



## BUTTE LOCAL AGENCY FORMATION COMMISSION

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### MEMORANDUM

**TO:** Local Agency Formation Commission

**FROM:** Scott Browne, Legal Counsel

**SUBJECT:** **Agenda Item 3.2 – LAFCo File No. 21-06 - Proposed Amendments to the Tuscan Water District Formation Adopting Resolution.**

**DATE:** February 23, 2023, for the meeting of March 2, 2023

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#### Summary

The Commission is requested to consider and adopt an amended Resolution for the Formation of the Tuscan Water District. The amendments are intended to address procedural and other issues regarding the proceeding raised in a December 7, 2022, letter (**Attachment J**) from James McCabe and other comment letters. The recommended amended Resolution is attached as **Attachment A** to this report.

#### Background

The Butte Local Agency Formation Commission (LAFCO) adopted Resolution 11 2021/22 (**Attachment B**) on February 3, 2022, approving the application for the formation of the Tuscan Water District, as a California Water District pursuant to Water Code, Division 13 and the requirements of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH). The formation was approved subject to a protest hearing and a landowner election.

The Protest Proceedings were duly noticed and conducted. The protest proceeding concluded on April 5, 2022, and there was insufficient protest to terminate the formation application and therefore, an election was called.

Pursuant to the Commission direction (Section 4.E) of the adopting resolution (No. 11 2021/22), the Executive Officer, on behalf of the Commission, requested in his letter of April 7, 2022, (**Attachment C**) that the Butte County Board of Supervisors (BOS) direct the County Elections Official to conduct the necessary election.

At its meeting of April 7, 2022, the BOS adopted Minute Order 042622-4.03 (**Attachment D**), calling for a mailed ballot election, conducted by Elections official, for the formation of the Tuscan Water District and set the date of the election for September 20, 2022.

Pursuant to the Commission direction (Section 4(F) of the adopting resolution), the Executive Officer prepared for the Commission's review an Impartial Analysis (**Attachment E**) of the proposed District formation, which was approved by the Commission on June 2, 2022, and submitted to the County Elections Official on June 6, 2022. With this action, LAFCo's formal role was completed and the County Elections Official proceeded to conduct the mailed ballot election.

On September 16, 2022, James McCabe sent a letter (**Attachment F**) to the Butte County Clerk Recorder objecting to the election proceeding. He pointed out that the Elections Office had failed to send the Notice of Election required by Government Code §57130. He also raised objections to the proposed ballot measure for a parcel charge to fund the operation of the district. On September 16, 2022, James McCabe sent another letter to the Butte County Clerk Recorder stating additional concerns with the election ballot. AquAlliance raised similar objections in a letter dated September 19, 2022 (**Attachment G**).

On September 27, 2022, the County Elections Official issued a News Release (**Attachment H**) stating that *“due to concerns that were raised regarding whether adequate notice of the election was provided, the Elections Official has determined that the official canvass will not be conducted as scheduled, and no results will be certified at this time. A new election will instead be re-noticed and scheduled for a future date.”*

LAFCo was requested by the County to submit a new request to the BOS calling for a new election. Pursuant to the Commission direction (Section 4.E) of the adopting resolution, the Executive Officer and Legal Counsel, on behalf of the Commission, provided the request on November 29, 2022 (**Attachment I**).

On December 7, 2022, Mr. McCabe sent a further letter (**Attachment J**) to the Butte County Administrative Officer outlining his concerns with the TWD election process, the proposed parcel charge, and originating LAFCo Resolution No. 11 2021/22 adopted February 2, 2022.

On January 3, 2023, Butte County Counsel provided a letter (**Attachment K**) stating that *“On behalf of the Clerk of the Board of Supervisors and the Clerk-Recorder/Registrar of Voters Office, the Butte County Counsel's Office is requesting that the Butte LAFCo Commission review Mr. McCabe's letter and adopt, if appropriate, a revised TWD Formation resolution to submit to the County that addresses the issues he has raised.”*

## **Request**

The balance of this memorandum addresses the concerns raised by McCabe and others and provides a recommended Amended Resolution to address and resolve these concerns. While staff does not necessarily agree with all of Mr. McCabe's legal objections, we are recommending changes to the Formation Resolution to reduce the risk of a successful legal challenge to the validity of the proceeding.

## **Analysis**

What follows is a point-by-point discussion of each of McCabe's objections. We are primarily focusing on his December 7, 2022, letter (Attachment I) as it incorporates his previous objections.

### McCabe September 16, 2022, Letter (**Attachment F**)

In his September 16, 2022, letter, McCabe objected to the failure of the County to provide the Notice of Election required by G.C. §57130.

The Amended Resolution explicitly directs the BOS to direct the County Elections Department to comply with the notice requirements of G.C. §57130 prior to holding the TWD formation election. (See Section 4.E. of the Amended Resolution).

McCabe December 7, 2022, Letter Concerns (*Attachment I*)

1. LAFCo Staff Does Not Have Authority to Request an Election.

Mr. McCabe asserts that LAFCo staff did not have authority under CKH to request that the Board of Supervisors initiate election proceedings for the formation of the TWD. He says only the Commission itself can make such a request.

The Executive Officer was expressly authorized by the Commission's resolution to make the request, which staff believes is legally sufficient. Furthermore, CKH (Govt. Code § 56384(a)) establishes the Executive Officer position and authorizes the Executive Officer to conduct and perform the day-to-day business of the Commission. Nevertheless, to avoid a future issue, the request shall be expressly made in the Amended Resolution and sent with an election request signed by the Chair of the Commission. (See 4.E. of the Amended Resolution.)

2. A New LAFCO Resolution is Necessary

McCabe asserts that a new Resolution from LAFCo is required to initiate the new election process under G.C.§57000(e)(1). The Board of Supervisors then has 45 days to call a special election, or it will be consolidated with the next general election.

Since staff is recommending that LAFCo adopt an amended Resolution and request for election, this objection will be satisfied.

3. The Formation Vote of Landowners Should be Based on Assessed Value, Not Acreage

McCabe objects that the LAFCo Resolution improperly specified that the vote on district formation be weighted based on acreage rather than on assessed valuation. He asserts that Water Code §34422 requires that the formation vote be based on assessed value using the County Assessment Roll.

The Water Code provisions regarding how the formation vote is weighted are ambiguous. In Part 4, Chapter 1. Elections Generally, Article 1. General Provisions §35003.Voting Rights provides:

*Each voter shall have one vote for each dollar's worth of land to which he or she holds title. The last equalized assessment book of the district is conclusive evidence of ownership and of the value of the land so owned except that in the event that an assessment for a district shall not have been made and levied for the year in which the election is held, the last assessment roll of each affected county shall be used in lieu of the assessment book of the district as evidence of ownership. However, the board may determine by resolution that the assessment book or assessment roll of each affected county shall be corrected to reflect, in the case of transfers of land, those persons who as of the 45th day prior to the election appear as owners on the records of the county. If an equalized assessment book of the district does not exist, then each voter shall be entitled to cast one vote for each acre owned by the voter within the district, provided that if the voter owns less than one acre then the voter shall be entitled to one vote and any fraction shall be rounded to the nearest full acre. [emphasis added]*

Since at formation no District Assessment Book exists, this provision would direct the weighting of the vote based on acreage owned. This is the formula adopted in the initial LAFCo resolution and the one most commonly used by other LAFCos who have formed California water districts.

However, as Mr. McCabe points out, Part 2. Formation, Chapter 3. Election on Formation, Article 2. Conduct of Election, § 34422 provides:

*At the [formation] election, the last equalized assessment roll of each affected county shall be used in lieu of the district assessment book.*

This section, McCabe argues, requires voting at formation be based on assessed value using the County assessment roll. He points out that W.C. Section 34422 is specifically in the provisions addressing the formation vote. It recognizes that at formation, there is no District Assessment Roll and directs that the County Assessment Roll be used in its place. W.C. Section 35003's provision for use of acreage when there is District Assessment Roll do not apply at formation, because 34422 substitutes the County Assessment Roll for the non-existent District Assessment Roll.

There is no case law interpreting these provisions, so we must try to determine how a court is likely to interpret them. The objective of judicial interpretation of statutes is to ascertain legislative intent and give effect to the legislative will. The various rules and principles of statutory construction are aids for ascertaining legislative intent. (58 Cal. Jur. 3d Statutes § 104)

Application of the rules of statutory construction to these confusing Water Code statutory provisions is complicated. On the one hand, the rules suggest that a later adopted provision (35003, last amended in 1992) normally supersedes any earlier adopted conflicting provision. Section 34422 was part of the original California Water District Act adopted in 1951. We also have WC §34153 that specifically requires the landowner petition to initiate formation be executed by the owners to a *majority of acres* of a contiguous area of land. Only where it is proposed to form a district of non-contiguous land is assessed value used to determine the necessary petition sufficiency. The TWD petition was for a contiguous district and the petition sufficiency was based on acreage, not assessed land value. If the petition was based on acreage, this would lend support for finding that the vote on formation should also be based on acreage.

However, such an interpretation would amount to an implied repeal of Section 34422. Section 35003's acreage formula would always apply at formation, since there is never a District assessment roll in existence at formation. Such implied repeal is disfavored under the rules of statutory construction. When possible, courts should seek to harmonize inconsistent statutes, construing them together to give effect to all of their provisions (58 Cal. Jur. 3d Statutes §107, 113). Here 35003 and 34422 can be harmonized. Section 34422 states that for formation elections, the County assessment roll is used in place of the district assessment roll. In such case, 35003's rule for the use of acreage where a district roll does not exist does not apply. In the special case of formation elections, a district assessment roll **does** exist-- it is simply the county assessment roll per 34422. This interpretation is also supported by the rule that a provision dealing with a specific situation normally reflects a legislative intent that the specific provision supersedes any contrary general provision in that situation.

That this is the appropriate interpretation of the two statutes is further confirmed by consideration of the statutory scheme of the California Water District Act. Section 35003 states the fundamental policy for water district voting that "*Each voter shall have one vote for each dollar's worth of land to which he or she holds title.*" In formation elections, this value-based vote can be upheld by using the county assessment roll as authorized by Section 34422.

"Land" is a defined term in the California Water District Law. It means the "the solid material of the earth ..., but there shall not be included in the meaning of land improvements thereon...." (Water Code § 34014.) Consequently, in determining "each dollar's worth of land" under the County assessment roll, the land value should be included, but not the value of any improvements on the land.

Staff therefore concludes that a court would be more likely to construe Section 34422 as governing district formation voting and require land value-based weighting of landowner votes using the County assessment roll to establish title and land value (and excluding the value of improvements). Staff therefore recommends including such a requirement in the amended Formation Resolution both for formation and director election. See Sections 3, General Conditions, sub 2. and 4. E. of the Amended Resolution. With amendment, this objection will be satisfied.

#### 4. Resolution errors per G.C. Section 57115

Mr. McCabe asserts that the LAFCo resolution omits elements regarding the election process specifically required by Section 57115 of CKH. Consequently, he argues that the resolution is invalid to authorize the BOS to initiate the district formation election process.

CKH Section 57115 requires that:

*Any resolution of the commission forwarding a change of organization or a reorganization for confirmation by the voters shall, in addition to any applicable requirements contained in Sections 57100 to 57111, inclusive, do all of the following:*

- (a) Designate the affected territory within which the special election or elections shall be held.*
- (b) Provide for the question or questions to be submitted to the voters.*
- (c) Specify any terms or conditions provided for in the change of organization or reorganization.*
- (d) State the vote required for confirmation of the change of organization or reorganization*

Mr. McCabe asserts that the LAFCo Resolution fails to set out the ballot “questions” to be presented at the formation election as required by 57115(b) and fails to “State the vote required for confirmation” as required by 57115(d).

- Ballot Questions

The LAFCo Resolution indicates the issues to be presented to the TWD voters but does not explicitly set forth the ballot language of the questions for the voters. The Proposed Amended Resolution No. 18 2022/23 (**Attachment A**) does provide explicit ballot language. See Section 4.F.

- Failure to State the Vote Required

McCabe objects to the language of the LAFCo Resolution regarding the vote needed to approve the proposal. First, he argues it is too vague as to who gets to vote. Second, the Resolution fails to explicitly state the vote amount required for confirmation.

McCabe criticizes the LAFCo Resolution because it refers to the voters in the formation election simply as a “landowner vote.” He claims it is imprecise and seems to have been misleading to the County elections official. He points out that the principal act, Division 13 of the Water Code, provides “‘Voter’ means a person who is a holder of title.” (Cal. Water Code §34027). A Division 13 voter thus must meet two qualifications: they must be a holder of title, and they must be a “person”. Division 13 voters are not defined simply as “landowners” or “holders of title”.

The California Water District Law specifies who is entitled to vote in the formation election. The formation election must be held pursuant to the general election provisions in the Law, which are found at Water Code sections 35003 – 35125. (Wat. Code § 34424.) Section 35004 provides for voting by “Every voter, or his legal representative.” A “voter” is a person who is a holder of title. (§ 34027.) A “holder of title” is the owner of record of the fee title to land. (§ 34026.) A “legal representative” includes a “person duly authorized to act for, and on behalf of, a holder of title

to land that is not a natural person.” (§ 34030) Water Code section 19 defines “person” broadly as “any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.” Therefore, eligible landowner/voters will be the record fee owner of the land (which could be a corporate/business owner or other entity owning the land) who is a “person,” which is defined as including a corporation and other business entities. The terms “voters” and “legal representatives” are used in Water Code section 34401 which reads “The notice of the election shall contain: ... (f) A statement that all voters and legal representatives of voters may vote either in person or by proxy at the election.” Likewise, Water Code section 35004 reads: “Every voter, or his legal representative, may vote at any district election either in person or by a person duly appointed as his proxy.” There is no reason to believe, as Mr. McCabe infers, that only humans who hold title to land may vote.

