

BEFORE THE
STATE WATER RESOURCES CONTROL BOARD

In the Matter of)
)
Regular Board Meeting: Item 9)
_____)

JOE SERNA JR. - CALEPA HEADQUARTERS BUILDING

BYRON SHER AUDITORIUM

1001 I STREET, SECOND FLOOR

SACRAMENTO, CA 95814

Tuesday, February 6, 2018

9:30 A.M.

Reported by:
Gigi Lastra

APPEARANCESBOARD MEMBERS

Felicia Marcus, Chair

Steven Moore, Vice Chair

Tam M. Doduc, Member

Dorene D'Adamo, Member

Joaquin Esquivel, Member

STAFF

Eileen Sobeck, Executive Director

Andy Sawyer, Assistant Chief Counsel

David Rice, Staff Counsel

Eric Oppenheimer, Chief Deputy Director

Jonathan Bishop, Chief Deputy Director

Jeanine Townsend, Clerk to the Board

Courtney Tyler, Assistant Clerk

Mark Bartson, Supervising Sanitary Engineer, DDW

Eugene Leung, P.E., DDW

PRESENTATION SPEAKERS:

Darrin Polhemus, Deputy Director, DDW

Melissa Hall, Senior Water Resource Control Engineer

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| | <ul style="list-style-type: none">• Previous Comments and Response to Comments | |

P R O C E E D I N G S

9:34 a.m.

CHAIR MARCUS: Good morning, sorry for the -- well, it's not very late. This is Felicia Marcus, Chair of the Board. And today is Tuesday, February 6 at 9:33 a.m. And the meeting is called to order.

With me, to my left Vice Chair Steven Moore. To his left, reappearing, apparating in the moment will be Board Member DeeDee D'Adamo. To my right, Board Member Tam Doduc, and to her right Board Member Joaquin Esquivel.

Ms. Sobeck, will you please introduce the staff that are assisting us today?

MS. SOBECK: Thank you, Chair Marcus. On my left is Andy Sawyer, representing the Office of Chief Counsel; on my right, my Chief Deputies Jonathan Bishop and Erik Oppenheimer. Also assisting is the Clerk to the Board, Jeanine Townsend and her Assistant, Courtney Tyler.

CHAIR MARCUS: Terrific, thanks.

DIVISION OF DRINKING WATER

9. Consideration of a proposed Resolution to amend the Health and Safety Code to add Permanent Point-of-Use / Point-of-Entry Water Treatment Device Regulations. (Written comments are due on February 2, 2018 by 12 noon.)

CHAIR MARCUS: All right, Item Number 10 is deferred to a future Board meeting. Item Number 9.

1 MR. POLHEMUS: Good morning, Madam Chair. Darrin
2 Polhemus, Deputy Director for the Division of Drinking
3 Water and Item Number 9 is asking the Board to adopt a
4 regulation package for us to move forward with setting
5 regulations for Point-of-Use/Point-of-Entry. Certainly,
6 we're prepared to give a presentation this morning if
7 that's the pleasure, but I think there is very few
8 commenters. So we could also jump the questions, pleasure
9 of the Chair on how you would like to proceed.

10 CHAIR MARCUS: Why don't -- here's what I would
11 suggest, I would suggest a short presentation for the
12 people listening over the web.

13 MR. POLHEMUS: Great.

14 CHAIR MARCUS: Because it's an important issue
15 and a lot of folks have spent a lot of time on it, so --

16 MR. POLHEMUS: We clocked it yesterday. It's
17 like --

18 CHAIR MARCUS: -- particularly Madelyn, I know
19 you're listening, but --

20 MR. POLHEMUS: Yeah, it's short.

21 CHAIR MARCUS: -- if you just do it, you don't
22 have to go through every single thing on every slide, but
23 just enough time to give us the overview for anyone tuning
24 in. It's a big deal, so you don't want it to leave it to
25 nothing.

