

PUBLIC MEETING  
BEFORE THE  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of: )  
 )  
Proposed Cease and Desist Orders )  
Against Individual Property Owners )  
and Residents in Los Osos/Baywood )  
Park Prohibition Zone )  
 )  
Re: Proposed Settlement Agreement, )  
Continuance of Hearings for )  
Designated Parties Who Have )  
Agreed to Settle )  
\_\_\_\_\_ )

CENTRAL COAST WATER BOARD  
CONFERENCE ROOM, SUITE 101  
895 AEROVISTA PLACE  
SAN LUIS OBISPO, CALIFORNIA 93401

VOLUME II

FRIDAY, DECEMBER 15, 2006

8:37 A.M.

Reported by:  
Richard A. Friant

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 (Recused)

BOARD ADVISORS and ASSISTANTS

Michael Thomas, Assistant Executive Director

John Richards, Attorney

Carol Hewitt, Executive Assistant

WATER BOARD PROSECUTION STAFF

Reed Sato, Director, Office of Enforcement

Matt Thompson, Project Manager

Sorrel Marks, Project Manager

Harvey Packard, Division Chief

LOS OSOS COMMUNITY SERVICES DISTRICT

Gregory M. Murphy, Attorney

Burke, Williams and Sorensen, LLP

Gail McPherson

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## P R O C E E D I N G S

8:37 a.m.

CHAIRPERSON YOUNG: Ms. Hewitt, would you please take roll.

MS. HEWITT: Thank you. Les Bowker. Absent. Monica Hunter. Absent. Daniel Press.

BOARD MEMBER PRESS: Present.

MS. HEWITT: Russell Jeffries.

BOARD MEMBER JEFFRIES: Present.

MS. HEWITT: Jeff Young.

CHAIRPERSON YOUNG: Present.

MS. HEWITT: Gary Shallcross.

BOARD MEMBER SHALLCROSS: Here.

MS. HEWITT: John Hayashi.

BOARD MEMBER HAYASHI: Present.

CHAIRPERSON YOUNG: Okay, good morning, everybody. I'm Jeff Young, Chair of the Central Coast Water Board. And this is December 15th; it's the second day of our hearings on the proposed cease and desist orders for specific properties in the Los Osos/Baywood area.

I think if the Board would indulge me a little bit, I've had a couple of requests by people that would like to make some comments. And I think I would like to give them that

1 opportunity. These are not -- one is a cease and  
2 desist order recipient. He'd like to tell us why  
3 he settled. And someone else has indicated they  
4 would like to speak, and I think there are not  
5 that many people here.

6 How many other people that are not  
7 scheduled to address us during the cease and  
8 desist order hearings have any thoughts they want  
9 to share with us this morning? I could give you a  
10 minute of time each to do this.

11 I know Mr. Barrow is one. And Mr.  
12 Bishop. Is there anyone else that would like a  
13 minute? And you could comment on what we're doing  
14 with these proceedings. Just these two  
15 individuals? Okay. Mr. Bishop; and, Mr. Barrow,  
16 you will be next.

17 MR. BISHOP: Thank you, Mr. Chairman and  
18 Board. My name is Larry Bishop. I'd like to take  
19 one moment to thank you for accepting the  
20 settlement agreement. We worked a long time with  
21 Mr. Sato and the staff to put that together.

22 I wanted to make the Board aware that  
23 our main reason for settling was to have the sewer  
24 progress. We felt that if we did continue to  
25 fight, and if we had a chance to win, it would

1 have just delayed the sewer and had more problems.

2 So, I wanted to thank you. We are  
3 trying to move forward. And that I think further  
4 settlements and that will be coming along. And it  
5 will be the people that are for the sewer. Okay.  
6 Thank you.

7 CHAIRPERSON YOUNG: Okay. I do have a  
8 question for you actually. We had just a very  
9 brief discussion yesterday about the forms that  
10 we've attached, the inspection form. And someone  
11 had said that if we used our form there possibly  
12 wouldn't be an extra fee charged for, you know, by  
13 the pumper to fill that out.