The Amended Resolution more precisely defines the voters in the formation election by reference to the statutory provisions. The Amended Resolution also will include the specification of the vote required to confirm the LAFCo formation action and elect directors: See Sections 3, General Conditions, sub 2. and 4.E. of the Amended Resolution.

#### 5. Funding Mechanism for the District

Both Mr. McCabe and the Aqua Alliance challenge the proposed parcel charge funding mechanism for the District. They assert that the proposed landowner majority vote parcel charge violates Proposition 218. They contend that only a special tax, approved by a 2/3<sup>rd</sup>'s vote of the registered voters is permitted at formation.

Mr. McCabe in his September 16, 2022, letter also argues that the charge cannot be considered a special assessment under Section 4 of Article XIII D of the California Constitution. A special assessment would require compliance with the Section 4 and G.C. Section 53753 assessment procedure. That process requires action by the District Board to establish assessment based on benefit and an approved engineer's report. This cannot be done at formation.

The Amended Resolution in Section 3 sub 2(a) and 12 modifies the requirement for a funding mechanism vote on formation. Instead of adopting funding at formation, the District, after formation, shall have one year to adopt a legally authorized revenue mechanism such as a special assessment providing the minimum equivalent of the revenue that would generate at least \$445,600/year, which is the initial proposed budget in the Fiscal Analysis.

The Amended Resolution adopts an interim sphere of influence for the District in Section 3 sub 6(a). Boundaries. As part of that interim sphere, a special condition requires that the District successfully enact the required funding mechanism within one year. If it does not do so, the sphere shall be reduced to zero and the District dissolved pursuant to Section 57077.1(c)(1) without protest or election.

#### CEQA

The Amended Resolution also includes additional provisions explaining why the approval of this resolution does not trigger environmental review at this time under the California Environmental Quality Act.

The Amended Resolution No. 18 2022/23 implementing the above recommendations is attached as Attachment A.

## Public Notice

Pursuant to Government Code Sections 56157 and 56158, and as was done for previous public hearings on this matter, A 21 Notice of Public Hearing was published in the Chico Enterprise Record on February 9, 2023, and notices were posted at the hearing location and the LAFCo offices. The notice stated *the Commission will consider and adopt an amended Resolution for the formation of the Tuscan Water District that is intended to address procedural issues regarding election processes and funding mechanisms.*

### **ALTERNATIVES FOR COMMISSION ACTION**

After reviewing this report and any testimony or materials that are presented, the Commission can take one of the following actions:

OPTION 1 – APPROVE Amended Draft Resolution No.18 2022/23:

- A. Adopt environmental findings as shown in Draft Resolution No.18 2022/23
- B. Move to adopt Resolution No. 18 2022/23 amending Resolution No. 11 2021/22 approving the Formation of the Tuscan Water District for the purpose of implementing the Vina Groundwater Sustainability Plan.

OPTION 2 - DENY the request without prejudice.

OPTION 3 - CONTINUE this proposal to a future meeting for additional information.

### **Recommended Action:**

The Commission is requested to consider this staff memorandum with attachments and accept and consider any public testimony. The Commission has the discretion to amend its previously approved resolution. It is respectfully recommended that the Commission consider the following recommendation for approval:

Approve the Statutory Exemptions identified in Draft Resolution No. 18 2022/23 (**Attachment A**) as the environmental determination pursuant to the California Environmental Quality Act (CEQA).

Approve the amendments identified in Draft Resolution No. 18 2022/23 (**Attachment A**), conditionally approving the formation of the Tuscan Water District.

Respectfully submitted,

*Scott Browne*

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Scott Browne  
Legal Counsel

### Attachments:

- A. Draft Resolution No.18 2022/23 – Amending Resolution No. 11 2021/22
- B. Resolution No.11 2021/22 Approving TWD Formation
- C. LAFCo Election Request to BOS

- D. BOS Order to Elections Official Calling Election
- E. LAFCo Impartial Analysis Submitted to Elections Official
- F. McCabe Letter Dated September 16, 2022
- G. AquaAlliance Letter Dated September 19, 2022
- H. Clerk News Release Cancelling Election
- I. New LAFCo Request to BOS to call Election
- J. McCabe Letter Dated December 7, 2022
- K. Butte County Counsel Letter Dated January 3, 2023



**DRAFT**

**AMENDED RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION  
OF THE COUNTY OF BUTTE MAKING DETERMINATIONS  
AND APPROVING THE FORMATION OF THE TUSCAN WATER DISTRICT –  
LAFCO FILE NO. 21-06**

**RESOLVED**, by the Local Agency Formation Commission of the County of Butte, State of California, that:

**WHEREAS**, a Petition of Application signed by 57-percent of the landowners in the proposed Water District was filed with the Commission to initiate the change of organization; and

**WHEREAS**, application has been made to this Commission pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq.) for consideration of a proposal for the formation of the Tuscan Water District as shown in Exhibit "A" attached hereto and made a part hereof; and

**WHEREAS**, an application to form the Tuscan Water District, a California Water District as defined in the California Water Code, Section 34000 et seq., has been filed with the Executive Officer of the Local Agency Formation Commission of Butte County, California by petition, and said application complied with all the requirements of law and the Commission; and

**WHEREAS**, the Executive Officer has given the notices required by law and forwarded copies of his report to officers, persons and public agencies prescribed by law; and

**WHEREAS**, the Executive Officer, pursuant to Government Code Section 56658, set December 2, 2021, as the initial hearing date and gave the required notice of public hearing; and the matter was continued to the meeting of January 6, 2022, and continued again to February 3, 2022, in the City of Oroville City Council Chambers; and

**WHEREAS**, the Executive Officer, pursuant to Government Code Section 56665, has reviewed this proposal and prepared a report including his recommendations thereon, and has furnished a copy of this report to each person entitled to a copy; and

**WHEREAS**, this Commission has considered the application materials, studies, attachments, and other documentation at the December 2, 2021, January 6, 2022, and February 3, 2022, public hearings which is incorporated by reference herein; and

**WHEREAS**, on December 2, 2021, January 6, 2022, and February 3, 2022, this Commission heard and received, all oral and written protests, objections and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter concerning this proposal; and

**WHEREAS**, this Commission considered the factors determined by the Commission to be relevant to this proposal, including, but not limited to, factors specified in Government Code Sections 56301, 56668; and 56886.5(a); and the California Water Code Section 34000; and

**WHEREAS** the Commission adopted Resolution No. 11 2021/22 on February 3, 2022, approving the formation of the Tuscan Water District (TWD) and ordering the formation subject to protest proceeding and election; and

**WHEREAS**, protest proceedings were duly held and protests were not received representing a majority protest, so the Executive Officer, pursuant to the Resolution requested that the Board of Supervisors of Butte County (BOS) call an election with regard to the formation, election of a board of directors, and adoption of a parcel charge to fund the operation of the district; and

**WHEREAS** the BOS by minute order on April 7, 2022, directed the Elections Officer to proceed with a mailed ballot election as requested; and

**WHEREAS**, the Elections Department prepared a ballot form and proceeded to conduct the mailed ballot election; and

**WHEREAS**, On September 16, 2022, James McCabe sent a letter to the Butte County Clerk Recorder objecting to the election proceeding. He pointed out that the Elections Office had failed to send the Notice of Election required by Government Code § 57130. And that the proposed ballot measure for a parcel charge to fund the operation of the district was contrary to the requirements of Prop 218. AquAlliance raised similar objections in a letter dated September 19, 2022; and

**WHEREAS**, On September 27, 2022, the County Elections Official posted a News Release (*Attachment H*) stating that “due to concerns that were raised regarding whether adequate notice of the election was provided, the Elections Official has determined that the official canvass will not be conducted as scheduled, and no results will be certified at this time. A new election will instead be re-noticed and scheduled for a future date;” and

**WHEREAS**, LAFCo was requested by the County to submit a new request to the BOS calling for a new election.

**WHEREAS**, On December 7, 2022, Mr. McCabe sent a further letter to the Butte County Administrative Officer outlining his concerns with the TWD election process, the proposed parcel charge, and originating LAFCo Resolution No. 11 2021/22 adopted February 3, 2022; and

**WHEREAS**, On January 3, 2023, Butte County Counsel provided a letter to LAFCO stating that “On behalf of the Clerk of the Board of Supervisors and the Clerk-Recorder/Registrar of Voters Office, the Butte County Counsel's Office is requesting that the Butte LAFCo Commission review Mr. McCabe's letter and adopt, if appropriate, a revised TWD Formation resolution to submit to the County that addresses the issues he has raised.”; and

**WHEREAS**, The Commission has determined that it is appropriate and necessary to amend Resolution No. 11 2021/22 to address the concerns raised; and

**WHEREAS**, after a duly noticed public hearing and consideration of any further testimony received.

**NOW THEREFORE**, the Local Agency Formation Commission of the County of Butte **DOES HEREBY RESOLVE, DETERMINE AND ORDER**, to adopt Draft Resolution No. 11 2022/23, amending and restating Resolution No. 11 2021/22 to read as follows:

## Section 1. Environmental Findings:

A. Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the Commission, and the facts outlined herein, the Commission finds that the formation of the Tuscan Water District is not subject to CEQA for the following reasons:

i. The formation of the Tuscan Water District is not a “project” under CEQA

LAFCo approval of a change of organization (such as a special district formation) is a project under CEQA when the action has a potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines §§ 15060(c) & 15378.) For example, a local government change of organization approval is a CEQA project when it constitutes an essential and conclusive step that foreseeably will culminate in some action that may affect the environment (e.g., approval of annexation of territory to a city for the planned development of that territory). But, when the LAFCo approval leaves open the issue of whether, what, where, or when any actual physical change affecting the environment would ultimately take place, the approval is not a project.

The formation of a water district under these facts and at this time is not a CEQA project because the Groundwater Sustainability Plan (GSP) has not yet received approval by the Department of Water Resources (DWR) (under review) and the Groundwater Sustainability Agencies (GSAs) must then consider how to best implement the GSP, assuming the project and management actions (PMAs) will evolve throughout this stage and the preferred or planned GSP actions and projects to be implemented have not yet been fully vetted beyond cursory identification. Therefore, under the current circumstances, approval of district formation will not result in any reasonably foreseeable change to the environment.

ii. The formation of the Tuscan Water District is exempt from CEQA

Even if formation of the Tuscan Water District was a “project” under CEQA, there are six CEQA exemptions that apply to LAFCo's action:

- Common sense exemption. CEQA does not apply "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (CEQA Guidelines § 15061(b)(3).) At the time of the water district formation, there will not be any identifiable environmental changes that are reasonably foreseeable because GSP implementation actions will be evaluated, determined, and implemented at a much later stage in the SGMA/GSP process.
- Organizational activity exemption. Similarly, CEQA defines "project" to exclude "organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment." (CEQA Guidelines § 15378(b)(5).) At this stage and as part of the planning work toward implementing groundwater regulation, LAFCo's organizational action to create a new water district is exempt because that action at this time will not result in any physical change in the environment.
- Section 15320 Exemption. Section 15320 exempts from CEQA review requirements "changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised." In this case the newly formed TWD will only have the authority to exercise powers already exercisable by the County Water Authority and the \*\*\* Sustainable Groundwater Management Agency (SGA) within the territory of the proposed District. Therefore the

formation of the district is merely a reorganization of who exercises existing authority within the territory of the proposed district and is within the scope of the 15320 exemption.

- Funding mechanism creation exemption. A principal objective for water district formation is to create a local agency with the authority to generate local revenue through fees or assessments and fund GSP implementation projects. The creation of a government funding mechanism is not a project. (CEQA Guidelines § 15378(b)(4).)
- Natural resource protection exemption. LAFCo is a government agency authorized by state law to regulate local government changes of organization. LAFCo approval of water district formation is an action to facilitate GSP implementation, which is an action to maintain and restore the groundwater, a natural resource and a matter involving environmental protection. The regulatory process involves procedures for protection of the environment because LAFCo will create a new water district (a local government agency subject to CEQA) that must evaluate its projects under CEQA before approving GSP implementation actions. The Proposal therefore is exempt under CEQA Guidelines sections 15307 and 15308.
- Planning study exemption. "Feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration." (CEQA Guidelines § 15262.) Water district formation is exempt under this provision because it is a GSP planning-related action that will facilitate future GSP implementation actions that LAFCo, GSA, and the water district have not yet approved, adopted, or funded.
- SGMA exemption. SGMA contains a special CEQA exemption: "[CEQA] does not apply to the preparation and adoption of plans pursuant to this chapter. Nothing in this part shall be interpreted as exempting from [CEQA] a project that would implement actions taken pursuant to a plan adopted pursuant to this chapter." (Water Code § 10728.6.) This exemption distinguishes between GSP preparation and adoption (exempt) and later GSP implementing projects (not exempt). Petitioners are pursuing water district formation concurrent with GSA preparation of the Vina GSP in order for the district to exist and be able to start GSP implementation after the Vina GSP is adopted. Water district formation therefore is an organizational activity that is part of GSP preparation and adoption. At this time, the SGMA/GSP process is in the planning (exempt) phase and water district formation at this stage similarly should be considered exempt. Conversely, if LAFCo were to treat district formation as a CEQA project and undertake detailed environmental review of potential Vina GSP implementation actions, then the environmental analysis would need to evaluate the potential actions to later implement the Vina GSP, which would be inconsistent with the SGMA exemption for GSP adoption.

### iii. Environmental Review is Premature

Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment. (CEQA Guidelines § 15004(b).)

Since the preferred or planned GSP actions and projects to be implemented have not yet been determined, it would be difficult to identify and formulate a project for thorough and meaningful environmental assessment at this time. Consequently, detailed CEQA environmental review of the district formation at this time would be premature because (a) the analysis would occur too

early in the GSP planning and development process to allow meaningful analysis of potential environmental impacts, (b) the final GSP will propose several different projects and options such that analysis of potential environmental impacts would be wholly speculative, and (c) the potential future environment-changing projects and actions are so varied and uncertain at this time that preparation of an initial study or EIR at this planning stage would be so speculative as to be meaningless.

