



BUTTE LOCAL AGENCY FORMATION COMMISSION

Minutes of February 3, 2022

(A complete voice recording of the Commission's meetings can be obtained from www.buttelafco.org)

1. CALL TO ORDER

Chair Leverenz called the meeting to order at 9:00 a.m., February 3, 2022, in the City of Oroville Council Chambers, 1735 Montgomery Street, Oroville, California. The meeting was also available to be viewed through Zoom Webinar.

1.1 Roll Call

Commissioners Present: Carl Leverenz (Chair-Public)
Greg Bolin (City)
Bill Connelly (County)
Tod Kimmelshue (County)
Al McGreehan (Special District)
James T. "Bo" Sheppard (City)

Commissioners Absent: Bill Sharman (Special District)

Alternate Commissioners Present: Steve Betts (Public), Larry Bradley (Special District)
Bruce Johnson (City) & Debra Lucero (County)

Alternate Commissioners Absent: None

Others Present: Stephen Lucas, LAFCO Executive Officer
Shannon Costa, LAFCO Government Planning Analyst
Joy Stover, LAFCO Commission Clerk
Marsha Burch, LAFCO Legal Counsel Representative

2. CONSENT AGENDA

2.1 Approval of the Minutes of January 6, 2022

Chair Leverenz stated he would entertain a motion.

Commissioner McGreehan made a motion to approve the Minutes of January 6, 2022. The motion was seconded by Commissioner Kimmelshue.

The motion was carried by the following vote:

AYES: Commissioners Bolin, Connelly, Kimmelshue, McGreehan, Bradley, Sheppard and Chair Leverenz

NOES: None

ABSENT: None

ABSTAINS: None

2.2 Adoption of a Renewing Resolution in Support of AB361

Chair Leverenz stated he would entertain a motion.

Commissioner Bolin made a motion to adopt a Renewing Resolution in Support of AB361. The motion was seconded by Commissioner Kimmelshue.

The motion was carried by the following roll vote:

AYES: Commissioners Bolin, Connelly, Kimmelshue, McGreehan, Bradley, Sheppard and Chair Leverenz

NOES: None

ABSENT: None

ABSTAINS: None

3. NOTICED PUBLIC HEARINGS

3.1 21-06 – Formation of Tuscan Water District

(Continued from January 6, 2022)

Steve Lucas stated comments from Trudy Wischemann, Jim Brobeck, Aimee Raymond, Richard Harriman and Walt & Cheryl Juhl were received after the agenda packets were mailed out and those comments have been provided to each of the Commissioners.

Steve Lucas presented a Power Point presentation explaining what is being proposed, the area being considered to be included and the purposes of the proposed district. A copy of the presentation is available upon request.

Chair Leverenz asked if the Commissioners had any questions for staff.

Alternate Commissioner Lucero voiced her concerns regarding Chapter 33 and in lieu pumping and sending water down south. She also voiced her concerns on the lack of Special Districts actually holding elections versus having board members appointed.

Chair Leverenz stated Commissioner Lucero raised many issues that are outside the scope of this district. The conditions that have been presented by the staff would preclude the district from transporting water outside the district by any means.

Commissioner Lucero stated she is asking about in lieu pumping as there are other ways to get water out of the county.

Commissioner Connelly stated in lieu pumping occurs when you have surface water rights, you apply for a permit and you export your surface water. But generally what happens is people follow land. This isn't really applicable to a groundwater district as they don't have any surface water. As far as Chapter 33, if we need to change that it needs to be done in a different forum.

Commissioner Lucero stated there are landowners within the district that have surface water rights and that is her concern.

Commissioner Connelly stated he has never seen a larger misdirection of what actually is happening here. He is concerned regarding attacks on Mr. Lucas that he has read as Mr. Lucas has nothing to gain by the formation of this district.

Commissioner McGreehan stated Mr. Lucas indicated he was going to address any input that was received since the date of the staff report. The Commissioners received copies of the comments that came in after the agenda packets were sent out. Commissioner McGreehan asked Mr. Lucas if he was going to address the recent comments.

