

MEMORANDUM

LOCAL AGENCY FORMATION COMMISSION

TO: Local Agency Formation Commission

FROM: Stephen Lucas, Executive Officer

SUBJECT: LAFCo File 21-06 - Tuscan Water District Formation – Protest Proceeding Results, Call for Election and Impartial Analysis

DATE: May 24, 2023 for the meeting of June 1, 2023

Summary

The Commission approved the formation of a California Water District to be called the Tuscan Water District (TWD) at its March 2, 2023 public hearing by adopting Resolution No. 18 2022/23 (**Attachment A**) subject to protest proceedings and a landowner voter election as discussed below. Conditions referenced below are found in Resolution No. 18 2022/23, Section 4 – Further Procedural Actions.

Protest Proceeding

4.E. 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.

The Executive Officer, pursuant to Commission policy, conducted a 21 day publicly noticed protest proceeding beginning April 7, 2023 and concluding on May 5, 2023. Official Public Notice was published in the Chico Enterprise Record on April 7, 2023 (**Attachment B**) as there was greater than 1,000 notices to be mailed to landowners. In addition to, but not statutorily required, individual landowner protest forms with cover letter were mailed to each landowner. Results of the Protest Proceedings (**Attachment C**) determined that there was insufficient landowner protest (greater than 50%) to terminate the proposal and therefore the Commission is obligated to request an election be conducted.

Call for Election

4.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.

While the above terms and conditions adopted in Resolution No. 18 2022/23 remain valid and provide the necessary direction to proceed with the election, the Executive Officer, as a measure of

additional clarity for the Commission, BOS and the public, determined to adopt a separate draft Resolution No. 26 2022/23 (**Attachment D**) confirming the results of the protest proceedings for the TWD formation and requesting the Butte County Board of Supervisors direct the County Elections Official to conduct the election. The draft resolution, with approving Resolution 18 2022/23 incorporated by reference, specifically addresses the election requirements stipulated by state law (GC 57000) and the Commission's actions. The Draft Resolution provides the following same ballot questions which were previously adopted in Resolution No. 18 2022/23.

4.F. *The formation election ballot questions to be placed before the voters are as follows:*

1. *Shall the Butte 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]*

This resolution calling for an election will be provided to the Board of Supervisors along with the adopting Resolution No. 18 2022/23, the proposed district boundary map and legal description.

Impartial Analysis

4.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.*

Included in this report is a draft Impartial Analysis (**Attachment E**) that will be provided to the County Elections Official to be included with the ballot pamphlet.

Action Requested:

1. Receive and acknowledge the outcome of Protest Proceedings conducted by the Executive Officer.
2. Consider and approve draft Resolution No. 26 2022/23 (Attachment C) formally requesting the BOS to direct the County Elections Official to conduct the mailed ballot election and direct staff to deliver said resolution to the County Chief Administrative Officer.
3. Consider and approve the Draft Impartial Analysis (Attachment D) and direct staff to provide the Impartial Analysis to the County Elections Official at the appropriate time.

Attachment: A. Adopting Resolution No. 18 2022/23
 B. Protest Proceeding Published Notice
 C. Results of Protest Proceeding
 D. Draft Election Call Resolution No. 26 2022/23
 E. Draft TWD Formation Impartial Analysis

Resolution No. 18 2022/23

**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 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 adopt a new Resolution No. 18 2022/23, amending and restating 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 Resolution No. 18 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), and the Legal Counsel Memorandum of February 23, 2023 for the meeting of March 2, 2023.
- B. Based on the evidence, analysis, and conclusions set forth in this resolution and the Executive Officer's reports and Legal Counsel Memorandum, 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 Groundwater 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 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:

