

Butte Local Agency Formation Commission



TO: Local Agency Formation Commission

FROM: Stephen Lucas, Executive Officer

SUBJECT: **LAFCO File No. 21-06 – Formation of Tuscan Water District**

DATE: Meeting of February 3, 2022



Purpose of Today's Meeting



- ➔ Build on the **Part A** presentation from December 2, 2021, meeting that provided public key information necessary to understand the broader framework under which the proposal was initiated and will be evaluated by the Commission.
- ➔ Receive **Part B** presentation from staff that provides the Commission and public with:
 - * **proposal details**
 - * **conditions of approval**
 - * **resolution for adoption**
 - * **responses to comments/questions**
 - * **factors considered for review**
 - * **CEQA findings**
 - * **powers**



Comments/Notice



- The Part B staff report addresses comments received after the December 2 meeting and until the date of the staff report (Jan 27).
- All comments received have been reviewed by the Commission and its staff and are part of the public record. Comments provide important public context into the decision making process and were organized by content type for a response.
- **Published Notice** was provided in the Chico Enterprise Record on November 11, 2021.
- Staff has taken the additional voluntary measure of **direct mailings to all landowners** within the proposed district.
- The notice was posted on the Butte LAFCo website.



Summary Overview



- **Initiated by landowner petition (56% of acres)**
- **Chief Petitioners:** *Rich McGowan, Darren Rice, Ed McLaughlin.*
- **102,327 acres in size**
- **57,092 acres = Petitioner Acreage**
- **88,951 acres = Agricultural Acreage in District**
- **3,136 parcels primarily used for agricultural production**
- **6,463 = Estimated population of District**
- **\$1,459,397,597 = District Assessed Value**
- **\$289,369,469 = Estimated value of TWD Agriculture**



Summary Overview

The proposed TWD will be:

- An independent, limited purpose, special district formed as a California Water District pursuant to Water Code Section 34000.
- A landowner voter district for which landowners' votes are weighted based on assessed land values they own.
- An enterprise special district with revenue generated exclusively by landowner assessments based on the assessed value of the land.

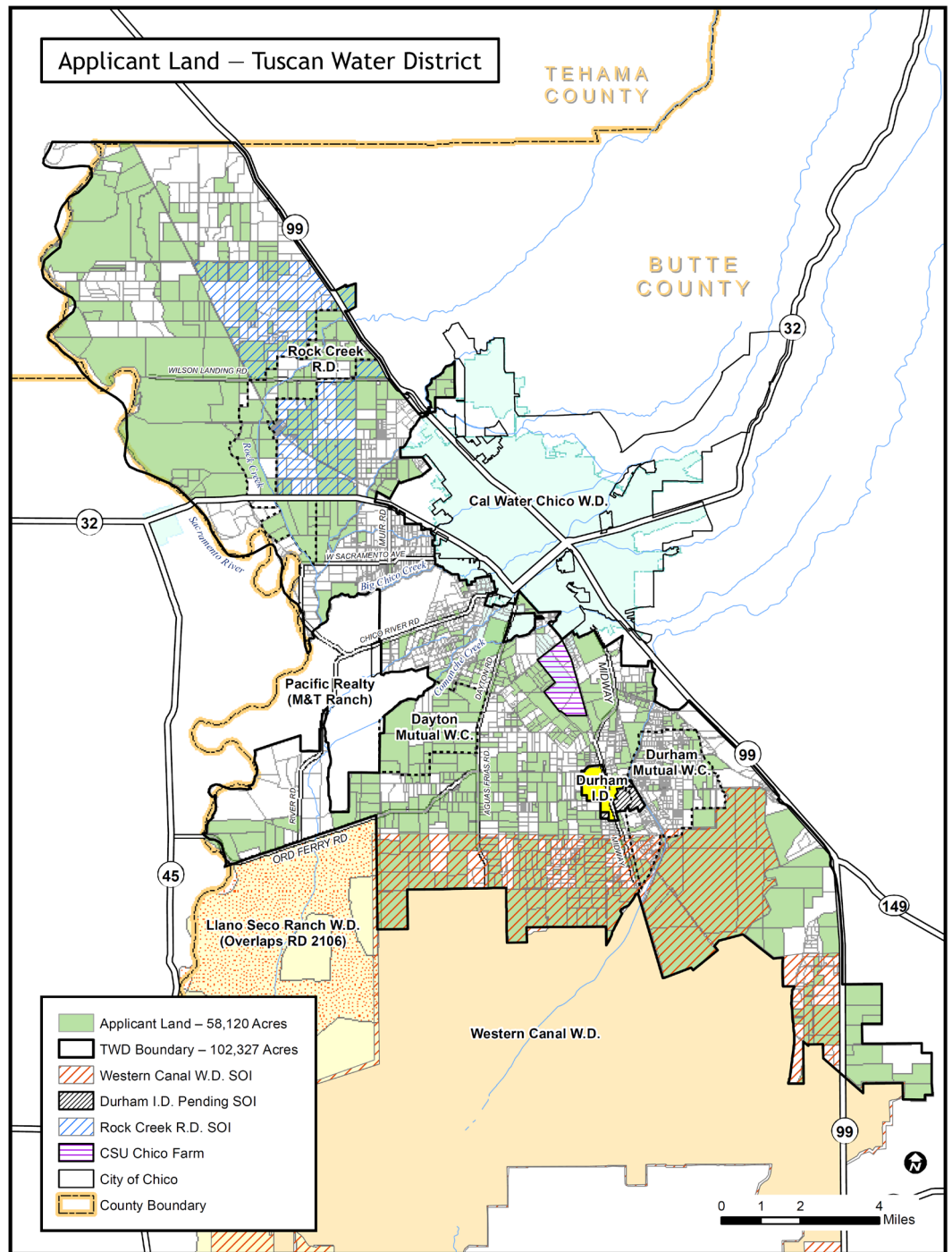
This is one of the fundamental benefits of a landowner district, those who own the most land and benefit the most from services, pay the most for improvements.

