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COMMISSIONERS

CITY

**Maria Nava-Froelich, Chair**

CITY

**Jason Jackson**

COUNTY

**Michael W. Kelley**

COUNTY

**Ray Castillo, Vice-Chair**

PUBLIC

**David H. West**



ALTERNATES

CITY

**Jim Predmore**

COUNTY

**Luis Plancarte**

PUBLIC

**Vacant**

EXECUTIVE OFFICER  
**Jurg Heuberger, AICP, CEP**

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LEGAL COUNSEL  
**Ryan D. Childers**

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ACTION MINUTES OF THE REGULAR LAFCO HEARING

**July 19, 2018**

**8:30 a.m.**

**El Centro City Council Chambers  
1275 Main Street, El Centro, CA**

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**VOTING COMMISSIONERS PRESENT:** Maria Nava-Froelich, Chair  
Ray Castillo, Vice-Chair  
Jason Jackson  
Michael W. Kelley

**ALTERNATE COMMISSIONERS PRESENT:** None

**ABSENT:** David H. West

**STAFF PRESENT:** Jurg Heuberger, Executive Officer  
Julie Carter, Accountant  
Paula Graf, Analyst

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

**3. Approval of Consent Items**

- 3A. Minutes from May 24, 2018
- 3B. Project Report update

**Motion by Commissioner Kelley to approve 3A and 3B.**

**MOTION:** Kelley  
**AYES:** Froelich, Jackson, Kelley, Castillo

ANO: None  
ABSTAIN: None  
ABSENT: West

**4. Public Comments**

No public comments were made.

**ANNOUNCEMENTS**

**5A. Announcements by the Commissioners**

Commissioner Kelley stated the annual conference is scheduled in October and if the Commissioners want to participate please let staff know. He will be traveling to Ontario today for a CALAFCO Board of Directors meeting and will provide an update.

Commissioner Froelich invited the public to the ICTC (Imperial County Transportation Commission) meeting on July 25<sup>th</sup> at 6pm.

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

Mr. Heuberger stated staff will need a count on who will be attending the annual conference by next week to take advantage of the reduced rate. Commissioner Kelley is on the CALAFCO Board and this year there is a public member vacancy and Commissioner West has been nominated. There's a possibility of two of the Commissioners being seated on the CALAFCO Board. Mr. Heuberger and Paula Graf attended the Heffernan Memorial Healthcare District meeting last night to address concerns the HMHD Board had regarding the Commissions direction and resolution regarding the compliance issues. Mr. Heuberger explained the items on the resolution to the Board and staff are working with the district on an almost daily basis. In a couple of months staff should have an updated report for the Commission. During that meeting, the Board asked if the district were to be graded, what would the grade be at the present time, to which Mr. Heuberger replied a B since the district has been making an effort.

Commissioner Kelley asked if an Executive Director has been hired.

Mr. Heuberger replied an offer was made for a part-time position, he's unsure as to when that position would start.

**DISCUSSION/ACTION/DIRECTION**

**6. Discussion/Action/Direction regarding the Appointment of an Alternate Public Member**

Mr. Heuberger stated the Commission has two public members, one permanent which is Commissioner West and one alternate. The alternate Public Commissioner Mr. Ralph Menvielle passed away recently. That left an opening for an alternate Public Commissioner. Staff received one letter of interest from Mr. Ed Snively.

Mr. Snively stated he appreciates the opportunity to be on the Commission and LAFCO has been a love of his for many years. He served on the Commission for 28 years.

**Motion by Commissioner Kelley to appoint Mr. Ed Snively as the Alternate Public Commissioner.**

**MOTION:** Kelley  
**AYES:** Froelich, Jackson, Kelley, Castillo  
**ANO:** None  
**ABSTAIN:** None  
**ABSENT:** West

## PUBLIC HEARING(S)

### 7. **Public hearing on the dissolution of the Niland Sanitary District (NSD 1-16) and the formation of the Niland County Sanitation District (NCSD 1-18)**

Mr. Heuberger stated this is an item that's been in the works for quite some time. He thanked Mr. Jose Angel from RWQCB, Mr. Tony Rouhotas, County CEO, Mr. John Gay, County Public Works Director, Ms. Katie Turner, County Counsel, Ms. Debbie Salas, NSD Present, Ms. Esperanza Colio, County Economic and Development Manager and the funding agencies that have worked with staff for the past couple of years. He also thanked LAFCO staff. It's been an effort that has been challenging at times. There are two additional items that were provided to the Commission today. One is a draft resolution that was drafted by Ms. Turner. This item is a request for the Commission to direct the NSD to adopt one similar which would appoint a person from the NSD Board to be the authorized representative to handle the wrapping up of the dissolution between now and the effective date of dissolution. It's a draft resolution and the NSD can tailor it as they wish. It avoids having to call various special meetings.

