

Butte Local Agency Formation Commission



TO: Local Agency Formation Commission
FROM: Stephen Lucas, Executive Officer
SUBJECT: **LAFCO File No. 21-06 – Formation of Tuscan Water District**
DATE: Meeting of December 2, 2021

Informational Meeting Only - No Action To Be Taken



Purpose of Today's Meeting



- ➡ This staff report is not intended to be a complete staff analysis.
- ➡ This Staff Report is intended to provide the Commission and the public key information necessary to understand the broader framework under which the proposal was initiated and will be evaluated by the Commission
- ➡ How the proposed TWD relates to California laws governing special districts, specifically, how it relates to the California Water District law (Division 13 of the Water Code)
- ➡ The information that relates to some of the many general questions that came up at various affected local agency public meetings held over the last few months.



Public Comments/Notice

- The staff report includes the public and agency comments received as of the date of the staff report. Evaluation of comments will be provided in the staff analysis presented to the Commission at the anticipated January 6, 2022 meeting.
- Published Notice was provided in the Chico Enterprise Record on November 11, 2021 pursuant to state law which directs that if the total number of notices required to be mailed exceeds 1,000, then notice may instead be provided by publishing a display advertisement in a newspaper.
- Butte LAFCo has taken the additional voluntary measure of direct mailings to all landowners within the proposed district.



