



Association of California Water Agencies

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(6/22/16) Public Hearing
Drinking Water Fee
Deadline: 6/22/16 by 5:00pm



Sent via ELECTRONIC MAIL to DAS-DrinkingWaterFees@waterboards.ca.gov

June 21, 2016

Ms. Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: ACWA Comments regarding SWRCB Draft Drinking Water Fee Regulations

Dear Ms. Townsend:

The Association of California Water Agencies (“ACWA”) appreciates the opportunity to comment on the State Water Resources Control Board’s (“SWRCB”) draft Drinking Water Fee Regulations released for public comment on April 29, 2016 (“Draft Fee Regulations”). ACWA represents over 435 public water agencies that collectively supply 90% of the water delivered in California for domestic, agricultural and industrial uses. Many of ACWA’s public agency members are entrusted with the responsibility of supplying the public with safe, high-quality drinking water. Ensuring the safety of drinking water supplies by complying with all relevant state and federal standards is the highest priority of these agencies.

I. BACKGROUND

The SWRCB’s Drinking Water Program is charged with the responsibility of administering the California Safe Drinking Water Act (“SDWA”).¹ Under SB 83 (2015), effective July 1, 2016, “Each public water system shall submit an annual fee according to a fee schedule established by the [SWRCB]... for the purpose of reimbursing the [SWRCB] for the costs incurred” by the SWRCB for conducting activities mandated under the SDWA.² The categories of Public Water Systems that pay these fees include Community Water Systems, Wholesaler Water Systems, and Transient and Nontransient Noncommunity Water Systems.

Following the enactment of SB 83 in June 2015, ACWA and other stakeholders met with SWRCB staff in a series of meetings to discuss potential approaches to structuring the SWRCB’s Drinking Water Program fee structure, presented at a SWRCB Board Workshop in

¹ Health & Safety Code § 116271.

² Health & Safety Code § 116565. (*Operative July 1, 2016.*)

November 2015, and along with many individual water systems' representatives, participated in a series of workshops held by SWRCB staff in locations around the state in December 2015.

The Draft Fee Regulations released for public comment on April 29, 2016 propose to significantly alter the existing structure of the fees paid by Community Water Systems and Wholesaler Water Systems. Under the Draft Fee Regulations, beginning in Fiscal Year 2016-17, fees for all Community Water Systems would be assessed on a per-connection basis, with two tiers of per-connection fees depending on system size. In contrast, under the current fee schedule, Community Water Systems with 1,000 or fewer connections pay a fee set at \$6 per service connection, with a minimum fee of \$250, while systems with more than 1,000 connections are charged a fee that is calculated based on the number of hours of service that the system requires from the Drinking Water Program ("fee-for-service"). Similarly, for Wholesaler Water Systems the Draft Fee Regulations would impose an annual fee of \$6,000 with an additional volumetric surcharge. Under the current fee schedule, these Wholesaler systems pay annual fees based on fee-for-service.

The Draft Fee Regulations' stated goal is to recover sufficient funding to support the Drinking Water Program's increased budget authorization amount for Fiscal Year 2016-17 and create a more stable and consistent source of funding for the Program. ACWA supports adequate funding for the Drinking Water Program. As is explained in section II, however, we have significant concerns related to the Draft Fee Regulations. In order to address these concerns, we encourage the SWRCB to replace the fee schedule included in the Draft Fee Regulations with the alternative fee schedule detailed in section III and Attachment 1. Finally, we urge the SWRCB to take additional steps to ensure that the State's Drinking Water Program maintains its accountability to public water systems and the customers they serve by modifying the Draft Fee Regulations and including provisions in the SWRCB Resolution adopting the final drinking water fee regulations that are detailed in section IV of this comment letter.

