Constance Filley Johnson

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I.D.# **49144**

July 8, 2022

Via email: *opinion.committee@oag.texas.gov*
Office of the Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General Opinion; Victoria County Water Control and Improvement District No. 2

Dear Committee Members:

The attached letter and request for opinion was submitted to this office concerning the Victoria County Water Control and Improvement District No. 2. As this entity is not an authorized requestor, this office was asked to exercise its discretion and submit the question related in the attached documents. After review of same, this office is formally submitting this question and requesting an opinion on the matters contained therein.

If you have any questions, or require any more information in order to fulfill this request, please do not hesitate to contact the undersigned at (361) 575-0468 or by email at cfjohnson@vctx.org. You may also contact my Asst. District Attorney Luis A. Martinez for any further information you may need or with any questions.

Sincerely,

Constance Filley Johnson

Attachments:

As Stated

MAREK, GRIFFIN & KNAUPP

DAVID C. GRIFFIN†★
ROBERT E. McKNIGHT, JR.
(ALSO LICENSED IN LOUISIANA)

OF COUNSEL
HOWARD R. MAREK***
JOHN GRIFFIN, JR*†♢
LYNN KNAUPP**

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June 14, 2022

By email opinion.committee@oag.texas.gov
Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Victoria County Water Control & Improvement District No. 2

Dear Committee Members,

Constance Filley Johnson, District Attorney for Victoria County, has kindly agreed to request on behalf of the above-referenced public utility ("the District") the Attorney General's opinion on a matter concerning the District's interest & sinking ("I&S") fund. I am the District's attorney and am not among those authorized to request directly an opinion. Ms. Johnson and I understand from your website that "[a] person other than an authorized requestor who would like to request an attorney general opinion may ask an authorized requestor to submit the question to the attorney general."[1]

General Legal Background

The District is subject to TEX. WATER CODE §§ 51.001-51.875, which includes authority to issue bonds. More specifically, the District operates under Article XVI, Section 59, of the Texas Constitution, so its bond-issuing authority is governed by § 51.402: "A district operating under Article XVI, Section 59, of the Texas Constitution, may incur debt evidenced by the issuance of bonds for any purpose authorized by this chapter, Chapter 49, or other applicable laws, including debt which is necessary to provide improvements and maintenance of improvements to achieve the purposes for which the district was created."

Once the issuance of bonds has been approved, a district's governing board levies a tax to serve two purposes: "to redeem and discharge the bonds at maturity," and "to pay for the expenses of assessing and collecting the taxes." TEX. WATER CODE § 51.433(a) & (b). These

[1] https://www.texasattorneygeneral.gov/attorney-general-opinions

taxes must be deposited into a district's interest and sinking fund. Tax money deposited into a district's interest and sinking fund "may be used only" for the following three uses:

(1) to pay principal and interest on the bonds;
(2) to defray the expenses of assessing and collecting the taxes; and
(3) to pay principal and interest due under a contract with the United States if bonds have not been deposited with the United States.

TEX. WATER CODE § 51.436(b).

In Opinion No. JM-142 (April 11, 1984) (Exh. A), the Attorney General allowed a fourth use. The opinion involves a water control and improvement district that significantly overtaxed its ratepayers: at the time of the request for an opinion, the balance of that district's I&S fund was "in excess of $390,000.00," but the balance of its outstanding bonds was only "approximately $31,000." *Id.* at 1. Hence, the district had far more money in its I&S fund than it could have spent on any of the uses allowed by § 51.436(b). The question posed was "[w]hether a water district may use excess bond monies levied for the interest and sinking fund for a water project not described in the bond issue." *Id.*

The Attorney General observed that for districts operating under Article XVI, Section 59 of the Texas Constitution (like the District at issue here), "it is clear that the constitution contemplates the creation of at least two discrete funds, one for maintenance of the district and one for the payment of interest on and redemption of outstanding bonds." JM-142 at 4. Primarily because of that reason, the Attorney General refused to follow a Texas appellate court opinion, concerning a public entity governed by a different constitutional and statutory combination, offered in support of the argument that "any surplus monies in the interest and sinking fund can be expended for any lawful purpose of the taxing unit." *Id.* at 2-3. The Attorney General concluded that a permissible non-statutory use of the surplus was much narrower:

> We conclude that, in the absence of statutory authority directing the disposition of any surplus monies levied for the interest and sinking fund, the water district may refund such excess to taxpayers or, in the event that such refund is impracticable, transfer such monies to the maintenance fund of the district. We note that section 51.352 of the Water Code specifies the purposes for which monies in [a] maintenance fund may be expended....

