
COMMISSIONERS

CITY

Maria Nava-Froelich, Chair

CITY

Jason Jackson

COUNTY

Michael Kelley

COUNTY

Raymond“Ray” Castillo, Vice-Chair

PUBLIC

David H. West



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

ACTION MINUTES OF THE REGULAR LAFCO HEARING

March 22, 2018

8:30 a.m.

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

VOTING COMMISSIONERS PRESENT:

Maria Nava-Froelich, Chair
Luis Plancarte
Jason Jackson
Michael Kelley
David West

ALTERNATE COMMISSIONERS PRESENT:

None

ABSENT:

Ray Castillo, Vice Chair

STAFF PRESENT:

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

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

3. Approval of Consent Items

3A. Minutes from January 25, 2018

3B. Project Report update

3C. Accept the Executive Officers determination of the City of Westmorland annexation WM 1-18

Mr. Heuberger stated the WM 1-18 annexation is to annex several streets to obtain grant funding. The annexation was approved administratively by the EO but will not be recorded until all documents are received.

City of Westmorland City Planner Ms. Justina Arce stated she represents the City of Westmorland and feels LAFCO should play a larger role in the tax sharing agreement process and initiate a master tax agreement now that the county has a new EO. It's frustrating for the communities to be bullied on a 50/50 share for perpetuity even after they receive development impact fees. She believes all the cities would be interested.

Commissioner Froelich stated she wouldn't want to step on the county.

Commissioner Jackson stated there have been discussions regarding Project Eagle in the City of El Centro and that may have stimulated some discussion regarding a master tax agreement. There have been meetings with the county and the City of El Centro.

Ms. Arce replied there have been discussions regarding the LAFCO taking the lead and samples from what other counties are doing would be useful. That's why there is a demise with the smaller communities being bullied.

Mr. Heuberger stated he meets regularly with the City Managers and can bring up this topic.

Motion by Commissioner Jackson to approve Items 3A, 3B, 3C.

MOTION: JACKSON
AYES: FROELICH, JACKSON, KELLEY, WEST, PLANCARTE
ANO: NONE
ABSTAIN: NONE
ABSENT: CASTILLO

4. Public Comments

No public comments were made.

ANNOUNCEMENTS

5A. Announcements by the Commissioners.

Commissioner Jackson stated he will be attending the Imperial Valley Economic Development Corporation (IVEDC) conference today.

Commissioner Froelich stated the Imperial County Transportation Commission (ICTC) held an unmet needs hearing on February 22nd. There is a meeting today at the City of El Centro chambers to discuss the results of that meeting. The Imperial County League of Cities meeting will meet this evening and is hosted by the City of Brawley.

5B. Announcements by the Executive Officer

NECESSITY ITEM ADDED TO THE AGENDA

Mr. Heuberger stated there is an item that is being requested to be added to the agenda. Resolution 2018-06 has been provided to the Commission. The Commission for some time has been advocating that the special districts have a seat on the Commission. As a result of an RDA

requirement a meeting with the special districts was held and the majority of the special districts attended. During that meeting there was discussion about the seat on the Commission. The special districts would have the ability to have two seats on the Commission just as the city and the county have. There was a follow up meeting scheduled but on Tuesday the California Special Districts Association (CSDA) advised staff of a legislative change made last year. Assembly Bill 979 changed the process of how the special districts could be seated. In the past each special district would have to pass a resolution in support. The new process is the Commission would adopt a resolution of intent initiating the process. The complexity of this process is once you pass the resolution of intent then a meeting of the special districts is required within 15 days. It's impossible to get the special districts to meet in a short period of time. The request today is to pass a resolution to initiate the process. This authorizes the Executive Officer to organize the Special Districts Selection Committee which is made up of the presiding officer of each district. At the next regular hearing a second resolution would be passed and within 15 days a meeting of the special districts would be held.

Commissioner Froelich asked if this item was noticed to the public. She is concerned the public was not aware.

Mr. Heuberger replied this is an item of necessity that came to the attention of staff on Tuesday. This item will be on the April agenda.

LAFCO Legal Counsel Mr. Ryan Childers stated this is a necessity item being added to the agenda. It would require 2/3 votes of the Commission. It came to the attention of staff after the agenda was posted and needs to be acted on before the next regular scheduled meeting.

Motion by Commissioner Kelley to add a Necessity Item to the agenda.

MOTION: KELLEY
AYES: FROELICH, JACKSON, KELLEY, WEST, PLANCARTE
ANO: NONE
ABSTAIN: NONE
ABSENT: CASTILLO

Motion by Commissioner West to approve Resolution #2018-06.

MOTION: WEST
AYES: FROELICH, JACKSON, KELLEY, WEST, PLANCARTE
ANO: NONE
ABSTAIN: NONE
ABSENT: CASTILLO

DISCUSSION/ACTION/DIRECTION ITEMS

6. Discussion/Action/Adoption of the Draft LAFCO Budget for FY 2018/2019

Mr. Heuberger stated as required by statute the Commission must adopt a budget and provide that budget to the funding agencies. The draft budget is being considered today and the final will come

back in May to adopt before the June deadline. The draft budget must be provided to the funding agencies due to the way the LAFCO's are structured. The budget presented today is the same as last year in terms of expenditures. There are some policy items that will be explained. The first being the special districts. If the special districts are seated on the Commission then the budget structure would change to 1/3 County, 1/3 Cities collectively, and 1/3 Special Districts collectively in terms of funding. The expenditures would change slightly. The current funding agencies would see a reduction.

Commissioner Kelley asked if there would be a revenue increase.