- Subject to:

Brown Act - Public Records Act - SGMA - CEQA - LAFCo Oversight

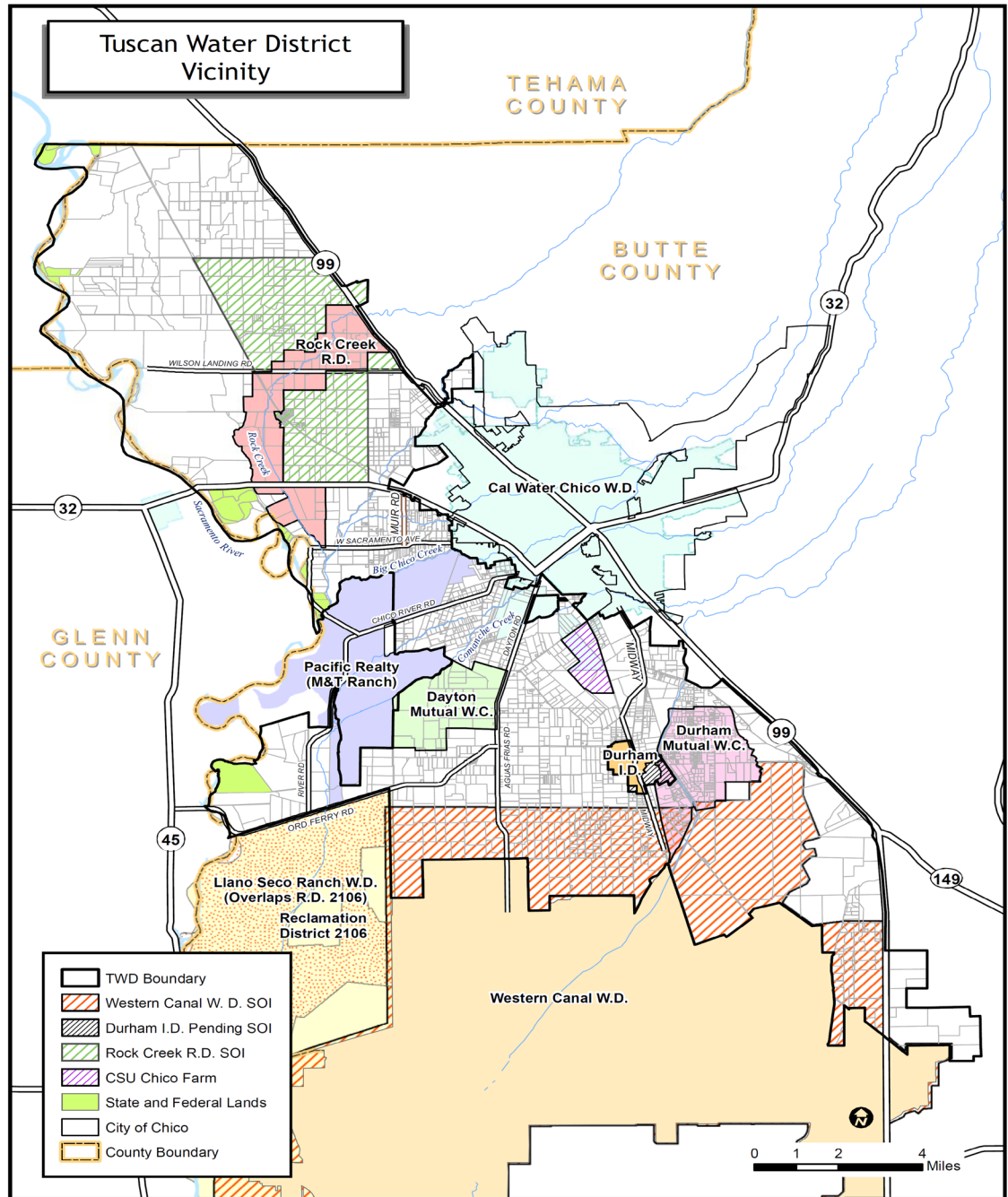