II. THE DRAFT FEE REGULATIONS DO NOT ALLOCATE DRINKING WATER PROGRAM COSTS EQUITABLY AMONG COMMUNITY WATER SYSTEM FEE PAYORS

ACWA acknowledges that the final drinking water fee regulations must ensure that the Drinking Water Program has adequate funding to support the amount allocated to the Program by the Legislature. However, we are concerned that the Draft Fee Regulations do not equitably allocate Drinking Water Program costs as they would impose dramatic fee increases on many Large Water Systems while decreasing fees for all Small Water Systems to levels substantially less than that those previously established by the Legislature.³

Under the California Constitution, State regulatory fees are required to bear a "fair or reasonable relationship" to the fee payor's burdens on, or benefits received from, the

³ For purposes of this comment letter, "Large Water Systems" are defined as Community Water Systems serving more than 1000 connections and "Small Water Systems" are defined as Community Water Systems serving 1000 or fewer connections.

governmental activity.⁴ As explained below, the Draft Fee Regulations’ dramatic increases on many Large Water Systems’ fees and significant reductions for all Small Water Systems’ fees are not fair or reasonable.

A. The Draft Fee Regulations Would Result in Dramatic Fee Increases for Many Large Water Systems

As illustrated in Table 1 below, for many Large Water Systems the SWRCB’s Draft Fee Regulations would *dramatically increase* their annual fees when compared to the fees that systems have been paying under fee-for-service.

Table 1 - Examples of Impact of Draft Fee Regulations on Large Water Systems

| System Name | Number of Service Connections | FY 2014-15 Actual Fee | SWRCB Draft Fee Regulations | Percentage Fee Increase (SWRCB Draft Fee Regulations compared to FY2014-15 actuals) |
|-----------------------------|-------------------------------|-----------------------|-----------------------------|---|
| CITY OF MERCED | 29,948 | \$10,058 | \$61,896 | 515% |
| SANTA ROSA, CITY OF | 54,603 | \$10,464 | \$111,206 | 963% |
| CONTRA COSTA WATER DISTRICT | 61,110 | \$14,498 | \$124,220 | 757% |
| EASTERN MUNICIPAL WD | 137,037 | \$31,233 | \$276,074 | 784% |
| SAN DIEGO, CITY OF | 276,525 | \$46,818 | \$555,050 | 1,086% |

An analysis of the magnitude of the proposed increases of the Draft Fee Regulations on water systems of different sizes has been included as Attachment 2 to this comment letter.

B. The Draft Fee Regulations Would Result in Across the Board Fee Reductions for Small Water Systems

In contrast with the dramatic fee increases for many Large Water Systems, the SWRCB’s Draft Fee Regulations would significantly decrease annual fees for all Small Water Systems. Under the Draft Fee Regulations, the average annual fee for Small Water Systems would be substantially less than the fees paid by these systems since the current fee structure was adopted by the Legislature in 2009. Under the current fee structure, Small Water Systems pay a fee of \$6 per service connection, with a minimum fee of \$250.

With the costs of the Drinking Water Program increasing and fees for many Large Water Systems increasing by orders of magnitude, it is not reasonable to significantly decrease fees

⁴ Cal. Const. art XIII. A., § 3.

across the board for all Small Water Systems. This is particularly true given the caps on fees for severely disadvantaged communities (SDACs) appropriately included in the Draft Fee Regulations.

C. The Draft Fee Regulations Provisions for Wholesaler Water Systems Do Not Enhance Revenue Stability and Are Inequitable for Both Wholesalers and Their Customers

For Wholesaler Water Systems, the Draft Fee Regulations would impose an annual fee of \$6,000 with an additional volumetric surcharge of \$1.36 per million gallons of water produced.⁵ The use of a volumetric production surcharge as the basis of these fees is problematic for a number of reasons.

First, the use of a volumetric surcharge to calculate fees could result in decreased revenue stability. Wholesalers' total production can vary significantly from year-to-year as water availability changes. These changes in production would significantly affect the stability and predictability of the fees paid by Wholesalers.

Secondly, there are matters of equity associated with the pass-through effects of any volumetric-based fees for Wholesalers. In some cases, there are Wholesalers which serve as intermediary water suppliers, obtaining their water from other Wholesaler Water Systems before distributing these supplies to retail water agencies. A fee structure based on total production would have the effect of charging downstream water systems multiple times for the same water.