JM-142 at 7.

Facts Relevant to This Request

The District's independent auditor, in its audit report for the District's 2019-2020 fiscal

year, reported that during that fiscal year "the District paid off all debt for which Interest and Sinking ad valorem taxes were assessed." (Exh. B at 29.) But the District still had money in its I&S fund. It is believed that the surplus resulted from erroneous reporting to the county tax assessor-collector (who sets the rates for ad valorem taxes) of certain debt as bond debt, which caused the tax rates to be set higher than needed to retire just the bond debt.

The District's eventual response to the surplus, formalized by a vote of its governing Board on January 11, 2021, was informed by its awareness of JM-142. The Board considered (1) the I&S fund surplus that existed as of Sept. 30, 2020, the end of the fiscal year and (2) the additional surplus already coming into the I&S fund as a result of the annual ad valorem tax levy that had been recently assessed in October 2020 and that taxpayers were, at that time, in the process of paying. The Board concluded that refunds were impracticable as to (1), but were practicable as to (2). Following is an excerpt from the Board's resolution:

> (1) Refunding the surplus is impracticable to the extent that the surplus arose from levies prior to the one assessed in October 2020. The impracticability arises from the difficulty of determining when, over the years the District has maintained the I&S Account, the surplus was accrued, and the taxpayers to whom the surplus is attributable, such that it would be impossible to refund the surplus to those who funded it, all as more fully discussed on the record of the Board's meeting held this date, and it is appropriate therefore for such surplus to be transferred to the general maintenance fund;
>
> (2) Refunding the surplus is practicable to the extent the surplus arose from, and/or will arise from, payments pursuant to the levy assessed in October 2020; and

(Exh. C.)

As it turned out, refunds of surplus (2) were not as practicable as the Board expected when it approved this resolution in January 2021. The Board's expectation was based largely on its understanding that the county tax assessor-collector could furnish a list of the payors and their payments on the October 2020 levy. But later, the tax assessor-collector said it could *not* furnish such a list. Based on that information, the Board on August 20, 2021, revisited the issue and concluded that a refund of surplus (2) was also impracticable. (Exh. D.)

Consistently with these decisions and with JM-142, the Board has approved transferring $87,000 from the I&S fund to the general maintenance fund. Of this amount

- $41,969 is attributable to surplus (1), i.e., $41,969 is the total amount of surplus (1): the total amount in the I&S fund as of Sept. 30, 2020, by which time all the bonds had been retired and the balance of the fund would, ideally, have been zero), and

- $45,031 is attributable to part of surplus (2) (which totaled $142,769 as of Sept. 30, 2021, the cut-off date of the District's last independent audit[2]).

The Board's August 20, 2021 revisiting of the issue would have been the end of it, and the remainder of the surplus would have eventually been transferred into the general maintenance fund, but for the fact that the county tax assessor-collector once again revised its position. It informed the District that it *could* provide, pursuant to a special request to its information technology contractor, a list of those who paid, and in what amounts, the District's ad valorem taxes that were erroneously assessed in the October 2020 levy. The resulting list was provided to the District in February 2022.

Unfortunately, the District's senior administrative employee (and the District employs only two administrative employees) has found that the list contains numerous inconsistencies with the public records of tax payments that are available on the website of the Victoria County Appraisal District. These inconsistencies are so numerous and significant, and so beyond the apparent capacity of the District's two administrative employees to sort out, that the District might reaffirm its determination of August 11, 2021, that refunds of surplus (2) are not practicable. The District does not seek the Attorney General's opinion on this fact-intensive question.

