September 19, 2017

Item Name: Niland Sanitary District Recommended Declaration of Default

Program: Pension Contract Management Services

Item Type: Action

Recommendation
Declare the Niland Sanitary District ("District") in default of its obligations to the California Public Employees' Retirement System ("CalPERS" or "System"), because of the District's failure to pay its required pension contributions in the amount of $203,997.

Executive Summary
At the May 2017 FAC meeting, staff presented an update about agencies that are significantly delinquent in paying required contributions to the System. The update included the status of the District's voluntary contract termination. The purpose of this agenda item is to recommend that the Board declare the District in default, which under Government Code section 20577 will require a reduction in the amount of earned retirement benefits to the District's employees and retirees.

Strategic Plan
This Agenda item supports Goal A of the CalPERS 2012-17 Strategic Plan, which aims to improve long-term pension and health benefit sustainability.

Background

Niland, California is a small census-designated region within an unincorporated area of Imperial County. The Niland community receives services from the District for wastewater collection and treatment. The District entered into a retirement contract with CalPERS effective October 1, 1995 to provide retirement benefits for its local miscellaneous employees.

From 1999 to 2013, no annual payments were required until, a District employee contacted CalPERS to review his employment history with the District. Staff requested payroll information from the District and it was determined that the District had failed to enroll two employees as members into the System within 90 days of eligibility as required by Government Code section 20283. In November 2014, a combined total of 10.3 years of service was granted to the employees and the District received an invoice for the arrears contribution payment. Since this time, staff has continually attempted to collect

the outstanding liabilities owed to the System. The District repeatedly responded that it was unable to pay. On February 12, 2015, the District adopted a resolution to terminate its retirement contract with CalPERS. At the September 2016 FAC meeting, staff reported that the District was delinquent due to nonpayment of employer-paid contributions (arrears balance), associated administrative fees, and unpaid unfunded liabilities totaling $23,795.

At the November 2016 FAC meeting, staff reported sending a final demand letter to the District on August 31, 2016, providing the agency 30 days to bring its account current or staff would initiate default proceedings. Niland terminated its contract with an effective date of May 12, 2016 and submitted the paperwork to CalPERS on November 1, 2016. The District's Board President committed to seek funding to avoid any benefit reduction. In February 2017 the Board President stated that the District received a loan, but the funds cannot be used to pay the system.

From December to April 2017, the Office of Audit Services ("OFAS") performed an audit that revealed the District did not report payroll to the system from July 1, 2013 through June 30, 2016 resulting in the addition of a combined total of 5.075 years of service and 1 additional member to the calculation of the District's final termination costs. After reviewing our audit finding, the District and their Attorney asserted it did not have a contract with CalPERS even though the District voluntarily terminated the contract in 2016 (Attachment 2). The Actuarial Office ("ACTO") used the final audit data to ensure an accurate and complete final termination valuation.

On June 14, 2017, staff sent to the District an invoice for the termination liability in the amount of $203,997. Subsequently, staff contacted the District multiple times to collect the amounts owed. The District refuses to pay the termination liability and continues to assert it did not have a contract with CalPERS despite staff providing them with a copy of the contract and the District itself initiating a voluntary termination of that contract. On July 14, 2017, staff sent a final collection letter to the District demanding payment within 10 days of the date of the letter (Attachment 3).

On July 31, 2017, staff sent a final demand letter to the District, providing it 30 days to pay the amount owed or default would be recommended, which would lead to benefit reductions. The District's employees and retirees also received letters via certified mail to advise them of CalPERS' proposed recommendation and consequences. So far, one member has contacted CalPERS. The 30 days lapsed without any payment.

Under Government Code section 20577, if an agency fails to pay the full amount owed upon termination, the Board can declare the agency in default and consequently shall reduce member retirement benefits as of the date the Board declares default, in proportion to the amount of the deficiency in accumulated contributions of the agency and its employees. Staff recommends, to the extent that the District failed to pay the full amount of its termination liability that became delinquent on July 14, 2017, that the Board declare the District in default and reduce retirement benefits paid to employees and retirees of the agency in accordance with section 20577.

CalPERS

The Actuarial Office completed the final termination cost valuation report on June 9, 2017. As of June 30, 2017, the District's miscellaneous plan is funded at 7.51% and the PEPRA miscellaneous plan is 0% funded based on a discount rate of 2.65%. Niland's current funded status represents a benefit reduction of approximately 92.49% for the four members in the classic miscellaneous plan and 100% for the one member in the PEPRA Miscellaneous plan. The reduction of benefits would only apply to the members' portion of benefits derived from their service to the agency.

Termination Cost[1]			
Rate Plan	Plan Participants	Funded Status	Total Termination Cost Owned
Misc. 2% at 60	**Total= 4** Term Vested = 3 Receiving Payments=1	7.51%	$194,253
PEPRA Misc. 2% at 62	**Total=1** Term Vested =1	0%	$9,744

[1] Source: Final Termination Valuation

If the Board declares the District in default, staff will notify the District's current and former employees of this decision before the implementation of the benefit reduction. The reduction will occur on the first pay period in December 2017.

Budget and Fiscal Impacts
Termination of the pension contract and addressing the outstanding liability of the District through the reduction in benefits will align the benefits received by members with the contribution amounts paid into the System on their behalf.

Benefits and Risks
CalPERS is charged with administering the System in accordance with the law. Enforcing the provisions of CalPERS' contracts and the Public Employees' Retirement Law with respect to contract terminations and resulting benefit reductions, when appropriate, helps ensure that employers contracting with CalPERS comply with the statutory provisions governing the System. This includes agreeing to timely payment of required contributions and termination liabilities in order to fully fund benefits accrued prior to termination. The Board has a fiduciary duty to ensure the integrity of the System in order to pay benefits and to protect the soundness of the System when employers do not pay their required contributions to CalPERS.

Other contracting agencies will not be impacted by the termination of the District. However, the retirement benefits of the vested terminated employees and the retiree will be impacted by future benefit reductions.

Attachments
Attachment 1 – Niland Sanitary District PowerPoint
Attachment 2 – Final Collections Letter
Attachment 3 – Final Demand for Payment Letter

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Scott Terando
Chief Actuary

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Marlene Timberlake D'Adamo
Interim Chief Financial Officer