Finally, Wholesalers vary widely in the complexity of their systems and total production does not correlate with regulatory oversight requirements. Comparing the existing fees paid by Wholesaler Water Systems with their total production, it is clear that Wholesalers' need for regulatory oversight from the Division of Drinking Water does not clearly correlate with their total production. Billing Wholesalers based on their "total production" is not equitable to these systems or their ratepayers.

III. THE DRAFT FEE REGULATIONS SHOULD BE AMENDED TO MORE EQUITABLY ALLOCATE THE FEE INCREASES REQUIRED TO FUND THE DRINKING WATER PROGRAM

A. Water Community Option for Community Water Systems

ACWA and other drinking water system representatives have developed an alternative fee option ("Water Community Option"). The Water Community Option for Community Water

⁵ Under § 64305(a) of the Draft Fee Regulations, "Million Gallons" means the annual average, rounded to the nearest million, as reported to the State Board by the wholesaler for 2012, 2013 and 2014, of the total gallons of water that the wholesaler produced from surface water and from groundwater and gallons of finished water that the wholesaler purchased or received from another public water system."

Systems is set forth in Table 2 below, as well as in Attachment 1, where it is set side-by-side with the current SWRCB fee schedule and the Draft Fee Regulations.

Table 2 - Water Community Option for Community Water Systems

| System Type | Per-Connection Fee |
|--------------|--|
| Small | 100 or fewer connections: \$250 or \$6/connection , whichever is more. (SDACs: \$100) |
| | 101-1,000 connections: \$6/connection (SDACs: \$2/ connection) |
| Large | 1,001-5,000 connections: \$6/connection for first 1,000 connections, \$3.5/connection for each connection over 1,000. (SDACs: \$2/connection) |
| | 5,001-15,000 connections: \$6/connection for first 1,000 connections, \$3.5/connection for next 4,000 connections, \$2/connection for each connection over 5,000 |
| | 15,000+ connections: \$6/connection for first 1,000 connections, \$3.5/connection for next 4,000 connections, \$2/connection for next 10,000 connections, \$1/connection for each connection over 15,000 |

The Water Community Option recovers the same amount in total fees as the Draft Fee Regulations, but is also consistent with the following key considerations when compared to the Draft Fee Regulations:

1. *The Water Community Option allocates fee increases more equitably among Large Water Systems than the Draft Fee Regulations.*

The Water Community Option allocates fee increases more equitably among Large Water Systems by creating additional tiers of per-connection fees for these systems. These additional tiers create a fee structure that accounts for the fact that water systems benefit from economies of scale when considering the amount of service that they typically require from the Drinking Water Program on a per-connection basis. The Water Community Option also reflects the investments of many Large Water Systems in in-house resources and staff that reduce their need for Drinking Water Program service on a per-connection basis.

2. *The Water Community Option maintains the current fee structure for Small Water Systems.*

Since 2009, Small Water Systems have been paying fees set by statute at \$6 per service connection, with a minimum fee of \$250. As detailed in Attachment 1, the Water Community Option would maintain the existing fee structure for Small Water Systems, with new caps on fees for severely disadvantaged communities. With the costs of the Drinking Water Program increasing and fees for many Large Water Systems increasing dramatically, it is not reasonable to significantly decrease fees across the board for all Small Water Systems.

The Water Community Option would ensure that fees fairly track system size by requiring all Community Water Systems to pay the per-connection fees charged to smaller systems for similar tiers of system size (i.e., fees would be assessed at \$6 per connection for the first 1000 connections for all systems, except for severely disadvantaged communities).

3. *The Water Community Option includes the same caps on fees for severely disadvantaged communities (SDACs) as the Draft Fee Regulation.*

ACWA acknowledges the SWRCB's interest in providing a reduction of fees for Community Water Systems serving SDACs. The Water Community Option includes the same caps on fees for SDACs as the Draft Fee Regulations prepared by SWRCB staff.

4. *The Water Community Option is simple to understand and administer.*

The Water Community Option is consistent with SWRCB's goal of creating a more stable and consistent source of funding for the Drinking Water Program by moving to a per-connection fee schedule for Community Water Systems, but refines the deescalating per-connection tiers proposed in the Draft Fee Regulations to ensure consistency with the considerations identified above.

ACWA encourages the SWRCB to adopt the Water Community Option for Community Water Systems.

