STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF ADMINISTRATIVE SERVICES
SEPTEMBER 19, 2017

ITEM 7

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING EMERGENCY REGULATIONS REVISING THE CORE REGULATORY FEE SCHEDULES CONTAINED IN TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 1, SECTIONS 2200, 2200.5, 2200.6, AND 2200.7 OF THE CALIFORNIA CODE OF REGULATIONS.

DISCUSSION

Water Code Section 13260 requires each person who discharges waste or proposes to discharge waste that could affect the quality of the waters of the state to file a report of waste discharge with the appropriate regional water board and to pay an annual fee set by the State Water Board, the funds from which are deposited in the Waste Discharge Permit Fund (WDPF). Water Code Section 13260 requires the State Water Board to adopt, by emergency regulations, an annual schedule of fees for persons discharging waste to the waters of the state. Water Code Section 13260 further requires the State Water Board to adjust the annual fees each fiscal year to conform to the revenue levels set forth in the Budget Act.

Financial Condition of the Waste Discharge Permit Fund

Attachment 1 shows a 6-year analysis of the fund condition of the WDPF. The FY 2016-17 beginning balance is approximately $19.5 million. Total revenue is approximately $123.2 million and total expenditures are approximately $125.7 million, resulting in a $2.6 million loss with a balance of $16.9 million and a fund reserve of approximately 13.5 percent.

The FY 2017-18 beginning balance is approximately $16.9 million. Under the current fee schedule, total revenue is anticipated to be approximately $134.5 million and total expenditures are anticipated to be approximately $134.8 million, resulting in a loss of $325,000 and an ending balance of approximately $16.6 million with a fund reserve of approximately 12.3 percent.

Program Expenditures

Attachment 2 shows the FY 2017-18 projected revenue based on the existing fee schedule, the budget for FY 2017-18, the projected revenue adjustments and the cost drivers, including staff cost and program adjustments. This chart also shows any revenue increases or reductions by program for maintaining a minimum five percent fund reserve. Except as noted below, staff is proposing to use the fund reserve to offset fee increases required due to insufficient revenue, allowing the State Water Board to keep most fees at the FY 2016-17 levels, meet budgetary expenditures and maintain a prudent fund reserve.

Proposed Fee Schedule Changes

Land Disposal

As a result of forecasted revenue exceeding budgeted expenditures, staff is proposing a one-time fee reduction of 12.6 percent to be applied to both the Land Disposal – Tipping and Land Disposal – No Tipping fee schedules.

Oil & Gas Surcharge
As a result of stakeholder feedback, staff and stakeholders worked to develop a new surcharge structure. There was consensus among the stakeholders to move to a new structure that assesses a surcharge based primarily on a discharger's threat to water quality and complexity rating with a factor for barrels of waste water produced.

Water Quality Certification (WQC)
Based on budgeted expenditures and forecasted revenue for FY 2016-17, a net fee increase of 32.4 percent was needed, but staff recommended and the Board approved a 20 percent fee increase and deferred the balance to FY 2017-18. Based on budgeted expenditures and forecasted revenue for FY 2017-18, a net fee increase of approximately 20 percent is required. Staff proposes the following changes:

- (A) Fill and Excavation Discharges
  - As a result of stakeholder and staff concern over the disparity between the existing linear and acre fee calculations, eliminate the linear fee calculation
  - Increase the minimum application fee from $720 to $1,500
  - Combine the Annual Active Discharge Fee and Annual Post-Discharge Monitoring Fee into one annual fee category and increase the minimum annual fee from $720 to $1,500
  - Increase the per acre fee multiplier by 30 percent from $10,206 to $13,268
  - Increase the project maximum by 8 percent from $120,000 to $130,000
- (B) Dredging Discharges
  - Increase the minimum application fee from $720 to $1,500
  - Combine the Annual Active Discharge Fee and Annual Post-Discharge Monitoring Fee into one annual fee category and increase the minimum annual fee from $720 to $1,500, equal to the application fee.
  - Increase the per cubic yard multiplier by 30 percent from $0.252 to $0.328
  - Increase the project maximum by 8 percent from $120,000 to $130,000
- (C) Sand Mining Dredging Discharges
  - Increase the minimum application fee from $720 to $1,500
  - Combine the Annual Active Discharge Fee and Annual Post-Discharge Monitoring Fee into one annual fee category and leave the annual fee at $720
- (D) Ecological Restoration and Enhancement Projects
  - Increase the minimum application fee from $200 to $400. Combine the Annual Active Discharge Fee and Annual Post-Discharge Monitoring Fee into one annual fee category and leave the annual fee at $200
- (E) Low Impact Discharges
  - Increase the minimum application fee from $720 to $1,500
  - Combine the Annual Active Discharge Fee and Annual Post-Discharge Monitoring Fee into one annual fee category and leave the annual fee at $200
- (F) Emergency Projects Authorized by a Water Board General Order
  - Increase the minimum application fee from $720 to $1,500. The large increase reflects the actual staff time involved in the application process for these types of projects.
  - Implement an annual fee component of $200 to reflect the annual staff time involved and to assist in tracking these projects.