Tuscan Water District

Petitioner Lands



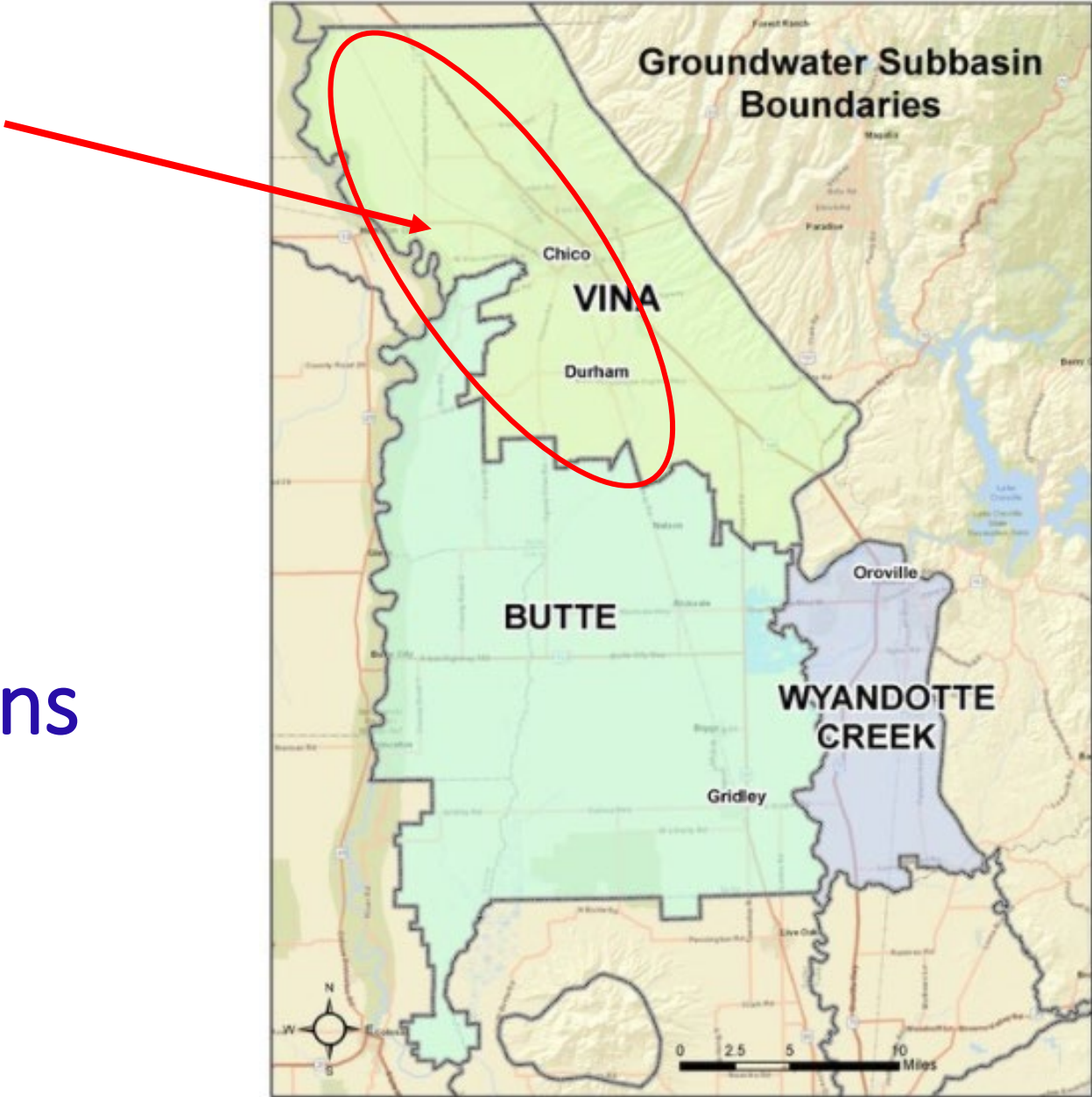
Tuscan Water District Vicinity

