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LEGAL COUNSEL
Ryan D. Childers

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ACTION MINUTES OF THE REGULAR LAFCO HEARING
August 24, 2017
8:30 a.m.
El Centro City Council Chambers
1275 Main Street, El Centro, CA

VOTING COMMISSIONERS PRESENT: David H. West, Chairman
Maria Nava-Froelich, Vice Chair
Jason Jackson
Michael Kelley
Ray Castillo

ALTERNATE COMMISSIONERS PRESENT: None

ABSENT: None

STAFF PRESENT: Jurg Heuberger, Executive Officer
Julie Carter, Accountant
Paula Graf, Clerk
Ryan Childers, Legal Counsel

REGULAR SESSION OF THE LAFCO CALLED TO ORDER AT 8:30 A.M.

- 3. Approval of Consent Items**
- A. Minutes from May 25, 2017
 - B. Minutes from June 22, 2017
 - C. Minutes from July 27, 2017
 - D. Project Report update

Motion to approve Items 3A, 3B, 3C, 3D.

MOTION: CASTILLO
AYES: FROELICH, JACKSON, KELLEY, CASTILLO, WEST
ANO: NONE
ABSTAIN: NONE
ABSENT: NONE

4. Public Comments

No public comments were made.

ANNOUNCEMENTS

5A. **Announcements by the Commissioners.**

Commissioner Kelley stated he will be on a panel during the CALAFCO conference in October. He is looking forward to the conference and the Imperial LAFCO is a sponsor this year.

Commissioner Froelich stated she attended an ICTC meeting last night. There are several projects in the works which includes a bus shelter for Niland and the possibility of having bus service on Sundays. She is working on promoting several projects on behalf of the Family Resource Center.

Commissioner West stated he attended the Southern Region of LAFCO's meeting. He will be on a LAFCO 101 panel during the CALAFCO conference in October.

5B. **Announcements by the Executive Officer**

I. Annual Conference

Mr. Heuberger stated the registrations are completed for the annual conference that takes place in San Diego this year.

II. YE 16/17 Budget Update

Mr. Heuberger stated this a budget update for the 2016/2017 fiscal year. An audit was completed and provided to the Commission and the current audit is in process. The LAFCO has been able to maintain the \$100,000 contingency fund, and funded the potential litigation line item in the amount of \$40,000.

DISCUSSION/ACTION/DIRECTION ITEMS

6. **Discussion/Action/Direction regarding a County wide RDA process**

Mr. Heuberger stated by LAFCO statute, a special district can be seated on the LAFCO Commission. This Commission has attempted to get the special districts to form an association and become a member of LAFCO. The passing of new legislation regarding the oversight of

redevelopment agencies has triggered the need to form an entity and the special districts will have the opportunity to appoint a representative. The special districts will need to meet and make an appointment. If the appointment is not made, then the governor makes the appointment. LAFCO will be sending out a letter to the special districts requesting they meet and form a selection committee. At the meeting, an appointment will be made to the oversight committee that must be formed to oversee the redevelopment agencies. The appointment needs to be made prior to June of 2018. An update will be provided to the Commission.

No action taken on this item.

7. Discussion/Action/Direction regarding the Heffernan Memorial Healthcare District business plan update (HMHD 1-15)

Mr. Heuberger stated this item will not be heard today, there are some recent issues that the Commission is aware of. Mr. Heuberger has agreed to participate in a discussion with the HMHD board during their meeting on September 6th to discuss the ongoing concerns. This item will be continued to the next regular hearing.

No action taken on this item.

PUBLIC HEARING ITEM(S)

8. Public hearing to consider the dissolution of the Winterhaven Fire District (WFD 1-15)

Mr. Heuberger stated the WFD dissolution has been before the LAFCO for over a year. It was continued from the last hearing to allow the County adequate time to try and resolve an issue regarding the SBA tower. Mr. Heuberger recently spoke with County Counsel Ms. Katie Turner and Ms. Turner indicated the County is ready to proceed. The WFD issued a letter sometime last year that stated they were terminating services. There are several issues including outstanding debts owed to private companies for services or materials provided estimated at \$30,000. The WFD owns a fire station and an appraisal was completed at the request of the County. The fire station was appraised at \$250,000. This dissolution is an outright dissolution since the County have already been providing the services and occupy a station in the Winterhaven area. The residents will not be without service. A fire engine was relinquished by the District to Fire Etc out of San Diego, which is the company that sold it to them, however, no paperwork was completed. The District sold an ambulance to that same company and again no paperwork was completed but a check was made payable to the WFD for \$5,300. Mr. Heuberger met with the president of the company and confirmed the company is in possession of both the ambulance and the fire engine. Mr. Heuberger did receive a check in the amount of \$5,300 made payable to LAFCO for the ambulance.