B. Water Community Option for Wholesaler Water Systems

The Water Community Option for Wholesaler Water Systems would maintain the existing fee-for-service structure for Wholesalers. By requiring that Wholesalers pay for the service they receive, the fee-for-service structure ensures that the program will be able to recover the full costs of providing regulatory oversight and any required assistance to these water systems.

While Wholesaler systems vary widely in their complexity and the total populations they serve, the Wholesaler category includes several very large systems, including the nation's largest drinking water system. These large systems benefit from internal investments in staff and

resources that limit their need for assistance from the Drinking Water Program, but given the scale of their operations and the large populations they serve, they do occasionally require substantial amounts of Program staff time on various regulatory oversight issues. This can result in significant variances in Drinking Water Program service requirements for these systems from year-to-year. Preserving the Drinking Water Program's ability to recover the full cost of service from these systems can help ensure that the Program's funding is adaptable to these changing circumstances.

ACWA encourages the SWRCB maintain the existing fee-for-service structure for Wholesaler Water Systems.

IV. THE SWRCB RESOLUTION ADOPTING THE FINAL DRINKING WATER FEE REGULATIONS SHOULD ENSURE THAT THE STATE'S DRINKING WATER PROGRAM MAINTAINS ITS ACCOUNTABILITY TO PUBLIC WATER SYSTEMS AND THE CUSTOMERS THEY SERVE

A. Maintain the Drinking Water Program's accounting of staff time allocated to specific water systems.

Under the current fee-for-service structure, all Large Water Systems receive semi-annual invoices that detail the Drinking Water Program staff time dedicated to their system. These invoices are critical to providing water systems with an opportunity to review and account for the service provided by the Drinking Water Program to their system.

As the Drinking Water Program moves towards a connection-based fee structure, we encourage the Board to include language in the Resolution adopting the final drinking water fee regulations that directs SWRCB staff to retain the DART system which is currently used to track Drinking Water Program staff time and continue to make an accounting of Drinking Water Program service available to Public Water Systems. This can help ensure that water systems are able to obtain the service, oversight and support that they require.

B. Track and report key Drinking Water Program performance metrics.

The Drinking Water Program provides essential services and oversight for all Public Water Systems, and regardless of how fees are assessed it is critical to ensure that all water systems receive an appropriate level of service in a timely fashion.

ACWA encourages the Board to include language in the Resolution adopting the final drinking water fee regulations that directs SWRCB staff to develop an annual report on key Drinking Water Program performance metrics to be presented to the Board at a public meeting no less frequently than once per year. In addition to providing the Board with an update on the Drinking Water Program's performance, the report would give members of the public, including Public Water System fee payors, an opportunity to provide feedback on the level of service provided by the Drinking Water Program.

C. Ensure that implementation of the final drinking water fee regulation is responsive to fee payors' budgeting processes and other constraints.

Section 64315 of the Draft Fee Regulations requires that fee invoices be paid “within forty five (45) calendar days of the date of the invoice, except that this date may be extended by the State Board for good cause, which shall be determined at the State Board's sole discretion.”

With the costs of the Drinking Water Program increasing and fees for many water systems substantially escalating under any revised fee proposal, many fee payors (particularly public agencies) will be required to obtain budget approvals to pay their revised fee. Obtaining the necessary authorization to pay these increased fees may take more than 45 days from receipt of an invoice. Accordingly, ACWA encourages the SWRCB to revise the section 64315 of the Draft Fee Regulations to provide 90 days for payment of invoices, and to include language in the Resolution adopting the final drinking water fee regulations that directs SWRCB staff to interpret the “good cause” provision in a manner that is responsive to fee payors' budgeting processes and other constraints.

ACWA appreciates the SWRCB's willingness to engage public water system representatives on this important issue. We urge the SWRCB to: 1) modify the Draft Fee Regulations consistent with the Water Community Option; and, 2) include the accountability elements detailed in this letter in the Board Resolution adopting the final drinking water fee regulations.

If you have any questions regarding this matter, please contact me at AdamR@ACWA.com or (916) 441-4545.