Detailed CEQA review therefore should wait until GSP implementation project plans have matured into firm and specific proposals. Tuscan Water District will be a local government agency with its own CEQA responsibilities and obligations, and it will review proposed GSP implementation actions under CEQA as and when it identifies appropriate GSP-implementing actions or projects. As a means to ensure later CEQA compliance by TWD, this resolution includes and imposes Condition 18 to require CEQA evaluation.

The Executive Officer is authorized and directed to prepare and file a CEQA Notice of Exemption consistent with this determination.

## **Section 2. General Findings, Terms and Conditions:**

- A. The Commission has considered the factors determined by the Commission to be relevant to this proposal, including, but not limited to, Sphere of Influence and General Plan consistency, and other factors specified in Government Code Sections 56301, 56668; and 56886.5(a); and the California Water Code Section 34000 and as described and discussed in the staff reports dated November 23, 2021 for the meeting of December 2, 2021 (Part A) and January 27, 2022, for the meeting of February 3, 2022 (Part B).
- B. Based on the evidence, analysis, and conclusions set forth in this resolution and the Executive Officer's report, the Commission finds that the formation of this District serves to further the purposes of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 including, but not limited to, the following: efficiently providing government services and facilitating the orderly formation and development of local agencies based upon local conditions and circumstances.
- C. The Commission adopts the determinations regarding consistency with LAFCO law and Commission Policies contained in the staff report for this proposal and incorporates them by reference herein.
- D. The Commission recognizes its core responsibility to preserve and protect agricultural lands (GC 56100, 56301) and finds that this proposal conforms with, and will not alter, modify or amend any current land uses or County land use designations in the Butte County General Plan. Furthermore, the Commission finds that the Tuscan Water District (TWD) formation will assist and support the continued and consistent availability of irrigation water to agricultural lands that will encourage their continued productivity and economic viability resulting in far less pressure to convert marginal agricultural lands to urban development proposals. As agricultural land protection is at the core of LAFCo's role, the formation of the TWD will do no harm to current land use patterns and help maintain agricultural as a valued economic driver in Butte County.
- E. The subject territory includes approximately 97,625 acres and 3,138 parcels of mostly private and very limited public property as described and identified in the adopted map shown as Exhibit A to this resolution and is assigned the following distinctive short form designation: 21-06 - Formation of the Tuscan Water District.

- F. Pursuant to Government Code Section 56426.5(b), the Commission is adopting an interim coterminous Sphere of Influence for the District. The Commission will, within one year of the effective date of the TWD formation, determine the long-term sphere of influence for the TWD. The Commission's conditions of approval require the TWD, within 6 months of the recording of the Certificate of Completion for the formation of the Tuscan Water District, to 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.
- G. Pursuant to Government Code Section 56886.5, the Commission determines, based upon the public record, the responses from alternative service providers lacking interest in assuming the role proposed by the TWD, the services currently provided to the affected territory by the County of Butte and other local agencies, the County's clear intent to not actively pursue water supply and irrigation projects, and its declared support for the formation application, that existing allied agencies are in support of the TWD formation and cannot feasibly provide the needed service or services in a more efficient and accountable manner than is proposed and that a new local agency is deemed necessary.
- H. The proposed TWD would have a landowner voter Board of Directors that would be focused on making decisions about the groundwater resources in the unincorporated service area of the Vina Basin.
- I. The proposed TWD offers the opportunity for landowners to manage the groundwater resource. The GSP shows that the Vina Groundwater Basin is in decline and is in need of a more focused management effort. It is in the best interests of all users of the Basin to better manage the groundwater resources.
- J. The landowners proposing the TWD are willing to fund and form the District to sustainably manage the groundwater resources. This brings more resources to the management of the Basin. The County would not be responsible for the entire Basin. The District would assist in complying with SGMA. The TWD could bring in an estimated \$425,000 to perhaps \$1,000,000 annually to help implement the Vina GSP and comply with SGMA. This is money that the County would not have to spend on SGMA compliance activities and areas that will not have to be managed by the County.
- K. The TWD would establish a local public agency of voluntary landowners that would sustainably manage the groundwater resource under its area. The District would work within the State Law with other agencies to provide for the reasonable use of water, pursue supply solutions, and to raise funds for planning and projects that comply with the GSP's.
- L. The affected territory will not be taxed for existing general bonded indebtedness of any agency whose boundaries are changed as required by Govt. Code § 57100(h).
- M. The Commission determines that an election on district formation will be held within the territory of the district ordered to be formed in accordance with applicable provisions of the CKH, California Water District Law, and Uniform District Election Law as required by Govt. Code § 57118(a).

### **Section 3. Conditions adopted by LAFCO:**

#### Administrative Conditions

- A. All LAFCo, Butte County and State of California fees must be paid in full prior to filing the Certificate of Completion.
- B. The map and legal description shall comply with the Department of Public Works and State Board of Equalization requirements.
- C. The legal description and map, if rejected by the State Board of Equalization or amended by action of the Commission, will be revised at the expense of the applicant.
- D. The following conditions are applied by the Commission consistent with its authority granted by Government Code Sections 56301, 56668; and 56886.5(a); and the California Water Code Section 34000:

General Conditions

- 1. That the name of the California Water District shall be the Tuscan Water District.
- 2. That formation of the 97,625-acre Tuscan Water District shall be contingent upon:
  - a. A successful landowner vote. The vote required for confirmation shall be an affirmative vote of a majority of the votes cast in the election, with each landowner having one vote for each dollar's worth of land to which the landowner holds title. Pursuant to W.C. 34422, title and worth of land shall be determined from the last equalized County Assessment Roll and, pursuant to the "land" definition at Water Code section 34014, land value shall not include land improvements. As used herein, "landowner" refers to a person who is a holder of title to land within the proposed District boundary or its legal representative as provided in Water Code Sections 19, 34026, 34027, 34030 and 35004. LAFCo will provide the Elections office with a list of properties and assessment roll information based on the boundaries of the District, but actual determinations as to the eligibility of owners to act as voters will be made by the Elections Officer.
  - b. Selection of an initial nine (9) members of the Board of Directors based on the nine candidates who receive the most votes with each landowner having one vote for each dollar's worth of land to which the landowner holds title.
  - c. The formation election ballot questions are as set forth in Procedural Actions 4.F. below.
- 3. Prior to filing the Certificate of Completion, a revised legal description and boundary map(s) shall be submitted to reflect the service area of the Tuscan Water District as adopted by the Commission.
- 4. The effective date of the Tuscan Water District formation will be determined by the certification of the election results by the Board of Supervisors and the filing of the certificate of completion by the LAFCO Executive Officer with the County Clerk-Recorder's office.
- 5. The new District is not expected to receive any revenue from the proceeds of taxes for the first full fiscal year of operation. Therefore, the Commission determines provisionally under Government Code section 56811(a) that the District will not be subject to any appropriations limit. After it is formed, the Tuscan Water District shall determine the permanent appropriations limit (if any) as soon as feasibly possible consistent with Government Code §§ 56811(a) &

57120. The planned special assessment revenue is not considered "proceeds of taxes" that would be subject to an appropriations limit.

### Boundaries

6. a. Pursuant to G.C. 56426.5.(b), the Commission hereby adopts an interim Sphere of Influence for the District that is coterminous with the proposed District boundaries. As a special condition of that Sphere, the sphere shall be reduced to a zero sphere and the District dissolved if the District does not successfully enact a revenue measure for the District in accordance with Condition 12 below within one year from the date of recording the Certificate of Completion as provided in Section 57077.1(c)(1) without protest or election. The Executive Officer may extend this one-year deadline based on good cause demonstrated by the District.
  - b. 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 long term 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.

### Governance – Board of Directors

7. The initial Board of Directors of the Tuscan Water District shall be composed of nine (9) members as provided for in the California Water Code section 34700.
8. The initial TWD board of directors will be elected at large based on a one vote for each dollar of assessed land value formula pursuant to Water Code sections 34400-34403, 34700, 34422-34424, 35003-35125, and the Uniform District Election Law. Candidates for the TWD board of directors must be qualified pursuant to Water Code section 34700. Candidates may self-nominate themselves but must demonstrate to the Elections Official their qualification to be a member of the board when doing so. If candidates are nominated by other individuals or entities, the candidate's qualification to be a member of the board must be stated in the nomination submitted to the Elections Official. If it has not been demonstrated to the satisfaction of the Elections Official that a candidate is qualified to be a member of the board, that candidate's name will not appear on the ballot.
9. The TWD board of directors shall within six (6) months from the date of the recording of the Certificate of Completion, adopt a resolution requesting the Board of Supervisors to establish electoral divisions based on equal size (acres) and the boundaries thereof in accordance with Water Code sections 35025 and 35026. The number of divisions shall be equal to the number of directors. (WC35025) The failure to execute this condition will result in the Commission initiating corrective actions up to and including, dissolution of the District.
10. The BOS shall at the time of calling the formation election for the proposed district, prescribe the procedure for the nomination of candidates for the initial board of directors of the district in accordance with Water Code section 34403 and other applicable provisions of the Water Code and Elections Code. The BOS shall make use of the nomination process and qualifications specified in Condition 8 above.

### Governance – Future Voting



11. Conversion to Registered Voters. In accordance with Water Code sections 35040-35041, the Board of Directors of the Tuscan Water District shall, between January 1 and March 30 of each year, inspect the assessable area within the district. At such time as at least 50 percent of the assessable area within the district is devoted to and developed for residential, industrial, or nonagricultural commercial use, or any combination thereof, such fact shall be certified to the board of directors by the secretary of the district. Any time after such certification, the registered voters residing within the district may petition for a change in the voting procedure from a landowner-voting district to a resident-voting district pursuant to Water Code section 35042 *et seq.*

#### Governance – Finance

12. The formation of the TWD shall be contingent upon a successful vote on the formation as determined pursuant to Water Code Section 34500. The continuing operation of the District shall require that the TWD enact a special assessment or other revenue measure generating sufficient annual revenue for the ongoing operation of the District in an amount not less than \$445,600/year on all land within the District receiving a special benefit or property-related service. If the revenue measure is not successfully enacted by the District within one year of the recording of the certificate of completion, pursuant to G.C. 56886(o) the Water District shall be dissolved in accordance with the procedure set forth in G.C. 57077.1(c)(1). As an integral part of the formation conditions, the District Board shall be deemed to have initiated such dissolution in the event it fails to meet the one-year deadline. The Commission may extend this deadline for good cause upon request by the Water District.

#### Intergovernmental Coordination – SGMA and Water

13. The Tuscan Water District, shall within one (1) year from 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 Tuscan Water District 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 MOU should identify the Tuscan Water District as a GSA partner, pursuant to the sustainable Groundwater Management Act, Water Code section 10720 *et. seq.* The MOU shall be provided to the LAFCo Executive Officer upon completion. The failure of the District to successfully enter into a MOU with the GSA's within one year of the Certificate of Completion being recorded, the Tuscan Water District shall be dissolved by LAFCo at the request of the TWD Board of Directors. If an agreement cannot be reached with the GSA's, the TWD can request LAFCo to mediate a resolution and/or extend this deadline for an additional period to be determined by LAFCo or modify the condition.
14. Per the MOU required in Condition No. 13, 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.
15. 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.

16. 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.

#### General Powers and Functions

17. 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-e below:
  - a. The Tuscan Water District 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. The District may request that LAFCO activate these powers in the future.
  - c. 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 purposes. (WC35500) The District may request that LAFCO activate these powers in the future. These powers under the California Water Code shall be deemed inactive or latent.
  - d. Any and all proposals or projects proposed by the Tuscan Water District (including groundwater recharge projects for the benefit of District landowners) shall be submitted to the appropriate GSA or agency under Condition Nos. 13, 14 and 15 to determine if the proposal or project is consistent with the affected GSP in sustaining the Vina groundwater basin.
  - e. 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.

#### Future Projects and CEQA

18. As a means to ensure that later District actions comply with CEQA and are consistent with the GSP, the District shall comply with the requirements in this condition. Prior to approving any GSP implementation activity that may result in a direct or reasonably foreseeable indirect physical change in the environment, the District shall undertake these steps:

- (a) 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. The GSA shall determine that the project is consistent with the GSP if the project is (1) a type of project or action or within the scope of a project or action identified in the GSP as a planned or potential project or management action, or (2) consistent and compatible with the goals, objectives, purposes, and policies in the GSP. GSA staff and officers shall not use or exercise any personal or subjective judgment in deciding whether the project should be carried out. The GSA GSP consistency determination is intended to be a ministerial review, with the GSA determining only whether the project is consistent or not. This condition is not intended to confer on the GSA the discretionary authority to determine whether to approve a District project or to modify or condition a project. 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.
- (b) If the GSA determines that the proposed project is consistent with the GSP, the District shall prepare an appropriate CEQA document for the project (e.g., notice of exemption, initial study and negative declaration, environmental impact report), adopt the CEQA document, make appropriate findings, and approve the project in accordance with the procedural and substantive requirements of CEQA. The District shall include the GSA on its distribution list for CEQA-related notices and draft documents. If during the CEQA process the District materially changes the project description, then the District shall consult with the GSA to confirm that the proposed project as modified remains consistent with the GSP.
- (c) 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.