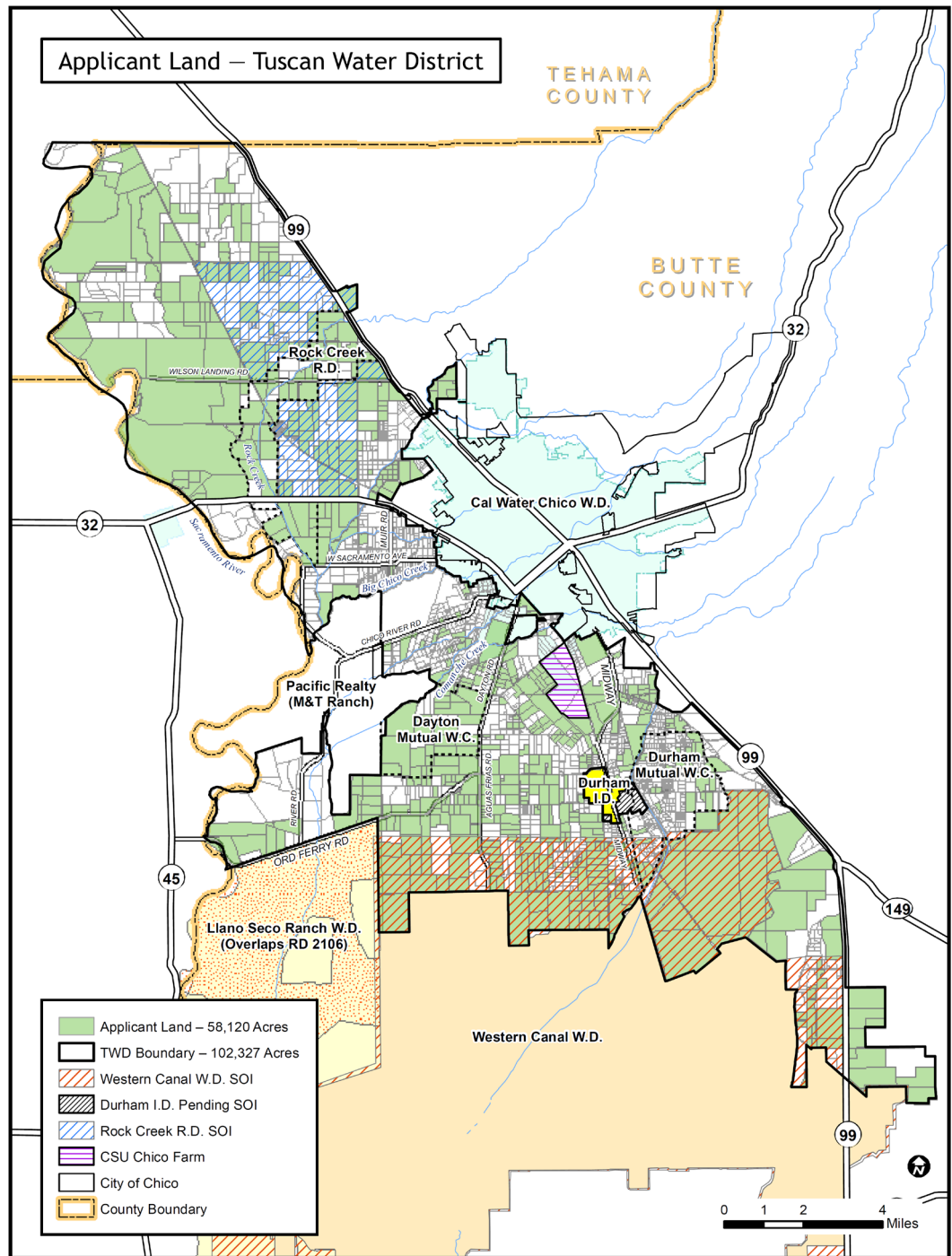
Summary Overview

- **Formation of Tuscan Water District**
- **Initiated by landowner petition (56% of acres)**
- **Chief Petitioners:** *Rich McGowan, Darren Rice, Ed McLauhlin.*
- **102,237 acres in size**
- **57,092 acres = Petitioner Acreage**
- **88,951 acres = Agricultural Acreage in District**
- **3,136 parcels primarily used for agricultural production**
- **6,463 = Estimated population of District**
- **\$1,459,397,597 = District Assessed Value**
- **\$289,369,469 = Estimated value of TWD Agriculture**



