

# **2022-2023 KERN COUNTY GRAND JURY**



## **TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT**

**Release Date  
June 1, 2023**



# **TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT**

**“When the well is dry, we know the worth of water.”**

**-Ben Franklin**

## **MISSION STATEMENT:**

*Tehachapi-Cummings County Water District will ensure the most reliable cost-effective water supply for our customers through the importation of State Water Project water and management of groundwater basins. We will operate and maintain certain flood control structures to protect our customers' safety and property.*

## **SUMMARY:**

Water scarcity has often led to conflicts at local and regional levels. Water is a necessary element for human life, and human activities are closely connected to availability and quality of water. Freshwater is a vital, yet unevenly distributed natural resource, and its availability often impacts the living and economic conditions of a country or region. Elements of a water crisis may put pressures on affected parties to obtain more of shared water resources, causing diplomatic tension or outright conflict.

Tehachapi-Cummings County Water District (TCCWD) is the Watermaster for the City of Tehachapi (City), Golden Hills Community Service District (GHCSO) and several other districts in the Tehachapi area. They draw their water from three basins (Cummings, Brite, and Tehachapi) and the State Water Project (SWP). They are unique in that they are the largest water pumping district area-wise in California for the last 50 years. TCCWD is in compliance with State rules for water usage and attempts to manage water efficiently and fairly. They have adjudicated water rights over three basins and during drought years create ordinances to prioritize SWP water allotment to stakeholders. Considering the drought history in California, every water district in the State is searching for ways to meet the challenges faced in supplying sufficient water to their populace. TCCWD is committed to having the water necessary to serve all customers as Watermaster.

One important note in considering the on-going relationships among the above districts is the differences that sometimes occur and evolve among these entities. All districts in California have the huge responsibility to make sure that they do not run out of water for their populace, especially because available potable water is ever changing due to variable weather patterns, year to year.

Banked water will only help for a short time, not forever, as the vicissitudes of the weather persist. Even with recent intense storms it is unlikely that water managers will have enough wiggle room to wind back the clock on proposals for limiting water use. How much water table levels will rise depends on soil moisture levels, future precipitation, temperatures, and evaporation losses.

Quoting from the Colorado Open Lands preservation group, “The problem or the danger in these episodic wet year events is that it can reduce the feeling of urgency to address the longer-term issues of water usage and water conservation.”

(A glossary is available at the end of this report.)

## **PURPOSE OF INQUIRY:**

The 2018-2019 Kern County Grand Jury Report on TCCWD highlighted three areas that needed attention. Pursuant to Penal Code §933.5, the 2022-2023 Kern County Grand Jury (Grand Jury) followed up to confirm if the recommendations had been implemented. During the investigation, new areas of concern surfaced, including litigation and disputes.

## **METHODOLOGY:**

The Grand Jury reviewed or interviewed the following:

- Previous Grand Jury reports
- Board meeting minutes of TCCWD posted on their website
- Newspaper articles about TCCWD
- Brown Act compliance of TCCWD meetings
- LAFCo compliance/management issues of TCCWD and the City of Tehachapi
- Field trips to the Tehachapi area for interviews, tours of facilities, exploration of the area, and viewing a TCCWD Board meeting
- Legal counsel for California State Water Resources Board
- Office of Kern County Counsel
- Past and present TCCWD Board Members
- City of Tehachapi and various district officials

## **DISCUSSION OF FACTS:**

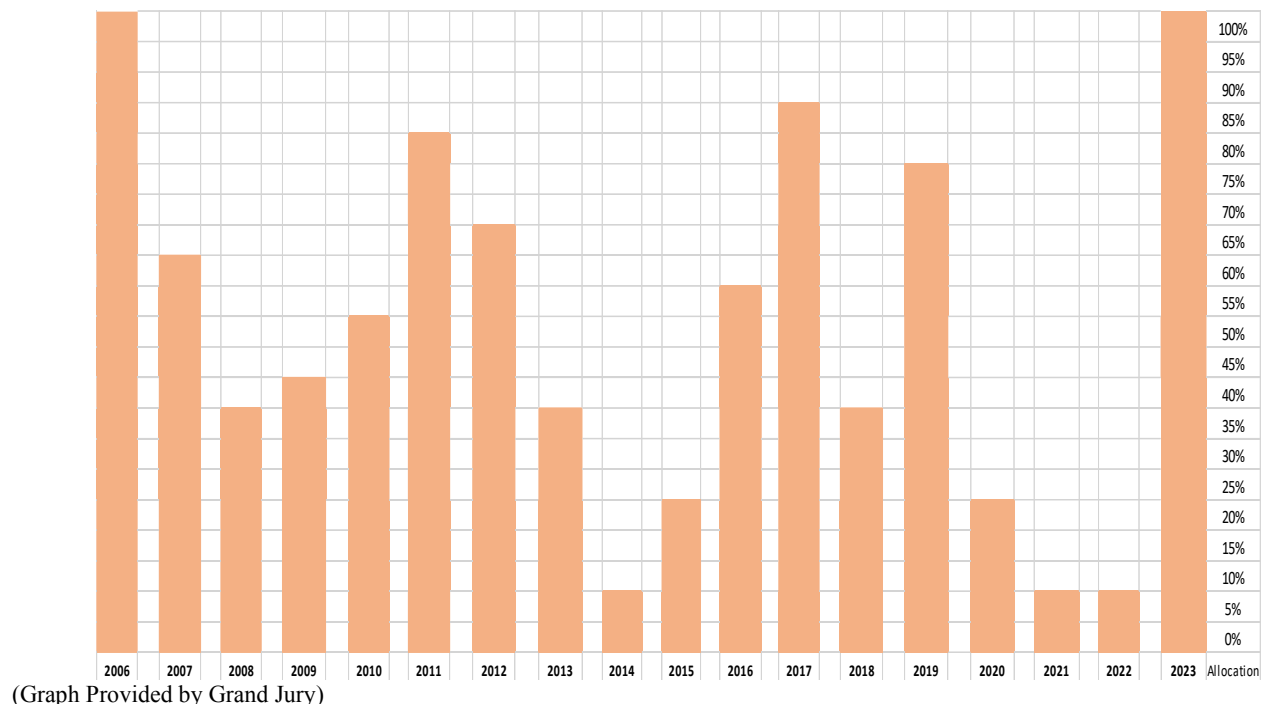
- A. TCCWD was organized on March 10, 1965, under provisions of the County Water District Law (Sections 3000 et seq. of the Water Code of the State of California). This district is located in the Tehachapi Mountains east of the Southern San Joaquin Valley and encompasses approximately 266,000 acres. TCCWD has adjudicated water rights over several basins. When water users within a basin are in dispute over legal rights to the water, a court can issue a ruling known as an adjudication. Adjudications can cover



an entire basin, a portion of a basin, or a group of basins and all non-basin locations between. The court decree will define the area of adjudication.

- B. The TCCWD Board of Directors is elected by the public from five geographical areas within the district. They serve a four-year term and the terms are staggered so that every two years either two or three Director’s seats are on the November General Election ballot.
- C. Brite Basin is an above ground reservoir and receives water from the State Water Project through Kern County Water Association (KCWA), and groundwater is stored in the other two basins. TCCWD has had for several years a planned approach to managing water and its distribution.
- D. Due to the length of the drought, SWP had previously reduced their yearly water allocations for 2021 and 2022 to 5% of their contracted amount. At the time of this report, and because of the recent tremendous increase in rainfall, SWP has raised their water allotment to 100% (as of April 2023) for all the California Water Districts. Due to the length of the drought, TCCWD had to reduce agriculture water allotment by approximately 40% from previous years. This reduction does not apply to municipal and industrial customers.

**State Water Project Allocations Years 2006 to 2023**



The water history in California has shown the propensity to have dry, if not drought years, just after record or close-to-record years of rain, is extremely high. This most recent increase of rainfall has created a dramatic rise in the SWP’s water allocation to 100%. The

biggest concern the community water districts should continue to have is that this is not a time to relax when it comes to future water availability.

