

BEFORE THE  
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

Board Meeting Item Four: )  
Consideration of a Proposed )  
Resolution to Adopt the )  
Permanent Regulations for )  
Point-Of-Use and )  
Point-Of-Entry Treatment )  

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JOE SERNA, JR.-CalePA Building  
COASTAL HEARING ROOM  
1001 I STREET  
SACRAMENTO, CALIFORNIA

Tuesday, January 22, 2019  
9:40 A.M.

Reported by: Peter Petty

APPEARANCES

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

Division of Drinking Water

Board Members Present:

Tam M. Doduc

Dorene D'Adamo

E. Joaquin Esquivel

Sean Maguire

Jeanine Townsend, Clerk to the Board

Courtney Tyler, Executive Office

STAFF PRESENT

Eileen Sobeck, Executive Director

Jonathan Bishop, Chief Executive Director

Eric Oppenheimer, Chief Deputy Director

Michael A.M. Lauffer, Chief Counsel

Darrin Polhemus, Deputy Director, Division of Drinking Water

Melissa Hall, Division of Drinking Water

David Rice, Legal Counsel

Mark Bartson, Division of Drinking Water

Eugene Leung, Division of Drinking Water

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P R O C E E D I N G S

9:40 A.M.

SACRAMENTO, CALIFORNIA

TUESDAY, JANUARY 22, 2019

BOARD MEMBER DODUC: Ms. Sobeck, we are now on Item Number 4.

MS. SOBECK: Yes, thank you. We're having our panel come up. And we are presenting an item regarding the Resolution to Adopt Permanent Regulations for Point-Of-Use, Point-Of-Entry Treatment.

And so, I will ask Darrin Polhemus to introduce our panel today.

MR. POLHEMUS: Good morning, Board Members. Darrin Polhemus, Deputy Director for the Division of Drinking Water.

Today, we'll be presenting on an item for regulation adoption of point-of-use, point-of-entry regulations. These regulations you've seen before and approved. This is to make some corrections that were found by the Office of Administrative Law, and move forward with that.

And to my left, Melissa Hall will be giving a short presentation. And then, we certainly can go into more -- have preparation

1 for more questions, in case there are questions  
2 on that.

3 To my right is David Rice, counsel for  
4 this item. And left is Mark Bartson, Chief of  
5 our regulatory -- or, over our Regulatory Group,  
6 over Melissa. And Eugene Leung. In case you  
7 have really technical questions, we brought the  
8 heavy hitter there.

9 So, I'll let Melissa begin.

10 BOARD MEMBER DODUC: Before you begin,  
11 though, are there any comment cards for this  
12 item? I'm not seeing any. Is there anyone here,  
13 wishing to speak on this item?

14 Then perhaps we might be able to expedite  
15 your presentation. And I'll turn to my  
16 colleagues to ask if they have any questions.

17 Do you have a quick presentation that you  
18 would like to do?

19 MR. POLHEMUS: If the Board wants to vote  
20 on it without, we're very happy to go. The  
21 presentation just talks about, quickly, the  
22 changes. It's seven, eight slides. But it's  
23 certainly at the Board's discretion.

24 BOARD MEMBER MAGUIRE: I wouldn't mind  
25 hearing the short presentation on the changes.

1 BOARD MEMBER DODUC: All right, then  
2 let's do that.

3 MR. POLHEMUS: All right, thank you.

4 BOARD MEMBER DODUC: It seems to be a  
5 sign.

6 MS. HALL: Good morning. Today's public  
7 hearing is to consider a resolution to adopt  
8 permanent regulations governing the use of point-  
9 of-use and point-of-entry treatment devices for  
10 public water systems serving fewer than 200  
11 service connections in lieu of centralized water  
12 treatment facilities --

13 BOARD MEMBER DODUC: You might want to  
14 slow down a little bit for the -- nope, actually,  
15 you are the speedy court reporter. Never mind.

16 MS. HALL: -- to achieve compliance with  
17 drinking water standards. The proposed  
18 regulations would replace emergency regulations  
19 that expired last January.

