



MEMORANDUM

DATE: August 11, 2021

TO: Vina Stakeholder Advisory Committee

FROM: Christina Buck, Interim Director

RE: Vina GSA Comments to LAFCo Regarding an Application to Form the Tuscan Water District

Action Requested

Consider recommendations to the Vina Groundwater Sustainability Agency (GSA) Board regarding comments to the Butte Local Agency Formation Commission (LAFCo) on the application to form the Tuscan Water District.

Application Available

The complete TWD formation application can be found at the Butte LAFCo webpage at <https://www.buttelafo.org/announcements>.

Background

The Butte Local Agency Formation Commission (LAFCo) received an application for the formation of a California Water District entitled the Tuscan Water District (TWD). The application was submitted by Chief Petitioners Richard McGowan, Darren Rice, and Edward McLaughlin and was initiated by a landowner-voter petition. To initiate the process, a majority of landowners must sign the petition to support the TWD formation. In April 2021 the LAFCo issued a Certificate of Sufficiency stating that acceptable landowner petitions were submitted by landowners owning 57,092 acres, a majority of the 102,327 acres in the proposed TWD area. This completes the first step in the process to form the TWD. With the completed application, Butte LAFCo issued a notice to local agencies and the public seeking comments and recommendations. Butte LAFCo will be accepting comments through September. Based on the response, Butte LAFCo could modify the application, including the proposed boundary and authority with conditions of formation. If Butte LAFCo approves the application or approves an amended version of the application, the question of district formation will be put to the landowners for a vote. Approval will be based upon support of a majority of landowners.

Staff prepared a summary of the TWD proposal, analysis and a series of specific issues for the Vina Stakeholder Advisory Committee (SHAC) to consider for a potential recommendation to the Vina GSA Board.

Highlights from the Proposal

The full proposal and application is available online: <https://www.buttelafco.org/announcements>. SHAC members are encouraged to review the materials.

The proposed TWD would be a California Water District, called the Tuscan Water District, formed pursuant to the California Water District Law (Water Code Section 34000 and following), and Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 56000 and following). The proposed TWD is 102,327 acres in size and contains approximately 3,136 individual parcels that are primarily used for agricultural production and for rural residential properties. The estimated value of TWD area agricultural production is \$289,369,469. The proposed TWD is primarily in the Vina subbasin with a small portion in the Butte subbasin and has an estimated population of 6,463. The vast majority of the land within the District relies on groundwater for both domestic and agricultural uses. The map of the proposed TWD is included at the end of this memo.

As stated in the application,

“The reasons for the proposal are: The Vina sub-basin and a portion of the Butte sub-basin are lacking public infrastructure and a subbasin-wide water district with statutory power, authority, and support of groundwater-dependent landowners to plan, manage, coordinate, develop, enhance, and preserve beneficial use of groundwater and surface water for all landowners in the proposed district for both agricultural and domestic uses. The principal objective is to create a local agency to evaluate, determine, fund, implement, and oversee projects and actions to achieve groundwater sustainability under the Groundwater Sustainability Plan to be adopted by the Vina and Rock Creek Reclamation District Groundwater Sustainability Agencies.” (Exhibit 1 item 4, pg. 10)

Authority and Proposed Conditions of Formation

As stated in the application (see page 11-12):

The proposed terms and conditions of the change of organization (special district formation) are:

- a. The name of the new California Water District shall be the Tuscan Water District.
- b. A map of the boundary, service area and sphere of influence of the territory is included with the Application. A Metes and Bounds Description and mapping per State Board Of Equalization standards has been submitted under separate transmittal.
- c. The Tuscan Water District is proposed to be an independent, special water district with 7 directors, one of whom will be a “domestic well” user, initially elected at large, and serving staggered terms and selected on the same ballot forming the District. Within a reasonable time, the Tuscan Water District Board of Directors may evaluate the geographic representation of communities of interest and determine the appropriate number of directors, as well as the appropriate organization of the directors, whether by divisions or at-large or a combination of the two, taking into consideration unique communities of interest and diversity of landownership of groundwater-dependent users.