- E. To increase their water resources, TCCWD joined the South Valley Water Resources Authority (SVWRA) in April 2015, for the purpose of developing projects, facilities, and programs to enhance water supplies. Considering that the extended drought has affected all of California's water districts, TCCWD management stated that everyone they've contacted are "scared to death" of possible further water reductions from SWP.
- F. TCCWD is financially well managed. They have grants, and a loan which will be paid off in 2024, as well as a planned strategy for capital improvements, depreciation, and servicing all equipment.
- G. The Annual Comprehensive Financial Report for Fiscal Year 2021-2022 showed a continued solvent operation. TCCWD was awarded, in June 2020, a Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association.
- H. According to California Government Code §12410.6(b), local agencies shall not employ a public accounting firm for more than six consecutive years, unless this requirement is waived by the State Controller. According to TCCWD staff, the auditing contract has been put out for bid to other firms. However, the same firm has been TCCWD's auditor since at least 2015, with only a change in the actual Lead Auditor Partner (having primary responsibility for the audit) every five years. Although some stakeholders were concerned about using the same auditing firm for more than the prescribed time limit, the Grand Jury confirmed they are in compliance with the law.
- I. However, TCCWD is not without problems. Research revealed that they are in litigation with the City of Tehachapi regarding water access for the Sage Ranch Development Project, a residential development including both single-family and multi-family housing units. The proposed additional water hookups would increase the total for the City from 3,000 to 4,000. They are at an impasse in negotiations. Recently, this litigation changed venue from Kern County Superior Court to the Sacramento Superior Court.
- J. Interviews with TCCWD Board members revealed they are considering a five-year plan for water allotment management, rather than a yearly review.
- K. In order to manage water distribution in these insecure drought times, TCCWD issues Ordinances entitled: "Establishing District Water Sale Priorities in the Event of a Shortage." The Ordinance is written by an Ad Hoc committee, consisting of board members and staff, when drought conditions are anticipated. The Water Ordinance Ad Hoc Committee explains how they plan to meet any envisioned emergency/drought caused by a reduction in the SWP water allotment. However, they do not include in their planning or meetings the water recipients involved/affected. They create each Ordinance without comments from recipients, although this year, due to public

pressure, they had several round table discussions prior to voting on this year's Ordinance.

- L. TCCWD and the City of Tehachapi entered into a Memorandum of Understanding (MOU) to recharge the City's wastewater. The City would like to upgrade its treatment process to add tertiary filtration and disinfection to their own wastewater, then pipe it into the flood control basin called Blackburn Dam, owned by TCCWD. Signed by both parties in May 2020, the MOU agreement allowed the City to claim 94% of the recharged water delivered to the basin (6% reduction is due to evapotranspiration loss factor), but later TCCWD attempted to unilaterally alter the MOU terms by lowering the amount to half of the recharged/reclaimed water. TCCWD publicly stated that they were collaborating with the City, but the City does not agree with this assessment.
- M. The term of the MOU is 30 years with an increase in compensation to TCCWD. The MOU states that the Recharge Fee will increase every five years beginning at \$30/Acre-foot (AF) in the first five years. The compensation will increase at a rate of \$5/AF for each five year increments afterwards. At the end of the term the increase of \$5/AF will continue at the five-year period thereafter.
- N. The City has spent about \$750,000 to date preparing the engineering analyses needed to prove the concept of their desired wastewater reclamation is viable. The City performed all initial feasibility analyses, spending approximately \$350,000 before confirming with TCCWD that the recharged water in Blackburn Dam would be new water and available to increase their water supply.
- O. The Grand Jury consulted with the California State Water Resource Board regarding water rights to recharged/reclaimed wastewater. Their legal counsel and water rights experts both confirmed the recharged/reclaimed wastewater belonged 100% to the original owner of the wastewater which would be the City of Tehachapi.
- P. Legal counsel for the State Water Resource Board recommended that the MOU parties follow the guidelines stated in the MOU and proceed to arbitration.
- Q. TCCWD has a contract with the City to provide SWP surface water yearly with a provision that enough imported water is available.
- R. TCCWD has provided to the City, on a five-year average, 217.75 AF of water:

|      |           |
|------|-----------|
| 2018 | 220.29 AF |
| 2019 | 193.87 AF |
| 2020 | 206.08 AF |
| 2021 | 234.59 AF |
| 2022 | 233.94 AF |
- S. The City uses untreated SWP water for irrigation of Tehachapi Unified School District campuses.

- T. TCCWD is complying with all the recommendations cited in the 2018-2019 Kern County Grand Jury Final report. They are still updating information into the Geographic Information System (GIS) to better manage/organize maintenance and depreciation as needed.

## **FINDINGS:**

- F1. Transparency is an important part of governance. To ease differences, when TCCWD forms an Ad Hoc Water Priority Committee for writing the Water Ordinance, the public would be better served with the inclusion of all stakeholders.
- F2. Instead of Ad Hoc committees, if TCCWD formed two permanent standing committees, one for Operations and another for Finances, ongoing reports would be made to the Board.
- F3. TCCWD, in their function as Watermaster, stated they are a water use agency not a land use agency. They resist residential development based on the additional water needed. Often this leads to disputes and/or litigation which delays or totally stops some projects.
- F4. Through interviews with TCCWD Board members, it appeared that they had incomplete knowledge of some of the issues on which they were asked to vote.
- F5. A TCCWD Board member is perceived to favor agricultural interests for water allotment decisions, causing more consternation for their municipal and industrial customers.
- F6. An agricultural enterprise leases some of their land from the family of a TCCWD Board member. When matters regarding this business are brought before the Board, recusal is utilized. However, remaining in the room as a spectator creates an appearance of conflict of interest.
- F7. In the spirit of the May 2020 MOU signed by both parties, treating the wastewater of the City of Tehachapi to tertiary quality is a responsible way to mitigate drought conditions, especially since SWP water allotments are often in flux. Recycled water recharging is a reliable, economically feasible, and environmentally sound means to expand available water resources and reduce the demand on freshwater systems. The public is best served by the parties honoring all aspects of the MOU.

## **COMMENTS:**

The 2022-2023 Kern County Grand Jury would like to thank all parties interviewed for their help and information contributing to this report

## RECOMMENDATIONS

- R1. The Board of TCCWD should replace the Ad Hoc Water Priority Committee with a permanent Standing Water Committee, and include representatives of Stallion Springs CSD, the City of Tehachapi, Golden Hills CSD, Bear Valley Springs CSD, as well as representatives of agricultural interests and other customers, to create future Water Ordinances by November 1, 2023. (Finding 1)
- R2. TCCWD should form a permanent standing committee for Operations and Budget/Financials respectively by November 1, 2023. (Finding 2)
- R3. By November 1, 2023, the TCCWD Board should adhere to rules and policies entered into by signed MOUs. (Finding 7)
- R4. Board members of TCCWD should receive training and briefings regarding agenda items being considered for action and/or voting by January 1, 2024. (Finding 4)

## **NOTES:**

- The TCCWD and the City of Tehachapi should post a copy of this report where it will be available for public review.
- Persons wishing to receive an email notification of newly released reports may sign up at: [www.kerncounty.com/grandjury](http://www.kerncounty.com/grandjury)
- Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: [www.kerncounty.com/grandjury](http://www.kerncounty.com/grandjury)

## **RESPONSE DEADLINES:**

- **REQUIRED WITHIN 90 DAYS FROM:**
  - **TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT**
- **REQUESTED WITHIN 90 DAYS FROM:**
  - **THE CITY OF TEHACHAPI**
- **REQUESTED WITHIN 90 DAYS FROM:**
  - **GOLDEN HILLS COMMUNITY SERVICE DISTRICT**

## **RESPONSES ARE REQUIRED PURSUANT TO PENAL CODE §§933(c) AND 933.05 WITHIN 90 DAYS TO:**

- **PRESIDING JUDGE**  
**KERN COUNTY SUPERIOR COURT**  
**1415 TRUXTUN AVENUE, SUITE 212**  
**BAKERSFIELD, CA 93301**
- **FOREPERSON**  
**KERN COUNTY GRAND JURY**  
**1415 TRUXTUN AVENUE, SUITE 600**  
**BAKERSFIELD, CA 93301**

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| Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury. |
|---|

## **GLOSSARY:**

Ad Hoc: Defined as temporary. An Ad Hoc committee is usually formed to do one task one time only.

Brown Act: The Ralph M. Brown Act is a California law that guarantees the public's right to attend and participate in meetings of local legislative bodies. Per California Government Code §54950 *et seq.*, it is an act of the California State Legislation authored by Assembly member Ralph M. Brown and passed in 1952.

Community Service District (CSD): A Community Service District is a form of independent local government used to provide services in unincorporated areas of a county. A CSD is authorized to provide a wide variety of services including water, garbage collection, waste-water management, security, fire protection, public recreation, street lighting, mosquito abatement, conversion of utilities to underground, library services, ambulance service, and graffiti abatement.

Lead Auditor Partner: An audit partner is a full partner at an accounting firm with a financial stake in the company.