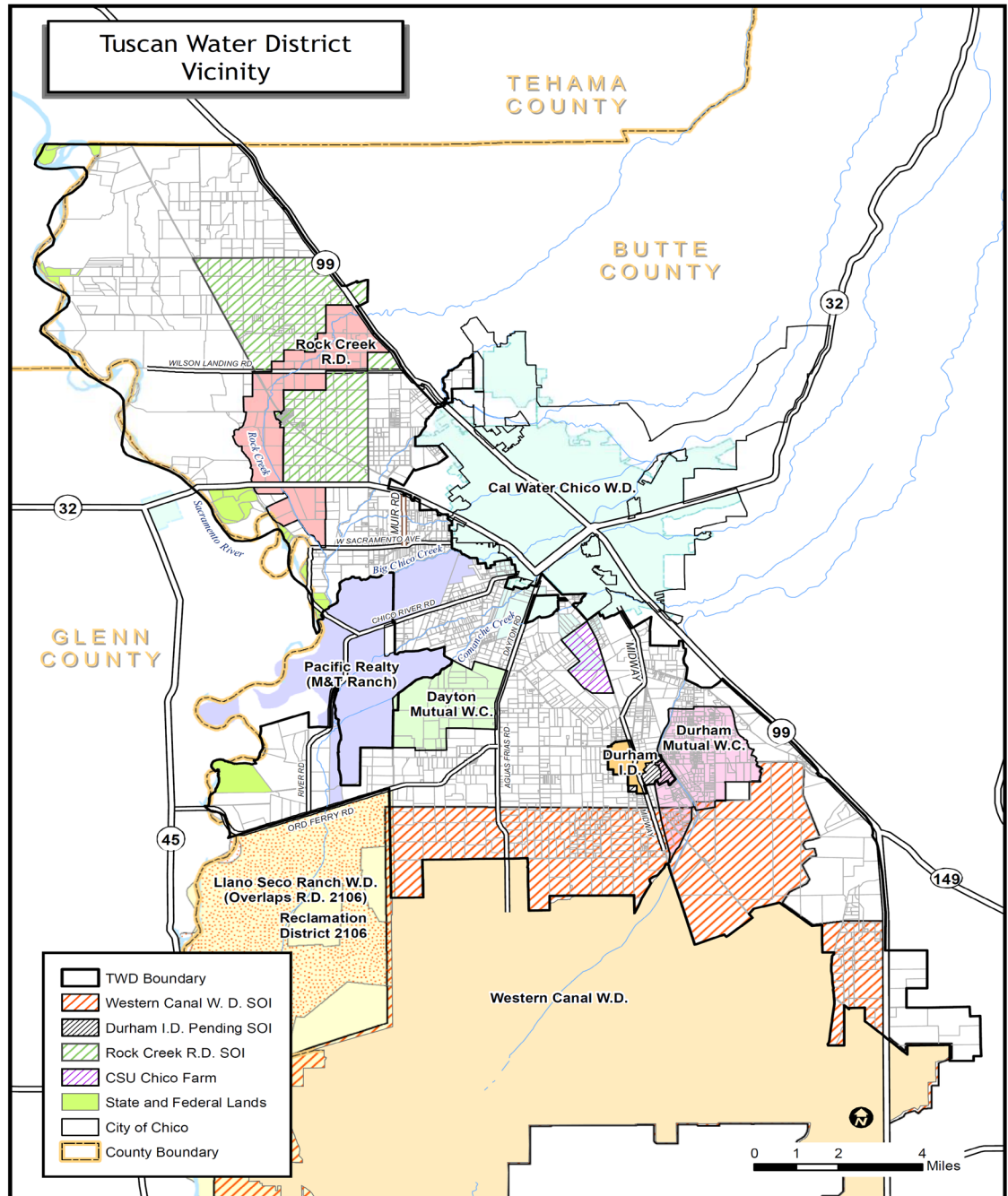
Tuscan Water District

Petitioner Lands



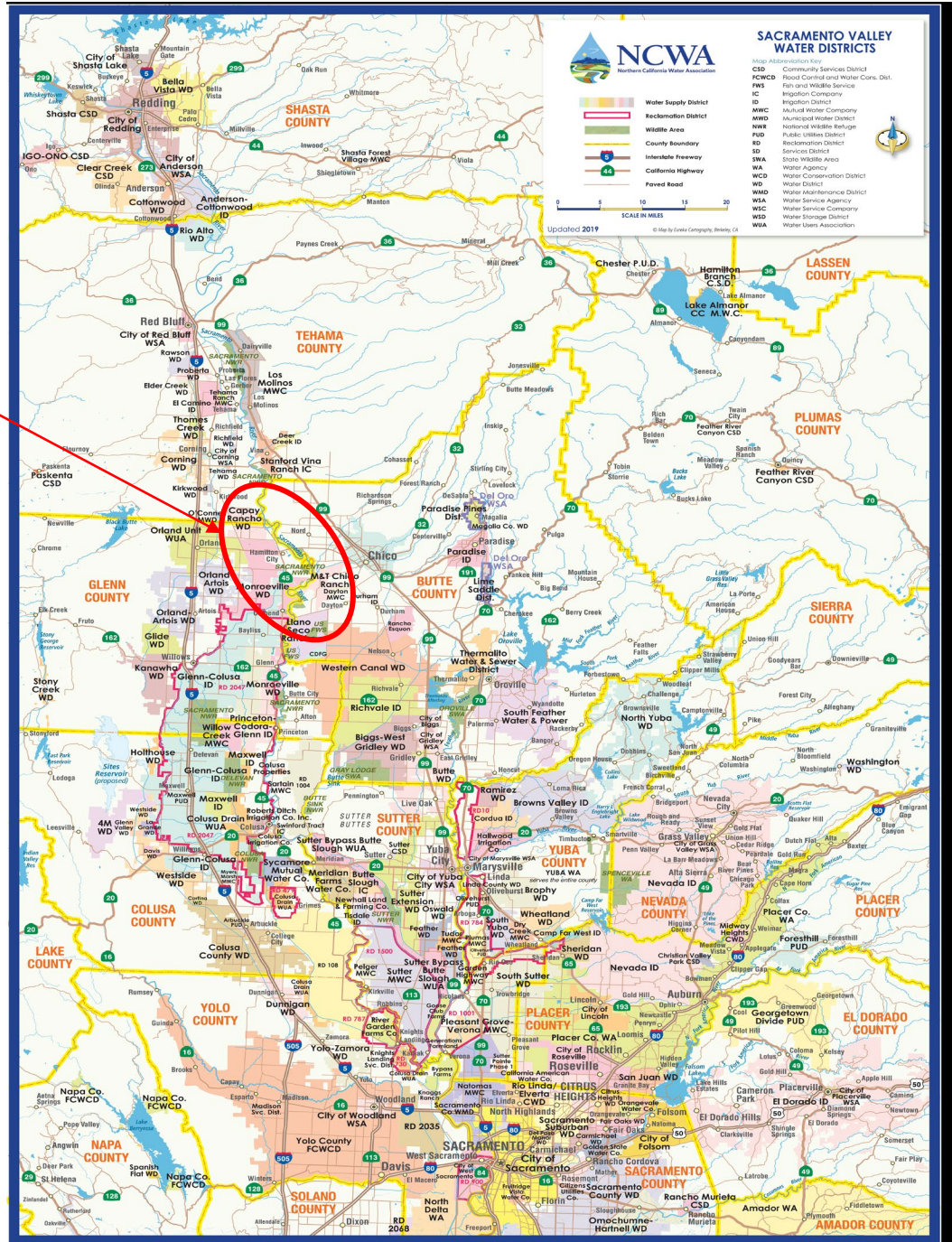
Tuscan Water District Vicinity

Butte County Vicinity Map



Tuscan Water District

North State Water Districts Map





Summary Overview

Purposes of TWD:

- Organize the landowners into a public agency with the overarching purpose of working cooperatively with the:
 - ✓ County of Butte
 - ✓ Butte County Water Commission,
 - ✓ Vina Groundwater Sustainability Agency
 - ✓ Butte Groundwater Sustainability Agency
 - ✓ Rock Creek Reclamation District Groundwater Sustainability Agency



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



What is LAFCo's Role?



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

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

What is LAFCo's Role...?

LAFCo can also impose a variety of conditions based on public and local agency comments received.

- Restrict authorized powers such as prohibiting exporting water out of the District/County/Basin.
- Determine electoral process such as number of directors and the establishment of electoral divisions.
- Formation of the district only if landowners approve funding source.
- Modifications to the boundary of the proposed District.
- Execute a coordination MOU with the Vina, Rock Creek, Butte Groundwater Sustainability Agencies (GSA).