Commissioner Kelley asked if NSD is dissolved, will their Board remain in full force.

Mr. Heuberger replied once the District is dissolved the Board will no longer remain. The 2<sup>nd</sup> item provided to the Commission this morning is information that came up within the last few days. A memo has been provided today which is intended to serve as clarification and to make some corrections. He will go through the memo, so it is clear to the public and for the record since it wasn't posted. This doesn't change the EO report or the direction being asked.

Commissioner Froelich stated she wants to recognize the NSD members that have served and are currently serving. They've been working hard even though things haven't worked out as expected. She wants to recognize the members of the public who have been present and showed interest in participating and working with LAFCO, the County team, and the RWQCB.

Mr. Heuberger stated to make it clear the action today is a combined action. One is the dissolution of the current district which will be dissolved on August 31<sup>st</sup> at midnight. The formation of the County Sanitation District would be effective immediately thereafter at 12:01 a.m. All of the current activities being worked on and reviewed by the LAFCO and IC Public Works will continue to be worked on with the NSD up until the district is dissolved. The District will continue to submit expenses/receipts to the LAFCO and the IC Public Works. The goal is to clean-up and settle any outstanding issues that the district currently has.

Commissioner Froelich asked if the clean-up will include people that are owed money.

Mr. Heuberger replied one of the concerns is the employee and termination issues that need to be taken care of by the current NSD. If the NSD cannot settle everything before the dissolution, then the County and the NCSD would then finish up as the successor. There will be an effort by LAFCO and the County to assist the NSD to try and resolve all outstanding matters that include recordkeeping and employees.

Commissioner Kelley asked if the current NSD employees would be offered to stay on.

Mr. Heuberger replied that employment is not something that LAFCO could or would want to dictate. It would be the decision of the new district. The NCSD with the help of LAFCO would wrap up the remaining issues. There is current litigation that's been going on for a while. One case was settled, and another is before the appellate court. He doesn't know if it affects the action being taken today. The County may have a better understanding and can explain.

I.C. Counsel Ms. Katherine Turner stated both the County and the NSD have been working together and one of the cases involves the County and a tax payment plan. One case is over, and one is being appealed. Mr. Dennis Morita represents the NSD and the County has legal counsel because both entities are named in the action. Both agencies may be able to combine counsel to save money or continue as a winding up matter.

NSD Counsel Mr. Dennis Morita confirmed that what Ms. Turner stated is correct. There was a case that was filed against the County, the NSD, and other people that the local Superior Court dismissed. That dismissal was upheld by the Court of Appeal. There was a new lawsuit filed against the County, the NSD, a couple of former board members, and some former employees. That case was also dismissed and that is the case that is up for appeal. There is a law firm in San Diego that is representing the counties interest. There is a law firm in San Diego through an insurance policy representing the NSD, he is still involved because the insurance company didn't pick up the defense of the former board members and the former employees.

Commissioner Kelley asked who initiated the lawsuit.

Mr. Morita replied a family by the last name of Castillo whose property was sold based on unpaid property taxes that included the assessments. It's at the initial stages and he recently received a letter from the Court of Appeal that states the Appellants opening brief is due in little over a month. It will be beyond September 1<sup>st</sup> before a decision is made by the Court of Appeals and if the court upholds then that could be the end of the litigation. If the Court of Appeals overturns, then the lawsuit would continue.

Commissioner Jackson asked if Mr. Morita is representing past board members and past employees, and how is he being compensated.

Mr. Morita replied yes to both, he submits a bill and the NSD addresses the demand and it is then provided to the County for payment.

Commissioner Jackson asked Ms. Turner if payment to Mr. Morita would be honored since the litigation will go beyond the dissolution date.

Ms. Turner replied yes.

Mr. Heuberger stated one of the LAFCO findings is the NSD doesn't have sufficient assets to cover all debts as stated on page 11. The NCSD is not obligated to settle any of the claims, it's up to them on a case by case basis and at their discretion not by LAFCO order. He wants everyone to be aware that the collection of fees, penalties, and taxes will continue to be charged by the new district to the extent allowable by law. The new district, the NCSD is an independent district and there is always a confusion because the County Board of Supervisors wears the hat of the governing body. The County BOS will normally adjourn from the County meeting and reconvenes as the new board of directors. He wants the public to understand that it's not the County Board of Supervisors and it is separate from the County. The County itself has no legal obligation.

Commissioner Castillo stated there was a similar experience at the Barbara Worth Country Club for sanitation repairs. The residents assumed the County was responsible for improvements, but it is the users not the County. The costs incurred must be paid by the users of the system.