Local Agency Formation Commission (LAFCo): LAFCo is in all 58 California Counties. LAFCo is responsible for reviewing and approving proposed jurisdictional boundary changes, including annexations and detachments of territory to and/or from cities and special districts, incorporation of new cities; formation of new special districts; and consolidations, mergers, and dissolution of existing entities. Additionally, they also promote orderly growth, discourage urban sprawl, preserve agriculture and open spaces, encourage efficient, sustainable public services, and consider regional housing needs, adequate water and other services.

Memorandum of Understanding (MOU): A Memorandum of Understanding is a type of agreement between two or more parties. It expresses a convergence of will between the parties, indicating an intended common line of action in good faith.

Ordinance: An ordinance is a law or decree by a municipality, i.e., a local law.

Standing Committee: A committee formed to do a job and meet regularly, like financials, logistics, operations, maintenance, creating rules, laws, policies, ordinances, ethics, human resources, etc.

State Water Project (SWP): The State Water Project is the nation's largest state-built water and power development conveyance system. The primary purpose of the SWP is to provide a water supply and delivery system to State Water Project Contractors that in turn distribute water across California.



Tertiary Quality Water: Reclaimed water undergoes tertiary treatment, which involves a variety of processes to purify the water. After tertiary water treatment, the water can be pure enough to drink; it is potable quality water.

Note: Prior to tertiary water treatment, wastewater typically goes through primary then secondary treatment processes:

- In primary treatment, all that is done is to put the water in large tanks or ponds to let the solid material, called sludge, either float to the surface or settle to the bottom. The water is then usually chlorinated, and the sludge is treated and disposed of in various ways.
- Most wastewater undergoes secondary treatment as well as primary treatment. The most common method is to sprinkle or trickle the water over a bed of sand or gravel. As the water filters downward, it is put into contact with oxygen and microorganisms, which work together to break down the organic matter in the water. The water is then usually chlorinated before it is released into the environment.

Watermaster: The Watermaster Program ensures that water is allocated according to established water rights as determined by court adjudication or agreement by an unbiased, qualified person, thereby reducing water rights court litigation, civil lawsuits, and law enforcement workloads.

**OTEHACHAPI**



July 27, 2023

Sent Via U.S. Mail and E-

mail Presiding Judge

Kern County Superior Court  
1415 Truxtun Avenue, Suite 212  
Bakersfield, CA 93301

Foreperson

Kern County Grand Jury  
1415 Truxtun Avenue, Suite 600  
Bakersfield, CA 93301

Re: Response to Tehachapi-Cummings CWD Grand Jury Report

On June 1, 2023, the Kern County Grand Jury published a report (Report) regarding the Tehachapi-Cummings County Water District (TCCWD). The Report requested responses from the city of Tehachapi (City) and Golden Hills Community Services District (Golden Hills). This is the joint response of the City and Golden Hills.

### **General Comments**

The City and Golden Hills each provide water service for municipal and industrial (M&I) purposes to residents and property owners within their respective boundaries. Some of that water is groundwater. The balance is imported State Water Project (SWP) water supplied by TCCWD. The City and Golden Hills each hold a substantially similar M&I contract with TCCWD for SWP water. Because the volume of groundwater the City and Golden Hills may extract each year is limited under the Judgment governing the adjudicated Tehachapi Basin, the City and Golden Hills must increasingly turn to imported SWP water to serve the demands of their residents and property owners.

SWP water is a finite supply with highly variable availability. For example, in 2022 the SWP made available only 5 percent of contracted amounts due to the then ongoing extreme drought. However, just one year later in 2023, the SWP is making available 100 percent of contracted amounts due to the extreme wet hydrology. This means, of course, in some years there

should be enough SWP water for TCCWD to satisfy all of the demands of its customers and, in other years, TCCWD must allocate the available SWP water supply among those customers.

TCCWD's participation in the SWP is funded partly by an ad valorem tax and partly by sales of the available SWP water. TCCWD's ad valorem tax revenue in 2021 was \$8.9 million. Of that amount, City property owners paid 16 percent and Golden Hills property owners paid 15 percent. Agricultural property owners paid 1 percent.

But the allocation of available SWP water by TCCWD does not track with that funding. TCCWD's draft 2020 Regional Urban Water Management Plan projects an allocation of SWP water of only 4 percent each to the City and Golden Hills, which is less than our requests. And projects an allocation of *66 percent to agricultural water users*. TCCWD's allocation of the available imported SWP water is skewed significantly toward agricultural uses and away from M&I uses. There should be no misunderstanding: TCCWD is an agricultural water district supported in large part by M&I taxpayers.

M&I water in the Tehachapi Basin supports not only state policy promoting additional housing but also the economic base of the entire Tehachapi region. With the available groundwater rightly limited by the Judgment and the need to plan for their futures, the City and Golden Hills began looking more closely at the practices of TCCWD in its allocation of available SWP water. What we found was a disturbing process lacking transparency and geared toward ensuring that one sector (and within that sector, one private farming enterprise) will receive the lion's share of available SWP water at the expense, in part, of City and Golden Hills residents and property owners.

The City and Golden Hills began questioning TCCWD regarding its practices over two years ago. Since that time, we have been ignored, publicly rebuked and ridiculed, and even sued (in the case of the City) by TCCWD's Board of Directors. But we have been tasked by our constituents to protect their interests and futures, and that is what we will do.

With that background in mind we will now respond to the facts, findings, and recommendations of the Report.

### **Discussion of Facts**

D. "Due to the length of the drought, SWP had previously reduced their yearly water allocations for 2021 and 2022 to 5% of their contracted amount. At the time of this report, and because of the recent tremendous increase in rainfall, SWP has raised their water allotment to 100% (as of April 2023) for all the California Water Districts. Due to the length of the drought, TCCWD had to reduce agriculture water allotment by approximately 40% from previous years. This reduction does not apply to municipal and industrial customers."

**Response:** During the drought, TCCWD did not provide the City and Golden Hills with all of the SWP water we requested. In fact, the City and Golden Hills received very little of our requested SWP water. Therefore, it is not accurate to state that "This reduction does not apply to municipal and industrial customers: M&I customers saw much of our requests go unfilled so that TCCWD could provide thousands of acre-feet of SWP water to agriculture and one private farming enterprise in particular. TCCWD used its water priority Ordinance to promote agricultural land uses over current year M&I demands.

- J. "Interviews with TCCWD Board members revealed they are considering a five-year plan for water allotment management, rather than a yearly review."

**Response:** This has not been publicly stated at any TCCWD Board of Directors meeting. While the City and Golden Hills have repeatedly asked the TCCWD Board to adopt a longer-term strategy for its SWP water supply, a majority of the Board of Directors has consistently held firm to the annual approach of allocating TCCWD's SWP water. If the TCCWD Board is, in fact, considering a "five-year plan," then those considerations must be occurring improperly in closed session because no such representation has been made in open session with an ability for public input.

These Board members might be referring to the 2020 Regional Urban Water Management Plan (RUWMP) and confusing that document with the water priority Ordinance. But the 2020 RUWMP is three years delinquent which has adversely impacted the ability of M&I customers to plan—a result some members of the TCCWD Board no doubt encourage as part of their effort to stifle development of needed housing.

- K. "In order to manage water distribution in these insecure drought times, TCCWD issues Ordinances entitled: "Establishing District Water Sale Priorities in the Event of a Shortage." The Ordinance is written by an Ad Hoc committee, consisting of board members and staff, when drought conditions are anticipated. The Water Ordinance Ad Hoc Committee explains how they plan to meet any envisioned emergency/drought caused by a reduction in the SWP water allotment. However, they do not include in their planning or meetings the water recipients involved/affected. They create each Ordinance without comments from recipients, although this year, due to public pressure, they had several round table discussions prior to voting on this year's Ordinance."

**Response:** Before conducting a roundtable discussion regarding this year's Ordinance, the President of the TCCWD Board of Directors initially attempted to dispense with even TCCWD's customary practice of conducting a noticed hearing for the Ordinance and, instead, pushed the Board to adopt the Ordinance without conducting a hearing (and the customary published notice). Representatives of the City and Golden Hills vociferously

objected and the Board rightly voted against the President's intended approach. Only after that occurred did TCCWD hold a roundtable discussion with stakeholders.

- L. "TCCWD and the City of Tehachapi entered into a Memorandum of Understanding (MOU) to recharge the City's wastewater. The City would like to upgrade its treatment process to add tertiary filtration and disinfection to their own wastewater, then pipe it into the flood control basin called Blackburn Dam, owned by TCCWD. Signed by both parties in May 2020, the MOU agreement allowed the City to claim 94% of the recharged water delivered to the basin (6% reduction is due to evapotranspiration loss factor), but later TCCWD attempted to unilaterally alter the MOU terms by lowering the amount to half of the recharged/reclaimed water. TCCWD publicly stated that they were collaborating with the City, but the City does not agree with this assessment."