Butte County Vicinity Map



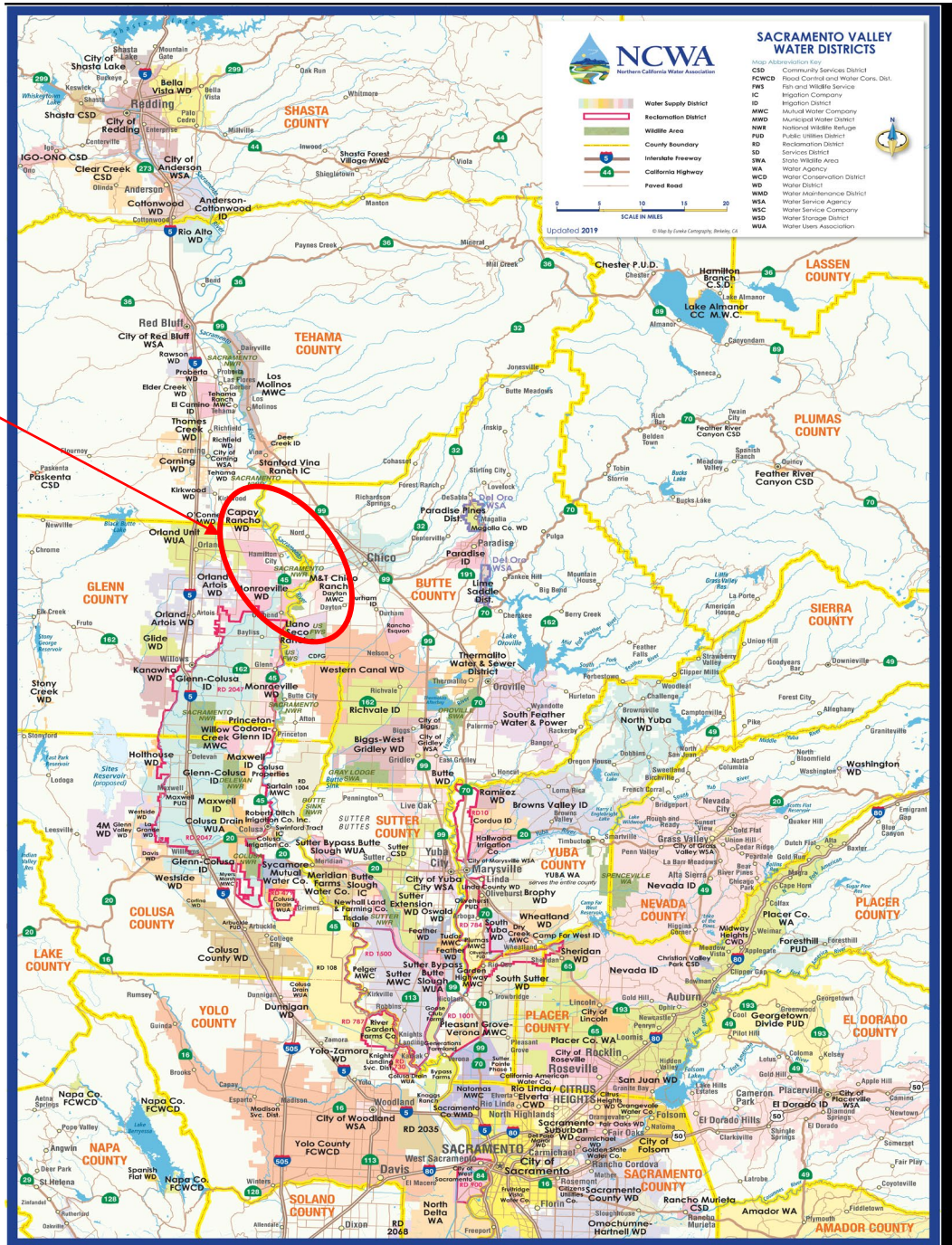
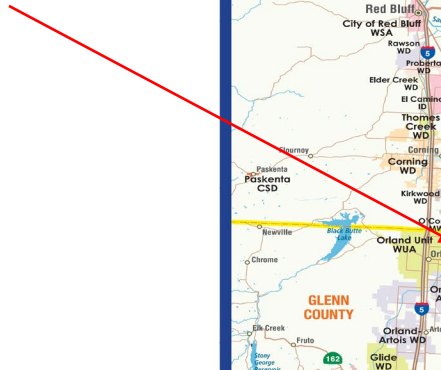
Tuscan
Water
District

