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COMMISSIONERS

*CITY*

Maria Nava-Froelich

*CITY*

Jason Jackson

*COUNTY*

Michael Kelley, Chairman

*COUNTY*

Raymond "Ray" Castillo

*PUBLIC*

David H. West

Vice-Chairman



ALTERNATES

*CITY*

Jim Predmore

*COUNTY*

Jesus "Jack" Terrazas

*PUBLIC*

Ralph Menvielle

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EXECUTIVE OFFICER  
Jurg Heuberger, AICP, CEP

LEGAL COUNSEL  
Ryan D. Childers

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ACTION MINUTES OF THE REGULAR LAFCO HEARING

December 15, 2016

8:30 a.m.

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

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**VOTING COMMISSIONERS PRESENT:**

Michael Kelley, Chairman  
David West, Vice Chairman  
Jason Jackson  
Ray Castillo  
Jim Predmore

**ALTERNATE COMMISSIONERS PRESENT:**

Ralph Menvielle

**ABSENT:**

Maria Nava-Froelich  
Jack Terrazas

**STAFF PRESENT:**

Jurg Heuberger, Executive Officer  
Julie Carter, Accountant  
Paula Graf, Clerk  
Ryan Childers, Legal Council

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

3. Approval of Minutes from September 22, 2016

Motion by Commissioner West to approve the minutes as presented and passed by the roll call vote of Jackson, Kelley, Castillo, West and abstained by Commissioner Predmore.

4. Approval of Consent Items:

- A. Project Report Update
- B. Extension of Service for Joe & Tanya Iten by the Executive Officer

Motion by Commissioner Jackson to approve 4A and 4B and passed by the roll call vote of Jackson, Kelley, Castillo, West and Predmore.

5. Public Comments: None

## ANNOUNCEMENTS

6. A. **Announcements by the Commissioners.**

Commissioner Kelley stated he attended a CALAFCO meeting last Friday and has been assigned to the Legislative Alternative Committee and also the Awards Committee. Commissioner Kelley will attend a CALAFCO retreat on January 11<sup>th</sup> and 12<sup>th</sup> in San Jose.

Commissioner Castillo stated he attended the CALAFCO annual conference in Santa Barbara and was able to tour several facilities. One of the facilities visited is a place that grows millions of flowers indoors. Commissioner Castillo also visited a reservoir that is dry and suffering from the statewide drought.

B. **Announcements by the Executive Officer**

Mr. Heuberger welcomed Commissioner Predmore to his first LAFCO hearing. Mr. Heuberger stated Items 9 (CSA 1-16 Cady Poe Colonia), 10 (CSA 2-16 Gateway of the America's), and 11 (NSA 1-16 Niland Service Area No.1) were asked to be pulled from the agenda at the request of the I.C. Public Works Director Mr. John Gay.

Commissioner Kelley asked why these items were being pulled.

Mr. Heuberger responded that he spoke with Mr. John Gay and was advised the I.C. Public Works will be conducting a second review of the Service Area Plan reports.

Mr. Heuberger stated items 13 (EC 1-16 Miller Burson) and 14 (EC 3-05 Lotus Ranch) were also pulled from the agenda. It is possible that these two items will be heard in January. Prior to the LAFCO hearing, there will need to be some consideration from the El Centro City Council and per a discussion yesterday with city staff there may not be enough time to have these two items heard by LAFCO in January since it would not allow LAFCO enough time to review the City Councils findings and to meet the 21-day public notice. These two items will potentially be heard by the City Council on January 17<sup>th</sup>.

Commissioner Kelley stated he is glad that all of the parties are trying to get on the same page and work together prior to coming before the LAFCO.

## DISCUSSION/ACTION/DIRECTION ITEMS

7. **Discussion/Action/Direction regarding the status of the Service Area Plan (SAP)/Municipal Service Review (MSR) for the Seeley County Water District**

Commissioner West stated he will recuse himself from this item due to a possible conflict of interest. Commissioner West recently met with the SCWD concerning a business matter.

Mr. Heuberger stated the LAFCO has been working with the SCWD over the past months. Among the issues is the lack of an updated Service Area Plan. That plan was progressing but had stalled a couple of years ago. Another issue is the lack of a quorum at the hearings. Mr. Heuberger spoke with the SCWD Board President Mr. Patrick Harris yesterday and Mr. Harris stated the SCWD has had several productive meetings these past months. Mr. Harris was appointed as Board President, an Office Manager has been hired, the bank balance is currently at \$400,000 and the board voted to approve a rate increase that included a Prop 218 requirement. The rate increase will be effective March 2017. One of the major concerns is the financial health of the district. The LAFCO will continue to review the district and as of now they seem to be taking a step in the right direction. A board member resigned this past month and the district is currently going through the process as required and advised by their legal counsel to appoint a new board member which is expected to occur during the SCWD January 10<sup>th</sup> hearing. The district has hired a Maintenance Manager and is also expected to hire an Assistant Maintenance Manager.

