

Offices of John S. Mills

P.O. Box 1160
Columbia, Ca. 95310

The Honorable Felicia Marcus, Chair
State Water Resources Control Board
c/o Mary Yang
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Sent by email: mary.yang@waterboards.ca.gov

August 25, 2017

Re: Comment letter AB 401 Low Income Rate Assistance Program (LIRA)

Dear Chair Marcus and members of the Board:

These comments are submitted on behalf of my clients¹ in the hope that they may be of assistance in developing a representative collaborative stakeholder process that will lead to a successful implementation of AB 401 (Dodd, 2015). My clients' collective service areas and areas of responsibility constitute a regional representation of the Central Sierra Nevada mountains and foothills (El Dorado County, Calaveras County and Tuolumne County).

We wish to thank the SWRCB for the opportunity to submit comments on this important process. Supporting the ability of low-income households to access health and safety needs associated with potable water is a laudable goal and one we support.

¹ South Tahoe Public Utility District (member El Dorado County Water Agency), Georgetown Divide Public Utility District (member El Dorado County Water Agency), County of El Dorado (member El Dorado County Water Agency), El Dorado County Irrigation District (member El Dorado County Water Agency), Calaveras County Water District and Tuolumne County Water Agency

My clients represent a cross section of Urban Water Suppliers² and public agencies³, which hold a responsibility for the planning and the delivery of a safe, affordable and reliable water supply to support local customers and communities. Many of the communities and areas within the service areas of my clients are designated as Economically Distressed Areas⁴. Those economic conditions create a challenge to local water agencies with limited fiscal resources and relatively small compliment of staff available. Nonetheless, we are committed to achieving the goals of AB 401 in the most reasonable and cost-effective fashion. We sincerely hope the SWRCB will consider the very real challenge, and opportunity this creates in smaller, less densely populated disadvantaged community areas.

Comments:

- **Collaboration is essential:** Collegiate and two-way communications by the Board with stakeholders and agencies charged with implementing AB 401 is critical. We believe it is imperative that the Board engages relevant stakeholders, such as my Central Sierra Nevada regional representative clients, in a meaningful and substantive fashion, as required by CWC §189.5. The workshop process to date has been helpful in learning what the CPUC and Board staff believe is needed. It is now necessary for the Board to direct its staff to engage in a collaborative working group manner with local water agencies from throughout the state and in particular those representing economically distressed areas and disadvantaged communities, that will face the greatest challenges in actually making AB 401 succeed. We also strongly suggest that the incorporation of non-governmental organizations in the stakeholder process will be a significant help in reaching disadvantaged communities. We urge the Board to include such representation and implement a working group effort as quickly as possible. However, we request the Board use the time provided for in AB 401. That is, the Plan is not required to be completed until January 1, 2018 and the report is not due until Feb. 1, 2018. We advise the Board to use that the full amount of time provided to work collaboratively with stakeholders to produce a feasible plan that can be implemented throughout the State's diverse communities. My clients include an agency that already has a LIRA program in place as well as those who are currently evaluating LIRA options at this time. This process is key to both groups.
- **Definitions are important:** The Board should work with stakeholders to determine exactly what the term "affordable" means. For example, is it a statewide formula/metric or is it locally adjusted? How often is it to be adjusted and by what entity? Resolving the issues associated with that

² CWC §10617

³ CWC §10616

⁴ CWC §79702

definition should help focus the program on what the need actually is and what factors are relevant in defining need and affordability. As the census data illustrates, median household incomes vary dramatically within the state, as does cost of living, and the costs of providing potable water service to those diverse areas sometimes mirror those differences. The stakeholder process should also frame and refine the issue of what percentage of household income is a reasonable amount to spend on basic water needs for a family.