Butte
County
GSA Basins



Tuscan Water District

North State Water Districts Map





Summary Overview



Purposes of TWD:

- Organize the landowners into a public agency with the overarching purpose of working cooperatively with the:
 - ✓ County of Butte
 - ✓ Butte County Water Commission,
 - ✓ Vina Groundwater Sustainability Agency (3 member GSA's)
 - ✓ Butte Basin Advisory Board (11 member GSA's)
 - ✓ Rock Creek Reclamation District Groundwater Sustainability Agency

To help implement the Groundwater Sustainability Plans (GSP) for the Vina and Butte sub-basins that will ensure adequate water is available to continue the existing agricultural uses of the affected land.



What is LAFCo's Role?



Pursuant to the Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (CKH) (GC56000), the Butte Local Agency Formation Commission (Butte LAFCo) has the discretion to:

- *approve (with or without conditions),*
- *modify, or*
- *deny the application for forming such a district.*



Formation Process at a Glance



Petition/ Application	LAFCO Public Hearing(s)	Protest Process	Vote
<p>Petition based on acreage-holders of title to a majority of the land.</p> <p>Landowners on the petition are checked. Application is submitted to LAFCO for review.</p>	<p>Staff Report is prepared. Analyzes various issues and factors regarding formation.</p> <p>Noticed public hearings are conducted. LAFCO decision to approve, modify or deny.</p>	<p>Allows the property owners to protest LAFCO's approval. Requires protest of more than 50% of acreage in the area to terminate.</p> <p>Otherwise action goes to a vote.</p>	<p>Formation Based on Acreage 1 ac.= 1 vote</p> <p>Funding Vote (218) – Must pass for District to be formed.</p> <p>Vote on Board of Directors based on acreage 1 ac. =1 vote</p>



Board of Directors



- Water Code allows 5,7,9. or 11 directors.

**The TWD will be established with a 9 member board of directors.
(Attachment F: Condition No. 7)**

- Water Code requires initial election to be at large.

The initial TWD board of directors will be elected at large based on one (1) vote for every one (1) acre of land owned. (WC34700).The initial (Attachment F: Condition No. 8)

- Water Code allows elections by divisions.

The TWD will be divided into divisions to allow for broader representation on the District Board and to greatly minimize the influence of large landowners. (Attachment F: Condition No. 10)

Boundaries



- The TWD service area boundary is approximately 102,327 acres (88,951 farmed) and contains approximately 3,136 parcels. The proposed TWD service area has contiguous boundaries and no islands of unserved territory.
- To the extent feasible, the TWD boundary followed the hydrologic boundary of the Vina Basin while taking into consideration physical features such as roads and creeks.

Service Area Recommendation. Staff recommends that the service area boundary be approved as proposed minus any dissenting landowners who request LAFCo to remove their parcels or landowners requesting to be included in the District.

