

INITIAL STATEMENT OF REASONS

BACKGROUND / AUTHORITY

The State Water Resources Control Board (State Board) is responsible for administering the Safe Drinking Water Act (SDWA) (Health & Saf. Code, div. 104, pt. 12, ch. 4, §116270, et seq.). The SDWA applies to all persons who supply water for human consumption, and meet the law's definition of "public water system." There are approximately 7,500 regulated public water systems in California. The program within the State Board that regulates public water systems (Drinking Water Program) is supported by fees that are deposited in the Safe Drinking Water Account, as provided for in Health and Safety Code (HSC) section 116590.

These proposed regulations establish a fee schedule to support the Drinking Water Program as required by SB 83 (2015). Effective July 1, 2016, the existing HSC section 116565, which establishes annual fees for public water systems, will become inoperative (Stats. 2015, ch. 24, § 19), and a new HSC section 116565 (added by Stats. 2015, ch. 24, § 20), will become operative, requiring the State Board to adopt a fee schedule in regulation. The fees that the State Board is required to establish in a fee schedule are to reimburse the State Board for costs it incurs in administering the SDWA (Stats. 2015, ch. 24, § 20). HSC section 116565, subdivision (d), which will become operative July 1, 2016, provides that the State Board "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 for expenditure for the administration of this chapter, taking into account the reserves in the Safe Drinking Water Account" (Stats. 2015, ch. 24, § 20). The legislature acknowledged, in subdivision (d) of new HSC section 116565, that the actual amount of revenue may not equal the amount appropriated, and so authorized the State Board to adjust fees accordingly (Stats. 2015, ch. 24, § 20). The law requires that the fee schedule initially be set through the regular rulemaking process and that, thereafter, amendments to the schedule may be done as emergency regulations that are not subject to review by the Office of Administrative Law (Stats. 2015, ch. 24, § 20).

SUMMARY OF PROPOSAL

The proposed regulations set forth a fee schedule for public water systems, which ensures, as the law requires, that the State Board generates sufficient revenue to pay for the level of expenditures authorized in the Budget Act. Under the proposed fee schedule all public water systems will be charged an annual fee. Those that the SDWA defines as community water systems will be charged a fee per service connection on a declining tiered scale. Public water systems that the SDWA defines as nontransient

noncommunity water systems would pay an annual fee per person, with a minimum fee being set. Public water systems that meet the statutory definition of transient noncommunity water systems would pay a flat fee. In addition, the proposed regulations would define a new category of public water systems for the purpose of these regulations, namely wholesalers, and would establish the fees to be paid by them. Lastly, community public water systems that are serving severely disadvantaged, as defined in the proposed regulations, would be eligible for a reduction in fees.

The State Board directly regulates a large percentage of the public water systems in the state, while others are regulated by those counties that enter into a delegation agreement with the State Board to do so, in accordance with Health and Safety Code Section 116330. The fees established by the proposed regulations would apply to public water systems that are regulated by both the State Board and the local primacy agencies, as required by HSC Section 116565; however, the local agencies are authorized to impose additional fees.

BENEFITS

The benefits to be provided by the regulation are that the legislative mandate will be carried out and the Drinking Water Program will be fully funded, allowing the necessary resources to ensure that water delivered by public water systems is pure, wholesome, and potable.

SPECIFIC DISCUSSION OF PROPOSED REGULATIONS

The proposed regulations would be contained in a new chapter, Title 22, division 4, chapter 14.5, California Code of Regulations. The following provides a detailed discussion of the proposed changes.

Title 22, CCR, Division 4, Chapter 14.5.

The State Board proposes to add the title of the chapter to be added, chapter 14.5, division 4, Title 22 Code of Regulations.

Section 64300, Definitions.

The purpose of this section is to provide clarification of the terms used in chapter 14.5. Specifically, the terms “severely disadvantaged community” and “wholesaler” are defined.

The addition of the term severely disadvantaged community is necessary as the proposed fee schedule would provide that a community water system that serves a severely disadvantaged community may receive a reduction in the annual fee that the

system is required to pay. The definition clarifies which public water systems are eligible for the reduced rate.

The addition of the term wholesaler is necessary because the fee schedule establishes a new category of public water systems, wholesalers, and would require them to pay an annual fee that is determined differently than the fees established for other public water systems. A wholesaler would be defined as a public water system that sells water to other public water systems. The definition would also provide that public water systems that would otherwise meet the definition of a wholesaler, but that have 1,000 service connections or more or that sell water only on a short-term or intermittent basis would be excluded from the definition of wholesaler for purposes of the chapter establishing the fee regulations. It is common for public water systems to sell water to other public water systems on a short-term or intermittent basis, such as during a fire or water outage. As set forth in the fee schedule, a public water system would not be required to pay both the community water system and wholesaler fee.

Section 64305, Fee Schedule for Annual Fees.

The purpose of this section is to establish the annual fees that must be paid by all public water systems, and inform the public water system as to how the fee will be calculated. The fees are set forth separately for community water systems, nontransient noncommunity water systems, transient noncommunity water systems, and wholesalers. Except for the term "wholesaler," which would be defined in the proposed regulations, the categories of public water systems are defined in Health and Safety Code section 116275.

Each of the fees is specified in Table 64305-A. The fees for the community water systems would be established based on the number of service connections, a term that is defined in SDWA, and systems would be eligible to pay a reduced rate if they serve a severely disadvantaged community, a term that would be defined in section 64300. Nontransient noncommunity water systems would pay an annual fee of \$2.00 per person served, but not less than \$456.00. Transient noncommunity public water systems would pay a flat fee of \$800.00. Wholesalers would pay \$1.36 per Million Gallons, and the regulation will define "Million Gallons."