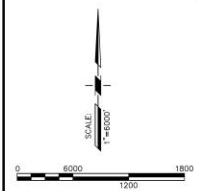
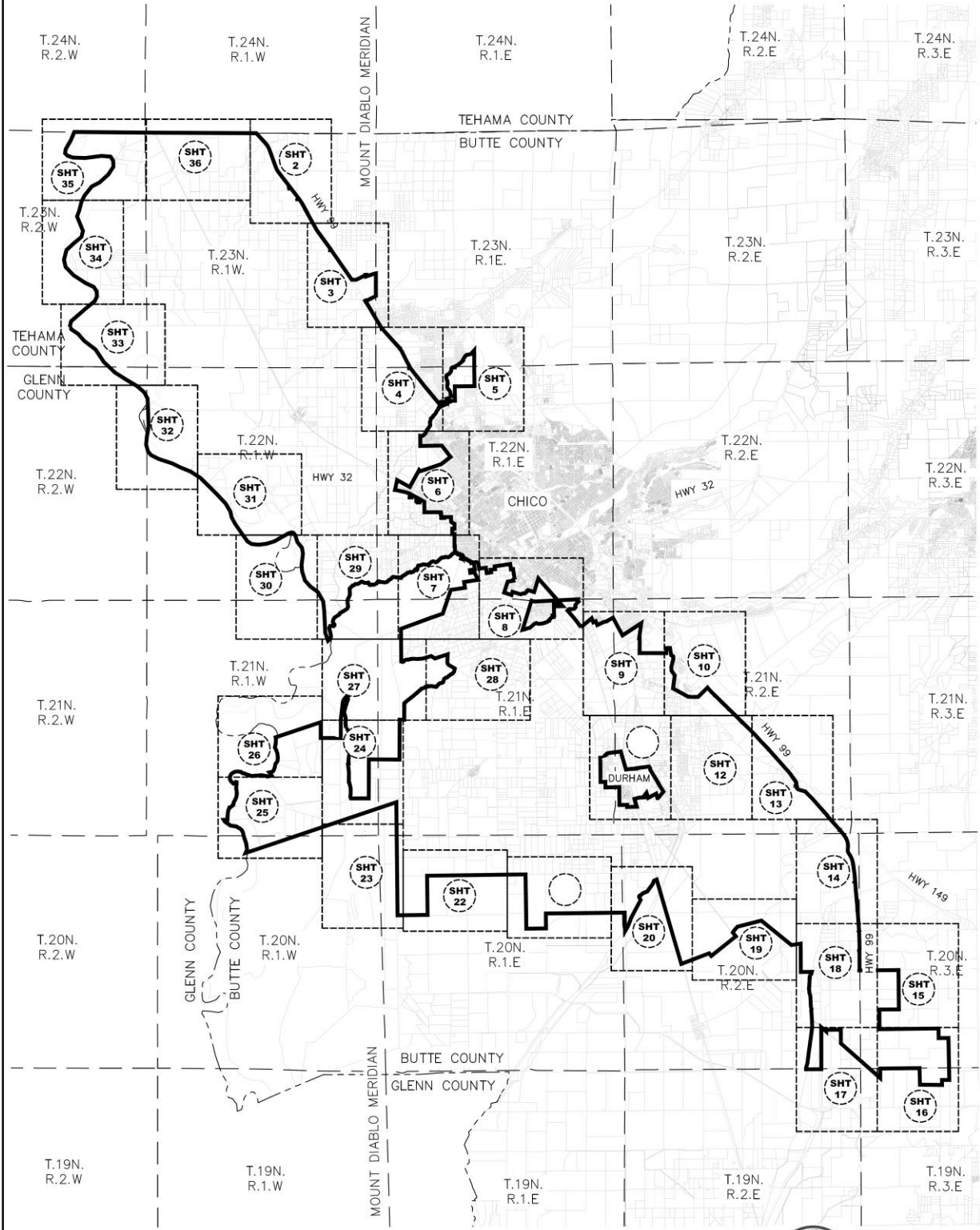
AYES: Bolin, Johnson, Betts, McGreehan, Bradley
NOES: Ritter
ABSENT:
RECUSED/ Connelly
ABSTAIN:


Clerk of the Commission


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 IN D.M.S.
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 HEREBEFORE ARE GROUND DISTANCES AND IN FEET AND DECIMALS THEREOF. RECORD MAPS AND DEEDS REFERENCED HEREBEFORE USING OTHER UNITS HAVE BEEN CONVERTED ACCORDINGLY.



