

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

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

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

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

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

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

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

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

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

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

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

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

Section 1. Environmental Findings:

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

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

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

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

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

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

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

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

Section 2. General Findings, Terms and Conditions:

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

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

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

Section 3. Conditions adopted by LAFCO:

Administrative Conditions

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

General

- 1. That the name of the California Water District shall be the Tuscan Water District.
- 2. That formation of the Tuscan Water District shall be contingent upon a successful landowner vote, based on a one acre one vote formula, the following:
 - a. Approve the formation of the 102,327 acre Tuscan Water District.
 - b. Approve parcel assessment of a maximum of ten dollars per acre (\$10.00/acre) to fund the initial administrative/organizational activities of the Tuscan Water District.
 - c. Selection of an initial nine (9) members of the Board of Directors

3. Prior to filing the Certificate of Completion, a revised legal description and boundary map(s) shall be submitted to reflect the service area of the Tuscan Water District as adopted by the Commission.
4. The effective date of the Tuscan Water District formation will be determined by the certification of the election results by the Board of Supervisors and the filing of the certificate of completion by the LAFCO Executive Officer with the County Clerk-Recorder's office.
5. The Tuscan Water District shall set the appropriations limit as soon as feasibly possible consistent with Government Code Section 57000.

Boundaries

6. Within 6 months of the recording of the Certificate of Completion for the formation of the Tuscan Water District, the Board of Directors of the Tuscan Water District shall submit an application to LAFCo to conduct a municipal service review (MSR) and determine the sphere of influence for the new district to LAFCo and that all fees and costs associated with the application shall be borne by the applicant (TWD), including an initial deposit in an amount deemed appropriate by the Executive Officer. The failure to execute this condition will result in the Commission applying a zero sphere of influence and initiating corrective actions up to and including, dissolution of the District.

Governance – Board of Directors

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

Governance – Voting

11. The Board of Directors of the Tuscan Water District shall, between January 1 and March 30 of each year, inspect the assessable area within the district. At such time as at least 50 percent of the assessable area within the district is devoted to and developed for residential, industrial, or nonagricultural commercial use, or any combination thereof, such fact shall be certified to the board of directors by the secretary of the district. Any time after such

certification, the registered voters residing within the district may petition for a change in the voting procedure from a landowner-voting district to a resident-voting district.

Intergovernmental Coordination – SGMA and Water

12. The Tuscan Water District, shall within one (1) year from the date of the recording of the Certificate of Completion, enter into a memorandum of understanding (MOU) with the Vina Basin and Butte Basin Groundwater Sustainability Agencies establishing the formal, government to government working relationship between the Tuscan Water District and the GSA's to include acknowledging the roles of each agency in the SGMA environment, methods for communication, cooperation and collaboration, establishing points of contact and any other matter that leads to cooperation in the implementation of the GSP for the basin. The MOU should identify the Tuscan Water District as a GSA partner, pursuant to the sustainable Groundwater Management Act, Water Code section 10720 et. seq. The MOU shall be provided to the LAFCo Executive Officer upon completion. The failure of the District to successfully enter into a MOU with the GSA's within one year of the Certificate of Completion being filed, the Tuscan Water District shall be dissolved by LAFCo at the request of the TWD Board of Directors. If an agreement cannot be reached with the GSA's, the TWD can request LAFCo to mediate a resolution and/or extend this deadline for an additional period to be determined by LAFCo or modify the condition.
13. Per the MOU required in Condition No. 12, all activities, actions, projects, and proposals initiated by the Tuscan Water District within its jurisdictional boundaries related to the direct or indirect management of groundwater resources, including groundwater recharge options, shall be submitted to the appropriate GSA for review and cannot be implemented or initiated until and unless, the affected GSA Board determines in writing that the proposed activities, actions and proposals are consistent with the applicable GSP. Requests not deemed consistent with the GSA's GSP, are prohibited.
14. Tuscan Water District shall submit any proposals, plans or projects regarding any extraction, use, or transfer of groundwater as defined in Butte County Chapter 33 (Groundwater Conservation), to the Butte County Department of Water and Resource Conservation for review and such proposals cannot be implemented or initiated until and unless, the Butte County Board of Supervisors or the Director of Butte County Department of Water and Resource Conservation determines in writing that the proposed activities, actions and proposals are consistent with the Butte County Code Chapter 33 (Groundwater Conservation). Requests not deemed consistent with the Butte County Chapter 33 are prohibited. The Tuscan Water District shall adhere to all the laws of the County of Butte
15. The Tuscan Water District shall not have the power to acquire, plan, construct, maintain, improve, operate, and keep in repair the necessary works for any drainage or reclamation works within the jurisdictional boundaries or sphere of influence of the Rock Creek Reclamation District without the written consent of the Rock Creek Reclamation District Board of Directors.