#### **Section 4. Further Procedural Actions**

- A. The recitals set forth hereinabove are true, correct, and valid.
- B. The Executive Officer is hereby authorized and directed to mail certified copies of this Resolution in the manner and as provided in Section 56882 of the Government Code.
- C. The Formation of the Tuscan Water District is hereby approved subject to the terms and conditions of this Amended Resolution.
- D. This formation requires a protest proceeding to be conducted and the Commission directs the Executive Officer to set the proposal for a protest hearing and give public notice of said hearing pursuant to Butte LAFCo Policy, California Government Code section 57002, and other applicable provisions of CKH.
- E. The Commission with this resolution again requests that the Butte County Board of Supervisors direct the County Elections Official to conduct the necessary election, setting the matter for consideration of the landowner voters of the affected territory on a date consistent with election law and the Cortese-Knox-Hertzberg Act, particularly G.C. 57130. Pursuant to Water Code Sections 34422 and 35003 each landowner voter shall have one vote for each dollar's worth of land owned by the landowner. The last equalized regular (Govt. Code § 57100(g)) County assessment roll will be used to establish land values and landowner title and, pursuant to the "land" definition at Water Code section 34014, land value shall not include land improvements. As used herein, "landowner" refers to a person who is a holder of title to land within the District

or its legal representative as provided in Water Code Section 19, 34026, 34027, 34030 and 35004.

- F. The formation election ballot questions to be placed before the voters are as follows:
1. Shall the Butte County Local Agency Formation Commission order dated March 2, 2023 ordering the formation of Tuscan Water District as a California Water District in western Butte County be approved, subject to the terms and conditions specified in the order which will require a subsequent, post-formation landowner approval of a special assessment or other lawful revenue measure generating equivalent revenue, to fund the initial administrative/organizational activities or the district shall be dissolved, all as more particularly described and set forth in Resolution No. 18 2022/23?"
  2. If the Tuscan Water District is formed, it will be governed by a nine (9)-member board of directors. Vote for up to nine at-large directors from the list below:  
*[final list of candidate names and occupational designation (if any) to be inserted here]*
- G. Pursuant to §57144 and §56898 of the Government Code, the Executive Officer will prepare for the Commission's review a revised Impartial Analysis of the proposed District formation; after the Commission has approved or modified the Impartial Analysis, it shall direct the Executive Officer to submit it to the election's official no later than the last day for submission of ballot arguments.

**PASSED AND ADOPTED** by the Local Agency Formation Commission of the County of Butte, on the 2nd day of March 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

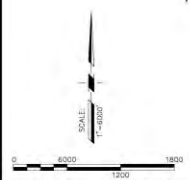
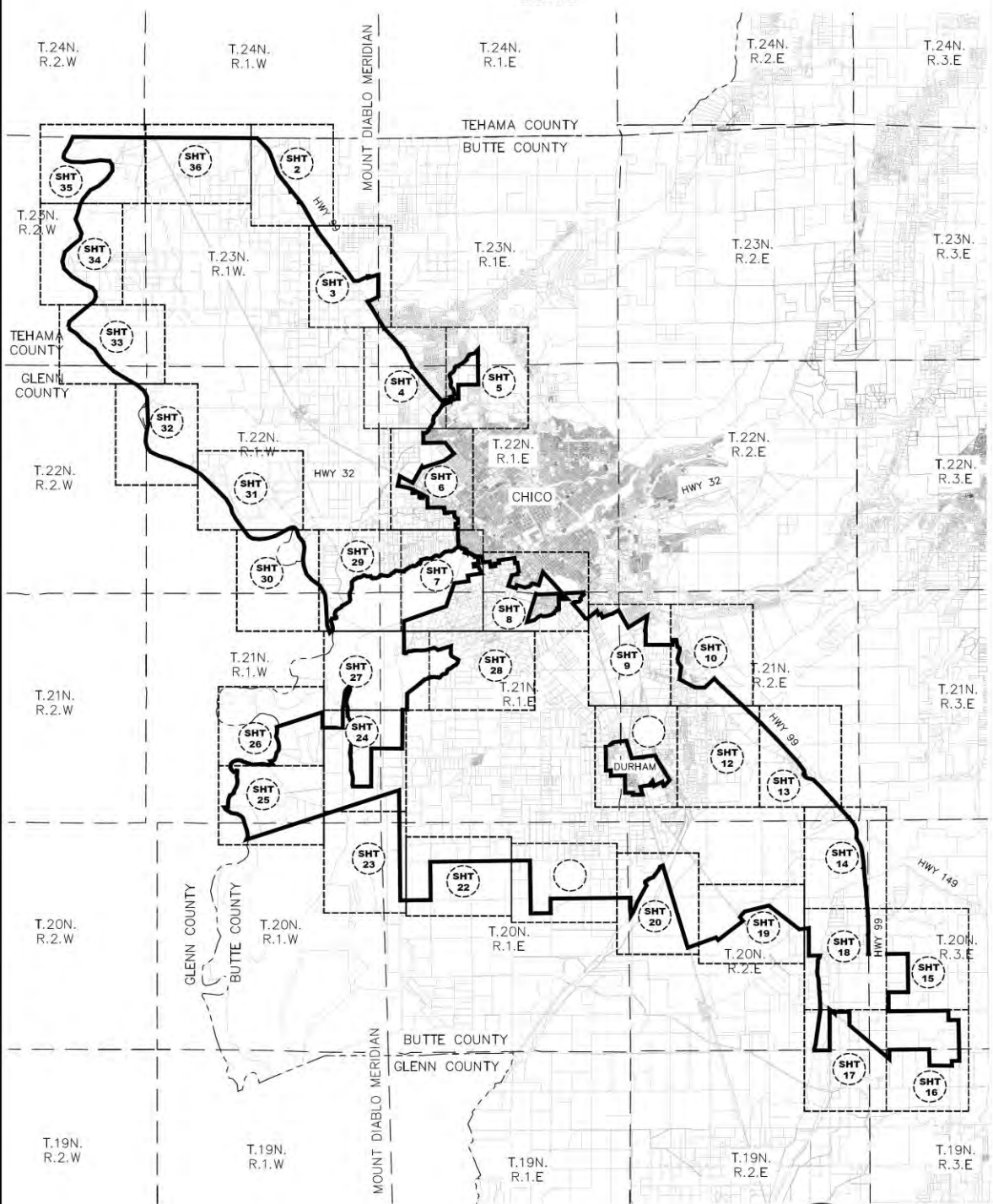
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Clerk of the Commission

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Bill Connelly, Chair  
Butte Local Agency Formation Commission

**EXHIBIT A"**  
**TUSCAN WATER DISTRICT**  
 PORTIONS OF TOWNSHIP 23 NORTH, RANGE 1 AND 2 WEST AND RANGE 1 EAST, TOWNSHIP 22 NORTH, RANGE 1 AND 2 WEST AND RANGE 1 EAST, TOWNSHIP 21 NORTH, RANGE 1 WEST AND RANGE 1 AND 2 EAST, TOWNSHIP 20 NORTH, RANGE 1 WEST AND RANGE 1 AND 2 EAST, ALL TOWNSHIP AND RANGES BEING REFERENCED TO THE MOUNT DIABLO MERIDIAN (M.D.M.), BUTTE COUNTY, CALIFORNIA  
 MARCH 29, 2022  
 SHEET 1 OF 36



**LEGEND:**  
 ——— TOWNSHIP LINE  
 - - - - COUNTY LINE  
 - - - - PROPOSED TWD BOUNDARY  
 (SHT #) SHEET NO.

**NOTES:**  
 1. ALL DISTANCES DESCRIBED HEREAFTER ARE GROUND DISTANCES AND IN FEET AND DECIMALS THEREOF. RECORD MAPS AND DEEDS REFERENCED HEREINAFTER USING OTHER UNITS HAVE BEEN CONVERTED ACCORDINGLY.



**PSOMAS**  
 PREPARED AT THE REQUEST OF:  
 AGRICULTURE-GROUNDWATER USERS OF BUTTE COUNTY  
 C/O RICHARD MCCOMBS

**RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION  
OF THE COUNTY OF BUTTE MAKING DETERMINATIONS  
AND APPROVING THE FORMATION OF THE TUSCAN WATER DISTRICT –  
LAFCO FILE NO. 21-06**

**RESOLVED**, by the Local Agency Formation Commission of the County of Butte, State of California, that:

**WHEREAS**, a Petition of Application signed by 57 percent of the landowners in the proposed Water District was filed with the Commission to initiate the change of organization; and

**WHEREAS**, application has been made to this Commission pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq.) for consideration of a proposal for the formation of the Tuscan Water District as shown in Exhibit "A" attached hereto and made a part hereof; and

**WHEREAS**, the formation of the Tuscan Water District, a California Water District as defined in the California Water Code, Section 34000 et seq., has been filed with the Executive Officer of the Local Agency Formation Commission of Butte County, California by petition, and said application complied with all the requirements of law and the Commission; and

**WHEREAS**, the Executive Officer has given the notices required by law and forwarded copies of his report to officers, persons and public agencies prescribed by law; and

**WHEREAS**, the Executive Officer, pursuant to Government Code Section 56658, set December 2, 2021, as the initial hearing date and gave the required notice of public hearing; and the matter was continued to the meeting of January 6, 2022, and continued again to February 3, 2022, in the City of Oroville City Council Chambers; and

**WHEREAS**, the Executive Officer, pursuant to Government Code Section 56665, has reviewed this proposal and prepared a report including his recommendations thereon, and has furnished a copy of this report to each person entitled to a copy; and

**WHEREAS**, this Commission has considered the application materials, studies, attachments, and other documentation at the December 2, 2021, January 6, 2022, and February 3, 2022, public hearings which is incorporated by reference herein; and

**WHEREAS**, on December 2, 2021, January 6, 2022, and February 3, 2022, this Commission heard and received, all oral and written protests, objections and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter concerning this proposal; and

**WHEREAS**, this Commission considered the factors determined by the Commission to be relevant to this proposal, including, but not limited to, factors specified in Government Code Sections 56301, 56668; and 56886.5(a); and the California Water Code Section 34000.

**NOW THEREFORE**, the Local Agency Formation Commission of the County of Butte **DOES HEREBY RESOLVE, DETERMINE AND ORDER**, as follows:

**Section 1. Environmental Findings:**

A. Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the Commission, and the facts outlined herein, the Commission finds that the formation of the Tuscan Water District is not subject to CEQA for the following reasons:

i. The formation of the Tuscan Water District is not a “project” under CEQA

LAFCo approval of a change of organization (such as a special district formation) is a project under CEQA when the action has a potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines §§ 15060(c) & 15378.) For example, a local government change of organization approval is a CEQA project when it constitutes an essential and conclusive step that foreseeably will culminate in some action that may affect the environment (e.g., approval of annexation of territory to a city for the planned development of that territory). But, when the LAFCo approval leaves open the issue of whether, what, where, or when any actual physical change affecting the environment would ultimately take place, the approval is not a project.

The formation of a water district under these facts and at this time is not a CEQA project because the Groundwater Sustainability Plan (GSP) has not yet received approval by the Department of Water Resources (DWR) (under review) and the Groundwater Sustainability Agencies (GSAs) must then consider how to best implement the GSP, assuming the project and management actions (PMAs) will evolve throughout this stage and the preferred or planned GSP actions and projects to be implemented have not yet been fully vetted beyond cursory identification. Therefore, under the current circumstances, approval of district formation will not result in any reasonably foreseeable change to the environment.

ii. The formation of the Tuscan Water District is exempt from CEQA

Even if formation of the Tuscan Water District was a “project” under CEQA, there are six CEQA exemptions that apply to LAFCo's action:

- Common sense exemption. CEQA does not apply "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (CEQA Guidelines § 15061(b)(3).) At the time of the water district formation, there will not be any identifiable environmental changes that are reasonably foreseeable because GSP implementation actions will be evaluated, determined, and implemented at a much later stage in the SGMA/GSP process.
- Organizational activity exemption. Similarly, CEQA defines "project" to exclude "organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment." (CEQA Guidelines § 15378(b)(5).) At this stage and as part of the planning work toward implementing groundwater regulation, LAFCo's organizational action to create a new water district is exempt because that action at this time will not result in any physical change in the environment.

- Funding mechanism creation exemption. A principal objective for water district formation is to create a local agency with the authority to generate local revenue through fees or assessments and fund GSP implementation projects. The creation of a government funding mechanism is not a project. (CEQA Guidelines § 15378(b)(4).)
- Natural resource protection exemption. LAFCo is a government agency authorized by state law to regulate local government changes of organization. LAFCo approval of water district formation is an action to facilitate GSP implementation, which is an action to maintain and restore the groundwater, a natural resource and a matter involving environmental protection. The regulatory process involves procedures for protection of the environment because LAFCo will create a new water district (a local government agency subject to CEQA) that must evaluate its projects under CEQA before approving GSP implementation actions. The Proposal therefore is exempt under CEQA Guidelines sections 15307 and 15308.
- Planning study exemption. "Feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration." (CEQA Guidelines § 15262.) Water district formation is exempt under this provision because it is a GSP planning-related action that will facilitate future GSP implementation actions that LAFCo, GSA, and the water district have not yet approved, adopted, or funded.
- SGMA exemption. SGMA contains a special CEQA exemption: "[CEQA] does not apply to the preparation and adoption of plans pursuant to this chapter. Nothing in this part shall be interpreted as exempting from [CEQA] a project that would implement actions taken pursuant to a plan adopted pursuant to this chapter." (Water Code § 10728.6.) This exemption distinguishes between GSP preparation and adoption (exempt) and later GSP implementing projects (not exempt). Petitioners are pursuing water district formation concurrent with GSA preparation of the Vina GSP in order for the district to exist and be able to start GSP implementation after the Vina GSP is adopted. Water district formation therefore is an organizational activity that is part of GSP preparation and adoption. At this time, the SGMA/GSP process is in the planning (exempt) phase and water district formation at this stage similarly should be considered exempt. Conversely, if LAFCo were to treat district formation as a CEQA project and undertake detailed environmental review of potential Vina GSP implementation actions, then the environmental analysis would need to evaluate the potential actions to later implement the Vina GSP, which would be inconsistent with the SGMA exemption for GSP adoption.

## **Section 2. General Findings, Terms and Conditions:**

- A. The Commission has considered the factors determined by the Commission to be relevant to this proposal, including, but not limited to, Sphere of Influence and General Plan consistency, and other factors specified in Government Code Sections 56301, 56668; and 56886.5(a); and the California Water Code Section 34000 and as described and discussed in the staff reports dated November 23, 2021 for the meeting of December 2, 2021 (Part A) and January 27, 2022, for the meeting of February 3, 2022 (Part B).



