

EXECUTIVE OFFICER'S REPORT

To The

Local Agency Formation Commission

TO:

Commissioner	DAVID WEST	[Public]	Commissioner	MICHAEL KELLEY	[Supervisor]
Commissioner	JASON JACKSON	[City]	Commissioner	RAY CASTILLO (Vice-Chair)	[Supervisor]
Commissioner	MARIA NAVA-FROELICH	[City]			
	(Chair)				
Alt Commissioner	LUIS PLANCARTE				[Supervisor]
Alt Commissioner	JIM PREDMORE				[City]
Alt Commissioner	RALPH MENVIELLE				[Public]

REPORT DATE:

Feb. 25, 2018

FROM:

Jurg Heuberger, Executive Officer & Paula Graf, Analyst

PROJECT:

Niland Sanitary District Reorganization/Merger/Dissolution/Formation.
This includes the dissolution of the Niland Sanitary district and the concurrent formation of the Niland County Sanitation District.

HEARING DATE:

March 22, 2018

TIME: 8:35 AM

AGENDA ITEM NO:

10

HEARING LOCATION:

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

RECOMMENDATION(S) BY THE EXECUTIVE OFFICER

(In Summary & Order)

OPTION #1:

Conduct a Public Hearing to complete the reorganization of the Niland Sanitation District, through the dissolution of the District and the formation of a new district in this case to be the "Niland County Sanitation District" formed under the California Health & Safety Code section(s) 4700 *et seq.* per the Executive Officer's recommendation. This action will require the Commission to make determinations/findings and adopt certain resolution(s). This follows the adoption of a Resolution by the Board of Supervisors # 2018-18 dated March 6, 2018

OPTION #2:

Conduct a Public Hearing to complete the reorganization of the Niland Sanitation District, through the dissolution of the District and the formation of a new district in this case to be the "Niland County Sanitation District" formed under the California Health & Safety Code section(s) 4700 *et seq.* per the Executive Officer's recommendation and with the changes ordered by the Commission following the hearing. This action will require the Commission to make determinations/findings and adopt certain resolution(s). This follows the adoption of a Resolution by the Board of Supervisors # 2018-18, dated March 6, 2018

OPTION #3:

Take no action!

OPTION #4:

Continue the item for not to exceed 70 days.

Project Data:

DATA & FACTS:

Project ID	NSD 1-16	
Project Name:	Niland Sanitation District Reorganization/Dissolution/Formation	
Applicant/Proponent:	LAFCO initiated action per GC #56375 (a) (2) (a)	
Application Type:	N/A	
Application Filed:	N/A LAFCO Direction per resolution #2017-20	
Certificate of Filing:	N/A	
Area/Size:	See Plan and MSR dated February 2006	
Location/Legal:	Maps of the existing District Boundary and the SOI are included in this report.	EXHIBIT A
	Maps of the proposed new Niland County Sanitation District are shown in this report.	EXHIBIT A-1
Population:	N/A	
Proposed Project:	Reorganization of the Niland Sanitation District (NSD) through the dissolution of the (NSD) District and the formation of a new Niland County Sanitation District (NCSD).	
MSR/SAP:	The most recent version of the Niland Sanitation District MSR/SAP is 2006.	EXHIBIT B
<u>TAX AGREEMENT:</u>		
Board of Supervisors Action:	N/A	
City Resolution:	N/A	
Tax Split:	N/A	
<u>CEQA:</u>		
Lead Agency:	LAFCO	
Documentation:	Exempt (reorganization only)	

ANALYSIS

I: Legal Requirements (Historical information): [Sphere of Influence and Municipal Service Reviews]

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: Reorganization/Dissolution Requirement:

- GC: **56035:** "Dissolution" means the disincorporation, extinguishment, or termination of the existence of a district and the cessation of all its corporate powers, except as the commission may otherwise provide pursuant to Section 56886 or for the purpose of winding up the affairs of the district.
- GC: **56375:** The Commission shall have the following powers and duties subject to any limitation upon its jurisdiction set for in this part:
- (a) (1) To review and approve with or without amendment, wholly, partially, or conditionally, or disapprove proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission.
 - (2) The commission may initiate proposals by resolution of application for any of the following:
 - (a) The consolidation of a district, as defined in Section 56036.
 - (b) The dissolution of a district.
 - (c) A merger.
 - (d) The establishment of a subsidiary district.
 - (e) The formation of a new district or districts.
 - (f) A reorganization that includes any of the changes specified in subparagraph (A), (B), (C), (D), or (E).
 - (3) A commission may initiate a proposal described in paragraph (2) only if that change of organization or reorganization is consistent with a recommendation or conclusion of a study prepared pursuant to Section 56378, 56425, or 56430 and the commission makes the determinations specified in subdivision (b) of Section 56881.

- GC: **57450:** On and after the effective date of the dissolution of a district, the district shall be dissolved, disincorporated, and extinguished, its existence shall be terminated, and all of its corporate powers shall cease, except as the commission may otherwise provide pursuant to Section 56886 or for the purpose of winding up the affairs of the district and as otherwise provided in this chapter. The general provisions of this chapter shall not be construed as limiting in any manner the authority of the commission to impose one or more of the terms and conditions set forth in Section 56886.
- GC: **57451:** For the purpose of winding up the affairs of a dissolved district, the successor of the dissolved district shall be determined as follows:
- (a) If the territory of a dissolved district is located entirely within the incorporated territory of a single city, the city is the successor.
 - (b) If the territory of a dissolved district is located entirely within the unincorporated territory of a single county, the county is the successor.
 - (c) If the territory of a dissolved district is located within the incorporated territory of more than one city or the unincorporated territory of more than one county, or any combination of the incorporated or unincorporated territory of two or more such cities and counties, the successor is that city whose incorporated territory or that county whose unincorporated territory shall, upon the effective date of dissolution, contain the greater assessed value of all taxable property within the territory of the dissolved district, as shown on the last equalized assessment roll or rolls of the county or counties.
 - (d) If the terms and conditions provide that all of the remaining assets of a dissolved district shall be distributed to a single existing district, the single existing district is the successor.
 - (e) If the terms and conditions provide that all of the remaining assets of a dissolved district shall be distributed to two or more existing districts, the successor is that existing district which, upon the effective date of dissolution, contains the greater assessed value of all taxable property within the territory of the dissolved district, as shown on the last equalized assessment roll or rolls of the county or counties.

III: The PLAN & NEED FOR ACTION (Historical information review):

The Niland Sanitation District was asked to prepare an updated MSR/SAP approximately three years ago, however little effort or progress was made. Ultimately the Executive Officer became aware of significant problems facing the District, not the least of which was a substantial compliance order by the Regional Water Quality Control Board and the potential loss of substantial grant funding needed to improve the system and bring it into compliance.

Federal, State and Local agencies appeared to have been working with the District resulting in commitments of substantial funding through various options ranging from 2.5 to 5 million dollars, all of which could or would have assisted the District in bringing its operations into compliance with regulatory requirements.

In addition, the Executive Officer began to receive numerous complaints from residents of the area about the operations of the District, including but not limited to assessments, billing, unequal evaluations and potential misuse of funds. Of concern was the manner in which each parcel was being billed.

(a) Unbeknown to LAFCO was also the fact that the County has been "loaning" the District funds (approximately \$243,252 per year) for several years. Absent those loans, the District would have been bankrupt years earlier.

(b) In fact, had it not been for continued loans by the County the Districts financial problems would have surfaced earlier.

(c) The Commission finds that the Niland Sanitation District (NSD) shall cease all operations and shall cease to exist effective May 1, 2018 and further that the new Niland County Sanitation District (NCSD) shall commence as a District effective May 1, 2018.

Several attempts were made to work with the District, ultimately it was the Board's own action that made it all but impossible for the District to continue to exist.

IV: CEQA:

It is argued and it is the Executive Officers opinion that dissolution of a district including the possible formation of a new district is exempt.