Boundaries



- A Sphere of Influence (SOI) is a planning boundary established by LAFCO which identifies areas that might be annexed in the future.
- The Commission has the flexibility to delay for one year the SOI determination.
- A conterminous SOI is expected.

Within 6 months of the recording of the Certificate of Completion for the formation of the Tuscan Water District, the Board of Directors of the Tuscan Water District shall submit an application to LAFCo to conduct a municipal service review (MSR) and determine the sphere of influence for the new district to LAFCo and that all fees and costs associated with the application shall be borne by the applicant (TWD), including an initial deposit in an amount deemed appropriate by the Executive Officer. The failure to execute this condition will result in the Commission applying a zero sphere of influence and initiating corrective actions up to and including, dissolution of the District. (Attachment F: Condition No. 6)

Boundaries



- The Water Code (WC34157) allows a proposed district to overlap other local agencies.
- The proposed TWD boundaries overlap with the Rock Creek Reclamation District (RCRD), Western Canal Water District (WCWD) Sphere of Influence which is permitted under the Water Code.
- The RCRD, WCWD have all provided letters of support for the TWD formation and have no concerns about any overlap.

The Tuscan Water District shall not have the power to acquire, plan, construct, maintain, improve, operate, and keep in repair the necessary works for any drainage or reclamation works within the jurisdictional boundaries or sphere of influence of the Rock Creek Reclamation District without the written consent of the Rock Creek Reclamation District Board of Directors. (Attachment F: Condition No. 15)



Powers, Services and Functions



- The TWD will be a *limited purpose* local government, meaning it will be providing one service or a single suite of services (water related) based on the powers allowed by the Water Code **(Attachment D)** and authorized by LAFCo.

Primary California Water District Powers (WC35400)

- **Acquisition and operation of water works for the production, storage, transmission, and distribution of water for irrigation, domestic*, industrial* and municipal purposes*, and any drainage or reclamation works* connected with such undertakings.**
- **Acquire and operate facilities and services for the collection, treatment, and disposal of sewage, waste, and storm waters.**

*** Addressed in Conditions of Approval Attachment F**



Powers, Services and Functions



- The TWD has requested the powers of a California Water District (WC34000) with the certain exceptions (sewer services, municipal/industrial water).
- Butte LAFCo has the authority to determine the powers granted to the TWD at formation and thereafter.
- All powers allowed under the principal act not initially granted by LAFCo, become latent powers. Districts can apply to LAFCo to activate latent powers or divest themselves of existing powers if warranted and at LAFCo's discretion.

Powers, Services and Functions Recommendation. It is recommended that all powers be activated with the exception of the District's capability to provide sewer services, transfer/move/export water outside of the District boundaries, and restrict the District from providing municipal (domestic) and industrial water services.



Powers, Services and Functions



Powers Recommendation. To ensure that the Tuscan Water District is able to complete its duties and responsibilities, the powers of the Water District should be activated as described in Attachment E with the exceptions as shown below:

Conditions of Approval (**Attachment F**) - Section 3

14. Tuscan Water District shall submit any proposals, plans or projects regarding any extraction, use, or transfer of groundwater as defined in **Butte County Chapter 33 (Groundwater Conservation)**, to the Butte County Department of Water and Resource Conservation for review and such proposals cannot be implemented or initiated until and unless, the Butte County Board of Supervisors or the Director of Butte County Department of Water and Resource Conservation determines in writing that the proposed activities, actions and proposals are consistent with the Butte County Code Chapter 33 (Groundwater Conservation). Requests not deemed consistent with the Butte County Chapter 33 are prohibited. The Tuscan Water District shall adhere to all the laws of the County of Butte.
15. The Tuscan Water District shall not have the power to acquire, plan, construct, maintain, improve, operate, and keep in repair the necessary works for any drainage or reclamation works within the jurisdictional boundaries or sphere of influence of the **Rock Creek Reclamation District** without the written consent of the Rock Creek Reclamation District Board of Directors.



Powers, Services and Functions



16. That pursuant to the applicable Water Code Sections the Tuscan Water District is authorized to exercise all powers and authorities subject to the following restrictions in a-g below:

- a. The Tuscan Water District's shall not have the powers to **export, transfer, or move water** underlying the Tuscan Water District (including groundwater pumped into an above ground storage facility) **outside the Vina or Butte Subbasins**. For purposes of this Condition "groundwater" shall have the meaning set forth in Water Code Section 10721(g) as follows: "Groundwater" means water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels unless included pursuant to Section 10722.5.
- b. The Tuscan Water District shall not have the power to **acquire, plan, construct, maintain, improve, operate**, and keep in repair the necessary works for the production, storage, transmission, distribution and sale of water for **domestic, industrial, and municipal purposes** (WC35401). These powers under the California Water Code shall be deemed inactive or latent.