- Limiting groundwater sustainability efforts to those established in the Groundwater Sustainability Plans (GSP's).
- Requiring approval from GSA's for projects not identified in a GSP.
- Restrictions on groundwater recharge/ownership of recharged groundwater
- Restrictions on providing municipal and industrial water or sewer services.



What is a Special District / California Water District?



- Special districts are local governments created by the people of a community to deliver specialized services essential to their health, safety, economy, and well-being.
- There are some 3,300 special districts in California providing 27 different types of services.
- Special districts...
 - Serve in specifically defined areas
 - Usually provide only a single service, allowing them to fully concentrate on one activity
 - Deliver public programs and public facilities that their constituents want
 - Utilize staff and other experts specializing on the specific mission of the district.

What Special Districts are not:



- not state government.
- not city or county government.
- not "Mello-Roos" districts or benefit assessment districts.
- not private, corporate, or non-profit entities.



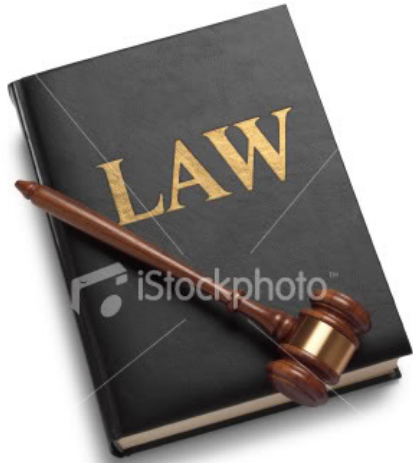
- The proposed TWD WILL BE a local government agency, specifically, a California Water District formed pursuant to Water Code Section 34000.
- The proposed TWD WILL NOT be a private, corporate or non-profit entity.