V: Background and Facts:

The Executive Officer has attempted to work with the NSD District Board for several months. During that time a number of meetings were held in an effort to assist the District and fully understand the issues.

Two key issues quickly became evident.

First, the District has been working with several funding agencies for over five years, but has not been able to final the grant process. The agencies include USDA, EPA, NADBANK/BECC and the County. In a meeting with all of them present, it was determined that the EPA and USDA grant funds were in jeopardy due to the amount of time that has elapsed. Additionally as a condition of obtaining the funding the District was to prepare a rate study and implement the rates. The District did cause to be prepared a rate study and in the second quarter of 2017 went through a Proposition 218 vote of the residents of Niland. Unfortunately, while the Proposition 218 essentially passed by the voters, the District Board in an unusual step did not vote to implement the fees established through the rate study. This action was key in the regulatory and funding agencies losing confidence in the District Board.

Subsequently as a result of the meeting with the funding agencies it was made clear that without a rate increase the funds would not be available. Consequently, the District attempted a second Proposition 218 vote in August, however this time it was rejected by the voters. This left the District in the position of not being able to increase the rates necessary to be sustainable.

Second, the District was found to be in violation of State requirements by the Colorado River Regional Water Quality Control Board (RWQCB). Although staff of RWQCB attempted for an extended period to work with the District, they were ultimately forced to impose a rather large fine against the District. Again, because of meetings between LAFCO, County, District and RWQCB and with significant effort by the Executive Director of the RWQCB the fines/penalties were negotiated to a lower and potentially manageable number, conditioned however on attaining compliance. Once again, the failure of the rate increase that jeopardized the necessary funding/grants, also placed the RWQCB in a position of reverting to the original fines.

During the meeting of June 7, 2017 with EPA representatives, USDA representatives, County staff and District Board members, it became clear that the funding agencies, namely EPA and USDA could not commit to holding the funds much longer and perhaps more importantly, would not hold the funds given the lack of confidence in the District.

During this same meeting, it was the consensus that there were two options that would need to be tracked concurrently. Track one would be for the District to make another effort to implement a rate increase which required another Proposition 218 vote. Track two was for LAFCO to initiate the dissolution process in order to take timely action regardless of the outcome of the second proposition 218 vote. Given the second Proposition 218 vote failed it has left LAFCO with no option but to proceed with the dissolution of the District.

In order to process a dissolution LAFCO staff has also reviewed the financial situation of the District in significant detail and has found that the District lacks the financial resources to continue operations exclusive of the RWQCB fines. This is in part due to the "loans" the County made for several years and neither the District nor the County disclosed this to LAFCO.

LAFCO staff has also met with numerous residents of the area and again through review of documentation provided, interviews and study of the situation has come to the conclusion that the residents do not trust the District and favor another agency to run the wastewater system.

VI: Prior Action by the Commission (August 24, 2017)

During the hearing in August 2017 and upon substantial public testimony and upon a request by the County, the Commission approved the dissolution of the Niland Sanitation District upon the conditions that;

- (a) The County had the opportunity to review the background of the district, the infrastructure analysis; a cost analysis and other studies report to effect a due diligence should the county opt to pursue being a successor or form a successor district overseen by the county;
- (b) The County had the opportunity to look at alternative types of districts;
- (c) The County, LAFCO, RWQCB and other funding agencies such as EPA, USDA etc., had time to consider the implications of a successor district, opportunities for funding, clarification on enforcement actions, etc.

VII: IMPLEMENTATION of a DISSOLUTION and FORMATION OF A County Sanitation District.