- B. Based on the evidence, analysis, and conclusions set forth in this resolution and the Executive Officer's report, the Commission finds that the formation of this District serves to further the purposes of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 including, but not limited to, the following: efficiently providing government services and facilitating the orderly formation and development of local agencies based upon local conditions and circumstances.
- C. The Commission adopts the determinations regarding consistency with LAFCO law and Commission Policies contained in the staff report for this proposal and incorporates them by reference herein.
- D. The Commission recognizes its core responsibility to preserve and protect agricultural lands (GC 56100, 56301) and finds that this proposal conforms with, and will not alter, modify or amend any current land uses or County land use designations in the Butte County General Plan. Furthermore, the Commission finds that the Tuscan Water District (TWD) formation will assist and support the continued and consistent availability of irrigation water to agricultural lands that will encourage their continued productivity and economic viability resulting in far less pressure to convert marginal agricultural lands to urban development proposals. As agricultural land protection is at the core of LAFCo's role, the formation of the TWD will do no harm to current land use patterns and help maintain agricultural as a valued economic driver in Butte County.
- E. The subject territory includes approximately 102,327 acres and 3,136 parcels of mostly private and very limited public property as described and identified in the adopted map shown as Exhibit A to this resolution and is assigned the following distinctive short term designation: 21-06 - Formation of the Tuscan Water District.
- F. Pursuant to Government Code Section 56426.5(b), the Commission will within one year of the effective date of the TWD formation, determine the sphere of influence for the TWD. The Commission's conditions of approval require the TWD, within 6 months of the recording of the Certificate of Completion for the formation of the Tuscan Water District, to 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.
- G. Pursuant to Government Code Section 56886.5, the Commission determines, based upon the public record, the responses from alternative service providers lacking interest in assuming the role proposed by the TWD, the services currently provided to the affected territory by the County of Butte and other local agencies, the County's clear intent to not actively pursue water supply and irrigation projects, and its declared support for the formation application, that existing allied agencies are in support of the TWD formation and cannot feasibly provide the needed service or services in a more efficient and accountable manner than is proposed and that a new local agency is deemed necessary.
- H. The proposed TWD would have a landowner voter Board of Directors that would be focused on making decisions about the groundwater resources in the unincorporated service area of the Vina Basin.
- I. The proposed TWD offers the opportunity for landowners to manage the groundwater resource. The GSP shows that the Vina Groundwater Basin is in decline and is in need of a more focused

management effort. It is in the best interests of all users of the Basin to better manage the groundwater resources.

- J. The landowners proposing the TWD are willing to fund and form the District to sustainably manage the groundwater resources. This brings more resources to the management of the Basin. The County would not be responsible for the entire Basin. The District would assist in complying with SGMA. The TWD could bring in an estimated \$425,000 to perhaps \$1,000,000 annually to help implement the Vina GSP and comply with SGMA. This is money that the County would not have to spend on SGMA compliance activities and areas that will not have to be managed by the County.
- K. The TWD would establish a local public agency of voluntary landowners that would sustainably manage the groundwater resource under its area. The District would work within the State Law with other agencies to provide for the reasonable use of water, pursue supply solutions, and to raise funds for planning and projects that comply with the GSP's.

### **Section 3. Conditions adopted by LAFCO:**

#### Administrative Conditions

- A. All LAFCo, Butte County and State of California fees must be paid in full prior to filing the Certificate of Completion.
- B. The map and legal description shall comply with the Department of Public Works and State Board of Equalization requirements.
- C. The legal description and map, if rejected by the State Board of Equalization or amended by action of the Commission, will be revised at the expense of the applicant.
- D. The following conditions are applied by the Commission consistent with its authority granted by Government Code Sections 56301, 56668; and 56886.5(a); and the California Water Code Section 34000:

#### General

- 1. That the name of the California Water District shall be the Tuscan Water District.
- 2. That formation of the Tuscan Water District shall be contingent upon a successful landowner vote, based on a one acre one vote formula, 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 activities of the Tuscan Water District.
  - c. Selection of an initial nine (9) members of the Board of Directors
- 3. Prior to filing the Certificate of Completion, a revised legal description and boundary map(s) shall be submitted to reflect the service area of the Tuscan Water District as adopted by the Commission.

4. The effective date of the Tuscan Water District formation will be determined by the certification of the election results by the Board of Supervisors and the filing of the certificate of completion by the LAFCO Executive Officer with the County Clerk-Recorder's office.
5. The Tuscan Water District shall set the appropriations limit as soon as feasibly possible consistent with Government Code Section 57000.

#### Boundaries

6. 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.

#### Governance – Board of Directors

7. The initial Board of Directors of the Tuscan Water District shall be composed of nine (9) members as provided for in the California Water Code section 34700.
8. The initial TWD board of directors will be elected at large based on a one (1) vote for every one (1) acre of land owned. (WC34700).
9. The TWD board of directors shall within six (6) months from the date of the recording of the Certificate of Completion, adopt a resolution requesting LAFCo to establish electoral divisions based on equal size (acres) and the boundaries thereof. The number of divisions shall be equal to the number of directors. (WC35025) The failure to execute this condition will result in the Commission initiating corrective actions up to and including, dissolution of the District.
10. The Commission shall at the time of calling the formation election for the proposed district, prescribe the procedure for the proponents to present candidates for the offices to be filled at that election. (WC 34403). Prior to the close of the 30 day reconsideration period following project approval, the TWD chief petitioners shall provide to the LAFCo Executive Officer a slate of nine (9) persons nominated for the Board of Directors.

#### Governance – Voting

11. The Board of Directors of the Tuscan Water District shall, between January 1 and March 30 of each year, inspect the assessable area within the district. At such time as at least 50 percent of the assessable area within the district is devoted to and developed for residential, industrial, or nonagricultural commercial use, or any combination thereof, such fact shall be certified to the board of directors by the secretary of the district. Any time after such certification, the registered voters residing within the district may petition for a change in the voting procedure from a landowner-voting district to a resident-voting district.

#### Intergovernmental Coordination – SGMA and Water

12. The Tuscan Water District, shall within one (1) year from 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 Tuscan Water District 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 MOU should identify the Tuscan Water District as a GSA partner, pursuant to the sustainable Groundwater Management Act, Water Code section 10720 et. seq. The MOU shall be provided to the LAFCo Executive Officer upon completion. 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. If an agreement cannot be reached with the GSA's, the TWD can request LAFCo to mediate a resolution and/or extend this deadline for an additional period to be determined by LAFCo or modify the condition.

13. 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.
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.

#### General Powers 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 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.

- c. 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 purposes. (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.
- d. Any and all proposals or projects proposed by the Tuscan Water District (including groundwater recharge projects for the benefit of District landowners) shall be submitted to the appropriate GSA under Condition Nos. 12, 13 and 17 to determine if the proposal or project is consistent with the affected GSP in sustaining the Vina groundwater basin.
- e. 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.

#### Future Projects and CEQA

17. As a means to ensure that later District actions comply with CEQA and are consistent with the GSP, the District shall comply with the requirements in this condition. Prior to approving any GSP implementation activity that may result in a direct or reasonably foreseeable indirect physical change in the environment, the District shall undertake these steps:
  - (a) 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. The GSA shall determine that the project is consistent with the GSP if the project is (1) a type of project or action or within the scope of a project or action identified in the GSP as a planned or potential project or management action, or (2) consistent and compatible with the goals, objectives, purposes, and policies in the GSP. GSA staff and officers shall not use or exercise any personal or subjective judgment in deciding whether the project should be carried out. The GSA GSP consistency determination is intended to be a ministerial review, with the GSA determining only whether the project is consistent or not. This condition is not intended to confer on the GSA the discretionary authority to determine whether to approve a District project or to modify or condition a project. 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.
  - (b) If the GSA determines that the proposed project is consistent with the GSP, the District shall prepare an appropriate CEQA document for the project (e.g., notice of exemption, initial study and negative declaration, environmental impact report), adopt the CEQA document, make appropriate findings, and approve the project in accordance with the procedural and substantive requirements of CEQA. The District shall include the GSA on its distribution list for CEQA-related notices and draft documents. If during the CEQA process the District materially changes the project description, then the District shall consult with the GSA to confirm that the proposed project as modified remains consistent with the GSP.
  - (c) 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.

**Section 4. Further Procedural Actions**

- A. The recitals set forth hereinabove are true, correct, and valid.
- B. The Executive Officer is hereby authorized and directed to mail certified copies of this Resolution in the manner and as provided in Section 56882 of the Government Code.
- C. The Formation of the Tuscan Water District is hereby conditionally approved.
- D. This formation requires a protest proceeding to be conducted and the Commission directs the Executive Officer to set the proposal for a protest hearing and give public notice of said hearing pursuant to Butte LAFCo Policy and California Government Code Section 57002. The outcome of the protest hearing process is termination of the proposal if 50% or more of landowners who have 50% of the voting power (own 50% of the acreage in the area) files a valid written protest with the Executive Officer. Any number protests below this threshold and the question of formation will be forwarded to a vote of the landowners in the area per the election process.
- E. The Executive Officer, on behalf of the Commission and in compliance with this resolution and State law, hereby requests that the Butte County Board of Supervisors direct the County Elections Official to conduct the necessary election, setting the matter for consideration of the voters of the affected territory on a date consistent election law and the Cortese-Knox-Hertzberg Act. The Executive Officer is directed to coordinate with the County Clerk to formulate the election questions consistent with the Commission’s determinations set forth herein. The regular County assessment roll will be used.
- F. Pursuant to §57144 and §56898 of the Government Code, the Executive Officer will prepare for the Commission’s review an Impartial Analysis of the proposed District formation; after the Commission has approved or modified the Impartial Analysis, it shall direct the Executive Officer to submit it to the elections official no later than the last day for submission of ballot arguments.

**PASSED AND ADOPTED** by the Local Agency Formation Commission of the County of Butte, on the 3<sup>rd</sup> day of February 2022, by the following vote:

**PASSED AND ADOPTED** by the Local Agency Formation Commission of the County of Butte, on the 3<sup>rd</sup> day of February 2022, by the following vote:

**AYES:** Leverenz, Connelly, Kimmelshue, McGreehan, Sharman, Bolin, Sheppard

**NOES:** None

**ABSENT:** None

**ABSTAINS:** None

  
Clerk of the Commission

  
**CARL LEVERENZ**, Chair  
Butte Local Agency Formation Commission



**BUTTE LOCAL AGENCY FORMATION COMMISSION**

1453 Downer Street, Suite C • Oroville, California 95965-4950  
(530)538-7784 • Fax (530)538-2847 • www.buttelafco.org

**April 7, 2022**

Board of Supervisors  
County of Butte  
c/o Andy Pickett, CAO  
25 County Center Drive  
Oroville, CA 95965

**Sent Via Email to: [apickett@buttecounty.net](mailto:apickett@buttecounty.net)**

Re: Call for Election for the Formation of the Tuscan Water District

Dear Mr. Pickett,

The Butte Local Agency Formation Commission adopted Resolution 11 2021/22 (attached) approving the application for the formation of the Tuscan Water District on February 3, 2022, subject to a protest hearing and a landowner election. The Protest Proceedings were concluded on April 5, 2022, and there was insufficient protest to terminate the formation application and therefore, an election must be called.

The California Water Code (34000) establishes that a mailed ballot election be held on the formation question, to include also a parcel assessment and selection of directors. The Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (GC57000(d)) directs the following:

*(d) When the commission makes a determination pursuant to this division that will require an election to be conducted, it **shall inform the board of supervisors and the elections official** of the affected county of that determination and request the board to **direct the elections official to conduct the necessary election.***

*(e)(1) When a board of supervisors is informed by the commission that a determination has been made that requires an election, it shall, within 45 days of receipt of the notification, **direct the elections official to conduct the necessary election.** The board shall do all of the following:*

*(A) Call, provide for, and give notice of a special election or elections upon that question.*

*(B) Fix a date of election.*

*(C) Direct the elections official to designate precincts and polling places and to take any other action necessary to call, provide for, and give notice of the special election or elections and to provide for the conduct and the canvass of returns of the election, as determined by the commission.*

*(f) Any provision in this part that requires that an election be called, held, provided for, or conducted shall mean that the procedures specified in subdivisions (d) and (e) shall be followed.*

The Butte LAFCo respectfully requests the Board of Supervisors call for an election on the matter of the Formation of the Tuscan Water District and direct the elections official to conduct a mailed ballot election. We are ready and willing to assist in the elections process if requested.

Sincerely,

*Steve Lucas*

Stephen Lucas  
Executive Officer

Attachment: 1. Butte LAFCo Resolution No. 11 2021/22

cc: LAFCO  
Candace Grubbs, Clerk-Recorder





**Clerk of the Board**

Andy Pickett  
Chief Administrative Officer and Clerk of the Board

25 County Center Drive, Suite 200 | T: 530.552.3300 | [buttecounty.net/administration](http://buttecounty.net/administration)  
Oroville, California 95965 | F: 530.538.7120

*Members of the Board*

*Bill Connelly | Debra Lucero | Tami Ritter | Tod Kimmelshue | Doug Teeter*

**Minute Order No.:** 042622-4.03

**Meeting Date:** April 26, 2022

**Item:** 4.03 - Call for Mailed Ballot Election for the Formation of the Tuscan Water District- The Butte Local Agency Formation Commission (LAFCO) adopted Resolution 11 2021/22 approving the application for the formation of the Tuscan Water District on February 3, 2022, subject to a protest hearing and a landowner election. The Protest Proceedings were concluded on April 5, 2022, and there was insufficient protest to terminate the formation application and therefore, an election must be called. The California Water Code (34000) establishes that a mailed ballot election be held on the formation question, to include also a parcel assessment and selection of directors. The Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (GC57000(d)) directs the following: (d) When the commission makes a determination pursuant to this division that will require an election to be conducted, it shall inform the board of supervisors and the elections official of the affected county of that determination and request the board to direct the elections official to conduct the necessary election. (e)(1) When a board of supervisors is informed by the commission that a determination has been made that requires an election, it shall, within 45 days of receipt of the notification, direct the elections official to conduct the necessary election. The board shall do all of the following: (A) Call, provide for, and give notice of a special election or elections upon that question. (B) Fix a date of election. (C) Direct the elections official to designate precincts and polling places and to take any other action necessary to call, provide for, and give notice of the special election or elections and to provide for the conduct and the canvass of returns of the election, as determined by the commission. Butte LAFCO requests that the Board of Supervisors direct the elections official to conduct the necessary election; provide a date of the election; direct elections official to conduct the mailed ballot election and take action necessary to call, provide for, and give notice of the special election and to provide for the conduct and the canvass of returns of the election, as determined by LAFCO.