Commissioner Kelley stated since the County is in the process of seeking additional funding for the construction of a new fire station, can the WFD property be sold and the proceeds used to fund the new fire station.

IC Fire Chief Mr. Tony Rouhotas replied if the station were sold, then those proceeds could be used to fund the new fire station. The building is in tough shape and would take a significant amount of resources to bring it up to date. The building is not in the shape to use as a fire station now.

Mr. Heuberger stated the County becomes the successor entity and inherits all the assets as they are. There is a fire station and a pickup truck. The truck has a substantial amount of grant funding invested in it and therefore it cannot be sold.

Commissioner Castillo asked what the status of the communication tower is.

Mr. Rouhotas replied that he is unsure what the status is. The County may want to utilize the tower but that will have to be worked out with SBA.

Mr. Heuberger stated the issue with the tower must be worked out with the County and SBA.

Mr. Rouhotas stated he would like several revisions to the recommendations in the Executive Officers report. He would like to revise Item E to be stated as follows, The Commission finds and determines that a number of individuals or businesses, the County of Imperial and LAFCO have claims for debts owed by the District, which the successor pursuant to Gov. Code 57453 has the authority to settle such claims, and given there are sufficient assets to cover such claims without burdening the successor, directs that the successor to their best ability pay any such valid claim as determined by the successor. Item F to be stated as follows, The Commission determines that the property known as the Winterhaven Fire Station located at 495 Third Avenue, Winterhaven further described APN 056-291-010-000, has been appraised at \$280,000 shall become the property of the successor as shall all contents, unless an individual or entity can demonstrate that they possess legal title to any specific content therein. LAFCO shall assist in coordinating the transfer of property and other documentation required for the completion of transfer and terms and conditions.

Mr. Heuberger replied he agrees to the recommendations to the EO report.

Commissioner Jackson asked if LAFCO can recover funds for cost incurred.

Mr. Heuberger replied that Item E states there are individuals or companies that are owed money by the WFD, which is estimated at \$58,000. The LAFCO expenses are an estimated \$29,000 to \$30,000. The County has stated they are also owed by the WFD, but that amount has not been provided. For the record, if the County can provide the total amount due to them, it would be helpful.

To the extent the County inherits an asset, that asset needs to be used to make good on outstanding debts to the extent they can. If there were no assets then the County would not be asked to pay any of the debt. In this case since there are assets, the mom and pop businesses should be paid. If the County states they are due \$500,000, then there wouldn't be any assets left to pay the debt.

Commissioner Jackson asked what position is LAFCO in line as they are owed the debt.

Mr. Heuberger replied that LAFCO would be first in line.

Mr. Rouhotas stated the County should be first in line since they have been providing the services for some time now.

Mr. Heuberger stated the LAFCO's expenses including staff time are \$29,869. The hard cost total is estimated at \$13,000. That is the amount that LAFCO will request to be reimbursed. In fairness, the County should do the same.

LAFCO Legal Counsel Mr. Ryan Childers stated the statutory provisions for a dissolution state, that the assets of the dissolved district cannot be transferred to the successor entity until all the short-term obligations have been satisfied. That's where it can get tricky and there are some exceptions, but that's the general rule.

Motion to approve Option #1 of the Executive Officer's Report and approval of the revisions to Item E and Item F as requested by the County of Imperial.

MOTION: KELLEY
AYES: FROELICH, JACKSON, KELLEY, CASTILLO, WEST
ANO: NONE
ABSTAIN: NONE
ABSENT: NONE

9. Public hearing to consider the reorganization of the Niland Sanitary District through the dissolution and formation of a new County Service area or the inclusion with the existing Niland Lighting District CSA which could be renamed the Niland Sanitation and Lighting CSA.

