



BOARD MEMBERS PRESENT

Jeffrey S. Young, Chairperson

Russell M. Jeffries, Vice Chairperson

Gary C. Shallcross

Daniel M. Press

John H. Hayashi

Leslie S. Bowker (Recused)

Monica S. Hunter (Absent)

BOARD ADVISORS and ASSISTANTS

Michael Thomas, Assistant Executive Director

Carol Hewitt, Executive Assistant

John Richards, Counsel  
State Water Resources Control Board

WATER BOARD PROSECUTION STAFF

Roger Briggs, Executive Officer

Lori Okun, Senior Staff Counsel

Matt Thompson, Project Manager

Sorrel Marks, Project Manager

Allison Millhollen

Harvey Packard

LOS OSOS COMMUNITY SERVICES DISTRICT

Stephen R. Onstot, Attorney  
Gregory M. Murphy, Attorney  
Burke, Williams and Sorensen, LLP

LOS OSOS COMMUNITY SERVICES DISTRICT

Daniel M. Bleskey, Interim General Manager  
Willdan

Lisa Schicker, President, Director

Steven Paige

Daniel Wickham

DESIGNATED PARTIES

William Moylan

Beverley DeWitt-Moylan

Alan Martyn

Robert Shipe

Dustan Mattingly

Lawrence Bishop

Christopher Alabe

Lawrence Kleiger

Bruce Payne

Katherine "Kitty" Thomas

Laurie McCombs

Tim Rochte

Antoinette Payne

Richard Sargent

Donna Kirtley

INTERESTED PARTIES

Joey Racano

INTERESTED PARTIES

Shirley Bianchi

Maria Kelly

Joyce Albright

Ann Calhoun

Keith Wimer

Jim Hensley

Lacey Cooper

Bo Cooper

Dianne Burke

David Duggan

Gewynn Taylor

Assemblyperson Sam Blakeslee

George Taylor

Alon Perlman

Pat Renshaw

Lawson Schaller

Julie Tacker

Anton Vesely

Joe Sparks

James Tkach

Chuck Cesena

Richard Margetson

Marla Jo Bruton

Tom Hollis

INTERESTED PARTIES

Gail McPherson

Elaine Watson

Al Barrow

Barbara Akle

Richard Sadowski

Geri Walsh

Linde Owen

Judy Vick

Carol Cribbs

ALSO PRESENT

Reginald Fagan

Sheila Cinderson

R. Wyatt Cash, Chief Deputy Counsel  
County of San Luis Obispo

Kathy Bouchard, Deputy Counsel  
County of San Luis Obispo

Steve Carnes  
County of San Luis Obispo

Larry Allen  
Air Pollution Control District

## I N D E X

	Page
Proceedings	1
Roll Call	1
Introductions	2
Enforcement	
Los Osos Individual Septic System Dischargers, San Luis Obispo County	3
Opening Remarks	3
Chairperson Young	3
Procedural Objections and Issues	20
Comment of Interested Parties 136,191,238,244,251	
Comment of Government Agencies	174
San Luis Obispo Air Pollution Control District	174
Public Comment	234,241
Late Afternoon Session	249
Collective Oath Administered	254
Regional Board Prosecution Staff	253,262
Questions by Board	276
Cross-Examination by LOCSO	291
Cross-Examination by Designated Parties	305
Evening Session	388
Los Osos Community Services District	392
Questions by Board	402,433
Cross-Examination by Regional Board Prosecution Staff	412
Cross-Examination by Designated Parties	417

I N D E X

	Page
Schedule Discussion	510
Continuation Date/Time	534
Adjournment	537
Reporter's Certificate	538

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## 1 EVENING SESSION

2 7:54 p.m.

3 CHAIRPERSON YOUNG: We're going to start  
4 with the CSD's case. Yes, sir?

5 MR. ONSTOT: Mr. Young, I just want to  
6 inform the Board Ms. Colin had to leave.

7 CHAIRPERSON YOUNG: Okay.

8 MR. ONSTOT: And would like to  
9 reschedule for the next time.

10 CHAIRPERSON YOUNG: Okay. In fact, I  
11 think what we can do -- is Mr. Shipe here? He's  
12 here, okay. If everyone -- if the people who have  
13 received proposed cease and desist orders, other  
14 than Mr. Shipe, would like to leave, they can do  
15 so, because I don't know that we would get to his  
16 individual action tonight. And I don't want  
17 anyone to be waiting around anticipating that we  
18 could actually get to them, other than him.

19 Mr. Shipe, everyone who has received a  
20 CDO other than yourself, for now doesn't have to  
21 stay here. I don't know that we will get to  
22 yours, but I didn't want anyone, you know, to wait  
23 around until 10:00 or so and --

24 MR. SHIPE: I'm happy to stay as long as  
25 you'll have me.



1                   CHAIRPERSON YOUNG:  Okay, good.  
2                   Everyone else who received a CDO doesn't have to  
3                   be here, if they don't want to, for their  
4                   testimony.  We'll reschedule the rest of these  
5                   when we get to the end of this evening.

6                   Right now I don't know when that is  
7                   going to take place.  Yes?

8                   UNIDENTIFIED SPEAKER:  When you sent the  
9                   notice out by mail and you knew you were going to  
10                  decide tonight when the --

11                  CHAIRPERSON YOUNG:  Well, we'll try to  
12                  actually pick a date tonight, okay.  But then I  
13                  believe everybody will get renoticed by mail.  
14                  That would be my guess on that.  So we'll confirm  
15                  that so that we know how that's going to take  
16                  place.  It certainly would be on the website once  
17                  that decision has been made.  Posted.

18                  Okay, yes, sir?

19                  MR. ALABE:  This friend of mine has a  
20                  CDO.  She wanted me to turn it in.  Can you accept  
21                  that, or do you have to --

22                  CHAIRPERSON YOUNG:  It's -- what did --  
23                  is that an envelope with -- is she returning it?

24                  MR. ALABE:  Right, it's from Cynthia  
25                  Colin; she's got her statement in here.

1 CHAIRPERSON YOUNG: It's her statement?

2 MR. ALABE: Yes.

3 CHAIRPERSON YOUNG: Okay, are you Mr.  
4 Hunter?

5 MR. ALABE: No, I'm Mr. Alabe.

6 CHAIRPERSON YOUNG: Oh, Mr. Alabe, okay.  
7 Why don't you give it to her; you can give it back  
8 to her and then because we're not going to get to  
9 her individual CDO this evening, then she can --

10 MR. ALABE: You're not doing any CDOs  
11 tonight?

12 CHAIRPERSON YOUNG: If we get to any it  
13 would be Mr. Shipe. And that's --

14 MR. ALABE: He'll be the only one?

15 CHAIRPERSON YOUNG: Probably he'd be the  
16 only one this evening, if we get to him.

17 MR. ALABE: Right.

18 CHAIRPERSON YOUNG: We've given the CSD  
19 two hours to do their case, so -- looking and see  
20 what time it is right now. All right, --

21 MR. ONSTOT: Mr. Chair, --

22 CHAIRPERSON YOUNG: Yes.

23 MR. ONSTOT: -- is the allotment for the  
24 prosecution and the CSD team inclusive or  
25 exclusive of closing arguments?

1                   CHAIRPERSON YOUNG: It includes your  
2 closing -- well, wait a minute. See, we have  
3 closing arguments for each of the individual  
4 cases. And so -- did we talk about that, think  
5 about that? I don't think we did. It probably  
6 doesn't include that time.

7                   MR. ONSTOT: Okay.

8                   CHAIRPERSON YOUNG: Okay? So you've got  
9 two hours, Mr. Onstot.

10                   UNIDENTIFIED SPEAKER: It should be  
11 included in the two hours.

12                   CHAIRPERSON YOUNG: Pardon me?

13                   UNIDENTIFIED SPEAKER: The two hours  
14 should include closing statement.

15                   BOARD MEMBER SHALLCROSS: You're giving  
16 them two hours to do their presentation.

17                   CHAIRPERSON YOUNG: Two hours to do this  
18 presentation. You know, I'm not counting the  
19 cross-examination time of witnesses with that,  
20 okay.

21                   MR. RICHARDS: All the previous cross-  
22 examination.

23                   CHAIRPERSON YOUNG: Yeah, I have not  
24 been keeping track of that. That is to variable  
25 of what goes on with it.

1 MR. RICHARDS: All right.

2 CHAIRPERSON YOUNG: Okay. Go ahead.

3 MR. ONSTOT: Okay, the CSD would call  
4 Dr. Daniel Wickham.

5 Dr. Wickham, were you here when the  
6 Chair administered the oath?

7 DR. WICKHAM: Yes, I was.

8 MR. ONSTOT: Okay. Can you please state  
9 and spell your full name, please.

10 DR. WICKHAM: Daniel Edmund Wickham.

11 MR. ONSTOT: And, Dr. Wickham, who are  
12 you employed by?

13 DR. WICKHAM: I'm employed by ABG  
14 Wastewater Solutions, Incorporated, and for  
15 AnaABC, Incorporated. I'm the President of both  
16 of those companies.

17 MR. ONSTOT: And can you briefly give  
18 the Board your educational and experience  
19 background?

20 DR. WICKHAM: I have a bachelor of  
21 science; I have a master of science in limnology,  
22 which is the study of freshwater biology; and I  
23 have a PhD from UC Berkeley on marine ecology.

24 MR. ONSTOT: Okay, if I can ask you to  
25 slow down just a little bit.

1 DR. WICKHAM: Yeah.

2 MR. ONSTOT: Talk slowly.

3 DR. WICKHAM: I have -- yes, I have a  
4 bachelor of science from the University of Miami;  
5 I have a master of science in limnology, which is  
6 the study of freshwater biology from Wayne State  
7 University in Michigan. And I have a PhD from UC  
8 Berkeley in marine ecology.

9 MR. ONSTOT: And how many years  
10 experience do you have in the wastewater field?

11 DR. WICKHAM: About 33.

12 MR. ONSTOT: And does any of that  
13 involve septic tank management?

14 DR. WICKHAM: Yes, septic tank  
15 management has been really my entire career for  
16 the last six years.

17 MR. ONSTOT: Now, you're located up in  
18 beautiful Sonoma County, is that true?

19 DR. WICKHAM: Yes, indeed.

20 MR. ONSTOT: Thank you very much for  
21 being here and spending your Friday night with us.  
22 Have you been asked to render some opinions  
23 regarding the current situation in septic tank  
24 management and proposed cease and desist orders  
25 for septic tank systems in the Los Osos area?

1 DR. WICKHAM: Yes, I have been.

2 MR. ONSTOT: Will the two-month pumping  
3 schedule that was originally proposed in the cease  
4 and desist order increase the level of protection  
5 provided by septic tanks to the environment?

6 DR. WICKHAM: In my opinion it will not.  
7 In fact, it will degrade the protection.

8 MR. ONSTOT: How so?

9 DR. WICKHAM: One has to look at the  
10 function of a septic tank and first to understand  
11 that. A septic tank is an anaerobic treatment  
12 device, one of many many different types of  
13 anaerobic treatment devices.

14 One of the most important aspects of  
15 septic treatment is the liquefaction of solids and  
16 the ability to allow solids to separate into two  
17 zones within the tank. Part of that, one of the  
18 most important parts of anaerobic digestion in the  
19 tank is the ability to float certain solids and  
20 move them up out of the zone where they leave the  
21 tank; and at the other extreme, to degrade other  
22 solids that will tend to sink.

23 So you create a separate zone in the  
24 middle where most of that effluent then passes  
25 out. And that's a clarified zone.

1           MR. ONSTOT: In your opinion will the  
2 pumping of septic tanks every two months reduce  
3 the load of organic pollution being discharged to  
4 the environment?

5           DR. WICKHAM: No. It's likely to be the  
6 reverse.

7           MR. ONSTOT: How so?

8           DR. WICKHAM: Well, part of the problem  
9 with any anaerobic system, particularly anaerobic  
10 systems that are based on inoculation, random  
11 inoculation with strict anaerobe bacteria,  
12 especially septic tanks where the predominant  
13 source of bacteria going into a septic system are  
14 intestinal bacteria from the human, the  
15 discharges.

16           Intestinal bacteria have an extremely  
17 tight temperature range. And when they go into a  
18 septic tank they literally go into temperature  
19 shock. And it takes a very very long time for an  
20 anaerobic inoculant within a septic tank to  
21 actually mature and become a stable population,  
22 which is then able to keep up with the actual  
23 septic load.

24           MR. ONSTOT: And, Dr. Wickham, in your  
25 opinion will the pumping of septic tanks improve

1 the ability of the leachfields to protect the  
2 environment?

3 DR. WICKHAM: No. Again, I would say it  
4 would be the exact opposite. What happens with a  
5 standard septic system, if you look at tables that  
6 are prepared to determine pumping schedules, and  
7 these are pretty universal throughout the United  
8 States, they range from tanks that -- the  
9 suggested interval for pumping ranges based on the  
10 size of the tank and the load going to the tank.

11 The lowest frequency, or the shortest  
12 frequency is around six months or so, and that's  
13 used for systems that are 500 gallons with nine  
14 people loading to them.

15 Anywhere in that interval the most  
16 frequent ranges of actual intervals for pumping  
17 range from around one year up to about five years,  
18 again based on load and size of the tank.

19 MR. ONSTOT: Are you familiar with the  
20 term mass balance?

21 DR. WICKHAM: Yes, indeed, I am.

22 MR. ONSTOT: What does that mean?

23 DR. WICKHAM: Mass balance is a way to  
24 step back from the issue of concentration. When  
25 you look at the TMDL process that's been developed



1 and is being widely implemented through the United  
2 States, there's an attempt to move away from  
3 concentration-based restrictions to something that  
4 is on the order of what you would call a mass  
5 balance.

6 Namely if nitrogen is being discharged  
7 at 40 mg/liter, that's a really largely irrelevant  
8 number, simply because you don't have with that  
9 any information on how much nitrogen there  
10 actually is. And it's more important to know how  
11 many pounds of nitrogen per year or per month or  
12 per, you know, whatever that might be.

13 MR. ONSTOT: Now, Mr. Thompson testified  
14 regarding a concept called nitrogen loading. My  
15 question to you is that based on mass balance  
16 calculations, do you have an opinion as to the  
17 expected reduction of nitrogen loading from the  
18 pumping proposal?

19 DR. WICKHAM: Yes. The only nitrogen  
20 that would be removed by pumping will be that  
21 nitrogen in the actual pumping event, itself. As  
22 soon as that tank is full nitrogen will pass  
23 through back into the soil at exactly the same  
24 concentration you started with; and, in fact,  
25 possibly even more. But it's certainly at least

1 the same level.

2 MR. ONSTOT: Is pumping of septic tanks  
3 a cost effective means to reduce nitrogen  
4 pollution in the aquifer?

5 DR. WICKHAM: Given, again, based on  
6 figures that relate to a mass balance, and if you  
7 look at an average septic tank or an average load  
8 to a septic tank of approximately 300 gallons per  
9 day, this obviously these are general figures  
10 here, and you have typically around a 40 mg/liter  
11 concentration of total nitrogen in the septic tank  
12 discharge. So an average home is discharging  
13 about 45 grams of nitrogen per day.

14 If you then look at a 1200 gallon  
15 pumping event, let's say a typical 1200 gallon  
16 tank, that 1200 gallons is being removed from a  
17 total of 18,000 gallons that are being discharged  
18 over that 60-day pumping cycle.

19 So the amount of nitrogen, since about 6  
20 to 7 percent of that load is being removed and  
21 taken away, that's approximately how much nitrogen  
22 would be taken away, as well.

23 And that, actually when you equate that  
24 to a cost based on a \$300 per pumping event, you  
25 get about \$700 per pound of nitrogen removed. So

1 the cost of removing one pound of nitrogen from  
2 each one of those homes is about \$700 per pound of  
3 nitrogen.

4 MR. ONSTOT: Thank you. Now, with  
5 regards to bacteria, will the pumping of the  
6 septic tanks every two months decrease releases of  
7 bacteria to the environment?

8 DR. WICKHAM: No. Again, it's likely to  
9 increase the actual discharge of potential  
10 pathogens. One of the aspects of a septic tank  
11 environment is that when it goes anaerobic and is  
12 at a mature level of treatment, then a good deal  
13 of the actual internal pathogens and enteric  
14 bacteria are being competed, they're being out-  
15 competed by various other anaerobic organisms.

16 So the removal of them and the  
17 elimination of that mature biological community  
18 within that tank is likely to allow certain  
19 organisms to pass through that might not otherwise  
20 pass through.

21 MR. ONSTOT: Thank you. And then the  
22 final question, will pumping of septic tanks every  
23 two months reduce the level of pathogens inside  
24 the tanks, themselves?

25 DR. WICKHAM: Based on what I just said,

1       it's likely to actually slightly increase.  It's  
2       certainly not going to reduce, and if anything, it  
3       would increase the number of pathogens that would  
4       be in that tank.

5                 Again, because of the lack of  
6       competition by an aggressive, or at least a mature  
7       anaerobic community.

8                 MR. ONSTOT:  Thank you.  Nothing  
9       further, Mr. Chairman.

10                BOARD MEMBER PRESS:  Mr. Chair.

11                CHAIRPERSON YOUNG:  Yes.

12                BOARD MEMBER PRESS:  At what point can  
13       we ask follow-up questions of --

14                CHAIRPERSON YOUNG:  The Board can ask  
15       questions at any time.

16                BOARD MEMBER PRESS:  Okay.

17                CHAIRPERSON YOUNG:  But this is not the  
18       time for cross-examination of witnesses by other  
19       designated parties.

20                BOARD MEMBER PRESS:  Right, no, I  
21       understand.

22                CHAIRPERSON YOUNG:  We can ask  
23       questions.

24                BOARD MEMBER PRESS:  Okay.  I'd like to  
25       do that if -- because -- while the topic is fresh.

1 CHAIRPERSON YOUNG: That's fine.

2 BOARD MEMBER PRESS: Is that all right?

3 CHAIRPERSON YOUNG: Yeah.

4 BOARD MEMBER PRESS: Okay, thanks. So,  
5 are the bacteria in septic tanks facultative  
6 anaerobes, are they?

7 DR. WICKHAM: There are some facultative  
8 organisms in there. They're not -- facultative  
9 anaerobes is an incorrect term; they're really  
10 facultative aerobes.

11 BOARD MEMBER PRESS: Okay. Are they --  
12 could you explain if they are preferentially --  
13 this is not their preferential system, right?  
14 What's the system that is preferential for the  
15 bacteria that are in there? They would prefer to  
16 have air, to have --

17 DR. WICKHAM: Actually the bacteria, the  
18 preferential place for the bacteria that are in  
19 your septic tank is in your intestine.

20 BOARD MEMBER PRESS: Right, okay. So, -  
21 -

22 (Laughter.)

23 BOARD MEMBER PRESS: So, are they doing  
24 the denitrification in the tank?

25 DR. WICKHAM: No, you don't have any

1 nitrogen removal in the tank.

2 BOARD MEMBER PRESS: Okay.

3 DR. WICKHAM: You don't create any  
4 nitrate in the tank, either.

5 BOARD MEMBER PRESS: Right. So, the  
6 denitrification happens in the soil.

7 DR. WICKHAM: Yes, exactly.

8 BOARD MEMBER PRESS: Okay. And is that  
9 other organisms, other than enteric bacteria that  
10 are going to be doing the denitrification?

11 DR. WICKHAM: Typically it's soil  
12 bacteria that are native in the soil.

13 BOARD MEMBER PRESS: Okay, right. So  
14 they're not --

15 DR. WICKHAM: Those would be facultative  
16 aerobes.

17 BOARD MEMBER PRESS: Okay, and they are  
18 able to denitrify because --

19 DR. WICKHAM: In effect a facultative  
20 aerobe is an aerobic organism that can obtain  
21 oxygen from sources other than oxygen in the air.  
22 And nitrate or nitrite are available oxygen to  
23 them. They can degrade nitrite aerobically even  
24 if air is present. They can only degrade nitrate  
25 if there's no oxygen present.

1                   BOARD MEMBER PRESS: Okay, great. So  
2 effectively then -- I'm trying to get a sense of  
3 what happens when you pump out this tank. And  
4 from what I gather that you're saying you don't  
5 have denitrification happening in the tank.

6                   DR. WICKHAM: No.

7                   BOARD MEMBER PRESS: And I'm trying to  
8 understand why the -- you're arguing that a  
9 frequent pumping schedule might disrupt the  
10 population of bacteria that are in the tank.

