August 12, 2020

The Honorable E. Joaquin Esquivel, Chair  
State Water Resources Control Board (State Water Board)  
1001 I Street  
Sacramento, CA 95814

SUBJECT: 9/15/2020 BOARD MEETING – ITEM # 6 – Consideration of a proposed Resolution adopting emergency regulations revising the Core Water Quality Regulatory Fee Schedules.

Dear Chair Esquivel,

On behalf of the California Association of Sanitation Agencies (CASA), thank you for the opportunity to provide comment on Agenda Item #6 pertaining to water quality fees for FY 2020-21. CASA represents more than 125 public agencies and municipalities that engage wastewater collection, treatment, recycling, and resource recovery.

Our members are public agencies, who are committed to the protection of public health and the environment on the ground locally throughout the state, and, like the State Water Board, their revenues have been impacted by the economic impacts associated with the global COVID-19 pandemic.

CASA submitted a comment letter a month ago to your staff regarding the proposed options presented during the August 6 staff workshop. In that letter, we recommended the selection of Option A, because it would provide some increased resources to the Water Boards while balancing the current economic challenges our members are experiencing. This recommendation reflected a consensus between CASA and our regional partner clean water associations, BACWA, CVCWA, and SCAP. The letter is re-attached, for your reference.

Due to the widespread economic impacts of COVID-19 on public agencies, in short, we request your consideration of two alternatives to mitigate the proposed 25% fee increase. The first alternative would be to utilize “Option B” that was proposed by Staff last month, as it is the middle position between the option presented by staff for adoption and the option preferred by local governments in California, or the second alternative would be to utilize a hardship exemption from fee increases for the agencies especially impacted, for which we go into more detail below.

The basis for your consideration of this request are for the following reasons:

1. The facts and results from the SWB’s survey of wastewater agencies exhibit widespread revenue loss.
2. The full fee increases to fund the programmatic expansions are not represented in the agenda materials.
3. Agencies already are going to experience a significant increase in operational costs to comply with other regulations and requirements adopted by the State Water Board this year.
4. The allocation of costs between fee payers is incommensurate with the costs borne by the beneficiaries.
Comment #1: The Results from the SWB’s Survey of Wastewater Agencies Exhibit Widespread Revenue Loss.

Over the summer, CASA and the State Water Board collaborated on developing a survey to gain a better understanding of how COVID-19 has affected the budget and operations of collection systems and wastewater treatment facilities. The State Water Board released the survey in July and provided an initial synopsis on the fiscal impacts at their August 18 meeting. The State Water Board provided CASA the raw survey data with agency-specific information removed, and there were some very interesting results. Over 250 agencies participated in the survey, and 44% reported revenue loss and 37% reported service revenue loss. Of those, 79 agencies provided more specific details about the extent, and while roughly two-thirds estimated their service revenue loss was between 0 and 10%, 14% of the agencies indicated they had suffered an over 30% percent loss. Other relevant findings included: 37% of the survey respondents reported an increase in delinquent payments, 25% of agencies reported experiencing operational personnel shortages, and 22% reported applying for agency relief from FEMA or CalOES.

Comment #2: The Full Fee Increases Are Not Represented in the Proposed Fee Schedule, and They will Entail Additional 10% increases Beginning in BY+2 and beyond.

While not displayed on any of the released materials, based upon the Q&A in the August 6 workshop, it is our understanding that the WDR and NPDES fee increases for all of the new BCPs would be the combined amounts of the March version (11% and 11.3%) and June version (13.9% and 14.3%) of the fee schedules, or approximately 24.9% percent for WDR and 25.6% for NPDES fees.

Due to the application of the estimated furlough salary savings as explained in Footnote 3 of the fee schedule, these figures are artificially adjusted downward in the coming year and are displayed as 11.8% and 13.5% respectively for the next two years. Given how the proposed fee increases have been lowered in the short term and the significant uncertainty over whether and how the State will address the two-year salary reductions and furloughs in later years, and their subsequent impact on fee increases, Option A would have provided less disruption to our member agencies.