Mr. Heuberger replied there wouldn't be, it only changes the way the funding is split. It changes the expenditures in terms of the office expenses and travel expenses if special districts were seated. The recommendation today is to proceed with the assumption of that happening. If by the final budget the special districts aren't seated then the original budget would be adopted. The other policy item is there are structural issues with the building. A considerable amount of work has been completed over the years, but the one repair never completed is the roof. There is a substantial number of leaks when it rains. The estimate to repair the roof is approximately \$80,000. It's unfortunate when the roof was repaired at some point because it might have made it worse. There are new requirements by law for the webpage. There must be specific buttons on the first page that direct you to certain items. The public cannot be asked to click on several links to get the information they need. The webpage has to be redone. The last policy issue that has been the recent subject of discussion is a stiped for each meeting attended.

Commissioner Kelley stated he doesn't believe a stiped is needed.

Mr. Heuberger stated last year a litigation fund was established. There isn't a request for a change just an update that there is a \$40,000 and a contingency fund of \$150,000. An increase is not being requested at this time. The expenditures absent the special districts being seated will stay the same. If the special districts are seated there will be a slight increase in the out of country travel and the office expense line items. The seven cities pay half of the LAFCO budget collectively based on their gross revenues, so unfortunately since the City of El Centro has the hospital they pay the lion share of the cities apportionment. There have been discussions with the special districts and the IID is the largest district based on revenue. If the same formula for the cities were used for the special districts then the IID would pay about 90%. The law states that no special district can pay more than 50%. If the special districts were seated the IID would be paying half of the 1/3 of the specials districts portion and the remaining would be split amongst the remaining special districts.

HPUD General Manager Ms. Laura Fischer stated she e-mailed LAFCO staff asking for information regarding the statute. She was unaware that HPUD would have to pay \$33,000 based on gross revenue to join LAFCO. The District was the instigator several years ago and was interested in

joining without the understanding that IID would only have to pay 50%. During the 15-16 fiscal year the District had an eleven million-dollar project that included a five million-dollar loan and a six-million-dollar grant. If funds from the project were used as part of the District's gross revenue then there are some questions.

Mr. Heuberger stated he was advised after the meeting with the special districts that no district by law could pay more than 50% of the total. The gross revenue numbers are retrieved from the State Controller's office. The calculation for the cities is simple but complicated for the special districts. LAFCO Accountant Ms. Julie Carter retrieved the information from their website and calculated the numbers although it doesn't make much sense how it's calculated. The most recent information from the State Controllers is for the fiscal year 15-16. That information was used to provide an estimate to each special district. The districts were advised that the numbers are an estimate but a close estimation. Each districts gross revenue is then split by a percentage and that's how the share is calculated. The alternative is the districts can get together and establish a different formula just as the cities can by law. Mr. Heuberger met with IID staff including Mr. Kevin Kelley, Ms. Tina Shields and Mr. Antonio Ortega and discussed the option of establishing a different formula. He suggested the IID could pay more with the possibility of having a permanent seat on the commission. In some counties the special district that pays the lion share has a permanent seat on the commission. One of the two seats would come from that district. There's the opportunity that the IID might say they would pay more if they would always have one seat. Keep in mind that the CKH law changed in 2000. The law changed from the districts not having to pay to now paying their fair share. That was at the request of the California Special Districts Association (CSDA). The special districts want to be represented but they have to pay. Prior to the change in law the special districts didn't have to pay. Ms. Fischer is correct in regard to the attempts to seat the special districts and they may not be interested because of now having to pay. If the special districts aren't seated then the budget will revert to the original proposed.

Commissioner Froelich asked how soon would the special districts be seated.

Mr. Heuberger replied the action today would be to pass a resolution that authorizes him to call and organize a meeting of the Special Districts Selection Committee. The law is written so that the next resolution of intention will be adopted in April. Once that resolution is adopted then the Committee must meet within 15 days. If the resolution of intention were adopted today then that would only allow staff 15 days to try and get the districts to meet, that is a short period of time. The Special Districts Selection Committee will meet and vote to decide whether or not to be seated. The results will be roughly around mid-May which is right in time for the final budget.

Commissioner Froelich asked if it's a mandate or an option for the special districts to be seated.

Mr. Heuberger replied it's an option although the state and the CSDA have been pushing to get them seated. LAFCO cannot force them.

Commissioner Plancarte asked since the County of Los Angeles operates the Mesquite Landfill, would they be eligible for a seat and is it defined in the law.

Mr. Heuberger replied only the special districts in the county where they have their largest operational stakes can vote and be on the Commission. For example, Coachella Valley Water District is both in Riverside and Imperial County but the majority of their operations is in Riverside therefore they cannot have a say in Imperial LAFCO. The formulation for how the special districts are calculated is different. Pioneer's Memorial Hospital District wouldn't have to pay if they were seated at this time. The law states if a hospital districts net income is in the negative than their share would be zero. The contribution would change if PMHD's net income were a positive number. The Heffernan Memorial District is not recognized as a special district by the State Controller. They show that the HMHD contribution would be zero. HMHD is a special district but since they don't operate a hospital they aren't recognized. That is being reviewed. Each year's contribution would change based on the gross revenues of each district.

Commissioner West asked if there are enough funds for staff and lawsuits if the special districts are seated. The Commissioner stipends will be removed.

Commissioner Kelley replied the stipends are probably warranted. Commissioner Froelich travels a long distance from Calipatria and Commissioner West is a public member. He wouldn't object to the stipend if the majority of the Commission is in favor.

Commissioner Froelich stated she is in favor of the stipend due to the cost of gas. The City of Calipatria provides a stipend of \$100 per meeting and that's not compared to what the bigger cities get. She comes back to El Centro twice today and will miss work. She uses the money from her own pocket.

Mr. Heuberger stated the stipends won't amount to more than \$3,500 per year at \$100 per meeting per month for five Commissioners. The stipend can be left in the draft budget and a final decision can be made for the final budget.