d. The Tuscan Water District is requesting to have the power and authority of the California Water Districts (Water Code Section 34000 and following) under the Water Code and other applicable state laws, including, but not limited to, the following:

i. Ability to establish zones of benefit based on conditions and needs to provide appropriate levels of service.

ii. Notwithstanding the authorizations of the California Water Code, not be authorized to acquire, plan, construct, maintain, improve, operate, or keep in repair the necessary works for the production, storage, transmission, and distribution of water, unless the exercise of such power is consistent with, or required by, the applicable Groundwater Sustainability Plan.

iii. Notwithstanding the California Water District law, the Government Code, or California Article XIII (D), by their affirmative vote to form the Tuscan Water District, landowners: (A) consent to board of directors levying assessments on district lands; (B) approve initial assessments not to exceed \$10.00 per acre; and (C) authorize Butte County to collect such assessments along with other taxes to recover district formation costs, costs for initial staff and administration of the district, and to cover expenses associated with collaborating with Butte County, the Vina GSA and the Rock Creek Reclamation District (RCRD) GSA to implement the Groundwater Sustainability Plan (GSP) applicable to the area covered by the Tuscan Water District.

iv. It is also acknowledged that the Tuscan Water District will not:

- Provide reclamation, flood control, or agricultural drainage services in the RCRD service area unless RCRD consents to such service or is unable to do so.
- Export water out of Butte County unless such export of surface or groundwater, under specified conditions adopted by Butte County, allows other public agencies with water delivery authority to do so, including Butte County. Additionally, the California Water District Law would limit the new district's authority to transfer water out of the district to "surplus water not then necessary for use within the district." (Water Code § 35425.)

Governance

California Water Districts are public agencies that are autonomous, landowner-voter special districts created and managed by the landowners. As a condition of formation, the TWD applicants are proposing to have a seven (7) member board of directors with one of the seats designated for a domestic well user representative. The TWD considers domestic well users as landowners on parcels of 10 acres or less with only domestic wells. Candidates for the initial seating of the board of directors must run on an "at-large", district-wide basis. After the District is formed, and prior to the next general election, the Board of Directors of the District may increase or decrease the number of directors and reorganize by "division" (or combination of 'division' and at large representation) following a process set forth in Water Code Sections 34400-34502, 35100-35110" (see page 26).

Funding

The TWD will have the authority to derive revenue for administration, operation, maintenance, construction of capital projects and to participate in the SGMA process. The primary funding source will be assessment on

landowners and may over time include state water bonds, bonded debt and short and long-term loans. The first-year budget will range from \$400,000.00 to a maximum assessment of ten dollars per acre (\$10.00/acre), depending on the level of assessments imposed by the Board of Directors. Initial assessments may be used to reimburse proponents for District formation costs and to cover start-up costs, which may include hiring a General Manager, and other consulting or specialized services.

Land Use in the TWD

Predominantly agricultural and open space lands consisting of ranches and farms varying in size from small to large, all dependent on groundwater. Key crops include almonds, walnuts, pistachios, prunes, plums, and rice. General Plan land use designations include: agriculture, agricultural residential, and open space.

DISTRICT ACREAGE BREAKDOWN

0 to 10 acres	5,956 acres (5.82%)
10.01 to 20 acres	5,946 acres (5.81%)
20.01 to 40 acres	10,605 acres (10.36%)
40.01 to 2761.54 acres	77,506 acres (75.74%)
<u>Non-APN acreage</u>	<u>2,313 acres (2.26%)</u>
Totals	102,327 acres

Rural residential properties served by a domestic well within the district is estimated by the number of parcels less than 10 acres. This amounts to 5,956 acres or about 5.8% of the proposed district area. The estimated population of the district is 6,463.

Relationship to Other Entities within the District

There are two special districts, two mutual water companies, an investor-owned utility, Butte County and the Vina GSA within the area of the TWD.

