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COMMISSIONERS

CITY

**Maria Nava-Froelich, Vice Chair**

CITY

**Jason Jackson**

COUNTY

**Michael Kelley**

COUNTY

**Raymond "Ray" Castillo**

PUBLIC

**David H. West, Chairman**



ALTERNATES

CITY

**Jim Predmore**

COUNTY

**Luis Plancarte**

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

**July 27, 2017**

**8:30 a.m.**

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

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**VOTING COMMISSIONERS PRESENT:**

David West, Chairman  
Maria Nava-Froelich, Vice Chair  
Jason Jackson  
Luis Plancarte  
Ray Castillo

**ALTERNATE COMMISSIONERS PRESENT:**

None

**ABSENT:**

Michael Kelley

**STAFF PRESENT:**

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

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

Legal Counsel Mr. Ryan Childers stated there are two potential necessity items that need to be added. These are both closed session items. One would be a decision to initiate litigation. The second would be potential litigation against LAFCO. Both of these items came to the attention of staff after the posting of the agenda and given the sensitive nature require immediate attention.

Motion by Commissioner Jackson to add two items to closed session and passed by the roll call vote of Froelich, Jackson, West, Castillo and Plancarte.

3. **Public Comments:**

No comments were received.

**ANNOUNCEMENTS**

A. **Announcements by the Commissioners.**

Commissioner Froelich stated she attended an ICTC meeting and one of the items that is being looked at is a bus shelter being built in Niland.

B. **Announcements by the Executive Officer**

Mr. Heuberger stated the Heffernan Memorial Healthcare District have submitted an annual update report and budget that will be presented to the Commission at the next hearing. Mr. Heuberger met with one of the board members this week and was advised there are three new board members and the District is looking forward to working with LAFCO.

**DISCUSSION/ACTION/DIRECTION ITEMS**

6. **Discussion/Action/Direction regarding the potential dissolution of the Niland Sanitary District (NSD 1-16)**

Mr. Heuberger stated various concerns were raised during the May hearing. There were significant public comments. Staff along with the County met with the various agencies and addressed how to move forward. The funding has been on the table for five years now and the agencies have a statutory time frame as to how long those funds can remain available. The District went through a Prop 218 that passed by the public but the Board voted not to implement the increase. That decision jeopardizes the funding since one of the requirements for funding is the adoption of a Prop 218 rate increase. The District has been in violation with the RWQCB for several years. The RWQCB agreed to reduce the fine provided the District upgrades the system to bring it into compliance. Without the funding that isn't possible. The District could face a shut down by the State or health agency. Back in May the Commission directed Mr. Heuberger to take a two-avenue approach. One was to allow the District to go through another Prop 218 process and at the same time commence the dissolution process. The NSD voted 3-2 to commence another Prop 218 and the final vote will be on August 4<sup>th</sup>. Mr. Heuberger has been meeting with the County and the agencies to obtain as much information as possible and at the same time preparing a report for a possible dissolution. If the District is dissolved, then the operations would need to be ran by another entity. A new special district would need to be formed or to combine the sanitary operations with an existing CSA which could be the Niland Lighting District. The County Board of Supervisors oversees the CSA's. A meeting will be scheduled with the various agencies after the Prop 218 August 4<sup>th</sup> vote. There have been numerous concerns and complaints by the public. The ultimate charge this Commission has is to make sure the community receives a level of service that can be maintained.

Commissioner West stated the Commission wants to make sure the residents sewer services.

Mr. Heuberger stated per a discussion with I.C. CEO Mr. Ralph Cordova, the Districts financials are being reviewed as well as the possibility of having a third party review the system from an operational standpoint. An option would be to approach the City of El Centro or Brawley and ask them to look at the system.

Commissioner Castillo asked if Ms. Colio could provide an update to the Commission.

I.C. Economic and Development Manager Ms. Esperanza Colio stated for the last five years the County have been working with the District to obtain funding for the plant improvements. The District received two cease and desist orders from the RWQCB. BECC works with EPA and they secured the funds for the preliminary engineering and the environmental document. USDA was willing to cover the costs as long as the District could obtain a bridge loan from the County. BECC grants 50% of the design cost and the bridge loan would cover the engineering and design. Once construction begins, the loan would be reimbursed. The funding agencies and the County both require a Prop 218 implementation to provide funding. The agencies do not feel secure that a Prop 218 will pass.

Commissioner Castillo stated the ongoing maintenance of the plant is a dilemma.

Ms. Colio responded the Prop 218 rate increase addresses previous debt and ongoing service and maintenance of the plant.

Ms. Colio stated the original penalty from the RWQCB is 4.5 million. The County worked with the District to negotiate the penalty and it was ultimately reduced to \$478,000. If the Prop 218 doesn't pass and the improvements aren't made, then the penalty will go back to the original amount. This is the only opportunity to bring the District in compliance

Commissioner Castillo stated if the District were to fail, and the County take over, the County doesn't have the funds to take over the operation of the facility. The system is paid by the users and the County can't obligate others to pay for the District. The best option moving forward is to dissolve the District.

Interim Plan Manager Mr. Manuel Sanchez stated he's been working for the District the past three months as a Grade 5 Operator. The major issues are in relation to copper, valium and chromium. The past six months there haven't been any issues. Mr. Sanchez plans to conduct research on the issues and go from there. The options are to invest the funding into fixing the issues or change the discharge permit into an evaporation pond permit.

Mr. Heuberger replied the funding is to address those issues

Mr. Sanchez stated the funding is to fix the issues. Another Prop 218 vote will occur on August 4<sup>th</sup>. The District accepts responsibility for the problems. The District is working hard and looking forward to making things effective and transparent and want to regain the trust from the community and understands the power that LAFCO has.