**Response:** The City does not believe TCCWD is collaborating with the City to achieve a solution for TCCWD's concern-which was raised for the first time before the figurative ink was dry on the MOU.

Section 3.02 of the MOU, in relevant part, provides:

**"3.02. Recharge Credits.** The initial recharge rate is set at 0.94 A/F for each 1.00 A/F of Recharge Water delivered by City to the Point of Delivery based on an estimated six percent (6%) evapotranspiration loss factor. The recharge rate may be adjusted up or down during the Term, based on sound scientific evidence to ensure that City receives a credit for the actual amount of water augmenting the Basin groundwater, less the Leave-Behind. If, after considering that scientific evidence, District and City cannot agree on the appropriate adjusted loss factor, the Parties shall attempt to resolve the dispute pursuant to Section 9.01 of this MOU. . ."

The purpose of any adjustment, up or down, to the recharge rate is to reflect, based on sound scientific evidence, any different *physical* percolation of recharged effluent than that agreed to in the MOU. The City only wants to receive credit for "the actual amount of water augmenting the Basin." TCCWD has instead attempted to use this provision to unilaterally adjust the recharge rate based on its *legal* conclusion (arrived at after signing the MOU) that the treated effluent, once returned to the aquifer even for storage, does not belong to the City. A drastic change like the one being pursued by TCCWD should have been addressed in the MOU because it likely may lead to the end of the entire project.

The City, together with Golden Hills, believes this project is a benefit to the entire Tehachapi Basin. Our hope is that TCCWD will reengage with the City with the same attention and effort TCCWD has shown in defense of its skewed allocation of the available SWP water supply for one private farming enterprise-which is owned by an out-of-state

investment firm. The City's project could be a win-win for all local water users. Unfortunately, TCCWD's Board of Directors has instead chosen to thwart this renewable supply of potable water as part of its ongoing effort to improperly engage in land use planning and stifle development of needed housing.

- P. "Legal counsel for the State Water Resource Board recommended that the MOU parties follow the guidelines stated in the MOU and proceed to arbitration."

**Response:** We have one point of correction regarding this factual statement. Section 9.01 of the MOU provides:

**9.01. Dispute Resolution.** In the event of a dispute regarding interpretation, implementation or enforcement of this MOU, the Parties shall first attempt to resolve the dispute before a mutually acceptable mediator or other independent third party intermediary, as appropriate, prior to commencement of any Superior Court action or proceeding. The fees and expenses of the intermediary shall be shared equally by the Parties."

The MOU calls for *mediation* rather than arbitration. Otherwise, we have no disagreement with the reported statement by an attorney with the State Water Resources Control Board.

- Q. "TCCWD has a contract with the City to provide SWP surface water yearly with a provision that enough imported water is available."

**Response:** The City and Golden Hills each hold a substantially similar "Term M&I Agreement" with TCCWD. Those agreements contain many provisions, some of which are disputed between the City and Golden Hills on the one hand, and TCCWD on the other hand. The obligation of TCCWD to provide imported SWP water under its Term M&I Agreements is certainly subject to the availability of SWP water from the Department of Water Resources. The City and Golden Hills disagree that, when SWP water is available to TCCWD, it then has unfettered discretion regarding allocation of that available SWP water among its customers.

### Findings

- F 1. Transparency is an important part of governance. To ease differences, when TCCWD forms an Ad Hoc Water Priority Committee for writing the Water Ordinance, the public would be better served with the inclusion of all stakeholders.

**Response:** We agree. The City and Golden Hills have advocated for direct participation with TCCWD's ad hoc committee since 2021. Additionally, this has been, in part, the subject of at least two letters from us to TCCWD (one dated March 30 2022 and the other dated January 4, 2023), both of which are enclosed.

- F2. Instead of Ad Hoc committees, if TCCWD formed two permanent standing committees, one for Operations and another for Finances, ongoing reports would be made to the Board.

**Response :** We agree. The letters identified in response to Finding 1 above also address the appropriateness of and request, a standing committee instead of an ad hoc committee.

- F3. TCCWD, in their function as Watermaster, stated they are a water use agency not a land use agency. They resist residential development based on the additional water needed. Often this leads to disputes and/or litigation which delays or totally stops some projects.

**Response:** We agree. Members of the TCCWD Board of Directors have repeatedly stated during Board discussion of SWP water allocations and priorities their desire to maintain an agricultural environment for the Tehachapi region. The Board President ran his most recent reelection campaign based on a no-growth platform, even at the expense of needed housing. The litmus test for the Board's selection of a replacement Director several months ago was the length of time applicants have lived in the area rather than expertise in water. That suggested a plan to "stack the Board" with followers of historical land use policy. Having attended nearly every TCCWD Board meeting over the last two years and observing the Board's discussions regarding water allocations, we have concluded that some members of the Board are biased and using TCCWD to advance their personal land use agendas. With the increasing demand for housing particularly within the City, the persistence of this unauthorized land use agenda over water-based policy will most likely lead to ongoing disputes and litigation.

- F4. Through interviews with TCCWD Board members, it appeared that they had incomplete knowledge of some of the issues on which they were asked to vote.

**Response:** We were, of course, not present for any interviews with members of the TCCWD Board of Directors. However, we have ongoing concerns that some Directors lack sufficient understanding of issues and awareness of facts, which has led them to simply follow the direction of the Board President instead of fulfilling their fiduciary duty as a public officials to serve the public. This is made worse by the biases and stated personal motivations regarding matters unrelated to water policy described in our response to Finding 3 above.

- FS. A TCCWD Board member is perceived to favor agricultural interests for water allotment decisions, causing more consternation for their municipal and industrial customers.

**Response:** We agree. The President of the TCCWD Board of Directors has repeatedly demonstrated his bias against M&I interests and made clear his desire to maintain agriculture in the Tehachapi area over the needs of M&I customers. Without any formal inquiry or study, he has concluded that TCCWD must allocate the lion's share of available SWP water to agricultural interests in the Cummings Valley (and predominantly one in particular) to "feed the world." The City and Golden Hills understand the need to balance competing interests, but the future landscape of Tehachapi has been steadily shifting



toward M&I interests and will continue to do so. For the greater good of the Community at large SWP water allocation should reflect this change. Importantly, however, we have not been "met in the middle."

- F6. An agricultural enterprise leases some of their land from the family of a TCCWD Board member. When matters regarding this business are brought before the Board, recusal is utilized. However, remaining in the room as a spectator creates an appearance of conflict of interest.

**Response:** We agree and disagree with portions of this finding. The President of the TCCWD Board of Directors consistently reports on his annual Form 700 Statement of Economic Interests lease(s) of significant ground to 'Grimmway Farms LLC,.. which serves as a source of income to an entity he owns and manages. A copy of his 2021 Form 700 is enclosed where he discloses this interest on Schedule A-2. However, the Board President does not recuse himself from discussions regarding allocations of water favoring this source of income. He instead uses the dais and his gavel to commandeer public debate and promote prioritization of SWP water for agricultural use benefitting his own economic interests. And he makes every effort (e.g., attempting to dispense with the long-held practice of conducting a noticed public hearing for the water priority Ordinance) to ensure that this out-of-state private agricultural enterprise is allocated SWP water at the expense of local M&I customers without full public input. Moreover the Board President appoints himself at each opportunity to the ongoing ad hoc committee to develop the water priority Ordinance behind closed doors.

While the Board President recused himself on one occasion from an issue affecting one of his properties, he remained in the Boardroom creating, at a minimum an appearance of impropriety-particularly in light of his ongoing insistence to participate in other matters affecting one of his sources of income.

- F7. In the spirit of the May 2020 MOU signed by both parties, treating the wastewater of the City of Tehachapi to tertiary quality is a responsible way to mitigate drought conditions, especially since SWP water allotments are often in flux. Recycled water recharging is a reliable, economically feasible, and environmentally sound means to expand available water resources and reduce the demand on freshwater systems. The public is best served by the parties honoring all aspects of the MOU.

**Response:** We agree. The City has invested significantly in the development of the project described in the MOU for the reasons explained in this finding.