1. Rock Creek Reclamation District (RCRD/RCRD GSA)
2. Western Canal Water District (WCWD)
3. Durham Mutual Water Company (MWC)
4. Dayton MWC
5. CalWater Chico
6. Butte County/Butte County GSA
7. Vina GSA

The application describes why none of the underlying agencies, public or private, has the capability or capacity to serve the proposed 102,327 service area of the TWD due to size, purpose or for other reasons. The TWD will not overlay the Durham Irrigation District (DID) service area or sphere of influence. The TWD applicants evaluated annexation to RCRD, DID or WCWD and did not find annexation as a viable alternative to the formation of the TWD. The TWD will overlay portions or all of the service areas to some of the entities. The application describes the relationship of the TWD to these entities.

California Environmental Quality Act (CEQA) Compliance

The application includes a description of how the TWD formation relates to CEQA. The lead agency, or approving agency, for the TWD formation is LAFCo. LAFCo will need to make a determination if the formation of the TWD and terms of district formation will cause a direct or reasonably foreseeable indirect physical change

in the environment. The application describes why petitioners have, “determined that TWD formation is not a project subject to CEQA review, that TWD formation at this time is exempt from CEQA, that detailed CEQA review at this stage would be premature and speculative and would not produce meaningful information, and that CEQA review would be conducted later in the Groundwater Sustainability Plan (GSP) implementation process as and when the newly formed district evaluates and identifies appropriate GSP implementation actions.”

Considerations for Response to LAFCo

LAFCo has notified the Vina GSA of the TWD application and requested comments from the Vina GSA. LAFCo posed several specific questions and welcomes all comments the agency believes are relevant to the Commission’s deliberations:

1. What affect, if any, will this proposal have on the operations and functions of your agency?
2. Does your agency believe the formation of the proposed TWD will help or hinder the overall management of surface irrigation water and groundwater resources within the Vina sub-basin, Butte County and the region?
3. Should the TWD be approved and formed, would your agency be willing to enter into cooperative agreements or studies with the TWD to examine methods of maintaining or enhancing local groundwater supplies?
4. Would you *agree* or *disagree*, that the proposed formation of the TWD would be a threat to the overall agricultural water supply in Butte County or otherwise compromise the ability of existing local water agencies to protect the current water supply available to the residents and irrigation water users in Butte County?
5. Please describe the relationship between the Vina GSA and a newly formed water district?

The interest of agricultural groundwater users to form a public water agency has occurred in other areas of the state. In Glenn County, agricultural groundwater users formed the Monroeville Water District in 2019. The Monroeville Water District was primarily formed to provide a means for agricultural groundwater users to participate in GSA governance structures in the applicable subbasins (Colusa and Corning). Monroeville Water District joined the respective GSAs as a Member Agency.

As described in the application, the TWD intends to work with the GSAs in the implementation of GSPs in the Vina and Butte subbasins. Although the TWD would be a GSA eligible agency, they cannot become a GSA unless a current GSA allows them to. This would require the GSA to voluntarily change their GSA jurisdiction in such a way that another agency (i.e. TWD) could become the GSA in that area. In the Vina subbasin, the two exclusive GSAs are the Vina GSA and Rock Creek Reclamation District (RCRD) GSA. The TWD application indicates that it may seek to formalize its relationship with respective GSAs through a Memorandum of Understanding (MOU). The TWD application also states that the TWD may, at the appropriate time, petition the Vina GSA for a seat on the Vina GSA Board. Per the Vina Joint Powers Agreement (JPA), GSA eligible agencies could join the Vina JPA upon agreement of all the member agencies (i.e., Butte County, City of Chico and Durham Irrigation District). The Vina GSA Board already includes an Agricultural Pumper Director appointed by the Butte County Board of Supervisors. If the TWD seeks to join the Vina JPA, the Member Agencies will need to consider the balance of representation on the Vina GSA Board. The Vina GSA should consider whether it would encourage the TWD to join the Vina GSA as a Member Agency or pursue an MOU.

The majority of the Vina Subbasin and therefore the TWD area comprises groundwater dependent lands. A combination of projects and management actions will be needed in order to balance basin conditions. As part of GSP development, draft Projects and Management Actions (PMA) chapters are available for public review for both the Vina Subbasin. The list of PMAs for the Vina Subbasin include a number of potential projects including: 1. Agricultural Irrigation Efficiency, 2. Flood-MAR (managed aquifer recharge), 3. Agricultural Surface Water Supplies, and 4. Extend Orchard Redevelopment. These potential projects or programs would all benefit from or in some cases require an agency with the authority and ability to conduct project operations. The Vina GSA should consider to what extent it has the capability and intent to implement projects and programs of the GSP.