Commissioner Kelley asked the SCWD Consultant Mr. John Kemp if the issue of the SCWD Board members getting along has been resolved.

Mr. Kemp responded that the issue seems to be resolving itself. There were two board members that were not getting along and that issue has syphoned a considerable amount over the last couple of months. Two of the board members that were siding with one board member are now meeting on middle ground. Mr. Kemp believes the situation has been rectified. He also verified the statement Mr. Heuberger made regarding recent actions taken by the SCWD. The SCWD meetings have been productive and the district seems to be progressing and functioning as a proper board should.

Commissioner Kelley asked if the potential board member is a bona fide member of the community.

Mr. Kemp responded at this time there are only two applicants and he does not have any personal knowledge of either applicant.

Commissioner Kelley asked if the board member with medical issues has been attending the meetings.

Mr. Kemp responded no, that board member hasn't attended a meeting since October.

Commissioner Kelley asked Mr. Heuberger if he is satisfied with the progress and balancing of the SCWD.

Mr. Heuberger responded he is satisfied with the progress the SCWD is making, but, the LAFCO needs to have a chance to review the district in detail and as discussed the biggest concern over the last six months has been the lack of a quorum due to attendance issues. The internal feud has aggravated that problem and a recent resignation of one of the board members should help. The SCWD appointed a two-member committee to work with the LAFCO on the Service Area Plan. The new General Manager is Ms. Miriam Rosales with whom the LAFCO has a good working relationship with.

Commissioner Kelly stated the Commissioners will anticipate a formal Service Area Plan submittal in the near future.

Mr. Heuberger responded the Service Area Plan will be started again per a recent conversation with Mr. Harris.

Commissioner Jackson asked if the recent SCWD Board votes were unanimous.

Mr. Kemp responded yes, since there were only three board members present, all votes were unanimous. There are two issues, one is regarding the Service Area Plan in which the previous manager had been working on. The SCWD have asked the previous manager to return on a temporary basis to train the new manager and help with the Service Area Plan. The other issue is that there is the potential shortage of board members. One of the current board members may have potential employment in Colorado and if he leaves then a new board member will need to be appointed.

Commissioner Kelley asked Mr. Kemp if he is still employed by the SCWD.

Mr. Kemp responded that he is a current consultant. Mr. Kemp and Mr. Harris may not always see eye to eye but are big enough to work together. He thinks the atmosphere will have a significant improvement.

Mr. Heuberger asked if Ms. Pam Hammond is the person hired to train the new General Manager.

Mr. Kemp responded yes Ms. Pam Hammond has been hired on temporarily.

No action was taken on this item.

**8. Discussion/Action/Direction regarding the status of the Service Area Plan (SAP)/Municipal Service Review (MSR) for the Niland Sanitary District (NSD 1-16)**

Mr. Heuberger stated that NSD is present today and they are more than welcome to speak. The NSD is a district that has been an item on the agenda in the past and the LAFCO have been working with their board president and legal counsel on various concerns. About a month ago Mr. Heuberger asked Colorado River Basin Water Board Executive Officer Mr. Jose Angel to attend a meeting at the LAFCO office to discuss their problems with the district. In attendance were the NSD, LAFCO, NSD Legal Counsel, USDA, The Holt Group, and the County. Mr. Angel was forthright and very helpful and clarified the district is facing a \$473,000 fine to the RWQCB. \$220,000 of that fine is what is called a mandatory minimum penalty fine. \$258,000 of the fine is what is considered discretionary and the RWQCB board can waive all, part or none. The RWQCB wants a plan of action that will rectify the problems. The frustration from the RWQCB is that the district over time continued to agree to fix the issues but never followed through, ultimately leading to penalties. The district had until Tuesday to submit a compliance plan to the RWQCB which they were able to submit in time. Mr. Heuberger received a copy of the proposed settlement agreement this morning. If the district follows through with the settlement agreement, then the RWQCB would agree to suspend \$125,000 pending satisfactory completion of the compliance project. It is still a significant hit to the district because they aren't in a financial position for those kind of expenses but it's a step in the right direction. The district's financial health, fee structure, and operating conditions are among the issues that need to be discussed. A sewer district is an oddity in the sense that it has very limited abilities for financial success. Unlike a water/sewer district, a sewer district doesn't have the ability to suspend services due to nonpayment. The fees are collected by the county as part of the property owners tax bill. The county has been gracious and advancing the funds to the district with the anticipation of collecting the money in the end. The county cannot pay the district beyond that. The question is can the district become financially stable with their revenue source without making some major changes. The changes being looked at are an increase in rates and their operational system. The district has been working with ADBANK and BECC. These agencies have offered to provide a tremendous amount of assistance.