20 To go over where we are in the process,  
21 in March 2017, prior to release of the draft  
22 regulations for public comment, State Water Board  
23 staff presented three informal public and  
24 stakeholder workshops on the development of the  
25 permanent regulations. Informal comments were

1 provided by interested stakeholders and public  
2 water systems.

3           Following release of the draft  
4 regulations, an opportunity for oral public  
5 comment was provided at a public hearing held on  
6 November 27th, 2017, with the 45-day written  
7 comment period closing on November 30th.

8           On January 3rd of last year, an  
9 additional 15-day comment period was provided for  
10 changes made to the regulation text, and that  
11 comment period was extended until February 2nd.

12           Following adoption of the regulations by  
13 the Board, on February 6th, 2018 and receipt of  
14 Office of Administrative Law comments on October  
15 5th, revised regulation text and an addendum to  
16 the initial statement of reasons were circulated  
17 in a public comment period that ran from November  
18 8th through the 27th.

19           Changes were made to the regulation text  
20 itself to provide additional clarity regarding  
21 what standard would be applied when assessing  
22 compliance with certain required elements.

23           The addendum to the initial statement of  
24 reasons was prepared to more specifically explain  
25 the necessity of portions of regulations by

1 describing the specific problem each requirement  
2 was intended to address.

3           This presentation focuses on comments  
4 received in response to these most recent notice  
5 changes.

6           If adopted today, staff will complete the  
7 response to comments for the regulations, the  
8 final statement of reasons, and any other  
9 necessary documents for submittal to the Office  
10 of Administrative Law by February 9th. The  
11 regulations would then be anticipated to take  
12 effect before April 1st.

13           For background, when a drinking water  
14 source needs treatment, a public water system  
15 typically provides the treatment at the source  
16 and all of the water throughout the distribution  
17 system meets drinking water standards. This is  
18 referred to as centralized treatment and is what  
19 we would like to see for all water systems.

20           For some small water systems, however,  
21 centralized treatment may not be immediately  
22 economically feasible. So, in place of  
23 centralized treatment, the proposed regulations  
24 would allow certain eligible public water systems  
25 the option of using point-of-use or point-of-



1 entry water treatment devices to comply with  
2 drinking water standards.

3           A point-of-use or POU device treats the  
4 water at a single tap. For example, a faucet at  
5 a kitchen sink. Only the water from that tap  
6 will be treated to comply with the drinking water  
7 standards.

8           A point-of-entry or POE device treats the  
9 water entering the customer's home or building.  
10 The drinking water throughout that building or  
11 home is treated, but the service line to the home  
12 and the water in the public water system's  
13 distribution system is not.

14           Under the emergency regulations that  
15 expired last January up to now, approximately 80  
16 water systems have taken advantage of the  
17 emergency regulations to use these devices,  
18 including a number of schools. Arsenic and  
19 nitrate have been the most common contaminants  
20 it's been used for. And the vast majority of the  
21 water systems using these have been -- over 95  
22 percent of them actually serve fewer than 100  
23 service connections.

24           The same statutes that required and  
25 authorized promulgation of these regulations also

1 composed constraints. California Health and  
2 Safety Code Section 116552 limits the use of POU  
3 and POE devices for compliance purposes to  
4 systems where there is no substantial community  
5 opposition and limits the terms of permits  
6 authorizing such use to three years, or until  
7 funding for centralized treatment becomes  
8 available, whichever comes first.

9           Health and Safety Code Section 116380  
10 limits the use to water systems where centralized  
11 treatment is not economically feasible and which  
12 serve fewer than 200 service connections.

13           It also specifies that these devices are  
14 only to be allowed instead of centralized  
15 treatment where the usage is not prohibited by  
16 the Federal Safe Drinking Water Act, its  
17 regulations or guidance.

18           Most of the specific requirements  
19 contained in the proposed regulations are based  
20 on federal statute, regulations and guidance.  
21 For the most recent comment period, these also  
22 happened to be the requirements that were most  
23 commented on.

24           At the Administrative Procedure Act  
25 hearing, held in November 2017, one commenter

1 attended and presented questions and comments.  
2 In total, we received written and oral comments  
3 from 15 individuals and organizations.

4           The Division of Drinking Water's  
5 Regulatory Development Unit has compiled and  
6 prepared draft responses to all comments  
7 received, including both those received after the  
8 deadlines and those outside the scope of the  
9 noticed changes.