Mr. Heuberger stated there are outstanding issues that will be addressed and worked on with the current NSD Board. The last item is the discussion of the teeter program with the County. That program basically allowed the County to loan the tax money to the NSD as an advance. The County would then collect the money from the property owners through the property tax bill. It allowed the NSD to continue operating with a positive cash flow. The recommendation is to conduct the public hearing and take in any public comments and to dissolve the Niland Sanitary District and to form the Niland County Sanitation District and to make the various findings as stated in the report. He thanked everyone that's been involved.

Commissioner Froelich asked when the Niland County Sanitation District would meet and if it's the Board of Supervisors that acts as an Ad Hoc Committee.

Mr. Heuberger replied it's not an Ad Hoc Committee. The Board of Supervisors will typically have a regular board meeting and would adjourn and re-open as the NCSD, that doesn't mean they can't have separate board meetings.

Commissioner Kelley stated it's the Board of Supervisors, even though it may have a different name.

Commissioner Froelich asked if the Niland Clinic and Chamber of Commerce will be included in the Niland County Sanitation District.

I.C. Public Works Director Mr. John Gay replied through the action today the boundary was amended for the future Niland County Sanitation District and it includes both the Niland Clinic and Chamber of Commerce.

Commissioner Froelich asked for a run-down of anything else that was amended regarding the Proposition 218.

Mr. Gay replied the County met with the residents four different times during the process, not including the Board action for the Prop 218. During that timeframe the County listened to the resident's primary concerns and an overall assessment was completed. The County also met with the RWQCB and the funding agencies

in an effort to reevaluate the Prop 218 process and move forward to adjust fees and create a new district. The NSD was providing service outside of their current boundary and the County wanted to capture those parcels into the new district boundary. There were approximately 3 parcels in total. In an effort to clean up the area, those parcels were included in the assessment and in the end, it was a successful process. The fee was essentially doubled to approximately \$64. That fee will establish an independence for the NCSD and for the residents. It will allow a cash flow to continue to provide service as well as move forward with the funding agencies for the compliance that must be completed for the treatment plant. The grant money that comes with zero interest is extremely important.

Mr. Heuberger asked if an agreement was made with the Regional Water Quality Control Board.

Mr. Gay replied the County met with Mr. Jose Angel from RWQCB, he's been a partner in the process. There's an obligation to meet the compliance for the treatment plant and a number of milestones the new district will have to meet. There is an agreement, in draft form at this point, some minor revisions that will be made over the next few days, but the intent is to have that agreement signed by the end of this month, and then they will move into the next phase which would be to establish a new cease and desist order which will be in alignment with the agreement being negotiated now. The RWQCB has been fair with extending timelines that are needed.

Commissioner Froelich asked if the geyser that is making its way down Highway 111 has any potential to affect the infrastructure of the district.

Mr. Gay replied no, it's not an impact at this time.

Commissioner Kelley stated he is concerned about the current employees of the NSD, would it be the new districts authority to ensure the employees maintain their livelihood.

Mr. Gay replied its part of the winding up of the dissolution. There is about a month to make some key decisions with regard to the employment status of the current NSD employees, as part of the compliance the new district let the RWQCB know that PERC will be the operator on site. PERC will have the ability to interview employees. They have anticipated they will need additional help, but PERC as the private operator will make the decision of who they want to hire.

Ms. Turner stated to be clear to all the NSD current employees, anytime that the County or PERC takes on or considers taking on an employee, they are fully separated. No one becomes a County employee without going through a legally required background check. No matter what decisions are made about keeping employees on, they will be fully separated from the District and before any next steps, so no one will transfer. She doesn't want to mislead anyone into thinking they are County or PERC employees, they will be fully separated and that's for legal reasons.

Commissioner Kelley asked if the NSD employees are aware of what they should be doing or are they being left out in the cold.

Mr. Gay replied it will be part of the process, PERC indicated they will be coming in and there will be a transition period. PERC will establish how many employees they need and who is qualified. That will be a process that will be gone over in the next four weeks.

Commissioner Kelley stated if the current NSD employees are severed would they receive a severance package.

Mr. Gay replied that it's an obligation to look and see if they have vacation time or sick time and to ensure they are compensated appropriately according to the law. That's what's being looked at right now.

Commissioner Kelley stated he wouldn't want anyone to just turn their backs on the employees and we need to do what we can to allow those employees priority. The agency that takes over should take full consideration of the current employees of the NSD, their livelihood is there, and some reside in Niland. He doesn't want to see them lose their livelihood.