14 Do you know anything about this?

15 MR. BISHOP: I'm not sure about that.  
16 When you put that in the form yesterday I was  
17 going to have to go back -- and we're probably  
18 going to have to negotiate that, the actual  
19 wording.

20 It could be an imposition. It could end  
21 up making the agreement not functionable, or that  
22 if we require a C42 license to have to do the  
23 inspection.

24 So, --

25 CHAIRPERSON YOUNG: Well, I think in



1 terms of that, our thought is that the inspection  
2 does not have to actually be done by someone with  
3 a license if it's a member of their company or  
4 their staff.

5 MR. BISHOP: Well, that's the way it  
6 would read, but --

7 CHAIRPERSON YOUNG: Would that be --  
8 that's what the Board intends, at least.

9 MR. BISHOP: But I know, as a  
10 businessman, if I have to fill out two different  
11 forms then I would be charging more.

12 CHAIRPERSON YOUNG: Okay, but the  
13 County's form is not mandatory from what I  
14 understand.

15 MR. BISHOP: And I haven't pumped a tank  
16 since I moved into the house, so I'm not sure what  
17 the cost is.

18 CHAIRPERSON YOUNG: Okay. All right,  
19 thank you. Now, Mr. Barrow.

20 MR. BARROW: Good morning and Merry  
21 Christmas, everyone.

22 CHAIRPERSON YOUNG: Merry Christmas.

23 MR. BARROW: I hope we can set our  
24 concerns aside for Christmas, enjoy it. I would  
25 like to give you -- Alfred Barrow. I am in the

1 prohibition zone; I'm an interested party.

2 I would like to give this to the staff.

3 This is a peer review on the Ripley update.

4 Orenco, a company in Oregon, has agreed to finance  
5 a wastewater project for Los Osos. It's the  
6 fastest way to compliance is to build a sewer.

7 And in that light, engineers have  
8 estimated they could build within one year. And  
9 so because this is private money, we're not  
10 tangled with the state's loan program, and they  
11 can come in either as a utility or as independent  
12 contractors; build, design and install a sewer and  
13 manage it, and charge a fee. Of course, there  
14 would have to be a 218 vote.

15 My question to regulatory staff here is  
16 would you obstruct that, or would you assist the  
17 community in moving forward with that.

18 The second part of my statement is would  
19 you assist us, approve the Howard Kolb style  
20 septic tank management program, which would bring  
21 everybody in compliance as far as immediate  
22 pumping of septic tanks and certification? Our  
23 wastewater committee had ad hoc septic tank  
24 management; and we wanted to form that. We have  
25 the documents modeled after Howard Kolb's effort

1 in San Lorenzo.

2 And I have submitted that to the staff  
3 some months ago. and I was hoping that you would  
4 cooperate with our community in getting that  
5 going. It would cost us about \$25 a year. We'd  
6 have a vote. And the benefit would be that the  
7 low-income people that are flagged who can't  
8 afford, would get CDBG money, that's community  
9 development block grant money, to pay for the  
10 improvements. So we can be sure that everybody  
11 would do this.

12 Could you answer those questions,  
13 please?

14 CHAIRPERSON YOUNG: Well, as to the  
15 second one, I don't know what the Howard Kolb  
16 septic tank management plan looks like. It's  
17 nothing that has come before the Board.

18 And so, --

19 MR. BARROW: In '95 you approved it.

20 CHAIRPERSON YOUNG: San Lorenzo --

21 BOARD MEMBER SHALLCROSS: San Lorenzo  
22 Valley.

23 CHAIRPERSON YOUNG: Oh, for this area?

24 BOARD MEMBER SHALLCROSS: Northern  
25 California --

1                   CHAIRPERSON YOUNG:  You know, I just  
2                   don't have -- I don't know that we have any  
3                   information right now, Mr. Barrow, that we can  
4                   review and give you an answer immediately.

5                   So, it --

6                   MR. BARROW:  Well, I can wait for that  
7                   one.  But that's one I would like to have answered  
8                   by the staff at some point.  Howard Kolb is on  
9                   your prosecution team.