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

NOTICE OF PROTEST HEARING
(Published in the Chico ER on April 7, 2023)

NOTICE IS HEREBY GIVEN that on Friday, **May 5, 2023, from 9:00 a.m. to 10:00 a.m.** at the office of the Butte Local Agency Formation Commission (LAFCo), located at 1453 Downer Street, Suite C, Oroville, CA, the Butte LAFCO Executive Officer will hold a public hearing for the single and only purpose of receiving written protests from any owner of land and/or registered voter within the area proposed for the formation of the Tuscan Water District as identified as "**Butte LAFCO File No. 21-06 – Formation of the Tuscan Water District**". The territory proposed for formation, as approved by the LAFCo, consists of 3,138 parcels totaling approximately 97,625 acres in size, and is generally bounded by the Tehama County line on the north, SR99 and Chico city limits on the east, Ord Ferry Road/ Western Canal Water District/Grainland Road on the south and the Sacramento River on the west.

This landowner district formation was initiated by a landowner petition submitted by the proponents who desired to provide representation for primarily agricultural users/landowners who wish to partner with other County agencies to address groundwater sustainability issues within the Vina Subbasin.

The proposed terms and conditions for this landowner district formation are set forth in Butte LAFCO Resolution No. 18 2022/23, adopted by the Commission on March 2, 2023, which is available for review in the LAFCO office at the address listed above and on our website at www.buttelafco.org.

All protests must be in writing, in the form required by California Government Code Section 57051, signed and dated, and addressed to Stephen Lucas, Executive Officer, Butte Local Agency Formation Commission, 1453 Downer Street, Suite C, Oroville, CA 95965-4950, and be **received any time prior to the conclusion of the hearing at the date and time set forth above.** The original completed protest forms may be submitted via US Mail or at the protest hearing. For further information or to obtain a copy of the LAFCO Resolution or protest forms, call (530) 538-7784, or visit the Butte LAFCO website at www.buttelafco.org.

PLEASE NOTE THAT THIS HEARING IS PURELY FOR THE PURPOSE OF RECEIVING WRITTEN PROTESTS, NOT TESTIMONY CONCERNING THE DISTRICT FORMATION.

BUTTE LOCAL AGENCY FORMATION COMMISSION



RESULTS OF PROTEST PROCEEDINGS

LAFCo File: 21-06 – Tuscan Water District Formation
 Protest Hearing held on **May 5, 2023**

Landowner Protests					
Total Number of Landowners/Parcels:	3,116	Total Assessed Land Value (ALV):	\$632,592,704	Total Acres	99,266.36
Landowner Protests Received	204				
Landowner Protests Determined Valid	182	Total Valid ALV	\$30,932,106	Total Acres	2,507.81
Percentage of Valid Protests	5.8%	Percentage of Valid ALV	4.8%		2.5%

Determination of Protests

The Executive Officer pursuant to GC §56708 and §56710, has caused the names of the landowner signers of protests and associated land values and acres, to be compared with the most recent assessment roll maintained by the Butte County Assessor.

Pursuant to GC §57052 the Executive Officer has determined the value of written protests and finds that pursuant to GC §57075, insufficient protests (less than 50% of ALV) have been received to terminate the formation proceedings, therefore, pursuant to the Water Code and the Commission Resolution No. 18 2022/23 approving the formation, the Commission will formally request the Board of Supervisors to direct the County Elections Official to conduct an election.