Ms. Turner stated it should be handled before the dissolution date so that everything is in order and the legal set up you have in the proposed decision today is to have the NSD Board continue to make the decisions about the final paychecks or severances and that gets approved by LAFCO as its been done before and should be done very soon.

Commissioner Jackson stated in regard to the employees if there's a legal separation, that process wouldn't be quick enough to have a seamless transfer of employment. Does that mean that PERC comes in with a whole team to run the facility until that process is complete and if those people do come back for employment.

Mr. Gay replied that PERC is ready to step in right now. They are a current operator for the County right now. They anticipate they will need to hire but based upon the personnel they have now they can come in and operate. There's been a long discussion in getting ready for this transition period.

Commissioner Jackson asked if the current NSD employees would apply at the County or PERC.

Mr. Gay replied that the applications would be with PERC.

Commissioner Castillo asked if the NSD will be notified of the dissolution date weeks prior. There are potential liabilities, potential assets and we need to plan as it's going to be taken over.

Mr. Heuberger replied the NSD will be notified today in writing of the decisions. For the last year or so Mr. Gay and Mr. Hueberger have been reviewing all expenses of the NSD, those are reviewed and either approved or denied. There is a good understanding of where the district is financially.

Commissioner Jackson stated to clarify, the recommendation is to designate one person to continue the wrap up of the dissolution.

Mr. Heuberger replied we are asking the NSD to designate one of their board members.

Commissioner Jackson stated the burden falls on the current NSD to tie up things like vacation, will that fall on the designated person or will the NSD Board still meet.

Mr. Heuberger replied that the NSD Board will still be effective, but we didn't want a situation where minor things couldn't be approved by a single designated person. Certain actions like employee decisions would be made by their Board.

Ms. Turner stated she would expect that all major decisions would be made by the NSD Board. What we found in the last dissolution is that we had a lot of paperwork that just needed to be signed in terms of deed transfers and documents.

Commissioner Jackson stated it wouldn't be fair to put the burden on one person.

Commissioner Froelich stated she concurs with Commissioner Kelley regarding the employees being displaced. It's heartfelt as the employees are part of the community so if anything can be done if they won't be hired, if there can be a severance package of some kind. They would of course have to go through the application process.

Ms. Turner stated it can be discussed more in detail and we can meet with the NSD Board within a week to have those discussions to make it as seamless as possible.

Commissioner Kelley stated he is sure we can insert a little influence.

Mr. Jose Angel stated as Mr. Gay indicated we've been working well and very hard at facilitating this process. There is an agreement in principle with County staff and this is ordinarily not an agreement he would enter into, but he understands the needs of the community. There's also a court order that needs to be met. He exercised all the discretion he has to make sure the project materializes, and the page can be turned to accommodate the needs of the community. The agreement will be finalized in the coming days. As Mr. Gay indicated, there are additional regulatory conditions that need to be met. Staff at the RWQCB are committed to protecting the community from additional liability and are looking for additional funding opportunities and to even lower the cost of the project. His board passed a resolution to prioritize this project for funding. Hopefully we can move together. He wanted to leave everyone with the impression that he used all the discretion he had.

Commissioner Kelley thanked Mr. Angel for the hard work and continued support.

Commissioner Froelich asked if in the future the infrastructure would be adequate to annex the Niland Slabs area.

Mr. Heuberger replied the new district will have to comply with the LAFCO guidelines which includes a Service Area Plan. We don't want to burden a new district. Himself and Mr. Gay spoke about a two-year period for the new district to be able to look at their infrastructure. If an annexation came before him today, he would recommend against it. In the long term it may be too expensive to annex. The new district will be required to prepare a master plan within a two-year period. At that point the district will be able to look at opportunities for expansion. One critical thing is the compliance issue that really triggered this. The funding agencies



collectively had authorized almost five-million dollars. Some of that funding may no longer be available. That funding is to bring the district into compliance. That needs to be completed prior to looking at any expansions.

Commissioner Froelich stated the reason she brings it up is because the City of Calipatria covers the prison sanitation. The City looked at the borderland project to possibly cover the Niland area but decided not to. Calipatria has the capacity, but it would take a lot of funding.

Mr. Heuberger stated a number of years ago the Commission along with the County looked at the possibility of the Niland area being serviced either through an agreement between the two agencies or Calipatria simply providing services. The studies revealed the cost factor didn't entice Calipatria to do so. Those are things that could change in the future, consolidations are always being looked at as being more effective in terms of government. The NCSD could operate for a while and in the future things can change and grant funds could come available. Technically it's doable but financially maybe not.

Commissioner Froelich stated she visited the Brawley wastewater plant and was impressed. She is wondering if the grant money would be capable of updating the Niland sewer plant similar to Brawley's.