### Recommendations

- R I . The Board of TCCWD should replace the Ad Hoc Water Priority Committee with a permanent Standing Water Committee, and include representatives of Stallion Springs CSD, the City of Tehachapi, Golden Hills CSD, Bear Valley Springs CSD, as well as

representatives of agricultural interests and other customers, to create future Water Ordinances by November 1, 2023. (Finding 1)

**Response:** We agree and have repeatedly asked TCCWD's Board of Directors, without success, for replacement of the ad hoc committee with a standing committee. This is an ongoing exercise and the committee assigned to undertake it is not "temporary" and "formed to do one task one time only" as noted in the Report's Glossary regarding an ad hoc committee. The City and Golden Hills appreciate the understanding of this issue and its importance to good government expressed in the Report. Given the Board President's biases and ongoing efforts to favor his own interests over those of the public, we believe this recommendation should go one step farther and recommend he recuse himself from all decision-making regarding water allocations and priorities (and specifically decisions affecting Grimmway Farms LLC) so TCCWD can restore public trust. This includes his not serving on the recommended Standing Water Committee.

While we do not expect agreement with TCCWD on every issue, we expect stakeholder confidence in the process. At times the TCCWD Board of Directors appears to be run as a private concern rather than what it is; a public agency funded in large part with taxpayer dollars. Open and public participation with stakeholders when setting public policy is preferred over its development behind closed doors by a select few with biases and perceived, if not actual, conflicts of interest.

- R2. TCCWD should form a permanent standing committee for Operations and Budget/Financials respectively by November 1, 2023. (Finding 2)

**Response:** We agree.

An item that should be promptly addressed by the standing committee is how TCCWD funds its participation in the SWP. There is at least a perception that TCCWD uses taxpayer money to subsidize SWP water made available to private agricultural interests. Those concerns will continue to fester until they can be addressed openly and publicly with a standing committee.

- R3. By November 1, 2023, the TCCWD Board should adhere to rules and policies entered into by signed MOUs. (Finding 7)

**Response:** We agree. The City stands ready to meet with TCCWD to work through this issue. The City is also prepared to pursue mediation as an agreed dispute resolution process under the MOU.

- R4. Board members of TCCWD should receive training and briefings regarding agenda items being considered for action and/or voting by January 1, 2024. (Finding 4)

**Response:** We agree. This training and briefing will hopefully lead to greater independence by individual members of TCCWD's Board of Directors and an ability to

question the status quo as times are changing. The Board President appoints himself to the ad hoc committees affecting water use (e.g., water priority Ordinance, City's indirect potable recharge project, and Sage Ranch development litigation). A better informed Board of Directors will allow other Directors to serve on TCCWD's committees so that TCCWD's policies and decisions are not dictated by one person with biases and perceived, if not actual, conflicts of interest.

Thank you for the opportunity to provide responses to the Report. We value the role the Grand Jury serves in the process of governing. We have maintained since the beginning of our own investigation into the practices of TCCWD that we three agencies have a common goal, which is serving the stakeholders in the Tehachapi region with sound water management policy. It does none of our constituents any good to be constantly at odds. While we have made recommendations to TCCWD similar to those of the Grand Jury in the Report without success, we are hopeful that your efforts fare better.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Chris Carlson", written over a horizontal line.A small, handwritten signature in blue ink, appearing to read "Chris", written above a horizontal line.

Chris Carlson, General Manager

Enclosures



**Tehachapi-Cummings  
County Water District**  
*Our Water • Our Future*

**Directors:**  
John M. Ables  
Jonathan Hall  
Joseph B. Sasia  
Robert W. Schultz  
Rick Zanutto

**Officers:**  
Robert W. Schultz, *President*  
Jonathan Hall, *Vice President*  
Thomas P. Neisler, *General Manager*  
Catherine Adams, *Secretary*  
LaMinda Madenwald, *Treasurer*

August 17, 2023

Presiding Judge  
Kern County Superior Court  
1415 Truxtun Avenue, Suite 600  
Bakersfield, CA 93301

Foreperson  
Kern County Grand Jury  
1415 Truxtun Avenue, Suite 600  
Bakersfield, CA 93301

**RE: RESPONSE TO GRAND JURY REPORT – TEHACHAPI-CUMMINGS  
COUNTY WATER DISTRICT**

Your Honor and Foreperson:

Tehachapi-Cummings County Water District (**TCCWD or District**) appreciates the efforts of the Grand Jury. TCCWD also appreciates the opportunity to respond to the Grand Jury Report of the District dated June 1, 2023 (**Report**).

The California Supreme Court recognized over 55 years ago that “[t]he scope and technical complexity of issues concerning water resource management are unequalled by virtually any other type of activity presented to the courts.” (*Antelope Valley Groundwater Cases* (2021) 62 Cal.App.5th 992, 999; quoting *Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal.2d 132, 140.) TCCWD recognizes these challenges and the importance of making sound decisions and recommendations based on facts.

The City of Tehachapi (**City**) informed the District many months ago before the Sage Ranch litigation that the City would bring considerable political pressure to bear if the District did not accede to the City’s water demands, including letter writing campaigns and threats of unwarranted complaints to the Fair Political Practices Commission. City officials have recently been quoted in the media as declaring that the City is “drought proof.” Given increasing demands, the history of drought and diminishing State Water Project supplies, such reckless statements undermine local and statewide conservation efforts and the public perception of the District’s management actions. The District will not be deterred by threats and continues to be guided by facts, science, its Mission Statement and sound water management practices for the benefit of all stakeholders within its service area.

TCCWD will address certain factual errors shown in underline in Part I. TCCWD will address certain findings in Part II, and we will address the recommendations noted in the Report in Part III.

**I. CORRECTION OF FACTS**

**1. SUMMARY AND FACT A: BACKGROUND**

“Tehachapi-Cummings County Water District (TCCWD) is the Watermaster for the City of Tehachapi (City), Golden Hills Community Service District (GHCSd) and several other districts in the Tehachapi area. They are unique in that they are the largest water pumping district area-wise in California for the last 50 years. TCCWD is in compliance



with State rules for water usage and attempts to manage water efficiently and fairly. They have adjudicated water rights over three basins and during drought years create ordinances to prioritize SWP water allotment to stakeholders. Considering the drought history in California, every water district in the State is searching for ways to meet the challenges faced in supplying sufficient water to their populace. TCCWD is committed to having the water necessary to serve all customers as Watermaster.”

**Response:** TCCWD does not have any adjudicated water rights in any of the three basins but does claim return flows from imported water. TCCWD has two distinct but related water management roles. TCCWD is a County Water District and contracts with the Kern County Water Agency for State Water Project (SWP) water, which the District delivers into its service area for distribution to its customers. Additionally, TCCWD has been appointed by the Kern County Superior Court as Watermaster for three adjudicated groundwater basins within its territory (Tehachapi Basin, Brite Basin and Cummings Basin). TCCWD has a duty as Watermaster to administer the judgments and sustainably manage these basins for the benefit of all water rights holders and users.

The Kern County Superior Court entered judgments over three groundwater basins within the boundaries of TCCWD as follows:

- **Cummings Basin** – Kern County Superior Court Case No. 97209, recorded March 6, 1972, and amended and restated January 5, 2021.
- **Tehachapi Basin**- Kern County Superior Court Case No. 97210, recorded March 23, 1971, and amended November 20, 1973.
- **Brite Basin** – Kern County Superior Court Case No. 97211, recorded December 9, 1970.

As Watermaster, TCCWD is charged by the court with administering water rights under the court’s judgments.

Importantly, the native waters of the three basins are distinct and separate from the SWP supplies. Native groundwaters are governed by the terms of the Judgments, and Watermaster rules and regulations. SWP supplies are governed by TCCWD’s rules and regulations relating to surface waters, and customer agreements, including Term M&I Agreements with its water purveyor customers.

The City and Golden Hills Community Service District (**Golden Hills**) own and lease native water rights and pump native water within the Tehachapi Basin and are therefore subject to the Tehachapi Basin judgment and Watermaster oversight. In addition to these native rights, the City and Golden Hills are water purveyors within the District and purchase SWP water from the District pursuant to TCCWD’s rules and regulations and Term M&I Agreements.

The District does not believe that it is “unique in that they are the largest water pumping district area-wise in California for the last 50 years.” The District does believe it pumps more SWP water (up to 10,000 AFY) at greater elevation (over 3,200 vertical feet) than any other public water district in California.

## 2. **FACT C: BRITE BASIN.**

“Brite Basin is an above ground reservoir and receives water from the State Water Project through Kern County Water Association (KCWA), and groundwater is stored in the other two basins. TCCWD has had for several years a planned approach to managing water and its distribution.”



**Response:** Brite Basin is the name of the adjudicated basin, not the reservoir. The reservoir is named J.C. Jacobsen Reservoir and is commonly referred to as Brite Lake. In addition to SWP water, native water is also collected from surface and sub-surface sources and stored in the reservoir.

TCCWD has had a planned approach to managing and distributing water *since its formation*. In fact, that role is one of the primary reasons the District was formed.