Title 22, CCR, Division 4, Chapter 14.5

Section 64310, Reduction of Fees for Public Water Systems Serving Severely Disadvantaged Community.

The purpose of this section is to establish the criteria for reducing the annual fee for community water systems serving a severely disadvantaged community. The

community water system would be required to pay the annual fee established in Section 64305, Table A unless the water system requests and receives approval from the State Board to reduce the fees because it serves a severely disadvantaged community. A public community water system must certify, and must provide documentation to the State Board upon request, that it serves a severely disadvantaged community. The fees for those systems that serve severely disadvantaged communities, and have received approval from the State Board to pay a reduced fee, are established in Table 64305 - A.

The proposed regulation would authorize the State Board to require documentation from any public water system that self-certifies that they are serving a severely disadvantaged community. Some community water systems have already been found to be serving severely disadvantaged communities because they did so as part of the application for receiving funding from the Drinking Water State Revolving Fund (DWSRF) operated by the State Board, which uses the same definition for severely disadvantaged as is being proposed in these regulations.

Title 22, CCR, Division 4, Chapter 14.5

Section 64315, Payment of Fees.

The purpose of this section (64315) is to establish that fees must be paid to the State Board within thirty (30) calendar days of the date of the invoice. The due date for the fees may be extended by the State Board for good cause, a determination which is to be made at the sole discretion of the State Board.

REASONABLE ALTERNATIVE STANDARDS

The State Board has determined that no reasonable alternative considered or otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or would be more cost-effective as and less burdensome to the regulated water systems and affected private persons, yet equally effective in implementing statutory requirements, than the proposed action. The State Board considered other fee schedules, but none of them would be any more cost-effective or less burdensome to the regulated water systems.

EVALUATION AS TO WHETHER THE PROPOSED REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

The State Board evaluated whether the proposed regulations are inconsistent or incompatible with existing state regulations. HSC section 116565 establishes the

current fee schedule for public water systems. These proposed regulations establish a fee schedule to support the Drinking Water Program as required by SB 83 (2015). Effective July 1, 2016, the existing HSC section 116565, which prescribes the annual fees to be paid by public water systems, will become inoperative (Stats. 2015, ch. 24, § 19), and a new HSC section 116565 (added by Stats. 2015, ch. 24, § 20), will become operative, requiring the State Board to adopt a fee schedule in regulation. No other state regulations exist that would conflict with the proposed regulations for fees to support the State Board's drinking water program.

ECONOMIC IMPACT ASSESSMENT

The State Board has determined that the proposed regulations would not significantly affect the following:

- The creation or elimination of jobs within the State of California. The requirements summarized above should not have any affect in that there would not be any significant change in public water system or regulatory personnel needed for compliance with the new requirements.
- The creation of new businesses or the elimination of existing businesses within the State of California. The nature of the drinking water industry is such that the adoption of this proposed regulation would not result in the creation or elimination of businesses. The impact of the proposed regulations would be insignificant.
- The expansion of businesses currently doing business within the State of California. Since public water system size is basically a function of the number of service connections (consumers) served, the proposed regulations should not have any effect on expansion.
- The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment. The State Board has made a determination that the proposed regulations would improve the protection of the public's health and welfare by fully funding the Drinking Water Program and ensuring that water delivered by public water systems is pure, wholesome and potable.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The State Board has determined that the proposed regulatory action would have no significant direct adverse economic impact on California business enterprises and

individuals, including the ability of California businesses to compete with businesses in other states. The proposed regulations apply only to public water systems, as defined pursuant to Health and Safety Code section 116275, which are not businesses or individuals. Public water systems are water companies providing drinking water to the public and, pursuant to Government Code section 11342.610, are exempt from the definition of a small business.

LOCAL MANDATE

The State Board has determined that the proposed regulation would not impose a mandate on local agencies or school districts that require state reimbursement, as the Division is implementing HSC section 116565 (added by Stats. 2015, ch. 24, § 20).

Local agencies and school districts currently incur costs in their operation of public water systems. The costs imposed by these regulations are not the result of a “new program or higher level of service” within the meaning of Article XIII B, Section 6 of the California Constitution because they apply generally to all individuals and entities that operate public water systems in California and do not impose unique requirements on local governments (County of Los Angeles v. State of California, et al., 43 Cal.App. 3d 46 (1987)). Therefore, no state reimbursement of these costs is required.

Local regulatory agencies also may incur additional costs for their responsibility to enforce state regulations related to small public water systems (fewer than 200 service connections) that they regulate. However, local agencies are authorized to assess fees to pay reasonable expenses incurred in enforcing statutes and regulations related to small public water systems (Health and Safety Code, § 101325). Therefore, no reimbursement of any incidental costs to local agencies in enforcing this regulation would be required (Gov. Code, § 17556(d)).

EFFECT ON SMALL BUSINESS

The State Board has determined that the proposed regulations would not affect small business because Government Code chapter 3.5, article 2, section 11342.610 excludes drinking water utilities from the definition of small business.

EFFECT ON HOUSING

The State Board has determined that the proposed regulations would have no impact on housing costs.

REPORTING REQUIREMENTS

The State Board has determined that the proposed regulations would not require reports from businesses.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

There are no regulations in the federal Code of Regulations that address the same issues as are addressed by these proposed regulations. These regulations relate only to fees charged by the State Board, and federal regulations regarding public water systems do not address fees.

WATER CODE SECTION 106.3 CONSIDERATION

In establishing and adopting the proposed regulations, the State Board considered the statewide policy set forth in section 106.3 of the Water Code and determined the proposed regulations will further the stated policy.