Commissioner West asked if the recommendation is to approve Option #1 or Option #2.

Mr. Heuberger replied the recommendation is to approve both draft budgets to provide to the funding agencies. The County pays half and the cities wait to receive what their apportionment will be. He wants the county to budget for the higher amount just in case the special districts are seated. If the special districts aren't seated then reducing the amount is easier to justify.

Motion by Commissioner West to approve both Option #1 of the Executive Officer's report.

MOTION: WEST
AYES: FROELICH, JACKSON, KELLEY, WEST, PLANCARTE
ANO: NONE
ABSTAIN: NONE
ABSENT: CASTILLO

7. Discussion/Action/Direction regarding the tax sharing process

Mr. Heuberger stated there have been questions raised by both the cities and by the EO's in the region and the state. He wanted to bring this to the attention since some of the Commissioners are new and haven't been on the Commission long. In prior years there was a master tax sharing agreement and that agreement was between the seven cities and the county. A master tax agreement no longer exists. Each project has its own tax sharing agreement. From the applicant's standpoint it's a confusing process because they don't have any control since it's between the city and the county to negotiate. In the past some of the agreements have taken up to a year and a half to negotiate. The applicant comes before LAFCO and are frustrated because they are not on the agenda. The Commission by law cannot hear an annexation project until there is a tax agreement. Imperial LAFCO's process and policy is different from what the law specifically states. The law states before the LAFCO can accept an application there must be a tax agreement completed. Years ago, this Commission changed the process. The original process is the applicant had to submit an application to LAFCO along with a completed tax agreement between the city and the county. The problem with that process is the project may have changed during the planning process and the county would say the tax agreement was no longer valid since the project had changed. The Commission said the process didn't make sense. The application could be processed but would not go to hearing until a tax agreement was completed. It provides a more efficient process. LAFCO staff work with city staff through a planning process from day one and immediately the tax sharing process starts. By the time the city land use approvals are completed the tax agreement process is close to being completed. The current process is more efficient and it's done simultaneously opposed to serially which is the way the law states. The process isn't being changed at this time it's just on the agenda as a reminder.

Commissioner Froelich asked if the policy is still abiding by the law and if there is a resolution adopting this process.

Mr. Heuberger replied it's legal since the project will not come before the Commission until the tax agreement is completed and a resolution was adopted back in the 1990's.

No action taken on this item.

8. **Discussion/Action/Direction regarding the Imperial Irrigation District, to obtain an updated Service Area Plan (SAP)/Municipal Service Review (MSR) and the possible retention of an outside consultant to prepare the SAP/MSR.**

Mr. Heuberger stated the special districts and the cities have completed or are in the process of completing their Service Area Plan's with the exception of the City of Calexico who is now in the process of updating. The special districts SAP's are up to date with the exception of IID. A letter was sent to Mr. Kevin Kelley requesting IID submit an SAP or the LAFCO would have one completed and it could cost up to \$300,000. IID requested a meeting with staff and the District stated they will complete the update internally. A representative from the District is present today and staff will work with them to obtain an updated SAP.

Commissioner Kelley asked if the IID has ever completed an SAP.

Mr. Heuberger replied in 2006 a review was completed and a promise was made to the Commission that they would complete a full review the following year. That was never completed.

Commissioner Kelley stated it's a big job but it's needed.

IID Government Affairs and Communications Officer Mr. Antonio Ortega stated the General Manager Mr. Kelley received a letter from Mr. Heuberger on February 15th and that prompted a follow up meeting in person on March 2nd. He attended the meeting along with the Mr. Kelley and other IID staff. Since that meeting a formal response letter was submitted to the Commission and Mr. Heuberger. The letter informed Mr. Heuberger that the IID would have its internal staff prepare the document rather than having the Commission appoint a third-party consultant. That means that they have to come up with internal resources which has been done. The next step is to put together a plan and a timeline that will be provided to the Commission. He acknowledged that the SAP/MSR is behind and LAFCO staff have been kind to provide them with historical information from 2006. IID will most likely redo or do a completely new SAP/MSR that will be provided as a working draft to staff to ensure they are on the right track. A formal document will be submitted for review hopefully sometime before the end of the summer. The working draft will be submitted earlier than the end of the summer.

Mr. Heuberger stated he gave the IID a due date of June 1st and realizes that it's a short amount of time and since that meeting he acknowledged if they made an effort and had a working draft in progress that staff would work with them for an August deadline.

Commissioner Froelich stated once the SAP/MSR for the IID is completed then the special districts will be up to date.

Commissioner Kelley stated the Executive Officer and the District will work together on updating the SAP.

Commissioner West asked if this is a verbal update or is action needed.

Mr. Heuberger replied this an update and no action is needed.

Mr. Ortega thanked the Commission for allowing the District the time to update the SAP.

No action taken on this item.

PUBLIC HEARING ITEM(S)

9. **Public hearing to consider the approval of the Service Area Plan (SAP)/Municipal Service Review (MSR) for the Heber Public Utility District (HPUD 1-17)**

Mr. Heuberger stated staff have been working with the special districts and the cities to obtain updates for the Service Area Plans/Municipal Service Reviews. Because of the downturn in the economy years ago the Commission allowed some flexibility. At this time staff is almost up to date with all agencies having an updated SAP/MSR. The HPUD is one of the last agencies to bring up to date. Representatives from the District are here today and can answer any questions. The District provided a comprehensive plan and it has been reviewed. Ms. Justina Arce did a great job. The District is in compliance and will be addressing some minor issues over time. The recommendation is to conduct a public hearing and approve the SAP/MSR.

