



BUTTE LOCAL AGENCY FORMATION COMMISSION Minutes of December 2, 2021

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

1. CALL TO ORDER

Steve Lucas called the meeting to order at 9:00 a.m., December 2, 2021, 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)
Bill Connelly (County)
Tod Kimmelshue (County)
Al McGreehan (Special District)
Bill Sharman (Special District) *arrived at 9:04 am after roll call*

Commissioners Absent: Greg Bolin (City) & James T. "Bo" Sheppard (City)

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
P. Scott Browne, LAFCO Legal Counsel

1.2 Welcome Newly Elected Commissioners

Chair Leverenz welcomed incoming Commissioners Al McGreehan, Special District Regular Member and Larry Bradley, Special District Alternate Member.

2. CONSENT AGENDA

2.1 Approval of the Minutes of September 30, 2021 (Special Meeting)

2.2 Approval of the Minutes of October 7, 2021

2.3 Adoption of a Resolution in Support of AB361

Chair Leverenz stated he would entertain a motion to approve the Consent Agenda.

Commissioner Kimmelshue made a motion to approve the consent agenda. The motion was seconded by Commissioner Johnson.

The motion was carried by the following vote:

AYES: Chair Leverenz, Connelly, Kimmelshue, McGreehan and Johnson
NOES: None
ABSENT: Bolin & Bradley
ABSTAINS: None

3. NOTICED PUBLIC HEARINGS

3.1 21-06 – Formation of Tuscan Water District

(Commissioner Bradley arrived at this time)

Chair Leverenz stated there has been concern expressed by members of the public about the formation of this district and it has had several hearings with other entities. There has also been a question regarding Supervisor Kimmelshue sitting and as to whether or not he has a conflict of interest. If there is a problem, as far as Supervisor Kimmelshue is concerned, it would really be up to the Supervisors. However, in order to clear the air, Supervisor Kimmelshue should have an opportunity to say something.

Commissioner Kimmelshue stated he has been advised that he does not have a conflict and he will remain seat on the Board of Directors of LAFCO.

Chair Leverenz stated there is not going to be any vote taken today. We received a number of letters, comments and statements and they will all be made a part of the record. We will be having this item on our January meeting and staff will incorporate all of these comments for the purpose of that hearing.

Steve Lucas stated as Chair Leverenz indicated this item is simply an informational item today and no action will be taken. We are here to hear the presentation and learn about the project. The meeting is also being made available in the Zoom platform today and made accessible by the general public. Steve Lucas presented a PowerPoint presentation explaining the process it takes to form a water district. Steve stated comments that were received up until 8 a.m. today and after the agenda packet went out have been handed out to the Commissioners today and will be entered into the record. Any comments that are received after this time will be included in the January meeting packet or the next meeting if this is continued. Staff published a public notice of hearing in the Chico Enterprise Record and additionally individual notices were mailed to landowners within the project area.

Commissioner Kimmelshue stated if this is approved by the LAFCO board, it is not official until there is a vote of the landowners, correct?

Steve Lucas stated that is correct. The action requested today is simply accept this for information, file the staff report, and continue the public hearing to either January 6th or another date should the Commission decide it needs a longer continuance.

Chair Leverenz asked if any members of the Commission have any questions of Steve.

Commissioner McGreehan stated given the enormity of the comments that have come in up to this point in time, realistically what is a reasonable period of time to analyze everything and prepare the staff report for the Jan. 6, 2022 meeting if we proceed?

Steve Lucas stated if the Commission wants to hear this in January, your staff will have it done. In terms of a reasonable amount of time, more time to evaluate things is always good.

Chair Leverenz stated today we received estimating about an inch and a half worth of material, plus comment comments, and all of that has to be reviewed by you and your staff.

Steve stated that is correct. Most of what he has seen come in the last couple of weeks is identical to what has been provided to the Water Commission and the Board of Supervisors meetings. Nothing has come in that is new to the point it would cause him great consternation to provide an answer to.

Commissioner McGreehan stated in fairness to the process, new information coming in would be best and not repeated comments.

Commissioner Kimmelshue asked what would be an example of a change of characteristics of the District.

Steve Lucas stated based on some districts that exist in other places in the state, more specifically in the central valley, as cities have grown where there had once been very large agricultural holdings, those cities grew and those districts remained. Then the character of the district became maybe 50% more urban than it was when the district was created.