**3. FACT G: FINANCIAL REPORTING.**

“The Annual Comprehensive Financial Report for Fiscal Year 2021-2022 showed a continued solvent operation. TCCWD was awarded, in June 2020, a Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association.”

**Response:** TCCWD has been awarded the Government Finance Officers Association’s “Certificate of Achievement for Excellence in Financial Reporting” every year since 2012 (i.e., eleven consecutive years).

**4. FACT H: AUDITING.**

“According to California Government Code §12410.6(b), local agencies shall not employ a public accounting firm for more than six consecutive years, unless this requirement is waived by the State Controller. According to TCCWD staff, the auditing contract has been put out for bid to other firms. However, the same firm has been TCCWD’s auditor since at least 2015, with only a change in the actual Lead Auditor Partner (having primary responsibility for the audit) every five years. Although some stakeholders were concerned about using the same auditing firm for more than the prescribed time limit, the Grand Jury confirmed they are in compliance with the law.”

**Response:** Government Code section 12410.6(b) focuses on the role of the auditor, not the firm and prohibits the agency from engaging an audit firm “**if the lead audit partner** or coordinating audit partner having primary responsibility for the audit, or the audit partner responsible for reviewing the audit, has performed audit services for that local agency for six consecutive fiscal years.” The District has not used the same lead auditor for more than six consecutive years. The Grand Jury Report confirms that the District is in compliance with the law. TCCWD has complied with this statute since it was enacted in FY 2013-14.

**5. FACT J: FIVE YEAR PLAN.**

“Interviews with TCCWD Board members revealed they are considering a five-year plan for water allotment management, rather than a yearly review.”

**Response:** While the District is not privy to the interviews, neither the TCCWD Board, nor any committee is considering a five-year plan for water allotment management. There have been past requests that the District implement a long term Water Shortage Priority Ordinance, but there are no ongoing discussions.

**6. FACT K: WATER SHORTAGE PRIORITY ORDINANCE.**

“In order to manage water distribution in these insecure drought times, TCCWD issues Ordinances entitled: “Establishing District Water Sale Priorities in the Event of a Shortage.” The Ordinance is written by an Ad Hoc committee, consisting of board members and staff, when drought conditions are anticipated. The Water Ordinance Ad Hoc Committee explains how they plan to meet any envisioned emergency/drought caused by a reduction in the SWP water allotment. However, they do not include in their planning or meetings the water recipients involved/affected. They create each Ordinance without comments from recipients, although this



year, due to public pressure, they had several round table discussions prior to voting on this year's Ordinance."

**Response:** There have been many misunderstandings and misstatements by the City and Golden Hills regarding the Water Shortage Priority Ordinance that the District adopts from time to time and the interplay between the Water Shortage Priority Ordinance and the banked water reserve requirements in the Term M&I Agreements between the District and the City and Golden Hills.

The District has historically managed supplies to ensure a reliable supply for existing uses and users over new uses and users. In times of water shortage, the District's first obligation is to its existing users and uses. The rationale is set forth in the recitals to the Ordinance. The District is well aware of the tension created by the City's desire for growth relying on imported water and our commitment to existing uses and users. Because of this tension the District has repeatedly advised the City and Golden Hills to acquire additional adjudicated rights in the Tehachapi Basin. The City and Golden Hills recently began acting on that advice and have acquired additional water rights to increase their ability to serve current demand. Because TCCWD manages a shrinking, variable resource; in times of shortage, the District's ability to commit imported water supplies to new users or uses, without taking water from existing users or uses, is limited.

When District staff anticipates that the imported water supply will be inadequate to meet demand in the upcoming year, staff drafts an ordinance to establish delivery priorities. This ordinance is typically titled "An Ordinance of the Tehachapi-Cummings County Water District Establishing District Water Sale Priorities in the Event of a Shortage" (**Water Shortage Priority Ordinance**). Such an ordinance was first adopted in 1977, then in 1999, 2009, 2014, 2015, 2017, 2018, 2019, 2020, 2021, 2022 and 2023. This is 12 years out of 26 or less than 50% of the time. The ordinance process is used to ensure the public's ability to be notified of and provide input on the anticipated action. Publication of the proposed action and a public hearing are required prior to the adoption of an ordinance.

Prior to 2021, no comments on the Water Shortage Priority Ordinance were received from any M&I interests, including the City and Golden Hills. In years of anticipated shortage, whether or not an ordinance was adopted, TCCWD conducted planning meetings with our agricultural customers. The purpose of these meetings was to discuss water supply, deliveries, schedules, coordination and any other issues our customers would raise. Such coordination is required for ag customers due to the nature of their use and advanced planning requirements.

M&I customers such as the City and Golden Hills have never historically been subject to current year restrictions and do not have the peaks in their demand that ag customers experience. Thus, no such meetings were requested or required. The first comments received from any M&I customer regarding the Water Priority Ordinance were received from the City of Tehachapi in a letter dated March 15, 2021. An email from Golden Hills was received on March 17, 2021. Subsequently, the District began ongoing and extensive efforts to engage all interested parties in the District's Water Shortage Priority Ordinance process. These efforts are summarized below by calendar year:

(see Table next page)



| Attachment | Date     | Description  | Comments                             |
|------------|----------|--|--------------------------------------|
|            |          |  |                                      |
|            |          | <b>2021</b>  |                                      |
| A          | 03/15/21 | Letter from City Tehachapi                               |                                      |
| B          | 03/16/21 | Email from Golden Hills                                  |                                      |
| CC         | 03/17/21 | Minutes, Reg Board Mtg                                   | Item tabled until April RBM          |
| C          | 04/08/21 | Sign-In Sheet, Comm Mtg                                  | All agencies present (BVCS on phone) |
| D          | 04/17/21 | Staff Report, Reg Board Mtg                              | Ordinance 2021-1 Adopted             |
| E          | 05/19/21 | Staff Report, Reg Board Mtg                              | Public Comment Procedures Adopted    |
|            |          |  |                                      |
|            |          | <b>2022</b>  |                                      |
| F          | 03/09/22 | Minutes, Spc Board Mtg                                   | Presentation by City of Tehachapi    |
| G          | 03/09/22 | Sign-In Sheet, Spc Board Mtg                             | City and Golden Hills present        |
| H          | 03/16/22 | Staff Report, Reg Board Mtg                              | City and Golden Hills present        |
| I          | 03/16/22 | Minutes, Reg Board Mtg                                   | Ordinance discussed, not adopted     |
| J          | 03/28/22 | Minutes, Spc Board Mtg                                   | Public Workshop on ordinance         |
| K          | 03/28/22 | Sign-In Sheet, Spc Board Mtg                             | City and Golden Hills present        |
| L          | 03/30/22 | Letter, City and Golden Hills                            |                                      |
| M          | 03/30/22 | Minutes, Spc Board Mtg                                   | Ordinance language approved          |
| N          | 03/30/22 | Sign-In Sheet, Spc Board Mtg                             | City and Golden Hills present        |
| O          | 04/20/22 | Staff Report, Reg Board Mtg                              | City and Golden Hills present        |
| P          | 04/20/22 | Minutes, Reg Board Mtg                                   | Ordinance 2022-1 adopted             |
| Q          | 05/18/22 | Staff Report, Reg Board Mtg                              | City and Golden Hills present        |
| R          | 05/18/22 | Minutes, Reg Board Mtg                                   | Water Priority Procedures            |
|            |          |  |                                      |
|            |          | <b>2023</b>  |                                      |
| S          | 01/09/23 | Minutes, Spc Board Mtg                                   | City and Golden Hills present        |
| T          | 01/09/23 | Sign-In Sheet, Spc Board Mtg                             |                                      |
| U          | 01/04/23 | Letter, City and Golden Hills                            |                                      |
| V          | 01/18/23 | Staff Report, Reg Board Mtg                              | City and Golden Hills present        |
| W          | 01/18/23 | Minutes, Reg Board Mtg                                   | Public Workshop Scheduled            |
| X          | 02/03/23 | Staff Report, Spc Board Mtg                              | City and Golden Hills present        |
| Y          | 02/03/23 | Minutes, Spc Board Mtg                                   | Public Workshop on ordinance         |
| Z          | 02/03/23 | Sign-In Sheet, Spc Board Mtg                             |                                      |
| AA         | 02/15/23 | Staff Report, Reg Board Mtg                              | City and Golden Hills present        |
| BB         | 02/15/23 | Minutes, Reg Board Mtg                                   | Ordinance 2023-1 adopted             |
|            |          |  |                                      |
|            |          | Indicates Board Meeting with Public Testimony/Discussion |                                      |
|            |          |  |                                      |

This detailed record unequivocally demonstrates that the District provided open and robust opportunities for public comments over multiple years since the ordinance first became an issue. After receiving the first-ever comments on the Water Priority Ordinance from the City and Golden Hills, the District accepted public testimony at four meetings of the full Board. In 2022, the District accepted public testimony at six meetings of the full Board. In 2023, the District accepted public testimony at four meetings of the full Board. The statement that the ordinance is created without comments from



recipients and that discussions were held this year due to public pressure is incorrect considering the record and the representation is unfair to the District. The chief complaint by the City and Golden Hills has been their desire that in years of shortage TCCWD give them a super-priority to all available supplies, for both for current year and recharge for future potential demands, before meeting any agricultural demand. The District has been unwilling to do so. This approach would defeat the very purpose for which the District required the City and Golden Hills to establish banked water reserve accounts – so that in water short years the M&I purveyors have their own banked supplies to call upon. The ongoing objections expressed by the City and Golden Hills are not related to a lack of opportunity to participate, but solely based on their discontent with the Board’s policies.