What does the California Legislative Analyst's Office (LAO) Say About Special Districts?



- “Water districts in California provide a diverse range of services—using a variety of financing means and governance structures. While some individual districts have pursued controversial policies, our analysis **indicates no evidence of a statewide structural governance problem.** Districts must make difficult tradeoffs in making their decisions. In those districts which have produced unpopular results, local remedies may be sought. For instance, residents have the opportunity to access the public participation process and propose changes. Local elections also provide the opportunity to change the character and policies of a governing board. If these approaches are not effective in dictating public opinion, residents also have the ability to approach their LAFCO about changing the structure of their special district.”

3. Governance Oversight/Public Participation



- Cortese-Knox-Hertzberg Act
- Political Reform Act
- Brown Act / Public Records Act
- California Environmental Quality Act (CEQA)
- Sustainable Groundwater Management Act (SGMA)
- Principal Acts/California Water Code





LAFCo Oversight

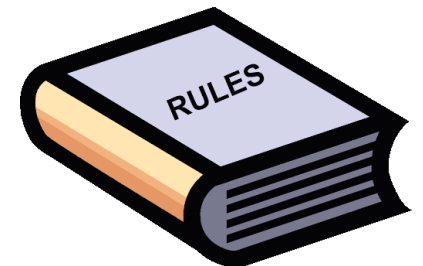
- Prepare a **municipal service review** (MSR) making determinations concerning its service capabilities and governance among others
- Establish/amend/update its **sphere of influence** (SOI)
- Approve/disapprove future jurisdictional **boundary changes**
- Consider/initiate other **reorganizations** such as consolidations and dissolution if warranted





Principal Acts

- Enabling or principal acts serve as the framework for a district, outlining the legal parameters for its governance and operation.
- There are two types of enabling acts:
 - Principal acts are established for an entire category of special districts. There are 29 different principal acts for the different types of special districts.
 - Special acts are targeted to the formation and functions of a specific proposed district.





California Water District

- The proposed TWD has been initiated locally through Butte LAFCo as a California Water District (WC 34000).
- The TWD proponents could have sought special act legislation to form the district as other districts have and bypass local control but elected to be accountable locally to the Butte LAFCo and other affected local agencies.
- There are 141 California Water Districts in the state, which is the 5th most formed special district type out of 29 distinct service categories.

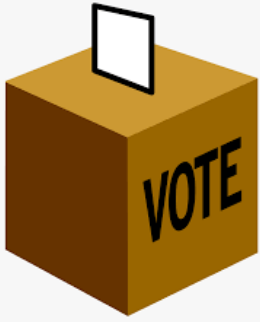


Governance Types



- **Dependent Special Districts**. Governed by the legislative body a city or county. About one-third of special districts are dependent.
- **Independent Special Districts**. Governed by a locally elected, independent board of directors, which oversees district functions. About two-thirds of special districts in the state are independent.

As a California Water District (WC 34700), the proposed TWD would be an independent special district with a governing board elected by landowners within the district.



Governance Types



- **Landowner Voter Districts.** A “district whose principal act provides that owners of land within the district are entitled to vote upon the election of district officers. Landowner voter districts are generally found in rural areas with large agricultural uses that often require expensive and unique infrastructure to support their mission that might otherwise not be required by the general population
- **Registered Voter Districts.** A “district whose principal act provides that registered voters residing within the district are entitled to vote for the election of district officers. Registered voter districts are generally differentiated from landowner voter districts in that they provide multiple services to a broader community of interest.



Governance Types

As a California Water District, the proposed TWD will be a landowner voter district with its Board of Directors elected by the landowners with votes weighted based on the assessed value of their parcels.