Alternate Commissioner Lucero asked who is funding the organization of TWD and what is being alleged in a letter that was provided to LAFCO yesterday.

Steve Lucas stated our job is to receive any disclosure information but it is not in our purview to decide on any allegations.

Scott Browne, LAFCo Counsel, stated the only conflict issues we have to deal with are with the Commissioners themselves.

Alternate Commissioner Lucero asked Commissioner Kimmelshue if he would be willing to enter his letter into the record showing no conflict of interest for this project.

Commissioner Kimmelshue stated at this point he is not willing to do that but he will discuss with his private counsel to see if that is appropriate.

Scott Browne stated Commissioner Kimmelshue does have an obligation to disclose the source of the potential conflict of interest, whether it is land ownership or corporate interest. He should very generally state the issue that created the potential for conflict of interest that would be helpful and necessary for our record.

Commissioner Kimmelshue stated he is a landowner in the district and he does receive income from that land. His counsel has told him that due to the size of income it is not a conflict of interest.

Tovey Giezentanner, working with the proponents for the Tuscan Water District, presented a PowerPoint presentation.

Commissioner Kimmelshue asked Tovey to state what the primary purpose of TWD is.

Tovey state there is an overdraft issue that needs to be addressed and projects need to be performed.

Alternate Commissioner Lucero stated on the slides, Cal Water and the City of Chico is not mentioned in the presentation.

Tovey stated in terms of Cal Water, we are very close to getting a relationship with them. No intent to do M&I. The City of Chico has been participating and the City is involved with the Vina GSA.

Alternate Commissioner Lucero stated so the reason Cal Water and the City of Chico is not in the staff report is because they are not part of the Vina sub basin.

Steve Lucas stated the City sits on the Vina GSA. Steve has had conversations with the City and the City has not decided to provide written comments at this time.

Chair Leverenz stated the City of Chico is relying on Cal Water.

Alternate Commissioner Lucero stated she is trying to give a voice to the citizens of Chico.

Chair Leverenz stated the Commission has received a number of public participation cards and he will call each speaker up by name.

Emily Alma, Chico resident, stated she is surprised there wasn't an opponent presentation at the end of the proponent's presentation. She is opposed to the formation of the Tuscan Water District and voiced her concerns.

Colleen Cecil, Executive Director of the Butte County Farm Bureau, shared the reasons why the Bureau is in support of TWD.

Walt Juhl voiced his concerns regarding how the district plans to recharge the groundwater.

Chair Leverenz stated those very concerns will be addressed within the CEQA review process.

Marty Dunlap, resident of Butte County and a public interest attorney, stated she submitted a letter with stating her concerns in November. She stated a registered voter district should be considered strongly.

Randall Meline, Chico resident, stated he uses domestic and agricultural water and has concerns that a lot of this is proactive. Groundwater has been monitored for decades. Butte County's population has grown. Efficiency and conservation are not enough. Recharge has been discussed for years. He stated he supports the formation of the TWD.

Andrew Mendonca, Vice President of Administration for Mendonca Orchards, provided a growth historical perspective. He stated they just had to lower their well from 12 feet to 50 feet. He is a 4th generation farmer and he is urging support of TWD. On our farm sustainability is our biggest goal.

Les Heringer, M&T Ranch Manager, stated they are a member of the Butte and Vina sub basins. Measure "G" requires a permit from the County to move groundwater down south. Since the mid 1990's not one permit has been issued. The TWD will give us all hope for the future.

James Strong, General Manager for Deseret Farms of California, stated they support the TWD. Forming the TWD will be the fastest, most certain and reliable way to take care of overdraft issues.

Nadine Bailey, representing Family Water Alliance, stated she loves the farmlands in this area and voiced her support for the formation of the TWD.

Darren Rice, Chico resident, stated SGMA needs to happen and we need to get on board. There is a ground swell of local support for the formation of TWD. We need to make sure farmers and domestic water users have water without hurting the environment.

Chair Leverenz stated we need to break for 10-15 minutes and convene at 11:15.

Debra Barger, resident of the unincorporated area of Butte County, stated she wanted to thank staff for the notice of hearing. She is a domestic well user and has concerns that the process has not really provided a structure to protect domestic well users. She asked the Commission to be very democratic in recognizing all water users.

Chair Leverenz stated the concerns are covered under the Water Code.

