



To The

TO:

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| Commissioner | MARIA NAVA-FROELICH | [City] | Commissioner | MICHAEL KELLEY (Chair) | [Supervisor] |
| Commissioner | JASON JACKSON | [City] | Commissioner | RAY CASTILLO | [Supervisor] |
| Commissioner | DAVID WEST (Vice-Chair) | [Public] | | | |

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| Alt Commissioner | JACK TERRAZAS | [Supervisor] |
| Alt Commissioner | JIM PREDMORE | [City] |
| Alt Commissioner | RALPH MENVIELLE | [Public] |

REPORT DATE: May 1, 2016

FROM: Jurg Heuberger, AICP, CEP, Executive Officer

PROJECT: Niland Sanitary District (NSD 1-16) Service Area Plan (SAP) / Municipal Service Review (MSR) Update

HEARING DATE: May 26, 2016 **TIME:** 8:40 AM

AGENDA ITEM NO: 11

HEARING LOCATION: El Centro City Council Chambers, 1275 Main Street, El Centro, CA

RECOMMENDATION(S) BY THE EXECUTIVE OFFICER (In Summary & Order)

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| OPTION #1: | Approve the proposed Sphere of Influence (SOI) and the direction as recommended for the SAP, as presented by the Executive Officer. |
| OPTION #2: | Approve the proposed Sphere of Influence (SOI) and the direction requested by the EO with modifications, following the hearing by the Commission. |
| OPTION # 3: | Continue the hearing for not to exceed 70 days, (end date August 16, 2016). |
| OPTION # 4: | Deny the Sphere of Influence and Service Area Plan update, and provide direction to the District and EO. |

Project Data:

DATA & FACTS:

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| Project ID | NSD 1-16 |
| Project Name: | Niland Sanitary District Sphere of Influence and Service Area Plan Update (SAP)/MSR |
| Applicant/Proponent: | Niland Sanitary District |
| Application Type: | LAFCO requested update |
| Application Filed: | N/A (LAFCO direction) |
| Certificate of Filing: | N/A |
| Area/Size: | See Plan |
| Location/Legal: | Maps of the District Boundary and the SOI are included in this report. |
| Population: | NA |
| Proposed Project: | Service Area Plan (SAP) / Municipal Services Review (MSR) Update. |
| MSR/SAP: | The most recent version of the Niland Sanitary District MSR/SAP is 2006. |

TAX AGREEMENT:

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| Board of Supervisors Action: | N/A |
| City Resolution: | N/A |
| Tax Split: | N/A |

CEQA:

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| Lead Agency: | LAFCO |
| Documentation: | Exempt |

ANALYSIS

I: Legal Requirements (Historical information):

Cortese-Knox-Hertzberg Reorganization Act of 2000 (CKH), also referred to as Government Code 56000 et Seq., provides the legal basis for the requirement of the Sphere of Influence and the Service Area Plan or Municipal service Review (MSR) being considered within the scope of this hearing.

G.C. § 56425 (a) states in part; *"In order to carry out its purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies so as to advantageously provide for the present and future needs of the county and its communities, the commission shall develop and determine the sphere of influence of each local governmental agency with the county and enact policies designed to promote the logical and orderly development of areas within the sphere."*

G.C. § 56425 (b - i) provide the frame work within which the Commission may approve the sphere of influence and the process that needs to be followed.

G.C. § 56425 (e) states in part; *"In determining the sphere of influence of each local agency, the commission shall consider and prepare a written statement of its determination with respect to each of the following:*

- (1) The present and planned land uses in the area.*
- (2) The present and probable need for public facilities and services in the area.*
- (3) The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.*
- (4) The existence of any social or economic communities' of interest in the area if the commission determines that they are relevant to the agency.*

G.C. § 56425 (f) is a critical new section that changed the parameters of the prior review insofar that this section now requires that; *" Upon determination of a sphere of influence, the commission shall adopt that sphere, and shall review and update, **as necessary**, the adopted sphere **not less than once every five years**".*

There appears to be a misconception that the agencies will have to prepare a full new plan every five years, however the intent here is to "review" the prior plan and to amend it if necessary. If there have been significant changes, or if there has been explosive growth, then certainly the amendment will be much more comprehensive.