10                  CHAIRPERSON YOUNG:  But you're always  
11                  free to contact staff on your own; send them a  
12                  letter; call them --

13                  MR. BARROW:  Sure.

14                  CHAIRPERSON YOUNG:  -- and see where  
15                  they stand with that.

16                  MR. BARROW:  The first question was  
17                  would you support a wastewater project in Los Osos  
18                  if we put one forward?  Would you obstruct it in  
19                  any way?

20                  CHAIRPERSON YOUNG:  You know, at this  
21                  point it's within the County's purview, as of  
22                  January 1st.

23                  MR. BARROW:  They haven't taken the  
24                  project yet.

25                  CHAIRPERSON YOUNG:  Well, I think that

1 that's imminent that they will take the project.

2 MR. BARROW: Well, it is, but the 218  
3 vote, you went through this whole discussion, it  
4 may fail, there may be another one. I think what  
5 we're talking about here is people are bringing  
6 private capital to the table with a reasonable,  
7 peer-reviewed project. And --

8 BOARD MEMBER SHALLCROSS: I think what  
9 Mr. Barrow is trying to do is get us to approve a  
10 project that's not before us, that no one's seen.  
11 So, you know, --

12 MR. BARROW: Well, are you going to stop  
13 it? That's all my question is.

14 BOARD MEMBER SHALLCROSS: If it's a hole  
15 in the ground that you dump things into, maybe. I  
16 mean we don't know what the project is. We don't  
17 have a project before us to make any sort of  
18 decision on.

19 MR. BARROW: Staff has it. So I'll send  
20 it to staff and let you look at it. But the  
21 developers are concerned that you might not permit  
22 the project. And I told them, I said, you don't  
23 permit projects, you permit discharges. And that  
24 you already have permitted a discharge for Los  
25 Osos in February 7, 2003.

1                   CHAIRPERSON YOUNG: Mr. Barrow, I can  
2 only tell you that staff will consider anything  
3 that you put in front of them. But the Board  
4 doesn't have anything in front of it which to  
5 comment on.

6                   MR. BARROW: Thank you.

7                   CHAIRPERSON YOUNG: Thank you for your  
8 comments this morning.

9                   MR. BARROW: You're welcome.

10                  CHAIRPERSON YOUNG: And have a good  
11 Christmas. Ms. Calhoun.

12                  MS. CALHOUN: Ann Calhoun, Los Osos. Is  
13 this sort of general --

14                  CHAIRPERSON YOUNG: It's an ad hoc  
15 addition to our agenda.

16                  MS. CALHOUN: -- because I had some  
17 comments yesterday on 3, but it was like too late.

18                  CHAIRPERSON YOUNG: Go ahead.

19                  MS. CALHOUN: Okay. Very briefly. At  
20 last year's CDO hearing former general manager  
21 Bruce Buel testified four times that the original  
22 TSO for the old project was unreasonable.

23                  In November a workshop was held in Los  
24 Osos by members of the National Water Research  
25 Institute. The final report on the independent

1 advisory panel noted the Central Coast Regional  
2 Water Quality Control Board's 210 compliance date  
3 appears to be somewhat arbitrary. The most  
4 optimistic estimate of the overall time period  
5 would be about approximately four years.

6 Unreasonable, arbitrary, approximate,  
7 most optimistic when tied to a settlement with  
8 some kind of drop-dead date creates, once again, a  
9 dangerous trap for the homeowner who has no  
10 control over or legal ability to build a  
11 wastewater treatment plant himself.

12 It's the same artificial trap that  
13 helped push the old project off a cliff; that  
14 prevented two vital steps that would have avoided  
15 this train wreck.

16 And I'm hoping nobody makes that same  
17 mistake again. If there's any kind of drop-dead  
18 date that has the unfortunate result of being seen  
19 as a fatal flaw or an impossible poison pill that  
20 requires the homeowner to do the legally  
21 impossible, or else have problems down the road,  
22 that unnecessary risk will cause many people to  
23 walk away from what should be and could be a total  
24 win/win agreement settlement for everybody.