The question on which the District does seek the Attorney General's opinion is this: Whether there is another alternative for use of the surplus in its I&S fund but one that (unlike a transfer to the general maintenance fund) does not depend on the impracticability of a refund. More specifically: Can the District maintain the surplus in the I&S fund and use it to reduce the amount owed on a future issuance of bonds (which is almost certain to happen) without finding that a refund would be impracticable? If the answer is *yes*, then the District could avoid continuing to research the fact-intensive question of whether the tax assessor-collector can provide a better list than the one of February 2022 and/or whether its own two administrative employees can reliably use the February 2022 list, possibly in combination with other sources, to calculate the refunds.

[2] Hence, the total of surplus (2) will be higher at present if any taxpayer paid the October 2020 levy after September 30, 2021. The October 2020 levy was the last one for the District with the erroneous ad valorem rate: no part of surplus (2) is attributable to any later levy.

Thank you for your attention to this matter. If you need any further information in order to address the question, please contact me.

Very truly yours,

/s/ *Robert E. McKnight, Jr.*

Robert E. McKnight, Jr.

The Attorney General of Texas

April 11, 1984

JIM MATTOX
Attorney General

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Honorable Luther Jones
El Paso County Attorney
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Opinion No. JM-142

Re: Whether a water district may use excess bond monies levied for the interest and sinking fund for a water project not described in the bond issue

Dear Mr. Jones:

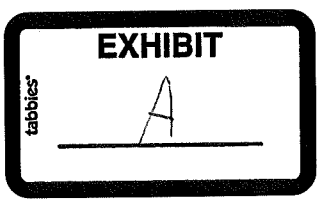
You ask us the following question:

> Can a water district use the proceeds of a bond issue passed pursuant to an act of the Thirty-ninth Legislature, chapter 25, 1925, for water projects other than the project described in the original bond issue?

We understand you to ask whether the district can expend surplus monies levied for the interest and sinking fund on water projects other than that described in the original bond issue. We conclude that monies in the interest and sinking fund cannot be expended for any purpose other than those set forth in section 51.436 of the Water Code. After the outstanding bonds are retired, any surplus may either be refunded if practicable, to taxpayers or be transferred to the district's maintenance fund.

You have supplied us with the following information. The El Paso County Water Control and Improvement District No. 4 issued a series of sewer bonds in 1956 in the amount of $275,000.00. Sections 51.433 and 51.434 of the Water Code require the district's board to levy a tax for the purpose of redeeming and discharging the bonds and paying the interest thereon. The fund created thereunder is now in excess of $390,000.00, with approximately $31,000.00 in bonds outstanding. The district proposes to use the excess funds for an Environmental Protection Agency project after the district has retired the remaining $31,000.00 in bonds.

Section 51.436 of the Water Code provides the following:



> (a) The district shall have an interest and sinking fund which shall include all taxes collected under this chapter.
>
> (b) Money in the interest and sinking fund may be used only:
>
> (1) to pay principal and interest on the bonds;
>
> (2) to defray the expenses of assessing and collecting the taxes; and
>
> (3) to pay principal and interest due under a contract with the United States if bonds have not been deposited with the United States.
>
> (c) Money in the fund shall be paid out of the fund on warrants by order of the board as provided in this chapter.
>
> (d) The depository shall receive and cancel each interest coupon and bond as it is paid and shall deliver it to the board to be recorded, cancelled, and destroyed. (Emphasis added).

Unambiguous statutory language is not subject to construction, but must be enforced as written. Ex parte Roloff, 510 S.W.2d 913 (Tex. 1974); Col-Tex Refining Co. v. Railroad Commission of Texas, 240 S.W.2d 747 (Tex. 1951). The clear language of the statute requires that money in the interest and sinking fund be expended only for three specified purposes. The district is without authority to expend the funds for any other purpose. But see Water Code §51.437 (permitting the investment of the funds in certain instances). Moreover, absent specific statutory authority to the contrary, monies in an interest and sinking fund may be used for no other purpose than the one for which it was created. Bexar County Hospital District v. Crosby, 327 S.W.2d 445 (Tex. 1959). See Attorney General Opinion H-658 (1975).