11                  DR. WICKHAM: Yes.

12                  BOARD MEMBER PRESS: But they're not the  
13 denitrifiers. So, what are they doing that is of  
14 utility to the treatment system?

15                  DR. WICKHAM: The issue with any septic-  
16 based system is that it's going to a leachfield  
17 for soil absorption.

18                  BOARD MEMBER PRESS: Right.

19                  DR. WICKHAM: The problem with pumping a  
20 tank on a schedule that frequent is that while you  
21 remove a portion of solids during the first  
22 pumping event, you'll remove a substantial sum of  
23 solids in the first pumping event, from that time  
24 on in effect you're going through a two-month  
25 period where you'll get very little solid

1 separation in that tank. Most of the solids will  
2 pass through.

3 So what you do in the interval between  
4 pumping is you increase the amount of solids that  
5 are going out to the leachfields for a 56-dy  
6 period or whatever it may be. Then you get  
7 another pumping event. The second pumping event,  
8 of course, all you're removing in effect is  
9 standard wastewater. It's about the same strength  
10 as what normal sewage would be, because it hasn't  
11 had time to really begin to collect an inventory.  
12 It's mostly passing through at that time without  
13 the separation function --

14 BOARD MEMBER PRESS: Okay, so the  
15 separation -- okay, I'm following you. The  
16 separation function is very important.

17 DR. WICKHAM: Yes.

18 BOARD MEMBER PRESS: But what is the  
19 microbial contribution to that separation in the  
20 tank? Or is there any?

21 DR. WICKHAM: Well, it's essential.  
22 Yeah, yeah, you have to have a mature anaerobe  
23 population that are liquefying those solids,  
24 allowing gas to capture and elevate scum layer as  
25 well as break other ones down that can then settle



1 out. That provides you with a more clear liquid  
2 in the middle which means you're protective of the  
3 actual soil absorption system.

4 BOARD MEMBER PRESS: Okay, so they're  
5 anaerobic during anaerobic digestion, they're  
6 producing CO2. The CO2 is floating --

7 DR. WICKHAM: CO2 and methane.

8 BOARD MEMBER PRESS: And methane, are  
9 floating -- are allowing, basically carrying, just  
10 like a fermentation, any fermentation?

11 DR. WICKHAM: Exactly, that's exactly  
12 what it is, in fact.

13 BOARD MEMBER PRESS: And that's why  
14 you're saying that you have more disruption if  
15 you're pumping more frequently? You're not  
16 allowing that --

17 DR. WICKHAM: Yeah, it's --

18 BOARD MEMBER PRESS: And what did you  
19 say was the time cycle? Six months for a kind of  
20 properly operating -- it takes that long to get  
21 that separation?

22 DR. WICKHAM: The recommended -- well,  
23 the thing is the recommended pumping schedules in  
24 the industry are largely based on an optimal. And  
25 what you have to look at it is it would be

1 somewhat like a U-shaped curve. If you were to  
2 plot solids concentration as total suspended  
3 solids --

4 BOARD MEMBER PRESS: Yeah.

5 DR. WICKHAM: -- on one axis and then  
6 against the time interval of pumping, what you'd  
7 see is you'd see a drop in the solids load as you  
8 allowed it to mature; then a stable period for  
9 some indeterminate number of years, maybe two  
10 years, three years, again depending upon load;  
11 then you'd start to see solids increase again if  
12 you weren't pumping frequently enough.

13 And so what you're trying to do is  
14 you're trying to catch that middle zone where  
15 you're preserving your actual biological function,  
16 but you're not letting it build solids to the  
17 point where now they don't have enough time in  
18 that clarified zone to really be settling out.

19 BOARD MEMBER PRESS: Okay.

20 DR. WICKHAM: So that sets the longest  
21 pump cycle that you would want. The shortest pump  
22 cycle is one which allows you to develop a  
23 mature --

24 (Parties speaking simultaneously.)

25 BOARD MEMBER PRESS: Develop that

1 mature, yeah. See, I'm used to dealing with yeast  
2 and wine fermentation, so --

3 DR. WICKHAM: I have owned a winery for  
4 15 years.

5 BOARD MEMBER PRESS: So you understand  
6 that, you know, we get anaerobic fermentations  
7 going really fast.

8 DR. WICKHAM: Those actually --

9 BOARD MEMBER PRESS: We don't have to  
10 wait two months for --

11 DR. WICKHAM: And those are facultative  
12 organisms that are not anaerobic fermentations,  
13 they're anoxic fermentations. They are using the  
14 oxygen in the sugar molecules.

15 BOARD MEMBER PRESS: Right, --

16 DR. WICKHAM: They're facultative  
17 aerobes is what --

18 BOARD MEMBER PRESS: Right, and they're  
19 doing it very quickly and they have --

20 DR. WICKHAM: Yes.

21 BOARD MEMBER PRESS: -- a lot of --

22 DR. WICKHAM: Extremely.

23 BOARD MEMBER PRESS: Okay, so you're  
24 saying that you need more than a couple months is  
25 what you're saying?

1 DR. WICKHAM: Yes, yes; usually six  
2 months is about the minimum. But then --

3 BOARD MEMBER PRESS: By the way, is that  
4 true when installing a septic tank from the start?

5 DR. WICKHAM: Yes, --

6 BOARD MEMBER PRESS: So somebody  
7 starts --

8 DR. WICKHAM: -- you go through a  
9 period, absolutely, yeah. A new tank will be  
10 discharging excessive solids until it really  
11 matures.

12 BOARD MEMBER PRESS: I see. Okay, good,  
13 thank you.

14 CHAIRPERSON YOUNG: Okay. I didn't have  
15 the clock running -- I did not have the clock  
16 running through that.

17 Okay.

18 MS. OKUN: I have cross-examination. Do  
19 you want me to wait till they're done with their  
20 case?

21 CHAIRPERSON YOUNG: I think you're going  
22 to have to wait, Ms. Okun, for that.

23 BOARD MEMBER HAYASHI: I have a quick  
24 follow-up question.

25 CHAIRPERSON YOUNG: Yes.

1                   BOARD MEMBER HAYASHI: Is there a  
2 breaking point or somewhere where you can pump  
3 half the tank out without disturbing the --

4                   DR. WICKHAM: Yeah, there are ways to  
5 pump out tanks that are different than removing  
6 the entire contents. But if you're doing that  
7 then you're not even really removing any nitrogen  
8 at all.

9                   The normal pump sequences and pump  
10 schedules that people do for these kinds of things  
11 are either you pump tanks -- you pump tanks for  
12 maintenance, which is recommended and absolutely  
13 should be done. And the timing of it should be  
14 constructed around that optimal treatment,  
15 increasing the optimal treatment to protect the  
16 leachfield.

17                   There are systems where people have  
18 port-a-potties, so you pump those simply to remove  
19 the entire contents.

20                   In between really is not recommended as  
21 far as function goes.

22                   CHAIRPERSON YOUNG: What is the function  
23 of the vertical wall separator in tanks?

24                   DR. WICKHAM: The baffle system there is  
25 to allow that zone where you have maximum amount

1 of solids residence time, and you have a T in that  
2 -- or you have that baffle prevents scum from  
3 moving to the outlet tank so it can go out the  
4 outlet T. And it also provides repository for  
5 settling at the bottom.

6 The second tank there is then a  
7 redundant secondary clarifier.

8 So they both work together as long as  
9 you don't get pass-through through that first tank  
10 to the other.

11 CHAIRPERSON YOUNG: Well, if you just  
12 pump the second part of the tank, aren't you just  
13 pulling out the liquid?

14 DR. WICKHAM: Yes, you would, but  
15 there's --

16 CHAIRPERSON YOUNG: And on the other  
17 side you're keeping the solids?

18 DR. WICKHAM: Yeah, yeah.

19 CHAIRPERSON YOUNG: And the liquid that  
20 might be in that tank?

21 DR. WICKHAM: The second tank is usually  
22 one-third of the volume of that tank, so you're  
23 not really achieving anything of significance to  
24 do it.

25 CHAIRPERSON YOUNG: Well, if you took

1 out that one-third, and then you pumped the first  
2 half down 75 percent, wouldn't you then be leaving  
3 the solids in the bottom that you're trying to use  
4 to establish the bacteria?

5 DR. WICKHAM: A lot of the bacteria that  
6 you're looking at are actually free in that water  
7 column. You're going to be removing a significant  
8 portion of the bacteria, in any event.

9 CHAIRPERSON YOUNG: Okay. All right,  
10 Mr. Onstot, go ahead.

11 MR. ONSTOT: Mr. Chair, I have no  
12 further questions, but I'm not opposed to cross-  
13 examination by Ms. Okun now, so Dr. Wickham can go  
14 home.

15 CHAIRPERSON YOUNG: Okay. Fine. I  
16 didn't realize that's what was going to happen.  
17 Go ahead.

18 MS. OKUN: Dr. Wickham, in your opinion  
19 are there any cost effective measures that could  
20 be implemented in the interim before there's a  
21 treatment plant to reduce pollutant loading?

22 DR. WICKHAM: Well, yes, as a matter of  
23 fact. There are a number of treatment systems,  
24 onsite treatment systems throughout the country  
25 that are used routinely almost everywhere.

1           Almost any of them would be more  
2           effective at least than a pumping schedule.

3           MS. OKUN:   And would they be cheaper  
4           than a pumping schedule?

5           DR. WICKHAM:  Typically yes, they would.  
6           Because if you're pumping every month or every  
7           other month, you're talking close to \$1800 per  
8           year.  And if you're looking at a time interval,  
9           depends upon the time interval of pumping really,  
10          yeah.  Most systems would pay back in about two  
11          years.

12          MS. OKUN:  What's the range of cost for  
13          those systems?

14          DR. WICKHAM:  The range, I think like a  
15          Nibbler system would probably be \$2000 to \$3000.  
16          The system we manufacture is probably about \$4000  
17          for the installation.  Advantex units will cost  
18          about \$10,000 to \$15,000.  There are several,  
19          Chromoglass, there's Nyadic, there's probably 50  
20          manufacturers available sold throughout the United  
21          States used for this purpose.

22          MS. OKUN:  And the system you  
23          manufacture is the Piranha system?

24          DR. WICKHAM:  Yeah.

25          MS. OKUN:  So the \$4000 for



1 installation, is that the only cost that would be  
2 incurred?

3 DR. WICKHAM: Other than what we -- when  
4 we install systems we mandate a management program  
5 as part of the -- because we want to have a  
6 maintenance thing, which is usually \$150 per year.

7 MS. OKUN: Okay.

8 DR. WICKHAM: And the electrical cost is  
9 about \$1 a month.

10 MS. OKUN: Okay.

11 MR. THOMPSON: Hi, Dr. Wickham. Would  
12 an effluent filter prevent some solids from  
13 passing out of the septic tank during the  
14 maturation process that you described?

15 DR. WICKHAM: Not really. The effluent  
16 filters are designed to remove particles one-  
17 sixteenth of an inch or larger. So you would  
18 remove only bulk things. And, in fact, most of  
19 those you really wouldn't remove, anyhow, because  
20 they'd be passing through.

21 MR. THOMPSON: You mentioned that during  
22 pumping that -- during the maturation phase that  
23 the solids would pass right through the septic  
24 tank. Could you qualify more what you mean by  
25 solids?

1 DR. WICKHAM: Solids are suspended  
2 solids, primarily suspended solids, which would be  
3 organic particulates based on toilet paper that's  
4 slowly breaking down, fecal material that's slowly  
5 breaking down, those types of things.

6 MR. THOMPSON: And could you  
7 differentiate between what type of solids would  
8 disrupt disposal field, or clog a disposal field?  
9 Would those suspended solids clog a disposal  
10 field?

11 DR. WICKHAM: Oh, absolutely, yeah.  
12 Suspended solids would clog a leachfield very  
13 quickly.

14 MR. BRIGGS: Got a question from over  
15 here. Is it your understanding that when a tank  
16 is pumped it's sterilized?

17 DR. WICKHAM: No, the tank is not  
18 sterilized when it's pumped.

19 MR. BRIGGS: So if it's not sterilized  
20 wouldn't there be a huge number of microorganisms  
21 remaining in the tank?

22 DR. WICKHAM: There would be a very very  
23 small proportion of what had originally been  
24 there, yes. Probably one --

25 MR. BRIGGS: How large -- you said a

1 large number --

2 DR. WICKHAM: Yeah, you would end up  
3 with probably a several millionfold reduction in  
4 there. I mean, in effect, you'd literally have  
5 beyond count of bacteria in there. You're  
6 removing virtually all of those. What you then  
7 have is the residual that's collected on the  
8 surface, which is a minor fraction of what was  
9 originally there.

10 MR. BRIGGS: Wouldn't that be a  
11 significant number of microorganisms?

12 DR. WICKHAM: When you're talking about  
13 anaerobic organisms, their growth rate is so slow  
14 and you change the conditions so radically that  
15 they go into shock.

16 MR. BRIGGS: Okay. And did I understand  
17 you correctly that you said, when you were talking  
18 about pumping, you gave the example pumping out a  
19 tank, kind of ran through the numbers, that the  
20 amount pumped would be proportional to the amount  
21 of nitrogen that's removed?

22 DR. WICKHAM: Approximately, yeah,  
23 because the nitrogen in these systems is all  
24 soluble.

25 MR. BRIGGS: All right, thank you.

1 CHAIRPERSON YOUNG: Any other questions,  
2 Ms. Okun?

3 MS. OKUN: No.

4 CHAIRPERSON YOUNG: Okay, well, the  
5 other designated parties also are going to have  
6 the opportunity now to ask questions of this  
7 witness. So, why don't you come forward and can  
8 we have maybe a chair set up over here. There's a  
9 microphone there, is it working?

10 Well, we do need to hear you very  
11 clearly. If you want to stand up with the  
12 microphone, that would be fine. And identify  
13 yourself.

14 MR. MOYLAN: My name is Bill Moylan.  
15 Dr. Wickham, from what I understand you're saying  
16 that frequent pumping is actually more detrimental  
17 than beneficial. Now, when it gets to the nitrate  
18 portion of it, which is the main concern of the  
19 RWQCB, how does the pumping affect the nitrates in  
20 the ground?

21 DR. WICKHAM: Well, the reduction of  
22 nitrogen leaving that system is effectively  
23 proportional to how much you've pumped out based  
24 on your load. Which is about, based on the  
25 particular schedule here, was around 6 percent.

1                   MR. MOYLAN:  Would you say that the  
2                   nitrate level that's in the aquifer now would  
3                   change very much at all?

4                   DR. WICKHAM:  No, the issue with it is  
5                   that you have -- when you have an existing septic  
6                   system one of the things to remember is that the  
7                   discharge from the septic tank is always in  
8                   ammonia form.  You do not have nitrate; you do not  
9                   have nitrite; almost all of it is in ammonia form.  
10                  And urea going into that tank is very quickly  
11                  converted to ammonia.

12                  And ammonia has a propensity to be bound  
13                  by the soil.  So what you will typically see  
14                  around a leach-line or a septage pit or whatever  
15                  it may be, is a layer of soil around there which  
16                  is commonly called the biomat.  And the biomat, of  
17                  course, is a complex phenomena, it's a range of  
18                  strictly anaerobic bacteria in the inside; a good  
19                  deal of mucous material that's being secreted by  
20                  this intestinal bacteria that sort of acts as the  
21                  filtering mechanism.  But also clogs the soil if  
22                  it gets excessive.

23                  So, a septic system is really in a fine  
24                  balance at all times.  And most of the systems  
25                  here in Los Osos, being as old as they are, are at

1 that sort of stable point.

2 Excessive loading of solids very quickly  
3 takes them past their capacity at that stage. A  
4 new system wouldn't be affected quite as easily.

5 But the bulk of the nitrogen that's been  
6 in the ground, or is in the ground, really has  
7 been there for years and years and years. And  
8 it's very slowly converted to nitrate as it enters  
9 the aerobic zone. And you get a good deal of  
10 denitrification in that process, too, because  
11 again, it's a mosaic.

12 And so what you have is really anaerobic  
13 ammonia on one side, aerobic interfaces coming in  
14 in a mosaic fashion, allowing nitrification to  
15 occur. Pockets of anaerobic bacteria; pockets of  
16 anaerobic area where a certain amount of that  
17 nitrogen then gets denitrified.

18 So it's a dynamic process going on all  
19 the time. And that's why they estimate, you know,  
20 septic systems reduce nitrogen 20 to 30 percent or  
21 so based on that denitrification.

22 The pumping would be probably lost in  
23 the noise.

24 MR. MOYLAN: So, the RWQCB's contention  
25 that the nitrate level in the aquifer is basically

1 from the septic tanks. Would you agree with that,  
2 or concur with that?

3 DR. WICKHAM: No, I haven't really seen  
4 anything in the data that convinces me that that,  
5 in fact, is the case, because no studies have  
6 really ever been done.

7 For one thing, you're looking at an  
8 environment. If you look at this environment,  
9 you're looking at a wetland bay environment which  
10 is profuse with wetland vegetation where you have  
11 huge stores of ammonia.

12 When any kind of marsh-like environment  
13 has enormous stores of ammonia present in the  
14 (inaudible), now you have moving sand and moving  
15 sand dunes through this area all the time,  
16 constantly burying things.

17 And without actually going through and  
18 doing isotopic studies of what your nitrate really  
19 -- the origin of the nitrogen in that thing, which  
20 would be a relatively easy thing that could be  
21 done. You can test isotopic ratios of the  
22 nitrogen leaving septic tanks. You could then  
23 look at the isotopic ratios of the nitrate in that  
24 groundwater and determine very quickly whether or  
25 not it was feasible, or whether those were simply

1 fossilized nitrogen sources.

2 MR. MOYLAN: So it would behoove the  
3 community, or the RWQCB to do some isotopic  
4 studies of the aquifer to find out actually where  
5 the nitrate originated from?

6 DR. WICKHAM: Well, in fact, yeah, since  
7 you have so many other sources, as well. You have  
8 aerosol nitrates coming from that power plant  
9 that's not very far. You have septic trunks; you  
10 got automotive sources; you have a lot of aerial  
11 sources.

12 Nitrogen's an issue that's very  
13 difficult because in the City of Santa Rosa I  
14 completed a study there where they were  
15 discharging -- they spent a great deal of money to  
16 try and remove nitrogen from their wastewater.  
17 Which they then put into this Laguna de Santa Rosa  
18 as direct discharge.

19 But they never implemented a phosphate  
20 management program. And the consequence was that  
21 because they weren't controlling phosphate, they  
22 were only -- they were spending literally tens of  
23 millions of dollars a year to control nitrate.

24 What happened was that the phosphate  
25 that during the beginning of the year you'd have



1 phosphate and nitrate and you'd have a bloom of  
2 green algae. And then as soon as the nitrate was  
3 depleted, which was very quick, then it would  
4 shift over to a bluegreen algae community, which  
5 are nitrogen fixers.

6 So what happened was all the nitrogen  
7 they had removed at the plant got loaded back in  
8 because they hadn't controlled phosphate. So  
9 these things are extremely complex. And without  
10 actually going through and really codifying where  
11 the sources of nitrogen are in this community, you  
12 could spend \$200 million and not affect it by even  
13 a tenth of a mg/liter.

14 MR. MOYLAN: So, in your estimation,  
15 what would be a wise thing to do to find out where  
16 those nitrates are actually originating from and  
17 how much do you think that might cost to test a  
18 majority of the aquifers, especially where the  
19 wells are that they've taken samples from?

20 DR. WICKHAM: You know, I don't do  
21 isotopic work, but you know, you're probably  
22 talking about a study -- if I were still in the  
23 university, when I was doing university research  
24 I'd probably be applying for a grant that would be  
25 in the order of \$200,000 I would guess.

1           MR. MOYLAN:  So, we would do a test in  
2   Los Osos for \$200,000 to determine --

3           CHAIRPERSON YOUNG:  Well, he's actually  
4   testified that's not his area of expertise.

5           DR. WICKHAM:  Yeah.

6           CHAIRPERSON YOUNG:  So is it safe to  
7   assume that you would be making some --

8           DR. WICKHAM:  I would be making, I would  
9   be expressing an opinion.

10          CHAIRPERSON YOUNG:  And I don't want him  
11   to go out on a -- any witness to go out on a limb  
12   with guesses.

13          DR. WICKHAM:  Yeah.

14          CHAIRPERSON YOUNG:  Unless they can  
15   state that they have a reasonable foundation to  
16   make the statements.  Okay, so he's --

17          MR. MOYLAN:  But (inaudible) --

18          CHAIRPERSON YOUNG:  Well, you can say  
19   that in your case, but ask him questions that are  
20   within his expertise.