Powers, Services and Functions



- e. The Tuscan Water District **shall not** have the power to **acquire, construct, operate,** and furnish facilities and services, within or without the district, for the **collection, treatment, and disposal of sewage,** waste, and storm water nor contract with any persons, firms, public or private corporations or public agencies or other users concerning facilities and services for said purpose. (WC35500). The District could request that LAFCO activate these powers in the future. These powers under the California Water Code shall be deemed inactive or latent.
- f. The Tuscan Water District **shall receive approval for any groundwater recharge** projects within the Districts' boundaries from the appropriate GSA under Conditions No.12 and 13, and the reclaimed or recharge water shall be maintained and used for the general public good in sustaining the Vina groundwater basin and the District and its landowners are restricted from ownership of reclaimed or recharged water.
- g. If the District approves and implements a project involving the delivery and/or importation of surface water into the District, then the District shall not thereafter **transfer that surface water for use outside the District boundaries.**



Funding



- The TWD will be an enterprise district meaning its revenue will be derived from grants, fees and assessments and it will receive NO ad valorem property tax share.
- The TWD is proposing a ten dollars per acre (\$10.00/acre) parcel assessment for all District lands. The largest landowners will pay the largest shares of assessments.
- The TWD proposes an annual budget (Attachment C) of \$446,000 which is similar to other local single purpose special districts and is adequate to initiate the creation, organization and administrative functions of the District.
- **Fiscal issues are covered in Attachment C (Fiscal Analysis) and Attachment D (Factors for Consideration, Factor K and LAFCo Policies 2.7, 5.2.8)**



Funding



Five Year Budget Projection

Budget Line	Year 1	Year 2	Year 3	Year 4	Year 5
General Manager/District Engineer (salary and benefits)	120,000	132,300	138,915	145,861	153,154
Legal Counsel (under contract/hourly)	50,000	52,500	55,125	57,881	60,775
Office Manager (salary and benefits (full-time))	60,000	63,000	66,150	69,458	72,930
Contract administrative, computer, tech support	25,000	26,250	27,563	28,941	30,388
Rent/office space	18,000	18,900	19,845	20,837	21,879
Office furniture (desks, chairs, tables, file cabinets, computers, phone lines, and other support material)	15,000	15,750	16,538	17,364	18,233
Contingency (20%)	57,600	60,480	63,504	66,679	70,013
General Reserve	100,00	100,000	100,000	100,000	100,000
Total Operating, Contingency and Reserve	445,600	484,930	487,640	507,021	527,372



Funding



Budget Recommendation. The Fiscal Analysis in Attachment C provides the reasonable rationale for the budget and the formula for the revenues. It provides adequate information for LAFCo and landowner decision-making with regard to the formation of the Water District. Ultimately the landowners within the proposed Water District boundary would be deciding if they believe the funding formula to be fair, equitable, and reasonable.

Conditions of Approval (Attachment F) - Section 3

2. That formation of the Tuscan Water District shall be contingent upon a successful landowner vote, based on one (1) vote for every one (1) acre of land owned, on the following:
 - a. Approve the formation of the 102,327 acre Tuscan Water District
 - b. Approve parcel assessment of a maximum of ten dollars per acre (\$10.00/acre) to fund the initial administrative/organizational needs and activities of the Tuscan Water District.
 - c. Selection of an initial nine (9) members of the Board of Directors

If any of the above matter on the ballot are not successful, the District will not be formed.

Intergovernmental Coordination



- **The following agencies support working cooperatively with the proposed TWD:**
 - **Butte County Board of Supervisors**
 - **Western Canal Water District**
 - **Rock Creek Reclamation District (and GSA)**
 - **Paradise Irrigation District**
 - **Glenn Groundwater Authority**
 - **Butte County Resource Conservation District**
 - **Northern California Water Association (NCWA)**
 - **City of Chico**
 - **Durham Irrigation District**
 - **California Water Service Company**

SGMA



- The TWD proposal relates directly to the implementation of SGMA, which requires locals GSA's to create GSP's.
- The proposed TWD is primarily located within the Vina Subbasin, and area that currently has no locally-governed, subbasin-wide special district that can evaluate, fund, implement, and oversee projects to implement the GSP.
- The Vina and Rock Creek Reclamation District GSA's are the groundwater authority for the Vina Subbasin.



