



Sent via ELECTRONIC MAIL to commentletters@waterboards.ca.gov

July 29, 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 Revised 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”) revised draft Drinking Water Fee Regulations released for public comment on July 13, 2016 (“Revised Draft 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. ACWA provided testimony at a SWRCB

¹ Health & Safety Code § 116271.

² Health & Safety Code § 116565(a).

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Board Workshop held on this issue in November 2015 and we participated in a series of workshops held by SWRCB staff in locations around the state in December 2015. ACWA submitted a comment letter on the SWRCB’s initial Draft Regulations on June 21, 2016 which expressed significant concerns with the proposed fee increases included in that proposal. The ACWA letter included a proposed alternative fee schedule developed by ACWA and other drinking water systems representatives (the “Water Community Option”), as well as a number of additional comments aimed at ensuring that the state’s Drinking Water Program maintains its accountability to Public Water Systems and the customers they serve.

ACWA acknowledges and appreciates the incorporation of elements of the Water Community Option in the Revised Draft Regulations. It is important to note, however, that the Revised Fee Regulations differ from the Water Community Option in that they include a new “Disadvantaged Community Certification” and also increase the per-connection fees for some large water systems when compared to the Water Community Option.

As is demonstrated in Table 1 below, the Revised Draft Regulations will significantly increase the average fees paid by Large Water Systems serving more than 1,000 connections.

Table 1 – Impact of Revised Fee Regulations by Community Water System Size

# of Service Connections	FY 2014-15 Actuals - Average Fee	Revised Regulations - Average Fee	Percentage Fee Difference - Revised Regulations vs. FY 14-15 Actuals
0-50	\$252	\$254	+<1%
51-1,000	\$1,688	\$1,697	+<1%
1,001-2,500	\$8,807	\$8,240	-6%
2,501-5,000	\$9,733	\$14,878	+53%
5,001-10,000	\$14,518	\$24,525	+69%
10,001-25,000	\$18,018	\$40,604	+125%
25,001-50,000	\$25,701	\$65,708	+156%
50,000-100,000	\$35,484	\$106,977	+201%
100,000-200,000	\$53,664	\$201,128	+275%
>200,000	\$110,172	\$550,735	+400%

While ACWA supports adequate funding for the Drinking Water Program, the magnitude of the proposed fee increases for Fiscal Year 2016-17 underscores the critical need for enhanced accountability and transparency in the administration of the Drinking Water Program and the implementation of the Revised Fee Regulations’ proposed fee structure.

II. THE SWRCB SHOULD UNDERTAKE A SERIES OF STEPS TO ENSURE THAT THE STATE'S DRINKING WATER PROGRAM MAINTAINS ITS ACCOUNTABILITY TO PUBLIC WATER SYSTEMS AND THE CUSTOMERS THEY SERVE

With the Revised Fee Regulations' significant re-structuring of the existing fee schedule and the substantial fee increases proposed for many Public Water Systems, the SWRCB should undertake a series of steps to ensure that the Drinking Water Program maintains its accountability to Public Water Systems. ACWA encourages the SWRCB to include specific language in the Resolution adopting the final drinking water fee regulations that directs SWRCB staff to maintain the Drinking Water Program's accounting of staff time allocated to specific water systems, track and publicly report key Program performance metrics, and ensure that implementation of the final fee regulation is responsive to public agencies' budgeting processes. Additionally, it is critical that the SWRCB provide a forum for the evaluation and discussion of the implementation of the Revised Fee Regulations.

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. It will also help inform the Board and SWRCB staff on how Drinking Water Program staff time and resources are being allocated.

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 public agencies' 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 the Revised Fee Regulations, 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's June 21, 2016 comment letter encouraged the SWRCB to revise the section 64315 of the Draft Fee Regulations to provide 90 days for payment of invoices.

ACWA's suggested revision was not incorporated in the Revised Draft Regulations. Accordingly, we encourage the SWRCB to include language in the Resolution adopting the final drinking water fee regulations that directs SWRCB staff to interpret the "good cause" provision in section 64315 of the Revised Draft Regulations in a manner that is responsive to fee payors' budgeting processes and other constraints.

D. Provide for additional transparency and stakeholder involvement in future rulemakings to modify the Drinking Water Fees.

Under Health & Safety Code section 116565(d), the SWRCB "shall set the amount of total revenue collected each year through the fee schedule at an amount equal to the amount appropriated by the Legislature in the annual Budget Act from the Safe Drinking Water Account." These annual adjustments of the fee schedule will be adopted through emergency regulations.³

The SWRCB should provide Public Water Systems with sufficient information (including the time accounting invoices and annual report described in subsections II. A. and B., above) and a robust public process when the fee regulations are adjusted. Doing so will be critical to ensuring that the Public Water System fees are calculated in a manner that reflects the California Constitution's requirement that state regulatory fees bear a "fair or reasonable relationship" to

³ Health & Safety Code § 116565(e)(1).

the fee payor's burdens on, or benefits received from, the governmental activity.⁴ Additionally, it will give the SWRCB and Public Water Systems an opportunity to evaluate the assumptions used in the development of the Disadvantaged Communities Certification provisions, as well as the financial impact of the Certification in Fiscal Year 2016-17 and beyond.

E. Plan to re-evaluate the proposed fee structure for Wholesaler Water Systems.

In ACWA's June 21, 2016 comment letter, we expressed concerns that the that the initial Draft Regulations use of a volumetric surcharge for Wholesaler Water Systems would result in decreased revenue stability and inequitably pass-through increasing regulatory fee costs to Public Water Systems served by one or more Wholesalers.

While the Revised Fee Regulations do not include any changes to the volumetric surcharge fee structure for Wholesalers, SWRCB staff have expressed a willingness to re-visit the structure of Wholesaler fees in future drinking water fee rulemakings. The SWRCB's public process for adjustments to the fee regulations should include an evaluation of the impact of the use of a volumetric surcharge for Wholesalers.

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 Steven Moore, Member
The Honorable Frances Spivy-Weber, 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

⁴ Cal. Const. art XIII. A., § 3.