

# **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 (GHCS D) 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

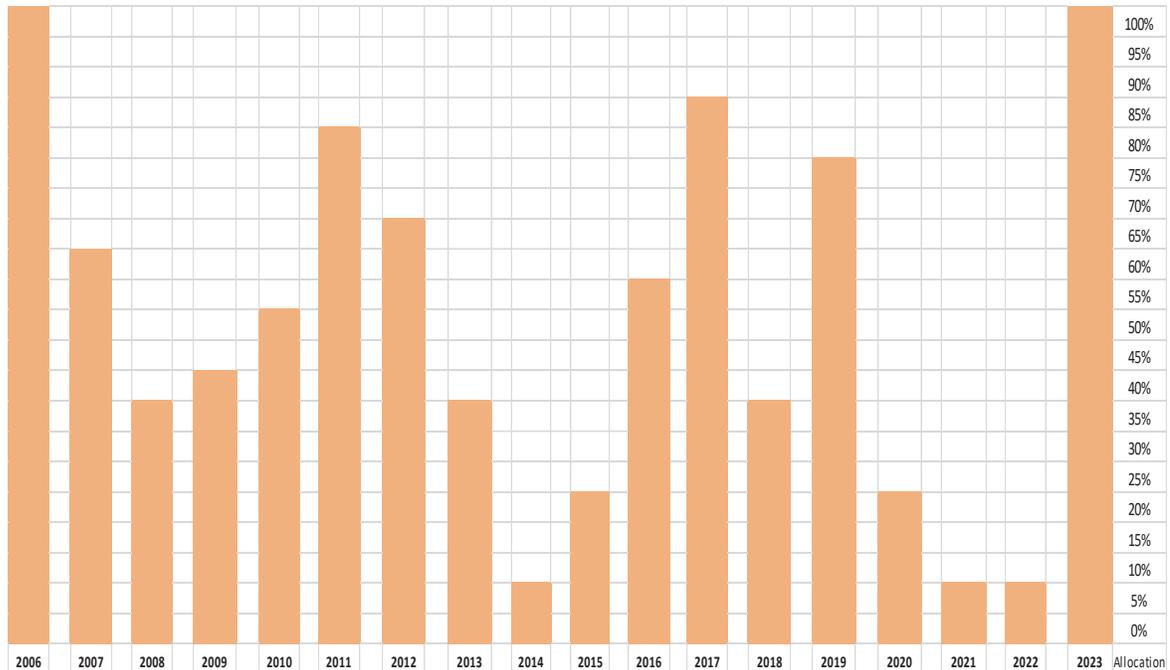
## **DISCUSSION OF FACTS:**

- 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**



(Graph Provided by Grand Jury)

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**

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.