One of the stated objectives of the TWD is “to the extent consistent with, or required by, the applicable Groundwater Sustainability Plan (GSP), acquire, plan, construct, maintain, improve, operate, and keep in repair the works for the production, storage, transmission, and distribution of water, including water recharge.” Unlike most other California Water Districts, the TWD will not have any water rights or contracted water. Any surface water that TWD would supply to landowners would need to be acquired from other local water right holders such as other local water districts. Local water districts with surface water rights or contracts cannot store, carry over or transfer surface water in wet years that is not needed for district landowners. The concept of utilizing available surface water in groundwater dependent areas has been previously evaluated by Butte County. Utilizing available surface water whenever possible to lessen groundwater demand would benefit basin conditions and the potential for such supplies does exist. For example, South Feather Water and Power conducted a 10,000 acre-feet south of delta water transfer program in 2020. Paradise Irrigation District (PID) has been exploring opportunities to utilize their water supply as the Town of Paradise rebuilds. For agricultural uses, PID could put a portion of their untreated water supply in Butte Creek that could be utilized in the basin. This would not require infrastructure, an intertie or treated water. The problem with advancing these concepts is that there is currently no organization that could acquire, distribute and manage surface water supplies in groundwater dependent areas. To accomplish or even pursue any of these potential solutions to Vina’s groundwater deficit, an agency is needed that will conduct physical “operations” to manage or maintain any type of required infrastructure. The TWD intends to develop programs to fill this gap in water resource management.

During GSP development in the Vina Subbasin, concerns regarding the legal implications of recharge and privatization of groundwater have been raised and continue to be discussed. Issues of concern on this topic were described in a discussion paper to the Vina SHAC regarding Legal Implications of Potential Projects and Management Actions. The paper is attached for reference. It clearly describes that the legal right to surface water that is imported and recharged into an aquifer (eg. In-lieu, recharge basins) is held by the project proponent (importer). The paper also identifies potential management actions by the Vina GSA that could protect the Vina subbasin and the implementation of the GSP from negative implications from artificial recharge projects. Placing specific conditions on the formation of the TWD may also help address these concerns.

Based on the questions and concerns raised during the development of the GSP in the Vina Subbasin and the potential formation of the TWD, the following issues have been identified:

1. Ownership of Recharged Groundwater
2. Water Exports
3. Relationship to Other Entities

Potential Recommendations to LAFCo

Staff has framed up a number of options and alternatives for discussion and recommendation by the SHAC to address the questions posed to the Vina GSA by LAFCo. Recommendations from the SHAC will help inform the content of a comment letter to LAFCo for the Vina GSA Board's consideration. The following can guide discussions and recommendations of the SHAC.

Components of a Potential Recommendation

The SHAC recommends that the Vina GSA Board submit a letter to the Butte LAFCo regarding the application to form the TWD that contains the following:

1. Should the SHAC recommend to the Vina GSA Board that the formation of the proposed TWD will
 - a. Help the overall management of surface irrigation water and groundwater resources within the Vina sub-basin, Butte County and the region
 - b. Hinder the overall management of surface irrigation water and groundwater resources within the Vina sub-basin, Butte County and the region
2. Does the SHAC recommend to the Vina GSA Board that if the TWD were approved and formed, the Vina GSA would be willing to enter into cooperative agreements or studies with the TWD to examine methods of maintaining or enhancing local water supplies?
3. Does the SHAC agree or disagree, that the proposed formation of the TWD would be a threat to the overall agricultural water supply in Butte County or otherwise compromise the ability of existing local water agencies to protect the current water supply available to the residents and irrigation water users in Butte County?
4. Should the SHAC recommend that the Vina GSA Board submit to LAFCo the following conditions on the formation of the TWD:
 - a. Any water imported into the District will remain in the district. This intent is stated in the TWD application materials under Protecting Butte County's Groundwater item 5 (see page 47). The TWD must be prohibited from transferring water outside of their service area. Although the Groundwater Conservation Ordinance (Chapter 33 of the Butte County Code) may regulate such an activity, the specific types of projects are not known.
 - b. Projects and programs conducted by the District must be consistent with Projects and Management Actions or Implementation activities as described in the relevant GSP.
 - c. The TWD cannot have the authority to regulate agricultural or domestic well pumping. While not an explicit authority prescribed in the Water Code, the potential that the TWD could regulate groundwater pumping in the future creates a potential conflict with authorities of GSAs.
5. Should the SHAC recommend to the Vina GSA Board to:

- a. Support the formation of the TWD
- b. Oppose the formation of the TWD
- c. Support the formation of the TWD with additional limitations
- d. Remain neutral

6. Other Recommendations

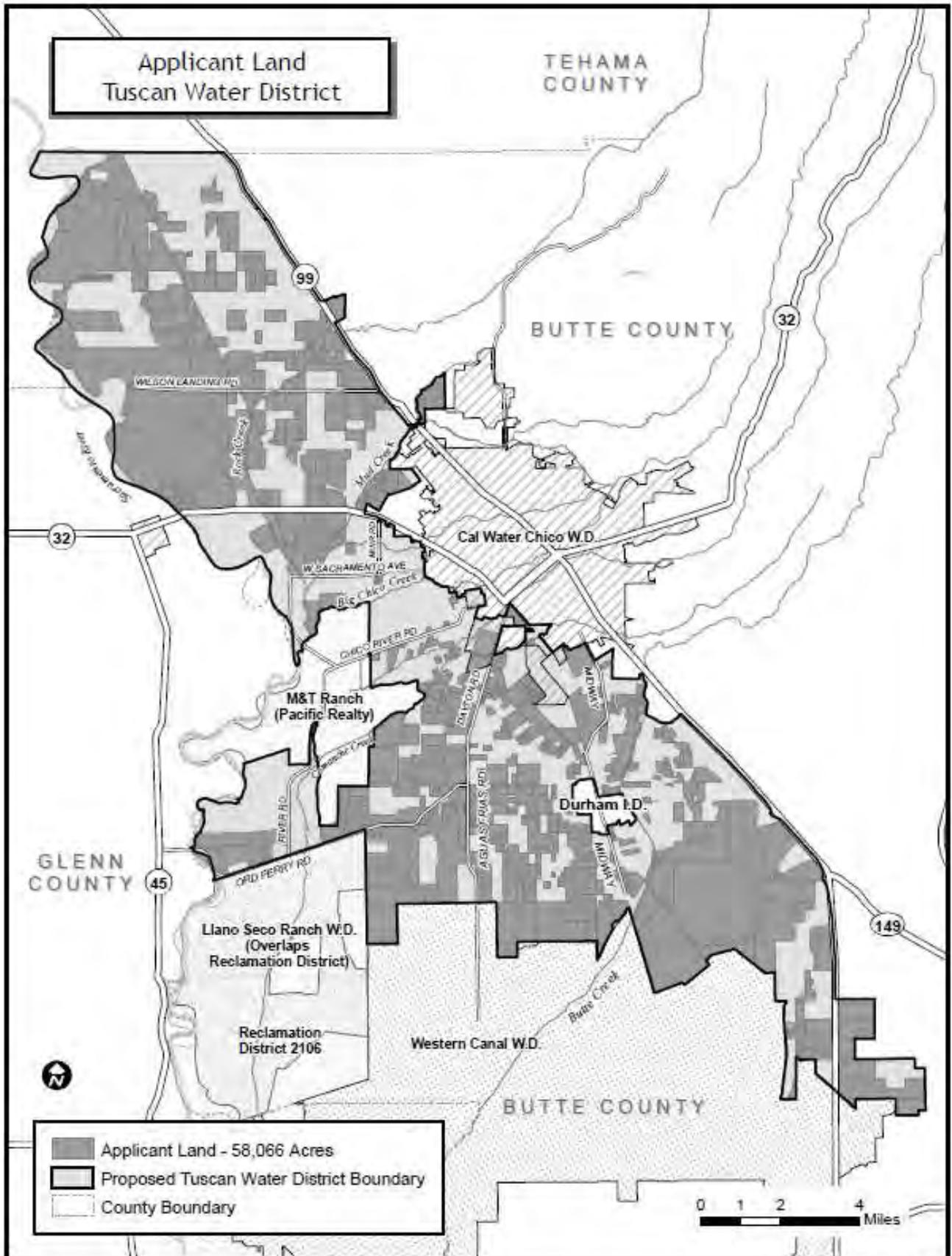
Action Requested

Approve a recommendation to the Vina GSA Board regarding comments to the Butte Local Agency Formation Commission (LAFCo) on the application to form the Tuscan Water District.