In order to dissolve the district and concurrently form a new County Sanitation District, the Commission made certain determinations and/or findings as follows:

- a) The Commission determines that based on the information provided and available the Niland Sanitary District lacks adequate funding and structural management to continue its operations.
- b) The Commission determines that the failure of the Niland Sanitary District to accomplish a rate increase, and in particular the failure of the Board of the NSD to implement the rate increase even though the Proposition 218 vote "passed" the voters, is a fatal flaw in continuing operations, insofar as the Board of Directors failed to recognize the urgency of their financial and technical problems;
- c) The Commission determines that the available grant/loan funds from EPA; USDA; NADBANK/BECC and the County are in jeopardy unless a successor agency with which these agencies can establish a trust factor to implement the use of the funds in a timely manner;
- d) The Commission determines that there are limited alternatives available as the residents of the area need to have a functional and compliant sewer collection and treatment system;
- e) The Commission determines that the current NSD does not have the resources to comply with the Regional Water Quality Control Board Order, nor the funding to pay the negotiated, much less the original fines;
- f) The Commission determines that the only viable alternative is to create a new entity and the most reasonable alternative is to form a new County Service Area, or as requested a County Sanitation District.
- g) The Commission determines that the formation of a new County Sanitation District requires the County Board of Supervisors to pass a Resolution of Application following a public hearing, upon which the LAFCO can then act to create the Niland County Sanitation District.

VIII: County Actions:

The County of Imperial has exercised a significant process through which they have conducted the following studies, copies attached as exhibits;

- Technical Report, The Holt Group
- Waste Water Rate Study, RCAC
- NSD Service Area A-3 Summary of Findings
- Boundary Map

EXHIBIT C
EXHIBIT D
EXHIBIT E
EXHIBIT F

Furthermore, the County conducted several community meetings within the town of Niland to assure that the public was informed of the process, the procedures and the potential ramifications should certain actions be taken.

The County and the respective enforcement and funding agencies have also continued to analyze the various options to limit the enforcement penalties and maintain certain funding (grant) options that had been directed at or to the NSD prior to the action taken by LAFCO in August 2017. It is our understanding as follows:

- (a) RWQCB: the enforcement actions remain in effect against the NSD, and the RWQCB has come to terms with the County on the penalty and payments thereof along with the compliance order requirements.
- (b) The USDA funding remains an option should the formation of the Niland County Sanitation District be enacted and the Niland Sanitary District dissolved.
- (c) The EPA/NADBANK/BECC and or any other funding previously a potential may no longer be available.

The County having reviewed its options has determined that the formation of a County Sanitation District was preferred over the LAFCO recommended County Service Area (CSA). To that end the County has passed a resolution # 2018-18 dated March 6th, 2018, attached hereto as EXHIBIT G, asking for the creation of the Niland County Sanitation District.

EXHIBIT G

The full enabling statutes for a County Sanitation District are attached. It appears that either a County Sanitation District or a County Service Area could be formed to take on the service of sanitary sewer systems. On the surface a County Sanitation District has limited powers and opportunities versus a County Service Area.

EXHIBIT H

IX: 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.

X: 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 Winterhaven Fire District and any party requesting a copy.

XI: Conflict of Interest Statement:

To date (at the writing of this report, February 25, 2018) 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 that the Commission order the dissolution of the Niland Sanitation District (NSD) and the concurrent formation of the Niland County Sanitation District (NCSD), subject to the following conditions/determinations:

Dissolution of the Niland Sanitation District:

- A)** The Commission having held one or more public hearings, having reviewed the Executive Officers Report and having taken input from the public, including extensive notifications to the public, makes the finding and determination that the Niland Sanitary District has effectively placed itself in a position where it is incapable of continued operation; is financially incapable of providing the service; is technically unable to provide services and the community having an alternative service available is best served by the dissolution of the District. This finding is made pursuant to and in conformance with Gov. Code section 57102(a)1 and 4; additionally, the Commission makes the following findings: The Commission determines that based on the information provided and available, the Niland Sanitary District lacks adequate funding to continue its operations;