1 MR. POLHEMUS: Yeah, we'll do that.

2 Okay. So, joining me today, doing the
3 presentation will be Melissa Hall. She's the senior over
4 our regulatory group. We have David Rice from Office of
5 Chief Counsel also assisting and then Mark Bartson, also a
6 manager in DDW over the regulation and Eugene Leung our
7 technical expert extraordinaire for detailed questions if
8 you try to stump us.

9 CHAIR MARCUS: Exactly, (indiscernible) yes.

10 MR. POLHEMUS: Yeah, I challenge you to do that.

11 CHAIR MARCUS: Whenever I ask, "Who would know
12 the answer to this?" your name comes up.

13 MR. POLHEMUS: His name comes up nine times out
14 of ten, yes.

15 Okay. So Melissa, take it away.

16 MS. HALL: Good morning. Today's public hearing
17 is to consider a resolution to adopt permanent regulations
18 governing the use of point-of-use and point-of-entry
19 treatment devices for public water systems serving fewer
20 than 200 service connections in lieu of centralized water
21 treatment facilities to achieve compliance with drinking
22 water standards.

23 Public workshops were held last March, ahead of
24 the 45 and 15-day comment periods. The Regulatory
25 Development Unit has begun compiling and responding to

1 comments received by the comment deadlines and a draft
2 response to comments is available on our website and is
3 part of the agenda materials for today's hearing.

4 Following adoption of the resolution, staff will
5 complete the response to comments, the Final Statement of
6 Reasons, and other necessary documents before submitting
7 the rulemaking package to the Office of Administrative Law.
8 The current, anticipated effective date of the regulations
9 is July 1st of this year.

10 This presentation will include a description of
11 the proposed regulations, including background on point-of-
12 use and point-of-entry devices, limitations on use of the
13 devices, the benefits of adopting the proposed regulations,
14 the statutory and regulatory basis of the proposed
15 regulations, a brief overview of point-of-use and point-of-
16 entry devices have been used under the emergency
17 regulations, and a comparison between the expired emergency
18 regulations and the proposed permanent regulations. We'll
19 follow that with a quick discussion of some of the comments
20 received and staff's responses to those comments.

21 For many water systems relying on groundwater,
22 the water system is able to deliver water straight from the
23 well as it already meets drinking water standards. For
24 some systems, the source may require treatment for just one
25 or two contaminants such as arsenic or nitrate. When a

1 drinking water source needs treatment, a public water
2 system typically provides the treatment at the source and
3 all of the water throughout the distribution system meets
4 drinking water standards. This is referred to as
5 "centralized treatment" and is what we would like to see
6 for all water systems.

7 For some small water systems however, centralized
8 treatment may not be immediately economically feasible. So
9 in place of centralized treatment, the proposed regulations
10 allow certain eligible water systems the option of using
11 point-of-use or point-of-entry treatment devices to comply
12 with standards. A point-of-use or POU device treats the
13 water to single tap, for example, the faucet at a kitchen
14 sink. Only the water from that tap will be treated to
15 comply with drinking water standards. A point-of-entry or
16 POE device treats the water entering the customer's home or
17 building. The drinking water throughout that home is
18 treated, but the service line to the home and the water in
19 the public water systems distribution system is not
20 treated.

21 In addition to satisfying statutory requirements
22 that will be described in the next few slides, the purpose
23 and benefits of developing regulations governing the use of
24 point-of-use and point-of-entry treatment devices include
25 providing flexibility and alternatives, and how water

1 systems can achieve compliance with regulations. And more
2 rapidly supply safe drinking water whether it is otherwise
3 economically infeasible. And providing the detailed
4 criterion framework needed to ensure that point-of-use and
5 point-of-entry devices are utilized in an effective,
6 consistent, lawful and safe manner that is protective of
7 public health.

8 In October 2015, Assembly Bill 434 amended
9 California's Health and Safety Code Sections 11630 and
10 11652. These amendments required the State Water Resources
11 Control Board to adopt both emergency and permanent
12 regulations for the use of point-of-use and point-of-entry
13 water treatment devices in lieu of centralized treatment.
14 And limited permit issuance for the use of these devices to
15 three years or until funding for centralized treatment is
16 available, whichever occurs first.

17 (Noise in distance.)