This rule applies when bonds remain outstanding. The rule is less clear when all of the outstanding bonds have been retired and there remains a surplus in the interest and sinking fund. In specific instances, the Texas Legislature has permitted the expenditure of surplus interest and sinking fund monies after the bonds outstanding are retired. See, e.g., V.T.C.S. arts. 723, 752a. The Water Code, however, is silent as to whether surplus monies in the interest and sinking fund can be expended after the bonds outstanding are retired.

It has been suggested that any surplus monies in the interest and sinking fund can be expended for any lawful purpose of the taxing

unit. Cited in support of such a proposition is Madeley v. Trustees of Conroe Independent School District, 130 S.W.2d 929 (Tex. Civ. App. - Beaumont 1939, writ dism'd judgmt cor.). We disagree both with the proposition and with the characterization of the Madeley case. Madeley concerned the disposition of surplus monies in the maintenance fund of an independent school district which the trustees sought to expend on the erection and equipment of a school building. The court held that the surplus monies in the maintenance fund ceased to be governed by the strictures imposed thereon by statutes specifying the purposes for which maintenance funds could be expended once the purpose of the statutes has been effectuated.

> If and when the statutes cease to control the fund, then it becomes a constitutional fund and not a statutory fund, and may be used by the trustees for the constitutional purposes; one of the constitutional purposes is 'the erection and equipment of school buildings' within the district. What we have said is in full recognition of the legal proposition that the fund collected for the support and maintenance of the public free schools, to the extent that it is needed for that purpose, can not be diverted to any other purpose.

Madeley v. Conroe Independent School District, supra at 934.

The following language in Madeley is that cited in support of the proposition that surplus monies in the interest and sinking fund may be expended for any lawful purpose of the taxing unit.

> The following illustration is in point on our holding: Where a district has issued bonds and voted a tax to retire them, what becomes of the surplus of the tax when the bonds are retired? Since it is not reasonable that the exact amount of the bonds will be collected, on every bond issue the trustees will have in their hands a surplus. Again, a tax payer permits his tax to become delinquent until after the bonds are retired; when sued, can he defend on the ground that the bonds for which the tax against his property was levied have been paid off? When the delinquent tax is collected, how shall it be expended? These questions find their answer in Sec. 3 of Art. 7 of the Constitution; where the bonds have been paid off the statutes regulating the expenditure of the funds for their payment cease to control the power of the trustees in the expenditure of the surplus, and its expenditure

> rests in the discretion of the trustees, under Sec. 3 of Art. 7 of the Constitution.

Id. For two reasons we conclude that such language is not dispositive of the issue before us. First, the paragraph is dicta. At issue in Madeley was a surplus in the maintenance fund, not in the interest and sinking fund.

Second, and more importantly, the court specifically held that article VII, section 3 of the Texas Constitution permitted school districts to levy a maintenance tax for "the erection and equipment of school buildings" within the district, as well as "for the further maintenance of public free schools." Tex. Const. art. VII, §3. The court noted that, for years, trustees of independent school districts had expended surplus monies in maintenance funds for erection of public school buildings. The constitutional provisions under which water control and improvement districts are created do not contain language similar to that of article VII, section 3. See Water Code §51.011. Article III, section 52 of the Texas Constitution authorizes the legislature to permit political subdivisions to issue bonds for certain specified purposes and to "levy and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof . . . ." Clearly, article III, section 52 contemplates the creation of a discrete, segregated interest and sinking fund; there is no language which could be construed to permit the expenditure of any surplus interest and sinking fund monies for any purpose other than the payment of interest and the redemption of outstanding bonds.

Likewise, article XVI, section 59 of the Texas Constitution authorizes the legislature to permit conservation and reclamation districts to issue bonds "as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment" and to levy and collect "all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds; and also for the maintenance of such districts and improvements . . . ." Again, it is clear that the constitution contemplates the creation of at least two discrete funds, one for maintenance of the districts and one for the payment of interest on and redemption of outstanding bonds. And again, there is no language in article III, section 52 which could be construed to permit the expenditure of surplus interest and sinking fund monies for any lawful purpose of the taxing unit.