Attachments

- 1. Comment Form from LAFCo
- 2. Memo Legal Implications of Potential Projects and Management Actions

EXTERIOR BOUNDARY MAP (EXHIBIT 2B)





Butte Local Agency Formation Commission

Request for Comments Form

To: **Vina Groundwater Sustainability Agency c/o Kelly Peterson**
Sent via email to: **kpeterson@buttecounty.net**

From: **Stephen Lucas, Executive Officer**

LAFCo Project File: **21-06 – Tuscan Water District Formation APN(s): Various (see map)**

Date Mailed: **June 30, 2021**

Requested Return Date: **July 15, 2021 – All comments will be accepted regardless**

IF NO COMMENTS OR COMMUNICATIONS ARE RECEIVED BY THE RETURN DATE, THE ASSUMPTION WILL BE MADE THAT YOUR AGENCY HAS NO COMMENTS.

The Butte Local Agency Formation Commission has received an application (*attached*) for the formation of a California Water District (Water Code 34000) which is a landowner voter district, initiated through a landowner petition and to be called the Tuscan Water District (TWD).

The proposed TWD is to be approximately 102,237 acres in size and contains 3,136 individual parcels that are primarily used for agricultural production. The purpose of the TWD is to organize the landowners into a public agency with the overarching purpose of working cooperatively with the County of Butte, Butte County Water Commission, Vina, Butte and Rock Creek Reclamation District Groundwater Sustainability Agencies (GSA's) and other state and local agencies in the development of Groundwater Sustainability Plans (GSP) for the Vina and Butte sub-basins that will ensure adequate water is available to continue the existing agricultural uses of the affected land. The proposed TWD is initially focused on developing its organizational/administrative capacity that will allow it to provide meaningful representation to its landowners as the process of developing groundwater sustainability plans is completed. The proposed TWD has presented no plans to develop or implement any particular projects, facilities or infrastructure and any such ideas would require great speculation at this time and would ultimately be determined by the yet to be developed groundwater sustainability plans.

The Butte LAFCo requests your agency respond to the following questions/inquiries and welcomes all comments your agency believes are relevant to the Commission's deliberations.

1. What affect, if any, will this proposal have on the operations and functions of your agency?

2. Does your agency believe the formation of the proposed TWD will help or hinder the overall management of surface irrigation water and groundwater resources within the Vina sub-basin, Butte County and the region?

3. Should the TWD be approved and formed, would your agency be willing to enter into cooperative agreements or studies with the TWD to examine methods of maintaining or enhancing local groundwater supplies?

4. Would you *agree* or *disagree*, that the proposed formation of the TWD would be a threat to the overall agricultural water supply in Butte County or otherwise compromise the ability of existing local water agencies to protect the current water supply available to the residents and irrigation water users in Butte County?

5. Please describe the relationship between the Vina GSA and a newly formed water district?

6. Other comments:

Prepared by: _____ Date: _____



Vina Groundwater Sustainability Agency
308 Nelson Avenue, Oroville, California 95965
(530) 552-3592 • VinaGSA@gmail.com

December 18, 2020

To: Vina Stakeholder Advisory Committee (SHAC)

From: Paul Gosselin, Vina GSA Administrator
Valerie Kincaid, Vina Legal Counsel

Re: Legal Implications of Potential Projects and Management Actions

The Vina SHAC voiced concerns about the ability to proceed with identifying potential Projects and Management Actions (PMA) without a greater understanding of the legal implications, particularly those involving recharge. Legal implications are one of many considerations whether a PMA is suitable for inclusion in a GSP. Since there are not specific proposed projects, the discussion of legal implications and other considerations are hypothetical. However, the general discussion of legal implications may identify aspects of potential projects requiring limitations that the Vina GSA Board may need to impose through management actions. The SHAC may identify and recommend management actions that would allow for projects to proceed consistent with the Vina GSP and without harming the basin or groundwater uses. Management actions could involve establishing rules, ordinances, policies and procedures governing projects.