18 CHAIR MARCUS: Crap. Okay. I broke the rules,
19 sorry. (Laughter.) It's because it's linked.

20 BOARD MEMBER DODUC: I want a Tam month now.

21 CHAIR MARCUS: You get a Tam month, sorry. The
22 phone is quiet. The iPad is telling me it's ringing,
23 sorry. Check your multiple devices. The sound is off.
24 I'm so sorry. Please, as you were saying.

25 MS. HALL: Prior to this unlike permits or point-

1 of-use devices, permits allowing the use of point-of-entry
2 devices were not restricted in duration. The California
3 Department of Public Health had originally adopted
4 emergency regulations for point-of-use devices in 2010 and
5 for point-of-entry devices in 2011. Those emergency
6 regulations expired on January 1st, 2014. From 2014 to the
7 first few months in 2016, although the underlying law was
8 still in effect there were no regulations.

9 On April 1st, 2016 this Board's emergency
10 regulations took effect and they remained in effect until
11 January 1st of this year when they expired in accordance
12 with law.

13 In preparing these regulations we had a few
14 constraints. There are three main statutory and regulatory
15 bases for California's point-of-use and point-of-entry
16 regulations. They're the Federal Safe Drinking Water Act
17 and its regulations, California's Health and Safety Code
18 Section 116380, and Health and Safety Code Section 116552.
19 Section 116380 both requires a State Water Board to adopt
20 regulations for point-of-use and point-of-entry devices,
21 and limits what those regulations may include.

22 In particular, Section 116380 specifies that
23 these devices are only to be allowed instead of centralized
24 treatment when it's demonstrated that centralized treatment
25 is not immediately economically feasible for water systems

1 with less than 200 service connections, or the usage is not
2 prohibited by the Federal Safe Drinking Water Act in its
3 regulation and guidance. And for water systems that have
4 submitted applications for funding to correct the
5 violations of the devices it would be used for.

6 Section 116552 added to requirements the first
7 that there must be no substantial community opposition, and
8 the second is that drinking water permits issued be limited
9 to not more than three years in duration or until funding
10 for centralized treatment is available, whichever occurs
11 first. This does not preclude a water system from
12 reapplying for another three-year permit, but it does build
13 in a timeline for reevaluating the feasibility of
14 centralized treatment.

15 These next three slides are an overview of the
16 limitations on the use of these devices to comply with
17 drinking water standards and lieu of centralized treatment.
18 The water systems must have fewer than 200 service
19 connections. And to give an idea of the number of systems
20 in California that are in that range, we have approximately
21 6,300 with fewer than 200 service connections including
22 1,800 community water systems, 3,000 transient non-
23 community water systems, and 1,500 non-transient, non-
24 community water systems.

25 The water systems must demonstrate that

1 centralized treatment is not economically feasible. Point-
2 of-use devices are limited to contaminants other than
3 microbial BUCs and radon.

4 Water systems must have submitted an application
5 for funding, and water systems must demonstrate that there
6 is no substantial community opposition and must hold a
7 public hearing.

8 Point-of-use and point-of-entry devices must in
9 general be third-party certified to applicable American
10 National Standards Institute standard, if one exists.

11 Water systems must have programs and plans in
12 place to ensure safe and effective use of the devices
13 including operations and maintenance requirements, customer
14 notification in the event of a device failing to meet
15 drinking water standards, and applying for provision of an
16 alternate water supply to any impacted customers.

17 The treatment devices must be owned, controlled
18 and maintained by the water system. And the devices must
19 be equipped with mechanical warnings.

20 For point-of-entry devices, every building
21 connected to the water system must have a device installed
22 and the rights and responsibilities of the customer must
23 convey with the title upon sale of the property.

24 For point-of-use devices, the water system must
25 ensure that each residential or dwelling unit has a device

1 installed in accordance with regulations.

2 Permits for the use of these devices are limited
3 in duration to three years or until funding for centralized
4 treatment is available, whichever comes first. Again, this
5 does not mean that a water system cannot apply for and
6 receive another three-year permit allowing the use of the
7 devices. But it does build in a timeline for reevaluating
8 the water system status with respect to factors such as
9 community support and participation and the feasibility of
10 centralized treatment.

