



August 12, 2020

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CAROLYN EMERY
EXECUTIVE OFFICER

TO: Local Agency Formation Commission

FROM: Executive Officer
Policy Analyst

SUBJECT: Legislative Report (August 2020)

BACKGROUND

After returning from summer recess on July 27, the Legislature got right to work on moving high-priority legislation forward. However, because the recess was extended due to the pandemic, there may be time constraints for committees on hearing the various bills introduced in both houses.

The focus of this report is on Senate Bill 414 (SB 414), a bill of LAFCO-interest that is expected to move forward during the remaining five weeks of the legislative session. Over the current year, staff has monitored SB 414, and the Commission adopted a "watch" position on the bill on May 8. Since that time, the bill has experienced several amendments, and it is anticipated that SB 414 will make it to the Governor's desk. A summary of the bill's current language is provided in the next section of this report.

Senate Bill 414 (Caballero) - Small System Water Authority

This bill would authorize the State Water Resources Control Board (SWRCB) to create the Small System Water Authority Act of 2020. The Act would authorize the creation of small system water authorities with the powers to absorb, improve, and completely operate noncompliant public water systems.

SB 414 proposes to do the following:

- Authorizes the SWRCB to provide a notice to cure identified water contaminant violations to all public agencies, private water companies, or mutual water companies that operate small public water systems with 3,000 service connections or serve less than 10,000 people.

- Authorizes the SWRCB to consolidate failing contiguous or non-contiguous existing small water systems and form a small system water authority to ensure the provision of an adequate supply of safe drinking water to the respective communities.
- Allows a public water system to join the small system water authority during the formation process conducted by the SWRCB or petition to join subsequently through the LAFCO process.
- Provides financial assistance to the newly formed small system water authority.
- Requires LAFCOs to review the SWRCB's plan to create a small system water authority and conduct multiple public hearings to receive comments from the public. However, the bill does not require LAFCO proceedings for changes of organization or reorganization.

Based on information provided by the SWRCB, there are 14 small water systems throughout Orange County. In accordance with a list published by the SWRCB's in 2018, none of the small water systems in Orange County have been deemed non-compliant, and therefore, are not directly impacted by the provisions of SB 414 at this time. Staff will continue to monitor the status of these small water systems through the State's annual reports. A fact sheet on SB 414 prepared by Eastern Municipal Water District and California Utilities Association, co-sponsors of the bill, is attached for reference by the Commission.

The California Association of Local Agency Formation Commissions (CALAFCO) has adopted an oppose position on SB 414 based on the following key concerns:

- Excludes LAFCOs from several critical notification points regarding intents and requests involving the creation of a small system water authority or consolidation of these systems.
- Allows the customers of an agency to submit a petition to the SWRCB to join a proposed authority without notifying the current service provider and LAFCO.
- Excludes LAFCO proceedings from the SWRCB's formation process of a proposed small system water authority.
- Removes all funding for LAFCOs to complete all actions required by the bill.

In response to the numerous concerns, CALAFCO, submitted a letter of opposition to Senator Caballero. A copy of the letter is attached to this report for reference.

As the current language in SB 414 involves the potential consolidation of failing small water systems and creation of a small water authority by the State and excludes the local LAFCO proceedings, but does not presently affect small water systems within Orange County, staff is recommending that the Commission provide direction on the updating of the agency's position on the bill.

POSITIONS OF OTHER AGENCIES AND ORGANIZATIONS:

Support: California Municipal Utilities Association (Co-Sponsor); Eastern Municipal Water District; Calleguas Valley Water District; Cucamonga Valley Water District, Elsinore Valley Municipal Water District, Mesa Water District, Orange County Water District, The Metropolitan Water District of Southern California; Three Valleys Municipal Water District.

Oppose: California Association of Local Agency Formation Commissions


BILL LOCATION/STATUS: Assembly Committee on Appropriations; hearing on August 21.

RECOMMENDATION

Staff recommends the Commission:

1. Receive and file the August 12, 2020 Legislative Report.
2. Provide direction to staff on the updating of the Commission's position on SB 414.