Commissioner Kelley asked if the district would be able to make payments to the RWQCB for the penalties.

NSD Board President Ms. Debbie Salas responded she has submitted a proposed compliance plan to the RWQCB and is waiting for a response and for the district legal counsel to review.

Commissioner Kelley asked if there has been any board action/direction with respect to the financial stability, i.e. raising the rates.

Ms. Salas responded she will be meeting with the rate study consultant today but no action has taken place by the board.

Mr. Heuberger asked if there is a payment plan for the \$133,000.

Ms. Salas responded that the district is trying to obtain a loan from the county for the \$133,000. The district is trying to obtain a payment plan for the \$220,000.

Mr. Heuberger stated the RWQCB is proposing to suspend the \$220,000 pending the ability of the district to obtain the financing, potentially from USDA and/or ADBANC. The district will need to obtain a loan from the county for the \$133,000.

Commissioner Jackson asked what the cash on hand is.

Ms. Salas responded the cash on hand is estimated at \$200,000.

Mr. John Kemp asked if the mandatory fines will be applied to a compliance program.

Mr. Heuberger responded yes, the mandatory fines will be used towards a compliance program. An option that was looked at many years ago was the possibility of combining the NSD with another entity. There was an attempt to combine the NSD with Calipatria, that however fell through.

Commissioner Kelley wished the NSD good luck and anticipates a final and complete Service Area Plan in the future.

No action was taken on this item.

## PUBLIC HEARING ITEMS

9. **Public hearing to consider the approval of Service Area Plan (SAP)/Municipal Service Review (MSR) for Cady Poe Colonia (CSA 1-16)**

This item was pulled from the agenda. No action was taken.

10. **Public hearing to consider the approval of the Service Area Plan (SAP)/Municipal Service review (MSR) for the Gateway of the America's (CSA 2-16)**

This item was pulled from the agenda. No action was taken.

11. **Public hearing to consider the approval of the Service Area Plan (SAP)/Municipal Service Review (MSR) for the Niland Service Area No.1 (NSA 1-16)**



This item was pulled from the agenda. No action was taken.

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

Mr. Heuberger stated he has been working on trying to put together a report that makes sense for a dissolution. It has been difficult to get information and somewhat impossible. Mr. Heuberger is asking that the item be heard today but continued due to the fact that information needed has not been received and this is information that is needed from both from a dissolution standpoint and a criminal standpoint. The county staff has some concerns as well and a meeting with them is needed. There are issues with funds that are unaccounted for. In the Executive Officers report under the analysis as required under the government code is a resolution with conditions if the dissolution is approved. Today's requested action would be to continue this item and open it up to a public hearing. The LAFCO is seeking help from Legal Counsel Mr. Ryan Childers. The LAFCO became aware early on that the WFD might owe a significant amount of money to various creditors. A public notice advertisement was published in the Yuma Sun requesting that any potential creditor of the WFD submit a claim to the LAFCO with proof of any amounts owed. A list of creditors is included in the hearing packet. Another issue is equipment the district disposed of in a questionable manner. The district owned a fire engine that was returned to the company that it was purchased from because they allegedly owed this company money, however there is no document proving that. An ambulance was sold by the WFD to this same company for \$5036 which there is no record of the approval to sale or any proof of the transaction. Mr. Heuberger was advised the check hasn't been cashed and that it's in a locked room at the WFD station. LAFCO Accountant Ms. Julie Carter has spent the last couple of months trying to make sense of whatever financial records were obtained. The district owns a building and a piece of land. The county had some issues as to how the dissolution of the Niland Fire District was handled. This time around a Phase I Environmental and a Title Report were completed. An appraisal has not been done. The bottom line is there is a structure and a piece of land and under the law if the WFD is dissolved the county becomes the successor agency and will complete the transaction of disposing/wrapping up the dissolution of the district. Under the law the county can keep the building for its own use or selling the building. There is an interest by the Winterhaven Water District in the building. The WWD owns a part of the WFD land. Mr. Heuberger has advised the WWD to contact the county. The county may also be interested in using the land for the sheriff's department storage, that's up to the discretion of the county. There is a tower owned by SBA that is on the property and the conditional use permit for has expired. The WFD and SBA had a lease that was converted into an easement in exchange for the district receiving a lump sum payment. The county is reviewing the lease and the potential that it violates the map act. The LAFCO will follow up on financial documents that are outstanding and the alleged transaction of the ambulance sale. Fire ETC is the company out of San Diego that is in possession of the fire engine and ambulance and they have agreed to store the equipment until this matter is figured out.