Commissioner West stated time is running out. The residents need to be able to continue to receive the sanitary services.

Commissioner Jackson asked when the next LAFCO hearing will be.

Mr. Heuberger replied the next hearing is on August 24<sup>th</sup>.

Commissioner Jackson stated the Commission made it very clear to the District that leadership needed to be shown, with a 3-2 vote from the District that did not happen. He recommends moving forward with the dissolution and to work with the County on forming a CSA.

No action was taken on this item.

## PUBLIC HEARING ITEM(S)

### 4. **Public hearing to consider the approval of the Service Area Plan (SAP)/Municipal Service Review (MSR) for the City of Holtville (HV 1-17)**

Mr. Heuberger stated this hearing is to consider the update to the City of Holtville's Service Area Plan and Sphere of Influence. Mr. Heuberger is recommending the approval of Option #1 pursuant to Exhibit D, which shows the recommended SOI boundaries. The City requested the SOI extend to the freeway as shown on Exhibit E. Every five years a SAP is due. A SAP is a review of the City services being provided. An SOI is a boundary that LAFCO establishes around the City as to the future development area. An SOI establishes where the Commission, County and City projects the City to grow. To have an SOI that is miles out is unrealistic. The SOI guides both the Cities and the County to work together on future development areas. The process has been beneficial. Mr. Heuberger has reviewed the SAP and agrees with the report except for the SOI extension to the freeway. The reality of building near an intersection of a freeway and state highway is difficult and expensive.

City Planner Ms. Justina Arce stated the City has no objection to the modified SOI. The City's intent has always been to grow southwest. With the boundary adjustments that were requested, the City would be able to respond to the demands from the government agencies consolidating the system. There is an increase in demand to remove properties from septic systems. It doesn't make sense for the City to take in the neighborhoods that are lacking infrastructure without receiving a significant benefit. The cost to make the improvements would be substantial and the City would have to share the property taxes with the County. The SR 115 reroute is sufficient for the City. There are many challenges in providing services to all the communities and it would require a regional pump station and be costly. It wouldn't make sense to acquire grants for these areas and then have to pay for the operation and maintenance in the long term. The City doesn't have any objection the revised SOI.

Commissioner Froelich asked if the City has addressed the environmental impacts.

Ms. Arce replied the SAP is a planning document and exempt from CEQA. CEQA will be addressed as projects and developments come along. The general plan is concurrently being updated.

Commissioner Castillo asked what the reason for the SOI revision is.

Ms. Arce replied the purpose was to eliminate prime farm land on the eastern end. The canal in that area would not pencil out for low density residential. The City wants to trade that land with areas that are less demanding for farming and easier to develop or had existing residential communities. CALTRANS is in the second phase for the environmental of the SR115. The financial viability to trade off land for commercial and industrial development would provide the City a sales tax base.

**Motion by Commissioner Castillo to approve Option #1 and passed by the roll call vote of Froelich, Jackson, Plancarte, Castillo and West.**

5. **Public hearing to re-consider the protest hearing on May 25, 2017 and hold a new protest hearing for the annexation of Miller-Burson (EC 1-16).**

Commissioners West and Plancarte recused themselves from this item.

Mr. Heuberger stated the Miller-Burson annexation protest hearing was held on May 25<sup>th</sup>. At that hearing staff received protests by both registered voters and landowners. During the June 22<sup>nd</sup> hearing, staff submitted the protests results to the Commission. The protests received did not meet the 50 percent plus 1 to terminate the project. It did meet the 25 percent in both categories to schedule an election. At that time, the Commission received a substantial amount of testimony from the public indicating there had been some erroneous and misinformation that would have caused some residents not to protest. The public asked if their previous protests could be withdrawn. The answer was no since the hearing for May 25<sup>th</sup> had already closed. The 25 percent protest votes would call for a general election vote per the CKH act. The election would be included in the regular November election, and the estimated cost of the election would be thirty to thirty-five thousand. The Commission at the hearing considered all the facts and found that there was sufficient information that some residents may have voted in error and may have not understood the process and the protest. The Commission felt it would be fair to the residents to consider holding a new protest hearing. A notice was sent both regular and certified mail to the residents advising them of the new protest hearing. In between that time some residents have talked to staff and former commissioners. Prior protests votes do not count, and the residents were made aware of this. Prior to the close of this hearing, residents are allowed to submit a written protest. At the end of the hearing the votes will be counted and certified by the Commission.

Commissioner Froelich stated the hearing is open for public comment and to submit a written protest.

No protests or comments were received.

Legal Counsel Mr. Ryan Childers stated the hearing is now closed and no protests can be submitted.

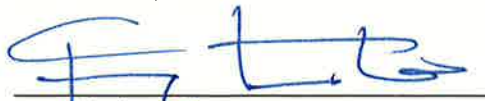
Mr. Heuberger stated for the record, no protests were received prior to this hearing and no protests were received at this hearing. The next step is to move forward with the recording of the annexation once the required documents are received by the City and the applicant.

**Motion by Commissioner Jackson to approve Option #1 and passed by the roll call vote of Froelich, Jackson, and Castillo.**

**EXECUTIVE SESSION**

Legal Counsel Mr. Ryan Childers stated as to both items there was a discussion but no action taken. The record should reflect as to the second item, Commissioners West and Plancarte recused themselves, left the room and did not participate in the discussion.

David West, Chairman



Jurg Heuberger, AICP, CEP  
Executive Officer to LAFCO