Currently, there are no specific projects proposed in the Vina subbasin. Evaluating the acceptability of a PMA must be based on the specific project's scope, design and intent. However, management actions could be identified through an evaluation of potential characteristics of projects that have negative aspects or are inconsistent with the GSP. For the purposes of this discussion paper, potential projects involve those that result in increased groundwater in the basin. Recharge, conservation and recycling projects could result in increased groundwater in the basin that could be put to beneficial use by the project proponent. Refer to the glossary of potential PMAs.

The following are questions concerning potential legal implications of potential projects. If there are other questions, please let me know prior to the January meeting.

1. Does a project proponent gain water rights over recharged groundwater?

Yes. A project proponent maintains the right to water that is recharged whether it results from recharge projects or groundwater demand reduction projects (e.g., conservation, recycling). If a project uses or obtains a surface water supply and recharges into the aquifer, the project proponent would have a legal right to the recharged water. Water does not legally become "common" or "native" supply available to overlying groundwater right holders unless it is abandoned by the project proponent. (Los Angeles v. Glendale (1943) 23 Cal.2d 68, 76-78; Los Angeles v. San Fernando (1975) 14 Cal.3d 199, 258-60; Stevens v. Oakdale Irrigation District (1939) 13 Cal.2d 343, 352-43; Crane v. Stevinson (1936) 5 Cal. 2d 387, 398.) Abandonment occurs when there is no evidence the recharger intended to account for recharged water and later extract that water and put it to beneficial use. The recharger is only allowed to extract the amount of water that recharged to the basin. Therefore, usually, when extracting recharged

water, there must be some accounting for “leave behind” or “loss” depending on the local practices and technical components of the subbasin/recharge.

A recharge project could result in recharged water becoming “common” or “native” supply. A project proponent could agree to certain terms of recharge, for example, a leave behind of a certain percent of the total recharge. Alternatively, the GSA may consider an ordinance or other enforcement mechanism that requires some portion of recharged water to be water dedicated to “common” or “native” supply. The recharging party or agency adopting any sort of ordinance would need to be cautious that the agreement/ordinance would not result in exposure to forfeiture for the recharging party (as recharge without later extraction and application to beneficial use is not itself a beneficial use of water).

2. What rights could a project proponent exercise over recharged water?

If a project includes the application for a new right to recharge water, it would need to obtain a water right permit from the State Water Resources Control Board (SWRCB) through a surface water right application and a supplemental groundwater recharge form. The water right permit application would need to identify the “beneficial use” that the project intends to meet. Recharging groundwater is not considered a beneficial use, however, meeting the sustainable management criteria in a GSP may be determined to be a beneficial use. The amount of recharged water that could be put to future use would be determined from project specific analysis and would be included in the water right permit. Depending upon the water source and the intent of the project, it may be eligible for a streamlined water right permit process established by the SWRCB to facilitate Flood Managed Aquifer Recharge (Flood MAR) and other GSP programs.

If a water right holder diverts surface water pursuant to an existing right, the diversion of that water makes it the possession of the diverter. Recharging the water into an aquifer changes the location or storage of diverted surface water, but it does not change the ownership. For this reason, recharged water remains the possession of the diverter/recharger and the diverter/recharger may exercise full control over that water unless it can be established that the diverter/recharger abandoned the recharged water or it is subject to reasonable losses.

3. Could a project affect groundwater users rights to pump groundwater or have it limited?

Not directly. Overlying groundwater rights are held by landowners whose land overly the groundwater aquifer. (Pasadena v. Alhambra (1949) 33 Cal.2d 908, 925.) An overlying water right is not quantified, but allows the water right holder to divert as much water as is reasonable to support beneficial uses on the overlying land. (Katz v. Walkinshaw (1902) 141 Cal. 116; Pasadena, at 925.) These rights are appurtenant to land and cannot be sold or otherwise detached from the land.