Steve Lucas stated he has not covered all of them yet. But when we take public comments he can explain all of the mechanics that go into that as there may be some cross over.

Commissioner Kimmelshue stated Mr. Lucas stated the proponents requested a change in section 16F. At what point would we do that?

Steve Lucas explained how amendments to the proposed resolution could be addressed at the time of the motion to approve, as the resolution contains the conditions of approval. He also explained how the map is amended when a parcel is added or removed.

Commissioner Lucero asked is LAFCo legal counsel looked at what other water districts are doing in terms of owning recharged water.

Marsh Burch, LAFCo legal counsel representative, stated it wasn't a matter of looking at what other districts are doing. The legal parameters are that recharge water is owned by the owner of the surface water that was used to recharge. There are considerable conditions included here that would prevent any transfer of that water after it had been used for recharge outside of the basin.

Richard Harriman asked to have the letters read so then we don't have to repeat our comments.

Chair Leverenz asked Mr. Harriman to sit down as he wants to give the Commissioners a chance to ask their questions and does not want anyone in the audience to jump up to speak out of order.

Chair Leverenz asked the proponents to speak.

Tovie Giezentanner, spokesman for the Tuscan Water District, stated on behalf of the petitioners and supporters who are here today, we wanted to let you know that they appreciate the professionalism and work that LAFCo staff has put into processing the application. We have reviewed the staff report and conditions and aside from one revision, we are on the same page as staff and accept the staff report. We have provided many comments in support of the project. If anyone has any additional questions we are here to answer them.

Chair Leverenz stated he will open this item to public comments in the order that he received the comment request forms.

Priscilla Hanford, an interested citizen, stated she was on the Regional Water Quality Control Board and the Water Commission that drafted the Chapter 33. She feels very strongly about this issue and feels very regretful that the issue has caused such polarization. Having read the conditions and having met personally with staff to further

pursue questions of my own, I stand in support of this formation with the conditions as proposed by staff.

Aimee Raymond stated she is here in opposition to the Tuscan Water District and gave her reasons for her opposition. She feels the conditions do not cover everything and there needs to be a debate about the conditions. This issue could have been solved by forming a reclamation district or an irrigation district, all which are registered voter districts. The full front of the opposition is the governance of the district.

Mark Kernes voiced his opposition and stated water is not owned by anyone unless they are politically given permission to own that water. The water is essentially owned by the public. The Tuscan Water District allows large landowners to have an undue influence over the Tuscan Water District Board. Voting should be given to the entire voting population.

Pam Stoesser voiced her opposition for many of the same reasons that you have already heard.

Colleen Cecil, Executive director of the Butte County Farm Bureau, stated the support for the TWD is overwhelming. The Butte County Farm Bureau, as well as many other local organizations including all of the neighboring water districts in this County, support the formation of the TWD because the TWD is the best solution for ensuring sustainability of the Vina basin.

Andrew Mendonca, V.P. Administration at Mendonca Orchards stated he wanted to urge the Commission's support of the formation of the Tuscan Water District. He provided his family's history of farming in the County.

Marty Dunlap stated almost everyone in this room is concerned about groundwater in Butte County. The issue has to do with fair representation, particularly in the governance. She feels there are residential well water users that will not be represented in the district. She voiced her concerns about the budget and asked if conditions could be modified in the future.

Les Heringer, M&T Ranch manager, stated he provided a letter for the Chair of the Commission. The Ranch supports the formation of the TWD and they do have parcels that are going to be in the TWD. They request 2 parcels remain in the Butte Water Sub Basin and not be a part of the TWD as they have over 100 year old historical surface water rights.

Tasha Levinson voiced her opposition to forming a landowner controlled district. She feels this is giving all the power to agriculture and she does not support it.