Jim McCabe, Durham resident and attorney, stated the question is not whether the TWD is the right agency but if it is needed. Do we need another government agency? We need a way to implement the Vina GSA. Indemnity is likely unenforceable if the Commission is sued over this. It is in fact required that campaign finance disclosures be required on LAFCO applicants. Mr. McCabe is asking the Commission to allow opponents to present a presentation.

Paul Behr, Chico resident and landowner in Rock Creek Reclamation District, stated he has been involved in the north Chico water for 20 years or better. The statement that Mr. Lucas stated that TWD is not a private entity, it is. It is driven by the AGUBC. Mr. Behr voiced his concerns for creating a landowner district.

Aimee Raymond, Butte County Water Commissioner, read her concerns on prepared PowerPoint slides. The slides were submitted into the record.

Mark Kernes, Oroville resident, stated his opposition to the TWD and stated the Board would be voted on by the 6 largest landowners in the County.

Richard O'Sullivan, Chico resident and farmer in the TWD area, stated he believes this is a tool to implement sustainable actions. The GSA represents many different interest. Mr. O'Sullivan stated he is also a domestic water user and he supports the TWD.

Tasha Levinson, Oroville resident, stated she had great respect for farmers but too much concentrated effort in one area is not good. Ms. Levinson voiced her opposition.

Steven Koehnen, Chico resident, stated his office sits 4,000 feet from the County line so technically he is one of the out of County landowners. He stated they just want to make sure water that is here stays here. Mr. Koehnen supports the TWD.

Richard Harriman, Counsel for Northern Calif. Environmental Defense Center, stated he wanted to submit a screenshot of a text into record between Commissioner Kimmelshue and Tovey Giezentanner. Mr. Harriman stated his reason why this project should not be approved.

Brian Mori, Butte County resident, stated he is speaking in support of the TWD. He has been involved in many SGMA Boards and meetings representing landowners. He feels there is a lack of understanding of basic hydrological principles by the public and that creates a tremendous mistrust in the process. This doesn't get solved overnight.

Rich McGowan, farmer and proponent of the Tuscan Water District, stated he has never claimed to be a saint but he will claim he is a citizen interested in a great water source. The application contains many letters of support. TWD is the right vehicle to work collaboratively to provide solutions to problems not create them.

Susan Schrader, Bidwell Ave resident in the unincorporated Chico area, stated she uses a domestic well and has concerns that domestic wells will go dry, the district will be able to move water in and out, and the groundwater for the parks/forest will be affected.

Geri Mahood, Chico resident, voiced her opposition to the project as she feels the aquifer will be drawn down by the district and there may not be water resources to replenish the aquifer.

Pam Stoester stated she wanted to register her opposition to the Tuscan Water District formation as she doesn't believe it will be responsible to the public and protect domestic wells as they have stated. She feels there is a potential for privatization of the aquifer, legal consequences of the recharge, water banking, etc. and she voiced her concerns over Commissioner Kimmelshue having a conflict of interest in the project.

Emma Frankenfield stated she is opposed to the formation of the TWD as it would put too much power in the hands of a few and she is concerned domestic wells may go dry.

Mike Reams, Durham resident, stated he is relatively new to Butte County and is an agricultural and domestic water user. He is glad to hear all the valuable talk about saving our most valuable resource which is the water. He would like the Commission to allow an equal opportunity for the opposition to present their case to the Commission.

Priscilla Hanford stated she was the alternate public member of LAFCO for many years. She feels a lot of the furor has been over people not being able to trust and feeling like they are not being fully represented. She provided a historical review of LAFCO's role. She stated she did not support this project in the beginning as it was presented. She now can see an opportunity for TWD to be made a useful entity for implementation. Ms. Hanford wanted to commend EO Lucas for an excellent presentation. She appreciates so much what LAFCO, LAFCO staff and the Dept. of Water Resource Conservation has done and for their service.

Chair Leverenz stated this completes the participation cards and opened the item for additional public comments. No additional comments were received.

Commissioner Connelly stated he would like to ask staff three questions. 1) When land value is calculated do they use the Williamson Act lower land value or the higher land value? This can be answered at a later time. 2) How many notices were sent out and how many comments were received from those notices?

Steve Lucas stated approximately 3200 individual notices were sent out and from those notices we received less than 10 responses.

Commissioner Connelly asked isn't it within the Commission's discretion to set the makeup of the board according to landowner size and do we have flexibility to do so. He clarified can the Board be some small, some medium and some large landowners.