HPUD General Manager Ms. Laura Fischer thanked LAFCO for reviewing the SAP and recognizing that the District is in compliance and has the capacity for sewer and water which are the main services provided. The District is in a position to allow the County to grow and develop. She looks forward to a partnership and working with LAFCO and the County.

Commissioner Kelley stated Heber is one of the larger special districts in the County and he appreciates the hard work.

Commissioner Jackson stated on Exhibit 7 it notes the sphere of influence for Calxico but not the sphere of influence for El Centro.

Mr. Heuberger replied the City of El Centro and the HPUD have a unique overlap on McCabe Rd. The sphere of influence remains at McCabe Rd. This Commission allowed the District to provide services to a development in the sphere of influence of El Centro. The latest agreement was

structured between the City of El Centro and the District and allowed the service to continue until such time that there were provisions made that the City would provide the services. The official boundary remains at McCabe Rd.

Commissioner Froelich stated Heber is thriving and they are an unincorporated town site just as Niland. She asked if Heber would consider becoming incorporated. They are close to the mall and the City of El Centro.

Ms. Fischer replied a study on becoming incorporated was completed about six years ago. The problem was the restricted property tax share agreement and sales tax agreement with the county that didn't make it feasible. It would be the same today and the District would be annexing into a city providing more services and not having the amount of revenue to sustain.

Commissioner Froelich replied the District could start building a general plan to become an established city.

Ms. Fischer replied the District's Board of Directors was interested until the study was completed and showed the revenue would not sustain becoming incorporated. It would be a continued interest and the District does provide community services such as parks and recreation that helps unite the community.

Commissioner Kelley stated the law enforcement and safety aspect would be costly.

Ms. Fischer replied the law enforcement aspect alone would be overwhelming in cost.

Commissioner Froelich stated the county supports Heber as they do Niland but Niland isn't thriving as much as Heber.

Ms. Fischer replied to sustain a public utility like the HPUD you need the customer base and the ability to collect. The District has that ability with ordinances and policies.

Commissioner Froelich asked what the sewer fees are to the residents.

Ms. Fischer replied she will find out what the fee is and provide that information.

Mr. Heuberger stated staff will work with the District and the next updated plan will be due in five years.

Ms. Fischer confirmed the rate is \$52.66 for sewer.

Motion by Commissioner KELLEY to approve the Service Area Plan/Municipal Service Review as presented.

MOTION: KELLEY
AYES: FROELICH, JACKSON, KELLEY, WEST, PLANCARTE
ANO: NONE
ABSTAIN: NONE
ABSENT: CASTILLO

10. Public hearing on the dissolution of the Niland Sanitary District and the formation of a new special district (NSD 1-16)

Mr. Heuberger stated as this Commission recalls back in August of 2017, the first step was taken to dissolve the District with the recommendations of the Executive Officer which stated the District has significant financial, structural and technical problems and the large fine of the Regional Water Quality Control Board (RWQCB). The Commission at that time directed the District be dissolved subject to a successor district being formed. The recommendation was a County Service Area. The County stepped up and requested the direction be modified to allow the County the opportunity to explore other options other than forming a CSA. The County asked for additional time to perform a rate and technical study. The funding agencies, specifically the United States Department of Agriculture (USDA) who are present today have grant funds that were potentially jeopardized if not utilized with a defined period of time. In the meantime, the County has conducted technical studies which are available to the public, to determine what the rate structure should be for a successful operation and for the technical aspects to meet compliance issues. Those studies have taken some time. The County has conducted a number of outreach meetings in Niland to ensure the residents are fully informed and understand and to have the ability to ask questions. The County has spent a lot of time and there will be another outreach meeting scheduled. The County has completed the studies and the Board of Supervisors approved the formation of a County Sanitation District and not a County Service Area. Most have heard of the LA County Sanitation District; Imperial County does not have that type of district but it is one of several districts that can be formed. A sanitation district allows them to provide sewer and some sewer related services. The County requested a sanitation district be formed to be called the Niland County Sanitation District and that would authorize them to run a sewer plant and collection system. Statutorily the law says that the Commission is somewhat limited by what the options are in terms of the Commission cannot form an entity that is not financially sound. One dilemma is the proposed Niland County Sanitation District is required to go through a Proposition 218 to establish a rate. The recommendation is to dissolve the Niland Sanitary District and form the Niland County Sanitation District subject to a Proposition 218 passing. If the Prop 218 passes then the County would take action and it would come back before the commission to establish the final parameters of the operations. If the Prop 218 doesn't pass then there is a big dilemma. It would come back before the Commission and the NSD would be nonoperational and technically the County could not be forced to form the new

district if it's not financially sound. The County does have the option to continue with the formation recognizing they would be in a subsidy mode. The County already subsidizes the NSD about \$200,000 a year. The District owes the County money. Either way the County has a financial problem. If the Prop 218 doesn't pass and the County does not move forward with the formation and stops funding the NSD then the NSD is bankrupt. The best of all alternatives is to form the Niland County Sanitation District and proceed with the Prop 218. The new district would handle the process and the best of all worlds is it would pass. It would then come back before the Commission and the Niland County Sanitation District would be formed with a new rate structure that is documented as being financially feasible.

Commissioner Kelley stated the Prop 218 is critical and asked who would be responsible for initiating the campaign to ensure the residents are aware of what the issues are both in English and Spanish. The residents need a clear picture and must be motivated to attend the meetings to see what is happening. If the Prop 218 fails then Niland would cease to exist.

Mr. Heuberger replied if the County walks away and doesn't fund the NSD then they are bankrupt. The new County Sanitation District would be responsible for the campaign of the Prop 218.

Commissioner Froelich stated it hasn't been an issue because the community meetings have had attendance.

Commissioner Kelley replied the residents apparently don't understand what's going on.