**Board Action:** Called for a mailed ballot election, conducted by Elections official, for the formation of the Tuscan Water District and set the date of the election as September 20, 2022.

Ayes: Supervisors Kimmelshue, Teeter and Chair Connelly  
Noes: Supervisor Ritter  
Absent: None  
Abstain: Supervisor Lucero

**Certification:** I hereby certify that the above action was taken by the Butte County Board of Supervisors on the date listed above.

  
\_\_\_\_\_  
Shaina Paulsen, Associate Clerk of the Board of Supervisors  
May 12, 2022







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**BUTTE LOCAL AGENCY FORMATION COMMISSION**

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1453 Downer Street, Suite C • Oroville, California 95965-4950  
(530)538-7784 • Fax (530)538-2847 • [www.buttelafco.org](http://www.buttelafco.org)

June 6, 2022

Keaton Denlay, Manager  
Clerk-Recorder/Elections  
155 Nelson Ave  
Oroville, CA 95965

Re: Tuscan Water District Formation Ballot – Impartial Analysis

Dear Mr. Denlay:

As required by state law, the Butte Local Agency Formation Commission (LAFCo) has prepared, approved and is providing, an Impartial Analysis for the Ballot Measure for the Formation of the Tuscan Water District.

Should you have any questions, please contact the LAFCo office at your convenience.

Sincerely,

*Steve Lucas*

Stephen Lucas  
Executive Officer

Enclosed: Impartial Analysis for the Ballot Measure for the Formation of the Tuscan Water District.

cc: LAFCO

**BUTTE LOCAL AGENCY FORMATION COMMISSION  
IMPARTIAL ANALYSIS OF THE FORMATION OF THE TUSCAN WATER DISTRICT**

A “yes” vote on the formation and revenue question will confirm the decision of the Butte Local Agency Formation Commission (LAFCo) to form an independent special district to be called the Tuscan Water District (District). A “no” vote on the formation and revenue assessment indicates opposition to the formation proposal. Landowner voters may also select up to nine (9) persons to be the new board of directors. The district formation order is subject to the terms and conditions approved by the Butte Local Agency Formation Commission and identified in LAFCO Resolution No. 11 2021-22.

The District is established pursuant to Division 13 of the California Water Code as a California Water District, is approximately 97,625 acres in size, and contains 3,138 individual parcels primarily used for agricultural production.

The District is generally bound by the Tehama County line to the north, State Route 99 and the City of Chico jurisdictional boundary to the east, Grainland Road to the south, and the Sacramento River on the west, in the unincorporated area of northwest Butte County.

The District will represent landowners for the purpose of working with the County of Butte, Butte County Water Commission, Vina, Butte, and Rock Creek Reclamation District Groundwater Sustainability Agencies (GSA’s) and other state and local agencies in the administration of Groundwater Sustainability Plans (GSP) for the Vina and Butte sub-basins.

The District is authorized to exercise all powers of a California Water District except, shall not have the power to transfer water underlying the District outside the Vina or Butte Subbasins; provide water for domestic purposes; or provide sewage treatment or stormwater drainage services.

The District will be governed by a nine member Board of Directors initially elected at-large by landowners by a one acre equals one vote formula. Following formation, the Board will be elected by divisions established by the LAFCo utilizing a one dollar of land assessment equals one vote formula.

District operations will be funded through a landowner voter approved revenue measure of \$10.00 per acre of land with a maximum revenue source of \$976,250 annually. The District may establish fees and collect fees for specified projects and in accordance with applicable law.

The District is required to enter into an agreement with the Vina and Rock Creek GSA’s within one year to establish their role in stabilizing the Vina groundwater basin. If an agreement cannot be reached, the District shall be dissolved.

All District projects related to the direct or indirect management of groundwater resources, cannot be initiated until and unless, the GSA Board reviews and determines that the projects are consistent with the applicable GSP.

Any District proposal for the use or transfer of groundwater shall be reviewed by the Butte County Department of Water and Resource Conservation and approved by the Butte County Board of Supervisors.

The District shall annually review the assessable land within the district. If at least 50 percent of the District land is devoted to and developed for residential, industrial, or nonagricultural commercial use, the registered voters within the district may petition for a change in the voting procedure from a landowner-voting district to a resident-voting district.

S/Stephen Lucas, Executive Officer, Butte Local Agency Formation Commission

## Attachment F

James F. McCabe  
9930 Ferson Road  
Durham CA 95938

September 16, 2022

By email to elections@buttecounty.net

Candace J. Grubbs  
Butte County Clerk-Recorder  
155 Nelson Drive  
Oroville CA 95965

Re: Ballot regarding Tuscan Water District, election on district formation and tax imposition, September 20, 2022

Dear Ms. Grubbs:

I have on multiple occasions written or spoken to various Butte County officials regarding the illegality of various aspects of the Tuscan Water District (TWD) or the efforts to form it.

In August, 2021, I wrote to the Butte County Water Commission, explaining that the landowner-voting feature of the proposed water district was an unconstitutional violation of the “one person/one vote” case law under the Equal Protection Clause, given that the TWD was proposed to have powers over a public asset on which virtually all Butte County residents depend – Butte County groundwater. Given the gerrymandered nature of the district and the concentration of agricultural landholdings in a few large corporations, fewer than 25 grower groups would have the power to elect the management of a district with authority over a groundwater aquifer on which about 125,000 people (including all residents of the City of Chico) depend.

On September 5, 2021, I wrote to the Vina Groundwater Sustainability Agency, reiterating the analysis as to why the TWD proposal was unconstitutional, and also pointing out both that the proponents had not clearly identified why a new government entity was needed, and that they had failed to demonstrate that they had made a diligent effort to get an existing government agency to take up the work they only vaguely described.

On September 24, 2021, I wrote to the Butte County Board of Supervisors, reiterating the points described above, and pointing out that the proposal was being advanced by a private organization known as the Agricultural Groundwater Users of Butte County (AGUBC), that had an “invitation only” membership policy, and that initially charged member \$2,500 to join. While AGUBC members had clearly discussed amongst themselves what they planned to do with the TWD once formed, TWD proponents steadfastly refused to disclose what had been discussed, or what they actually planned.

On December 1, 2021, I wrote to the Butte County Local Area Formation Commission, enclosed my prior letters, and pointing out that LAFCo had not given adequate notice to affected stakeholders and that the TWD formation application was incomplete and deficient. I also lodged an objection with LAFCo that the hearing should not be conducted until TWD proponents had cured their failure to file campaign finance reports with respect to the proposal, as required by the California Government Code.

Also on December 1, 2021, I transmitted to District Attorney Mike Ramsey a letter from six county residents asking the District Attorney to redress the AGUBC campaign finance violations.

As you know, despite vocal opposition by many district and County residents, LAFCo approved formation of the TWD on February 3, 2022, and the Board of Supervisors on April 26, 2022 requested that you conduct a vote-by-mail election. You may not know that District Attorney Ramsey did not take any action on the campaign finance violations.

I previously wrote you on June 20, 2022, pointing out that while the Clerk-Recorder website as of that date reflected a June 24 deadline for the submission of nomination packets for the election to the TWD board, you had failed to provide notice of the election in the manner clearly required by Government Code § 57130: “The elections official shall cause notice of each change or organization or reorganization election to be given by publication, posting and mailing as provided in Chapter 2 (commencing with Section 57025) of Part 4.” The referenced Chapter requires mailing to all landowners in any affected territory (Gov’t Code § 57025(b)), and “if the affected territory is inhabited”, to all registered voters residing within any affected territory. “Shall.” The statute is mandatory.

You made no such mailing to the persons who had a statutory right to mailed notice of the TWD formation election. There is nothing in the Government Code that permits you to rely on website notices, or on prior mailings by other agencies about the TWD formation process to discharge the obligation imposed on you by Government Code § 57130. Notice of the pendency of an application is not a notice of *the election*. Posting information on your website is not “mailing.” As a consequence of your failure to perform the statutorily mandated mailing task, the only people who knew about the election and the supposed deadlines (imposed without adequate notice to voters) were candidates hand-picked by AGUBC, to whom they passed out nomination packets. And given the absence of notice, none of the roughly 6,500 people who reside in the proposed district were advised of the possibility of submitting a ballot argument in opposition to the formation of the district or the imposition of the parcel tax.

But you know all that. I write today about a *new* error by your office. Unsurprisingly, it runs to the benefit of the TWD proponents: The ballot – which was sent only to landowners -- improperly includes on the same ballot the question of approval of the new parcel tax.

The question of whether the TWD should be *formed* is properly submitted to landowners within the proposed district, with votes weighted by acreage.

The *parcel tax*, though, is different. Proposition 13, passed in 1978, added Section XIII A to the California Constitution. Section 4 thereof provides: “Cities, Counties and special districts, by a *two-thirds vote* of the *qualified electors of such district*, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.” (emphasis added). The enabling legislation spells this out: “Except as provided in Section 7282 of the Revenue and Taxation Code, the legislative body of any city, county, or district may, following notice and public hearing, propose by ordinance or resolution the adoption of a special tax. The ordinance or resolution shall include the type of tax and rate of tax to be levied, the method of collection, and the date upon which an election shall be held to approve the levy of the tax. The proposition shall be submitted to the *voters* of the city, county, or district, or a portion thereof, and, upon the approval of two-thirds of the votes cast by voters voting upon the proposition, the city, county, or district may levy the tax.” Cal. Gov’t Code §50077(a) (emphasis added).

The proposal here is similar to the Paso Robles Basin Water District formation proposal in San Luis Obispo County that was the subject of an election in March, 2016. Ballotpedia has information on that election: [https://ballotpedia.org/Paso\\_Robles\\_Basin\\_Water\\_District,\\_California,\\_Formation,\\_Measure\\_B-16\\_\(March\\_2016\)](https://ballotpedia.org/Paso_Robles_Basin_Water_District,_California,_Formation,_Measure_B-16_(March_2016)) There, the funding portion of the proposal was put to a registered voter vote, while the district formation question was put to a landowner-voter vote.

The “assessment” referred to in the ballot question is not an “assessment” at all – it is not apportioned according to either the value of the land or the benefits the assessment would confer, and it has not been supported by the analysis required by Proposition 218, particularly the engineer’s report. As disclosed by the LAFCo application, it is a non-ad valorem tax designed to raise general revenue for the operation of the new government entity. As such, it requires a separate ballot distributed to registered voters within the proposed district, and such parcel tax may not be imposed unless it is authorized by 2/3 or more of the registered voter ballots cast. In an election under Cal. Gov’t Code §50077(a), corporate owners cannot vote, landowners not resident in the proposed district cannot vote. I have copied below the text of a message that a county resident has received from the Chief Counsel for the Howard Jarvis Taxpayers’ Association, indicating his doubts about the validity of trying to impose a tax in this manner.

The current ballot has been distributed to some landowners not entitled to vote at all on a parcel tax (e.g., Farmland Reserve, Inc., Rancho Esquon), and hasn’t been distributed to what is likely several hundred non-landowner registered voters who do live within the proposed district who are entitled to vote.

Butte County voters will not stand for elected officials ignoring Proposition 13, particularly if they are ignoring it to do a favor to campaign contributors.

Please provide citations to the statutory and constitutional authorities that validate a uniform annual assessment of up to \$10 an acre for administrative expenses on approval by the owners of a majority of the acreage for which votes would be cast.

Sincerely,



James F. McCabe

Cc: Butte LAFCo (email) County  
Counsel (email) Board of  
Supervisors (email) District  
Attorney (email)

Text of email from Timothy Bittle, Howard Jarvis Taxpayer’s Association

Thank you for your inquiry regarding the formation and funding of the Tuscan Water District.

You first asked whether the \$10 per acre charge is an assessment or a tax. I don’t know. Neither the District’s LAFCO application nor the election ballot is clear on that point.

A Water District has power under Water Code section 36455.1 to impose a benefit assessment on properties specially benefitted by the acquisition or construction of public works for water, sewer, or storm drainage. The uniform \$10 charge here, however, does not seem to qualify under that statute because it is not funding any work or improvement, and because such assessments must be supported by an engineer’s report apportioning the costs of the project according to each property’s relative benefit.

Under Water Code sections 36552-36560, Water Districts can seek two-thirds voter approval of an ad valorem property tax in excess of Proposition 13's one percent cap to repay bonds for the acquisition or improvement of real property by the District. Again, however, the \$10 charge here does not seem to qualify because it is not funding a bond issuance, and because the District formation ballot seeks only simple majority approval.

Water Districts, of course, have authority to establish and collect rates for providing water or sewer services, and can charge fees to well pumpers under the Sustainable Groundwater Management Act, but the \$10 per acre charge here does not seem to be tied to either the receipt of a service or the pumping of water.

Under Government Code section 50077, all local districts, including Water Districts, have authority to impose special taxes with two-thirds voter approval. Again, however, this authority seems inapplicable because the District formation ballot seeks only simple majority approval.