Steve Lucas stated the Commission has some flexibility in establishing the number of Directors and some have flexibility in establishing the divisions in which they are in.

Commissioner Kimmelshue stated he is not sure how Mr. Harriman received the screen shot of a text. Commissioner Kimmelshue stated if it was Mr. Harriman's goal to embarrass him, he did. He extended an apology to Commissioner Lucero.

4. REGULAR AGENDA

4.1 Items Removed from the Consent Agenda- None

4.2 Adoption of 2022 LAFCo Regular Meeting Calendar

Commissioner Johnson made a motion to approve the 2022 LAFCo Regular Meeting Calendar. The motion was seconded by Commissioner Connelly.

The motion was carried by the following vote:

AYES: Commissioners Connelly, Kimmelshue, McGreehan, Bradley, Johnson and Chair Leverenz

NOES: None

ABSENT: Bolin

ABSTAINS: None

4.3 21-09 – City of Chico – Extension of Services – 817 Oak Lawn Avenue

Shannon Costa stated this is a request by the City of Chico and the affected landowner to extend sanitary sewer service to a single parcel outside of the city's jurisdictional boundary. The need for sewer service is because of a failed septic system inspection. Typically we would require an annexation as this parcel is contiguous to the City's boundary. Staff is working with the City of Chico on an island annexation plan and this parcel is located within one of those islands. Staff would like to condition this approval to extend the annexation for about six months so we can formalize the annexation plan with the City.

Chair Leverenz opened this item to the public for comments. None stated.

Commissioner Johnson made a motion to adopt Resolution No. 06 2021/22 approving the extension of services. The motion was seconded by Commissioner McGreehan.

The motion was carried by the following roll call vote:

AYES: Commissioners Connelly, Kimmelshue, McGreehan, Bradley, Johnson and Chair Leverenz

NOES: None

ABSENT: Bolin

ABSTAINS: None

4.4 Discussion of Potential Annexation Plan for the City of Chico

Shannon Costa provided a brief update and stated the City has four remaining island within their jurisdiction. In order to accelerate the annexation of the island areas, it was agreed that the island annexations would be approved at one time but their recordation would be spaced out on a yearly basis. Execution of the agreement would allow the City to extend sanitary sewer service into those areas without prior approval by LAFCo. With the agreement in place the City could pursue annexation of other areas, including special planning areas with those projects being considered on their merits. We do anticipate that this plan will come before the Commission in early spring.

Chair Leverenz stated he met with the City of Chico and their staff because this has been a lingering issue for years. They were receptive and we will keep this issue on our agendas.

Scott Browne stated once the details of this agreement are finalized, it is a question of who is going to draft the agreement. If LAFCo is going to draft it, then he will do it. If the City of Chico is going to prepare the draft agreement, then Scott will review the draft prepared by the City's attorney.

5. Public Comment on Items not on the Agenda

None stated.

6. Reports and Communications

6.1 Executive Officer's Report

Chair Leverenz stated he received a public participation card from Michael Brown regarding the El Medio Fire Protection District.

Michael Brown provided his history of being a firefighter in Butte County and voiced his concerns with El Medio not providing services. If after a year they haven't reached out and formed a plan with the City to annex into the City of Oroville, something is amiss. It has become redundant to have a fire district that is surrounded by the County and the City of Oroville. The City has annexed the District's core and the County provides service for no additional cost across the street. The people who live in the District pay the highest cost for fire protection for a District that doesn't respond.

Commissioner Connelly stated the Commission cannot take action on this issue today but he does support dissolving the district. People are paying fees and getting no service.

Steve stated the City of Oroville's contractual services agreement with CalFIRE, we actually have that application and expect to have that come to the Commission sometime in the spring. Part of that process will give the Commission the opportunity to weigh in on Oroville's responsibility to serve the El Medio area. We may get to the point where LAFCo will initiate the dissolution of that District, but he prefers that it comes from either the District

or the City of Oroville. Steve Lucas summarized the Executive Officer's report and provided updates.

6.2 Correspondence - None

7. ADMINISTRATION - None

8. ADJOURNMENT

There being no further business, the meeting was adjourned at 12:58 p.m. to the next LAFCO meeting scheduled for Thursday, January 6, 2022.

LOCAL AGENCY FORMATION COMMISSION



By: Stephen Lucas, Executive Officer

Minutes prepared by Joy Stover, Commission Clerk