Rich McGowan, representing the landowner petitioners for the TWD, stated he wanted to recognize and thank all of the petitioners and supporters in the audience and asked them all to stand to show the Commission the support. This process all started back in 2015 with the help of Paul Hahn, who submitted a letter of support. Rich provided a historical review of how they got to this point. He stated the Butte County Water Commission and the Board of Supervisors affirmed their support for the formation of TWD in comment letters to LAFCo. TWD has support from local, regional and statewide agencies and organizations. Rich stated the landowners and petitioners who support this effort, believe the TWD is the only practical, regional and logical solution to coordinate and manage groundwater and surface water in such a large currently unserved area. Formation of the water district will benefit all landowners including domestic well users, small, medium and large farms. It is a critical next step for the long term preservation and protection of valuable agricultural land and

rural lifestyles. We appreciate the Commission's consideration and respectfully request you support formation of the Tuscan Water District.

Jamie Johansson stated he is a local farmer here in Oroville, president of the California Farm Bureau and a member of the Butte County Farm Bureau. Here today on behalf of the CA Farm Bureau Federation to extend strong support for the formation of the Tuscan Water District. Formation of the TWD will ensure agricultural and domestic groundwater users in the Vina sub basin have a seat at the table and are part of the discussion and decision making process for Butte County's groundwater future. The Tuscan Water District aims to fill a gap in ground and surface water management in the region. For these reasons we strongly support the formation.

Jeff Carter stated his family owns acreage in the proposed district and stated his 65 acres are dependent upon a single well. He has worked for many years with many of the proponents of the district and feels their hearts are in the right place. The divisions are going to ensure that there is representation of small parcels, such as his parcel. He would suggest, just to make certain that we have minority rights protected, that as a condition of approval that LAFCO look at that breakdown of divisions as they are devised and bring it back before LAFCo before this project is finally approved to make certain that we do have majority rule and minority representation.

Peter Peterson stated he was the first chairman of Butte County's Water Commission. During that time there were lots and lots of water problems and during that time there were several entities that were formed. The part he has trouble with is the governance issue and that control of this whole basin will be in the hands of three landowners with 1 acre 1 vote. He doesn't think this serves the purpose of Butte County.

Ed McLaughlin thanked the staff and said they have been tremendous to work with. His concern has always been with water in Butte County. He's concerned that the San Joaquin valley is trying to turn a desert into an oasis with water from Butte County. Butte County has been a leader in water for the last 50 years, first in having a water department and having a water commission and realizing we have a critical resource. Today the Commission has an opportunity to make a historic decision to the fact that we can actually determine our own destiny. Our goal is to not have even one drop of water to leave our county.

Jane Dolan stated she would not be within this district but she supports it. She completely and wholeheartedly agrees with Pricilla Hanford, one of her idols, for someone who analyzes and researches and looks at all sides and concludes with what is the best choice for the public and the citizens of this county. When I did serve on the Board of Supervisors we decided that we wanted to move the issue of water and its management and addressing the real concerns that have been unaddressed for a century to move it into the twentieth century. I think that this district and the interest of all parties are bringing us into the twenty first century. The interest we must address are large. In the 80s and 90s we created the Department of Water Resource Conservation. We did not choose to and could not in her opinion create a water agency. We created the Water Commission and openly invited citizens to work with and address policy concerns. We developed policies and regulations and we asked the voters to put them into charter and it is only the voters that can change those requirements. I don't fear this district. I know and respect these landowners. They cannot avoid the SGMA laws, they cannot ignore the groundwater sustainability agencies, the public act requirements of the state and the county and they cannot ignore their neighbors. She respects them and trust them and finally after 30 years your groundwater dependent agricultural folks are standing up to show some leadership. She supports them.

Richard Harriman stated he is speaking on behalf of the public interest and the Northern California Environmental Defense Center. Mr. Harriman stated he submitted to the staff, and the Commission should have a copy, a letter by Bob Braitman. Bob Braitman is one of the deans of the LAFCO community of this state. He has been involved for over 50 years and is very well respected. He is a consultant and has served many LAFCOs in this state. Mr. Braitman is reluctant to be critical of Mr. Lucas as it is not personal but it is about following the law. Mr. Harriman's purpose today is to focus on the legal requirements as we do not have broad discretion, contrary to the staff report. Mr. Harriman stated Mr. Braitman's conclusion is based on the foregoing emissions after reviewing the Butte LAFCO rules and procedures, it appears the process that has been utilized by the LAFCO staff does not comply statutorily procedures or the Commission's own rules and procedures.