 - a) The Commission determines that the failure of the Niland Sanitary District to accomplish a rate increase, and in particular the failure of the Board of the NSD to implement the rate increase even though the Proposition 218 vote "passed" the voters, is a fatal flaw in continuing operations, insofar as the Board of Directors failed to recognize the urgency of their financial and technical problems;
 - b) The Commission determines that the available grant/loan funds from EPA; USDA; NADBANK/BECC and the County are in jeopardy unless a successor agency with which these agencies can establish a trust factor to implement the use of the funds in a timely manner;
 - c) The Commission determines that there are limited alternatives available as the residents of the area need to have a functional and compliant sewer collection and treatment system and operator;
 - d) The Commission determines that the current NSD does not have the resources to comply with the Regional Water Quality Control Board Order, nor the funding to pay the negotiated much less the original fines;
 - e) The Commission determines that the only viable alternative is to create a new entity and the most reasonable alternative is to form a new County Service Area, or as requested a County Sanitation District.
 - f) The Commission determines that the Niland Sanitary District cannot be dissolved until the new Successor Entity is established, therefore the Commission finds that in the interim the NSD Board shall work with the LAFCO and County staff 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;
- B)** The Commission having reviewed all of the available alternatives if a dissolution is to take place determines that the most reasonable and effective alternative is to create a new Niland County Sanitation District governed by the Board of Supervisors to take on the operations.
- C)** The effective date of the dissolution is set to be the date upon which the new Niland County Sanitation District is formed and operational, and the dissolution is recorded with the County Recorder at which time the new Niland County Sanitation District shall have all rights and obligations as set forth under Gov. Code 56000 et Seq. The recording date will be transmitted to the District and the County upon receipt from the County Recorder.

- D) Pursuant to Gov. Code section 57450, upon the effective date of dissolution the District shall be dissolved, dis-incorporated, and extinguished, its existence shall be terminated and all of its corporate powers shall cease.
- E) Pursuant to Gov. Code section 57077.1 et Seq., the Commission determines that the dissolution be approved without confirmation of the voters, subject to the limitations set forth in Gov. Code section 57113.
- F) The Commission finds and determines that a number of individuals or businesses may have claims for debts owed by the District, which the successor pursuant to Gov. Code 57453 has the authority but not the obligation to settle such claims, and only given that 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.
- G) The Commission determines that any and all property known to or belonging to the Niland Sanitary District, shall become the property of the Niland County Sanitary District as shall all contents unless an individual or entity can demonstrate that they possess legal title to any specific content therein.
- H) The Commission determines that the Niland County Sanitary District shall have the authority to provide wastewater collection and treatment systems for the area currently served by the NSD and shall therefore have the same boundary and Sphere of Influence as shown on Exhibit A-1 and shall have the power/authority to contract for services, to collect fees, rates, assessments to allow for the operation of the system without it being a burden to the County.
- I) The Commission determines that the Niland County Sanitation District shall implement rates that are adequate to continue the operation and adequate to qualify for the funding agencies to continue with the previously offered support in the form of loans or grants;
- J) The Commission does not have the ability to dictate land use and therefore places no conditions or restrictions upon the use of the property as that rests with the successor and/or the land use agency.
- K) The Commission finds and determines that the residents of the area previously served by the District will, given the Niland County Sanitation District implementation have the continued benefit of a wastewater collection and treatment system that the residents must recognize require reasonable fees to be imposed.
- L) The Commission finds and determines that the Niland County Sanitation District shall have two years following the effective date to provide and updated Municipal Service Review and if necessary any adjustment to the boundary of the Niland County Sanitation District.
- M) The effective date shall be no later than June 1, 2018.
- N) In the event the Niland County Sanitation District Proposition 218 fails to pass, the Niland County Sanitation District shall not be formed and the Niland Sanitary District shall continue to exist pending further action by the LAFCO.

CC: Niland Sanitary District Board of Directors
County of Imperial County Counsel, Katherine Turner
County Public Works, John Gay
County CEO, Tony Rouhotas

ATTACHMENTS:

EXHIBIT A- Existing Boundary/SOI Map
EXHIBIT A-1- Proposed Boundary/SOI Map
EXHIBIT B- SAP 2006
EXHIBIT C- Technical Report, The Holt Group
EXHIBIT D- Waste Water Study, RCAC
EXHIBIT E- NSD Service Area A-3 Summary of Findings
EXHIBIT F- Proposed Boundary/SOI Map
EXHIBIT G- County Resolution #2018-18
EXHIBIT H- County Sanitation District Health and Safety Code Statute