Water Code section 36557 authorizes a one-time charge of "fifty cents (\$0.50) per acre for each acre of land [to] be used by the board to pay the preliminary expenses incurred in forming the district." Here, although the District formation ballot states that the \$10 per acre charge is "to fund the initial administrative/organizational activities," it is much greater than fifty cents, and the ballot states that it is "an annual parcel assessment."

The statute that seems to come closest to authorizing the annual \$10/acre charge here is Water Code section 35539 *et seq.*, which empowers a Water District Board, when adopting its budget for the next year, if it finds that expenses will exceed its revenue from all existing sources, can seek majority voter approval of a uniform one-year "special assessment" to make up the difference. But even this statute faces obstacles. The ballot states that the \$10 is "an annual parcel assessment." And it was not proposed by the District Board because there is no board yet.

In short, I don't know how the \$10 charge has been classified by the proponents, or what statutory/constitutional authority they are proceeding under. If the ballot is passed with less than two-thirds landowner approval, you may very well have a good case to challenge it.

You next asked whether the ballot must be limited exclusively to the question of district formation, and not include the \$10/acre annual assessment. Ordinarily I would say no, because it is generally legal to combine on one ballot the formation of a district and its proposed initial funding source, provided that the vote required to pass the measure matches the vote constitutionally needed to approve the proposed funding source. In this case, however, since I don't know the nature of the proposed \$10/acre charge, or the statutory authority for it, I cannot say whether it is proper to include it in a simple majority-vote proposal to form the District.

# AQUALLIANCE

DEFENDING NORTHERN CALIFORNIA WATERS

September 19, 2022

Candace J. Grubbs  
Butte County Clerk-Recorder  
155 Nelson Drive  
Oroville CA 95965  
Sent via e-mail to [elections@buttecounty.net](mailto:elections@buttecounty.net)

Re: Proposed Tuscan Water District formation and tax election

Dear Clerk-Recorder Grubbs:

AquAlliance and its members have been and remain deeply concerned about the formation of the proposed Tuscan Water District (“TWD” or “District”) and communicated this to LAFCO, the Board of Supervisors, and the Butte County Water Commission. Some examples include:

1. In August and September 2021 Jim Brobeck, AquAlliance’s Water Policy Analyst, provided the Butte County Water Commission and the Board of Supervisors with comments on the proposed formation of TWD. His comments highlighted how TWD would cause legal, financial, and hydrologic perils to all groundwater dependent users in and near the Vina Subbasin since it would specifically create the infrastructure to recharge groundwater in the Vina Subbasin.
2. On February 2, 2022 Mr. Brobeck submitted written comments to LAFCO demonstrating the dangers of forming the proposed TWD based on the long and tortured history between Butte County and the California Department of Water Resources (“DWR”) and DWR’s efforts to extract ever more water from the NorthState (Agenda Item 3.1 - 21-06 - Formation of Tuscan Water District, February 3, 2022).

Additionally, AquAlliance informed the public regarding hazards of the proposed TWD through a League of Women Voters online forum (November 2021) and in a Chico News and Review commentary (2021). In February 2022, AquAlliance filed litigation against the Vina Subbasin’s Groundwater Sustainability Plan, challenging its serious vulnerabilities - many that would be implemented by the proposed TWD.

After participating in public opportunities to inform government officials, TWD proponents, and the public of the dangers inherent in the TWD goals and weighted landowner control, all in the midst of the COVID pandemic, it came to our attention that the formation and tax ballot is currently circulating with serious deficiencies that must be corrected .



**Proposed Amendments to the Tuscan Water District  
Formation Adopting Resolution.**

For Meeting of March 2, 2023

Page 2 of 3  
AquAlliance re Proposed TWD  
formation and tax election

**A. Notice of opportunities to participate in the formation and ballot were improperly noticed**

Government Code § 57130 requires that “The elections official shall cause notice of each change or organization or reorganization election to be given by publication, posting and mailing as provided in Chapter 2 (commencing with Section 57025) of Part 4.” The referenced Chapter requires mailing to all landowners in any affected territory (Gov’t Code § 57025(b)), and “if the affected territory is inhabited”, to all registered voters residing within any affected territory. The statute is mandatory. However, your office made no such mailing to the persons who had a statutory right to mailed notice of the TWD formation election. There is nothing in the Government Code that permits your office to rely on website notices or on prior mailings by other agencies about the TWD formation process to discharge the obligation imposed on you by Government Code § 57130. Notice of the pendency of an application is not a notice of the election. Posting information on your website is not “mailing.” As a consequence of the failure by your office to perform the statutorily mandated mailing task, the only people who knew about the election and the supposed deadlines (imposed without adequate notice to voters) were candidates hand-picked by the Agricultural Groundwater Users of Butte County, to whom they passed out nomination packets. In addition, without proper notice, none of the roughly 6,500 people who reside in the proposed district were advised of the possibility of submitting a ballot argument in opposition to the formation of the district or the imposition of the parcel tax.

**B. The TWD formation ballot improperly combines the question of formation with the approval of a new parcel tax.**

The question of whether the TWD should be formed is properly submitted to landowners within the proposed district, with votes weighted by acreage. However, the parcel tax is of a different character. Proposition 13, passed in 1978, added Section XIII A to the California Constitution. Section 4 thereof provides: “Cities, Counties and special districts, by a *two-thirds vote of the qualified electors* of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district” (emphasis added). The enabling legislation spells this out: “Except as provided in Section 7282 of the Revenue and Taxation Code, the legislative body of any city, county, or district may, following notice and public hearing, propose by ordinance or resolution the adoption of a special tax. The ordinance or resolution shall include the type of tax and rate of tax to be levied, the method of collection, and the date upon which an election shall be held to approve the levy of the tax. The proposition shall be submitted to the *voters* of the city, county, or district, or a portion thereof, and, upon the approval of two-thirds of the votes cast by voters voting upon the proposition, the city, county, or district may levy the tax” (emphasis added). Cal. Gov’t Code §50077(a).

**C. The ballot improperly labels the tax an assessment.**

The “assessment” referred to in the ballot question is not an “assessment” as it is not apportioned according to either the value of the land or the benefits the assessment would confer. It has also not been supported by analysis required by Proposition 218, particularly the engineer’s report. As disclosed by the LAFCO application, it is a non-ad valorem tax designed to raise general



**Proposed Amendments to the Tuscan Water District  
Formation Adopting Resolution.**

For Meeting of March 2, 2023

Page 3 of 3  
AquAlliance re Proposed TWD  
formation and tax election

revenue for the operation of the new government entity. As such, it requires a separate ballot distributed to registered voters within the proposed district, and such parcel tax may not be imposed unless it is authorized by 2/3 or more of the registered voter ballots cast.

**D. Corporations and non-resident landowners may not vote on a parcel tax.**

In an election under Cal. Gov't Code §50077(a), corporate owners cannot vote, landowners not resident in the proposed district cannot vote. It is our understanding that the current ballot has been distributed to some landowners not entitled to vote at all on a parcel tax (e.g., Farmland Reserve, Inc., Rancho Esquon), and hasn't been distributed to what is likely several hundred non-landowner registered voters who do live within the proposed district who are entitled to vote.

In conclusion, AquAlliance believes the TWD process leading to the formation and tax election was, and the ballot itself is, legally invalid. If you believe that your actions are justified, we seek a response with citations to the statutory and constitutional authorities that validate your office's actions regarding notice to participate and the handling of the parcel tax as discussed above.

Sincerely,



Barbara Vlamis  
AquAlliance  
Executive Director  
P.O. Box 4024  
Chico, CA 95927

Cc: Steve Lucas, Butte LAFCO by e-mail [slucas@buttecounty.net](mailto:slucas@buttecounty.net)  
Butte County Board of Supervisors via the Clerk of the Board by e-mail  
[clerkoftheboard@buttecounty.net](mailto:clerkoftheboard@buttecounty.net)  
Jim Brobeck, AquAlliance Water Policy Analyst  
Michael Jackson, Attorney at Law

# **NEWS RELEASE**

Candace J. Grubbs, County Clerk-Recorder/Registrar of Voters  
(530) 552-3404



Date: September 27, 2022

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## **TUSCAN WATER DISTRICT FORMATION ELECTION**

The official canvass of the election to ratify the formation of the Tuscan Water District and to elect Board Members was scheduled to begin at 9am on September 28, 2022.

However, due to concerns that were raised regarding whether adequate notice of the election was provided, the Elections Official, in consultation with representatives from LAFCO and the proponents of the district formation, has determined that the official canvass will not be conducted as scheduled, and no results will be certified at this time.

A new election will instead be re-noticed and scheduled for a future date.



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**BUTTE LOCAL AGENCY FORMATION COMMISSION**

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1453 Downer Street, Suite C • Oroville, California 95965-4950  
(530)538-7784 • Fax (530)538-2847 • [www.buttelafco.org](http://www.buttelafco.org)

November 29, 2022

Board of Supervisors  
County of Butte  
Oroville, CA

**VIA EMAIL TO:** [clerkoftheboard@buttecounty.net](mailto:clerkoftheboard@buttecounty.net)

Re: New Election for Tuscan Water District Formation

Dear Supervisors:

The Butte Local Agency Formation Commission (LAFCO) requests that the County of Butte call a new election for the landowner/voters to consider approval of the proposed Tuscan Water District.

**BACKGROUND**

On February 3, 2022, LAFCO adopted its Resolution No. 11 2021/22 that approved the formation of Tuscan Water District in western Butte County, subject to certain terms and conditions. The conditions include a successful landowner vote, based on a one-acre/one-vote formula, to approve the formation of the District. The same resolution directed the Executive Officer to request the County Board of Supervisors to call a landowner election, a process we are now repeating.

On April 26, 2022, the Board of Supervisors approved a minute order that called for a mailed ballot landowner election to be conducted by the County elections official for the formation of the District and set the date of the election as September 20, 2022.

County election staff then processed and conducted the September 20, 2022, landowner election. Prior to canvassing the election returns, the County received two comment letters objecting to the election. James McCabe provided a letter dated September 16, 2022, and AquAlliance submitted a letter dated September 19, 2022. While the letters asserted various objections and comments, there were two common substantive objections. First, the letters asserted that the County failed to give certain election-related notices required by statute. Second, the letters complained that the ballot question was unclear and that it purported to provide for approval of a new assessment in a manner inconsistent with the California Constitution.

County staff then evaluated the comment letters and grounds of objection in consultation with LAFCO staff and the district formation petitioners. It was determined that proper notice of election was not given. Therefore, in a news release dated September 27, 2022, the County Clerk-Recorder/Registrar of Voters announced that "due to concerns that were raised regarding whether adequate notice of the election was provided, the Elections Official, in consultation with representatives from LAFCO and the proponents of the district formation, has determined that



**Proposed Amendments to the Tuscan Water District  
Formation Adopting Resolution.**

For Meeting of March 2, 2023

the official canvass will not be conducted as scheduled, and no results will be certified at this time. A new election will instead be re-noticed and scheduled for a future date.”

**SPECIFIC REQUEST**

Consistent with the County Clerk-Recorder/Registrar of Voters' September 27, 2022, announcement, the LAFCO Executive Officer, on behalf of the Commission and in compliance with LAFCO Resolution No. 11 2021/22, requests that the Board of Supervisors call a new election and again order and direct the County elections official to conduct the necessary mailed ballot landowner election and take action necessary to call, provide for, and give notice of the election, and provide for the conduct and canvass of returns of the election, as in accordance with the requirements of Cortese-Knox-Hertzberg and the Elections Code.

To implement LAFCO's request, it is suggested that the Board amend its original April 26, 2022, minute to reflect the necessary changes as discussed above.

The two September 2022 comment letters also raised concerns about the language in the ballot question and the process by which the new water district would approve landowner assessments. Consistent with the Commission direction in its resolution, LAFCO staff intend to work with the Proponents, and County elections official to clarify the ballot question in response to the concerns raised by the comment letters and ensure that the modified District Formation ballot question provides for funding of the district operations in a manner that is consistent with the California Constitution and LAFCO resolution.

Thank you for your cooperation in this matter. Please contact me if you have any questions.

Sincerely,

*Steve Lucas*

Stephen Lucas  
Executive Officer

*Scott Browne*

P. Scott Browne  
Butte LAFCo Counsel

cc (via email):

Andy Pickett, CAO at [apickett@buttecounty.net](mailto:apickett@buttecounty.net)

Brad Stephens, County Counsel at [bstephens@buttecounty.net](mailto:bstephens@buttecounty.net)

Candace Grubbs, County Clerk-Recorder/Registrar of Voters at [elections@buttecounty.net](mailto:elections@buttecounty.net)

James F. McCabe  
9930 Ferson Road  
Durham CA 95938

December 7, 2022

By email to [clerkoftheboard@buttecounty.net](mailto:clerkoftheboard@buttecounty.net)

Andy Pickett  
Chief Administrative Officer  
and Clerk of the Board of Supervisors  
Butte County  
25 County Center Drive, Suite 200  
Oroville CA 95965

Re: Letter from LAFCo Executive Officer dated November 29, 2022

Dear Mr. Pickett:

I understand that a staff member at Butte LAFCo has sent a letter dated November 29, 2022 to the Butte County Board of Supervisors (BOS) making a request that the BOS amend minutes of a meeting held in April of this year. The request seems to be to change the minutes to somehow suggest that the BOS directed the Clerk-Recorder to conduct an election with respect to formation of the proposed Tuscan Water District on a date other than September 20, 2022 (the date on which the BOS directed the Clerk-Recorder to hold an election in the first instance).

The letter is inappropriate, and the request should not be placed on the agenda for the BOS meeting of December 13, 2022. As explained below, LAFCo should be advised that if it seeks a further election with respect to the Tuscan Water District, the Commission (not staff) should make such a scheduling request to the BOS, and the Commission should do so only after adopting a resolution in the form required by State law. I am copying LAFCo and its counsel on this letter.