21          MR. MOYLAN:  Thank you very much.

22          DR. WICKHAM:  You're welcome.

23          CHAIRPERSON YOUNG:  Okay, any other  
24   recipients of proposed cease and desist orders  
25   that would like to ask questions of this witness?

1 Okay, go ahead. Identify yourself, again.

2 UNIDENTIFIED SPEAKER: Yes, we have CDO  
3 1029.

4 CHAIRPERSON YOUNG: Okay.

5 UNIDENTIFIED SPEAKER: Mr. Wickham, a  
6 couple questions, if I may. The RWQCB has  
7 expressed that this pumping regime would remove 20  
8 to 22 percent of the nitrates or the nitrate  
9 loading. Do you have an opinion is that number  
10 accurate? If we did actually do this pumping,  
11 say, every two months.

12 DR. WICKHAM: No, to achieve that number  
13 you'd have to be pumping at three times that  
14 schedule. At least three to four times that  
15 schedule. You'd have to be pumping every two  
16 weeks.

17 UNIDENTIFIED SPEAKER: Okay. If we did  
18 achieve that, to achieve that number, would it  
19 still have any effect on the ground, if we remove  
20 20 percent of the nitrates by drains from the  
21 septic tanks?

22 DR. WICKHAM: No. From what I've seen  
23 in the field, in investigations and the store of  
24 nitrogen that usually is typically associated with  
25 that biomat around leachfields, it could take,

1 without an active program of denitrification  
2 through bacterial inoculation, you are looking at  
3 a store of nitrogen that would last there for  
4 several years.

5           And the issue about release of nitrate  
6 from this zone is that it's being peeled off  
7 slowly from the ammonia storage area. It's only  
8 that aerobic interface where nitrate are being  
9 created, because nitrate is, you know, it actually  
10 moves through soil very rapidly. But it takes  
11 time to work through that zone because you don't  
12 have active aeration in that zone. It's a static  
13 system. And only a small amount is being peeled  
14 away on a daily basis.

15           So your nitrogen store is still even  
16 with, even if you were to pump everything out of  
17 those tanks, that nitrogen is still sitting in  
18 that septic tank or in those leach-lines for  
19 several years.

20           Now, we have had experience in Michigan  
21 where we were doing restoration of leach-beds  
22 where we were able to actively treat it and we  
23 could see, we saw a drop in ammonia and nitrate  
24 concentrations went up where they were being  
25 released through into the soil at 40 to 50

1 mg/liter and over about an eight-month period we  
2 reduced it so the total inorganic nitrogen was  
3 down to about 2 mg/liter.

4 So, I mean it is possible to remediate  
5 those, but that's a bioremediation, and you know,  
6 that has to be done on an active method.

7 UNIDENTIFIED SPEAKER: Not with a  
8 pumping regime?

9 DR. WICKHAM: No. The pumping regime  
10 doesn't really affect the dynamics in the soil.

11 UNIDENTIFIED SPEAKER: One final  
12 question, if I may. Is there any, in your opinion  
13 is there any net benefit environmentally to the  
14 water quality by the pumping regime suggested and  
15 getting approved by these CDOs?

16 DR. WICKHAM: No. In fact, my concern  
17 was it was expressed earlier when they presented  
18 this, that pumping was one option and that  
19 alternatives might be approved, but they had to be  
20 demonstrated to be actually superior in protection  
21 of the environment to the pumping regime.

22 Based on my expert opinion is one such  
23 alternative that is superior to pumping is not  
24 pumping.

25 (Laughter.)

1 UNIDENTIFIED SPEAKER: Thank you, sir,  
2 for coming down, and for your time. Thank you.

3 CHAIRPERSON YOUNG: Okay. Any other  
4 designated parties that wish to ask questions?

5 MR. ALABE: Chris Alabe, Los Osos,  
6 number 1019. Have you, sir, had any experience  
7 with communities of our size or larger that have  
8 had the entire community fixed up with these  
9 onsite systems?

10 DR. WICKHAM: I haven't personally, but  
11 there are a wide number of communities around the  
12 country that have been, you know, that are done  
13 using onsite systems.

14 The largest system we've worked with is  
15 about 120 homes.

16 MR. ALABE: I understand that, but we're  
17 talking about 5000 here.

18 DR. WICKHAM: Yeah, but they're all  
19 scalable.

20 MR. ALABE: Oh, okay. And have you had  
21 any problems with maintenance on large  
22 communities?

23 DR. WICKHAM: No. What you do is,  
24 maintenance, again the small flows workshop has  
25 advocated septic management and septic maintenance

1 districts for several years now. They have worked  
2 through programs; a wide variety of software  
3 available for setting up management districts.

4 There's now tremendous advantages or  
5 advances in the actual remote sensing ability in  
6 septic systems. Most systems we put in when we're  
7 doing a large community, are somewhat automated.  
8 I mean we have sequencing for subsurface drip  
9 systems.

10 This technology is exploding because in  
11 the last -- when the federal Clean Water Act was  
12 passed in 1970 the EPA mandated, or Congress  
13 mandated that septic systems be considered as  
14 temporary solutions. Because by the year 2000 the  
15 entire country would be on sewer at some point.

16 At the time that prediction was made  
17 there were 25 percent of the population of the  
18 United States served by onsite systems. In 1998  
19 Congress asked the EPA to revisit that prediction.  
20 And what they found was that instead of zero  
21 septic tanks, there were now 27 percent of the  
22 actual population that were now being served by  
23 onsite systems.

24 In 1998 what that did is it finally made  
25 the EPA realize that, in fact, onsite systems were

1 permanent solutions. And it was time to actually  
2 spend the time and money to engineer those things  
3 so that they could be as effective as the  
4 centralized systems where most of the engineering  
5 had been done in the past.

6 And so it's changed dramatically in the  
7 past ten years.

8 MR. ALABE: It sounds like (inaudible).

9 CHAIRPERSON YOUNG: You'll have to speak  
10 up louder so we can hear you.

11 MS. MOYLAN: I'm Beverley DeWitt-Moylan.  
12 And I just have one question. I'm a recipient of  
13 a CDO. And so --

14 CHAIRPERSON YOUNG: Is your microphone -  
15 -

16 MS. MOYLAN: Oh, this one here?

17 (Parties speaking simultaneously.)

18 MS. MOYLAN: My question is as a member  
19 of this group of 45 who may be asked to pump, do  
20 you have an opinion about the effectiveness of 45  
21 of almost 5000 families pumping. And that if we  
22 were to start pumping before everyone else, would  
23 that have any advantage over waiting until  
24 everyone else gets their CDO and everyone else  
25 starts pumping at the same time?



1 DR. WICKHAM: My main concern was that  
2 the people who are going to be starting pumping  
3 most frequent or earliest will be the ones that  
4 will see problems in their system arise more  
5 rapidly.

6 And if, in fact, this causes the failure  
7 of these leach systems, and looking at the basis  
8 of the types of solids you'll be getting out  
9 there, it would certainly -- now, this obviously  
10 is an opinion, but I would not be surprised to see  
11 the leachfields begin to fail within two years  
12 based on a pumping schedule of this nature.

13 So you would simply be ahead of the  
14 curve in terms of failure.

15 MS. MOYLAN: So what you're saying in  
16 your expert opinion then that any Board that would  
17 order such a CDO and order this kind of pumping  
18 would have been better served to have bettered  
19 their research before they proposed these orders?

20 DR. WICKHAM: Well, in fact, goes a  
21 little further. If one were to go out right now  
22 and characterize the effluent going into the  
23 ground from your systems that are currently here,  
24 take BOD readings, TSS, the types of things that  
25 are pertinent, an argument could be made that such

1 an order would violate the anti-degradation  
2 language in the Clean Water Act. And, in fact, it  
3 might be an illegal act to take.

4 MS. MOYLAN: Thank you very much.

5 CHAIRPERSON YOUNG: Okay, anyone else  
6 wish to ask Dr. Wickham any questions, who's a  
7 recipient of a CDO? Mr. Payne.

8 MR. PAYNE: Good evening. Are you  
9 familiar with T.R. Bounds, the vice president of -  
10 -

11 (Parties speaking simultaneously.)

12 DR. WICKHAM: Yeah, Terry Bounds, yes, I  
13 know Terry.

14 MR. PAYNE: Have you read this 14-page  
15 paper that came out in 1995?

16 DR. WICKHAM: I'm not sure if I have,  
17 no.

18 MR. PAYNE: Okay. In that paper he  
19 suggests that -- I can't find that on the back  
20 right now, but it suggests the reduction of sludge  
21 volume begins to be optimal only after two and a  
22 half to three years. So, --

23 DR. WICKHAM: He may be right on that.  
24 I mean one of the interesting things about this  
25 field is because the septic pumping industry is

1 dominated by people who make their money by  
2 pumping septic tanks, almost no research has  
3 really been done on that.

4 (Laughter.)

5 MR. PAYNE: Yeah, he suggests that way  
6 back 30 years ago the health service decided that  
7 12-year pumping would be adequate for the average  
8 size --

9 DR. WICKHAM: I did an installation  
10 three days ago in a septic tank up in Sonoma  
11 County that had not been pumped for 30 years. And  
12 it was still functioning perfectly well; the  
13 effluent flowing out of it was doing quite well.  
14 It's all a function of load and how you're  
15 treating it and what you're doing for that tank.

16 MR. PAYNE: Whether you put bleach in  
17 your laundry --

18 DR. WICKHAM: There's a number of ways  
19 you can kill a septic tank.

20 MR. PAYNE: Okay. Would you like an  
21 extra copy of the 14-page article? I've got an  
22 extra.

23 DR. WICKHAM: Well, yeah, actually I  
24 would.

25 MR. PAYNE: Okay. Thank you for your

1 input.

2 CHAIRPERSON YOUNG: Does anyone else  
3 have any questions for Dr. Wickham? Okay, Mr.  
4 Thomas.

5 MR. THOMAS: Dr. Wickham, you mentioned  
6 that area in Los Osos is a shifting dunes complex.  
7 And I don't think you used those terms, but that's  
8 the way I interpreted it. And that the source of  
9 nitrate in groundwater could be buried organic  
10 material that was trapped by the shifting dunes.

11 And I wonder, what would cause that  
12 organic matter to start breaking down?

13 DR. WICKHAM: What you'd have there is  
14 you have a system that if you -- and, again, this  
15 is hypothetical and it's based on the fact it's  
16 only brought up as a warning that nobody has, in  
17 fact, identified the source of nitrate in this  
18 groundwater.

19 Now, there's no doubt about the fact of  
20 the presence of the nitrate, but there is  
21 substantial doubt as to the actual source of it.

22 And barring any conclusive proof, I, as  
23 an ecologist, when I look at a system like this I  
24 want to know what are the potential sources from  
25 all different manners. And so from that

1       standpoint if you were to look at a system where  
2       you had substantial buried ammonia in the form  
3       from buried swamp-type material, the sediments in  
4       swamp-type environments is extremely high in  
5       ammonia.

6               Then what would happen is on an annual  
7       basis you'll have, when you were talking about the  
8       vadose zone and things like that, you would have  
9       areas that would dry out in the summertime  
10      exposing those sediments to oxygen and exposing  
11      them to nitrification in the process.

12             At the same time, in the winter when you  
13      get saturation, then it would go back; it would be  
14      diluted out; it would become less available and  
15      less obvious.

16             And so there would be a dynamic based on  
17      an annual seasonal cycle.

18             MR. THOMAS: Could the discharge from  
19      the septic system in Los Osos contribute to that  
20      degradation and the increasing nitrates? The  
21      degradation of that organic material by adding --

22             DR. WICKHAM: Oh, in terms of actually  
23      accelerating its breakdown?

24             MR. THOMAS: Um-hum.

25             DR. WICKHAM: It's unlikely that the

1 sands, the issue with it here is that type of  
2 sand. I just installed a lysimeter at the fire  
3 house; we did an installation that we're studying  
4 right now at the fire house in Los Osos.

5 And we augured the sand in that  
6 environment and ironically that sand -- in Sonoma  
7 County, in order to get that quality of sand,  
8 which is used for engineered mound systems, we  
9 have to travel all the way to Marysville, which is  
10 almost 200 miles away to bring that sand in.

11 But what you have here is probably some  
12 of the highest quality filtering sand, or filter  
13 media that I've ever seen. So my guess, when you  
14 look at that, most of the bacteria will be  
15 filtered out, you know, relatively quickly coming  
16 from a septic tank.

17 MR. THOMAS: But just the water. Say  
18 the bacteria is filtered out, but just the water  
19 going through those areas, potential areas of  
20 organic matter, adding to the saturation that you  
21 were just discussing.

22 DR. WICKHAM: No, the actual volume  
23 you're talking about is not that high.

24 MR. THOMAS: Okay, I --

25 DR. WICKHAM: There are certain times of

1 the year where absolutely, if you had no rain  
2 whatsoever, then it is really your largest source  
3 of water going down there.

4 MR. THOMAS: Okay. And you mentioned  
5 the two other potential sources as the vegetation  
6 we just talked about, --

7 DR. WICKHAM: Yeah.

8 MR. THOMAS: -- in the power plant?

9 DR. WICKHAM: Yeah.

10 MR. THOMAS: And you mentioned that you  
11 hadn't seen studies that would indicate to you  
12 that septic discharges are the cause of the  
13 groundwater contaminants?

14 DR. WICKHAM: It was based on the -- I  
15 actually submitted -- our company actually  
16 prepared the proposal for the Los Osos, the EIR  
17 update that they did.

18 And we were one of three companies that  
19 were interviewed for doing the sewer system. And  
20 in the preparation of that I read that EIR quite  
21 carefully. And what I saw in the EIR system, or  
22 in that data, looking at the nitrate levels, is  
23 there was an unusual anomaly.

24 As a scientist I looked at it and I said  
25 there's something here I don't understand.

1       Because I don't understand how you can have a  
2       nitrate-rich zone coming ostensibly from these  
3       septic systems, go through a gap where you had  
4       very low levels of nitrate, and then get down to  
5       the groundwater area where you had high nitrate  
6       again.

7                       So it was this discontinuity that first  
8       at least suggested to me that there were other  
9       factors that might be involved. I'm not arguing  
10      in any way that these are known, or that I'm even  
11      correct on that. It's just that I saw no data to  
12      support or convince me. And I saw an anomaly that  
13      made me question the conclusion.

14                      MR. THOMAS: Okay. Have you seen data  
15      that shows the increase in nitrate concentrations  
16      in groundwater correlated to the increase in  
17      septic systems installed in Los Osos?

18                      DR. WICKHAM: I really don't. The data  
19      that you were showing goes back to about 1983, and  
20      I'm not entirely sure whether you have data prior  
21      to that. That's one of the large gaps.  
22      Frequently when we look at these systems we don't  
23      have a historical record.

24                      So what we have to do is use indirect  
25      methods to try and come up with what the initial



1 condition might have been.

2 CHAIRPERSON YOUNG: You haven't looked  
3 at any historical nitrate groundwater level data?

4 DR. WICKHAM: Prior to 1983. I don't  
5 know where it exists.

6 CHAIRPERSON YOUNG: Okay, but have you  
7 looked at the data up until 1983?

8 DR. WICKHAM: I looked at the data from  
9 '83.

10 CHAIRPERSON YOUNG: From 1983 --

11 DR. WICKHAM: Yeah.

12 CHAIRPERSON YOUNG: -- to the present?

13 DR. WICKHAM: Yeah. Yeah.

14 CHAIRPERSON YOUNG: Okay.

15 DR. WICKHAM: I hadn't seen large  
16 obvious increases in nitrate. Now, you have to  
17 remember that the community has been releasing  
18 over the last 30 years since those data were  
19 taken, the community has released something on the  
20 order of 10 million pounds of nitrate into that  
21 zone.

22 And I would have, had there not been  
23 natural denitrification occurring I would have  
24 expected to see a far higher level of nitrate in  
25 the groundwater.

1                   CHAIRPERSON YOUNG:  Okay.  Matt, could  
2                   you put on the screen the chart with the 2005  
3                   nitrate contour levels?  I just want to ask Dr.  
4                   Wickham a couple of questions about that.

5                   The prohibition zone that has the  
6                   overlay.  Okay.

7                   And I think, Dr. Wickham, your testimony  
8                   is that there could be other sources contributing  
9                   to this nitrate --

10                  DR. WICKHAM:  Yeah, it's I simply --

11                  CHAIRPERSON YOUNG:  -- level of  
12                  groundwater?

13                  DR. WICKHAM:  -- do not know that there  
14                  are not other sources.

15                  CHAIRPERSON YOUNG:  Okay.  Do you know  
16                  that there are other sources?

17                  DR. WICKHAM:  No, not at all.

18                  CHAIRPERSON YOUNG:  Okay, now --

19                  DR. WICKHAM:  Now, I do -- well, yes I  
20                  do know that there are other potential sources for  
21                  nitrate in this area.  One being that power plant  
22                  down there.

23                  CHAIRPERSON YOUNG:  Okay.  Can you  
24                  explain to me how aerial deposition of nitrate  
25                  would get into the groundwater in this area?

1 DR. WICKHAM: Aerial deposition gets  
2 into the groundwater because when nitrate hits  
3 that surface of the soil and it's fully nitrified,  
4 rainwater will bring it down almost instantly.  
5 It'll wash down very quickly in any rain event.

6 CHAIRPERSON YOUNG: Okay, so you're  
7 saying that denitrification would not act on that  
8 source, --

9 DR. WICKHAM: Probably not, because --

10 CHAIRPERSON YOUNG: -- but it is  
11 acting --

12 DR. WICKHAM: -- you're in an aerobic --

13 CHAIRPERSON YOUNG: -- but it is acting  
14 on the septic tank source?

15 DR. WICKHAM: Because of the anaerobic  
16 zones there that you find around those things.  
17 The denitrification from nitrate is an absolutely  
18 anaerobic process. But the problem with  
19 denitrification is in order to get to that point  
20 you have to fully aerobically nitrify the  
21 material.

22 So it's a combination. You start with  
23 aerobic treatment to maximize the actual  
24 conversion of ammonia to nitrite, then to nitrate.  
25 Then you reverse the process by going into an

1 anaerobic zone rich in carbon.

2 So at the surface, if there's not a  
3 substantial store of carbon in an anaerobic zone,  
4 that nitrate will simply pass on through.

5 CHAIRPERSON YOUNG: Okay. Let's look at  
6 this chart, this graph for a moment.

7 DR. WICKHAM: Sure.

8 CHAIRPERSON YOUNG: And let's just  
9 assume that this data is accurate, okay? And that  
10 the contours represented by the color are  
11 accurate.

12 DR. WICKHAM: Um-hum.

13 CHAIRPERSON YOUNG: Is it your testimony  
14 that you think it is more likely that there's  
15 another source of nitrogen other than the septic  
16 tanks that are causing these levels to exist?

17 DR. WICKHAM: I would say, without  
18 knowing what the past deposition of wetland  
19 vegetation was, it would be difficult to conclude  
20 either way.

21 And the one -- and I'm simply saying, as  
22 a scientist, there are ways to determine that.

23 CHAIRPERSON YOUNG: Well, I understand  
24 that. Right now I'm just trying to get into what  
25 your opinion is. And what you're factoring into

1 it, and what you're not factoring in.

2 Do you consider the density of septic  
3 tanks in these areas of highest nitrate level in  
4 groundwater to be a significant factor that you've  
5 considered in your opinion?

6 DR. WICKHAM: One of the things --

7 CHAIRPERSON YOUNG: Have you considered  
8 it?

9 DR. WICKHAM: One of the things I always  
10 consider is correlational data. Correlational  
11 analysis is an extremely important tool for an  
12 ecologist. But one of the things we learn very  
13 quickly is correlation is not causation.

14 So, without knowledge about the factors  
15 that would be also involved in here, I can't  
16 attribute causation to any correlation I see at  
17 anytime ever.

18 CHAIRPERSON YOUNG: So your answer is  
19 you have not considered the density --

20 DR. WICKHAM: Oh, no, I considered all  
21 sources, yeah.

22 CHAIRPERSON YOUNG: Have you considered  
23 the factor of the density of the septic tanks in  
24 these areas that overlay the highest levels of  
25 nitrate in groundwater?

1 DR. WICKHAM: Absolutely.

2 CHAIRPERSON YOUNG: And are you saying  
3 that you don't know how to consider that  
4 information because it hasn't been adequately  
5 analyzed?