G.C. § 56428 (a) provides the mechanism for anyone to file a request with the executive officer for an amendment to the sphere of influence. It states in part; *"Any person or local agency may file a written request with the Executive Officer requesting amendments to a sphere of influence or urban service area adopted by the commission..."*

Again there may be some confusion in this area as there have been numerous questions about the "limitations" of the sphere and the process to amend.

It appears clear that the mandate is to review the plan at least every five years but there is no apparent restriction on the number of times that it may be amended nor is there a restriction on who can request such an amendment, there is only a process that needs to be followed. It goes without saying however that for an amendment to work it need the consensus of the City/District, the County and the Commission.

Just as there are provisions for the addition of areas to a sphere of influence there are provisions for a process to remove an area from an approved sphere boundary. This is found in G.C. 56429.

In addition to the SOI process G.C. § 56430 (a - d) now addresses the requirement for the review of municipal services which in our case has been referred to for nearly a decade as the Service Area Plan (SAP).

G.C. § 56430 (a) states; *"In order to prepare and to update spheres of influence in accordance with Section 56425, the Commission shall conduct a service review of the municipal services provide in the county or other appropriate area designated by the commission. The commission shall include in the area designated for service review the county, the region, the sub region, or any other geographic area as its appropriate for an analysis of the service or service to be reviewed and shall prepare a written statement of its determination with respect to each of the following:*

- 1) *Infrastructure needs or deficiencies.*
- 2) *Growth and population projections for the affected area.*
- 3) *Financing constraints and opportunities.*
- 4) *Cost avoidance opportunities.*
- 5) *Opportunities for rate restructuring.*
- 6) *Opportunities for shared facilities*
- 7) *Governmental structure options, including advantages and disadvantages of consolidation or reorganization of service providers.*
- 8) *Evaluation of management efficiencies*
- 9) *Local accountability and governance."*

G.C. § 56430 (d) also required that the Office of Planning and Research of the State, in consultation with the commissions, and the California Association of LAFCO's and other governmental agencies, SHALL prepare a comprehensive set of guidelines for service reviews by July 1, 2001. Since these guidelines are voluminous a full text copy is not attached to the report however there is a PDF copy on the CD rom that has been provided to each commissioner and every interested party. Furthermore, the Executive Officer has urged the various entities to utilize the "draft final" version as a guide to preparing the SOI and SAP.

II: The PLAN as submitted:

The District is a very small "sanitary" District that provides wastewater treatment services only, to the town site of Niland. The District has not changed any of its services or operations since its last review in 2006, therefore this review essentially covered the financial information only. Services by the District are functioned questionable, particularly in view of its financial condition.

III: District Approvals:

The District will need to accept the LAFCO approval of the SOI/MSR/SAP via a resolution to include any and all recommendations.

IV: CEQA:

It is argued and it is the Executive Officers opinion that the Service Area Plan fit within one or more "exemptions" under the provisions of CEQA, not the least of which is the possible determination that this process is "not a project".

V: Analysis by the Executive Officer / Determinations by the COMMISSION:

G.C. § 56425 (e) states in part; *"In determining the sphere of influence of each local agency, the Commission shall consider and prepare a written statement of its determination with respect to each of the following:*

- (1) The present and planned land uses in the area.*
- (2) The present and probable need for public facilities and services in the area.*
- (3) The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.*
- (4) The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency.*

Proposed findings by the Commission:

- 1) The present land use within the boundaries of the proposed SOI/SAP includes residential, limited amount of commercial and virtually no industrial. In general this is an area that is predominately residential and the District has limited expansion opportunities. The District provides only wastewater treatment to a small community known as "Niland".
- 2) The present services provided by the District are simply the treatment of wastewater from the community.
- 3) Currently the services provided are according to the audited financial information being supplied in a financially questionable if not extremely serious deficit condition. Refer to more detail below and in the attached financials.
- 4) There are no known social or economic communities of interest relevant to this review.

Financial Condition:

According to the documents received by LAFCO, the District during fiscal year ending June 2015 (June 2016 not yet due), the District according to the accountant (Woo), "the District has incurred substantial net operating losses during the last few years."

The same comment was made by the auditor for fiscal year ending in June 2014.