Landowner Districts in Butte County	Acres	Other
Rock Creek Reclamation District	4,644	GSA – Vina Basin
Western Canal Water District	62,974	GSA – Butte Basin
Sacramento River Reclamation District	20,725	
Reclamation District No. 833	38,600	
Biggs West Gridley Water District	32,000	GSA – Butte Basin
Butte Water District	18,030	GSA – Butte Basin
Richvale Irrigation District	34,150	GSA – Butte Basin
<i>Groundwater Sustainability Agency (GSA)</i>		

Can it Change? Yes



ARTICLE 3. Alternative Method of Conducting Elections [35040 - 35060]

- The voting procedure within a district shall be changed from that of a landowner voting district to that of a resident voting district at such time as the board of directors certifies that 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, 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.

Should the TWD be formed, the Board of Directors will be required to review the land uses within the District and potentially convert the District from a landowner voter district to a registered voter district.

Is a Landowner Voter District Legal?

The issue of landowner-voter districts was called into question in the US Supreme Court case, *Salyer Land Company v. Tulare Lake Basin Water Storage District (1972)*.

The plaintiffs claimed that it was unconstitutional for the District to restrict voting rights to landowners and that it was inequitable that smaller landowners received fewer votes than larger landowners.

The District argued that its services benefited the land only and the number of votes allotted to landowners was proportional to the assessed value of the land, and therefore relative to the benefits and burdens to each landowner.

The US Supreme Court agreed with the defendant and upheld landowner-voting because the District “provides no service to the general public.”





Board of Directors



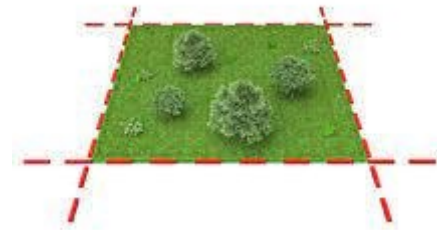
- Water Code allows 5, 7, 9, or 11 directors.

The TWD proponents have requested the proposed TWD be established with a 7 member board of directors.

- Water Code allows elections by divisions.

The TWD proponents have considered that the proposed TWD be divided into divisions to allow for broader representation on the District Board and to greatly minimize the influence of large landowners.

Boundaries



- **Contiguous** – The parcels contained within the district share a common boundary with territory within a local agency. All parcels must touch.
- **Non-Contiguous** - The parcels contained within the district do not have to share a common boundary with territory within a local agency. All parcels do not need to touch.
- California Water Districts (WC34153)(b) can have non-contiguous territory provided the boundary of each area of the district is within two miles of the boundary of another area of the district.

Boundaries



- The Water Code (WC34157) allows a proposed district to overlap other local agencies.

- **The proposed TWD boundaries overlap with the Rock Creek Reclamation District (RCRD), Western Canal Water District (WCWD) Sphere of Influence and the Durham Irrigation District (DID) Sphere of Influence which is permitted under the Water Code.**
- **Additionally, the TWD application states that the TWD will not provide drainage, flood control or reclamation services within the RCRD without the consent of its Board.**
- **The RCRD, WCWD and DID have all provided letters of support for the TWD formation and have no concerns about any overlap.**

Boundaries



- The Vina Subbasin is a portion of the larger Sacramento Valley Groundwater Basin covering approximately 184,917 acres. The proposed TWD would represent approximately 102,000 acres of the Vina Subbasin, otherwise referred to as the “white area”, or the unincorporated territory that is not currently represented by a local water/irrigation/reclamation district and is governed by Butte County.

The proponents of the TWD actively participated within the County governance structure to develop the proposed district boundaries to align with the Vina Subbasin unincorporated white areas under the Butte County GSA jurisdiction.



Funding



- Enterprise Special Districts. These agencies run much like business enterprises and provides specific benefits to their constituents. They are primarily funded by fees paid by service recipients.
- Non-Enterprise Special Districts. These deliver services that provide general benefits to entire communities. They are primarily funded by property taxes.

The proposed TWD is intended to be an enterprise special district with revenue generated exclusively by landowner assessments based on the assessed value of the land. This is one of the fundamental benefits of a landowner district, those who own the most land and benefit the most from services, pay the most for improvements.