Sincerely,



Adam Walukiewicz Robin
Senior Regulatory Advocate

cc: The Honorable Felicia Marcus, Chair
The Honorable Dorene D'Adamo, Member
The Honorable Tam M. Doduc, Member
The Honorable Frances Spivy-Weber, Member
The Honorable Steven Moore, Member
Mr. Tom Howard, Executive Director
Mr. Eric Oppenheimer, Chief Deputy Director
Ms. Cindy Forbes, Deputy Director, Division of Drinking Water
Mr. John Russell, Deputy Director, Division of Administrative Services
Mr. David Ceccarelli, Staff Services Manager II, Division of Administrative Services
Mr. Ryan Wilson, Staff Services Manager I, Division of Administrative Services

Attachments

1. Side-by-Side Details: SWRCB Draft Fee Regulations and Water Community Option
2. Impacts Analysis: SWRCB Draft Fee Regulations and Water Community Option

ATTACHMENT 1 - Side-by-Side Details: SWRCB Draft Fee Regulations and Water Community Option

| System Type | SWRCB Current Fee Schedule | SWRCB Proposed Fee Regulations | Water Community Option |
|--------------------|---|---|--|
| Small | 1,000 or fewer connections: \$250 or \$6/cxn, whichever is more* | 100 or fewer connections: \$200 (SDACs: \$100) | 100 or fewer connections: \$250 or \$6/cxn, whichever is more* (SDACs: \$100) |
| | | 101-1,000 connections: \$4/cxn (SDACs: \$2/cxn) | 101-1,000 connections: \$6/cxn (SDACs: \$2/cxn) |
| Large | 1,001+ connections: fee-for-service | 1,001+ connections: \$4/cxn for first 1,000 cxns, \$2/cxn for each cxn over 1,000 (SDACs: \$2/cxn) | 1,001-5,000 connections: \$6/cxn for first 1,000 cxns, \$3.5/cxn for each cxn over 1,000 (SDACs: \$2/cxn) |
| | | | 5,001-15,000 connections: \$6/cxn for first 1,000 cxns, \$3.5/cxn for next 4,000 cxns, \$2/cxn for each cxn over 5,000 |
| | | | 15,000+ connections: \$6/cxn for first 1,000 cxns, \$3.5/cxn for next 4,000 cxns, \$2/cxn for next 10,000 cxns, \$1/cxn for each cxn over 15,000 |

SDAC: Severely Disadvantaged Community

cxn: Connection

* - Consistent with provisions of Health & Safety Code section 116565 in effect from 2009 through June 30, 2016

ATTACHMENT 2 - Impacts Analysis: SWRCB Draft Fee Regulations and Water Community Option

| Average Fee Option Impacts By System Size | | | | | | |
|---|-----------------------|--------------------------------|---|--|--------------------------------------|---|
| # of Service Connections | # of Systems in Range | FY 14-15 Actuals - Average Fee | SWRCB Draft Fee Regulations - Average Fee | SWRCB Draft Fee Regulations - % of FY14-15 Actuals | Water Community Option - Average Fee | Water Community Option - % of FY14-15 Actuals |
| 0-50 | 467 | \$252 | \$200 | 79% | \$254 | 101% |
| 51-1,000 | 805 | \$1,688 | \$1,106 | 66% | \$1,697 | 101% |
| 1,001-2,500 | 211 | \$8,807 | \$5,280 | 60% | \$8,240 | 94% |
| 2,501-5,000 | 137 | \$9,733 | \$9,073 | 93% | \$14,878 | 153% |
| 5,001-10,000 | 110 | \$14,518 | \$16,525 | 114% | \$24,525 | 169% |
| 10,001-25,000 | 132 | \$18,018 | \$34,162 | 190% | \$39,764 | 221% |
| 25,001-50,000 | 63 | \$25,701 | \$70,086 | 273% | \$59,043 | 230% |
| 50,000-100,000 | 16 | \$35,484 | \$131,225 | 370% | \$89,612 | 253% |
| 100,000-200,000 | 5 | \$53,664 | \$270,708 | 504% | \$159,354 | 297% |
| >200,000 | 4 | \$110,172 | \$788,645 | 716% | \$418,323 | 380% |

