



LOCAL AGENCY FORMATION COMMISSION
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July 23, 2020

The Honorable Anna Caballero
California State Senate
State Capitol, Room 5052
Sacramento, CA 95814

RE: SB 414 – Small System Water Authority Act of 2020 – OPPOSE PROPOSED AMENDMENTS

Dear Senator Caballero:

The El Dorado Local Agency Formation Commission (LAFCO), joins the California Association of Local Agency Formation Commissions (CALAFCO) in opposing the proposed pending amendments for your bill **SB 414**. It is our understanding you are planning amendments to be done in Assembly Appropriations where the bill is currently being held in Suspende.

We support efforts to ensure all Californians have safe, affordable drinking water. However, the proposed amendments have such a substantive negative impact to local agency formation commission (LAFCOs) that we must now oppose them.

It is our understanding these changes are an effort to reduce the cost of the bill, and to closer align processes and State Water Resources Control Board (SWRCB) authority existing in SB 88 (2015, Committee on Budget & Fiscal Review) and AB 2501 (2018, Chu). These laws deal with consolidation of existing water systems, whereas SB 414 creates a new type of public water system and reflects the formation of a new public entity (as well as dissolving existing public and private systems). One simply should not be compared to the other.

The proposed amendments strip LAFCOs of their part and authority in the formation of the new water authority – a public agency that would otherwise be formed at the discretion of and by the authority of LAFCO. Additionally, they remove LAFCOs' authority to dissolve a public water system as authorized by the SWRCB and as part of the formation process of the new authority. As you know, formation of a new, local public agency has been the authority of LAFCO since 1963 when the Legislature created them. To now turn that authority over to the SWRCB in an effort to "save money" or "streamline the process", we believe, creates a false perception that the cost will be reduced and sets a dangerous precedent.

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SECTION 1 of the bill is being completely stricken and therefore divests LAFCO of all involvement in the formation process and it removes LAFCO from the process of dissolving any public water system identified by the SWRCB as mandated for dissolution and inclusion into the new authority except for holding a public hearing on the matter. Not only does this removal divest LAFCO of their authority and give it to the SWRCB, it eliminates the Plan for Service requirements to be included in the draft conceptual formation plan. All other public agencies are subject to submit a comprehensive Plan for Service when applying to provide services and exempting the authority from doing so sets a precedent.

Code Section 78038(b) proposes to give quasi-legislative authority to the SWRCB in the action to form the new authority. The Legislature created LAFCO as a quasi-legislative body decades ago to do this very thing. While the Legislature has exercised its authority to create new service providers in the past, until now there has been no state agency with that authority. We fail to understand the need to create an entity at the state level to do something LAFCOs have been effectively doing for 57 years – forming new districts – that happen at the local level.

LAFCO is being excluded from several critical notification points:

- Code Section 78033(a)(1) excludes LAFCO from the list of entities the SWRCB is to notify of their intent to form the authority. *LAFCO needs to be included in the list of other local agencies receiving such notification* (such as cities, county, water districts, etc.). Further, this section allows the SWRCB to invite other public water suppliers to consider dissolving and join the authority. Without including LAFCO on the notification under this section, we would be in the dark regarding those local districts (both independent and dependent) that may consider dissolving.
- Code Section 78033(a)(2)(A) excludes LAFCO notification from an entity wishing to consolidate into a proposed authority. *LAFCO needs to be included in this notification.*
- Code Section 78033(a)(2)(B) provides that customers of an entity wishing to join a proposed authority petition the SWRCB directly. Not only does this keep LAFCO in the dark, it is a run-around of the current service provider as there appears to be no notification to them.
- Code Section 78033(b) allows the governing board of a county or city dependent special district to notify the formation coordinator they wish to opt into the new authority. Here again, without LAFCO receiving this notification there is no way for us to know of the pending dissolution.

In addition to removing LAFCOs' existing authority from the formation process of a public agency service provider, we are concerned about Code Section 78037(a)(3) which requires the LAFCO to hold a public hearing to allow for public comment on the dissolution of the public water system mandated for dissolution by the SWRCB and requires the LAFCO to provide all comments back to the SWRCB for consideration (without the funding to do either). The section also states the dissolution shall be ordered upon completion of the public hearing. We question the purpose of reporting back the public comments to the SWRCB for consideration if the dissolution is ordered immediately upon closure of the public hearing.

If one of the goals of these amendments is to closer align processes with SB 88, then it would stand to reason the SWRCB would be the entity conducting the public hearing (pursuant to Code Section 116682 of the Health and Safety Code), especially given the fact that with these amendments, the LAFCO no longer has any other part in the actual dissolution. Not that LAFCO supports these amendments, but we respectfully submit that if LAFCO is left out of some part of the process, then it makes sense that it should be left out of the process entirely.