Mr. Angel replied that the Brawley wastewater plant is a bile plant, and it's a biological process. The City has different demands and it's a facility designed for specific needs. The main issue in Niland is the wastewater plant discharges to surface water. When someone discharges to surface water, they need a federal permit that the state issues. That permit carries significant liability when their out of compliance. One of the considerations for the project is how can we minimize the liability to the community while at the same time treating the water to a level sufficient so that it doesn't cause environmental issues. That was some of the criteria and determining factors for Niland. This will eliminate the discharge to surface water and will diminish the liability. The treatment system will be similar, but we are just talking energy demand and some other issues. The plant will produce wastewater similar to the quality in Brawley. It's the right facility in his opinion. The plant will be designed to accommodate all the projected flow for the next ten years. There's room to add discharge but the plant needs to have at least 25% room, or a letter will be sent by the RWQCB stating the plant is running out of room and expansions need to start before the plant reaches capacity. In regard to the Slabs area, it's not so much the cost to treat the wastewater but the cost for the piping that would be significant. He also stated that the geyser doesn't currently impose a threat to Niland.

Commissioner Castillo stated he will translate for Mr. Grijalva.

(Spanish) Niland resident Mr. Arturo Grijalva stated he has a few questions. John Vanderburg who did the study was not present at the last meeting and he has some concerns.

Commissioner Castillo asked what study he is referring to.

(Spanish) Mr. Grijalva replied the assessment study, RCAC.

Mr. Heuberger stated the RCAC study is a previous study that was done. This wasn't the study that the County completed.

(Spanish) Mr. Grijalva stated that Mr. Vandenburg did a prop 218 study a year ago. He was the person that counted the votes. He doesn't know if the Commission was informed but one of the NSD Board members observed Mr. Vandenburg hiding votes. He was asked to show those votes but refused to. The residents had asked him to show the votes, and that's when the votes were recounted and the Prop 218 failed.

Commissioner Froelich asked if he is referring to the Proposition 218 that just passed.

Mr. Heuberger stated to clarify, the Niland Sanitary District went out to a Prop 218 vote originally and that's where the RCAC report was created at their request to determine what the cost value was. That vote passed but was turned down by the NSD Board. That triggered no rate increases which in turn made the funding agencies back off and say without a rate increase you aren't sustainable therefore we can't fund it. The NSD went through another Prop 218 vote and they did ask Mr. Vandenburg to look at the numbers again and made sure he made some minor revisions, pennies on the dollar. They went to another Prop 218 which then failed. That report is not what the County used in preparing this prop 218 analysis.

Commissioner Castillo stated the issue that is being brought up is regarding the prior Prop 218 report.

Mr. Heuberger stated that the County prior to issuing a Prop 218 vote had its own analysis done, they looked at the previous report but did their own analysis.

Mr. Jose Angel translated for Mr. Grijalva.

(Spanish) Mr. Grijalva stated he is bringing something that happened to their attention. Mr. Vandenberg is not trustworthy, because he hid votes and he believes that the study that he prepared is being used for the decision. He wants to know why he was given Vandenberg's study.

Commissioner Jackson replied the RCAC study is not the study that the County utilized for their Prop 218 decision. The County conducted their own study so the RCAC study essentially doesn't exist.

Mr. Heuberger asked who gave him the study.

(Spanish) Mr. Grijalva stated the person who gave him the study is present today. He wants to know who has the current assessment. He wants the right numbers and the current information. He wants to know how many times Mr. Heuberger has been to a NSD meeting in the past five years and who will give him a copy of the study.

Mr. Heuberger replied at least two for sure, he doesn't recall. The important factor is when the County went through their Prop 218 review they prepared an analysis to determine what the rates should be and then those numbers are the numbers that were used to cast the votes on the election. Those numbers passed.

Ms. Claudia Gomez stated she doesn't live in Niland but owns property there. When they had issues with the rates, the County would tell the residents to refer their questions to the NSD. Now that there isn't a NSD who will they refer their questions to, would there still be a NSD.

Mr. Heuberger replied no, the new district will be the NCSD which will be the County Board of Supervisors.

Ms. Gomez stated at the last meeting in Niland she realized there are a few errors with the assessment, she won't say who, but some will be getting the wrong rates when they get their new taxes.

Mr. Heuberger stated he suggests that she meet with Mr. Gay.

Ms. Gomez stated she would assume they already know that. If they did the reassessments they should know. They didn't refer to what the rate is for reinstalling, what is the process to reinstall or to remove a sewer connection.

Mr. Heuberger replied not to assume that anyone knows anything, if she has information that she thinks there are errors they should be brought to Mr. Gays attention.