6 DR. WICKHAM: Because I have no  
7 knowledge about the substructure beneath those  
8 areas and whether the correlation that you're  
9 looking at might not be a correlation that's  
10 related to where people settle and put their  
11 houses, as opposed to something coming from those  
12 houses.

13 CHAIRPERSON YOUNG: What would that have  
14 to do with nitrate levels in groundwater?

15 DR. WICKHAM: Because if there were some  
16 unpredictable reason to put a piece of property or  
17 a house in a particular area, and that area  
18 happened to be an area that was conducive to some  
19 natural source of ammonia, then that correlation  
20 would be totally indirect.

21 And without knowing what the underlying  
22 store of nitrogen in that community is, one can't  
23 make a conclusion based on correlation.

24 BOARD MEMBER PRESS: How would nitrate  
25 levels increase over time if the septic tanks were

1 not involved, not implicated?

2 DR. WICKHAM: This was -- it was not  
3 shown today that there has been an increase over  
4 the measurable period. Now, if that is, in  
5 fact, --

6 BOARD MEMBER PRESS: But that's my  
7 question, how would they increase if septic tanks  
8 were not involved, not implicated?

9 DR. WICKHAM: Oh, no, I would probably -  
10 - well, it depends on your exogenous sources. If  
11 you have other sources such as agricultural runoff  
12 or if you have aerial deposition from nitrous  
13 oxide, things like that from the power plant,  
14 without ruling those out, those would be potential  
15 ways of having it increase.

16 Plus increase in population. Frequently  
17 people look at correlations and they correlate  
18 events without looking at the fact that they're  
19 looking at increased population at the same time.  
20 Now, the increased population can absolutely  
21 increase the amount of deposition of septage into  
22 this area. There's no doubt about that.

23 But it also can increase the amount of  
24 air traffic; it can increase the amount of  
25 automobiles; it can increase power plant,

1 generates more power. You have a whole suite of  
2 other different uncontrolled factors that if you  
3 don't at least consider those, your conclusion is  
4 always tentative.

5 And that's all I'm saying, is if it's  
6 based on science, the procedure for science is to  
7 actually look at all the factors and parcel out  
8 what those factors may be. And you may end up at  
9 the end of the road saying, yes, indeed, these  
10 septic tanks are causing nitrate contamination in  
11 the soil.

12 But without that, you can't make --

13 BOARD MEMBER PRESS: What do you make of  
14 the fecal coliform DNA studies. We've had --  
15 staff has reported on that. I mean, would that  
16 count as one of the indirect factors?

17 You mentioned that your preference would  
18 be for direct measurement of isotopic ratios,  
19 right? You'd like to know if -- you'd have a  
20 tracer; you'd know if it was human in origin.  
21 And, you know, there you go.

22 So, in the absence of that, are DNA  
23 studies of fecal coliform good indirect proxies?  
24 Why or why not?

25 DR. WICKHAM: A well designed sampling



1 program for DNA analysis of fecal coliform  
2 bacteria would, in fact, be an important tool.  
3 But it's important to realize that when you're  
4 looking at ecological data, you're looking at a  
5 wide variety of ways.

6 If you're taking a large suite of  
7 bacteria and you're isolating them out to be able  
8 to get to the one or two bacteria you're going to  
9 culture in order to be able to take your DNA  
10 sample, you don't really -- you don't necessarily  
11 know that that's representative of what that whole  
12 population of bacteria you started --

13 BOARD MEMBER PRESS: Right, it has to be  
14 well sampled.

15 DR. WICKHAM: Yeah, it has to be well  
16 designed.

17 BOARD MEMBER PRESS: Of course, yeah.

18 DR. WICKHAM: But, no, absolutely. I  
19 think that would be another important thing to  
20 look at.

21 BOARD MEMBER PRESS: Thanks.

22 CHAIRPERSON YOUNG: Okay. Dr. Wickham,  
23 thank you very much --

24 DR. WICKHAM: Thank you.

25 CHAIRPERSON YOUNG: -- for your

1 testimony.

2 MR. ONSTOT: Mr. Chair, I do have a  
3 couple questions on redirect. Just a couple.

4 CHAIRPERSON YOUNG: Go ahead. Go ahead.

5 MR. ONSTOT: Dr. Wickham, you mentioned  
6 that you install Piranha systems?

7 DR. WICKHAM: Yes.

8 MR. ONSTOT: Did you do that at any of  
9 the CSD locations?

10 DR. WICKHAM: The fire station.

11 MR. ONSTOT: The fire station. Can you  
12 explain, and I think you mentioned that you  
13 already started testing the effectiveness of that?

14 DR. WICKHAM: Yeah, we put it in two  
15 weeks ago, so we're just starting to get data.

16 MR. ONSTOT: Can you explain what the  
17 Piranha system is and at least your preliminary  
18 findings with regards to that?

19 DR. WICKHAM: The device was invented as  
20 a means to introduce the facultative bacteria that  
21 we were discussing into septic environments. I  
22 have been working using bacteria for  
23 bioremediation of contaminated soils since about  
24 1989.

25 And people with septic tanks would

1 approach me and want to buy the bacteria from us.  
2 And I wouldn't sell it to them, because it was  
3 unfair to sell bacteria of this nature for people  
4 to put into an anaerobic septic tank. It was just  
5 inappropriate.

6 And it wasn't until I worked back to  
7 some of the earlier work I had done at University  
8 of California as the Director of the Lobster  
9 Aquaculture Project working with George  
10 Tchanaoglous, and we used air-lift pumps  
11 frequently. So you have air rising through a  
12 column.

13 And I realized if I could take that I  
14 could put a little refuge in the center of that  
15 unit where I could put a packet of bacteria, and I  
16 could keep those bacteria alive aerobically  
17 because when they leave the system they go into  
18 this anoxic type of metabolism. And one of the  
19 first things they do is they degrade the mucous  
20 material that clogs leach-lines.

21 And so we really invented it largely to  
22 be able to recover failing leach systems. But  
23 over the past six years now, the data that we've  
24 collected with over 2000 installations is they, in  
25 fact, do also result in -- it'd be difficult to

1 get into here, but there's a new process, an  
2 aerobic form of denitrification that we've done  
3 quite a bit of research on. And that's one of the  
4 things we'll be looking at, at the fire station.

5 MR. ONSTOT: And is the discharge from  
6 the Piranha system, how does it differ from an  
7 expected discharge from your typical septic  
8 system?

9 DR. WICKHAM: Discharge differs in a  
10 number of ways.

11 Number one is the solids content is  
12 reduced dramatically. The typical systems have a  
13 TSS of around 15 to 20 mg/liter, so it's -- and  
14 the BODs tend to be about the same, 15 to 20. So  
15 it's a secondary -- it's being discharged at  
16 secondary levels, but it doesn't convert the  
17 ammonia in the tank to nitrate as you would  
18 typically have in an aerobic system.

19 Instead the nitrogen leaves the tank in  
20 ammonia form and it enters that nitrification zone  
21 and causes an aerobic form of denitrification.  
22 Which we've done substantial sampling with  
23 lysimeters in Michigan and Massachusetts test  
24 center, Buzzards Bay, which is an NSF EPA site.

25 So, that's primarily what we're doing

1       there.

2               MR. ONSTOT:  Thank you, Mr. Chairman.

3               CHAIRPERSON YOUNG:  Any other questions  
4       then for Dr. Wickham?  We can then let him go.

5               DR. WICKHAM:  Thank you very much.

6               CHAIRPERSON YOUNG:  Okay, thank you for  
7       your testimony.  Continue.

8               (Applause.)

9               CHAIRPERSON YOUNG:  Folks, please.  This  
10       isn't a performance, okay?

11              (Audience speaking simultaneously.)

12              AUDIENCE SPEAKER:  I thought he  
13       performed well.

14              CHAIRPERSON YOUNG:  The clock is  
15       running, Mr. Onstot, go ahead.

16              MR. ONSTOT:  Yes, CSD would call Roger  
17       Briggs.

18              Mr. Briggs, earlier, after the  
19       prosecution presented its case I asked a question  
20       as to when the decision was made to bring  
21       enforcement actions against the individual septic  
22       tank owners, do you recall that?

23              MR. BRIGGS:  I recall the question.

24              MR. ONSTOT:  And Mr. Thompson deferred  
25       to you as the right person to answer that.  So

1 I'll ask the question to you.

2 MR. BRIGGS: It's something we've  
3 considered for years, and I believe that's  
4 summarized in our July 2004 enforcement report as  
5 one of the options. At that time we didn't think  
6 it really made sense because the District was  
7 proceeding with a project.

8 And I think once the District decided to  
9 delay, we felt that we'd given the County lots of  
10 time, we'd given the CSD lots of time by way of  
11 the time schedule orders. And we needed to take a  
12 different tack in terms of our enforcement tools.

13 MR. ONSTOT: So that occurred right  
14 after the election?

15 MR. BRIGGS: I'd say so.

16 MR. ONSTOT: Now, Mr. Thompson also  
17 testified that the first wave of enforcement  
18 orders, the first 50, if you will, were chosen at  
19 random. Do you recall that?

20 MR. BRIGGS: I recall that.

21 MR. ONSTOT: Now, it's the prosecution  
22 team's objective to treat all the individual  
23 dischargers equally and fairly, is that correct?

24 MR. BRIGGS: Right.

25 MR. ONSTOT: Now, Mr. Thompson also said

1       that approximately -- or that the prosecution team  
2       had an objective of bringing approximately 4284  
3       enforcement actions. Do you recall his testimony  
4       in that area?

5               MR. BRIGGS: Yeah. I don't remember the  
6       exact number.

7               MR. ONSTOT: Okay. Well, unless my map  
8       is wrong, if you bring 50 enforcement actions, it  
9       would take over seven years to get to everybody if  
10      you bring 50 per month for some 84 months.

11              And my question, Mr. Briggs, is that  
12      reasonable, in your opinion, as the Executive  
13      Officer of this Board?

14              MR. BRIGGS: No.

15              MR. ONSTOT: Why not?

16              MR. BRIGGS: Because we don't intend to  
17      proceed at that rate.

18              MR. ONSTOT: What rate do you intend to  
19      proceed at?

20              MR. BRIGGS: We haven't decided that  
21      yet, but the idea was to have an initial round and  
22      then adjust as we go forward.

23              MR. ONSTOT: So what is your timetable  
24      for bringing the 4000-plus enforcement actions?

25              MR. BRIGGS: We don't have a set

1 timetable.

2 MR. ONSTOT: Do you have an approximate  
3 timetable?

4 MR. BRIGGS: No.

5 MR. ONSTOT: Well, --

6 MS. OKUN: Object to this line of  
7 questioning based on relevance.

8 CHAIRPERSON YOUNG: Yeah, I'm not -- you  
9 know, I understand he's using his time this way.  
10 It is not relevant to the issues. Quite willing  
11 to give you some leeway here, but what point would  
12 you like to make with the Board in terms of  
13 whatever rate the prosecution team may be  
14 contemplating in using an enforcement?

15 MR. ONSTOT: Okay, my point is even if  
16 you assume an excessively rapid rate of 50 a month  
17 for seven years, Mr. Briggs has already testified  
18 that at least the prosecution team intends to  
19 treat everybody equally. And the question then  
20 becomes how are the people who are prosecuted  
21 seven years from now being treated the same way as  
22 these 45 people here who appear to be being made  
23 an example out of.

24 CHAIRPERSON YOUNG: Mr. Onstot, he did  
25 not testify it was going to take seven years for



1       whatever he's contemplating on doing. He said he  
2       hadn't decided on what rate. He said he would  
3       make an adjustment.

4               MR. ONSTOT: Okay.

5               CHAIRPERSON YOUNG: Okay? But what is  
6       the importance of that? He did --

7               MR. ONSTOT: The importance --

8               CHAIRPERSON YOUNG: -- say his intention  
9       is that everyone is to be treated equally and  
10      fairly. Okay. We have to wait and see what he  
11      has in mind in that respect.

12              MR. ONSTOT: Okay. Can I continue?

13              CHAIRPERSON YOUNG: Yes.

14              MR. ONSTOT: You testified, Mr. Briggs,  
15      that seven years is an unreasonable period of  
16      time. Is it unreasonable because it's too fast or  
17      too slow?

18              MR. BRIGGS: I think that's an excessive  
19      period of time.

20              MR. ONSTOT: So it would be your  
21      estimate that between zero and seven years you  
22      would bring 4000 enforcement actions against the  
23      individual dischargers?

24              MR. BRIGGS: Yes.

25              MR. ONSTOT: Is it your intention to

1 bring these actions prior to January 1st of 2010?

2 In other words, have them completed by that date?

3 MR. BRIGGS: Yes. Doing more math.

4 MR. ONSTOT: Thank you. Were you  
5 involved with the preparation of the most recent  
6 version of the cease and desist order?

7 MR. BRIGGS: Yes.

8 MR. ONSTOT: I will walk through my  
9 questions step-by-step. The first one being with  
10 regards to the 45 dischargers who are at issue  
11 here, do you have evidence that each of them, in  
12 fact, own or operate a septic tank?

13 MR. BRIGGS: We asked them to submit  
14 evidence. And so far no one has submitted  
15 evidence to the contrary.

16 MR. ONSTOT: You asked them to submit  
17 evidence of what?

18 MR. BRIGGS: For the cease and desist  
19 order hearing.

20 MR. ONSTOT: You asked them to submit  
21 evidence that they own a septic system?

22 MR. BRIGGS: They have an opportunity to  
23 indicate to us that they're not in violation of  
24 the prohibition by not discharging from a septic  
25 system.

1           MR. ONSTOT: Perhaps you're not  
2 understanding my question. Do you have evidence  
3 that all 45 individual dischargers own or operate  
4 a septic system within the prohibition zone?

5           MR. BRIGGS: We have the information  
6 that they've provided to us. Not everyone has  
7 responded, actually. So, to the extent that those  
8 folks who did respond indicated that they were  
9 discharging, I'd say yes.

10          MR. ONSTOT: Okay. And how many of  
11 those 45 do you have evidence that they own or  
12 operate a septic system?

13          MR. BRIGGS: I don't have a tally of the  
14 numbers, but it seems to me it's on the order of  
15 30.

16          MR. ONSTOT: And is that evidence, or  
17 those documents you refer to, in the prosecution's  
18 document or exhibit list?

19          MR. BRIGGS: It would be in the -- what  
20 I'm referring to is what the dischargers have  
21 provided, as far as their verification. The other  
22 thing we have to go by is the initial fact that  
23 they have a residence at that address. And our  
24 presumption is that if they have a residence,  
25 they're using a septic system for waste disposal.

1                   MR. ONSTOT: I understand that. Again,  
2 my question was can you prove 45 septic systems  
3 for these 45 dischargers? You said no, I have  
4 evidence of 30 of them. My question was, where is  
5 this evidence as to those 30?

6                   MS. OKUN: I don't see how this is  
7 relevant when we're going to be going through  
8 discharger-by-discharger. It's not relevant to  
9 the larger group, how many there are evidence for  
10 and there aren't evidence; it's relevant to each  
11 particular one.

12                  CHAIRPERSON YOUNG: Well, I'm letting  
13 him use his time the way he wants. I mean I was  
14 thinking of that, myself. That we are going to  
15 have site-specific individualized presentations.  
16 And so I'm assuming some of this information is  
17 going to come out at that time. I mean certainly  
18 they can ask these individuals, Mr. Onstot, when  
19 they're testifying, whether they have a system or  
20 not.

21                  MR. ONSTOT: Mr. Chair, I understand  
22 that.

23                  CHAIRPERSON YOUNG: Yeah.

24                  MR. ONSTOT: But we're here as the CSD.  
25 We're not faced with a CDO. We don't have any

1       septic discharges that are subject to this Board  
2       at this time. And it's our understanding that we  
3       are to take the lead with regards to major issues,  
4       to address the Board, and that's why we're a party  
5       here.

6                   CHAIRPERSON YOUNG: Oh, I think if you  
7       have that impression, that's incorrect. I never  
8       designated you as a party to take the lead for  
9       anything in particular. My reason in designating  
10      you is simply because of the District's position  
11      in the community and the knowledge that it has.

12                   But not to represent or to take the lead  
13      for these individual people.

14                   MR. ONSTOT: No, and --

15                   CHAIRPERSON YOUNG: If that's something  
16      that you're doing on your own, that's one thing.  
17      But, --

18                   MR. ONSTOT: No. We're not, the  
19      District is not representing the interests of  
20      everybody, either --

21                   CHAIRPERSON YOUNG: Okay, then what is  
22      the lead that you think that you are taking?

23                   MR. ONSTOT: To cover generic areas that  
24      would be applicable to everybody else. Because  
25      why else would we be here, because we don't have

1 septic systems that are subject to CDOs at this  
2 time.

3 CHAIRPERSON YOUNG: Well, you're here --

4 MR. ONSTOT: Well, I --

5 CHAIRPERSON YOUNG: -- because you  
6 requested designated party status, and I felt that  
7 it was appropriate given the CSD's position within  
8 the community and the functions that it's  
9 authorized to do, and its interest in wastewater  
10 disposal.

11 I felt that it had an elevated level of  
12 interest in this.

13 MR. ONSTOT: Okay, we appreciate that.

14 Can I --

15 CHAIRPERSON YOUNG: Okay? I mean that's  
16 really why.

17 MR. ONSTOT: Can I use our allotted  
18 time, then, as we choose?

19 CHAIRPERSON YOUNG: Yeah, and I've  
20 stopped the clock while we've been going back and  
21 forth on this. Hang on one second.

22 (Pause.)

23 CHAIRPERSON YOUNG: Go ahead, Mr.  
24 Onstot, continue with your questions.

25 MR. ONSTOT: Mr. Briggs, do you remember

1 the question?

2 MR. BRIGGS: No.

3 MR. ONSTOT: Okay. Forty-five people  
4 facing enforcement action. You have evidence on  
5 30 of them that they have -- own or operate septic  
6 systems. And my question was, is that evidence  
7 that you refer to on those 30 in the prosecution  
8 team's exhibit list?

9 MR. BRIGGS: Well, first of all, I was  
10 guessing on the amount of 30. I think that's  
11 close. And so what I was referring to was the  
12 evidence that the dischargers provided to us,  
13 which corroborates our assumption that they're  
14 operating a septic system.

15 MR. ONSTOT: Okay, again the question,  
16 is that information provided in the prosecution's  
17 exhibit list?

18 MR. BRIGGS: I don't know that that's  
19 part of our exhibit list. It's what they -- it's  
20 what everybody has in front of them in the  
21 binders.

22 MS. OKUN: But that is part of our  
23 exhibit listed items 2, which incorporates all the  
24 agenda materials, including the submissions by  
25 designated parties.

1 MR. BRIGGS: Thanks.

2 MR. ONSTOT: Okay, so that would be item  
3 2 A through L?

4 MS. OKUN: No, item 2.

5 MR. ONSTOT: Two, by itself?

6 MS. OKUN: Yes.

7 MR. ONSTOT: Okay. Now, with regards to  
8 the approximately other 15, you don't have  
9 evidence that they own or operate septic systems,  
10 correct?

11 MR. BRIGGS: We have the evidence of the  
12 fact that they have residence in the prohibition  
13 zone, and the presumption that they have a septic  
14 system, and that they're discharging from the  
15 septic system.

16 MR. ONSTOT: Okay. Other than the  
17 presumption that there's a septic system, do you  
18 have evidence that people are, in fact, living in  
19 those dwellings?

20 MR. BRIGGS: No. I don't think we do.

21 MR. ONSTOT: Now, out of the number of  
22 dischargers, or alleged dischargers, out of the 45  
23 that I just mentioned, approximately 30, do you  
24 have evidence that of those 30 that the septic  
25 systems are actually being used?



1                   MR. BRIGGS: I'd say for most of them,  
2                   yes.

3                   MR. ONSTOT: And where in the  
4                   prosecution's exhibit list are those documents?

5                   MR. BRIGGS: The same documents.

6                   MR. ONSTOT: And by most, what do you  
7                   mean, 50 percent? 51 percent?

8                   MR. BRIGGS: No. I don't know what it  
9                   is, 80 percent or something like that.

10                  MR. ONSTOT: Would you agree that a  
11                  septic system that's not in use does not  
12                  discharge?

13                  MR. BRIGGS: Yes.

14                  MR. ONSTOT: Now, Mr. Thompson gave me a  
15                  definition of discharge as release of waste into  
16                  the environment. My question is of the most of  
17                  the 30 that you have evidence that they own or  
18                  operate a septic system that is, in fact,  
19                  discharging, do you have evidence that those  
20                  discharges are waste material or contain waste  
21                  material?