- **Mission creep is not desirable:** The express purpose of AB 401 is to develop a plan for the funding and implementation of a Low Income Water Rate Assistance program that includes all the elements provided in the legislation⁵. We believe it is imperative that the Plan developed provides tangible and timely financial relief to the eligible population, in the most cost effective and least regulatory burdensome method. Indeed, the authorizing legislation⁶ notes that, *“The plan may also include recommendations for other cost-effective methods of offering assistance to low-income water customers besides rate assistance including billing alternatives, installation of water conservation devices, and leak repair.”* This indicates that there should be consideration given to varying compliance methods based on the local capacity and conditions, but consistent with the legislation. The objective should be to help the water customers in need, with appropriate relief and not attempt to invent a program that may delay the deployment of that relief due to an overly ambitious agenda or extraneous complexities.
- **What works elsewhere already may work for AB 401:** We strongly suggest that the Board use existing information from State and Federal welfare agencies and stakeholders to determine what the scope of water affordability need is in California and what existing programs may be the most effective and the quickest to deploy so as to provide relief. This may mean using – as is – what is working in other welfare programs, or as may need to be modified to meet the criteria in AB 401. In any event, four key elements should be in the Plan: 1) the design (form) of the program; 2) the implementable actions and an estimated timetable required to bring the program from design to action; 3) the funding mechanism(s) needed to succeed and; 4) a reporting process that is not overly burdensome and, if possible could be carried out on a schedule consistent with other existing reporting periods for the implementing agencies.
- **Reduce administrative costs:** The Board should focus on the development of the Plan with assistance through a meaningful and sincere collaborative process with stakeholders to flesh out details on how to reduce administrative costs. Local agencies and NGOs are often times the

⁵ CWC §189.5(b) et seq

⁶ IBID

“leanest” organizations in terms of delivering a product absent significant long time-frames and costly amounts of overhead and administration. The Board should specifically solicit the input from the stakeholders on this key issue and then utilize the information to attempt to create a timely, lean and efficient way to achieve the mission of AB 401.

- **Where local programs are already working enable, do not disable them:** Stakeholder input may provide the SWRCB with examples of locally developed LIRA programs that have been working successfully for some time. In some cases, local agencies have spent substantial time and resources to develop their own LIRA – some years ago – and those creative programs have already stood the test of Proposition 218 compliance. Some of these programs may require adjustments to meet the objective of AB 401, but where possible the Plan should accommodate and extend existing LIRA efforts instead of forcing their elimination and creation of a new program.
- **Significant existing obstacles:** Proposition 218 requires water agencies to charge a fee proportionate to the actual cost of providing water service. The cost of service “yardstick” is both transparent and effective at linking costs to rates. However, Proposition 218 does place limits on water service providers that constrain a rate structure supported LIRA program. We suggest that the issue of Proposition 218 and how it relates to a rate-supported LIRA program, be examined within the collaborative stakeholder process and recommendations included in the Plan.
- **A State public goods charge (PGC):** We do not believe that a logical first step to making a resource more affordable is to tax it. A PGC will increase costs for all water users. The accumulation by the State of requisite transactional costs for the collection of the new fee/tax, the management of the program and the redistribution of what are actually locally generated funds, will add substantial administrative costs to the program as opposed to a locally run program. This is a subject area that can be addressed in more detail in the collaborative stakeholder process and we would welcome the opportunity to develop alternatives.
- **Assumptions and questions are important:** It is critical that the implementation of AB 401 be based on sound assumptions as informed through the collaborative process. We note that thus far it is assumed that over 1/3 (34%) of all California households would be subsidized for some portion of their water use. Is the 34% amount justifiable and is such a large scope logical? What is the reasoning for a 20% discount? What would be the fiscal response needed to fund a portion of over 1/3 of the state’s household with subsidized water? What would the impact be on water consumption rates if 1/5 of water use by over 1/3 of the population were discounted? Is such an approach consistent with making water conservation a way of life in California? The term “compliant”, as used in option four of the presented UCLA paper, lacks clarity. Any program of this potential size and scope must exhibit clarity in terminology. What

does “compliant” mean? What assumptions are being made regarding the short- and long-term cost of water as a result of new drinking water standards? Will increased rates to pay down subsidies result in increased water costs to other customers and thereby make water less affordable for those customers that are near the breakpoint for being subsidized? What standards/requirements regarding potable water, if any, are anticipated to be imposed on new construction low-moderate income housing projects? Is the direct subsidy of a water bill, the best way to deliver a subsidy to multi-family housing dwellers served by master meters that comprise 31% of the state’s population⁷? California’s projected new housing unit needs are 180,000 units per year, but for the last 10-years only 80,000 have been built, contributing at least in part to spiraling housing unit costs as demand outstrips supply⁸. What relationship is there between the percentages of household income now required to own or rent a dwelling unit and the proposed subsidies for water? Is affordable water a proportionate financial obstacle to the 34% of the state’s population identified for a subsidy, when 3 million households already pay more than 30% of their income toward rent and 1.5 million households pay more than 50% of their income toward rent⁹? What is the nexus between increased water use efficiencies and water consumption and water costs per unit? How does that relationship interact with subsidies?