Comment #3: Agencies are Already Going to Experience Increased Costs to Their Operations in the Coming Years Because of Recently Adopted Regulations

Not only are our member agencies experiencing decreasing revenues, they may also be dealing with the shutoff moratorium and incurring other COVID-related expenses. When those factors are put in context with the extra expenses that our member agencies will have to budget for and incur in the coming years to comply with the numerous regulations and investigative orders adopted by the State Water Board this year, e.g. toxicity provisions, ELAP, PFAS sampling, and CV-SALTS, the fiscal impacts are significant, and it is very difficult for our members, especially smaller ones, to plan and budget, and more so given local pressure against fee and rate increases.

Comment #4: The Allocation of Costs between Fee Payers is Incommensurate with the Costs Borne by the Beneficiaries of Different Programs.

Beyond the options to handle the magnitude of the increases, we also are concerned with the allocation of costs of the new PYs for the Harmful Algal Bloom program, which are being allocated only to the WDPF, as this is both a drinking water and clean water issue. Moreover, there are many factors influencing HABs, and it is inappropriate to assume dischargers are the driving force behind their occurrence. Accordingly, we request that this be reconsidered to reduce the burden and shift some of the costs to other permittees and/or other funding sources.

Similarly for our sector, the PYs associated with the Water Resiliency Portfolio will impact water recycling and drinking water supply, and we are concerned that WDPF fees alone are being used to cover the full cost.
Alternative Option #1:

For the reasons expressed above, in lieu of the State Water Board moving forward with option A, we at least request the Board to consider pursuing Option B.

Alternative Option #2: Provide a Hardship Exemption

Another option, which would provide the State Water Board with a more narrowly tailored approach to these challenges to ensure the most impacted agencies are not burdened, would be to add a hardship exemption. This could be achieved through appending an additional footnote to the existing ones in § 2200 of the regulatory text associated to the fee schedule.

CASA Recommendation:

- Add a footnote that states, “For FY20-21, a municipal discharger that is experiencing documented economic hardship may apply for a fee exemption or reduction, in accordance with criteria developed within 30 days of the effective date of these regulations,” to the regulatory text as shown in the attached.

Conclusion

In closing, we reiterate our appreciation of your inviting stakeholder input on this issue that will have economic ramifications for our members now and in the next couple of years as we navigate through the pandemic and associated economic recession. Given that the decision has already been made to expand programs and increase spending despite these very real concerns, our preference is for an alternative that provides lower increases than the one proposed. This is more manageable than large and fluctuating increases year to year, especially in light of the unforeseen financial impacts of COVID, recent emergency response activities due to heat, wildfires, and social protests, and other factors described above that are affecting all levels of government.

We request that the State recognize the challenges currently facing local governments and to shoulder along with us these widespread impacts. Option C represents full staffing and fully funded fees for the WDPF programs, but it may lead to further operational and staffing challenges for permittees. We prefer option A, but perhaps we could meet in the middle with Option B. If there any questions about these comments, please do not hesitate to reach me directly at (916) 694-9269 or jvoskuhl@casaweb.org.

Thank you,

Jared Voskuhl
Manager of Regulatory Affairs

CC: Board Members
Eileen Sobeck, Executive Director
Jonathan Bishop, Chief Deputy Director, Divisions of Water Quality and Financial Assistance
John Russell
Glen Osterhage
David Ceccarelli

Attached: Proposed Regulatory Text for Economic Hardship
CASA Comment Letter on WQ Fees from 8/12/20
DRAFT FEE EXEMPTION/REDUCTION PROPOSED LANGUAGE

Section 2200. Annual Fee Schedules.
Each person for whom waste discharge requirements have been prescribed pursuant to Section 13263 of the Water Code shall submit, to the state board, an annual fee in accordance with the following schedules. The fee shall be submitted for each waste discharge requirement order issued to that person.¹,²

(a) The annual fees for persons issued waste discharge requirements (WDRs), except as provided in subdivisions (a)(3), (b), and (c), shall be based on the discharge’s threat to water quality (TTWQ) and complexity (CPLX) rating according to the following fee schedule, plus applicable surcharge(s).

¹ Federal facilities will generally not be invoiced for the portion of the annual fee that is attributable to the state board’s ambient water monitoring programs. See Massachusetts v. United States (1978) 435 U.S. 444.

² For FY20-21, a municipal discharger that is experiencing documented economic hardship may apply for a fee exemption or reduction, in accordance with criteria developed within 30 days of the effective date of these regulations.