The accounting further states for the District that-"factors including a deficit in unrestricted assets may indicate that the District will be unable to continue as a going concern for a reasonable period of time".

For fiscal year 2015/2016 the NSD adopted a budget with revenues of \$287,877 and expenditures of \$358,500 for a net deficit of \$ 70K +/-.

In addition to the accounting financials the District also faced or faces non-compliance issues including penalties from Regional Water Quality Control Board.

VI: Public Notice:

Public notice for the proposed project hearing before the Imperial County Local Agency Formation Commission has been given, according to Section § 56427. Notice was issued in the form of a publication in the IV Press at least twenty-one (21) days prior to said hearing, and posted on our webpage.

VII: Report:

In accordance with Section § 56665, the Executive Officer has prepared a report, and presented said report to your Commission and to any public member requesting such report. In addition, a copy of said report has been issued to the Niland Sanitary District and any party requesting a copy.

VIII: Conflict of Interest Statement:

To date (at the writing of this report, May 1, 2016) no Commissioner has indicated that there is any conflict of interest with regard to this project, nor has any Commissioner reported any communications with the Applicant, Proponent or Opponent. The Commissioners will be asked to declare that during and prior to the public hearing.

The Executive Officer does not have any type of known conflict of interest or financial gain as a result of this project and owns no property in the vicinity.

EXECUTIVE OFFICERS RECOMMENDATION

RECOMMENDATION:

It is the recommendation of the Executive Officer that LAFCO conduct a public hearing and consider all information presented in both written and oral form. The Executive Officer then recommends, assuming no significant public input warrants to the contrary, that LAFCO take the following action;

- I: Certify that the Service Area Plan is exempt from CEQA.
- II: Make the finding that this Sphere of Influence remain the same and no change is expected or herewith approved.
- III: Make the finding that although the District is currently functional its financial and operating conditions indicate that it may be unable to continue providing service unless substantial and significant changes are made immediately. The conditions to be implemented are outlined below.
- III: Make the findings pursuant to Government Code Section § 56425 that:
 - a. The Service Area Plan has been reviewed by the Executive Officer and the Commission and the District is in financial distress according to the audited financial information available from the last audit.
 - b. The Service Area Plan for the District shows it to be operating at a marginal level at best and faces both regulatory as well as financial hurdles that could lead to it being unable to continue services.
 - c. The Sphere of Influence currently adopted remains adequate for the District and no annexations or changes to the boundary have occurred since the prior SAP review.
- IV: The Commission finds that, the present land uses within the boundaries of the District are predominately urban and the services are strictly for providing wastewater treatment.

The Commission finds that, there are no known social or economic communities of interest in the areas.
- V: Since there have been no protests received, the Commission adopts and approves the current Sphere of Influence Boundary as previously reviewed and approved.
- VI: The Commission further finds that given the current information available, the District is in financial distress and must implement appropriate measures to become financial stable to continue services by implementing the following:
 - a) Adopt a budget no later than June 30, 2016 for Fiscal 2016-2017 that shows at a minimum a balanced budget, and to transmit the draft and final budget to LAFCO for review and possible further action.
 - b) Adopt a revised fee schedule to place the District in a net positive cash flow level for fiscal 2016-2017, and provide a copy of the fee schedule to LAFCO.
 - c) Provide to LAFCO a plan to show how it can and will comply with the regulatory requirement of the RWQCB.
 - d) Provide any information to the Executive Officer within 45 days that would assist in an additional review in order for LAFCO to take appropriate action.

LAFCO Policy:

The proposed Sphere of Influence and Service Area Plan appears to be consistent with the Cortese-Knox-Hertzberg Reorganization Act of 2000, the Imperial LAFCO Policies and Procedures and the County of Imperial General Plan (Chapter IV. B. of LAFCO's Policies, Standards and Procedures). Furthermore, the City has (according to the Service Area Plan) the ability to supply the necessary public service, and has assured LAFCO that it has the capacity to service the areas.

NOTE: All "cc" submittals are the Executive Officer's Report only. Attachments are generally too voluminous and are only supplied on CD. Information about the project may also be found on the LAFCO web page at www.iclafco.com.

CC: Niland Sanitary District

ATTACHMENTS:

EXHIBIT A – Audited Financial Information
EXHIBIT B – Current Sphere of Influence Boundary Map