Ordering a dissolution for a service provider who is currently providing service requires a successor agency to assume the delivery of service as well as all the assets and liabilities of the entity being dissolved. Code Section 78037(a)(4) requires the order of dissolution to make appropriate equitable arrangements for the interim operation of the public water system until the formation of the authority is complete, and they are prepared to take over service delivery. While that “interim” service provider may be identified in the draft conceptual formation plan, 78037(a)(4) does not explicitly state to whom the service, assets and liabilities should be transferred. We suggest language be added to explicitly state the interim operator as identified in the approved conceptual formation plan.

Proposed amendments to the draft conceptual plan

We have a few concerns relating to the draft conceptual plan as noted below.

- Code Section 78035(c) requires the formation coordinator to submit the draft conceptual formation plan to the SWRCB and any applicable LAFCO for comments within 60 days of its receipt. Further, the formation coordinator shall finalize the plan for public comment no later
- than 30 days after receiving comments from the SWRCB. What is left out of this section are the comments on the plan from the LAFCO. Undoubtedly, as the local agency who is responsible for the formation of public agencies, LAFCOs know what to look for and consider when reviewing formation plans. *The LAFCO comments need to be considered by the SWRCB and the formation coordinator before the document is available for public comment.*
- Code Section 78038 requires LAFCO to hold two public hearings on the draft conceptual formation plan and to subsequently submit a report to the SWRCB summarizing public comment and any recommendations the LAFCO may have for the SWRCB on the plan. *We would like to see amendments requiring the SWRCB to specifically adopt or reject each of our recommendation on the draft plan and explain their response for those decisions.*

Removing funding for LAFCO mandates

The current version of the bill reflects a cost of up to \$10.65 million to LAFCOs for authority formations, which represents only 11.5% of the total cost estimate of \$89.15 million. Using these projections, the costs associated with LAFCO are far below every other entity and related provision (with one exception) of the dissolutions; formations; administration; SWRCB support and support for the authorities once formed. The cost for LAFCO to perform the dissolution of public water systems and to form the new authority are far likely to be less than having the SWRCB perform these functions. Consequently, we believe this creates a false perception that the overall cost will be reduced by removing LAFCO from the process. Transitioning these processes to a state agency rather than keeping them at the local level does not in fact reduce costs – it simply transfers the cost from the local level to the state level. Further, we would assert the cost is less at the LAFCO level.

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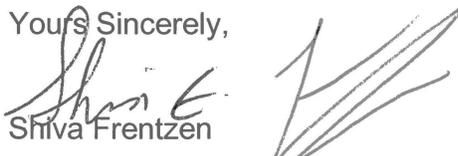
Finally, the proposed pending amendments require LAFCOs to (1) review the proposed plan and provide recommendations to the SWRCB; (2) hold a public hearing to allow for public comment on the dissolution of the public water system mandated by the SWRCB for dissolution and provide all comments to the SWRCB; (3) hold two public hearings to receive input on the proposed plan for the new authority, summarize comments received and provide a report to the SWRCB; (4) review a report on the authority's performance for the first three years; and (5) hold a public hearing as directed by the SWRCB if the new authority is failing to comply with the plan to review the authority's performance and provide a report back to the SWRCB on comments received at the hearing.

The proposed pending amendments remove all the funding for LAFCO for all the actions still required by the bill as noted above. Section 78038(a) adds a clause to address funding for only the two public hearings to consider the draft conceptual plan and prepare the required report – and only if – they (LAFCO) “incur extraordinary costs over and above its normal budgeted operating expenses for conducting the public hearing and preparing the report to the state board”. All of the LAFCO expenses related to SB 414 are over and above normal operating budget costs. Our budget only covers the normal operative costs of the agency. The budget assumes that the applicant bears 100% of the cost of a proposal; to do otherwise is an improper subsidy by our funding agencies to the benefit of the applicant. If this bill becomes law, in order to cover the costs associated with these proposals should the state not cover the costs, we will have to increase fees to the local government agencies that pay into LAFCO annually (cities, counties, and special districts), in so doing improperly subsidizing the state.

We strongly believe LAFCOs need to be added to the language in Section 78115 (a)(1). All other entities, including the Public Utilities Commission, have some level of funding in the proposed pending amendments. To eliminate the funding for the one local agency involved and retain funding for all state agencies involved puts the collection of that funding on the backs of local government.

Please do not hesitate to contact LAFCO staff at 530-295-2707 if you have any questions about our OPPOSE position to the proposed amendments on **SB 414**.

Yours Sincerely,


Shiva Frentzen

Chair, El Dorado LAFCO

cc: Assembly Local Government Committee
Assembly Environmental Safety & Toxic Materials Committee
Senate Governance and Finance Committee
Senate Environmental Quality Committee
Pamela Miller, Executive Director, CALAFCO