Mr. Heuberger replied it's an issue with how the factual information which Mr. John Gays office has been trying to put out at the various meetings is getting portrayed. It's up to the people in this room from Niland to stand up and say if the residents don't get together and the options that are available then Niland is in bigger trouble. That's the reality. Rather than sit here and argue over what the residents want and don't want. There aren't a lot of choices. The County has gone the extra mile not only in subsidizing the District over the last four or five years but with Mr. Gays effort. He commended the County. The residents have had issues with the current operations of the District a lot which started with the prior board and the way things were done. The problem is that's in the past and the past can't be fixed and we can't dwell on the fact that someone was mistreated or paid too little or too much. We are trying to move forward and make the community functional. The big downside besides not having the population base and the economics is the fact they don't provide water service. If someone came to LAFCO and wanted to form a sewer district and not provide water it would essentially be denied. You don't want to create a sewer district without the ability to control the water side. Niland is served by the Golden State Water Company. Mr. Heuberger commends Mr. Gar for working with LAFCO.

Commissioner Froelich stated the Commission would approve what the Board of Supervisors would approve.

Mr. Heuberger replied he is recommending the dissolution of the Niland Sanitary District and concurrently form the Niland County Sanitation District with the stipulation that it is subject to the Prop 218 passing.

Commissioner Froelich stated she would like to take one step at a time, dissolve the Niland Sanitary District and form the Niland County Sanitation District and then proceed with the Prop 218.

Mr. Heuberger replied the problem is the NSD as it's currently constituted will continue to operate and exist until that final action is taken. If the Commission votes today to only dissolve then the NSD will be out of existence and without the authority to do anything. At the same time the County wouldn't have the authority either.

LAFCO Legal Counsel Mr. Ryan Childers stated the Commission has a legal mandate to ensure that any district that comes for formation has the financial ability to operate. Without the Prop 218 there is a strong argument to be made that it cannot financially exist whether it's a successor agency or the current District. By making it contingent the dissolution does not occur unless the Prop 218 passes and the new entity doesn't spring into existence until the Prop 218 passes. If the Prop 218 passes that would be the end date for the NSD and the beginning date for the Niland County Sanitation District.

Commissioner Kelley stated if it doesn't pass then it will be the date of death for the community.

Commissioner Froelich stated she thinks the Prop 218 will pass. The residents have been advocating and there are people here from Niland here today that can come to the podium. The residents want a fair rate per EDU. They have confidence in the County and LAFCO. She wants to advocate that the Prop 218 is fair.

Commissioner Kelley stated what's happened in the past is in the past and we need to move forward.

Mr. Heuberger stated the County has completed an extensive rate study and those studies are available to the public. Granted this issue is the determined rates are probably higher than anyone wants them to be but everyone has that problem whether you live in El Centro or San Diego. The costs are generally what they are. The residents have a valid concern because Niland is not an affluent community and the rates going up is a problem. At the same time the rate that was determined is what it takes to be financially sound.

Commissioner Froelich stated the rate is very high. We don't want to set them up for a rate they can't pay.

I.C. Public Works Director Mr. John Gay stated the current rate is about \$37 and as Mr. Heuberger stated, Mr. Gay was pulled into this issue back in August. The County has been subsidizing Niland at least two years if not longer for approximately \$100,000 per year. The current rate of \$37 is not covering the costs. If the County takes over they need to know what the operating costs will be to communicate that information to the Board of Supervisors. There have been community meetings and the consultants have looked at what the operating costs would be and were able to shave roughly 10% if the County takes over and could operate at \$400,000 per year as well as make sure there are adequate reserves which isn't happening with the NSD. The rate ends up being about \$63 per EDU. It is double the current rate but it's a fair rate that will sustain a new County District. It's important the new district be financially sound and not have to come back before this Commission. The current rate compared with the other studies that were commissioned by the NSD falls in between the two rates. The initial rate that was passed but the NSD turned it down was \$61, the subsequent rate after that was \$69 so it's hitting within the true operating costs. Mr. Gay is comfortable with the rate and supports the proposed action and allowing the Prop 218 process to move forward is important. The County has done a lot of outreach and has communicated with the residents. There is one more meeting and the residents have already been advised what the rates would be. The next meeting is to go over the Prop 218 process. This is up to the residents of Niland and they will be given all the tools and information to vote accordingly.

Commissioner Froelich asked if the rates will be revisited again in five years.

Mr. Gay replied that it typically would be revisited in five years. Mr. Gay is proposing as part of the rate study is to propose a flat rate for five years. The previous rate study had an increase each year approximately several dollars. The flat rate can be incorporated for the next five years, those rates are in the five-year performance and show the District will be financial sound for the five years.

Commissioner Froelich asked if the clinic and the Chamber of Commerce in Niland are not part of the District and if they will be charged more. She is concerned the clinic would go away because it would be too expensive and the Chamber of Commerce because it's a nonprofit organization. She wants to know what can be done to include them in the District.

Mr. Gay replied that's a good question and he mentioned it to the Board of Supervisors. Both can be included in the new district boundary if the Commission approves. They would have to pay their fair rate which is about \$63 per EDU but they won't pay double the rate. The Commission will have an opportunity to look at that option when it comes back hopefully after a successful Prop 218 and look at what the policies would be in terms of operating. One discussion is how would the new district serve areas outside of the boundary. The recommendation would be to charge double the

rate which is typical. The NSD passed a resolution years ago that allowed a charge of triple that the rate for service outside the boundary.

Commissioner Froelich asked if that would need to be stipulated.

Mr. Heuberger replied its part of the recommendation and included as an exhibit.

Commissioner Jackson asked if the potential of residents abandoning their residents were factored in the rates and what would that do to the overall operational costs.