10           The draft response to comments is  
11 available on our website and is part of the  
12 agenda materials for today's hearing.

13           While generally supportive of the  
14 proposed regulations, some changes were  
15 requested.

16           The next slide described comments that  
17 may be of interest, but that did not result in  
18 changes to the proposed regulations.

19           Several comments focused on limitations  
20 on POU and POE use for compliance purposes and on  
21 the challenges of gaining 100 percent  
22 participation to achieve compliance with drinking  
23 water standards. The commenters' concerns are  
24 noted and appreciated, but for these requested  
25 changes we're constrained by statutory and

1 federal regulatory requirements.

2           Regarding schedules for installing  
3 centralized treatment, one commenter expressed  
4 doubt that this would be feasible in three years.  
5 By California law, permits for the use of these  
6 devices are limited in duration to three years or  
7 until funding for centralized treatment is  
8 available, whichever comes first.

9           This does not, however, preclude a water  
10 system from reapplying for another three-year  
11 permit allowing the devices. But it does build  
12 in a timeline for reevaluating the water system  
13 status with respect to factors such as community  
14 support and participation, and the feasibility of  
15 centralized treatment.

16           Other commenters objected to requirements  
17 based on the Federal Safe Drinking Water Act,  
18 including requiring mechanical warning devices to  
19 warn customers of operational problems and that  
20 the water system own, control, and maintain the  
21 treatment units.

22           However, federal law does require the  
23 water system to own, control, and maintain the  
24 treatment units and to include mechanical  
25 warnings of POU or POE devices are to be relied

1 upon by the water system to achieve compliance  
2 with drinking water standards.

3 Others expressed frustration that the  
4 water system is required to ensure 100 percent  
5 participation in the use of the devices and to  
6 access devices for monitoring and maintenance to  
7 comply with the federal requirement that all  
8 consumers will be protected through proper  
9 installation, maintenance and monitoring. And  
10 state law, requiring that water delivered by  
11 public water systems be at all times pure,  
12 wholesome and potable.

13 That concludes the staff presentation.  
14 For more details, the proposed regulations, the  
15 initial statement of reasons, and the complete  
16 regulatory package so far are available at the  
17 link that's shown on this slide and in the notice  
18 of proposed rulemaking. All of the additional --  
19 all of the information relied on to develop the  
20 proposed regulations is available there.

21 And if you have any questions, Eugene in  
22 particular is available to answer them.

23 BOARD MEMBER DODUC: Thank you. And I  
24 don't believe there's any speaker cards for this  
25 item, still?

1 MS. SOBECK: No.

2 BOARD MEMBER DODUC: Comments, questions  
3 from the Board? Mr. Maguire?

4 BOARD MEMBER MAGUIRE: Oh, I just wanted  
5 to thank the Division of Drinking Water for  
6 putting all the effort and stewardship in seeing  
7 these regulations through, all the way to having  
8 permanent regulations. I think it's long overdue  
9 and I think it's a really important alternative  
10 for, especially, small communities who have to  
11 deal with the extreme cost of centralized  
12 treatment, and just providing them some  
13 alternatives to buy some time to enable them to  
14 be in compliance with drinking water standards.

15 So, again, thank you for doing this and I  
16 think it's a very important step.

17 BOARD MEMBER DODUC: And would you like  
18 to make a motion?

19 BOARD MEMBER MAGUIRE: And on that, I  
20 would like to make a motion to adopt Item 4.

21 BOARD MEMBER D'ADAMO: Second, and ditto  
22 what you said. Thank you.

23 BOARD MEMBER DODUC: All right, thank  
24 you.

25 All in favor?

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(Ayes)  
BOARD MEMBER DODUC: Good job.  
(Item 4 concluded at 9:51 a.m.)

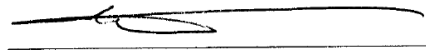
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**REPORTER' S CERTIFICATE**

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 9th day of July, 2018.



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PETER PETTY  
CER\*\*D-493  
Notary Public



CERTIFICATE OF TRANSCRIBER

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 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.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



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MARTHA L. NELSON, CERT\*\*367

February 4, 2019