25 So I'm hoping they will keep that in

1 mind on future settlement negotiations, or if the  
2 settlement agreement can be reworked to consider  
3 some of those concerns, I hope that will be kept  
4 in mind. Because potentially I think we're so  
5 close to a communitywide win/win, and I hope that  
6 won't be stopped.

7 Thank you.

8 CHAIRPERSON YOUNG: Thank you. Mr.  
9 Greening.

10 MR. GREENING: Thank you. Good morning.  
11 Eric Greening. I think I'm saying something that  
12 everyone understands, but I've heard people speak  
13 of it in a different way, so I just want to  
14 clarify. The Blakeslee bill that everyone talks  
15 about allows the County to take on and take over  
16 the project. It does not require the County to do  
17 so. It is not inevitable that the County do so.

18 And I just hope everyone is aware of  
19 that, because I've heard some speakers speak as if  
20 this is inevitable, and that the County has  
21 already decided to take it on. And that's --

22 CHAIRPERSON YOUNG: Has the County  
23 indicated that it might not take over the project?

24 MR. GREENING: The County has several  
25 points along the way at which it decides how and



1       whether to go forward. It has not made a formal  
2       decision.

3               It has made some formal decisions, for  
4       example, relative to Paavo Ogren's time, taking on  
5       this project. It is due to make a formal decision  
6       next -- it has made a formal decision on the  
7       consent agenda Tuesday in relation to spending  
8       some of the \$2 million on agreements for  
9       environmental and engineering services. Next week  
10      it will have on its consent agenda an item to  
11      create a technical review committee, although it's  
12      not naming the people; that comes back to them in  
13      February.

14             It has not actually agreed to take on  
15      the project. And there's no way it can fully do  
16      so until or unless there has been a 218 vote  
17      approving the project.

18             So, yes, it is definitely getting  
19      involved in the project. It is involved in a  
20      number of ways. It has not committed to building  
21      a project. It doesn't have a project before it  
22      that it can commit to build.

23             CHAIRPERSON YOUNG: Well, I think that  
24      is interesting. I wasn't aware of that, but --

25             MR. GREENING: And the Blakeslee

1       legislation does not require the County to take  
2       anything. Obviously if a 218 vote fails, the  
3       County is under no obligations whatsoever.

4               CHAIRPERSON YOUNG: Well, it sounds like  
5       it would be everyone's best interest to make sure  
6       the County takes the project.

7               MR. GREENING: The 90 percent --

8               CHAIRPERSON YOUNG: Otherwise, --

9               MR. GREENING: -- 94 percent of County  
10       residents who don't live in Los Osos may not  
11       entirely agree, because we are seeing all of the  
12       County's, Staff, Board time, et cetera, leaning  
13       very strongly in the direction of Los Osos. And a  
14       lot of other things may not get done.

15               But be that as it may, I certainly  
16       understand your point of view.

17               CHAIRPERSON YOUNG: Thank you. And  
18       thank you for the clarification.

19               Okay, that will conclude that brief  
20       public comment period. We are now going to resume  
21       our hearing. And where we left off was we  
22       concluded the Community Services District  
23       presentation. There's 45 minutes left of that  
24       time. And what we're going to do is allocate that  
25       45 minutes to any of the remaining cease and

1 desist order recipients who collectively want to  
2 put on evidence of a general nature. We can start  
3 with that.

4 And I guess first I'm just curious, Mr.  
5 Packard, any updates on anyone else who wishes to  
6 settle?

7 MR. PACKARD: We heard from Lucienne  
8 Colin this morning, who wishes to settle.

9 CHAIRPERSON YOUNG: Okay.

10 BOARD MEMBER SHALLCROSS: As long as the  
11 list doesn't have --

12 CHAIRPERSON YOUNG: Yes, --

13 BOARD MEMBER SHALLCROSS: -- certain  
14 parties' names on it.

15 MR. THOMPSON: This list --

16 CHAIRPERSON YOUNG: And you have  
17 redacted names?

18 MR. THOMPSON: No, there's no redacted  
19 name; there's no -- that information is redacted  
20 from this list.

21 CHAIRPERSON YOUNG: What information is  
22 redacted?

23 MR. THOMPSON: The information that's  
24 not supposed to be released to the public is  
25 redacted --

1 CHAIRPERSON YOUNG: Has been taken --

2 MR. THOMPSON: -- from this list.

3 CHAIRPERSON YOUNG: Good, okay.

4 MR. THOMPSON: The only name that's not  
5 on here is Colin, C-o-l-i-n, who -- bear with me  
6 for a second, sorry. There should be one more  
7 added to the bottom here, and that would be Colin.  
8 I think this is 24 settling dischargers.