Ms. Gomez replied that she won't correct it.

Niland resident Mr. Aristeo Ojeda stated he has a couple of points to explain. The problems as Claudia explained have been happening for many years. He's met with Mr. Heuberger and also Ryan Kelley and has been explaining the problems from 2013 to today. Many people lost their properties because of being overcharged. Luckily the Castillo family are the only ones in court, imagine if all the people that lost their properties were in court. Regarding the employees, the residents have been talking about the employees to the NSD Board for a long time, and the residents don't want those employees. Those employees are what caused the residents to lose their properties, it wasn't the residents choice. He talked to them to do the assessments correctly and the people will pay what is right, but they continued to be overcharged. He went to the tax collector and the tax collector says he has to pay this amount and he tells them sorry that he won't pay it, it needs to be fixed now. He's been arguing for many years and they continue to charge the wrong amount. He met with Justina Arce from The Holt Group and told her that the assessments were being done incorrectly. He saw the people doing the assessments and approached them and asked why they are doing the assessments from the streets, why don't they go inside to see how many connections there are. They responded that they didn't need to.

Mr. Gay stated for the record The Holt Group provided consulting services with regard to the assessment and the study for the new rate. The residents were met with on four different occasions and a site visit was conducted twice. The second time he went on site with The Holt Group and physically went to each property. They did investigate inside the properties. He stands by the assessments and they are correct. In the event that they need to change, the beauty of establishing a new district is there is a living body, and if they have issues they can talk to the new NCSD office to speak with him or if they don't like the result they can appeal to the NCSD Board.

Commissioner Kelley stated Mr. Ojeda believes he's been assessed improperly. Can he explain exactly what the concern is.

Mr. Gay replied that he is a little confused. There have been many conversations with the residents. The best thing to do is move forward. If he has issues, then he can come and talk to the County. The assessments are based on usage. A resident would be considered one and a restaurant may be at three. The County went out and reassessed the entire area to see what uses were on each parcel and then developed them based on the

EDU approved methodology. That established the assessment. If a resident had what looked like another residence in the backyard then they would have been assessed a value of two. The residents were met with and were given this information and were allowed a process if they had problems, they could challenge. This information was taken through the internet, walk-ins and meetings. They visited each individual property that had a dispute, they walked on site and out of all the sites visited the assessments were reduced because they may have had facilities, but they were filled with concrete. They would fill it with concrete if they didn't want the service. If there are other issues they can talk to him.

Mr. Ojeda stated if a resident has a garage and they see an air conditioner or water cooler they would charge for two hookups.

Mr. Heuberger asked if he is referring to the new assessments.

Mr. Ojeda stated he is talking about The Holt Group and the same mistakes are being done just like the previous operators that conducted the assessments.

Commissioner Kelley asked if a resident had a garage with an air conditioner would they be charged for a hookup.

Mr. Ojeda replied yes because they assume someone is living in the garage with a shower or another hookup. There isn't anything in the garage. They receive a double charge and they go to the County and have to pay the tax collector because that's the amount the NSD sends and that's the amount the tax collector collects. They pay the amount and then go back to the NSD and take proof of payment and they get reimbursed, but the NSD doesn't fix the records and the next year the same thing was happening, being overcharged.

Mr. Heuberger replied that he is mixing up what was previously being done and what is being done now.

Mr. Ojeda replied no, the same problems are going to happen. He stated he's explained this to everyone, someone from the County needs to fix the issue.

Commissioner Kelley stated that someone needs to fix any overcharges. Those issues should be resolved easily.

Mr. Ojeda stated if a property is abandoned without water, gas, or electricity they still charge for sewer. There are a lot of activities that they continue to do.

Mr. Gay stated a residence would be established as one, if there is a residence with another unit in the back and it's established that someone is living back there like a duplex then it's assessed as two. It was clear, and all the EDU's are based upon an established rate by the EPA. If the residents are still challenging their assessments, then there is a process they can go through. They can speak to Mr. Gay and the use will be looked at, if it's different then what's established on the EPA chart then they would take a look at what the assessment may be. There may be a need for an engineering study. The major uses are on the EPA chart and the majority are residential. This was talked about with the residents. The previous district charged if a resident installed a washing machine and how many sewer laterals they had. The way that the County moved

forward with the assessments is they wiped the slate clean and the charges are based upon an established use for the property, not the number of hookups or washing machines or trailers in the back.

Commissioner Froelich asked if a resident has an air conditioner in their back-storage area, would that be considered a connection.

Mr. Gay replied no, a property wouldn't be charged solely based on having an air conditioner. If they see a unit in the back with an air conditioner then it would potentially be a second dwelling. It would be looked at, but not assumed or guessed that it was. That's why there were four meetings, to solicit the public if they had any issues.