There is admittedly a dearth of explicit, direct authority in this area. Courts in other jurisdictions have held that surplus monies in an interest and sinking fund can be expended after outstanding bonds have been redeemed for purposes other than those for which the bonds were originally issued and sold, but only when such was specifically provided by statute. See, e.g., Diver v. Village of

Glencoe, 379 N.E.2d 1214 (Ill. App. 1978); Jack's Cookie Corp. v. Giles County, 407 S.W.2d 446 (Tenn. 1966); St. Louis-San Francisco Ry. Co. v. Ottawa County Excise Board, 207 P.2d 275 (Okla. 1949); King v. Duval County, 174 So. 817 (Fla. 1937); Flint v. Duval County, 170 So. 587 (Fla. 1936); Rothschild v. Village of Calumet Park, 183 N.E. 337 (Ill. 1932).

The dearth of authority in this area may be easily explained by the fact that constitutional and statutory provisions which govern the creation of sinking funds ordinarily contemplate that no more taxes shall be collected than are necessary to meet the principal and interest on the bonds. See, e.g., East St. Louis v. United States, ex rel. Zebley, 110 U.S. 321 (1884); E.T. Lewis Co. v. Winchester, 130 S.W. 1094 (Ky. App. 1910); Rogge v. Petroleum County, 80 P.2d 380 (Mont. 1938); State v. Board of Public Instruction for Dade County, 170 So. 602 (Fla. 1936); 15 E. McQuillin, Municipal Corporations, §43.133 (1970). In fact, some courts have held that any levy creating such a surplus is void as to the excess. People ex rel. Brenza v. Fleetwood, 109 N.E.2d 741 (Ill. 1952); People ex rel. Manifold v. Wabash Ry. Co., 53 N.E.2d 976 (Ill. 1944); Rogge v. Petroleum County, supra.

We construe the Water Code to permit only the imposition of an interest and sinking fund levy sufficient to pay the bonds and interest as they become due. It clearly does not permit nor does it contemplate the creation of a surplus. Section 51.433 provides the following in pertinent part:

> §51.433. Tax Levy
>
> (a) At the time bonds are voted, the board shall levy a tax on all property inside the district in a sufficient amount to redeem and discharge the bonds at maturity.
>
> (b) The board annually shall levy or have assessed and collected taxes on all property inside the district in a sufficient amount to pay for the expenses of assessing and collecting the taxes.
>
> (c) If a contract is made with the United States, the board annually shall levy taxes on property inside the district in a sufficient amount to pay installments and interest as they become due.
>
> (d) The board may issue the bonds in serial form or payable in installments, and the tax levy shall be sufficient if it provides an amount

> sufficient to pay the interest on the bonds, the proportionate amount of the principal of the next maturing bonds, and the expenses of assessing and collecting the taxes for that year. (Emphasis added).

Section 51.434 of the code provides the following:

> §51.434. Adjustment of Tax Levy
>
> (a) The tax levy made in connection with the issuance of bonds shall remain in force from year to year until a new levy is made.
>
> (b) The board may from time to time increase or diminish the tax to adjust it for the taxable values of the property subject to taxation by the district and the amount required to be collected.
>
> (c) The board shall raise an amount sufficient to pay the annual interest of and principal on all outstanding bonds. (Emphasis added).

It is suggested that Attorney General Opinion MW-97 (1979) controls this issue. In Attorney General Opinion MW-97 (1979), this office declared that, in an instance in which the applicable statutes were silent as to the disposition of any surplus interest and sinking fund monies after the redemption of bonds outstanding, such funds may be expended only for the same "public improvements" for which the bonds were originally issued. Quoting McQuillin, Municipal Corporations at Volume 15, §43.134, the opinion declared:

> A sinking fund should be applied to the payment of the principal and interest on the bonds which it was created to service, and even though the bonds have been declared void, cannot be diverted to other purposes. Thus, it is an unlawful diversion to transfer a sinking fund to the general fund. . . . It has been held that an unallocated surplus remaining after the payment of principal and interest of outstanding bonds may be used for the construction of a public improvement . . . . (Emphasis added).