Mr. Gay replied there is approximately an 8% of flexibility that was factored in. Part of the process of meeting with the residents is was all users were audited within the current district and that audit established what there was in terms of what the EDU count would be. One EDU is basically a residential home and 10 EDU's could be the Niland Chamber as an example. The 8% flexibility includes if someone comes in and says there was a mistake which happened during the auditing process. There was a first pass and then double checked. Some didn't have the uses that were proposed to be charged. By doing so, the County was able to absorb that within the rate. There's some flexibility if some users were to drop off it would be sustainable. If 30% of the users drop then there would be trouble but that's not anticipated.

NSD Board Member and Employee of BO & GO LLC Ms. Lenita Ozier stated the 111 of the 500 EDU's is the problem right now for BO & GO. They are selling homes to pay the taxes that are \$20,000 when the net income is \$13,000 per year. She has posted one of the homes for sell on the internet and have lost five residents since this all started. She understands the nature of the problem and is on the Board. She was told that they are responsible for over \$7,000 a month and have already been through the process with the NSD to cap and concrete seal all the vacant lots to make sure the connections were not accessible was already completed a year ago when the first rate study was conducted and was basically told to be quiet and the Prop 218 will pass. At the end of the day what guarantees are they that they can operate outside of one year being feasibly responsible for something that is ten times the amount of their income. She doesn't want to fight and doesn't like public speaking and is outside her character. What will happen to the 22 families that are in the park. The Niland residents are what was left behind from a society that was striving and the income base is not there. They brought their ministerial services from San Diego to Niland to cover the cost of their salaries and make sure the people are able to eat. When it comes down to can the residents pay \$69 per month probably so. They will have to step it up in another area and reroute resources. They cannot afford to pay for 111 EDU's when there are less than 30 residents on a continual basis. She was advised by the planning department for about \$200,000 they can rezone the property and remove the sewer, electric, etc. but who can afford that.

Commissioner Kelley asked if it's a mobile home park. The park would have so many connections and is she being charged for all the connections regardless if they are being used.

Ms. Lozier replied that's correct and over half of them are vacant with no trailers. 12 are designated for seasonal use. Spaces 15-32 have been capped off with concrete blocks.

Mr. Heuberger asked if the park has an operational permit by the County for the mobile home park.

Ms. Lozier replied there are several permits and there are 77 permitted spaces to operate.

Mr. Heuberger stated there are approximately 30 spaces being operated.

Ms. Lozier replied there are 32 available spaces, 44 are capped and sealed and there are under 25 residents.

Mr. Heuberger asked if she has gone to the IC Planning and asked them to change the permit.

Ms. Lozier replied yes, she has. There are separate permits for the sewer, gas, IID meter, Gas meter that are tied up together. She has visited the county and requested the permit be changed to 32 available spaces even though they are only housing twenty something. The county told her that the electrical would have to be removed, the gas meters removed and by the time that would be completed it would cost about \$300,000 just to redo one permit because every permit is tied to one and there are conditions and laws that have to be abided by. She doesn't want to fight but it's a bad situation. If that happened then the cost would fluctuate and have to be redistributed and Niland doesn't have the population to support it.

Mr. Heuberger asked Mr. Gay if the rate study reflected 100 spaces.

Mr. Gay replied it was accounted for. The actual users were looked at and the rate study accounts for that. There was an indication of approximately 38 capped and that is reflected. There is an EDU map that shows each EDU.

Ms. Justina Arce stated the policy as it relates to the rates are tied to the mobile home park permit and that's because the permit allows that number of units throughout the course of operation. The county doesn't have the resources to go out and see if a unit moves in or out. All jurisdictions charge by a number of spaces. BO & GO has 77 permitted spaces and the policy was written that way. However, the policy takes into account if the facility is capped then the rates would be reduced by that number of EDU's. That is being allowed which is different then other jurisdictions in attempt to the help the residents. The county informed the residents if there is a dispute a formal dispute form would need to be completed on the website. The county has not received any formal disputes.

BO & GO has contacted the county regarding the 44 capped units and currently the NSD is honoring that. Mr. Gay has investigated several capped and those have been removed from the list. The capped was considered when considering the total universal rate. An inspection can be done once BO & GO submits a formal dispute. Prior records cannot be relied on.

Commissioner Froelich asked if there would be an ability to use the capped after they are concreted.

Ms. Lozier replied yes since they are concreted above ground. The NSD president asked her to make sure the capped are secure and to take photos.

Mr. Heuberger asked if she is willing to pay for the 30 spaces and if so there shouldn't be any issues.

Commissioner West stated they will be charged for the 30 EDU's but the county has to receive the request.

Mr. Heuberger stated she is not being tied to the 32 spaces, she will pay for whatever the number of units the permit allows her to operate at the park. There is the flexibility to operate at 30, 50, 90 or whatever the permit allows is the EDU that will be paid.

Mr. Gay replied it's a clear assessment, in the event it's determined the spaces are capped it's not that easy to reconnect. There is a policy in place if that want to tie back in. There isn't any point of charging if it can't be used.

Commissioner West stated they will be given an exemption if they are capped.

Niland Resident Mr. Ojeda stated since a new district will be created will the board members remain the same.

Mr. Heuberger replied the governing board will be the County Board of Supervisors and Mr. John Gay in the meantime would be the manager. The Commission cannot dictate how the district operates in terms of employees.

Mr. Gay stated his department will have oversight in running the district, the operator will be PERC who also operates all the other districts.

Mr. Ojeda replied they don't want false information, the assessments were wrong before and that's why the residents were being overcharged. Mr. Heuberger stated to forget about the past, but the residents want new personnel and not reward old employees.