I.C. Counsel Ms. Katie Turner stated the LAFCO has been working with the County. The County's main concern is they don't want the dissolution to look like a reorganization. The County wants it to be a clean dissolution. Under the law the assets would be identified and it would be handled like a typical bankruptcy. The County has been providing emergency services and it is their opinion that they should be first in line as a creditor. For the winding up, the County would follow the terms and conditions, but the way they are drafted as of now leaves a lot of questions about future creditors approaching them. The County would not take money out of their general fund to pay these creditors. The assets would be identified and that's the only pull of money that gets taken to pay those creditors. The County would like to have the lease with SBA finalized and for it to be terminated and clarified during this process and not an obligation of the county for years to come. Ms. Turner stated she appreciates the cooperation and can answer any questions.

Commissioner Jackson asked if the County would want to be first in line as a creditor due to the fact that the county has been providing services.

Ms. Turner responded yes, she would be happy to sit down with the LAFCO Counsel Mr. Ryan Childers and present a proposed order of creditors. If taxes are due to someone else or a judgement, then those would be priority over the county.

I.C. Fire Chief Mr. Tony Rouhotas stated he agrees with Ms. Turner that the County should be a priority creditor. There were times that the County had to staff personal in Winterhaven for a week or two on several occasions over the course of 2014-2015 due to the WFD lacking worker's compensation insurance. From the time the WFD closed their doors in June of this year up to today's date need to be considered and those figures haven't been put together yet. A little over a year ago the County started providing service to the Quechan. The County was never officially asked to take over providing emergency services to the Winterhaven area. Those services have been provided through mutual aid. The county was aware of the WFD closure via an email and are currently providing services to the Winterhaven area.

Commissioner Kelley stated from a public safety aspect and morally it's the right thing to do.

Mr. Rouhotas agreed.

Commissioner Kelley asked if the County is properly staffed to provide services.

Mr. Rouhotas responded that it is a busier station but would leave that up to discussion.

Commissioner Jackson asked what the call averages are on a monthly basis.

Mr. Rouhotas responded the average call is approximately 12 calls per month. It's a large area to cover.

Mr. Heuberger stated the LAFCO hasn't received a claim from the County.

Ms. Turner the County is working on compiling the numbers.

Mr. Heuberger stated the LAFCO has sent the County certified letters and various emails to which none have been responded. So it's not a lack of notice.

Ms. Turner stated that the County is working on the numbers, she cannot provide a date as to when it will be completed.

Mr. Heuberger stated he would like to continue this item until February.

Ms. Turner stated the County is comfortable with a February hearing.

Commissioner Castillo asked when the tower lease expires.

Mr. Heuberger responded the conditional use permit expired back in September of this year. Planning was asked to pull the item from their agenda so the conditions could be reviewed prior to extending the conditional use permit. At the last LAFCO hearing the attorney for SBA was aware of this. Planning hasn't rescheduled this item to be heard. The CUP is expired although there is a provision that allows an extension of the CUP subject to compliance. The big issue is whether the

map act was violated. There is an easement similar to a parcel map which basically means we cannot do anything with the land that the tower is on.

LAFCO Legal Counsel Mr. Ryan Childers stated SBA paid a lump sum to the WFD and in return turned the lease into an easement that doesn't expire

Mr. Heuberger stated the attorney for SBA advised if they reimbursed for the lump sum payment that was paid to the WFD then they would terminate the lease.

Winterhaven Water District Manager Mr. Rick Miller, stated the district is interested in the WFD property due to the fact that they are landlocked and cannot expand.

Mr. Heuberger stated he did advise Mr. Miller to contact the County.

Motion by Jackson to continue this item and approved by Jackson, Kelley, Castillo, West, and Predmore.

**13. Public hearing to consider the approval for the annexation of Miller-Burson (EC 1-16)**


This item was pulled from the agenda. No action was taken.

**14. Public hearing to consider the approval for the annexation of Lotus Ranch (EC 3-05)**

This item was pulled from the agenda. No action was taken.

**EXECUTIVE SESSION**

Mike Kelley, Chairman



Jurg Heuberger, AICP, CEP  
Executive Officer to LAFCO