The case cited by McQuillin in support of the above underscored language is King v. Duval County, supra. As we have already noted, the rule in King is not a general rule of law with respect to the disposition of surplus interest and sinking fund levies; the transfer permitted in King was specifically authorized by statute. Such is not the case in the Water Code. Attorney General Opinion MW-97,

therefore, relied upon authority which does not support the proposition for which it was cited. Accordingly, to the extent to which Attorney General Opinion MW-97 conflicts with this opinion, it is hereby overruled.

In the absence of specific statutory authority, the prevalent judicial and legislative reasoning appears to be that such surplus monies may be refunded to taxpayers, see, e.g., Diver v. Village of Glencoe, supra; City of Stuttgart v. McCuing, 234 S.W.2d 209 (Ark. 1950), unless such refund would be impracticable. In such event, the surplus levy may be transferred to the general maintenance fund. See Morton v. Baker, 494 S.W.2d 122 (Ark. 1973); Lawrence v. Jones, 313 S.W.2d 228 (Ark. 1958).

We conclude that, in the absence of statutory authority directing the disposition of any surplus monies levied for the interest and sinking fund, the water district may refund such excess to taxpayers or, in the event that such refund is impracticable, transfer such monies to the maintenance fund of the district. We note that section 51.352 of the Water Code specifies the purposes for which monies in maintenance fund may be expended. See also Water Code §51.351 (provides that proceeds from the sale of bonds shall be deposited in the construction fund and that, after the payment of obligations for which the bonds were issued, any remaining money in the construction fund may be transferred to the maintenance fund).

S U M M A R Y

In the absence of statutory authority directing the disposition of any surplus monies levied for the interest and sinking fund after the redemption of bonds outstanding, the El Paso County Water Control and Improvement District No. 4 may refund such excess to taxpayers or, in the event that such refund is impracticable, transfer such monies to the maintenance fund.

Very truly yours,

Jim Mattox

JIM MATTOX
Attorney General of Texas

TOM GREEN
First Assistant Attorney General

DAVID R. RICHARDS
Executive Assistant Attorney General

Prepared by Jim Moellinger
Assistant Attorney General

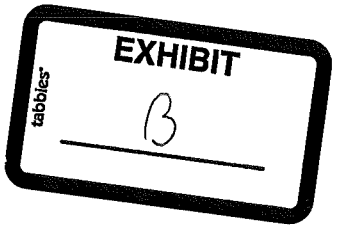
APPROVED:
OPINION COMMITTEE

Rick Gilpin, Chairman
Jon Bible
Colin Carl
Susan Garrison
Jim Moellinger
Nancy Sutton

VICTORIA COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2

FINANCIAL STATEMENTS

For the Year Ended September 30, 2020



NOTE 15: SUBSEQUENT EVENTS

During the fiscal year ended September 30, 2020, the District paid off all debt for which Interest and Sinking ad valorem taxes were assessed. The debt retirement occurred after the District had approved and submitted the Interest and Sinking ad valorem tax rate to the Victoria County Tax Assessor/Collector's office for the assessment of the 2020/2021 tax levy to be performed in October 2020. The District determined that it would be practicable to refund the surplus to taxpayers. Accordingly, the District will refund all tax collections associated with the 2020/2021 Interest and Sinking tax levy to the public and retain the General and Operating and Special Assessment tax levies to support District operations.

In preparing these financial statements, events and transactions have been evaluated for potential recognition or disclosure through February 8, 2021, the date the financial statements were available to be issued.