Respectfully Submitted,


CAROLYN EMERY
LUIS TAPIA

Attachment

- A. SB 414 Fact Sheet
- B. CALAFCO's Letter of Opposition



SB 414 (Caballero) The Small System Water Authority Act of 2020

**A Solution to Providing Safe Drinking Water to Communities
Served by Chronically Non-Compliant Systems**

Background

In 2012, Governor Jerry Brown signed into law Assembly Bill 685 (Eng), establishing the Human Right to Water—declaring that it is the policy of the state that every Californian has a human right to safe, clean, affordable, and accessible drinking water.

Additionally, in 2019, Governor Gavin Newsom signed into law Senate Bill 200 (Monning), which created the Safe and Affordable Drinking Water Fund to provide an on-going source of funding and an annually adopted plan to address safe and affordable drinking water needs for communities throughout the state.

Water Accessibility and Safety Concerns in California

AB 685 and SB 200 marked critical legislative landmarks in the fight to ensure safe



drinking water for all Californians. Nearly 800,000 people throughout the state currently lack access to safe and reliable drinking water on a daily basis. The State Water Resources Control Board (State Board) has identified roughly 300 systems statewide that chronically serve contaminated drinking water or cannot provide reliable water service due to unsound infrastructure or because they lack the local financial, managerial, and technical resources to do so. The vast majority of these systems are small, rural systems that typically serve less than 10,000 people. A sustainable solution is necessary to address this drastic health and safety crisis.