11 We're also proposing to require at least two
12 months of pilot testing, and as well as submit additional
13 monitoring.

14 As of December 2017, over 100 water systems have
15 implemented a point-of-use or point-of-entry program where
16 we're considering doing so with point-of-use devices
17 preferred three to four times as often as point-of-entry
18 devices.

19 Contaminants targets for treatment with these
20 programs include selenium, fluoride, uranium, hexavalent
21 chromium, arsenic and nitrate with one in three programs
22 developed to address arsenic and over 40 percent developed
23 to reduce nitrate concentrations.

24 While the proposed regulations would allow the
25 use of point-of-use and point-of-entry devices for systems

1 with fewer than 200 connections, use so far has been
2 predominantly by systems with fewer than 100 connections.

3 While the proposed permanent regulations are very
4 similar to the now expired emergency regulations we're now
5 proposing some changes. In the permanent regulations,
6 we're clarifying that a proposed new community water system
7 cannot be permitted to use point-of-use or point-of-entry
8 treatment devices in lieu of centralized treatment to
9 comply with the Safe Drinking Water Act.

10 We're specifying that the economic feasibility
11 evaluation for community water systems will be based on the
12 annual median household income to better account for those
13 communities where the water users and income vary
14 considerably from seasons to season or from month to month.

15 We're clarifying that public hearing requirements
16 do not apply to non-community water systems, although there
17 is solar requirement to apply for funding to meet the
18 conditions in the statute.

19 Finally, we're requiring that not only will a
20 water system have to submit monitoring and operations and
21 maintenance plans, they will also have to implement the
22 improved plans.

23 At the Administrative Procedure Act Hearing held
24 on November 27th we had one commenter attend and present
25 questions and comments. We received substantive written

1 comments from five organizations by the comment deadlines.
2 And while generally supportive of the proposed regulations
3 some changes were requested.

4 The next slide describes requested changes that
5 may be of particular interest, but that did not result in
6 changes to the proposed regulations. And we were able to
7 meet with most of the -- or meet or speak or correspond
8 with most of the commenting parties.

9 Several comments focused on limitations on point-
10 of-use and point-of-entry use for compliance purposes, and
11 on the challenges of gaining 100 percent participation from
12 the affected community. The commenters concerns are noted
13 and appreciated, but for many of the requested changes the
14 State Water Board is constrained by statutory and
15 regulatory requirements.

16 One commenter requested that to minimize
17 interruption in the provision of safe drinking water, the
18 term "immediately, economically feasible" should be defined
19 to mean the financing and installation of centralized
20 treatment to provide safe drinking water will take longer
21 than 90 days. While staff agree that there should be as
22 little interruption as possible in the provision of safe
23 drinking water, while water systems are pursuing a
24 permanent centralized means of ensuring compliance with
25 standards, the time required to complete design, financing

1 and installation for a centralized treatment system will
2 vary based on site conditions, the contaminants to be
3 treated, and the selected treatment methods. While 90 days
4 might, in some instances, be an appropriate timeframe for
5 many others it will not. So no changes to the regulation
6 text are proposed in response to this comment.

7 One commenter requested that the requirement
8 regarding funding application demonstration be expanded to
9 sources other than federal, state or local agencies, to
10 include private sources as funding options. Applications
11 for public funding tend to include the details necessary to
12 evaluate whether the terms of Health and Safety Code are
13 met, specifically, the requirement that the application is
14 for funding to correct the violations for which the devices
15 would be used. In addition, requiring that private funding
16 be applied for is problematic without additional clear
17 requirements, so no changes to the regulation text were
18 proposed in response to this comment.

19 One comment noted that for several contaminants
20 such as 1,2,3-trichloropropane and hexavalent chromium,
21 there are currently no devices certified in accordance with
22 an American National Standard Institute or ANSI standard.
23 The proposed regulations do provide for use of point-of-use
24 and point-of-entry treatment devices, without independent
25 third-party certification, if they are approved by the

1 State Water Board following a review of the design,
2 construction, treatment performance and available field or
3 pilot test results. Because this alternative was already
4 provided for in the proposed regulation text, no further
5 changes have been proposed in response to this comment.