22                  MR. BRIGGS: You mean the wastewater  
23                  that they're discharging?

24                  MR. ONSTOT: Correct.

25                  MR. BRIGGS: By definition, it's waste.

1 MR. ONSTOT: So it would be all of them?

2 MR. BRIGGS: Yes.

3 MR. ONSTOT: And of all of those septic  
4 tank systems that are discharging waste, as you  
5 have defined it, do you have evidence -- or for  
6 how many of those do you have evidence that that  
7 waste material, in fact, leaches down to the  
8 groundwater table?

9 MR. BRIGGS: It's a presumption that the  
10 water doesn't just vaporize. It ends up in the  
11 groundwater table.

12 MR. ONSTOT: So it's your presumption  
13 that all the wastewater that's discharged winds up  
14 in the groundwater table?

15 MR. BRIGGS: That all the wastewater  
16 that's discharged?

17 MR. ONSTOT: Correct.

18 MR. BRIGGS: No, but that there is a  
19 discharge in the prohibition zone that reaches  
20 groundwater.

21 MR. ONSTOT: And other than that  
22 presumption, do you have any empirical data to  
23 support that? In other words, what I'm looking  
24 for is a nexus between the discharge of wastewater  
25 and entry into the groundwater table in the --

1           MR. BRIGGS: Well, we have the nitrate  
2 information which we were just looking at and  
3 talking about extensively. We also have  
4 information on a rise in groundwater table that  
5 has been attributed by the CSD to septic system  
6 usage.

7           MR. ONSTOT: And where is that empirical  
8 data found in the prosecution's exhibit list? And  
9 if Ms. Okun can answer that, that's fine.

10          MS. OKUN: Do you know the answer off  
11 the top of your head --

12          MR. BRIGGS: No, I don't.

13          MS. OKUN: -- without reviewing the  
14 list?

15          MR. ONSTOT: Would you like to look at  
16 the list?

17          MR. BRIGGS: Sure.

18          MS. OKUN: Do you have a list to show  
19 him?

20                 (Pause.)

21          MR. BRIGGS: Mr. Onstot, I couldn't tell  
22 you which document it's in, if it's in this  
23 exhibit list.

24          MR. ONSTOT: So you don't know if it's  
25 part of the record?

1           MR. BRIGGS: Correct, other than it  
2           seems to me that Bruce Buel may have talked about  
3           that during the ACL hearing. And I believe the  
4           ACL transcript is a part of this list.

5           MR. ONSTOT: Okay, well, then if we  
6           don't know if this empirical data is part of the  
7           record, can you then describe for us what that  
8           data is? Is it analytical testing? Is it  
9           anecdotal data? Can you give us some idea as to,  
10          for those roughly 30 people, describe to us the  
11          evidence or the data that links the septic system  
12          discharge to entry into the groundwater table?

13          MR. BRIGGS: My point was just that  
14          there has been common knowledge amongst those  
15          working on the Los Osos issue that groundwater has  
16          risen over the years and it's been attributed to a  
17          sense of septic system discharge. And so that is  
18          another way of determining that the septic systems  
19          from 4300 systems or 4700 systems does, in fact,  
20          reach groundwater.

21          MR. ONSTOT: Well, there are other  
22          sources to the rising of the groundwater table  
23          other than septic tank system usage, is that  
24          correct?

25          MR. BRIGGS: It's possible.

1                   MR. ONSTOT:  And do you know what some  
2                   of those are?

3                   MR. BRIGGS:  Rainfall.  And recharge.  
4                   My understanding of the basin is that the main  
5                   recharge for the shallow groundwater is from just  
6                   what happens on the surface in the populated area,  
7                   as opposed to some other recharge area.

8                   MR. ONSTOT:  Now, by the way, do you  
9                   have a copy of the most recent proposed cease and  
10                  desist order, the one dated April 28th, before  
11                  you?

12                  MR. BRIGGS:  Actually, I don't.

13                  MR. ONSTOT:  Well, actually I could just  
14                  ask you if you're familiar with it.  Are you aware  
15                  that there's a requirement in there that the  
16                  dischargers are to obtain and maintain all  
17                  applicable permits for operation of their septic  
18                  system?

19                  MR. BRIGGS:  I think what we have in  
20                  here is a requirement that they get an inspection  
21                  and pump the tank initially.  And having any  
22                  repairs done that are required.  Is that what  
23                  you're referring to?

24                  MR. ONSTOT:  Yes, but it also requires  
25                  the dischargers to maintain proper permits from

1 the County for operation of their septic systems.

2 MS. OKUN: Could you specify what  
3 provision you reviewed?

4 CHAIRPERSON YOUNG: What page are you on  
5 in the proposed CDO?

6 MR. ONSTOT: I'm looking for it now, Mr.  
7 Chair. In the interest of time I'll withdraw the  
8 question.

9 MR. BRIGGS: Well, the County is  
10 mentioned on page 4 --

11 CHAIRPERSON YOUNG: Well, there's no  
12 question.

13 MR. BRIGGS: Okay.

14 CHAIRPERSON YOUNG: He withdrew the  
15 question.

16 MR. ONSTOT: Okay, my questions, Mr.  
17 Briggs, did you find it?

18 (Laughter.)

19 CHAIRPERSON YOUNG: That's a yes or no  
20 question.

21 MR. BRIGGS: Yes.

22 MR. ONSTOT: Where is it?

23 MR. BRIGGS: Page 4, B, just B,  
24 actually. It says: By three months after the  
25 date of this order the discharger shall have the

1 contents of the septic system pumped; and 2,  
2 obtain a report by the County of San Luis Obispo  
3 septic tank pumper or other inspector approved by  
4 the Executive Officer," et cetera.

5 MR. ONSTOT: Thank you very much. My  
6 question is to what extent in your view, and I'm  
7 not asking for a legal opinion, but just as the  
8 key staff member, what is this Water Board's  
9 jurisdiction over septic tank management?

10 MR. BRIGGS: Jurisdiction? We're  
11 responsible for regulating waste discharges; and a  
12 septic system is a waste discharger.

13 MR. ONSTOT: And would that be for all  
14 septic systems?

15 MR. BRIGGS: Yes.

16 MR. ONSTOT: Large or small?

17 MR. BRIGGS: Yes, although we count on  
18 the counties to regulate individual systems and  
19 community systems that have five homes or less, or  
20 are 2500 gallons per day or less.

21 MR. ONSTOT: And my question is, what is  
22 your understanding -- again, I'm not asking for a  
23 legal opinion -- of the County's role in septic  
24 tank management and how it complements the  
25 Regional Board's?

1                   MR. BRIGGS: They permit the septic  
2 systems initially in conformance with our basin  
3 plan.

4                   MR. ONSTOT: And does the County have  
5 any jurisdiction over discharges from the septic  
6 tank systems?

7                   MR. BRIGGS: Discharges. I don't know;  
8 you'd have to ask the County that.

9                   MR. ONSTOT: Are you familiar with any  
10 memorandum of understanding or other agreement  
11 between this Regional Board and the County of San  
12 Luis Obispo regarding discharges from septic tank  
13 systems?

14                   MR. BRIGGS: We've had a memorandum of  
15 agreement with all the counties, I believe it's  
16 all the counties, in the region for that  
17 arrangement I just mentioned to you.

18                   MR. ONSTOT: And do you recall, with  
19 regards to the agreement between San Luis Obispo  
20 County and this Board, namely the ones that would  
21 apply to Los Osos septic systems, what the role of  
22 the County is with regards to discharges of waste  
23 from those septic systems?

24                   MR. BRIGGS: I don't recall any  
25 specifics about Los Osos.



1                   MR. ONSTOT: No, I'm talking about the  
2 County in general. Los Osos isn't San Luis Obispo  
3 County.

4                   MR. BRIGGS: I'd say as I described  
5 already.

6                   MR. ONSTOT: So they regulate the small  
7 ones; you regulate the large ones?

8                   MR. BRIGGS: Right.

9                   MR. ONSTOT: Thank you. Nothing  
10 further.

11                   MS. OKUN: Mr. Briggs, how long have you  
12 been working on the Los Osos project?

13                   MR. BRIGGS: Since the early '80s.

14                   MS. OKUN: Mr. Onstot asked you several  
15 questions to which you replied that there was a  
16 presumption of wastewater reaching groundwater, or  
17 a presumption of certain things.

18                   When you use the term presumption, do  
19 you mean your conclusion based on your  
20 professional judgment and your 20-plus years of  
21 working on this project?

22                   MR. BRIGGS: Yes. There's really no  
23 place else for it to go.

24                   MS. OKUN: Regarding evidence of  
25 discharges from septic systems or other types of

1 systems, is there a community sewer system in Los  
2 Osos?

3 MR. BRIGGS: There are some small  
4 community systems. Bayridge Estates, Vista del  
5 Oro, for example, that have small areas that have  
6 a collection system and a community septic system.  
7 But other than that there is no communitywide  
8 sewer system.

9 MS. OKUN: And are any of the cease and  
10 desist order recipients that are before the Board  
11 today within those communities?

12 MR. BRIGGS: No. We made a correction;  
13 that's mainly why we went from 50 to 45, to make  
14 sure that we were dealing with individual  
15 dischargers that were not connected to one of  
16 those systems.

17 MS. OKUN: If a residence wasn't using a  
18 septic system, what method would they have of  
19 discharging of their wastewater?

20 MR. BRIGGS: I don't know of any other  
21 methods that are used in Los Osos. There are a  
22 couple of instances in our Region where holding  
23 tanks are used.

24 MS. OKUN: If any holding tanks were  
25 being used in Los Osos, do you think you would

1 know about that?

2 MR. BRIGGS: I would think so.

3 MS. OKUN: Regarding the memo of  
4 understanding with the County of San Luis Obispo,  
5 at the time that was entered was there a general  
6 waiver for septic tank discharges?

7 MR. BRIGGS: Was there a general waiver?  
8 Yes, I believe there was.

9 MS. OKUN: Is that still in effect?

10 MR. BRIGGS: No. The Legislature  
11 removed the waivers effective a couple years ago.  
12 And their status now --

13 MS. OKUN: That's fine.

14 MR. BRIGGS: Okay.

15 MS. OKUN: I don't have anything  
16 further.

17 CHAIRPERSON YOUNG: Well, Mr. Onstot, we  
18 will then have other designated parties that want  
19 to cross-examine this witness. If this is the way  
20 we're going to progress --

21 MR. ONSTOT: I'm sorry.

22 CHAIRPERSON YOUNG: -- I'm afraid that's  
23 what's going to happen.

24 And you're representing who, Ms.  
25 McPherson?

1 MS. McPHERSON: 1029.

2 CHAIRPERSON YOUNG: 1029. And who's  
3 1029?

4 UNIDENTIFIED SPEAKER (Redacted): I am.

5 CHAIRPERSON YOUNG: Okay.

6 MS. McPHERSON: I wanted to ask first,  
7 Mr. Briggs, your notices and reports, what you  
8 mean by adjust, streamline and test case? Could  
9 you define those terms?

10 MR. BRIGGS: Say that again?

11 CHAIRPERSON YOUNG: And speak louder,  
12 please, so everybody can hear you.

13 MS. McPHERSON: I apologize. I was  
14 asking, in your notices of reports what you mean  
15 by the terms adjust, streamline and test case.

16 MR. BRIGGS: Don't know what the context  
17 is.

18 MS. McPHERSON: It has to do with the  
19 process of implementing the CDOs.

20 MR. RICHARDS: Ms. McPherson, I think to  
21 assist the Board in understanding where you're  
22 going and what Mr. Briggs is going to say, you  
23 should ask him specific questions about specific  
24 instances of uses of language like that.

25 MS. McPHERSON: Okay.

1           MR. RICHARDS: Otherwise, it becomes  
2 unclear what the context would be.

3           MS. McPHERSON: Okay. What is 8313?

4           MR. BRIGGS: I think 8313 is the Los  
5 Osos discharge prohibition resolution.

6           MS. McPHERSON: Since there was little  
7 data that existed in that timeframe from 1983, was  
8 this a zoning measure?

9           MR. BRIGGS: I don't agree with the  
10 premise of the question. So I don't know, is that  
11 a question or a statement?

12           MS. McPHERSON: Well, there wasn't site-  
13 specific data to indicate that these homes were  
14 individually violating the basin --

15           MR. RICHARDS: Ms. McPherson, --

16           CHAIRPERSON YOUNG: Well, that's the  
17 point, you're testifying.

18           MR. RICHARDS: The basin --

19           MS. McPHERSON: Sorry.

20           MR. RICHARDS: -- plan prohibition was  
21 adopted in 19-, I think, -83.

22           MS. McPHERSON: Yes.

23           MR. RICHARDS: It was approved by the  
24 State Board. It's in the basin plan. The basis  
25 for that is not open to challenge at this time.

1 MS. McPHERSON: Okay. Can I ask what  
2 the purpose of the amendment to the basin plan  
3 was?

4 MR. BRIGGS: The purpose of the  
5 amendment was to protect water quality, because we  
6 anticipated that there were a lot of wastewater  
7 problems already existent in Los Osos, and that  
8 they would get worse. And they did.

9 MS. McPHERSON: Was there a time  
10 schedule order associated with the resolution that  
11 was written called 8313 in the basin plan  
12 amendment?

13 MR. BRIGGS: No. There was a time  
14 schedule in the resolution, but it wasn't called a  
15 time schedule order.

16 MS. McPHERSON: What was that time  
17 schedule related to?

18 MR. BRIGGS: It was related to  
19 completing a project to comply with the discharge  
20 prohibition.

21 MS. McPHERSON: And what was the due  
22 date on that one, on that plant, or that project?

23 MR. BRIGGS: I believe it was 1988,  
24 probably November 1, 1988.

25 MS. McPHERSON: What was the process to

1 challenge a basin plan amendment in 1983?

2 MR. BRIGGS: I think it's --

3 CHAIRPERSON YOUNG: But, wait. I'd like  
4 to know what the relevancy is, because --

5 MS. McPHERSON: Well, the relevance is  
6 that I don't believe people had a chance to  
7 challenge that. And that the rules changed --

8 MR. RICHARDS: I'm sorry, but that is  
9 not an issue before the Regional Board at this  
10 time in this proceeding.

11 MS. McPHERSON: Okay. In 1983 was the  
12 intent for the basin plan amendment to issue  
13 individual CDOs? Was that one of the -- was that  
14 part of the intent?

15 MR. BRIGGS: No.

16 MS. McPHERSON: From 8313 it says  
17 discharges from individual community systems  
18 within the prohibition area in excess -- this is  
19 the housing number, a housing number, and that's  
20 why I asked about the zoning -- it has 1150  
21 housing units that were prohibited.

22 And then it allowed a buildout of 27 --  
23 you didn't --

24 MR. BRIGGS: That's wrong.

25 MS. McPHERSON: Okay. So there wasn't

1 more houses that were going to be allowed to be  
2 built?

3 MR. BRIGGS: Yes.

4 MS. McPHERSON: In the interim?

5 MR. BRIGGS: Yes, there were, but that's  
6 not what you said.

7 MS. McPHERSON: Okay, I'm sorry. How  
8 many houses would that be?

9 MR. BRIGGS: It allowed 1150 additional  
10 units to be built until the discharge prohibition  
11 was effective in 1988.

12 MS. McPHERSON: And do you know how many  
13 houses were built?

14 MR. BRIGGS: No, I don't.

15 MS. McPHERSON: That's all I have, thank  
16 you.

17 CHAIRPERSON YOUNG: Okay. Mr. Shipe,  
18 your turn.

19 MR. SHIPE: Mr. Briggs, a few questions.  
20 MOU, what is that?

21 MR. BRIGGS: Memorandum of  
22 understanding.

23 MR. SHIPE: And I believe it was stated  
24 that the general waiver was not still in effect.  
25 What does that mean? What was the general waiver?



1           MR. BRIGGS: Well, we had a waiver that  
2 allowed for low-threat discharges to be covered by  
3 a general waiver. That is a waiver of waste  
4 discharge requirements, is what the waiver is. It  
5 means that individual waste discharge requirements  
6 are not required.

7           MR. SHIPE: Okay, so just to confirm,  
8 basically, in other words, each individual septic  
9 tank didn't have a waste discharge requirement?

10          MR. BRIGGS: That's right.

11          MR. SHIPE: Okay. And are all the other  
12 terms of that memorandum of understanding in  
13 effect?

14          MR. BRIGGS: I don't know.

15          MR. SHIPE: Are you aware of anything  
16 else that has been -- because you said this was  
17 taken out a couple years ago.

18          MR. BRIGGS: Right. The Legislature had  
19 all the Regional Boards re-evaluate the waivers  
20 that they had. So we've been going through a  
21 process with various types of discharges to either  
22 re-establish waivers or to handle them in some  
23 other fashion.

24          MR. SHIPE: Okay, and so when you say a  
25 couple years ago you're saying basically this

1 century? I mean I'm just trying to -- people use  
2 the term a couple years all sorts of different  
3 ways. So I'm just trying to get a timeframe --

4 MR. BRIGGS: I say a couple, I mean two.

5 MR. SHIPE: Okay, about two years, okay,  
6 cool, thank you.

7 Okay, so you're not sure whether or not  
8 anything else has been removed from that MOU?

9 MR. BRIGGS: No, I'm not sure.

10 MS. OKUN: His testimony wasn't that the  
11 waiver was in the MOU or that it was removed from  
12 it.

13 MR. SHIPE: Okay, it was just -- it was  
14 mentioned and I was just trying to get  
15 clarification. This isn't something that I deal  
16 with a lot, so it seemed important, so, thank you.

17 CHAIRPERSON YOUNG: Mr. Moylan, come on  
18 up.

19 MR. MOYLAN: My name is Mr. Moylan and  
20 I'd like to say I was really impressed with Dr.  
21 Wickham's testimony. And it seemed to me that it  
22 was evident that the nitrates in the groundwater  
23 had never really been scientifically tested to  
24 find out what the major source of those are. And  
25 I think that's what we need to do. And I'm

1 wondering if the Board is considering testing  
2 isotopically to find out what those nitrates  
3 really are.

4 Because if that's the case, and they  
5 are, I mean if the case is --

6 MR. RICHARDS: Mr. Moylan.

7 MR. MOYLAN: Yes.

8 MR. RICHARDS: Do you have a question  
9 for Mr. Briggs?

10 MR. MOYLAN: Yes. Mr. Briggs, are you  
11 considering testing isotopically the water, Los  
12 Osos, the aquifers to find out what the actual  
13 source or the major source of the nitrates is?

14 MR. BRIGGS: We've evaluated that over  
15 the years including when 8313 was adopted. And we  
16 also addressed it again in our response to the  
17 CSD's submittal for this proceeding with the issue  
18 of aerial deposition. So that's been our  
19 response.

20 CHAIRPERSON YOUNG: Mr. Briggs, I think  
21 he asked you for a yes or no answer.

22 MR. MOYLAN: Yeah, I was asking if you  
23 were going to test the aquifers --

24 MR. BRIGGS: We don't have any plans to  
25 do that.

1                   MR. MOYLAN: Okay. It seems to me that  
2 that would be a good thing to do because --

3                   CHAIRPERSON YOUNG: Do you have another  
4 question for him?

5                   MR. MOYLAN: No, not at this time.

6                   CHAIRPERSON YOUNG: Okay. Any -- okay,  
7 Mrs. Moylan has some questions. Okay, does anyone  
8 else who's received a proposed cease and desist  
9 order? Someone back there? Okay. Good.

10                  MS. MOYLAN: Beverley DeWitt-Moylan,  
11 prohibition zone CDO recipient. Sorry you're not  
12 feeling well today, Mr. Briggs.

13                  MR. BRIGGS: Thanks.

14                  MS. MOYLAN: Let me recommend elderberry  
15 extract --

16                         (Laughter.)

17                  MS. MOYLAN: You can get it at New  
18 Frontiers.

19                  MR. BRIGGS: All I need is about 4300  
20 suggestions like that.

21                         (Laughter.)

22                  MS. MOYLAN: I am also a public  
23 employee. And as a teacher working for the County  
24 Office of Education I'm very aware of the use of  
25 public funds and the prudent and wise decisions

1 that need to be made when you spend the money of  
2 the taxpayers.

3 I heard you say a few minutes ago that  
4 you and the staff have been working for many years  
5 on the idea of CDOs, which I assume includes the  
6 idea of bimonthly pumping. And I'm wondering if  
7 you, in planning those CDOs for all these years,  
8 and in bringing all these people here from  
9 Sacramento and from all their jobs, I know I'm  
10 getting paid today by the public to sit here  
11 instead of working with my students.