Mr. Heuberger stated the residents of Niland need to be able to have sewer services. It's unique because it's a sanitation district only and they don't provide water service. The District serves an area that doesn't have a lot of connections and the operational costs per unit tend to be a lot higher than an entity that has more connections. LAFCO and the County have been working with the District for more than a year. The RWQCB issued an order against the District for non-compliance which ended up with the District owing a substantial number of fines. Mr. Heuberger commended Mr. Jose Angel from the RWQCB, he has been extremely helpful and worked with the District to negotiate a settlement that reduced the fines substantially. Funding has been available to the District for several years now, from USDA, EPA, BECC, and NADBANC. The availability of funding has dragged on and the grant funds do have limitations and deadlines to meet. The funding totals approximately \$5.8 million dollars the District needs to bring the operations into compliance with

regulations. One of the stipulations of the grant funding is the requirement for a Proposition 218 rate study and the implementation of a rate increase. The initial Prop 218 was passed by the voters but voted down by the District Board. A second Prop 218 was conducted, however, that was voted down by the residents and failed to pass. The failure to pass a Prop 218 has jeopardized the funding and the compliance with the RWQCB. The District is in violation and operating in the negative at approximately \$240,000 per year. With the current rate structure, they cannot get through the year. They are financially insolvent and incapable of operating. Funding is not available if the District remains as is. The recommendation is to dissolve the District and allow another entity to operate the system. Mr. Heuberger met with the County and the County has requested revisions to the EO's recommendation. Mr. Heuberger will amend his recommendation to state the dissolution will be authorized upon the formation of a CSA or an equivalent entity, it doesn't lock the County into a CSA as the only option.

Commissioner Kelley stated he is reluctant to dissolve the District and have the County take over the burden and the debts. Other options should be looked at.

Mr. Heuberger replied the recommendation is to dissolve the District upon the formation of a CSA or equivalent. The funding agencies will not provide funding to the District.

Commissioner West stated if no action is taken, the District would not receive funding from the agencies and the District will ultimately fail.

Commissioner Jackson stated the funding is not available to the District, but would be to the County. He isn't aware of any private entity that would want to take over the District, and funding wouldn't be available to them.

I.C. Public Works Director Mr. John Gay stated his department stepped into this project just last week. Mr. Heuberger has been good at transferring documents. The County and LAFCO have met with the various agencies and stakeholders. The County is gathering more information, they need to set a date as to expectations in the timing. The County is aware of the debts against the District and the issues with the treatment system. It's best to allow the County time to continue down the path of gathering more information to convey to the Board of Supervisors what the cost or liability to run the District would be. To date, the County may have an obligation of \$4 million dollars, that's if the grants are still in place. The County needs to determine a mechanism to have in place to fund the liability, either through a rate study or other means.

Commissioner West stated the County has a time frame if they move forward with the idea that a CSA would be in place. If nothing is done, funding will not be available. The County would continue to substitute money every year and end up in the negative of millions with no money coming from the federal or state level.

Mr. Gay replied the County is requesting a revision to the terms and conditions, so the County doesn't get locked into the option of only a CSA. At this time, the County is funding the NSD, and the County wants to make sure an entity is established and will last, either it being a CSA, reorganization, or restructuring. The County wants enough time to complete the transition, it may take up to four months, just depends.

Commissioner Kelley replied Mr. Gays statement was clear. No board has denied a continuance of an issue to give opportunities for individuals to come back with a resolution.

Mr. Gay replied there are two options, one is to continue and one is to move forward. Everything is happening quickly with the people who are in place now and who have come into this information

recently. The County can live with Option #1 contingent upon not being locked into the only option of a CSA. The County needs to determine what the best type of successor entity should be, and it can more than likely be a CSA. The County needs flexibility and time.

LAFCO Legal Counsel Mr. Ryan Childers stated what the County is asking for is an opportunity to explore the options without being locked in and to have flexibility. Mr. Childers recommends revising the EO's recommendation to substitute the word CSA with Successor Entity throughout the document. In the recommendation, subsection C states the dissolution is not effective until a successor entity is in place. The County is not stuck in any one option or to take any action for that matter until they have gone through their due diligence. At the same time, the message is being sent to the funding agencies that action is taking place.