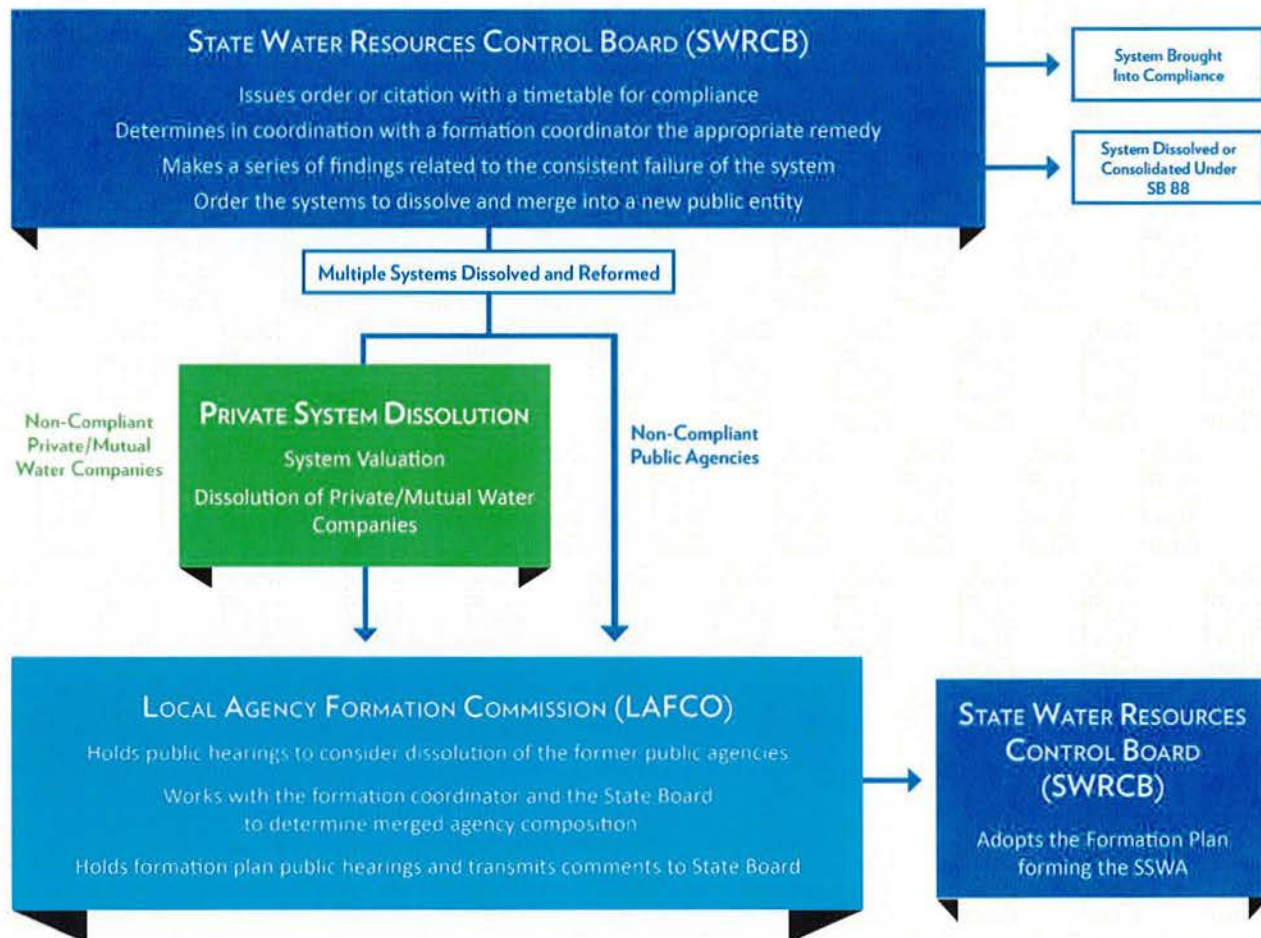


To date, laws have been passed that address various elements of the water accessibility issue including voluntary and forced consolidations, supplying resources and technical support, and

limiting the development of new unsustainable water systems. While these efforts have created a portfolio of options to address this critical issue of water accessibility in California, immediate and lasting changes to the governance structure of chronically non-compliant small systems are still needed to protect public health and safety.

The Small System Water Authority Act of 2020

SB 414 would create the Small System Water Authority Act of 2020, providing another valuable tool to prevent chronically non-compliant water systems from serving contaminated water to Californians. SB 414 builds off of the State Board's existing authorities by proposing a process to merge non-compliant and at-risk water systems into a larger and more robust public water system that can take advantage of improved economies of scale, streamlined managerial functions, and enhanced financial capacity.



This bill authorizes the State Board to notify chronically non-compliant systems, and those that are systematically at-risk of failure that they are in violation of public health and safety. Each system is then provided with an opportunity to return to compliance within a given time-period. If a system is unable to remedy the noncompliance in a timely manner, the State Board may contract with a formation coordinator to evaluate the feasibility of forming a Small System Water Authority (SSWA). If the determination is that formation of a SSWA is the most effective, affordable, and economically reasonable means of providing safe and reliable drinking water,

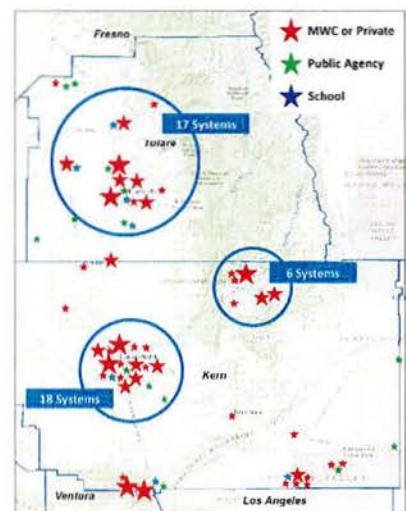
then eligible water systems would be dissolved and merged into a new SSWA. For private and mutual water companies, they would be dissolved and will receive compensation through a distressed business valuation process, if there is remaining value on the system. Any public agency would be dissolved through a process involving consultation with the local agency formation commission (LAFCO). At this time, any existing water systems, state small water systems, or individual well owners would also have an opportunity to voluntarily consolidate with the new authority.