12 I'm wondering if you used wise and  
13 prudent judgment in researching in advance the  
14 effect of bimonthly pumping. After I heard Dr.  
15 Wickham, in comparison, his precision in  
16 comparison to --

17 MR. RICHARDS: Ms. Moylan, --

18 MS. MOYLAN: The -- I'm asking if --

19 MR. RICHARDS: -- could you ask a  
20 question?

21 MS. MOYLAN: My question is did you do  
22 research with any specialists or experts like Dr.  
23 Wickham to be able to develop a system so  
24 Draconian as this, that affects so many people in  
25 so many ways? So, basically, were you considering

1 wise and prudent use of public funds in the whole  
2 process of planning these CDOs? Thank you.

3 MR. BRIGGS: We considered the wisdom of  
4 the proposal and we did consult with people  
5 knowledgeable about septic systems, including  
6 those amongst us on the team. And we don't  
7 necessarily agree with some of Dr. Wickham's  
8 conclusions.

9 (Audience speaking simultaneously.)

10 CHAIRPERSON YOUNG: So the answer to her  
11 question is did you consider the use of public  
12 funds or resources in this analysis --

13 MS. MOYLAN: I wanted to make sure that  
14 you had done sufficient research before producing  
15 something that was as broadly affecting as this is  
16 financially to so many people in so many ways, and  
17 to the taxpayers, when you planned these CDOs.

18 I just wanted to make sure that you had  
19 done research ahead of time that would justify  
20 this kind of a process. Thank you for your  
21 answer.

22 CHAIRPERSON YOUNG: Okay. Okay, I don't  
23 think we've seen you yet today, is that correct?  
24 Okay. And your name, please?

25 MS. KIRTLEY: My name's Donna Kirtley.

1 CHAIRPERSON YOUNG: Okay.

2 MS. KIRTLEY: And I had a question for  
3 Mr. Briggs. My question is, I have a hard time  
4 understanding how you can say that it's fair and  
5 equitable how you're going about -- I want you to  
6 explain to me -- I also have a CDO -- how you can  
7 explain to me that it's fair and equitable how  
8 you've gone about disbursing the CDOs.

9 My problem with how this is done is the  
10 way I was raised, being fair and equal if you're  
11 going to pass this out to everybody, is either you  
12 pass them out to nobody --

13 CHAIRPERSON YOUNG: Ms. Kirtley, --

14 MS. KIRTLEY: -- or you pass them out to  
15 everybody.

16 CHAIRPERSON YOUNG: Ms. Kirtley, --

17 MS. KIRTLEY: So please let me know how  
18 you make this fair. That some people will be  
19 penalized more than others. Let me know. Tell me  
20 how you make this fair and equitable. I think  
21 that's a logical question to ask.

22 CHAIRPERSON YOUNG: Well, it's a  
23 question you can ask him. However, the Board  
24 makes that determination. The Board has not acted  
25 yet.

1 MS. KIRTLEY: I know.

2 CHAIRPERSON YOUNG: Staff has presented  
3 a recommendation --

4 MS. KIRTLEY: I understand.

5 CHAIRPERSON YOUNG: -- okay?

6 MS. KIRTLEY: But I want to understand  
7 how the recommendation can be made in such a way  
8 that there is a group of people, and to be fair  
9 and equitable, how it can be that a small group is  
10 singled out first.

11 I mean if they're saying all of us have  
12 to do this, that makes sense to me. Although I  
13 don't think it's right, it makes sense. But,  
14 taking small groups, and some of them being  
15 penalized more than others along the way, if this  
16 comes to fruition, doesn't make sense.

17 CHAIRPERSON YOUNG: I haven't heard any  
18 testimony yet that people are going to be handled  
19 any differently. There's been an issue of timing  
20 as to when staff thinks it's going to get through  
21 the entire group of people. But I haven't heard  
22 anything yet that suggests that people are going  
23 to be treated differently.

24 So, I mean just logistically, and I deal  
25 with the process of the Board functioning. I



1 don't know how we would handle 4500, if they were  
2 all issued at once and told to come here.

3 So, as a practical matter, and based on  
4 the other functions and duties of this Board, --

5 MS. KIRTLEY: I understand that.

6 CHAIRPERSON YOUNG: -- there's got to be  
7 a spacing of how this turns out.

8 MS. KIRTLEY: There's got to be a  
9 spacing, but it --

10 CHAIRPERSON YOUNG: Someone's got to go  
11 first. Someone's going to go last. And those  
12 that come first are going to complain that they're  
13 first. I don't know how to make that any more  
14 fair than to get, they've done a randomized  
15 selection of people. So, --

16 MS. KIRTLEY: But in the end you're  
17 still going to have 4300 people doing the same  
18 thing. So whether it's 4300 from the start or  
19 4300 in the end, it's still 4300.

20 CHAIRPERSON YOUNG: That's right.

21 MS. KIRTLEY: So, --

22 CHAIRPERSON YOUNG: And so the Board is  
23 going to, I'm sure, take that into consideration  
24 when it starts to make decisions.

25 MS. KIRTLEY: Thank you.

1                   CHAIRPERSON YOUNG:   Okay.  Now, did you  
2   have any other questions for Mr. Briggs?

3                   MS. KIRTLEY:   That was my question.

4                   CHAIRPERSON YOUNG:   Okay.

5                   BOARD MEMBER SHALLCROSS:  Can I just  
6   make a quick --

7                   CHAIRPERSON YOUNG:   Mr. Shallcross.

8                   BOARD MEMBER SHALLCROSS:  Yeah, I think  
9   this is an important question that she raises.  
10   And certainly, you know, we're all wondering how  
11   this is going to work in the long run.  And I  
12   certainly hope you bring your thoughts to it when  
13   you put on your case, your own case.  Because  
14   these are the sorts of things I want to hear.  
15   Thanks.

16                   CHAIRPERSON YOUNG:   Okay.  Mr. Payne.

17                   MR. PAYNE:   Yeah, I wonder if you'd help  
18   me with my questions for --

19                   CHAIRPERSON YOUNG:   Were you making  
20   faces at me before when Dr. Wickham was  
21   testifying?  I didn't know whether it was to me or  
22   to someone else.

23                   MR. PAYNE:   I just have this --

24                   CHAIRPERSON YOUNG:   Or just trying to  
25   get my attention?

1                   MR. PAYNE: I just have this funny face  
2 sometimes it twitched and --

3                   CHAIRPERSON YOUNG: Okay.

4                   (Laughter.)

5                   MR. PAYNE: Okay.

6                   CHAIRPERSON YOUNG: I mean I just wasn't  
7 sure whether there was someone sitting behind me.

8                   MR. PAYNE: No, I wouldn't deliberately  
9 make a face at you, I don't think.

10                  CHAIRPERSON YOUNG: Okay. All right.

11                  MR. PAYNE: Anyway, --

12                  CHAIRPERSON YOUNG: Go ahead, you have  
13 questions for Mr. Briggs?

14                  MR. PAYNE: Yeah, if I have trouble with  
15 them will you help me this time, too?

16                  CHAIRPERSON YOUNG: No promises.

17                  MR. PAYNE: Oh, no -- okay. Thanks  
18 much. How much time do I have? As long as  
19 possible or --

20                  (Laughter.)

21                  CHAIRPERSON YOUNG: No, in fact, I don't  
22 want you to ask any questions that have already  
23 been asked and answered.

24                  MR. PAYNE: Okay.

25                  CHAIRPERSON YOUNG: So you have to think

1 up new questions that are relevant.

2 MR. PAYNE: Okay, yeah, relevant. Mr.  
3 Briggs, were you -- just a minute -- were you  
4 involved in choosing October for the presentation  
5 on this?

6 MR. BRIGGS: Choosing October?

7 MR. PAYNE: Yeah, October 2005 for the  
8 presentation of this? You weren't involved?

9 MR. BRIGGS: No.

10 MR. PAYNE: Okay, --

11 MR. BRIGGS: It's a report from the CSD,  
12 so they produced it.

13 MR. PAYNE: I see.

14 MR. BRIGGS: We used it.

15 MR. PAYNE: I've heard it said that this  
16 was the latest information that you had. And Mr.  
17 Miller presented in the ACL hearings beautiful  
18 maps with groundwater levels and --

19 CHAIRPERSON YOUNG: Mr. Payne, you'll be  
20 able to present those maps if you want, that you  
21 have from Mr. Miller, when it's your turn.

22 MR. PAYNE: Okay.

23 CHAIRPERSON YOUNG: Okay? If you have  
24 other questions --

25 MR. PAYNE: The things that --

1                   CHAIRPERSON YOUNG:  -- of Mr. Briggs, go  
2 ahead.

3                   MR. PAYNE:  One of the things that's  
4 bothering me right now is that I understood when  
5 we laid out the groundwork for this that we were  
6 going to have our presentation and then be able to  
7 cross-examine witnesses afterwards.  And so now  
8 I'm in a situation where I'd like some answers,  
9 but I would rather be able to cross-examine after  
10 my presentation.

11                   CHAIRPERSON YOUNG:  You're going to be  
12 able to do that.

13                   MR. PAYNE:  Oh, okay.

14                   CHAIRPERSON YOUNG:  What's happening is  
15 that the CSD has called Mr. Briggs as a witness.

16                   MR. PAYNE:  Oh.

17                   CHAIRPERSON YOUNG:  And I really made a  
18 concession for Dr. Wickham because he was leaving  
19 that everyone would have the opportunity to cross-  
20 examine him.

21                   MR. PAYNE:  I see.

22                   CHAIRPERSON YOUNG:  Somehow we got into  
23 this very quickly, that we were going to do this  
24 with every witness.  That wasn't really what I was  
25 hoping it would be, but since we started down that

1 path, I thought we might as well just finish it.

2 So, you're going to have an opportunity  
3 when it's your individualized property that staff  
4 is going to put evidence and testimony on with  
5 respect to, to be able to ask Mr. Briggs questions  
6 again, or anyone else of staff.

7 MR. PAYNE: Okay.

8 CHAIRPERSON YOUNG: So this isn't your  
9 last chance at this or anyone else who's received  
10 a cease and desist order, okay?

11 MR. PAYNE: I'm sorry, I --

12 CHAIRPERSON YOUNG: Okay, you're just  
13 kind of getting in, everyone's getting some free  
14 questions now.

15 MR. PAYNE: Okay, I see.

16 CHAIRPERSON YOUNG: But I'm keeping  
17 track of who's asking questions and I'm going to  
18 try to limit it later, too.

19 MR. PAYNE: Okay. Part of the problem  
20 that I have is I speak for a lot of people. I  
21 never go downtown but what somebody doesn't come  
22 up to me and thank me for helping and trying to  
23 solve the problem with them. And for the issues  
24 that I bring up.

25 And here I am, one of the first 45

1 people who has to defend the whole village,  
2 because whether you want to admit it or not,  
3 however these 45 people end up will set a  
4 precedent for the rest of the village. And I  
5 don't see how you will be able to equitably treat  
6 the rest of the people if we mess up with what we  
7 know and what's right and what should be.

8 I remember --

9 CHAIRPERSON YOUNG: Do you have any  
10 questions for Mr. Briggs?

11 MR. PAYNE: Just that --

12 CHAIRPERSON YOUNG: Is it a question?

13 MR. PAYNE: Yeah. Can you be open  
14 minded for the rest of the 4000 people if I'm  
15 convicted of being a criminal here? I mean I'm  
16 innocent, but I'm obviously presumed guilty right  
17 now.

18 CHAIRPERSON YOUNG: Well, the Board, Mr.  
19 Payne, is really going to be the ones you should  
20 be addressing those comments to.

21 MR. PAYNE: Okay.

22 CHAIRPERSON YOUNG: Not Mr. Briggs.  
23 We're the ones that are going to be making the  
24 decisions. And I can guarantee you that the Board  
25 is going to take careful consideration for what we

1 do with the very first CDO that we actually hear,  
2 knowing that there's going to be potentially 4500  
3 or so to come after that, possibly, in some form  
4 or another. I don't know at this point.

5 MR. PAYNE: After being here January the  
6 5th and you'd already decided to fine the CSD, I  
7 sat right there and listened to you and Roger  
8 Briggs toss it back and forth about what you were  
9 going to do to individuals in the prohibition zone  
10 to force them to put this Tri-W Montgomery Watson  
11 monstrosity, outrageously expensive thing.

12 And can you actually make a judgment  
13 with an open mind after what was said on January  
14 the 5th about --

15 CHAIRPERSON YOUNG: If I didn't think I  
16 could I would not be sitting here today. Okay?

17 MR. PAYNE: Okay, I'm going to count on  
18 you to be honest and fair, because I feel I got  
19 the weight of the whole village on my back. And  
20 I've read reams of material and hundreds if not  
21 tens of -- \$50, \$60 worth of copy just to get you  
22 guys all a copy of everything that I've  
23 researched.

24 So, I'm into this real heavy and I've  
25 got a lot at stake, and this village has got a lot



1 at stake. And we don't need CDOs. When my wife  
2 testified, she's a real estate broker, and what  
3 this is doing to property values --

4 CHAIRPERSON YOUNG: Okay, Mr. -- Mr.  
5 Payne, Mr. Payne, you're going to have your  
6 opportunity to get into this testimony with us.

7 MR. PAYNE: Okay.

8 CHAIRPERSON YOUNG: Please.

9 MR. RICHARDS: So not now.

10 CHAIRPERSON YOUNG: All right, --

11 MR. PAYNE: As you can see, I'm a little  
12 bit up tight. Thank you --

13 CHAIRPERSON YOUNG: Yeah, I understand.  
14 Okay.

15 MR. PAYNE: -- for your patience with  
16 me.

17 CHAIRPERSON YOUNG: Ask the next --

18 BOARD MEMBER SHALLCROSS: Can I just  
19 make a --

20 CHAIRPERSON YOUNG: Mr. Shallcross.

21 BOARD MEMBER SHALLCROSS: A couple  
22 people have mentioned this. In any case, whatever  
23 happens, you won't be a criminal. These aren't  
24 criminal proceedings.

25 MR. PAYNE: But I am considered guilty

1       until proven innocent, and nobody's proved I'm  
2       guilty.

3                   BOARD MEMBER SHALLCROSS:   The Board  
4       doesn't think so.

5                   MR. PAYNE:   Thank you.

6                   CHAIRPERSON YOUNG:   The staff has to  
7       prove its case, Mr. Payne.

8                   MR. PAYNE:   Pardon me?

9                   CHAIRPERSON YOUNG:   The staff has to  
10       prove its case.  It is the staff's burden to  
11       establish the existence of the facts necessary to  
12       prove liability.  That's their burden.  And you  
13       can argue when it's your time that they haven't  
14       done their job.

15                   MR. PAYNE:   So far all they've said is  
16       everybody in the prohibition zone's guilty.

17                   CHAIRPERSON YOUNG:   Okay, okay.  All  
18       right, let's -- thank you for your comments.

19                   MR. PAYNE:   Okay, thanks for --

20                   CHAIRPERSON YOUNG:   All right.  Have a  
21       good evening.

22                   MR. PAYNE:   Thanks for your patience  
23       with me.  I appreciate it greatly.

24                   CHAIRPERSON YOUNG:   All right.  Mr.  
25       Rochte.

1 MR. ROCHTE: Rochte.

2 CHAIRPERSON YOUNG: Rochte, okay.

3 MR. ROCHTE: Like ice tea but rock tea.

4 CHAIRPERSON YOUNG: Okay.

5 MR. ROCHTE: 1015; that's not the time,  
6 that's my CDO number.

7 CHAIRPERSON YOUNG: No. And you have  
8 questions for Mr. Briggs?

9 MR. ROCHTE: Yes, I do.

10 CHAIRPERSON YOUNG: Okay.

11 MR. ROCHTE: And thank you very much,  
12 Mr. Chair, for bending over backwards and giving  
13 us the opportunity. I really appreciate it.

14 Roger, I earlier asked about the MOU  
15 that was in -- is in place between the County and  
16 the Regional Water Board. Is there any reason why  
17 that can't be effected? Put into effect at this  
18 time and allow the County to be the ones to see  
19 through the cleaning of the water?

20 MS. OKUN: Objection to the extent that  
21 calls for a legal conclusion.

22 MR. ROCHTE: I didn't hear what she  
23 said.

24 CHAIRPERSON YOUNG: She objected based  
25 on your question calling for a legal conclusion --

1 MR. ROCHTE: Oh?

2 CHAIRPERSON YOUNG: -- of the witness.  
3 And I have to figure out whether to sustain the  
4 objection or overrule it. And I really don't  
5 know, so I'm going to have to ask my lawyer to  
6 advise me.

7 MR. ROCHTE: Okay.

8 CHAIRPERSON YOUNG: He's rolling his  
9 eyes.

10 (Laughter.)

11 MR. ROCHTE: Well, he's thinking. I  
12 just might elaborate --

13 CHAIRPERSON YOUNG: He's got to do  
14 something to --

15 MR. RICHARDS: To justify my trip to San  
16 Luis Obispo. What concerns me more is that this  
17 line of questioning departs radically from what  
18 the CSD asked Mr. Briggs to talk about in the  
19 first place.

20 And it does, in fact, require Mr. Briggs  
21 to speculate about strategies that might or might  
22 now be available to the Regional Board, but which  
23 are not a part of this proceeding.

24 So I would be inclined to advise you to  
25 sustain the objection, and direct Mr. Rochte to

1 focus his questions on the factual testimony that  
2 Mr. -- this is cross-examination.

3 CHAIRPERSON YOUNG: It is, and the scope  
4 is broader than --

5 MR. RICHARDS: I mean I know that it's  
6 quite possible to allow, you know, people to stray  
7 from the path, but this does depart substantially  
8 from the testimony that Mr. Briggs gave, based on  
9 the questions that were asked him by the Community  
10 Services District. And it does get into  
11 speculation about strategies that the Regional  
12 Board might or might not employ that are beyond  
13 the scope of this hearing.

14 CHAIRPERSON YOUNG: I don't think,  
15 though, that whatever the CSD has asked him  
16 necessarily limits what other recipients of CDOs  
17 who are also designated parties, you know, should  
18 be or should not be allowed to ask.

19 But, I'm going to allow the question.  
20 But if it does call on speculation I want the  
21 witness to advise us that it's speculative.  
22 Because I don't want any speculative answers.

23 MR. BRIGGS: The basic idea of the MOUs  
24 with all the counties, including San Luis Obispo  
25 County, is that the County would implement the

1 regulation of individual septic systems in  
2 accordance with our basin plan.

3 Since the basin plan prohibits  
4 discharges in the zone of Los Osos, then the  
5 County would have to conform with that. And, in  
6 fact, we did have the County in the lead role in  
7 trying to solve the wastewater management problems  
8 up until 1998. And the community decided they  
9 didn't like that. They wanted to have their own  
10 Community Services District to solve the problem.

11 MR. ROCHTE: Is there still the MOU in  
12 effect? Has it ever been discontinued or legally  
13 or whatever, administratively canceled?

14 MR. BRIGGS: I couldn't answer that.

15 MR. ROCHTE: I work for the state and I  
16 get --

17 CHAIRPERSON YOUNG: Does anyone else  
18 know on staff? Ms. Marks, do you know?

19 MR. ROCHTE: Yeah, is the MOU still in  
20 effect?

21 CHAIRPERSON YOUNG: Or Mr. --

22 MR. ROCHTE: Was there a time limit --

23 CHAIRPERSON YOUNG: -- Thompson?

24 MR. ROCHTE: -- on it? I have it right  
25 here.

1 MS. MARKS: My understanding is that the  
2 MOU is not officially in effect.

3 CHAIRPERSON YOUNG: Okay. All right,  
4 next question?

5 MR. ROCHTE: Are you sure about that?  
6 She says, you know, --

7 CHAIRPERSON YOUNG: Well, that's her --

8 MR. ROCHTE: Her understanding.

9 CHAIRPERSON YOUNG: -- understanding.  
10 Sounds like they don't know.

11 MR. ROCHTE: Can she, you know, produce  
12 anything that confirms that?

13 CHAIRPERSON YOUNG: Well, I don't know.  
14 I have --

15 MR. ROCHTE: I have it here and there's  
16 no date, but -- I work for the state and I do a  
17 lot of MOUs. And usually they stay in effect  
18 unless they are --

19 CHAIRPERSON YOUNG: Have you asked the  
20 County?

21 MR. ROCHTE: I'm asking the Board,  
22 because they're a signatory to it.

23 CHAIRPERSON YOUNG: All right, but it  
24 sounds like they don't know.

25 MR. ROCHTE: Anybody here from the

1 County?

2 (Pause.)