However, recharge projects could decrease the amount of water that has previously been abandoned. In this situation, there would be a decrease in native groundwater supplies available for groundwater right holders. Groundwater users would not lose their right to divert groundwater to support beneficial uses on the overlying land, but lower groundwater elevations may increase cost or make it impracticable. It is also possible that recharge projects may underestimate the amount of water that migrates or is “lost”, which could result in allowing the recharger to extract more water than is reasonable, which could result in decreasing the amount of water available for overlying groundwater users.

4. For managed recharge projects, does it matter what the source of the water is or if it comes from another basin?

No, the source of the water only matters to the extent that it affects ownership. The water source could come from high storm flows, surface water held by the project proponent or surface water supply held by another agency. So long as the water was diverted pursuant to a valid water right prior to recharge, the recharged water would be owned by the diverter.

There has been discussion and interest of having local surface water supplies be used for recharge projects (e.g., in-lieu, recharge basins) in groundwater dependent areas. Surface water sources would come from outside the Vina subbasin. The legal right to surface water that is imported and recharged into an aquifer is held by the project proponent (importer). (Los Angeles v. San Fernando (1975) 14 Cal.3d 199, 245-55; Water Code 7075.)

In-lieu recharge occurs when a groundwater right holder does not extract groundwater due to an alternate supply of water (usually surface water deliveries). The water "recharged" in this situation is water that the groundwater holder had a right to extract, but did not, due to the alternate supply. The amount of in lieu recharge would depend on the amount of water available to the groundwater right holder and the amount of groundwater that remained in the ground (not pumped). For example, if an overlying water right holder had the right to pump 100 acre feet and they only pumped 20 because they purchased 80 acre feet of surface water, they would have a right to the 80 acre feet of in lieu recharge. (Water Code 1005.1)
5. Could the owner of a surface water lose their ownership/water right by making their water available to a project proponent?

Not if they are careful. As noted above, recharge is not a beneficial use of water. (Water Code, 1242.) Therefore, if a surface water right holder diverted surface water and recharged that water into the aquifer without any intent to later extract it and put it to beneficial use for a period of 5 consecutive years, the surface water right could be subject to forfeiture. More likely, the surface water right holder would sell or transfer the surface water through a contract to a project proponent. The transfer of water is a beneficial use. (Water Code, 1745.07.) Water sale/transfer arrangements are not unique and have not resulted in losing ownership or water rights. The owner of a surface water supply would only lose their ownership/water right through a permanent sale and filing of a change in water rights with the SWRCB.
6. How would projects affect groundwater users, the environment (streams, GDEs, all species), and water quality (surface and groundwater)?

Recharge projects have the potential to affect groundwater users, groundwater quality and/or environmental beneficial uses. Recharge projects will be subject to environmental evaluation under the California Environmental Quality Act (CEQA). Prior to project approval, the project proponent would be required to identify and evaluate the impacts of the proposed project on the environment hydrology, housing, traffic, agriculture, etc. However, CEQA does not require that projects consider or comply with GSPs. The exception is that general plan updates and zoning ordinances must consider the applicable GSP.
7. Could a project be available for out-of-basin export?

Potentially. Depending upon the project scope, it could intend to export recharge water out-of-basin.
8. Could a project in the Vina subbasin benefit users downslope subbasins?

Potentially. The Vina and the other subbasins in the Northern Sacramento Valley are interconnected to certain degrees. Depending upon the scope and location of a project, the

benefits could extend beyond the Vina subbasin. As part of the project design, the benefit of the project would be analyzed and monitored.

Potential Management Actions

Management actions would allow the Vina GSA to protect the Vina subbasin and the implementation of the GSP from negative implications from artificial recharge projects through enactment of rules, ordinances and/or policies.

1. Require any recharge project, in lieu project or other project that affects the sustainable management criteria in the GSP be subject to review and approval by the Vina GSA Board for consistency with the GSP.
2. Evaluate ordinances or policies that the GSA may adopt to ensure recharge projects are operating without adverse impact to the basin or the GSA's ability to achieve sustainability.