Reeb Government Relations, LLC

June 29, 2020

The Honorable Henry Stern
Member, California Senate
State Capitol, Room 5080
Sacramento, California 95814

RE: Senate Bill No. 474—Oppose

Dear Senator Stern:

I am writing on behalf of Mountain Counties Water Resources Association (MCWRA) to express opposition to your SB 474, relating to development in very high fire hazard severity zones or state responsibility areas.

Existing law requires the Director of Forestry and Fire Protection to identify areas of the state as very high fire hazard severity zones. The State Board of Forestry and Fire Protection determines whether an area of the state is one for which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state. Existing law refers to these areas as “state responsibility areas.” SB 474 would prohibit the creation or approval of a new residential, commercial, retail or industrial development in a very high fire hazard severity zone or a state responsibility area.

MCWRA’s territory includes Alpine, Amador, Calaveras, El Dorado, Mariposa, Mono, Nevada, Placer, Plumas, Sierra, Tuolumne, and Yuba counties. Association members include water and community sewer providers and county governments.

MCWRA opposes SB 474 for several reasons. First and foremost, it is far to encompassing in its application. Reducing the effects of wildfire in the wildfire urban interface is more appropriately accomplished with improved forest management, appropriate land use designations, and building code and defensible space requirements. The Association believes your legislation, if enacted, would violate the constitutional protection against government takings by depriving a property owner of all economically viable use of their land. The general principle supporting this belief is that government is forbidden from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole; e.g., fire prevention and suppression. The Association believes SB 474 goes too far in the desire to regulate development in very high hazard fire areas or state responsibility areas by imposing a complete ban against development. SB 474 would interfere with the legitimate property rights of thousands of property owners throughout California. The United States Supreme Court has concluded that the timing of the acquisition of property—before or after the initiation of the regulatory restriction—is one of the factors to be considered in the judicial ad hoc determination of whether the restriction has gone "too far" and become a taking requiring just compensation.

Second, the Association believes land use designation and project development decisions should remain with counties and cities. Rather than a broad sweeping away of property rights, the Legislature should continue its work with Executive branch agencies and departments and local governments to improve forest health, building codes and the enforcement of defensible space requirements.

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Third, public agency water and sewer infrastructure is developed based on city and county general plans and investment in that infrastructure usually occurs ahead of actual development, with that investment recaptured in part through capacity charges imposed on new development. SB 474 wipes out virtually all new development in the area covered by MCWRA, therefore stranding water and sewer capacity investment that has been undertaken based on general plans, Department of Finance population projections and Department of Housing and Community Development fair share housing allocations.

The Office of the Legislative Counsel has found that SB 474 constitutes a state-mandated local program, yet SB 474 includes a provision that no reimbursement is required because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this legislation. This is perfidy as the California Constitution [Section 4 of Article XIII (D)] prohibits a local agency from levying an assessment on a parcel unless a special benefit is conferred upon that parcel and there is a proportionate special benefit derived by each identified parcel in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment can be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Further, only special benefits are assessable. Local agency water and sewer providers cannot shift costs incurred in preparation of new development to existing ratepayers. By eliminating development on thousands of parcels, SB 474 eliminates the ability of a local agency to levy assessments on those parcels and on existing developed parcels. The same challenge arises regarding service charges and fees [Section 6 of Article XIII (D)].

Finally, SB 474 now has been amended into a completely unrelated subject matter three times since its introduction in February of last year. The COVID-19 response actions taken by the Legislature in March of this year have severely limited public participation in the legislative process. There will remain seven weeks in the regular session when the Legislature reconvenes from its truncated summer recess on July 13. Simply put, the Association believes SB 474 should not be pursued this year with limited public involvement in the current pandemic environment.

Thank you for your time and consideration.

Sincerely,

Robert J. Reeb

RJR:
Cc: The Honorable Brian Dahle
The Honorable Andreas Borgeas
The Honorable Frank Bigelow
The Honorable Meghan Dahle
The Honorable James Gallagher
The Honorable Kevin Kiley