3 MR. ROCHTE: Is that guy who was  
4 subpoenaed from the health board --

5 CHAIRPERSON YOUNG: If you want to  
6 call --

7 MR. ONSTOT: Mr. Chairman, we subpoenaed  
8 the head of Environmental Health in the County. I  
9 don't know if he's here. We're obviously not  
10 going to get to him tonight, but he's part of our  
11 case-in-chief. And my understanding is that there  
12 is an MOU, that it is in effect.

13 CHAIRPERSON YOUNG: Okay. Would you  
14 accept that offer of evidence?

15 MR. ROCHTE: I didn't hear that, I'm  
16 sorry.

17 CHAIRPERSON YOUNG: Mr. Onstot said that  
18 it's his understanding that there is an MOU in  
19 effect; that they are calling a County employee as  
20 a witness to testify in their case.

21 MR. ROCHTE: Oh, very good. Okay. I  
22 will accept that, yes.

23 CHAIRPERSON YOUNG: Okay. Do you have  
24 any other questions --

25 MR. ROCHTE: I have a follow-up



1 question.

2 CHAIRPERSON YOUNG: -- any other  
3 questions for Mr. Briggs?

4 MR. ROCHTE: Yes, sir, for Mr. Briggs.  
5 Is there anything then that is keeping the Board,  
6 in your opinion, in your guidance, from allowing  
7 this MOU to go forward without having to  
8 administer CDOs? Use the MOU, not CDOs.

9 MS. OKUN: I object to the question to  
10 the extent that it assumes that the MOU somehow  
11 conflicts with CDOs or provides an alternative to  
12 CDOs.

13 I think the question misstates what the  
14 MOU says.

15 CHAIRPERSON YOUNG: I'm going to allow  
16 the question. Go ahead, Mr. Briggs.

17 MR. BRIGGS: Well, we're still operating  
18 as we did when the MOU was effective. We're not  
19 sure of the status right now. Some of the MOUs we  
20 use with the counties are just outdated and in  
21 need of revision.

22 But we're still operating in the same  
23 manner that I described in my answers to questions  
24 from Mr. Onstot, where the County is actually the  
25 primary agency a far as issuing permits for

1 individual systems.

2 But it's in conformance with the basin  
3 plan. And so that means that none can be issued  
4 for the Los Osos area, the prohibition zone of Los  
5 Osos.

6 MR. ROCHTE: Mr. Chair, --

7 CHAIRPERSON YOUNG: Mr. Richards has  
8 found some language in the Water Code that may  
9 help answer some of your questions. Go ahead.

10 MR. RICHARDS: Mr. Briggs, the Water  
11 Code was amended to sunset waivers, and the  
12 subdivision dealing with existing waivers said  
13 that a waiver in effect on January 1, 2000 shall  
14 remain valid until January 1, 2003 unless the  
15 Regional Board terminates that waiver prior to  
16 that date. And it may be renewed by the Regional  
17 Board in five-year increments.

18 Now, has the Regional Board adopted --  
19 has the Regional Board renewed the waiver under  
20 which the MOU took effect?

21 MR. BRIGGS: The waiver for individual  
22 systems?

23 MR. RICHARDS: For individual systems.

24 MR. BRIGGS: Actually, Matt, I think,  
25 has the better answer for that.

1           MR. THOMPSON: The simple answer to that  
2 question is no. We came out with a waiver  
3 resolution in 2002, it's waiver resolution 2002-  
4 115. It allows us to review waivers for  
5 particular discharges in five-year increments.

6           And I also understand that we're  
7 somewhat in limbo with the memorandum of  
8 understanding because one, it is outdated and  
9 there are some pending regulations coming from the  
10 state regarding septic systems.

11           That's my best understanding.

12           MS. MARKS: If I could just add to that  
13 we just met with the County yesterday updating the  
14 MOU. So it's in the process of being updated, but  
15 the old version is not currently in effect.

16           CHAIRPERSON YOUNG: Okay.

17           MS. OKUN: Just two things to answer Mr.  
18 Richards' question. This Region does not have a  
19 general waiver for septic tanks.

20           Also there's been a lot of testimony  
21 regarding this memorandum of understanding. It's  
22 not in the record, and I think that we should put  
23 it into the record.

24           CHAIRPERSON YOUNG: Okay. What exhibit  
25 number are you going to give it? Mr. Onstot, do

1 you have a copy of it?

2 MR. ONSTOT: Yes, Mr. Chair.

3 CHAIRPERSON YOUNG: Okay. All right.

4 MR. BRIGGS: Mr. Chair.

5 CHAIRPERSON YOUNG: Yes.

6 MR. BRIGGS: The state legislation is  
7 AB-885.

8 CHAIRPERSON YOUNG: Right.

9 MR. BRIGGS: And State Board is getting  
10 close, I guess, to acting on that. I think they  
11 have their draft regulations out. So I think all  
12 the regions are waiting for that guidance from the  
13 State Board. And that would be an opportune time  
14 to update MOUs with the counties.

15 CHAIRPERSON YOUNG: Okay. Any other  
16 questions?

17 MR. ROCHTE: You do a great job of  
18 translating legalese into lay terms. Does that  
19 mean there is not a current MOU, but there is  
20 legislation, there is cooperation with the County  
21 to --

22 CHAIRPERSON YOUNG: To do something.

23 MR. ROCHTE: Yeah. Presently there  
24 isn't one. Mr. Chair, what I'm getting at is  
25 trying to avoid -- or I should say trying to speed

1 up at the rate at which clean water is achieved in  
2 Los Osos. And if it can be done without these  
3 CDOs, and instead through the vehicle of an MOU  
4 that has been in place, we'll be that much further  
5 -- that much closer to clean water.

6 I just have one more, just to get the  
7 record right. This morning Mr. Blakeslee spoke  
8 and very eloquently, and I support his comments.  
9 I just wonder if his rep can confirm if his  
10 comments this morning about trying to seek a  
11 legislative solution would include something like  
12 the MOU so that we don't have to end up with CDOs?

13 CHAIRPERSON YOUNG: I think he was  
14 pretty --

15 MR. ROCHTE: Political?

16 CHAIRPERSON YOUNG: -- vague,  
17 intentionally.

18 MR. ROCHTE: But could it be that the  
19 MOU and that sort of thing could be involved in  
20 it?

21 CHAIRPERSON YOUNG: Well, we don't need  
22 to go there. I don't know what he intends, and he  
23 really didn't want to share it with us. He did  
24 say it would make some people unhappy. I did hear  
25 that. And I don't know what that means.

1 MR. ROCHTE: It means --

2 (Parties speaking simultaneously.)

3 BOARD MEMBER PRESS: Mr. Chair, Mr.  
4 Chair, --

5 CHAIRPERSON YOUNG: Yes.

6 BOARD MEMBER PRESS: -- are we going to  
7 have a conversation here now?

8 (Parties speaking simultaneously.)

9 CHAIRPERSON YOUNG: Well, I think we  
10 kind of are, Dr. Press, and we only have a couple  
11 of minutes left before I think --

12 BOARD MEMBER PRESS: Well, --

13 CHAIRPERSON YOUNG: Why not? I mean at  
14 this late --

15 (Parties speaking simultaneously.)

16 BOARD MEMBER PRESS: -- be frank about  
17 it to the extent of a free-for-all, you know.

18 (Laughter.)

19 CHAIRPERSON YOUNG: Well, at this hour  
20 things just kind of progress into this mode. Do  
21 you have any other questions for Mr. Briggs?

22 MR. ROCHTE: No, I don't.

23 CHAIRPERSON YOUNG: Okay. And, Mr.  
24 Moylan, have you already asked questions of Mr.  
25 Briggs?

1 MR. MOYLAN: Yeah, but I --

2 CHAIRPERSON YOUNG: Okay. Well,  
3 that's --

4 MR. MOYLAN: Okay, I want to ask them of  
5 you, then.

6 CHAIRPERSON YOUNG: You want to ask him  
7 what?

8 MR. MOYLAN: I'd like to ask somebody a  
9 question or two.

10 CHAIRPERSON YOUNG: No, no, Mr. Briggs  
11 is the witness who's being cross-examined, so --

12 MR. MOYLAN: I'd like to cross-examine  
13 him with two questions.

14 CHAIRPERSON YOUNG: You've already done  
15 that, sir. And your time is up for that cross-  
16 examination. I'm sorry.

17 MR. MOYLAN: This is important and --

18 CHAIRPERSON YOUNG: I'm sorry, every  
19 question, I'm sure, is important that every person  
20 would like to ask. Okay?

21 Now, it is 10:00 and --

22 MR. MOYLAN: I know, but you were in a  
23 conversation with this man and I was waiting and  
24 waiting --

25 CHAIRPERSON YOUNG: I know, but at some

1 point I need to draw things to a close for this  
2 evening.

3 MR. MOYLAN: One question. One  
4 question. One quick answer.

5 CHAIRPERSON YOUNG: Yes or no?

6 (Audience speaking simultaneously.)

7 AUDIENCE SPEAKERS: Yes.

8 CHAIRPERSON YOUNG: All right, one  
9 question. A short question and no preliminary  
10 statements in front of the question.

11 MR. MOYLAN: Mr. Briggs, will you please  
12 consider the human impact at issuing these CDOs  
13 will have and act on that consideration in a  
14 compassionate way?

15 MR. BRIGGS: Yes.

16 MR. MOYLAN: Thank you.

17 CHAIRPERSON YOUNG: Okay.

18 (Applause.)

19 CHAIRPERSON YOUNG: Okay, I think we're  
20 going to stop now. Okay, as I said. Let's first  
21 do this. Yeah, we're going to set a date for the  
22 continuation. I just want to get something  
23 straight for the record.

24 Okay, so, Mr. Onstot, you have 64  
25 minutes left, 64 minutes left for your case, all



1 right? And, Michael, you'll make note of that, 64  
2 minutes.

3 MR. THOMAS: Got it.

4 CHAIRPERSON YOUNG: Okay, and when we  
5 resume this hearing, then, we're going to continue  
6 where we're leaving off right now. We're done  
7 with Mr. Briggs' cross-examination.

8 What's going on now?

9 UNIDENTIFIED SPEAKER: No, I was just  
10 standing up.

11 CHAIRPERSON YOUNG: Okay.

12 (Laughter.)

13 CHAIRPERSON YOUNG: See, this is why I  
14 had to draw it to a close because if I allowed him  
15 to ask more questions this is what I was afraid.

16 UNIDENTIFIED SPEAKER: No, no, I'm good.  
17 I was just standing up.

18 CHAIRPERSON YOUNG: Yeah, okay, that's  
19 fine. All right, so I guess -- I do need to hear  
20 now from staff as to when the Board can continue  
21 this logistically.

22 Go ahead. I mean is it a question about  
23 this?

24 UNIDENTIFIED SPEAKER: Yes, sir.

25 CHAIRPERSON YOUNG: Go ahead.

1 UNIDENTIFIED SPEAKER: Just to make it  
2 crystal clear to the crowd here, sir, as today is  
3 April 28th, we'll have nothing we need to be in  
4 compliance with until your next meeting?

5 CHAIRPERSON YOUNG: That's correct. The  
6 Board is taking no action tonight; there's been no  
7 vote on anything. We haven't done anything with  
8 respect to any individual property whatsoever.

9 UNIDENTIFIED SPEAKER: Thank you.

10 CHAIRPERSON YOUNG: Yeah, that should be  
11 clear.

12 MR. SHIPE: One more quick question?  
13 Will anything be allowed to change?

14 MR. RICHARDS: No.

15 CHAIRPERSON YOUNG: Well, let me tell  
16 you what is not going to change. There will be no  
17 more interested persons offering their comments.  
18 So that part is closed, okay.

19 Staff has done its presentation and so  
20 that is now closed, okay.

21 Mr. Briggs.

22 MS. OKUN: I would suggest adding this  
23 to the May 12th agenda in terms of rescheduling.

24 CHAIRPERSON YOUNG: Okay, we'll get to  
25 that in one second. And so there's not going to

1 be any changes actually.

2 MR. SHIPE: Okay.

3 CHAIRPERSON YOUNG: Yeah, we're going to  
4 just continue where we left off.

5 MR. SHIPE: Just this last week has been  
6 a little crazy with changes, and I just wanted to  
7 make sure we weren't going to be doing that again  
8 for the next 13 days.

9 CHAIRPERSON YOUNG: Well, I mean, see,  
10 staff can make recommendations. And, you know,  
11 they operate, when we do things like this they're  
12 operating independently of what we're doing on  
13 this side.

14 MR. SHIPE: Yeah, I understand that.

15 CHAIRPERSON YOUNG: I don't control what  
16 they do. I don't know what they're up to. So,  
17 they're going to do what they do, and the Board is  
18 going to do what it does.

19 MR. SHIPE: That's basically what I was  
20 trying to get an idea of what to expect for the  
21 next two weeks.

22 CHAIRPERSON YOUNG: Well, you're not  
23 going to hear --

24 MR. SHIPE: Okay.

25 CHAIRPERSON YOUNG: -- from me. Okay?

1 MR. SHIPE: That's fine.

2 (Laughter.)

3 CHAIRPERSON YOUNG: I've already laid  
4 out my --

5 MR. SHIPE: That's all I wanted to know.

6 I -- I --

7 CHAIRPERSON YOUNG: -- my orders of  
8 presentation and that's all --

9 MR. SHIPE: You've answered it  
10 perfectly.

11 CHAIRPERSON YOUNG: Okay. All right.  
12 Now, May 11th did I hear?

13 MS. OKUN: May 12th.

14 CHAIRPERSON YOUNG: May 12th? And  
15 that's --

16 MS. OKUN: It's a Board meeting, but the  
17 agenda is very light.

18 BOARD MEMBER JEFFRIES: Is it a one-day  
19 or two-day meeting?

20 MS. OKUN: Right now it's scheduled for  
21 a day and a half. We have Morro Bay on the 11th.

22 BOARD MEMBER JEFFRIES: Mr. Chair, my  
23 question is are we going to continue to start on  
24 May 11th at 1:00? That's what the agenda that I  
25 have received says. Is there going to be enough

1 time on the 12th to proceed? Has there been taken  
2 enough off the agenda on the 12th to --

3 CHAIRPERSON YOUNG: Okay, how about  
4 this. The 11th, is that -- you're saying that's  
5 the open day. I know the 12th is our light Board  
6 meeting.

7 BOARD MEMBER PRESS: The 11th is not  
8 a --

9 CHAIRPERSON YOUNG: The 11th is out for  
10 you?

11 BOARD MEMBER PRESS: No, you have an  
12 item on the 11th.

13 MS. OKUN: Right, the Morro Bay item.

14 CHAIRPERSON YOUNG: Okay, is that  
15 definite?

16 MS. OKUN: They had a meeting last  
17 night; we don't know what happened yet. And that  
18 can't be moved to the 12th because Alexis Strauss  
19 isn't available on the 12th.

20 BOARD MEMBER SHALLCROSS: Is there any  
21 way we can clear the 12th?

22 CHAIRPERSON YOUNG: Okay, the 12th right  
23 now is what we have scheduled as a light Board  
24 meeting, is that correct? And on the 11th we  
25 tentatively have the Morro Bay Cayucas?

1 MS. OKUN: It's noticed for that.

2 CHAIRPERSON YOUNG: It's noticed for  
3 that. And that is at 1:00. Is that -- we're  
4 noticing it for 1:00?

5 MS. OKUN: Yes.

6 CHAIRPERSON YOUNG: Okay, we --

7 MR. ONSTOT: Mr. Chair, the 12th is  
8 really bad for our side, too.

9 CHAIRPERSON YOUNG: The 12th is? Okay.  
10 What about the 11th?

11 MR. ONSTOT: The 11th is open; there is  
12 a CSD Board meeting, but it shouldn't be a --

13 CHAIRPERSON YOUNG: Right.

14 MS. OKUN: I don't know if we can get a  
15 notice out in time because we still have to talk  
16 to the people on Morro Bay to find out what  
17 happened last night. We'd have to get the notice  
18 out on Monday.

19 CHAIRPERSON YOUNG: Well, can we  
20 continue the Morro Bay matter to another date?

21 MR. BRIGGS: Well, we could. We'd  
22 prefer to move on it if it's ready to go.

23 CHAIRPERSON YOUNG: Well, the notice  
24 that would go out for Monday would be what?

25 MS. OKUN: We have to provide a ten-day

1 notice for the continued hearing.

2 CHAIRPERSON YOUNG: For this continued  
3 hearing. Okay. So the problem we've got is that  
4 Thursday we tentatively have Morro Bay, which is  
5 interfering with trying to do --

6 BOARD MEMBER PRESS: I think your  
7 noticing requirements require that you do it on  
8 the 12th.

9 CHAIRPERSON YOUNG: Okay, but we have  
10 a --

11 BOARD MEMBER PRESS: I know it's  
12 inconvenient for everybody.

13 CHAIRPERSON YOUNG: Okay. Yeah. All  
14 right, --

15 MR. BRIGGS: Mr. Chair, I think Mr.  
16 Onstot said it's not good for them, but is it  
17 something that you could still do?

18 MR. ONSTOT: Well, the CSD would  
19 obviously be represented, but I'm engaged in  
20 another matter, so I won't be here. And Mr.  
21 Murphy is going to be a brand new dad. But it  
22 shouldn't hold up all of these proceedings.

23 CHAIRPERSON YOUNG: Well, I don't want  
24 to do that. If he has -- can I inquire a little  
25 bit about what you have to do on that Friday?

1                   MR. ONSTOT: Yes, I'm going to be in  
2 Pittsburgh.

3                   CHAIRPERSON YOUNG: All right. And I  
4 prefer that they have their attorney that has  
5 started with this, continue with this. Although  
6 I'm sure Mr. Murphy is just chomping at the bit.

7                   MR. MURPHY: New child on Tuesday.

8                   CHAIRPERSON YOUNG: Huh?

9                   MR. MURPHY: New child on Tuesday.

10                  CHAIRPERSON YOUNG: Yeah, okay.

11                  MR. MURPHY: I won't be awake.

12                  CHAIRPERSON YOUNG: All right, well, how  
13 much of the 12th -- well, the 12th doesn't work,  
14 so what's then the next day after that? Looks  
15 like the 11th potentially is not good because of  
16 Morro Bay. All right, the 12th is not good  
17 because of some conflicts.

18                  What's the next day?

19                  BOARD MEMBER HAYASHI: What if we start  
20 earlier on Thursday, start at 8:30.

21                  BOARD MEMBER PRESS: You're not going to  
22 get the notice out.

23                  CHAIRPERSON YOUNG: Can we get --

24                  (Parties speaking simultaneously.)

25                  MS. OKUN: Well, yeah, we can send the



1 notice out Monday, but that would potentially only  
2 give us about four hours for Los Osos.

3 MR. THOMAS: Why? Why is that only  
4 going to --

5 CHAIRPERSON YOUNG: Well, because Morro  
6 Bay's on the same day.

7 MR. THOMAS: Well, we can move Morro Bay  
8 to Friday.

9 MS. OKUN: No, we can't.  
10 We can't.

11 CHAIRPERSON YOUNG: No. Okay. Mr.  
12 Jeffries, you have a suggestion?

13 BOARD MEMBER JEFFRIES: Well, yes, I  
14 know we're going to be here on June the 8th for an  
15 offsite meeting, and I was thinking since we're  
16 down here already we could stay and hold this on  
17 the 9th, which would be a Friday.

18 Is that graduation for everybody?

19 UNIDENTIFIED SPEAKER: Yes.

20 CHAIRPERSON YOUNG: Okay.

21 MR. BRIGGS: What about --

22 CHAIRPERSON YOUNG: Later in May.

23 MR. BRIGGS: What about the suggestion  
24 of May 11th with the idea that we break for Morro  
25 Bay at 1:00.

1 CHAIRPERSON YOUNG: And then --

2 MS. OKUN: If it's still on. And if  
3 it's not on, we'll go all day.

4 MR. BRIGGS: Yeah.

5 CHAIRPERSON YOUNG: Okay. Well, I think  
6 that makes sense. At least we can --

7 BOARD MEMBER JEFFRIES: Start earlier in  
8 the day.

9 CHAIRPERSON YOUNG: Start earlier in the  
10 day, try to get through the --

11 MR. BRIGGS: Right, and then maybe go  
12 back --

13 CHAIRPERSON YOUNG: -- CSD's  
14 presentation.

15 MR. RICHARDS: That's going to be  
16 extremely inconvenient for me, because I'm going  
17 to be in San Diego on the 10th.