Commissioner Kelley asked if those issues would be sent to the tax collector.

Mr. Gay replied the issues are reviewed by his office first. If it's a legitimate issue, then they would take the information and work with the tax collector to make sure it's reflected in the assessment. That's the process. If there's still an issue the doors are always open.

Mr. Heuberger stated the assessments are not retroactive to any prior assessments. He wants to make sure everyone understands that. Historically there were issues with the assessments and the current assessment was completed for the Prop 218 vote and to establish a rate, it didn't go back and correct past mistakes. The new assessments haven't been placed on the roll yet. The previous assessments were done for years and years and the residents have a legitimate concern. The new assessment is what they have to deal with.

Mr. Gay stated it's important for the audience to understand the new assessments haven't taken affect yet, any assessments they see now are based on the current NSD assessments.

Ms. Claudia Gomez stated she's not a resident of Niland but owns property there. She was charged \$2,200 a year for property that's been abandoned since 2010. She's been attending the meetings since 2012 and hasn't been reimbursed. She went to the NSD and she doesn't have a sewer connection and according to the new assessment she's being charged as one connection. The property has been vacant since 2010 and she was being charged for two sewer lines. She thought the new assessment would be correct, but its not. They never went into her property.

Mr. Gay replied if she has an assessment of 1 with a residential unit and it's fully abandoned and not in use then the assessment can be looked at again, however, if there's a residence and no one is there that's a different issue because at some point in time someone can live there. If it's tied into the sewer they will be charged for that service. There is a method if she wants to come in he'd be happy to do a site investigation of her property. If it's clearly abandoned and she can show that the lateral is plugged and concreted, then the assessment will be changed accordingly.

Commissioner Jackson stated that just because a residence is not currently occupied, it doesn't relinquish their responsibility of having a fee. There may be a dwelling unit that no one is residing in, but they are still responsible. He asked if her dwelling unit is totally inhabitable, and no one can live there. Some people are talking about things that happened in the past, Mr. Gay and the County needs to be giving a chance.

Ms. Gomez stated if the County went to Niland they would see the residents that don't have sewer lines. That was the process before, it would get concreted and signed off. She assumes the County would get that information from the NSD and doesn't understand why she must go through that process again.

Commissioner Jackson stated not to assume.

Ms. Gomez asked if it's her responsibility to go again to the County and say that someone didn't do their job.

Commissioner Jackson replied that it is her responsibility and she should go to the County and make an appointment for her property to be inspected. It should be a simple fix. The records from the past might not even exist.

Ms. Gomez stated that all the NSD records should have been transferred to the County.

Commissioner Jackson replied yes, but those records may not be correct. It's up to Mr. Gay to verify or move forward separate from the Niland documents.

Ms. Gomez stated it's not fair to have to go through the process of having them go through the property and have it signed off again when she did that already.

Commissioner Jackson stated this should be her last time to go through the process.

Ms. Gomez replied it's not fair to get charged for an abandoned property. She doesn't mind paying any fees for something that's being used. It's been abandoned since 2010 and she was paying \$2,000 a year. She knows there is a fee for abandoned property in Niland and that's fine, but she doesn't want to be charged for something that's not being used.

Ms. Turner stated she represents the County Tax Collector as well. When you get a tax bill the tax collector is legally obligated to collect that money, and you will be fined and penalized and possible foreclosure on the property. The tax collector has that duty and to collect the amount of money they are to collect. The residents need to go directly to Public Works since they are the department that sends the amount over to the tax collector. The tax collector doesn't have the ability to change those numbers. The tax collector will be in a lot of trouble and the residents will be hit with a fine. If there is a mistake, go directly to public works or fines and assessments will occur. If it's on the tax bill it has to be paid.

Commissioner Froelich stated if anyone in the audience has or knows of anyone who has an error, to make an appointment with Mr. Gay. There may be errors, but they can be handled with Mr. Gay.

Niland resident Ms. Teresa Monroe stated it's been so many years that the residents have been overcharged. The employees shouldn't receive vacation pay, it's unfair. (Some comments were inaudible)

Commissioner Kelley stated to clarify his earlier statement regarding his concerns for employees of any district, an employee needs to be a bona fide productive employee of an agency to be retained.