**7. FACTS L, M, O: MOU REGARDING CITY WASTEWATER.**

“TCCWD and the City of Tehachapi entered into a Memorandum of Understanding (MOU) to recharge the City’s wastewater. The City would like to upgrade its treatment process to add tertiary filtration and disinfection to their own wastewater, then pipe it into the flood control basin called Blackburn Dam, owned by TCCWD. Signed by both parties in May 2020, the MOU agreement allowed the City to claim 94% of the recharged water delivered to the basin (6% reduction is due to evapotranspiration loss factor), but later TCCWD attempted to unilaterally alter the MOU terms by lowering the amount to half of the recharged/reclaimed water. TCCWD publicly stated that they were collaborating with the City, but the City does not agree with this assessment.

“The City has spent about \$750,000 to date preparing the engineering analyses needed to prove the concept of their desired wastewater reclamation is viable. The City performed all initial feasibility analyses, spending approximately \$350,000 before confirming with TCCWD that the recharged water in Blackburn Dam would be new water and available to increase their water supply.

The Grand Jury consulted with the California State Water Resource Board regarding water rights to recharged/reclaimed wastewater. Their legal counsel and water rights experts both confirmed the recharged/reclaimed wastewater belonged 100% to the original owner of the wastewater which would be the City of Tehachapi.”

**Response:** TCCWD has complied with the terms of the MOU and has not altered any of its provisions, which is why the City has not given TCCWD notice of default. (See MOU, § 9.00.) TCCWD stands behind its commitment to credit the City for recharge of tertiary treated wastewater “augmenting the Basin groundwater, less the Leave-Behind.”

- Section 3.02 of the MOU expressly provides that the City’s recharge credit will be adjusted based on “sound scientific evidence to ensure that City receives a credit for the **actual amount of water augmenting the Basin groundwater**, less the Leave-Behind.
- TCCWD has never attempted to unilaterally alter the MOU terms by lowering the amount to half of the recharged/reclaimed water. This claim is unfounded. There is no dispute to arbitrate.
- Water belongs to the State, not the City. (Water Code, § 102.) The City has a right of use during the period the City controls the water, subject to other provisions of the law. (*Id.*)
- The City’s Indirect Potable Recharge Project is still at the concept stage. No environmental clearance has been obtained and no permits have been granted.
- The District has steadfastly supported the City project, and any other project that brings new water supplies to the Tehachapi Basin without harming existing water rights owners and Basin users.

The City owns a wastewater treatment plant and has wastewater discharge permits from the State Water Resources Control Board (**State Board**) for the treatment and disposition of City wastewater.



According to City records, virtually all of the treated water originates as native groundwater. Historically, the City disposed of the water through application of the water to agricultural crops in the Tehachapi Basin or through its waste ponds.

Legal commentators agree that return flows from treatment of native groundwater “arguably should not qualify as developed water independent of the common supply.” (Garner, McGlothlin, Szeptycki, Babbit, Kincaid, *The Sustainable Groundwater Management Act and the Common Law of Groundwater Rights – Finding a Consistent Path Forward for Groundwater Allocation* (2020) 38 J. Envtl. L., 163, 184).

In May of 2020 the District and the City entered into a Memorandum of Understanding (MOU) whereby the City would deliver tertiary treated wastewater into the District’s flood control facility known as the Blackburn Dam for percolation into the Tehachapi Basin and receive a Recharge Credit of .94 AF for each 1.00 AF of water that augments the Basin groundwater, less the leave-behind requirement.: Section 3.02 states in relevant part:

**“The recharge rate may be adjusted up or down during the Term, based on sound scientific evidence to ensure that City receives a credit for the actual amount of water augmenting the Basin groundwater, less the Leave-Behind.”**

Water Code section 1210 provides:

“The owner of a wastewater treatment plant operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive right to the treated wastewater as against anyone who has supplied the water discharged into the waste water collection and treatment system, including a person using water under a water service contract, unless otherwise provided by agreement.”

In Draft Order WR 2001, the State Board denied Victor Valley Wastewater Reclamation Authority’s (Authority) petition to change the point of discharge, place of use, and purpose of use of treated effluent, because the treated wastewater is derived from native groundwater, and the change would reduce the amount water available to other water rights holders in the adjudicated Mojave Basin. (See e.g., Water Code, § 1210.)

The State Board noted that Water Code section 1210 gives the plant operator the exclusive right to the treated wastewater, but expressly provides that this provision does not affect the plant owner’s legal obligations to any legal user of the treated wastewater. According to the State Board, the “purpose of Water Code section 1210 was to encourage water reclamation by clarifying an ambiguity regarding ownership of treated wastewater as between a treatment plant owner and suppliers of the wastewater. As both sections 1210 and 1211 make clear, however, the Legislature did not intend to affect any rights that downstream users may have to the treated wastewater discharge under the common law.” (Draft Order WR 2001, p. 11.)

Thus, the State Board determined that changing the point of discharge would reduce native recharge to the Mojave River, resulting in injury to the objecting parties who will have to either reduce their own groundwater pumping or pay assessments to cover the shortfall.

In Tehachapi, verified waste discharge reports provided by the City to Fugro Engineering, a mutual consultant to TCCWD and the City, revealed that the City produces about 1,000 AF of wastewater



annually, and that about 65% (650 AFY) of the treated effluent percolates to recharge the groundwater basin. The return flows from the native treated effluent are considered part of the safe yield of the Tehachapi Basin. Thus, changing the place of use to Blackburn Dam and giving the City a credit for the return flows from native waters would significantly reduce the water supply to every other water rights holder in the Tehachapi Basin. A modest amount (approx. 29% of the treated effluent or 290 AFY) of “new” water would be generated to augment the existing water supply.

If the District were to ignore the City’s own verified Waste Discharge reports, and provide the City a Recharge Credit of 94% for all wastewater delivered to Blackburn Dam, regardless of the source or its impact on the basin native safe yield, the safe yield would fall by an estimated 11.8%. TCCWD, as Watermaster, cannot support the reclassification of the native groundwater resources for the benefit of the City and to the detriment of all other water rights holders and users. As set forth in the MOU, the City must demonstrate that the recharge augments the groundwater supply. Otherwise, giving the City full credit for the water delivered, without recognizing the current contribution to the basin’s safe yield, would reduce the pumping allocations for all other water rights holders in the basin, putting the health and safety of the other water rights holders in the basin at risk.

At this point, the City is faced with a purely economic decision of whether to proceed with the project. TCCWD has steadfastly indicated its support for this project or any other project that enhances the basin’s water supply without harming existing users and rights holders. It is unfortunate that the City has chosen to politically pressure TCCWD, rather than follow the science and the terms of the MOU to a fair outcome.

**8. FACT Q: TCCWD CONTRACT WITH CITY**

“TCCWD has a contract with the City to provide SWP surface water yearly with a provision that enough imported water is available.”

**Response.** The statement is accurate, but incomplete. TCCWD has SWP water supply agreements with several water purveyors, including the City. The contracts have a rolling 10-year term. The agreements require the customer to establish a 5-year banked supply for their use to make up the shortfall in years of shortage. TCCWD assumes the obligation to replenish these banked reserves when allocations are available. Under these agreements, TCCWD has provided adequate surface water to meet all of our M&I customers’ demands every year.

**9. FACT S: UNTREATED SWP WATER**

“The City uses untreated SWP water for irrigation of Tehachapi Unified School District campuses.”

**Response.** The statement is accurate, but incomplete. All SWP water is untreated and non-potable. The City uses SWP water to irrigate some TUSD campuses as well as for other landscaping and park areas.