Storm Water
To avoid another single-year fee reduction that has been given the past three fiscal years, and to bring revenue and expenditures into alignment with each other, staff is proposing to lower fees across all segments of the SW program. Staff is proposing to lower Municipal storm water fees by 11.0 percent, Industrial storm water fees by 21.8 percent and Construction storm water fees by an average of 15.5 percent. Historically, construction fees have been capped at 100 acres. Program staff indicated that more time is spent on larger projects, so staff proposes to raise the cap from 100 to 150 acres. As a result, approximately 200 construction projects out of over 8,400 regulated facilities, will see a fee increase between 1 percent and 19.4 percent. Staff is also proposing to reduce the No Exposure Certification (NEC) fees from $200 to $150 to better reflect staff workload.

NPDES
Staff is proposing to modify the language for flow-based NPDES fees to capture discharges from public wastewater treatment facilities that are anticipated to be regulated under a new general order in FY 2017-18.

Confined Animal Facilities (CAF)
Staff is proposing to increase the maximum animal count for the feedlot tiers that do not pay an annual fee. This change corresponds to the new bovine general order adopted by the Central Valley Regional Water Quality Control Board (Central Valley Regional Board) and does not affect any existing dischargers.

As a result of a new poultry general order adopted by the Central Valley Regional Board, staff worked with stakeholders on a new poultry fee schedule that includes a change in methodology from a per-animal count to an animal equivalent unit (AEU). Stakeholders approved the proposed fee schedule with no requested changes, however, they indicated their main concern is the cost to comply with the new permit. Central Valley Regional Board staff is working with stakeholders on this matter. Staff have been working with regional board CAF staff and stakeholders on revising the non-poultry fee schedule to also be based on AEUs and is projected to implement the revised schedule for FY 2018-19.

Agricultural Lands
Budgeted expenditures are projected to exceed revenue by approximately 22 percent, comprised of a 16 percent increase resulting from an approved budget change proposal (BCP) and a 7 percent increase resulting from staff and program costs. Staff considered several options to meet budgetary and program requirements and is proposing to increase fees by approximately 16 percent to cover the $1.0 million increase related to the BCP, resulting in a 12 cent increase from $0.75 to $0.87 per acre. Staff is proposing to use the fund reserve to offset the 7 percent increase related to staff and program costs.

Cannabis
Staff is proposing a new fee schedule for dischargers enrolling in the proposed statewide general order for cannabis cultivation scheduled to be adopted in FY 2017-18. The current fee schedule for cannabis cultivation will remain in place for those dischargers currently enrolled in a regional board order or waiver and will be replaced by the new statewide general order fee schedule for FY 2018-19.

POLICY ISSUE

Should the State Water Board adopt a resolution amending the annual fee schedules as proposed by staff?

FISCAL IMPACT

The FY 2017-18 Budget Act includes expenditure authority for the Waste Discharge Permit Fund of $134.0 million. The proposed fee schedule changes will ensure the projected revenue for the WDPF meets the FY 2017-18 budget expenditure authority and maintains a prudent fund reserve of approximately 8.0 percent.

REGIONAL BOARD IMPACT

The proposed fee schedule changes would allow the State Water Board to initiate the gradual transition of assessing fees that reflect projected regional board priorities.

STAFF RECOMMENDATION

That the State Water Board approves the resolution to adopt emergency regulations to change the current annual fee schedules as proposed by staff.

State Water Board action on this item will assist the Water Boards in reaching Goals 1-4 of the Strategic Plan Update: 2008-2012 to:

- Goal 1: Support beneficial uses
- Goal 2: Improve and protect groundwater equality
- Goal 3: Increase sustainable local water supplies
- Goal 4: Address water quality protection and restoration

D R A F T

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2017-

ADOPTING EMERGENCY REGULATIONS REVISING THE CORE REGULATORY FEE SCHEDULES CONTAINED IN TITLE 23, DIVISION 3, CHAPTER 9, ARTICLE 1, SECTIONS 2200, 2200.5, 2200.6, AND 2200.7 OF THE CALIFORNIA CODE OF REGULATIONS.

WHEREAS:

1. Water Code Section 13260(d) requires each person for whom waste discharge requirements are issued to pay an annual fee to the State Water Board.

2. Water Code Section 13260(f) requires the State Water Board to adopt a schedule of fees by emergency regulation.

3. Water Code Section 13260(f) requires fees to be adjusted annually to conform to the revenue levels set forth in the State Budget Act for these activities.

4. State Water Board staff prepared recommended changes to the annual fee schedule contained in current regulation to implement the State Budget Act requirements.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts emergency regulations approving the revisions to Title 23, Division 3, Chapter 9, Article 1, Sections 2200, 2200.5, 2200.6, and 2200.7 of the California Code of Regulations to implement the provisions of the 2017 State Budget Act pursuant to the provisions of Water Code Section 13260(f) (annual fee schedule).

2. The State Water Board directs its staff to work with the regional water quality control boards and representatives of affected stakeholders to evaluate the propriety of enacting fees for additional categories of discharges of waste regulated under orders waiving the issuance of waste discharge requirements, and to report its recommendations to the State Water Board prior to the State Water Board's consideration of adoption of the next annual water quality fee schedule.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 19, 2017.

Jeanine Townsend
Clerk to the Board