Mr. Heuberger replied the County Board of Supervisors and Mr. Gays office will have the oversight of the new district. If a resident has a complaint they can meet with Mr. Gay or the Board of Supervisors.

Mr. Ojeda stated there are several issues. One issue of the mobile home park was resolved today. The GNH haven't paid for the last six years and the county owns that facility. GNH is collecting money and the residents are paying for the water treatment. The owner collects the money but doesn't pay. The Chambers have an RV dump and for many years they never paid for sewer and they collect the money by cash. That business needs to be stopped because the money doesn't go towards the sewer facility. In the winter two-million gallons were treated and in the summer one-million gallons were treated.

Commissioner Kelley asked where that money goes.

Mr. Ojeda replied the Chamber doesn't have a permit. He visited the health department and was told there is a permit for the septic but not the business. The County didn't do anything. He called the RWQCB and was told they only deal with the sewer not the water. No one knows how the Chamber operates, the RV's and snowbirds come and dump without any issues.

Commissioner Froelich asked if maybe the permit is part of their swap meet permit.

Mr. Heuberger replied it's immaterial since the new rate structure accounts for the Chamber. The real question is if the proposed rate is \$62 and the residents are being treated fairly will the residents pay that rate.

Mr. Ojeda replied yes they just don't want the same people.

Ms. Lozier stated the Chamber doesn't have a permit but they need to have one. There are people who are dumping in the canal, park and behind buildings. There are bad things happening and they aren't letting them dump in the park.

Mr. Heuberger replied that's an enforcement issue that would need to be brought to County Environmental Health.

Niland resident Mr. Hinojosa thanked the Commission for the help and the Niland residents can't let this happen. The main issue is the County needs more users in Niland, Seeley, and Heber. There is 70% vacant land and structures in Niland. There is water, sewer, and power services. Why is there vacant lots and properties. There isn't the tax revenue from those properties. Why are so many properties vacant.

Commissioner Kelley asked if he expects the Commission to answer that question. It's the condition of the area and the way it is. The people would love to have brand new homes built and larger water system and hotel but that's not the conditions of the way things are.

Mr. Hinojosa replied lack of property and users is because of the need to take a look at how the county planning and building is structured. A few years ago, the cost to get a permit for a water heater was more than the actual cost of a water heater. The Board of Supervisors worked together and were able to bring the fees down and help the community. There needs to be plan and he acknowledges it's outside the jurisdiction of the Commission. The Board of Supervisors needs to work on a plan for development and give incentives for residents, not big developers. The residents cannot pay \$25,000 just for the paperwork to rebuild their homes.

Commissioner Jackson stated he appreciates his passion but as he said it's out of the Commissions charge. The comments are best brought before the Board of Supervisors and even though two Supervisors are here today it's outside the prevue of the Commission. The Supervisors can't act on anything at this meeting. He suggested these comments be brought before the County and maybe they can help.

Niland resident Ms. Teresa Monroe stated the NSD had demands for \$23,590. They are overcharging the residents and they expect the residents to pay them back. The Board should pay the money to the residents out of their own pockets. The water is \$2,181 and they don't understand why the bill is so high. Who do the residents have to pay the water bill from the Chamber of Commerce.

Commissioner Kelley stated he's not following the conversation.

Commissioner West stated he apologizes and cannot understand what she is saying.

Ms. Monroe stated the residents from Niland have to pay \$23,000. The NSD is overcharging the residents and they want their money back.

Commissioner Kelley replied there is no money to pay the overcharges back. That is out of the Commissions hands and the Commission wants to move forward to make sure the community exists.

Niland resident Mr. Alex Hernandez stated he is confused. Mr. Heuberger said to forget the past, the past is what created this problem. He's been reading and the County has said the last Prop 218 by RCAC is incorrect and the EDU's are incorrect. They acknowledge it's incorrect but what about

the people that were over and undercharged. Why can't they get their refund back, what is customer service.

Mr. Heuberger stated the NSD doesn't have half the money needed to operate. Tomorrow they could be bankrupt and no one would get money back.

Mr. Hernandez asked if they were bankrupt would the fines still be due.

Mr. Heuberger replied the fines are separate and would stay. The County and the RWQCB negotiated the fines down to \$133,000 and a payment plan over 20 years which is helping the rate stay at the \$63. If the state wasn't willing than the rates could have been between \$90 to \$100. Staff has worked hard with the RWQCB to reduce the fines and legally they couldn't get rid of all of them. Staff has worked to get the residents fair treatment and he sympathizes with them and some things happened that wronged the residents but are now moving forward to try and establish an entity that's accountable. There are five Board of Supervisors that have meetings the public can attend every Tuesday and you can speak to Mr. Gay. In his personal opinion Mr. Gay will have a much better, fair and accountable system.

Mr. Hernandez replied he is saying the residents in Niland don't count. If the County takes over and they only care about the state fine and not the residents that were being overcharged then the residents don't matter. These aren't errors from the past, these are errors from a year ago. The state will be paid but not the residents that were overcharged within the year from the last rate study.

Mr. Heuberger asked if he is asking the new entity take responsibility to pay the residents for things they may or may not have been charged for.

Mr. Hernandez stated the state fines are going to be paid.

Mr. Heuberger stated the State of California is higher than the County and the federal government is higher than the state.

Mr. Hernandez asked who oversees the districts in California.

Mr. Childers replied the County is governed by California law. Under the law if someone feels they have overpaid someone or were overcharged there is a process and when it applies to a government entity there's a different process. It's a special claims process and a formal claim has to be presented to the entity within a certain period of time and if it's not done within that time then it's barred by the statute of limitations. It can either be denied or granted and if it's denied then you can have the right to bring a lawsuit. That's the process and it's not something the Commission can

answer. It's a legal process. Mr. Childers would encourage him to seek independent legal advice. He understands the anger and frustration but it's not within the purview of the Commission.