9 Excuse me, 22. Oh, I'm sorry, I have a  
10 more updated list. Please bear with me for a  
11 second.

12 Does this jibe with your list, Michael?  
13 Do you have Robinson and 1029 towards the bottom  
14 there?

15 MR. THOMAS: Yes.

16 MR. THOMPSON: Okay. We also have  
17 Colin, who informed us this morning that they're  
18 willing to settle.

19 CHAIRPERSON YOUNG: Okay. Do you have a  
20 total, Mr. --

21 MR. THOMPSON: I think it's 24 parties.  
22 Including Colin, who is not on this list.

23 CHAIRPERSON YOUNG: Okay. Good. Thank  
24 you very much. How many cease and desist order  
25 recipients want to participate in this next 45

1 minutes and put on some collective evidence  
2 that'll be used automatically and incorporated  
3 into the individual hearings? Ms. McPherson, do  
4 you have any idea?

5 MS. McPHERSON: I think there's --

6 CHAIRPERSON YOUNG: I know you are one  
7 of them, I assume on behalf of who you're  
8 representing.

9 MS. McPHERSON: Yes, I think that there  
10 is at least five. Maybe a show of hands.

11 CHAIRPERSON YOUNG: Can you please  
12 identify yourselves? Okay. Mr. Rochte; Mr.  
13 Martyn; Mr. Payne, you don't even know what I'm  
14 asking about and I'm glad to see that you're here.

15 MR. PAYNE: Thank you. I didn't --  
16 could you repeat the question?

17 CHAIRPERSON YOUNG: There's 45 minutes  
18 allotted this morning --

19 MR. PAYNE: Okay.

20 CHAIRPERSON YOUNG: -- for those people  
21 that have received cease and desist orders,  
22 proposed orders, like yourself, that can  
23 collectively put on some general evidence that's  
24 applicable to all of the other cease and desist  
25 order hearings. And that way not burn some of

1 their own 15 minutes of time.

2 So if there's information like that of a  
3 general nature that you wish to participate in,  
4 given to the Board, this group has 45 minutes to  
5 do that. Okay? Are you one of them?

6 MR. PAYNE: Yeah. Collectively 45 --

7 CHAIRPERSON YOUNG: Well, --

8 MS. McPHERSON: Mr. Chairman, --

9 CHAIRPERSON YOUNG: Yeah.

10 MS. McPHERSON: -- we went ahead and  
11 have four identified -- five witnesses that have  
12 common issues. And we're going to go ahead and  
13 call them. And that was something that we kind of  
14 organized among ourselves, so.

15 CHAIRPERSON YOUNG: Okay, so the people  
16 that raised their hands are all part of this  
17 effort?

18 MS. McPHERSON: Yes. Yes.

19 CHAIRPERSON YOUNG: So if I just --  
20 okay.

21 BOARD MEMBER SHALLCROSS: I think maybe  
22 we should explain to Mr. Payne and some other  
23 folks who weren't here that this 45 minutes is  
24 time left over from the CSD's presentation. They  
25 only took 15 minutes and they had an hour; so

1 we're allotting the 45 minutes to other folks who  
2 might want to talk on issues of common interest.  
3 That explains why it's 45 minutes for everyone.

4 MR. PAYNE: Thank you.

5 CHAIRPERSON YOUNG: And so let me -- so  
6 that you know where that comes from, where's the  
7 footnote?

8 (Pause.)

9 CHAIRPERSON YOUNG: Here it is, I've got  
10 it. What we're doing is following this part of  
11 the notice. The Chair will consider requests by  
12 designated parties other than the Community  
13 Services District, to present general evidence  
14 relevant to multiple parties at this time. That's  
15 what this is about.