Chair Leverenz stated he is familiar with Mr. Braitman and has worked with him with CALAFCO. The point that he wants Mr. Harriman to focus on is that his making a statement here that Mr. Braitman as a matter of law has made that determination. Chair Leverenz stated it is not the way Mr. Braitman has written this at all. And he is challenging Mr. Harriman because he would like some law. Mr. Harriman is the one who is supposedly informed about this. The point is that following procedures and so on can be subjective determination. In the letter Mr. Braitman says rather than create a water district, which will overlap existing water agencies, LAFCO should consider using some of the existing water agencies. Mr. Braitman was not indicating for any reason that creation of this district is somehow violating any law and that is the representation that Mr. Harriman just made.

Alternate Commissioner Lucero asked why we are interrupting public testimony. She thought public testimony was able to be given and then it can be rebutted. Can't we allow public testimony?

Chair Leverenz stated he is attempting to focus our discussion. He is intending to give Mr. Harriman all the time he desires, but we need to focus on what we are here about today as to whether or not as a matter of law we are entitled to proceed. We have been advised both by the applicant and their attorneys and our own attorney and in review of Mr. Braitman and Mr. Harriman over the last several months raising the same thing. Chair Leverenz stated he just wants to make sure we haven't forgotten anything because of right now he has not seen anything that would indicate that we are breaking the law.

Richard Harriman stated Mr. Braitman is not a lawyer and he acknowledges that. He has taught environmental law classes for bar credits for many universities. If you look at Mr. Lucas' report, one of the things that he omits in discussing the budget that he fails to disclose that there is going to be a reimbursement to the parties who have carried the water and the mail and have paid the bills. That is not disclosed in the report or in the public record that has been made available for the last 5 or 6 months. The other thing that Mr. Braitman's letter focuses on is what is a reasonable opportunity and a reasonable alternative within the framework of resolution 17-1-70. He brings to the attention of this Commission that the united water conservation district in Ventura County that was formed for the very reason that they were unable to address subsidence and they needed to have some other ways of taking care of business there. They form a district that was respectful of all of the rights of the people and is one that could be used by these applicants and if it was suggested it should be considered by this board. Mr. Harriman states Mr. Lucas' report fails to describe to the Commission is the history of attempts to try to develop on the west side of the City of Chico, west of the green line. There is infrastructure that is going to be developed here and it is going to have potential development impact in the County. What Mr. Braitman's recommendation to this Commission is, is that this be remanded to staff to

have them redo the application which should have been done as required by the rules of procedure that he cited in the public record and that is what we request that you do.

Chair Leverenz asked if there was anyone else that wished to speak. No one came forward. Chair Leverenz called for a 15 minute break at 10:53 am.

Chair Leverenz called the meeting to order at 11:07 am.

Commissioner Connelly asked how the voting is going to occur within the district.

Steve Lucas stated the first vote on formation will be formed at an at large vote and it will be based on acreage only. Subsequently we have a condition that requires TWD to return to LAFCO and present a map that demonstrates nine divisions within the district. They will present that as they draw it up. The Commission sitting in the authority over that map, has the ability to amend that map and create the divisions in a manner in which the Commission feels is safe, equitable and reasonable. The point of this is to create as much equity as we can within the structure of a landowner voter district. For instance if you have one ten thousand acre owner, they stay in one division. On the southern end, you have another large landowner and they are in one division, they would only be able to vote within their division. Meaning that the 2 largest landowners would only control 2 out of nine seats on that board. So right off the bat the idea that 2 large landowners are going to control everything is seriously debunked by that particular way of dividing up the district. We can also look at the parameters within those divisions and see if there's an area where we have a lot of domestic well owners and put them in one division which would enhance their ability to put a small domestic well owner from that division on the board. By divisions you effectively mitigate one or two large landowners from controlling a majority of seats on the board.

Chair Leverenz stated so if the Commission approves the resolution and the conditions, the initial election of the Board members would be pursuant to the Water Code which would be a vote based upon acreage. As a condition, the district has to come back to LAFCO at which point we can reestablish different rules for those nine divisions.

Steve Lucas stated we have the ability to establish those divisions within reason.