Niland resident and NSD Board Member Ms. Lonita Ozier stated she works at the Oasis Mobile Village and a lot of the frustration from the residents is not from experiencing the same but at a more elevated level of getting things through. She's used to dealing with the planning department. When they went through the first process either in March or April she was told that the residents would be assessed, it took her 69 days to complete a ten-day application process. She had to remove every gas line, electric meter, cord, and it was almost to the point where it didn't happen, and they would have been billed for 77 and they are only using 32 connections. When the people say it's more of the same, it is but it may not stay that way with a living body available for the practical purposes of resolving issues. The other issue dealing with this as a board member, is dealing with the community saying the ballots stated only the owner can vote and a lot of the people paying the bills are renters and not owners. Then they deal with why there are two different ballots and there are more than half of a count and one passed and the other didn't. They are dealing with a lot of questions from the community and about the Prop 218 process. She believes the plant is in better hands in the hands of the County. The complications are complicated, and the improvements need to be done and there needs to be confidence. As far as the lady being billed, with the Prop 218 that passed, it stated vacant lots won't have to pay a standby charge or any fee. She shouldn't be getting billed for anything if the County adheres to what the Prop 218 is for. The second Prop 218 is where the confusion came from, there were language barriers, three different ballots that were sent out and one election process. The people are upset and don't understand what's going on. She stated a rate increase did need to happen. The process of a resolution is complicated. Hers is on a larger scale so she didn't have a choice.

I.C. CEO Mr. Tony Rouhotas stated that John Gay has been very transparent with his personnel throughout the entire process. The community has had their disputes and are upset but he wants to remind them of the similar issue with the Niland Fire where the County stepped in. There were similar issues with the assessments. He wants the community to be open minded and give Mr. Gay and his staff a good starting point and allow them to provide the service that the Niland residents should receive and are deserving of. There have been various meetings in Niland including a Board of Supervisors meeting to show the process. Everyone should be open minded and give everyone the chance to run a true sewer district to serve the township now and for the future as well.

NSD employee Mr. Devon Bendel stated he appreciates the comments on trying to help the employees with some sort of compensation if they are laid off. Some of the accusations don't apply, residents saying they have vacant lots where they have trailers and homes, it's his opinion as to when he did the assessments. Residents say his opinion doesn't matter and that he should change his based on their standard. If they aren't willing to disconnect their home or trailer to get a vacancy, then the property can still be usable. It hurts to hear accusations that he should call a lot vacant when there's a dwelling unit. The employees went to the properties where they cap their toilet and shower, but the sink faucet is still usable. They were given the benefit that they would change it after the employees seeing it. Employees see beds, toilets that are full to the brim with feces. It's a hard job to do and then to hear comments that the employees aren't doing their jobs, is humiliating. He understands if they need to get rid of him, the funding and decisions need to be made for Niland. There are some employees that are just trying to get by, and to accuse and humiliate them and to come after the meetings to call them names in the middle of the street is not right. There comes a point where do as you wish but it's not right to put this on the employees. He knows he is being recorded repeatedly at home and at work by the residents, maybe he will see them in court. He appreciates the decisions being made today.

Commissioner Kelley thanked him for his willingness to stand up and talk and his courage.

Commissioner Froelich thanked everyone for their comments.

Mr. Heuberger stated the recommendation is to approve Option #1 of the Executive Officer's report and add the changes and clarifications that were provided to the Commission this morning.

Mr. Heuberger stated the NSD will receive notification of today's action in writing, but he would like to schedule a meeting with the NSD Board and Mr. Gay as early as possible to start working out the resolutions to the issues that were discussed.

Commissioner Jackson thanked the NSD Board and the residents, it is a long trek down here to testify. They've been vigilant in participating in the process. It's important to recognize the community involvement. He thanked the County, and everyone involved.

Commissioner Castillo stated Niland will be much better off with the improvements to the facility. There will be a new sheriff substation and a new fire station built with grant funding.

**Motion by Commissioner Jackson to approve Option #1 of the Executive Officer's report with the changes and clarifications, dissolving the Niland Sanitary District and forming the Niland County Sanitation District.**

**MOTION: Jackson**  
**AYES: Froelich, Jackson, Kelley, Castillo**  
**ANO: None**  
**ABSTAIN: None**  
**ABSENT: West**

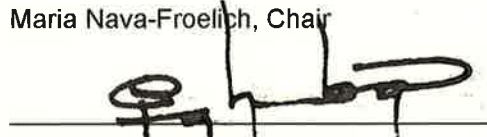
**EXECUTIVE SESSION**

**8. LAFCO Anticipated Litigation:**

**Based on existing facts and circumstances, the Board has decided to initiate or is deciding whether to initiate litigation. There is (1) such potential case (Government Code 54956.9 (c)).**

Mr. Heuberger stated legal counsel isn't present today therefore no discussion/action will be taken on this item.

Maria Nava-Froelich, Chair



Jurg Heuberger, AICP, CEP  
Executive Officer to LAFCO