18 CHAIRPERSON YOUNG: Okay.

19 MR. RICHARDS: So getting here from San  
20 Diego is, I don't know what the --

21 UNIDENTIFIED SPEAKER: Six hours.

22 (Parties speaking simultaneously.)

23 CHAIRPERSON YOUNG: There are going to  
24 be some people that are going to have a problem  
25 with whatever day we pick. So, I'm just trying to

1 minimize that disruption. I saw this lady in the  
2 back, is it Ms. Colin? Ms. Colin? Yes, did you  
3 have a problem with that day?

4 AUDIENCE SPEAKER: Somebody said  
5 Saturday; that sounded great.

6 CHAIRPERSON YOUNG: Saturday?

7 AUDIENCE SPEAKER: Yeah, it sounded  
8 great to me. I don't know about anybody else, but  
9 taking off work really sucks.

10 CHAIRPERSON YOUNG: And, you know what,  
11 yeah, I work, too. And so it does suck.

12 BOARD MEMBER SHALLCROSS: So do I.

13 CHAIRPERSON YOUNG: Believe me. So, you  
14 know, --

15 AUDIENCE SPEAKER: (inaudible).

16 CHAIRPERSON YOUNG: All right, yes, Ms.  
17 Moylan?

18 MS. MOYLAN: I have an important meeting  
19 about students scheduled to (inaudible) for that  
20 day. So I wouldn't be able to attend --

21 CHAIRPERSON YOUNG: Would your husband  
22 be able to?

23 MS. MOYLAN: He would be able to --

24 CHAIRPERSON YOUNG: Okay. Okay.

25 MS. MOYLAN: But I wouldn't be able to

1 attend, myself.

2 CHAIRPERSON YOUNG: Well, it's someone  
3 who just represents the property. I mean this is  
4 not going against individuals, it's really being  
5 issued against properties.

6 MS. MOYLAN: Well, even that, would he  
7 be able to submit my presentation, and would that  
8 be included in the record?

9 CHAIRPERSON YOUNG: Yeah, if he wants to  
10 read it --

11 MS. MOYLAN: But he couldn't submit the  
12 written --

13 CHAIRPERSON YOUNG: You know, the  
14 written testimony --

15 MS. MOYLAN: But if there weren't time  
16 to read the whole -- my whole presentation. I  
17 mean that was a question I had just as you told me  
18 today that we were going to have to split, have  
19 seven minutes, you know, it's 15 minutes between  
20 us. I have a 15-minute presentation. He has a  
21 15-minute presentation. If I don't have time for  
22 my whole presentation, can I submit the written  
23 presentation and that will be included in the  
24 record? Even though I don't get a chance to say  
25 it orally.

1 CHAIRPERSON YOUNG: No.

2 UNIDENTIFIED SPEAKER: Fifteen minutes  
3 is 15 minutes.

4 MS. MOYLAN: That's pretty bizarre to  
5 me, because I -- 15 minutes to talk about what's  
6 been going on through this whole thing, and to  
7 talk about our site-specific evidence, as well.  
8 And we only have 15 minutes for that. And then we  
9 can't submit what we don't have time for. It just  
10 seems highly unjust when this is so impactful on  
11 each of our lives. I'm stunned. Thank you.

12 (Audience speaking simultaneously.)

13 UNIDENTIFIED SPEAKER: Set the date for  
14 the 11th and let's roll. I don't want to be here  
15 any more than anybody else.

16 CHAIRPERSON YOUNG: Okay.

17 BOARD MEMBER SHALLCROSS: Forty-five  
18 times 15 minutes is ten hours.

19 CHAIRPERSON YOUNG: All right.

20 UNIDENTIFIED SPEAKER: So you're talking  
21 about 12 hours.

22 BOARD MEMBER SHALLCROSS: And that's  
23 without any extra time. So it doesn't even look  
24 like we're going to get through that in a day.

25 CHAIRPERSON YOUNG: Right.

1                   BOARD MEMBER SHALLCROSS: Yeah, they  
2 have an additional hour and there's --

3                   (Parties speaking simultaneously.)

4                   BOARD MEMBER SHALLCROSS: Can you just  
5 wait till I finish, please? Thank you. So it  
6 looks to me like this is going to go two days  
7 anyway, or a day and a half.

8                   CHAIRPERSON YOUNG: Right.

9                   BOARD MEMBER SHALLCROSS: So maybe we  
10 should just do it on a separate, like later in May  
11 sort of thing.

12                   CHAIRPERSON YOUNG: Well I think we have  
13 the morning of the 11th right now that we can use,  
14 and I think we should use that time.

15                   BOARD MEMBER SHALLCROSS: And then  
16 continue it after May?

17                   CHAIRPERSON YOUNG: Yeah, we're going to  
18 have to.

19                   BOARD MEMBER SHALLCROSS: I don't know,  
20 it just seems like it would be better if we did it  
21 all in one big chunk --

22                   CHAIRPERSON YOUNG: We thought we were -  
23 -

24                   BOARD MEMBER SHALLCROSS: -- a continued  
25 day and a half. Rather than, you know, a little

1 today, a little on the 11th, a little --

2 CHAIRPERSON YOUNG: Okay.

3 BOARD MEMBER SHALLCROSS: -- you know,  
4 that, I think things get too far apart.

5 CHAIRPERSON YOUNG: Dr. Press, do you  
6 feel that way, also?

7 BOARD MEMBER PRESS: Yeah, I think that  
8 we don't actually have any idea how the Board is  
9 going to approach this. So, you know, I would  
10 like an opportunity for the Board to finish the  
11 preliminary designated parties and then have an  
12 opportunity to discuss some options.

13 CHAIRPERSON YOUNG: Before we listen to  
14 the individual?

15 BOARD MEMBER PRESS: Well, before we  
16 listen to all of them, perhaps. So, you guys  
17 suggested that we hear one CDO and then we  
18 deliberate. And I think that we need to get to  
19 that point, and then we'll know more about what we  
20 need.

21 CHAIRPERSON YOUNG: Okay, but do you  
22 want to do -- do you want to use the 11th at all  
23 to complete any of this?

24 BOARD MEMBER PRESS: I still think we  
25 should use the 12th because the 12th gives us a

1 full day.

2 CHAIRPERSON YOUNG: But we have a Board  
3 meeting scheduled for that day.

4 BOARD MEMBER PRESS: Right. Most of it  
5 is consent calendar, most of it can be -- is  
6 written reports.

7 CHAIRPERSON YOUNG: But the 12th doesn't  
8 work for --

9 BOARD MEMBER PRESS: It's not -- it's  
10 inconvenient for --

11 CHAIRPERSON YOUNG: He's going to be in  
12 Pittsburgh.

13 BOARD MEMBER PRESS: -- the CSD. You  
14 can have other counsel. It's inconvenient for  
15 everybody. Remember, you need a quorum. You have  
16 five Members. You have to have this quorum. So,  
17 it seems to me you solve that problem first.  
18 They're a designated party, but they're not one of  
19 the CDO recipients.

20 CHAIRPERSON YOUNG: Mr. Briggs.

21 MR. BRIGGS: I think you could probably  
22 do what Mr. Shallcross was advocating, the 11th  
23 and the 12th. Because we could fit in Morro Bay,  
24 if it's still on the agenda, at 1:00. Get back to  
25 Los Osos in the afternoon. And start Los Osos in



1 the morning. Morro Bay at 1:00. Back to Los Osos  
2 in the afternoon. And pick up Los Osos again on  
3 Friday. We have quite a few hours there.

4 CHAIRPERSON YOUNG: So how much of the  
5 Board -- the agendized Board meeting on the 12th  
6 are we going to now dispense with to make room?  
7 How much time are we really going to have for the  
8 12th?

9 MR. BRIGGS: How much time do we have  
10 available?

11 CHAIRPERSON YOUNG: Yeah, on the 12th.

12 MR. BRIGGS: For the regular Board  
13 meeting? Probably just a couple hours.

14 CHAIRPERSON YOUNG: Okay. All right.  
15 And Russ and John, --

16 BOARD MEMBER JEFFRIES: Well, I think  
17 that Dr. Press is exactly correct. Is that the  
18 first consideration that you, as Chair, make sure  
19 you have a quorum. And I think that we already  
20 have committed to be here on the 11th and the  
21 12th. And if we can start say earlier, 8:30 on  
22 the 11th, and start with where we left off  
23 tonight. And proceed as long as we can till we  
24 have to handle the other agenda item. And once  
25 that's over, then we can proceed on with this.

1 And then continue on, if we need to, on the 12th.

2 I think that you have your quorum, but  
3 if you try to juggle it around on other days --

4 CHAIRPERSON YOUNG: Okay.

5 BOARD MEMBER JEFFRIES: -- I think you  
6 may lose one Member --

7 CHAIRPERSON YOUNG: All right, John?

8 BOARD MEMBER HAYASHI: I have to go home  
9 early on Friday. No, I'll be here.

10 (Laughter.)

11 CHAIRPERSON YOUNG: I know this is past  
12 your bedtime, John.

13 BOARD MEMBER HAYASHI: My bedtime is  
14 7:30.

15 CHAIRPERSON YOUNG: Okay. Mr. Onstot.

16 MR. ONSTOT: Mr. Chair, that works for  
17 us. We will have it covered here one way or the  
18 other.

19 CHAIRPERSON YOUNG: Okay, fine.

20 MR. ONSTOT: We've got 65 lawyers, we  
21 should not be the stumbling block.

22 CHAIRPERSON YOUNG: Okay.

23 MR. ONSTOT: We'll do the Board's  
24 pleasure.

25 CHAIRPERSON YOUNG: Okay. All right.

1 Yes, sir?

2 UNIDENTIFIED SPEAKER: If some of the  
3 CDOs can't be here, what would be the --

4 CHAIRPERSON YOUNG: On the 11th?

5 UNIDENTIFIED SPEAKER: -- procedure?

6 CHAIRPERSON YOUNG: On the 11th or the  
7 12th?

8 UNIDENTIFIED SPEAKER: The 12th,  
9 speaking for myself. I'm going to be (inaudible).

10 CHAIRPERSON YOUNG: Okay. Well, let's  
11 see, how do we want to handle that?

12 BOARD MEMBER PRESS: It's highly  
13 unlikely that you could have 15-minutes times 45  
14 in the timeframe of the 11th and 12th. You have  
15 an hour that you have to finish up with the CSD  
16 presentation. You know, you're going to have  
17 cross-examination, you're going to have  
18 discussion. I really don't think that it's likely  
19 that we'll get to all of them in that timeframe.

20 CHAIRPERSON YOUNG: Okay, but on the  
21 12th we will get --

22 BOARD MEMBER PRESS: I'm including the  
23 12th.

24 CHAIRPERSON YOUNG: Okay, but so let's -  
25 - I want to be clear, then, as to who needs to

1       come on the 11th or 12th, especially the 12th.  
2       And if some, you know, cannot make it for some  
3       reason, you know, we can take that into  
4       consideration now.

5               BOARD MEMBER PRESS: Well, maybe when  
6       you send out the notice you can ask if some of the  
7       CDO recipients can let you know whether they are  
8       ones that can't make it on that day. And they can  
9       be continued.

10              CHAIRPERSON YOUNG: I think what we need  
11       to do is just to go ahead and notice it and  
12       anticipate that they're going to show up. And if  
13       there is a problem with attendance, then they're  
14       just going to have to contact Mr. Thomas so that  
15       we can just take that into consideration.

16              But I don't know whether there are going  
17       to be some problems, but I think we can  
18       accommodate issues like that with schedules. Yes,  
19       ma'am?

20              UNIDENTIFIED SPEAKER: Are you going to  
21       put them in some kind of order so that --

22              CHAIRPERSON YOUNG: Well, we do have an  
23       order that we talked about earlier. And I think -  
24       - do you have that order? I think Mr. Shipe is  
25       first.

1                   MR. SHIPE: Yeah, and I believe that he  
2 was going to be second.

3                   CHAIRPERSON YOUNG: And --

4                   MR. SHIPE: But he won't be able to be  
5 here until late Friday.

6                   CHAIRPERSON YOUNG: Okay.

7                   MR. SHIPE: I just wanted to remind you  
8 of that.

9                   CHAIRPERSON YOUNG: Okay.

10                  BOARD MEMBER SHALLCROSS: How late  
11 Friday?

12                  UNIDENTIFIED SPEAKER: I believe I land  
13 (inaudible).

14                  CHAIRPERSON YOUNG: Well, okay, that  
15 we're going to have a problem with. Okay. I mean  
16 I would have you go sooner. And if we're ready to  
17 go, then we'll just pass you up and you'll fall in  
18 later is all that will happen. But we do --

19                  UNIDENTIFIED SPEAKER: So long as I can  
20 go, that's fine.

21                  CHAIRPERSON YOUNG: Yeah. Well, I think  
22 the reason for having you go earlier than later in  
23 the pack is that your comments were more  
24 extensive; your written comments were more  
25 extensive. And I think we felt that you might

1 have a lot more to bring to bear on the issues.  
2 And that was really, I think, the reason for that.  
3 And to give other people the opportunity to  
4 incorporate your testimony by reference.

5 So, --

6 UNIDENTIFIED SPEAKER: I'll see if I can  
7 get an earlier flight.

8 CHAIRPERSON YOUNG: Okay. So, well, Mr.  
9 Stoneman now is not an issue. Mr. Moylan is not  
10 an issue. And Colin is not an issue. So it's Mr.  
11 Shipe, the first one. And then what we will do at  
12 that point is just start to go alphabetically.  
13 Alphabetically.

14 UNIDENTIFIED SPEAKER: How about the CDO  
15 numbers?

16 CHAIRPERSON YOUNG: Not by numbers. And  
17 the reason is, and this is just to make it easy  
18 for me and the Board Members, it's the way our  
19 binders are set up so that we can just start to go  
20 through this material and keep track of everything  
21 that's being presented. And go through the  
22 written testimony so we can track the witnesses in  
23 an efficient way.

24 So, that's why. So, Mr. Alabe.

25 MR. ALABE: Or Mr. Payne, we're

1 combined.

2 CHAIRPERSON YOUNG: That's right, so you  
3 guys then would be second it looks like, second  
4 and third.

5 MR. ALABE: Have you decided on a day  
6 yet?

7 CHAIRPERSON YOUNG: Yeah, we did. We  
8 decided on May 11th to continue this. And are we  
9 going to start then at 8:30?

10 UNIDENTIFIED SPEAKER: And just to  
11 remind, I'm combined, as well, with Mr. Borthwick.  
12 And I will see if I can get him up here on that  
13 day.

14 CHAIRPERSON YOUNG: Okay. Mr. Briggs,  
15 then are we starting at 8:30 on the 11th?

16 (Parties speaking simultaneously.)

17 CHAIRPERSON YOUNG: Well, you'll come as  
18 soon as you can come. Just don't get a ticket for  
19 speeding.

20 MR. RICHARDS: I'll try not to.

21 MR. BRIGGS: If we start at 8:30 it  
22 pretty much requires travel the night before for  
23 the distant Board Members. That's why we started  
24 at 10:00 today, was to not have that. So it's  
25 really up to you.

1                   CHAIRPERSON YOUNG:  So how early would  
2                   you want to start on the 11th?

3                   BOARD MEMBER PRESS:  It makes no point  
4                   to start later than that, because --

5                   CHAIRPERSON YOUNG:  On the 11th.  Okay.

6                   BOARD MEMBER PRESS:  I mean that's what  
7                   I was saying, it's either you do the 12th, or you  
8                   start at 1:00 on the 11th.  I mean --

9                   CHAIRPERSON YOUNG:  But 1:00 on the 11th  
10                  is not an option right now.

11                  BOARD MEMBER PRESS:  I understand.  I'm  
12                  telling you that this is, I think, too much to  
13                  ask.  I mean if that's their decision, then I'll  
14                  do it so you have a quorum.  But it makes no sense  
15                  for me to come in the night before.

16                  MS. OKUN:  Can I make one suggestion?  
17                  If we do know by Monday in time to get the notice  
18                  out that the Morro Bay item is going to be  
19                  continued, we could start at 10:00 in that case,  
20                  because it would be the only thing on the agenda.

21                  CHAIRPERSON YOUNG:  Yes.

22                  MR. BRIGGS:  Would you prefer 10:00?

23                  BOARD MEMBER PRESS:  Well, you can try.

24                  MR. BRIGGS:  Okay.

25                  CHAIRPERSON YOUNG:  Okay, so 10:00 is



1 what you'd prefer anyway on the 11th, regardless  
2 of what happens with Morro Bay? So you can drive  
3 down that morning.

4 BOARD MEMBER PRESS: Yeah, but then, of  
5 course, it doesn't make much sense. You're only  
6 getting a couple hours, and you know, --

7 CHAIRPERSON YOUNG: Okay. Well, you  
8 know what, either we accommodate, you know, the  
9 inconvenience of traveling and getting here and  
10 get a couple of hours and hope that Morro Bay is  
11 resolved without us having to do much. Or we  
12 don't do anything in the morning.

13 So, we'll start at 10:00 on the 11th.  
14 Okay. All right, sounds like we have a plan,  
15 right? We're going to start at 10:00 on May 11th.  
16 And people will be given notices. Are they going  
17 to be mailed those notices, Ms. Okun? Or Mr.  
18 Thomas? And how are you going to do that?

19 MR. THOMAS: By email, by mail and by  
20 posting it on the website.

21 CHAIRPERSON YOUNG: Okay.

22 MR. SHIPE: Just a question on the 11th.  
23 So if Morro Bay is on, we are going till 1:00 or  
24 till whenever you break, and then we're going to  
25 go that evening, too?

1 CHAIRPERSON YOUNG: Yeah.

2 MR. RICHARDS: That afternoon, anyway.

3 CHAIRPERSON YOUNG: Yeah, certainly that  
4 afternoon, and possibly into the evening --

5 MR. SHIPE: Okay, that's all right,  
6 okay, yeah. Okay, I just wanted to know how much  
7 time I need to keep clear on my calendar because  
8 two hours is what they went through their first  
9 hour, so.

10 CHAIRPERSON YOUNG: That's right, yeah.  
11 We could potentially go through the 11th, all the  
12 way through, and break in the evening. We're  
13 going to go over to the 12th because that's our  
14 regular Board meeting. Yeah.

15 Okay, yes, sir?

16 UNIDENTIFIED SPEAKER: Are we doing it  
17 on the 12th also?

18 CHAIRPERSON YOUNG: Yes. Why don't you  
19 folks who have questions come up to the podium so  
20 we can still hear.

21 UNIDENTIFIED SPEAKER: Are we dismissed?

22 CHAIRPERSON YOUNG: You're not dismissed  
23 yet, no.

24 UNIDENTIFIED SPEAKER: I just was  
25 wondering what was the time for the 12th?

1 CHAIRPERSON YOUNG: Oh.

2 UNIDENTIFIED SPEAKER: We didn't say  
3 that.

4 CHAIRPERSON YOUNG: Okay. Mr. Briggs?

5 MR. BRIGGS: I think we should shoot for  
6 10:00.

7 CHAIRPERSON YOUNG: 10:00 then on the  
8 12th; 10:00 on the 12th.

9 UNIDENTIFIED SPEAKER: And that will go  
10 till what time?

11 CHAIRPERSON YOUNG: That will probably  
12 go all day, and we'll cut it off when we can't  
13 take it anymore.

14 UNIDENTIFIED SPEAKER: Well, after  
15 seeing how resilient you are today, we could be  
16 here until 1:00, 2:00 in the morning, you know.

17 (Laughter.)

18 CHAIRPERSON YOUNG: We're not going to  
19 be feeling very good tomorrow morning. Yes, sir.  
20 Any other questions?

21 UNIDENTIFIED SPEAKER: Same question as  
22 to how late on that Friday.

23 CHAIRPERSON YOUNG: Yeah, don't know at  
24 this point. We'll just play it by ear.

25 UNIDENTIFIED SPEAKER: Okay, thank you.

1                   CHAIRPERSON YOUNG:  And of course that  
2 depends on how much we get done on the 11th, which  
3 we don't know.

4                   Okay, folks, the meeting is adjourned  
5 for now.  We will continue at 10:00 on May 11th.

6                   (Whereupon, at 10:30 p.m., the meeting  
7 was adjourned, to reconvene at 10:00  
8 a.m., Thursday, May 11, 2006, at this  
9 same location.)

10                   --o0o--

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Central Coast Regional Water Quality Control Board Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of May, 2006.