6 And we did receive one late comment from the Farm
7 Bureau in support of the proposed regulations.

8 That concludes the staff presentation. For more
9 details, the proposed regulations, the Initial Statement of
10 Reasons and the complete regulatory package so far are all
11 available at the link that's shown on this slide and in the
12 Notice of Proposed Rulemaking. All of the information
13 relied on to develop the proposed regulations is available
14 there.

15 CHAIR MARCUS: Thank you. This is actually a
16 really good summary -- useful summary to save, of some of
17 the key issues. But for the folks who aren't as in the
18 weeds of it, let me just see if I can simply lay out the
19 point of the regulations.

20 One is that point-of-use/point-of-entry treatment
21 devices depending on what you're treating for -- are you
22 concerned about showers for example and washing machines
23 in addition to drinking water at the sink -- is that it can
24 be faster and cheaper to get people clean water than a
25 centralized system, particularly, in a small distributed

1 community. However, we don't have the same confidence in
2 it necessarily, and so we're requiring that you've got to
3 have certified devices or the other thing you just said
4 that's in the regs.

5 And you've got to have a water system responsible
6 for checking them, because putting in one of these systems
7 and not maintaining it, doesn't help people. And so you've
8 tried to struggle with how do you create an opening for
9 this faster, less expensive interim system ideally, while
10 also being protective of public health, which is what
11 you're trying to do here.

12 MR. POLHEMUS: Yeah, exactly. And I guess I
13 would just emphasize that faster and cheaper is in view of
14 capital costs. I think, you know, long-term wise there has
15 to be a dedicated maintenance as you mentioned. Operation
16 and maintenance costs will be substantial, so it's not a
17 freebie. And there's a lot of -- now you've got a lot of
18 multiple installed locations that you've got to keep track
19 of, it's a whole different level of ongoing effort
20 associated with maintaining them.

21 CHAIR MARCUS: Excellent point. Great, and again
22 I mention all (indiscernible) the people who are listening
23 over the Web.

24 Thank you. Are there questions or comments
25 before we move to comments?

1 VICE CHAIR MOORE: Yeah, real quick, two things.
2 One, just thinking about walking in the shoes of those who
3 would want to implement these, we saw comments about first
4 it can be a daunting challenge to get 100 percent
5 participation. But you noted in your response to comments
6 that this is really required under I think the Safe
7 Drinking Water Act, for point-of-use/point-of-entry type
8 devices.

9 But and that may actually skew the population of
10 the systems toward the smaller end, in terms of trying to
11 get 100 percent participation. Are there some examples of
12 where you've seen successful implementation of 100 percent
13 participation or what does that exactly mean? Or are there
14 any systems in a community where some houses say, "We're
15 not going to do point-of-use or point-of-entry," and then
16 that -- does that disqualify the whole system?

17 MR. LEUNG: So in the regulations, to start the
18 program they may not achieve compliance right away, but we
19 allow a water system to move forward if there's no
20 substantial community opposition. So that gives them a
21 rolling program, so that the big picture-wise is first you
22 pilot test to make sure it works. You have a public
23 hearing to say, "This isn't a good option. This looks like
24 it will work for us." And then you roll out if there's no
25 community opposition. So hopefully, over time you would

1 gain 100 percent participation and be able to achieve that.

2 And so right now, for the ones that are
3 successful, it's mostly businesses. Because they have full
4 control of the water system, so that -- or schools -- that
5 they can come in and put in devices at all the water use
6 locations. So those will be the lower-hanging fruit,
7 relatively speaking. But the community is hopefully over
8 time, with the success, people will see this as a potential
9 option for them. And we'll be able to get more community
10 participation.

11 And I think there's a lot of work out there right
12 now, to look at different options. Maybe not unnecessarily
13 put it at the location -- give people the choice of where
14 they want to install the units and just being flexible with
15 that.