May 18, 2023 By: *Steve Lucas*

 Stephen Lucas, Executive Officer

RESOLUTION NO. 26 2022/23

**RESOLUTION OF THE BUTTE LOCAL AGENCY FORMATION COMMISSION
CONFIRMING RESULTS OF THE PROTEST PROCEEDINGS FOR
21-06 – TUSCAN WATER DISTRICT FORMATION AND
REQUESTING THE BUTTE COUNTY BOARD OF SUPERVISORS DIRECT THE COUNTY
ELECTIONS OFFICIAL TO CONDUCT THE NECESSARY ELECTION**

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, pursuant to Part 4 of Division 3 of Title 5 of the Government Code of the State of California, commencing with Section 56000 (**GC§5100(a)**); an application to form the Tuscan Water District “District” (**GC§57100(b)(d)**), 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 Local Agency Formation Commission (LAFCO) has adopted Resolution No. 18 2022/23 on March 2, 2023 making determinations and approving the Tuscan Water District Formation as described in Exhibit “A” attached hereto and by this reference incorporated herein; and which describes the boundaries of the proposed district (**GC§57100(c)**), and states the conditions (**GC§57100(e)**) applied by the Commission;

WHEREAS, the District 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 (**GC§57100(f)**); and

WHEREAS, protest proceedings for the change of organization or reorganization were conducted pursuant to Chapter 1, commencing with Section 57000, of Part 4 of Division 3 of Title 5 of the Government Code; and the protest hearing was held on May 5, 2023, notice of which was given in the manner required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE BUTTE LOCAL AGENCY FORMATION COMMISSION AS FOLLOWS (Pursuant to 57100, 57115, 57118, 57125):

- A. The Commission hereby finds and determines that the value of written protests against this annexation which were filed and not withdrawn by landowner voters within the formation area was less than 50% of the assessed land value within the territory and therefore the Commission directs the formation to be subject to the confirmation of the landowner voters located within the affected territory.
- B. The regular County assessment roll is to be utilized by the County Elections Official (**GC§57100(g)**).
- C. The election will be conducted by mailed ballots within the affected territory (**GC§57115(a)**, (**GC§57118(a)**) of the proposed formation as described in Resolution 18 2022/23 incorporated herein as Exhibit A.
- D. The formation is subject to the terms and conditions identified in LAFCo Resolution No. 18 2022/23 making determinations and approving the Tuscan Water District Formation as

described in Exhibit "A" attached hereto and by this reference incorporated herein; and which describes the conditions **(GC§57115(c))** approved by the Commission;

- E. 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. **(GC§57115(d))**
- F. The affected territory will not be taxed for existing general bonded indebtedness of any agency whose boundaries are changed as required by **GC§57100(h)**.
- G. The 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. **(GC§57120)**
- H. The ballot questions for the election shall read as follows **(GC§57115(b))**:
 - 1. *Shall the Butte 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]*

PASSED AND ADOPTED by this Local Agency Formation Commission of the County of Butte, on the 1st day of June 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINS:

Clerk of the Commission

BILL CONNELLY, Chair
Butte Local Agency Formation Commission

Exhibits: A. Resolution No. 18 2022/23

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

A “yes” vote on the formation will confirm the decision of the Butte Local Agency Formation Commission to form an independent special district to be called the Tuscan Water District (District). A “no” vote on the formation indicates opposition to the formation proposal. Landowner voters may also select nine (9) persons to be the new board of directors. Landowner votes are counted based on a one dollar of assessed land value equals one vote formula.

The District is established pursuant to Division 13 of the California Water Code as a California Water District, is approximately 99,152 acres in size, and contains 3,136 individual parcels primarily used for agricultural production.

The District is generally bound by Tehama County 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 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 to implement 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.

Following formation, the Board of Directors will be elected by divisions established by the Butte County Board of Supervisors.

District operations will be funded through a landowner voter approved revenue measure that would raise a minimum of \$445,600 annually. The District may establish 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.

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. 18 2022-23.

The above statement is an impartial analysis of the Tuscan Water District Formation. If you desire a copy of the ballot measure, please call the elections official's office at (1-800-894-7761) and a copy will be mailed at no cost to you.

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