- The Vina and Rock Creek Reclamation District GSA's have adopted the Vina Subbasin GSP.
- The proposed TWD would be formed to evaluate, fund, and implement projects and actions to achieve groundwater sustainability under the Vina GSP.

SGMA



- If formed, the proposed TWD WILL NOT be a GSA.
- The TWD will be required to enter into a Memorandum of Understanding with the Vina, Rock Creek and Butte Basin Groundwater Sustainability Agencies (GSAs) to guide their relationship and the implementation of the project and management actions identified in the GSA's GSP's.
- Through the MOU with the GSA's, the proposed TWD would consider projects that are identified in the Vina GSP Projects and Management Actions chapter.





SGMA



The TWD will be subject to the following conditions: (Attachment F, 12, 13, 16f, 17a,c)

SGMA Recommendation. To ensure that the Tuscan Water District is able to complete its duties and responsibilities consistent with the adopted GSP's, strong conditions are fully described in Attachment F and summarized below:

- The Tuscan Water District, shall within one (1) year from formation the date of the recording of the Certificate of Completion, **enter into a memorandum of understanding (MOU) with the Vina Basin and Butte Basin Groundwater Sustainability Agencies** establishing the formal, government to government working relationship between the TWD and the GSA's to include acknowledging the roles of each agency in the SGMA environment, methods for communication, cooperation and collaboration, establishing points of contact and any other matter that leads to cooperation in the implementation of the GSP for the basin. The failure of the District to successfully enter into a MOU with the GSA's within one year of the Certificate of Completion being filed, the Tuscan Water District shall be dissolved by LAFCo at the request of the TWD Board of Directors. **(Attachment F: Condition No. 12)**



SGMA



- Per the MOU required in Condition No. 12, all activities, actions, projects, and proposals initiated by the Tuscan Water District within its jurisdictional boundaries related to the direct or indirect management of groundwater resources, including groundwater recharge options, shall be submitted to the appropriate GSA for review and cannot be implemented or initiated until and unless, the affected GSA Board determines in writing that the proposed activities, actions and proposals are consistent with the applicable GSP. Requests not deemed consistent with the GSA's GSP, are prohibited. **(Attachment F: Condition No. 13)**
- The Tuscan Water District shall receive approval for any groundwater recharge projects within the Districts' boundaries from the appropriate GSA and the reclaimed or recharge water shall be maintained and used for the general public good in sustaining the Vina groundwater basin and the District and its landowners are restricted from ownership of reclaimed or recharged water. **(Attachment F: Condition No. 16f)**



SGMA



- The District shall prepare a project description and submit it to the Vina Groundwater Sustainability Agency (GSA). The GSA shall undertake a GSP consistency determination by reviewing the project description and determining whether the project is consistent with the GSP. A principal purpose of the GSP determination review is to confirm that the proposed project will be consistent with the GSP before the District undertakes the effort, time, and expense to perform CEQA review of the project. **(Attachment F: Condition No. 17a)**
- The District may proceed with and implement the project if the GSA has determined that it is consistent with the GSP and the District has complied with CEQA. **(Attachment F: Condition No. 17c)**



The big questions simplified:

- Has a reasonable need for groundwater management services in the proposed TWD been established? = **YES**
- Can the proposed TWD adequately fund itself? = **YES**
- Is there a reasonable and implementable alternative to meet the needs of the TWD landowners? = **NO**
- Can concerns raised be effectively addressed with appropriate conditions of approval? = **YES**

Pursuant to the detailed analysis in Attachment D – Factors for Consideration and the entirety of the project record to date.

Action Requested:

OPTION 1 – APPROVE the proposal as submitted:



A. Adopt environmental findings as shown in the draft resolution

B. Move to adopt Resolution No. 21 2021/22 approving the Formation of the Tuscan Water District for the purpose of implementing the Vina Groundwater Sustainability Plan.