16 VICE CHAIR MOORE: That's a great discussion, and
17 clarification that you're not -- you don't have to have 100
18 percent buy-in from the get-go, but you do work towards
19 that in terms of that. And then the overall community
20 acceptance is the issue.

21 The second question, again we have a three-year
22 limit for good reasons. Try to get the centralized
23 treatment in place, but that's not going to be feasible
24 everywhere. You know, as we know with our funding programs
25 it's a real challenge to get the bigger projects underway.

1 But there are provisions here that have been clarified, I
2 thought, relative to the emergency regulations that you can
3 reapply for another three years as that three-years segment
4 expires.

5 MR. POLHEMUS: Yeah, absolutely. And we've
6 worked with the Division of Financial Assistance to clarify
7 that under those rules we continually have to fund
8 permanent situations. You know, they don't want us to fund
9 an in-and-out type of thing, but we've clarified that our
10 funding is eligible for point-of-use/point-of-entry
11 devices. That it is considered semi-permanent in those
12 types of situations and that, you know, it's appropriate to
13 evaluate it after a period of time to make sure that
14 situations haven't changed. We don't want to strand a
15 separate community on point-of-use/point-of-entry when
16 other options in their area become available. And they can
17 convert to being on a centralized system, which we continue
18 to strive for.

19 It's a recognition that we need this level of
20 treatment to make sure people are getting healthy water,
21 but that doesn't mean we're going to give up on trying to
22 make sure that we have full supplies to everybody and that
23 are healthful.

24 I would comment too, coming back on the other one
25 that a point that often gets lost in this is that -- and

1 I've -- not in point of use/point of entry for drinking
2 water -- but I have experience with dealing with like
3 wastewater onsite systems at public homes. And dealing
4 with private property is a huge deal, so a water system
5 committing to dealing with residences and going into their
6 home for point-of-use type of stuff will be huge.

7 It creates all kinds of liability issues
8 associated with if you've caused a house fire or something
9 like that through electrical usage for these systems and
10 stuff like that. So these are not without their other
11 ancillary issues that we'll have to work through and help
12 people associated with that.

13 CHAIR MARCUS: Yeah, it's not a silver bullet or
14 magic wand.

15 MR. POLHEMUS: No.

16 CHAIR MARCUS: It is one of those things where
17 you also have people who won't let folks into their house.
18 Because in order to install this you probably need a
19 building inspector to say your house is in compliance with
20 this other permit. So yeah, there's a whole bunch of --
21 but hopefully we can help a lot of people.

22 MR. POLHEMUS: We want to help a lot of people
23 and I think this moves in that direction. You know, a
24 substantial number of people will be served with this and
25 find relief and get quality water.

1 CHAIR MARCUS: All right, speaker cards?

2 UNIDENTIFIED SPEAKER: None.

3 CHAIR MARCUS: None, oh I'm sorry. Well, I'm
4 glad we had this conversation though. Sorry, I just
5 thought there would be, because I saw people in the
6 audience.

7 All right, well thank you. Do I have a motion on
8 this fine item?

9 VICE CHAIR MOORE: I move adoption of the staff
10 recommendation.

11 BOARD MEMBER ESQUIVEL: Second.

12 CHAIR MARCUS: All in favor?

13 (Ayes.)

14 CHAIR MARCUS: Okay. It carries, thanks for the
15 good work.

16 MR. POLHEMUS: Thank you.

17 (Item 9 Presentation ended at 10:22 a.m.)

18 --oOo--

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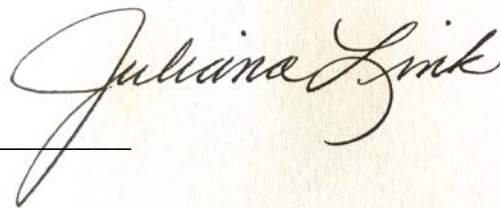
25

REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of February, 2018.

A handwritten signature in black ink on a light-colored, textured background. The signature reads "Juliana Link" in a cursive script. A horizontal line is drawn across the page below the signature.

Juliana Link
CER-830

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of February, 2018.



Jill Jacoby
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