RESOLUTION

Whereas the Victoria County Water Control & Improvement District No. 2 ("District") finds itself with money in its Interest & Sinking Account ("I&S Account") surplus to what it needed to pay off all the debt for which ad valorem taxes were assessed to fund the Account; and

Whereas the District's options in this circumstance are set forth in Texas Attorney General Opinion No. JM-142: "such surplus may be refunded to taxpayers ... unless such refund would be impracticable," in which case "the surplus levy may be transferred to the general maintenance fund"; and

Whereas the District has carefully considered whether and to what extent a refund would be impracticable,

Now, therefore, the Board determines as follows:

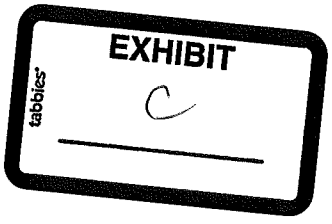
(1) Refunding the surplus is impracticable to the extent that the surplus arose from levies prior to the one assessed in October 2020. The impracticability arises from the difficulty of determining when, over the years the District has maintained the I&S Account, the surplus was accrued, and the taxpayers to whom the surplus is attributable, such that it would be impossible to refund the surplus to those who funded it, all as more fully discussed on the record of the Board's meeting held this date, and it is appropriate therefore for such surplus to be transferred to the general maintenance fund;

(2) Refunding the surplus is practicable to the extent the surplus arose from, and/or will arise from, payments pursuant to the levy assessed in October 2020; and

(3) To the extent the District has used surplus money in the I&S Account in 2019 (to pay off bonds that were to be covered by utility revenue rather than by ad valorem tax levies), and in 2020 (after paying off all the debt for which ad valorem taxes were assessed to fund the Account, to pay for sludge cleanup and disposal, and to pay the auditor's fee for the 2019 audit), it would have been impracticable to refund such surplus for the same reasons cited in section (1).

PASSED AND APPROVED this 11th day of January, 2021.

Adrienne Hernandez
Board Chair



Approved 9/20/2021

Victoria County Water Control & Improvement District #2

Minutes from special called meeting

August 20, 2021

The meeting was called to order by Board President Jesse Garcia at 7:00 pm. A quorum consisting of Jesse Garcia, Robert Zapata, Kathy Moses, Norma Morales, and John McGrand was present.

The citizens were welcomed and there were no public comments.

B1. 2021 Tax Rate – Donald Goldman of Goldman, Hunt & Notz, LLP, discussed the possible 2021 tax rate with the Board. He had talked to Robert McKnight, attorney, and Ashley Hernandez, Victoria Co. Tax Assessor-Collector. The district can raise the M&O tax rate by 8% this year due to the county being declared a disaster area because of the winter storm in February. He also discussed the work sheet that is used to compute the tax rate and felt the district should only charge the $0.2937/$100 valuation for the M&O rate. The district does not have any debt at this time and cannot charge for an I&S tax rate.

After discussion among the board members, Kathy Moses made a motion to set the 2021 tax rate at $0.2937/$100 valuation. John McGrand seconded. All for the motion, none opposed, motion carried.

B2. I&S account. Kathy Moses made a motion to not refund the funds in the I&S account and to move $40,000.00 to the M&O account. John McGrand seconded. After discussion, Kathy Moses rescinded her motion.

Kathy Moses made a motion to not refund the funds in the I&S account since we are unable to obtain the information needed to make the refunds. Robert Zapata seconded. All for the motion, none opposed, motion carried.

Kathy Moses made a motion to transfer $40,000.00 from the I&S account to the M&O account and to leave the balance in the I&S account. Norma Morales seconded. All for the motion, none opposed, motion carried.

C1. Public Notice for tax hearing. Kathy Moses made a motion for the public hearing to be held at 6:30 pm on Monday, September 13, 2021, and the regular board meeting will be held at 7:00 pm on Monday, September 13, 2021. Robert Zapata seconded. All for the motion, none opposed, motion carried.

C2. 2021 Audit Engagement – Keith Cox presented the engagement letter from Goldman, Hunt & Notz, LLP to the board for the 2021 Audit. The estimated cost will be $18,000.00. Kathy Moses made a motion to accept the engagement letter from Goldman, Hunt & Notz, LLP, for the 2021 audit. John McGrand seconded. All for the motion, none opposed, motion carried. Jesse Garcia signed the engagement letter.

Kathy Moses made a motion to adjourn at 7:32 pm. Norma Morales seconded. All for the motion, none opposed, motion carried. The meeting adjourned at 7:32 pm on 8/20/2021.