Powers and Functions

- Special districts are *limited purpose* local governments, meaning on providing one service or a single suite of services.
- It can lead to innovative and sustainable local decisions.
- Special districts can only be granted service authority consistent with their enabling act and with the consent of LAFCo at formation and thereafter.
- Most special districts perform a single function, such as water service, parks and recreation, fire protection, pest abatement or cemetery management. Other districts have multiple functions, such as community service districts or county service areas.



Powers and Functions

Primary California Water District Powers (WC35400)

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



Powers and Functions

- Butte LAFCo has the authority to determine the powers granted to the TWD at formation and thereafter.
- All powers allowed under the principal act not initially granted by LAFCo, become latent powers. Districts can apply to LAFCo to activate latent powers or divest themselves of existing powers if warranted and at LAFCo's discretion.

- **The proponents of the TWD have requested the powers of a California Water District pursuant to Water Code Section 34000.**
- **Butte LAFCo will determine which powers the proposed TWD have requested will become active powers and all others will become latent powers.**

Intergovernmental Coordination



- California Water Districts (WC35850-35855) also have the power to join with one or more public agencies, including the United States, private corporations or other persons for the purpose of carrying out any of the powers of such district.
- The purpose of the TWD is to organize the landowners into a public agency with the overarching purpose of working cooperatively 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 development of Groundwater Sustainability Plans (GSP) for the Vina and Butte sub-basins that will ensure adequate water is available to continue the existing agricultural uses of the affected land.

Intergovernmental Coordination



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

SGMA



- The TWD proposal relates directly to the implementation of the Sustainable Groundwater Management Act (SGMA), which requires groundwater sustainability agencies (GSA's) to manage groundwater at the local level through the development of groundwater sustainability plans (GSP).
- The proposed TWD is primarily located within the Vina Subbasin.
- The Vina and Rock Creek Reclamation District GSA's are the groundwater authority for the Vina Subbasin.
- The Vina and Rock Creek Reclamation District GSA's are in the process of reviewing and adopting the Vina Subbasin GSP.
- The proposed TWD would be formed to evaluate, fund, and implement projects and actions to achieve groundwater sustainability under the Vina GSP.



SGMA

- The Vina GSP will include possible projects and management actions (PMA's) that would help move the subbasin towards sustainability. The Vina GSA website refers to the PMAs as a “menu of options” for the subbasin to achieve sustainability.

PROJECTS and MANAGEMENT ACTIONS (PMAs)

Planned Projects	Potential Projects	Conceptual Projects	Management Actions
<ul style="list-style-type: none"> • Agricultural Irrigation Efficiency • Residential Conservation • Scoping for Flood Managed Aquifer Recharge (FloodMAR)/ Surface Water Supply and Recharge • Community Water Education Initiative • Fuels Management for Watershed Health 	<ul style="list-style-type: none"> • Paradise Irrigation District Intertie • Agricultural Surface Water Supplies • Streamflow Augmentation • Community Monitoring Program • Recycled Wastewater • Rangeland Management • Removal of Invasive Species • Surface Water Supply and Recharge 	<ul style="list-style-type: none"> • Extend Orchard Replacement • Recharge from the Miocene Canal 	<ul style="list-style-type: none"> • General Plan Updates • Domestic Well Mitigation • Well Permitting Ordinance • Landscape Ordinance • Prohibition of Groundwater Use for Ski (Recreational) Lakes • Expansion of Water Purveyors' Service Area • Groundwater Allocation

SGMA



- After the GSP is adopted, the new water district would evaluate the GSP and its menu of PMA options and it would develop a plan to determine, fund, and implement appropriate PMAs.

The principal objective for district formation is to create a local agency with the authority to evaluate, fund, implement, and oversee projects and actions to achieve groundwater sustainability under the GSP to be adopted by the Vina and Rock Creek Reclamation District GSAs. The Proposal would benefit the local residents, landowners, and farmers who depend upon a well-managed groundwater subbasin and who would bear the principal financial obligation for GSP implementation.