Commissioner Jackson stated he understands the County's position, but it's clear and was clearly stated in the last meeting, that the lack of taking action and moving forward with a dissolution means kissing away \$5 million dollars. That would put the District in bankruptcy.

Mr. Heuberger stated it's been said many times, the funding is at risk of not being available. The agencies have expressed the funding could be available to a successor agency, but not the District. Mr. Heuberger agrees to the County's request to revise the recommendation. If the funding agencies do not see action taking place, then they aren't going to want to assist. In the end if the District goes bankrupt then it would force the County to step in. The County would inherit the problem. The message needs to be sent to the agencies that steps are being taken to get the issues resolved. Since the dissolution isn't effective immediately, the District has to continue to keep operating the plant. The recommendation is for the LAFCO and the County to have oversight over the District. Before the District takes any action, the LAFCO and the County will need to review. This puts the District on a probationary period that allows them to spend for the normal day to day operation expenses, but not to incur any expenses that would further jeopardize the District. The District will report to the LAFCO and the County.

Commissioner Castillo stated he has concerns regarding the County taking on the responsibility of the District. The County cannot take on new debt. It's easy to say dissolve the District, but then it falls on the County to take the responsibility. Mr. Castillo likes the compromise of not being locked into a CSA.

RWQCB Executive Officer Mr. Jose Angel stated his Board has a history with the District. In 2009, a cease and desist order was issued. It's one of the highest compliance orders his board can issue short of an injunction. The District failed to comply with the order. The Board put a stop to the mandatory minimum penalty's and gave the District a compliance schedule based on what the District stated they could achieve. The Board adopted a new cease and desist order in 2011, and the District again failed to comply, mainly due to the lack of funding and institutional capacity. Mr. Heuberger mentioned the agencies coming together and providing a proposal to bring the District into compliance. Engineering and design services have been provided that total \$800,000. The District snatched the fee from the jaws of victory when it voted against the Prop 218 rate increase. The District lacks the institutional capacity and they have a fractured relationship with the residents. The inevitable is being postponed and he would trust the Commission to uphold the public's trust. \$2,000,000 million dollars in grants have already been lost, and another \$3,200,000 is at risk. Failure to act is not an option. The RWQCB is willing to step in and provide a recommendation to make up for the shortfall. The grant will not be recommended to be given to the District. The District lacks a compliant record. These statements are not to reflect the District president, she has done her best. Residents have come into the office with concerns regarding the rates and the assessments. The RWQCB is willing to work with the County or other entity to make it right for the residents. Mr. Angel recommends approving the dissolution. Allowing the County time is not an

issue. Mr. Angel spoke with the County to explore options. The original fine was reduced to \$450,000 and 75% of that can be used to fix the issues. It's a tough situation, but it can't be postponed. Saying goodbye to \$5,800,000 makes no sense.

Commissioner Kelley stated that was a good explanation of the history of the District. He asked Mr. Angel if he concurred with a continuance.

Mr. Angel replied he doesn't have a problem of allowing more time. The County will have time because the dissolution isn't effective until a new entity steps up to the plate. Not acting right now would send the agencies the wrong message.

Commissioner West asked Mr. Angel if he recommends the dissolution and not continuing the item. That would allow that County time.

Mr. Angel replied he recommends the dissolution contingent upon the formation of a successor entity. The EPA and BECC have bent over backwards to continue to maintain the funding. The agencies are under significant diminishing returns on the funding and at any moment's notice the funding can be taken and used for other border areas that are in need. His recommendation is to act now.

Commissioner Froelich asked if in the recommendation, there would be an option to leave the words CSA and add and/or successor agency. Would that jeopardize the funding.

Commissioner Jackson stated he doesn't have a problem with leaving CSA and adding and/or successor agency.

Commissioner Kelley disagreed and stated to strike out CSA.

Mr. Angel stated the agencies are looking for action to take place, not necessarily the language.

Mr. Childers stated to use successor entity.

