



Agenda Date: 8/1/2006  
Agenda Placement: 10B

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Britt Ferguson for Nancy Watt - County Executive Officer  
County Executive Office  
**REPORT BY:** Andrew Carey, Management Analyst, 253-4477  
**SUBJECT:** Letter of support for SB 1733, water quality - civil penalties

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### **RECOMMENDATION**

Approval of and authorization for the Chair to sign a letter in support of Senate Bill (SB) 1733, water quality - civil penalties. (Supervisor Dillon) (Unanimous vote of the Board members present required)

### **EXECUTIVE SUMMARY**

The Porter-Cologne Water Quality Control Act authorizes the State Water Resources Control Board and regional water quality control boards to act as the principal agencies with primary regulatory authority over water quality. These boards also impose fines based on mandatory minimum penalties established by the act.

Implementation of the Porter-Cologne Water Quality Control Act has had some unintended consequences for publicly owned, rural wastewater treatment facilities in small communities. A number of rural wastewater treatment facilities, which have been unable to invest in the infrastructure needed to comply with the act's clean water mandates due to lack of funds, have been subject to repeated fines by local water quality control boards for wastewater discharge violations. In essence, funds that could have paid for new infrastructure have instead been used to pay discharge fines.

SB 1733 is intended to provide some fiscal relief to publicly owned, rural wastewater treatment facilities by amending the act's mandatory minimum penalty requirements to provide greater flexibility to the state board and regional water quality boards when imposing fines on treatment facilities in small, rural communities.

SB 1733 is currently in the Assembly Committee on Appropriations and will most likely be considered by that committee soon after the Assembly returns from its summer recess on August 7, 2006. Because the Napa County Legislative Subcommittee has recessed until August 7, 2006, Supervisor Dillon has requested that this bill be brought before the Board of Supervisors for discussion and possible action at the earliest opportunity.

**FISCAL IMPACT**

Is there a Fiscal Impact?                      No

**ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

**BACKGROUND AND DISCUSSION**

The Porter-Cologne Water Quality Control Act authorizes the State Water Resources Control Board and regional water quality control boards to act as the principal agencies with primary regulatory authority over water quality. The act imposes civil penalties for certain violations relating to waste discharge requirements, including a mandatory minimum penalty of \$3,000 for serious violations and for certain violations that are repeated four or more times in any period of six consecutive months. The act also defines "serious violation" to include a failure to file a discharge monitoring report. The act further authorizes the state board or a regional board, in lieu of assessing specified mandatory minimum penalties against a publicly owned wastewater treatment facility serving a small community, to elect to require the facility to spend an equivalent amount towards the completion of a compliance project.

Implementation of the Porter-Cologne Water Quality Control Act has had some unintended consequences for publicly owned, rural wastewater treatment facilities in small communities. A number of rural wastewater treatment facilities, which have been unable to invest in the infrastructure needed to comply with the act's clean water mandates due to lack of funds, have been subject to repeated fines by local water quality control boards for wastewater discharge violations. In essence, funds that could have paid for new infrastructure have instead been used to pay discharge fines.

SB 1733 is intended to provide some fiscal relief to publicly owned, rural wastewater treatment facilities by amending the water quality mandatory minimum penalty statute to:

- | Revise the condition regarding use of an alternative compliance project (in lieu of assessing all or a portion of a mandatory minimum penalty) to prepare a financing plan instead of the current requirement that a treatment facility must demonstrate that it has sufficient funding to complete a compliance project.
- | Authorize the state board or a regional board to waive a penalty for specified violations based upon a finding by the board and a vote by two-thirds of all of its members.
- | Authorize the state board or a regional board to reduce a penalty, including the ability to assess liability at a level that does not recover the economic benefit that may be related to the violation.
- | Replace the existing "six consecutive months," as the basis for determining a repeat violation and substitute a period of six calendar months.

The provisions of SB 1733 are intended to provide some level of assistance for instances where violations are technical, but have not caused environmental harm, or are a definite financial hardship that cannot be met. SB 1733 also provides some flexibility in how the collection of mandatory minimum penalty fees can be utilized. By requiring a financing plan, rather than the currently required demonstration of available funding, facilities should be able to begin to draw down the mandatory minimum penalty fees which they have paid and direct those funds towards upgrading and modernization efforts. The bill's author and supporters claim that SB 1733 will allow some degree of flexibility to help with the lack of economic and infrastructure resources to move small communities closer to compliance with water quality standards.

The June 21, 2006 version of SB 1733 is attached to this staff report for reference. However, the bill was amended on June 27, 2006, in the Assembly Environmental Safety and Toxic Materials Committee. SB 1733, as amended on June 27, 2006 makes two additional changes to the mandatory minimum penalty statute. First, the state board or a regional board must make several findings in order to allow a small community to spend the amount of penalties on a project to bring the entity into compliance in lieu of sending the penalty payments to the state. As amended, SB 1733 would allow the publicly owned treatment facility to demonstrate that it has a financing plan to correct the violations within five years as opposed to demonstrating that it has sufficient funding to complete the compliance project within five years.

The amended bill also expands the definition of "small community" to mean "a publicly owned treatment works serving a population of 10,000 persons or less or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents in the service area of the publicly owned treatment works serving the community, rate of unemployment, or low population density." SB 1733 as amended in committee on June 27, 2006 was not available from the Legislature by the time this report was prepared and submitted.

SB 1733 is supported by the California Association of Sanitation Agencies, the California State Association of Counties, the League of California Cities, and the Regional Council of Rural Counties. Clean Water Action, Environment California, and the California Sierra Club are on record as opposing SB 1733. SB 1733 passed in the State Senate by a vote of 39 to 0 on May 11, 2006.

#### **SUPPORTING DOCUMENTS**

- A . Letter of support for SB 1733
- B . June 21 version of SB 1733

CEO Recommendation: Approve

Reviewed By: Andrew Carey