



August 10, 2020

The Honorable Lorena Gonzalez
Chairwoman
Assembly Appropriations Committee
California State Assembly
State Capitol Rm 2029
Sacramento, CA 95814

Dear Chairwoman Gonzalez:

Subject: SB414 (Caballero) – Oppose Unless Amended

The California Association of Mutual Water Companies (CalMutuals) represents over 300 mutual water companies in California. Mutual Water Companies are community-owned, not-for-profit water systems that are much like food co-ops and other mutual benefit groups. Mutual Water Companies serve many disadvantaged communities throughout California. CalMutuals was an early supporter of SB414, but much has changed since 2019, leading us to change our position to **oppose it unless it is amended**. As discussed below, our concerns are technical, but also a matter of process. The need for consultation with regional water systems that are currently helping smaller systems, is important as a practical measure of the potential impacts SB414 may have on on-going regional initiatives. The experiences of those regional systems would also inform the proposed structure of the Small System Water Authorities to be formed under SB414 through their “lessons learned.”

Technical Problems with SB414

CalMutuals has reviewed the proposed new amendments to SB414 and has a variety of concerns. A significant concern relates to the ambiguity of the powers being provided to the State Water Board concerning "at risk" systems. That term is not defined in the bill, and the SAFER program is currently in the process of classifying the types of risk involved. Also, there is a reference in Water Code Section 78031(a)(2) on page 37 of the bill that states "If a public water system meets the criteria for an at-risk public water system pursuant to Section 116682 of the Health and Safety Code, . . ." However, that Section 116682 (see pages 16 through 23 of the bill) does not set forth any specific criteria for an "at-risk" system, rendering that cross-reference meaningless.

Another concern relates to the fair market value provisions on page 46, as the bill conditions the fair market value of water rights on them being in an adjudicated basin. We have been advised by legal experts that is not constitutional. The government is required to pay fair market value if property is being taken. The state cannot condition its payment of compensation on certain criteria being met.

Also, SB414 is not clear about how the corporate dissolution action authorized on page 45 would relate to the order for immediate possession discussed at the bottom of page 46. It would seem that the eminent domain action would occur first, followed by the dissolution - or perhaps it can be done in one piece of litigation. The drafted provisions on that subject are confusing.

Lastly, SB414 is not consistent in its use of terms. The Health and Safety Code provisions in the early pages of the bill refer to the person or firm assisting the State Water Board as the Administrator, while the Water Code provisions later in the bill now refer to that person or firm as the Formation Coordinator. Further amendments are needed to make those terms consistent throughout SB414.

On a positive note, CalMutuals does appreciate the outreach provision on pages 22-23, and the opportunity for an at-risk system to cure its purported risk, as set forth on page 46.

Issues With Process

CalMutuals has been supportive of various regional water agencies and local suppliers that have been helping small water systems make improvements, as well as assisting with consolidations. Acknowledging that SB414 is one of several tools to be considered under the SAFER program, we believe that time must be taken for consultations that could help avoid unintended consequences, and at minimum, benefit the legislation from "lessons learned" in some of these recently addressed problems. However, at this time, SB414 adds a layer of complexity before it is fully evident that the SAFER program lacks tools for progress. The legislation needs to clearly specify what type of circumstances would merit the application of its provisions in the SAFER program. We believe that the SAFER program deserves a chance to succeed. SAFER involves a level of complexity that is challenging for small water systems to follow. Adding SB414 at this time after the SAFER process already consulted an advisory group that invited public participation is problematic for reasons of public transparency. For the small water system representatives who participated in SAFER workshops and meetings, enacting SB414 at this time represents an unfair bait-and-switch, by larger water systems and foundation-supported think-tanks and the non-governmental organizations they support, by adding further statutory authorities that will be perceived as threatening those systems.

As an example, in the past month, CalMutuals helped mutual water companies in the City of Maywood, located in Southeast Los Angeles, forge a mutual aid agreement with five (5) other water systems, representing an important step to increased regional cooperation among those companies. Also, the Water Replenishment District of Southern California (WRD) has been facilitating state grants to build treatment plants at the three mutual water companies in Maywood and treatment facilities at a mutual water company in nearby Cudahy. Using a "tool" such as SB414 may or may not be helpful to those efforts. We are not aware of any consultations with WRD about how SB414 would affect its efforts in assisting the operations of the three not-for-profit Maywood entities in providing improved water quality to the residents of that disadvantaged community. A similar process is taking place in Riverside County, where the South Mesa Water Company is consolidating a 200-connection residential trailer park. This is in parallel with efforts by the Coachella Valley Water District to consolidate systems in Mecca and Thermal. These areas suffer from extreme poverty and it is not certain that consolidating the trailer park water systems into a single public agency would be feasible by any means.

Local Agency Formation Commissions have been key to major consolidations in Southern California in the year since SB414. The fact that they oppose SB414 is concerning to us. Without proactive engagement by LAFCO in Los Angeles County, for example, the much-publicized dissolution of the Sativa-Los Angeles County Water District would have been disorderly and inefficient.

We acknowledge that the legislative year is drawing to a close, and that time constraints are not conducive to further consultations for consideration of the technical amendments we recommend, as well as potential amendments recommended by water agencies currently helping small water systems. We note that none of the sponsors of the bill, as well as some of its supporters, are actively engaged in the activities they are trying to define through legislation. In fact, the Metropolitan Water District itself, has refused to engage in the human right to water in its on-going integrated regional planning process. We therefore oppose the bill unless it is amended to reflect these concerns.

Sincerely yours,



Lisa Yamashita-Lopez
President

Cc: Mr. Alf Brandt, Senior Counsel to the Speaker of the Assembly

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