Mr. Hernandez replied that's where the issues are. The errors were done by RCAC, the same company that is conducting the current rate study. These are professionals and there shouldn't have been errors in the Prop 218. The community has expressed what is incorrect and no one is paying attention. Now the County admits there were errors and are going to fix it but they want the community to come and tell them if it's wrong. These are professionals and it should be as accurate as possible. They shouldn't say if it's incorrect come talk to us and we will see what's wrong. That's now how professionals work and they did their job incorrect. The rate study should be correct because that's how they should be paid. If the 77 spaces that were talked about earlier are reduced to 33 then that will increase the other resident's rates. There are many things that need to be looked at.

Mr. Hernandez stated the residents were told to look at the map on the internet to see if it's incorrect. There are property owners that don't live in Niland. If their parcels are incorrect how will they be able to say anything if they don't attend the meetings or don't use the internet. How will the rate be correct if the people that own property don't live in town.

Commissioner Jackson replied he has valid points but it's outside the purview of the Commission. The Commission is trying to give Niland the opportunity to exist. Without the County stepping in and without a successful Prop 218 then there wouldn't be a sanitation district and the residents would be displaced. State law states you must have an operational sanitation system. If the Prop 218 passes then the residents can take up the concerns to Mr. Gay or whomever manages the new district. Mr. Childers has provided information to file papers with the state and none of that can be helped by the Commission. The Commission has listened and heard the complaints over the past year and understand but cannot help. The Commission can only give the residents the ability to exist and move forward. The past is in the past. The Commission doesn't have the power to say that a resident can receive a refund or reassessment. Mr. Gay will organize with his staff for the Prop 218. The residents have to move forward and vote. Hopefully everyone will understand that if they vote against the Prop 218 then they should look for somewhere else to live.

Mr. Hernandez replied he understand the plant has to operate. In the past the plant wasn't operating and the personnel weren't running the plant properly. Now there is someone there that has the understanding and has been running the plant within parameters.

Commissioner Jackson stated the what ifs don't matter. What matters is if the Prop 218 passes.

Mr. Hernandez replied the plant has been operating as it should.

Commissioner Jackson stated there isn't enough income to sustain the District. The County has decided to subsidize the District through this process and it's only as an emergency to get to this point. He doesn't speak for the Board of Supervisors and doesn't want to put the two members on this Commission on the spot but if the Prop 218 fails he doesn't think the Board of Supervisors will vote to continue to fund.

Mr. Hernandez replied he understands about not having enough money but if the plant is not being run correctly then more money is being spent. He asked Mr. Gay how the numbers were calculated and was told the type of proposed plant is a settling pond. If that's the case then the amount of money to operate a plant like that would cost less than what's running right now.

Commissioner West stated there is a three-minute time limit and he would like to move forward. Mr. Hernandez can speak with Mr. Gay or the Commissioners after the meeting if he would like.

Mr. Hernandez stated he wants everything to be fair.

Mr. Childers stated there needs to be an interpreter for Mr. Arturo Guevera.

Commissioner Froelich replied she will interpret for Mr. Guevera.

(Spanish) Niland resident Mr. Arturo Guevera stated Niland is a community that's been violated in many aspects. No one has paid attention and the residents have been trying for years to find a resolution to the problems. He wants to know who conducted the rate study.

Mr. Heuberger replied Mr. Gay from the County and the Holt Group.

Ms. Arce stated RCAC is the consultant that prepares the rate study in coordination with the Holt Group. The EDU's reflected and used for the rate study are the most current according to the uses. Additionally, the operating costs are reflected with the new operations and the reduced loan terms.

(Spanish) Mr. Guevera stated he would like a copy of the assessment that's been done and asked how he can obtain one.

Mr. Gay replied he can provide a copy today.

(Spanish) Mr. Guevera asked what will happen if there are errors.

Mr. Gay replied a draft rate study can be provided but the rate will be \$62.79 per EDU and then the Board of Supervisors will conduct the Prop 218 which will allow the residents to take the rate study

and come before the Board with questions or disputes. There will be another meeting most likely in April to go over the Prop 218 process and any questions can be answered at that time.

(Spanish) Mr. Guevera stated for years the residents have asked for help and it's been denied. Now they come to the residents as professionals asking them to help with the evaluation and the community have participated. That's the way everyone should have been working together and not leave the residents to solve their own problems. Who will represent the residents, they've asked the NSD for public records and the records they were given was as if they were laughing at them. That's intolerable and there must be justice. The residents don't want favoritism and that is the reason why the assessments need to be reviewed. If favoritism is seen they he will come back before the Commission and show them the problems. The residents are tired and they want more effort put into this situation and hopefully the issues will be resolved.

Mr. Ryan Childers stated for the record the public hearing is closed.

Comments in the audience were inaudible.

Motion by Commissioner Jackson to approve the dissolution of the Niland Sanitary District with the concurrent formation of the Niland County Sanitation District subject to the successful passing of the Proposition 218.

Mr. Childers requested Commissioner Jackson formally adopt the recommendations of staff because there are specific statutory items that are laid in the recommendations.

Amended Motion by Commissioner Jackson to accept all recommendations of the Executive Officer and approve the dissolution of the Niland Sanitary District with the concurrent formation of the Niland County Sanitation District subject to the successful passing of the Proposition 218.

MOTION: JACKSON
AYES: FROELICH, JACKSON, KELLEY, WEST, PLANCARTE
ANO: NONE
ABSTAIN: NONE
ABSENT: CASTILLO

Maria Nava-Froelich, Chair



Jurg Heuberger, AICR, CEP
Executive Officer to LAFCO