## **II. FINDINGS**

- F1.** TCCWD agrees that transparency is an important part of governance. The District has continually strived to meet the highest standards of transparency in all of our operations. The public has always been provided with multiple opportunities to address the entire Board on every topic. The topic of the Water Shortage Priority Ordinance is addressed in detail in Item K above. TCCWD disagrees with the finding that the public is better served by ad hoc committee meetings, rather than public Board meetings.
- F2.** TCCWD disagrees with this finding. Whenever any ad hoc committee meets, a report is made to the Board. No decisions are made, nor is policy formulated by committees. All decisions are made by the



full Board in scheduled and posted meetings, in accordance with the Ralph M. Brown Act. The Board of Directors of TCCWD has consistently striven for efficiency. Creating standing committees and holding regular meetings leads to more meetings. No support has been provided in the Grand Jury Report detailing the benefits of standing versus ad hoc committees. TCCWD does not understand the finding regarding a standing Finance Committee. Item F above finds that the District is financially well managed. This is supported by Item G (including our response thereto) as well as by our ongoing record of receiving “clean” audits.

- F3.** TCCWD is tasked with managing a limited and variable water supply for all customers. TCCWD has never opposed any development on the basis of land use. Any objections have always been over water supply. We manage a variable, decreasing, imported water supply. We cannot meet increasing, fixed demands for growth in any use category with a variable supply and meet our current obligations as well. Once development occurs, water supply must be provided to serve that development. The Board’s policy has been to prioritize our existing users and uses over new users and uses. We would need examples to respond to the last sentence in this finding. The claims are unsupported and vague.
- F4.** TCCWD has polled all five members of our Board regarding this assertion. None have indicated agreement with this finding. The Grand Jury has attended a Regular Board Meeting and they have had access to our agenda packages for all meetings. Staff strives to provide complete, thorough staff reports for all items being considered. A more thorough response cannot be provided without examples of perceived incomplete knowledge.
- F5.** The tension between customer classes is often mischaracterized as Agricultural versus M&I. The tension is more accurately described as meeting the demands of existing users and uses versus new users and uses. The City and Golden Hills have requested voluntary, banked water be deposited into their accounts during years when adequate supply is not available to meet current year demands as well as their requests for future supply. The District mandated that its Term M&I customers, including the City and Golden Hills, bank a five-year water supply. The City has met this requirement, and Golden Hills has accumulated more than 300% of the mandatory banked water reserve. The banked water reserve accounts were put in place so that the Term M&I customers had a supply of water in water short years. Instead of drawing on these accounts during water short years, as intended, the City and Golden Hills have demanded that the District meet not only current year demands in time of shortage, but also future demand by recharging water to their banked water accounts. Recharging water, and suffering the resulting spreading losses, in a water short year is not an efficient use of a scarce resource. (See Cal. Const. Art X, sec. 2.) The Board has consistently met current year demands before prioritizing future demands.
- F6.** TCCWD strives to comply with all aspects of the Ralph M. Brown Act when conducting its public meetings and believes that the Director followed the Conflict of Interest Law.

Generally, the Political Reform Act of 1974 precludes a public official from participating in making or in any way attempting to use his or her position to influence a governmental decision in which the public official knows or has reason to know that he or she has a financial interest. (Govt. Code, § 87103.) When a conflict arises, the official should announce the conflict, follow the recusal procedure, leave the room, and refrain from any participation in the decision. (2 Cal. Code Regs., § 18707). A public official, however, does not, as a result of public service, lose his or her right to speak on matters of personal interest.

“If an official has a personal interest in the agenda item as defined in Regulation 18704(d)(2) and wishes to speak or appear as a member of the general public, following the public identification



of the financial interest and recusal the official may leave the dais and speak or observe from the area reserved for members of the public.” (2 Cal. Code Regs., § 18707(a)(3)(B); see also § 18704(a)(d)(2).)

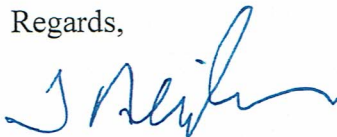
### **III. RECOMMENDATIONS**

- R1.** Disagree. An ad hoc committee is only convened when the necessity exists. The committee is disbanded when the task is completed. Creating a permanent standing committee necessitates more meetings and workload for staff. In most years, such an ordinance is not required and thus no need for any committee exists. No decisions are made by committees. A committee may or may not provide a recommendation to the full Board for its consideration and action. The public interest is best served by holding public meetings in front of the full Board of Directors. TCCWD Board of Directors has repeatedly conducted as many public meetings as are required to fully discuss an issue. The simplest solution may be to not form any future Water Shortage Priority Ordinance committees. The City and Golden Hills have distorted the committee role to such an extent that the process does not serve a useful purpose for the TCCWD Board of Directors.
- R2.** Disagree. See reasons cited for R1 above. Additionally, no deficiencies have been noted for TCCWD financials. The benefit of such a committee is undefined.
- R3.** Completed. See response to Items L and P above. While the finding discusses a single MOU, TCCWD complies with the requirements of all MOUs to which it is signatory.
- R4.** Completed. The District issues a binder to each Director titled “Board of Directors Reference Binder”. This practice has been in place since 2016. This is an exhaustive compilation of the relevant rules, regulations and statutes under which TCCWD operates. The Table of Contents for this binder is attached (see Attachment “DD”). This resource has now been included in electronic format on a computer drive that the Directors can access using district provided computer tablets. Full agenda packages, including staff reports for each agenda item, are posted with the agenda package for an upcoming meeting. The Brown Act requires the posting of the agenda only. Providing the staff reports on the preceding Friday for a Wednesday meeting in the following week provides substantial time for the Directors to review the information and make any inquiries of staff prior to the meeting.

### **IV. CONCLUSION**

The District has a complicated role in many issues. We have attempted to provide explanation and clarity during the course of the Grand Jury investigation and in our responses to the Grand Jury Report. We appreciate the extensive effort expended by the Special Districts Committee during their numerous visits and email correspondence. We also appreciate the time that the entire Grand Jury spent preparing the Report.

Regards,



Thomas P. Neisler  
General Manager

LIST OF ATTACHMENTS:

|               |  |
|---------------|--|
| Attachment A  | Letter from Jay Schlosser, March 15, 2021                      |
| Attachment B  | Email from Susan Wells, March 16, 2021                         |
| Attachment C  | Sign-in sheet, Water Priority Committee meeting, April 8, 2021 |
| Attachment CC | Minutes, Regular Board Meeting, March 17, 2021                 |
| Attachment D  | Staff Report, Agenda Item No. 9, April 17, 2021                |
| Attachment E  | Staff Report, Agenda Item No. 7, May 19, 2021                  |
| Attachment F  | Minutes, Special Board Meeting, March 9, 2022                  |
| Attachment G  | Sign-in sheet, Special Board Meeting, March 9, 2022            |
| Attachment H  | Staff Report, Agenda Item No. 11, March 16, 2022               |
| Attachment I  | Minutes, Regular Board Meeting, March 16, 2022                 |
| Attachment J  | Minutes, Special Board Meeting, March 28, 2022                 |
| Attachment K  | Sign-in sheet, Special Board Meeting, March 28, 2022           |
| Attachment L  | Letter, City and Golden Hills, March 30, 2022                  |
| Attachment M  | Minutes, Special Board Meeting, March 30, 2022                 |
| Attachment N  | Sign-in sheet, Special Board Meeting, March 30, 2022           |
| Attachment O  | Staff Report, Agenda Item No. 10, April 20, 2022               |
| Attachment P  | Minutes, Regular Board Meeting, April 20, 2022                 |
| Attachment Q  | Staff Report, Agenda Item No. 12, May 18, 2022                 |
| Attachment R  | Minutes, Regular Board Meeting, May 18, 2022                   |
| Attachment S  | Minutes, Special Board Meeting, January 9, 2023                |
| Attachment T  | Sign-in sheet, Special Board Meeting, January 9, 2023          |
| Attachment U  | Letter, City and Golden Hills, January 4, 2023                 |
| Attachment V  | Staff Report, Agenda Item No. 12, January 18, 2023             |
| Attachment W  | Minutes, Regular Board Meeting, January 18, 2023               |
| Attachment X  | Staff Report, Special Board Meeting, February 3, 2023          |
| Attachment Y  | Minutes, Special Board Meeting, February 3, 2023               |
| Attachment Z  | Sign-in sheet, Special Board Meeting, February 3, 2023         |
| Attachment AA | Staff Report, Agenda Item No. 10, February 15, 2023            |
| Attachment BB | Minutes, Regular Board Meeting, February 15, 2023              |
| Attachment DD | Table of Contents, Board of Directors Reference Binder         |

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