Selecting A District



- Formation of a district begins when a group of citizens or a local government agency determine that there is a particular issue of importance that needs attention that cannot be met by an existing local government agency.
- These are most often special districts of which, there are 29 different categories available in California or can be created as new “special act” district.
- The proponents of the TWD determined a California Water District was the appropriate path forward based on guidance provided by the Butte County Board of Supervisors (BOS) and the Department of Water and Resource Conservation.
- This early consultation with County representatives determined that:
 - 1)the County was not interested in initiating the formation and
 - 2)the County would support the citizens’ initiative to initiate the formation via a petition of landowners directly to Butte LAFCo.



Selecting A District

Excerpts from the staff report provided to the Butte County Water Commission meeting on August 4, 2021, that offers a more detailed explanation:

- “For many years, **Butte County has encouraged agricultural groundwater users to organize**. In contrast to the “white areas” of the county that are groundwater dependent, local water districts provide an organizational structure for surface water irrigated areas. The primary reason to promote groundwater users to organize was to improve drought coordination and groundwater management.
- The resolution states in part, “If, and when, the AGUBC desire to move forward with creation of a new California Water District or other type or eligible local agency with the dual purpose of: a) SGMA responsibility, and b) exercising powers and duties as a special district as authorized by the Water Code for water purveyance and ancillary activities, **Butte County will work constructively, cooperatively and collaboratively with landowners on the formation process of a new eligible local agency for involvement in SGMA issues**”.

Selecting A District



- In 2017, with encouragement and support of Butte County, the proposed TWD was initiated locally by landowner petition directly to Butte LAFCo as a California Water District (WC 34000).
- In 2021 both the Butte County Water Commission and the Butte County Board of Supervisors voted to conditionally support the TWD proposal.
- Alternatively, the TWD proponents could have sought special act legislation to form the district as other districts have and bypass local control but elected to be accountable locally to the Butte LAFCo and other affected local agencies.



Petition Process

- **Notice of Intention.** Prior to circulating petitions, the proponent shall file with the LAFCO Executive Officer a Notice of Intention. The Executive Officer shall notify affected local agencies and interested parties of the intent to form a District.
- **Signatures.** Each person shall affix the date after he or she signs the petition. Since this petition is by property owners each person signing the petition must also include a written description sufficient to identify the location of land owned by each person signing the petition.
- **Certificate of Sufficiency.** The petition signatures must be verified by the Executive Officer within 30 days. Within the same 30 days, the EO is required to prepare a certificate of sufficiency indicating whether the petition is signed by the requisite numbers of validated signers.



Application Review

- The proponents are required to file an application and fees for processing with the formation proposal.
- The application is circulated to affected local agencies for comments.
- During this “completeness” phase, application materials can be amended based on comments received.
- If determined to be complete, the EO prepares a Certificate of Filing and prepares a staff report, and conducts public hearings with regard to the proposal.



Analysis

Applicable Butte LAFCo Policies:

- **5.2 District Formation.**

- 5.2.1 Consistency with LAFCO Policies.

- 5.2.2 Need for New District Required.

- 5.2.3 Sphere of Influence Plan and Municipal Service Review.

- 5.2.5 Consistency Required.

- 5.2.6 Conflicts Not Allowed.

- 5.2.7 Public Benefit Considered.

- 5.2.8 Fiscal Solvency.

Analysis



Applicable State LAFCo Law (GC56000)

- **Plan for providing services submitted with application GC 56653.**
- **Terms and Conditions GC 56885-56886.**
- **Requests for Exclusion.**
- **Hearing and Notice**
- **Reconsideration**

Protest Hearing/Election



- If LAFCO has approved the application and the reconsideration period is over, the LAFCO Executive Officer conducts the Protest Hearing for the formation of the District.
- 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 EO, the project is terminated. 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.

Protest Hearing/Election



- If the formation survives the protest hearing, the EO sends the Resolution to the BOS who in turn directs the county elections official to conduct the election.
- The election would be completed based on the property owners and the acreage they own. Three questions would likely be voted on:
 1. The formation of the District. The formation of the District would be determined on a 1 vote per acre vote pursuant to water code section 35003.
 2. The Board Members to be elected based on a 1 acre per vote formula, and
 3. The funding of the District (prop218).



Action Requested:

Accept for information, file the staff report and continue the public hearing to January 6, 2022.