- **Preliminary analysis:** In an attempt to provide the Board with more refined information as it relates to a reasonably sized sampling of the Central Sierra Nevada region’s moderately sized public water systems, we have provided basic information below. Please note that the data is in some cases estimates only. For example, in developing service area information within census tracts, there are substantial differences in boundaries and therefore, estimates must be used. Also the American Community Survey (ACS) information is used but the ACS provides information for areas with population concentrations of 20,000-60,000, which is well above the size of most communities in my client’s service areas. As a result, ACS data margins of error relative to rural area populations are extreme. Therefore, the information provided in cross referencing population, income levels, household size and water agency service areas should be noted as “best estimates” available at this time.
 1. Percentage of total local government customer base earning less than 200% of the federal poverty level per household ranged from a low of 30% to over 50%. Most estimates ranged toward the higher percentage.

⁷California’s Housing Future: Challenges and Opportunities, Ca. Dpt of Housing and Community Development, January 2017 p. 15

⁸ IBID

⁹ IBID

2. Current rate structure (base rate percentage and consumption rate percentage) ranged from a low of 75% / 25% to a high of 88% / 12%.
3. Median Household Income by county (not water agency service area) ranges from approximately \$50,000 to \$69,000. Please note some water agency service areas were as low as \$28,262.
4. Number of “master meters” on public water systems serving multi-family housing or mobile home parks ranged from a low of 25 to a high of 730.
5. Estimated costs to convert master meters to individual meters ranged from \$12,000 to nearly \$3 million, not including costs incurred by property owner for each meter.
6. Number of private households served by wells located within local agency service area data was incomplete at this time but from reported data the highest number is 2,900.

Summary

We support the objective of AB 401 and the Board’s dedication to develop a plan to bring that objective into reality. My clients also strive to keep water affordable, while also making investments in their system’s infrastructure, bringing new water use efficiency measures online and protecting their surface and groundwater resources and the watersheds that support the natural infrastructure. Given large service areas, low customer densities, the aging man-made infrastructure and below average household incomes, coupled with the “bad to worse” conditions of the Sierra watersheds¹⁰, these are not inconsequential challenges for relatively small agencies. These are all challenges the agencies’ Boards of Directors and employees engage on a daily basis. We also recognize there are equally daunting challenges at the state level.

The costs for a family’s housing budget including mortgage, taxes, fees, sewer, and water service are contributing factors to the total affordability of maintaining a residence in California. AB 401’s objective of making a basic amount of water for health and human safety affordable by offering a subsidy of an undetermined amount (at this time) is admirable. Unfortunately, the notion of making other water ratepayers pay more, will simply increase those ratepayers’ costs and create a spiral effect. The

¹⁰ 2017 UPDATE: *State of the Sierra Nevada’s Forest Report – From Bad to Worse*, Sierra Nevada Conservancy, March 1, 2017

proposal for a public goods charge on water would attempt to make water cheaper by taxing it. The Board needs to start afresh with a thorough examination of the objective of AB 401 and the possible unanticipated outcomes associated with some of the alternatives being discussed at this time. We strongly recommend that the Board invite a diverse and geographically representative stakeholder group to work with the Board's staff on developing a methodology that can best implement the goal of AB 401, while considering the other relevant factors that we have raised in this letter.

My clients request that I inform the Board that they would like to participate by sending myself as well as representative stakeholders from the Central Sierra Region, to work with the Board's staff and help develop a draft plan to bring the objective of AB 401 to fruition.

Please do not hesitate to contact my office if you have any questions regarding our comments.

Sincerely

John S. Mills

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Cc: The Honorable Steven Moore, Vice Chair, SWRCB
The Honorable Tam M. Doduc, Member, SWRCB
The Honorable Dorene D'Adamo, Member, SWRCB
The Honorable E. Joaquin Equivel, Member, SWRCB
Mr. Gordon Burns, Undersecretary, CalEPA
Ms. Eileen Sobeck, Executive Director, SWRCB
Mr. Michael Lauffer, Chief Counsel, SWRCB
Mr. Eric Oppenheimer, Chief Deputy Director, SWRCB
Mr. Erik Ekdahl, Director, Office of Research, Planning & Performance, SWRCB
Mr. Max Gomberg, Climate and Conservation Manager, SWRCB