NSD Legal Counsel Mr. Dennis Morita stated several board members and staff are present today. Under the circumstances, the District doesn't have any quarrel with the recommendation and the monitoring. The District could assist by sending the agendas.

Mr. Heuberger stated the LAFCO and the County are requesting to review all documents from the District prior to any action being taken.

Mr. Morita replied the District will look forward to having an indication of who the successor entity will be. The Board also resides in Niland and they have as much at stake as the residents. They recognize at the end of the day that it's the residents who will have to step up to wherever the rate lands. It's not the responsibility of others in the County to subsidize.

Commissioner Kelley asked why the board didn't approve the Prop 218.

Mr. Morita stated the feedback from the residents was the manner of how the assessments were being conducted. Many residents stated they didn't receive a notice regarding the Prop 218. The staff received the mailing addresses from the County Assessor's office which is based on the last equalized assessment roll. Staff confirmed and reconfirmed with the County that they had the most recent list. In Niland, mail is not delivered to a physical address. Many notices were returned as undeliverable because the mailing address was the physical address. There were a variety of

reasons the Prop 218 was turned down. The Board understands the gravity of the information. There were workshops, presentations, and the consultant for the rate study spent a deal of time explaining how the rates were calculated. Various agencies also attended the meetings. The rate increase was the lynch pin of getting the funds together to bring the plant into compliance.

Commissioner Kelley asked if Mr. Morita would confirm if the recommendation of Mr. Angel is the direction to go.

Mr. Morita replied yes, he agrees with the recommendation.

Niland resident Mr. Ojeda stated the truth about the Prop 218 failure is because the residents have been charged double illegally, and been paying the wrong rate for many years. The residents never used to check the bills, they just paid them. The Prop 218 failed because the residents don't agree with the rate. There was already an increase years back. The residents have explained to the District, and they do not listen. Any agency that takes over will face the same problems. The last assessment that was submitted was wrong. Why is a vacant land being charged. If the residents were being charged correctly, then we might not be here in this situation. No one listens to the residents.

Mr. Gay stated there is an issue with collections. There isn't enough money coming in. Based on how the other CSA's are operated, there may be vacant lots that are charged because they have the benefit of the service. Those dynamics need to be analyzed. Whatever agency is put in place, needs to have the ability to collect the revenue. Part of that process is to go through another rate study. It will be looked at with fresh eyes and to see if the previous rate study was adequate. Some residents are paying \$37 per month, the recent rate study reflected a new rate that would be double that amount. There's a minimum amount that needs to be collected in order to operate the system.

NSD Director Ms. Ozier stated she is also an employee at the Oasis Mobile Village in Niland. Her employer is present today. The District went through a rate study to determine what a feasible rate would be. Many residents were being billed incorrectly. The main interest that prompted her to work with the community was when her employer purchased the mobile home park. The park is set up for 77 mobile homes. The town is going bankrupt and people are cutting costs to survive. Her employer was told by the County that the sewer fees would total \$90,000 for connection. Her employer should be paying \$7,000 but is paying \$14,000. These charges are just for sewer fees. If changes are made to the sewer connection, then changes must be made to the other utility connections and the property would need to be rezoned. The Board understands the situation, but what happens when the residents are put into the situation when they can't pay. There were about 25 residents that showed up after the Prop 218 hearing that said they never received notice of the hearing. Wrong assessments were submitted and it should not have happened.

Mr. Bobby Ozier stated he is the owner of the Oasis Mobile Village, Niland Inn, and the large building on 8101. He came to Niland and invested money into something that no one cares about except the owners. He's spent a million dollars this years on improvements to his properties. The police and fire department used to be present in Niland every day, and now you don't see them anymore. He thanks the NSD for looking out for the people. Mr. Ozier wasn't going to speak today, but believes the Commission cares. What needs to happen is not so much about the funding but about the people who reside in Niland. No one has told them how much they will end up paying. This is their home and biggest investment. He takes \$5,000 of his own money each month and invests in Niland. His taxes alone were \$60,000 and \$50,000 for sewer, and now he is being told the charges might be double. Before he outright gives the property to the County, he would rather let the residents from the slabs reside there. He has 20% of his tenants that cannot pay their rent now, and cannot afford to raise their sewer bill. If he does raise the sewer bill, he needs to know

the amount. He sees a future in Niland, and it's a beautiful place. There are many vacant homes. The problem is bigger than the grant money, it's a matter of how they will sustain down the road if the residents cannot afford to pay.