1. The November 29 letter is not a “notification” by Butte LAFCo. The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Cal. Gov’t Code §§ 56000 *et seq*, “Cortese-Knox”) provides that once a LAFCo has approved the formation of a new district with a resolution meeting certain specifically enumerated requirements, *the commission* shall inform the board of supervisors of the affected county and request that the board direct the county elections official to conduct the necessary election. Cal. Gov’t Code § 57000(d). Once a board of supervisors has been informed of such a request by *a LAFCo commission*, the board is obligated to call for an election and to set an election date. Cal. Gov’t Code § 57000(e)(1).

The November 29 letter is not a request from Butte LAFCo to establish an election date – it is a letter from a staff member acting independently of the Commission. The Tuscan Water District election was cancelled on September 27, 2022. There have been two LAFCo meetings between the time the election was cancelled and November 29, the date the letter was sent: one on October 6 and another on November 3. There was no agenda item for either of those meetings mentioning the cancellation of the Tuscan Water District election, or alluding to any

**Proposed Amendments to the Tuscan Water District  
Formation Adopting Resolution.**

For Meeting of March 2, 2023

Page 2 of 5

new request to the BOS to call for a Tuscan Water District election and set a date. Nor was there anything in the Executive Officer's reports to Butte LAFCo for those meetings referring in any way to the cancellation of the September Tuscan Water District election, or to the need to set a new election. The letter is entirely *ultra vires*. The BOS has neither the obligation nor the authority to set another election absent a formal, legally sufficient request from the Commission.

2. Amendment of the BOS's April 26, 2022 minutes is inappropriate. The minutes of the April 26, 2022 meeting were adopted by the BOS at its May 10, 2022 meeting. Given the passage of time since the BOS's receipt of the original "notification" from the LAFCo, it would be impossible for the BOS to meet its obligation under Government Code § 57000(e)(1) to, within 45 days of receipt of notification, direct the elections official to conduct an election. The only way to avoid having to schedule the Tuscan Water District election on the date of the next general election is for LAFCo to make a new notification to the BOS, and for the BOS to act on it within the time provided by statute. This will require an agenda item and a BOS vote. Given the fatal deficiencies in the LAFCo Resolution, a new resolution is necessary. The BOS would properly wait until LAFCo manages to get the resolution right.

3. The LAFCo resolution on its face calls for an election to be conducted in a manner contrary to law, and should therefore be returned to LAFCo to craft a resolution consistent with the principal act, the Water Code. The Tuscan Water District is proposed to be formed as a California water district under Division 13 of the California Water Code. Part 4 of Division 13 generally provides for allocation of votes among voters based on the assessed value of land owned by the voter. Cal. Water Code § 35003. In elections held *after* formation, the allocation of votes is determined by the assessment book of the district. *Id.* In such elections, if no assessment book exists, votes are allocated among voters on the basis of the acreage the voters own. However, formation elections are governed by a different part of Division 13 – Part 2 (Formation), Chapter 3 (Election on Formation), Article 2 (Conduct of Election). Likely in recognition of the fact that a district assessment book would not exist before a district is formed, Cal. Water Code § 34422 specifically provides: "At the [formation] election the last equalized assessment roll of each affected county shall be used in lieu of the district assessment book." Thus, votes on the question of whether the Tuscan Water District should be formed should be allocated among voters on the basis of the *assessed value of land owned*, not on the basis of acreage owned.

The LAFCo February 3, 2022 resolution approving formation of the Tuscan Water District ("LAFCo Resolution") explicitly calls for an election in which votes are allocated among voters on a "one acre one vote formula."<sup>1</sup> **This is plainly legally erroneous.** Any formation election conducted on this basis would be invalidated in litigation. The BOS should not schedule a plainly illegal election. The BOS should instead return the matter to LAFCo for correction.<sup>2</sup>

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<sup>1</sup> This error is also found in the Governance section of the Resolution (¶ 8), describing the voting for the initial board of directors of the district.

<sup>2</sup> In a September 16, 2022 letter to the Clerk-Recorder, I stated "[t]he question of whether the TWD should be *formed* is properly submitted to landowners with the proposed district, with votes weighted by acreage." I had not reviewed the formation election provisions of Division 13

**Proposed Amendments to the Tuscan Water District  
Formation Adopting Resolution.**

For Meeting of March 2, 2023

Page 3 of 5

4. The LAFCo resolution omits elements specifically required by Cortese-Knox, and hence is not a notification requiring action by the BOS. Cortese-Knox requires that “[a]ny resolution the commission forwarding a change of organization or a reorganization for confirmation by the voters shall . . . do **all** of the following: . . . (b) Provide for the question or questions to be submitted to the voters. . . [and] (d) State the vote required for confirmation of the change of organization or reorganization.” Cal. Gov’t Code § 57115. The LAFCo Resolution fails to address either statutorily-required element. The BOS cannot, consistent with Cortese-Knox, direct the county elections official to conduct an election without guidance as to the question or questions to be presented, or as to what vote will be required to approve formation of the district. These issues are discussed separately below.

Ballot questions. The LAFCo Resolution does not set out the ballot questions to be presented at the formation election. In the cancelled election, LAFCo’s failure to meet this statutory obligation resulted in formulation of the ballot question in private meetings between County officials and district proponents that willfully and consistently excluded participation of those critical of district formation. That Cortese-Knox requires LAFCo to formulate ballot questions assures that there is at least the appearance of public participation in and ability to comment on how ballot questions related to district formation are presented.

LAFCo’s failure to specify ballot questions also resulted in the inclusion on the original Tuscan Water District ballot of a formation condition *different from* the condition stated in the LAFCo Resolution. The Resolution specified as a general condition that there be a “successful vote” to “[a]pprove parcel assessment [sic] of a maximum of ten dollars per acre (\$10.00/acre) to fund the initial administrative/organizational activities of the Tuscan Water District.” But the ballot question formulated in the secret meetings between County elections officials and district proponents, though, the ballot question framed the \$10 tax as an **annual** event. That is **not** the condition approved or authorized by the LAFCo Resolution – there is no mention in the Resolution of a recurring collection of funds. If the district proponents wish to seek voter approval of an **annual** assessment in connection with formation, they need to go back to LAFCo and get a resolution, grounded in evidence submitted to the Commission, that such an annual tax is warranted.

LAFCo’s failure to specify ballot questions also resulted in the use of misleading language in describing the proposed fee. The “assessment” that was referred to in the privately drafted ballot question is not an “assessment” at all – it is not apportioned according to either the value of the land or the benefits the assessment would confer, and it has not been supported by the analysis required by Proposition 218, particularly the engineer’s report. As disclosed by the LAFCo application, it is a non-ad valorem tax designed to raise general revenue for the operation of the new government entity. Taxes should be clearly described in ballot measures as “taxes.” LAFCo must contend with the fact that the collection of a parcel tax is a tax (not an assessment because, as noted below, it must “state the vote required for confirmation,” and the nature of the fee collection dictates what percentage of votes cast is required for a ballot proposal to be confirmed.

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when I wrote that – I had assumed that LAFCo knew what it was doing on this issue. That assumption was wrong, and my September 16 letter was wrong on this point.

**Proposed Amendments to the Tuscan Water District  
Formation Adopting Resolution.**

For Meeting of March 2, 2023

Page 4 of 5

“State the vote required for confirmation.” The LAFCo Resolution also omits the statutorily-required specification of the vote required for formation of the district. It refers to “a successful landowner vote” without specifying who votes, or what voting outcome is required for the district to be formed.

Required outcome. Since the LAFCo Resolution conditions formation of the district on voter approval of a parcel tax, district formation can be approved only by a vote of two-thirds of the votes cast. Proposition 13, passed in 1978, added Section XIII A to the California Constitution. Section 4 thereof provides: “Cities, Counties and special districts, by a *two-thirds* vote of the *qualified electors of such district*, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.” (emphasis added). The enabling legislation spells this out: “Except as provided in Section 7282 of the Revenue and Taxation Code, the legislative body of any city, county, or district may, following notice and public hearing, propose by ordinance or resolution the adoption of a special tax. The ordinance or resolution shall include the type of tax and rate of tax to be levied, the method of collection, and the date upon which an election shall be held to approve the levy of the tax. The proposition shall be submitted to the *voters* of the city, county, or district, or a portion thereof, and, upon the approval of two-thirds of the votes cast by voters voting upon the proposition, the city, county, or district may levy the tax.” Cal. Gov’t Code §50077(a) (emphasis added). A statutorily sufficient resolution from LAFCo would explicitly state this two-thirds vote requirement.<sup>3</sup>

Voters. The LAFCo Resolution does not specify who is entitled to vote in the Tuscan Water District formation election. The Resolution refers only to a “landowner vote.” This is imprecise, and seems to have been misleading to the County elections official. The principal act here in issue, Division 13 of the Water Code, provides “‘Voter’ means a **person** who is a holder of title.” Cal. Water Code § 34027 (emphasis added). A Division 13 voter thus must meet two qualifications: they must be a holder of title, and they must be a “person.” Division 13 voters are *not* defined simply as “landowners” or “holders of title.”<sup>4</sup> Division 13 thus differs from

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<sup>3</sup> The November 29 letter obscures the fact that my September 16 letter raised with the Clerk-Recorder the fact Proposition 13 required that the fee portion of formation proposal required a two-thirds majority to pass. The letter seems to dissuade the BOS from looking too hard at that issue (since it is not raised) by assuring the BOS that issues other than the failure to give notice of the election will be worked out with the Clerk-Recorder, presumably in more secret meetings with district proponents. This violates the sequence of events required by Cortese-Knox. LAFCos are required to formulate ballot questions and to state the vote required for confirmation *before* asking a board of supervisors to set an election, by including that information in its formation resolution. Cal. Gov’t Code § 57115. The letter writer effectively asks the Board of Supervisors to look the other way, potentially permitting a violation of Proposition 13. I seriously doubt that incumbent supervisors who have publicly and loudly proclaimed their fealty to Proposition 13 to get elected would welcome a litigated finding that an election that they facilitated by failing to exercise due diligence *violated* Proposition 13.

<sup>4</sup> The *voting* provisions of Division 13 are different from the *petitioning* provisions of that Division. Cal. Water Code § 34153 provides: “The **holders of title** to a majority in area of land which is capable of using water beneficially for irrigation, domestic, industrial or municipal



**Proposed Amendments to the Tuscan Water District  
Formation Adopting Resolution.**

For Meeting of March 2, 2023

Page 5 of 5

Division 14 of the Water Code (water storage districts), in which holders of title are explicitly given both the right to petition **and to vote** with respect to district matters. Cal. Water Code § 39052. Division 13's voting eligibility provisions more closely resemble those in levee districts, governed by Water Code Division 19, which limits voters to registered voters (i.e. humans), resident in the district, who own assessed land within the district. Cal. Water Code § 70121.

I understand that in the election that was cancelled, **the Clerk-Recorder provided ballots to and was prepared to count votes from ineligible voters:** the "voter" list was not limited to "persons" – it included title holders that were corporations and LLCs. This is arguably the result of the failure of the LAFCo Resolution to "state the vote required for formation," as required by Cortese-Knox, and its use of imprecise language about a "landowner vote."

The BOS should not treat the November 29, 2022 letter as a "notification" asking the BOS to set a new election date – the LAFCo Resolution it relies upon is explicitly wrong on vote allocation, and is deficient due to its failure to specify ballot questions, its failure to state what vote outcome is required for district formation, and its failure to articulate who is entitled to vote. Until LAFCo furnishes the BOS with a compliant resolution, no election should be scheduled.

Sincerely,



James F. McCabe

Cc: Butte LAFCo (email)  
Clerk-Recorder (email)  
County Counsel (email)

**Proposed Amendments to the Tuscan Water District  
Formation Adopting Resolution.**  
For Meeting of March 2, 2023

**Attachment K**

**COUNTY COUNSEL**  
BRAD J. STEPHENS

**ASSISTANT COUNTY COUNSEL**  
KATHLEEN KEHOE GREESON



**CHIEF DEPUTY COUNTY COUNSEL**  
FELIX WANNENMACHER  
ROGER S. WILSON

**DEPUTY COUNTY COUNSEL**  
BRUNELLA WOOD

**OFFICE OF THE COUNTY COUNSEL**  
**COUNTY OF BUTTE**  
25 COUNTY CENTER DRIVE, SUITE 210  
OROVILLE, CALIFORNIA 95965  
PHONE: (530) 552-4070 FAX: (530) 538-6891

January 3, 2023

Stephen Lucas  
Butte Local Agency Formation Commission  
1453 Downer Street, Suite C  
Oroville, CA 95965-4950

Re: New Election for Tuscan Water District Formation

Dear Mr. Lucas:

On February 3, 2022, Butte LAFCo adopted a resolution approving the formation of the Tuscan Water District (TWD). Pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, LAFCo requested that the Butte County Board of Supervisors call for an election of landowner/voters to consider approval of the formation of the proposed Tuscan Water District, elect a board of directors and adopt a method of funding operation of the district. In September of 2022, questions were raised as to the noticing done by the County Elections Department for the formation election. At the request of the County, LAFCo staff sent a letter on November 29, 2022, to the Clerk of the Board requesting that the Butte County Board of Supervisors call for a new election of TWD landowner/voters to correct the noticing procedure.

On December 7, 2022, the Clerk of the Board of Supervisors and the Butte County Clerk-Recorder/Registrar of Voters received a further letter from James McCabe raising numerous issues regarding the request for a new election.

On behalf of the Clerk of the Board of Supervisors and the Clerk-Recorder/Registrar of Voters Office, the Butte County Counsel's Office is requesting that the Butte LAFCo Commission review Mr. McCabe's letter and adopt, if appropriate, a revised TWD Formation resolution to submit to the County that addresses the issues he has raised.

As always, we are available to meet with you or otherwise communicate with you concerning the issues raised and any course of action you propose to take.

Very truly yours,  
BRAD J. STEPHENS  
Butte County Counsel

By:   
Felix Wannemacher,  
Chief Deputy County Counsel

FW/bt