Chair Leverenz stated LAFCO has independent legal representation and they have reviewed everything that we have done, including the last minute letters we received from Mr. Harriman and Mr. Braitman.

Marsha Burch stated Mr. Browne has been involved from the beginning and has reviewed everything, including what we have received recently. Ms. Burch has reviewed everything, through the preparation of the staff report, all of the late comments and everything that was received from the staff report until today, including the letters from Mr. Harriman and Mr. Braitman.

Chair Leverenz asked if there are any general questions about procedures that any of the Commissioners have before we proceed. None stated.

Commissioner Connelly made a motion to approve the proposal as submitted, adopt environmental findings as shown in the draft resolution and adopt Resolution No. 11 2021/22 with noted amendments, approving the formation of the Tuscan Water District for the purpose of implementing the Vina

Groundwater Sustainability Plan. The motion was seconded by Commissioner Bolin.

Chair Leverenz stated for clarification the approval of the resolution will also approve the conditions of approval which is Exhibit F of the staff report.

Chair asked Steve Lucas to clarify any recommended amendments to the resolution.

Steve Lucas stated in the resolution at Section 2, Letter J, inadvertent language was left in and will be removed.

Commissioner Connelly accepted the change. Commissioner Bolin accepted the change.

Steve Lucas stated in the resolution at Section 3, under General Powers and Functions, starting with condition 16, add Future Projects and CEQA and section 17 A-C, as described conditions in attachment F

Commissioner Connelly accepted the change. Commissioner Bolin accepted the change.

Steve Lucas stated the applicants requested to clarify and remove the language of addressing ownership of recharged water. F will be rewritten to state: Any and all proposals or projects proposed by the Tuscan Water District, including groundwater recharge projects, for the benefit of the district landowners, shall be submitted to the appropriate GSA under conditions 12, 13 & 17 to determine if the proposal or project is consistent with the affected GSP in maintaining the groundwater basin.

Commissioner Connelly accepted the change. Commissioner Bolin accepted the change.

Steve Lucas stated we have a formal letter from M&T Ranch to remove two particular parcels from the district. The map will be updated.

Commissioner Connelly asked can other people withdraw.

Steve Lucas stated as was spoken about in last December and today, anybody could have requested to be removed and we would have taken them out. At the end of the meeting, those that are in are in and those that are out are out and we will move forward with the protest proceedings and election. At any point down the line, any landowner could request removal from the district for any reason and that would come back to LAFCo for detachment.

Commissioner McGreehan ask if in the future can a landowner asked to be added.

Steve Lucas stated absolutely and that process would be similar to any other annexation.

Chair Leverenz stated so this completes the resolution and the conditions.

Alternate Commissioner Lucero stated it is very confusing virtually it is very difficult to follow what is actually part of the resolution and what is not. There were some things that

were left out and some things that were added. It would be helpful to the public if we could see the resolution as it is actually being stated.

Chair Leverenz stated the draft resolution has been amended slightly and amount to mostly typos and clarifications.

The motion was carried by the following roll call vote:

AYES: Commissioners Bolin, Connelly, Kimmelshue, McGreehan, Sharman, Sheppard and Chair Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

Commissioner Kimmelshue asked now that the resolution has been approved, at what point would we bring back the discussion of divisions.

Steve Lucas stated it will be quite a while.

4. REGULAR AGENDA

4.1 Items Removed from the Consent Agenda- None

4.2 Adoption of Budget Committee

It was decided Commissioners Sheppard (City), McGreehan (Special District), Kimmelshue (County) and Chair Leverenz (Public) would make up the Budget Committee.

5. Public Comment on Items not on the Agenda

None stated.

6. Reports and Communications

6.1 Executive Officer's Report - None

6.2 Correspondence - None

7. ADMINISTRATION - None

8. ADJOURNMENT

There being no further business, the meeting was adjourned at 11:30 a.m. to the next LAFCO meeting scheduled for Thursday, March 3, 2022.

LOCAL AGENCY FORMATION COMMISSION

By: Stephen Lucas, Executive Officer

Minutes prepared by Joy Stover, Commission Clerk