(Translated by Commissioner Castillo) Niland resident Mr. Arturo (last name inaudible) stated what is being seen today are problems related to community of Niland. He will speak regarding problems of the sewer plant and people that have invested in properties. For the residents who are low income, the increase is very difficult. Over the years the residents have been overcharged, other people have abused their authority. One of the persons he wants to speak about publicly is the Board president Ms. Debbie Salas

Commissioner West stated he can talk about issues to address, but no name calling, it's doesn't solve anything.

(Translated by Commissioner Castillo) Mr. Arturo stated there are properties in Niland that haven't paid sewer fees in years, in fact, the owners were reimbursed for money that they never paid. The people who were overcharged were never reimbursed. The residents would like for the Commission to look at the situation and are waiting to see the new assessments and if there are any conflicts in the charges.

Niland resident Ms. Maria Monroe stated the connections are incorrect and there are many residents that were not aware of this hearing today. There aren't any microphones at the Niland meetings and it's difficult for the residents to understand what is going on and being said. The Board said they were going to pay \$5,000 during a meeting, but they didn't say to who or what for. How can an empty lot be charged for sewer. The sewer fee will be raised to \$68 per month. She is supposed to pay \$37 per month but has been paying \$800 per year.

NSD employee Mr. Devon Bendel stated he is a Grade I Operator for the District. He is on both sides of the fence, being an employee and a resident. Like his father, he has two sewer connections, two vacant lots, and owns a block in Niland. It's devastating to hear both sides and the Board shouldn't have taken some of the actions that they took place. He recommends oversight of the Board.

Mr. Heuberger stated the recommendation is to proceed with the dissolution effective upon the formation of a successor entity. Language needs to be added to the EO report, page 1, item p regarding oversight of the District. The District shall provide in advance of any meeting, proposed action to be taken. The notification shall be provided to both the LAFCO EO and an appropriate County staff for direction. This will allow the County to be more involved with the actions as they go through their process. It also prevents any action taking place that could be detrimental.

Commissioner Jackson suggested adding language to the recommendations that would include the Districts legal counsel provide notice of closed session items.

Commissioner Froelich stated Niland is her hometown, and she knows many of the people that are present today. It's sad to see it moving in this direction. She thanked all the agencies involved.

Mr. Heuberger stated this item was brought as quickly as it could to the Commission. The longer it drags out, the more likely there will be issues with the funding. He wants to see action taken as soon as possible.

Mr. Morita stated in response to Commissioner Jacksons comment, under the Brown Act, anyone can request notice of meetings or agendas and the District has to comply with the request.

Mr. Childers replied the request is in regard to a case of when a necessity item comes up after the regular agenda is posted. The LAFCO and the County need to be notified as soon as someone is aware of the item.

Mr. Heuberger stated the backup to the agendas need to be sent in a timely manner, not last minute. There have been issues with numerous requests for the backup items.

Commissioner West stated the Commission has oversight that is given by the state legislature and the Commissioners care about the community and take all comments into consideration.

Motion to approve the dissolution of the Niland Sanitary District upon formation of a successor entity. The term CSA shall be replaced with Successor Entity. In the interim, the NSD Board shall work with the LAFCO and the County in the form of a transition, during which the NSD Board, shall take no action without first consulting the LAFCO EO and in no case, shall take any action that further jeopardizes the operational and financial ability of the District.

**MOTION: KELLEY
AYES: FROELICH, JACKSON, KELLEY, CASTILLO, WEST
ANO: NONE
ABSTAIN: NONE
ABSENT: NONE**

10. Continued Public hearing to consider the approval for the annexation of Justo Felix (IM 3-15)

Mr. Heuberger stated this item will be continued. The City Council of Imperial will be hearing this item in September and once the City acts and submits a resolution to LAFCO then it will be scheduled for hearing.

No action taken on this item.

David H. West, Chairman



Jurg Heuberger, AICP, CEP
Executive Officer to LAFCO