The State Board would determine the appropriate remedy for a small failing water system, whether it be through existing consolidation authorities, helping to bring the system into compliance with financial and technical assistance, or the formation of an SSWA. A SSWA can be formed if there are five or more eligible non-compliant or at-risk systems, although the formation coordinator can also determine that a viable SSWA could be formed with less than five systems. The State Board through consultation with the LAFCO would then, through a public and transparent process, form the new SSWA, which would have the unique powers to absorb, improve, and consolidate currently non-compliant or at-risk public water systems with either contiguous or noncontiguous boundaries. Each SSWA would be required to submit a conceptual formation plan to the State Board. The formation coordinator would identify and hire critical staff and will ultimately complete a Final Plan for Service that would be approved, through a local public hearing process coordinated by LAFCO and approved by the State Board.

The new system would be an independent special district, provided with new internal and external financing opportunities, increased transparency including an elected Board of Directors, and would be scaled to a size to develop, coordinate, or contract through regional agreements, the necessary infrastructure to treat contamination issues. This in turn will lead to more sustainable water systems that can effectively deliver safe and affordable drinking water to its residents.

Finally, to ensure accountability and transparency, during each update of the annually adopted Safe Drinking Water Fund Expenditure Plan, the State Board would include an evaluation of the operational performance of each Small System Water Authority in delivering safe and reliable drinking water that meets all applicable water quality standards.

SAMPLE Grouping of Non-Compliant Systems
For demonstration purposes only.



Larger stars denote proportionately larger populations of small systems noted as "Out of Compliance" in State Water Board Database.

Small System Water Authority Act of 2020 Support/Opposition

SUPPORT

California Municipal Utilities Association (Co-Sponsor)
Eastern Municipal Water District (Co-Sponsor)
Calleguas Municipal Water District
Cucamonga Valley Water District
Elsinore Valley Municipal Water District
Mesa Water District
Orange County Water District
The Metropolitan Water District of Southern California
Three Valleys Municipal Water District

OPPOSITION

California Association of Local Agency Formation Commissions

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 California Association of Local Agency Formation Commissions (CALAFCO), representing all 58 local agency formation commissions (LAFcos) in the state, is opposed to 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 Suspense.

We appreciate you, your staff and the sponsors working with us over the past several years on this bill (and the prior version, AB 2050, 2018, vetoed by Governor Brown, which we supported), and 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.

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

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SB 414 – OPPOSE PENDING AMENDMENTS

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- 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. *Their 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 LAFCOs recommendation on the draft plan and explain their response for those decisions.*

Removing funding for LAFCo mandates

We appreciate you, your staff and the sponsors working with us over the past several years to ensure LAFCo costs are covered. 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. We believe the cost for LAFCOs to do the work as outlined in the June 25, 2019 version of the bill is far below the \$10.65 estimate (depending upon the number of authorities formed).

Even using the fiscal projections in the current bill, 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 LAFCOs 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.

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 and in order to cover them should the state not, the LAFCo will have to increase their fees to the local government agencies that pay into the LAFCo annually (cities, counties, and special districts).

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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, LAFCo 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 them 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.

Further, as we've discussed with the sponsors previously, 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

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- 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. *Their 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 LAFCos recommendation on the draft plan and explain their response for those decisions.*

Removing funding for LAFCo mandates

We appreciate you, your staff and the sponsors working with us over the past several years to ensure LAFCo costs are covered. 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. We believe the cost for LAFCos to do the work as outlined in the June 25, 2019 version of the bill is far below the \$10.65 estimate (depending upon the number of authorities formed).

Even using the fiscal projections in the current bill, 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 LAFCos 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.

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 and in order to cover them should the state not, the LAFCo will have to increase their fees to the local government agencies that pay into the LAFCo annually (cities, counties, and special districts).

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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.

We want you to know we appreciate your efforts and those of your staff and the sponsors in working with us over the past several years on this very important issue. We have very few concerns with the bill as currently written but strongly oppose the proposed amendments for all the reasons stated above. We are happy to continue to have conversations on the bill to find solutions that work for everyone.

Please do not hesitate to contact me if you have any questions about our OPPOSE position to the proposed amendments on ***SB 414***.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "Pamela Miller", written in a cursive style.

Pamela Miller
Executive Director