General Powers and Functions

16. That pursuant to the applicable Water Code Sections the Tuscan Water District is authorized to exercise all powers and authorities subject to the following restrictions in a-g below:
 - a. The Tuscan Water District shall not have the powers to export, transfer, or move water underlying the Tuscan Water District (including groundwater pumped into an above ground storage facility) outside the Vina or Butte Subbasins. For purposes of this Condition “groundwater” shall have the meaning set forth in Water Code Section 10721(g) as follows: “Groundwater” means water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels unless included pursuant to Section 10722.5.
 - b. The Tuscan Water District shall not have the power to acquire, plan, construct, maintain, improve, operate, and keep in repair the necessary works for the production, storage, transmission, distribution and sale of water for domestic, industrial, and municipal purposes (WC35401). These powers under the California Water Code shall be deemed inactive or latent.
 - c. The Tuscan Water District shall not have the power to acquire, construct, operate, and furnish facilities and services, within or without the district, for the collection, treatment, and disposal of sewage, waste, and storm water nor contract with any persons, firms, public or private corporations or public agencies or other users concerning facilities and services for said purposes. (WC35500) The District could request that LAFCO activate these powers in the future. These powers under the California Water Code shall be deemed inactive or latent.
 - d. Any and all proposals or projects proposed by the Tuscan Water District (including groundwater recharge projects for the benefit of District landowners) shall be submitted to the appropriate GSA under Condition Nos. 12, 13 and 17 to determine if the proposal or project is consistent with the affected GSP in sustaining the Vina groundwater basin.
 - e. If the District approves and implements a project involving the delivery and/or importation of surface water into the District, then the District shall not thereafter transfer that surface water for use outside the District boundaries.

Future Projects and CEQA

17. As a means to ensure that later District actions comply with CEQA and are consistent with the GSP, the District shall comply with the requirements in this condition. Prior to approving any GSP implementation activity that may result in a direct or reasonably foreseeable indirect physical change in the environment, the District shall undertake these steps:
 - (a) The District shall prepare a project description and submit it to the Vina Groundwater Sustainability Agency (GSA). The GSA shall undertake a GSP consistency determination by reviewing the project description and determining whether the project is consistent with the GSP. The GSA shall determine that the project is consistent with the GSP if the project is (1) a type of project or action or within the scope of a project or action identified in the GSP as a planned or potential project or management action, or (2) consistent and compatible with the goals, objectives, purposes, and policies in the GSP. GSA staff and officers shall not use or exercise any personal or subjective judgment in deciding whether the project should be carried out. The GSA GSP consistency determination is intended to be a ministerial review,

with the GSA determining only whether the project is consistent or not. This condition is not intended to confer on the GSA the discretionary authority to determine whether to approve a District project or to modify or condition a project. A principal purpose of the GSP determination review is to confirm that the proposed project will be consistent with the GSP before the District undertakes the effort, time, and expense to perform CEQA review of the project.

- (b) If the GSA determines that the proposed project is consistent with the GSP, the District shall prepare an appropriate CEQA document for the project (e.g., notice of exemption, initial study and negative declaration, environmental impact report), adopt the CEQA document, make appropriate findings, and approve the project in accordance with the procedural and substantive requirements of CEQA. The District shall include the GSA on its distribution list for CEQA-related notices and draft documents. If during the CEQA process the District materially changes the project description, then the District shall consult with the GSA to confirm that the proposed project as modified remains consistent with the GSP.
- (c) The District may proceed with and implement the project if the GSA has determined that it is consistent with the GSP and the District has complied with CEQA.

Section 4. Further Procedural Actions

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

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

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

NOES: None

ABSENT: None

ABSTAINS: None



Clerk of the Commission



CARL LEVERENZ, Chair
Butte Local Agency Formation Commission