16 So, let's go ahead. Okay, the clock is  
17 running.

18 MS. McPHERSON: Okay, the first witness  
19 would be -- is Rob Miller.

20 CHAIRPERSON YOUNG: Okay.

21 MR. MILLER: Good morning, Mr. Chairman,  
22 Members of the Board.

23 MS. McPHERSON: Good morning. Can you  
24 state your name --

25 MR. PACKARD: Mr. Chairman, --

1 MS. McPHERSON: I'm sorry.

2 MR. PACKARD: Mr. Young.

3 MS. McPHERSON: I was going to start  
4 asking questions. Do you want to go ahead and  
5 address them first?

6 MR. PACKARD: There may be people here  
7 who didn't take the oath yesterday.

8 CHAIRPERSON YOUNG: Good point. Where  
9 is that? Okay, everyone who was not here  
10 yesterday --

11 UNIDENTIFIED SPEAKER: Time, sir.

12 CHAIRPERSON YOUNG: What's that?

13 UNIDENTIFIED SPEAKER: Time.

14 CHAIRPERSON YOUNG: Time? I did stop  
15 the clock, don't worry. All those that weren't  
16 here yesterday and who have otherwise not taken  
17 the oath, would you please stand if you intend to  
18 testify today. Okay. Repeat after me.

19 ALL PROSPECTIVE WITNESSES  
20 were called as witnesses herein, and were  
21 thereupon duly sworn.

22 CHAIRPERSON YOUNG: Okay, thank you.

23 MS. McPHERSON: Good morning. Can you  
24 state your name for the record?

25 MR. MILLER: Rob Miller.



1 MS. McPHERSON: Thank you. What is your  
2 title?

3 MR. MILLER: District engineer.

4 MS. McPHERSON: Can you give us a little  
5 bit of background on your education, experience  
6 and the company you work for?

7 MR. MILLER: Sure. I work for the  
8 Wallace Group, a local engineering company for the  
9 past 12 years; involved in wastewater management  
10 primarily here in the San Luis Obispo County area.  
11 Also Santa Barbara County.

12 MS. McPHERSON: How long have you been  
13 working for the Los Osos CSD?

14 MR. MILLER: Since about 1999.

15 MS. McPHERSON: Are you familiar with  
16 the wastewater projects before 1998?

17 MR. MILLER: Yes.

18 MS. McPHERSON: How many have there been  
19 -- I'm sorry, somebody said they can't hear me, so  
20 do I --

21 BOARD MEMBER SHALLCROSS: You have to  
22 pull it up to you. Yeah.

23 MS. McPHERSON: Okay. I was asking how  
24 many wastewater projects there's been since the --  
25 to your knowledge, pre-1998 and to date.

1           MR. MILLER: My primary involvement with  
2 the County project was the assessment engineering  
3 portion; and that was the last project I was  
4 involved in. But I know there were at least two  
5 generations prior to the CSD.

6           MS. McPHERSON: Okay. Are you aware  
7 that there is an update to the wastewater  
8 facilities plan that was completed in July of this  
9 year?

10          MR. MILLER: Yes.

11          MS. McPHERSON: What was your role in  
12 that project?

13          MR. MILLER: We prepared the request for  
14 proposals, the scope of work for the consultants;  
15 and were involved in some of the interview and  
16 selection process. And then, of course, arranging  
17 for and facilitating a peer review of that  
18 analysis by the National Water Research Institute.

19          MS. McPHERSON: Can you describe some of  
20 the key elements of that project?

21          MR. MILLER: Yeah, the primary focus of  
22 the project was to look at alternative project  
23 proposals that focused on site constraints,  
24 different disposal methodologies, collection  
25 methodologies. And that was the focus, basically

1 to update the 2001 Montgomery-Watson project  
2 report.

3 MS. McPHERSON: In that report you  
4 mentioned NWRI. Can you tell us who they are?

5 MR. MILLER: The National Water Research  
6 Institute's a nonprofit group primarily involved  
7 with water supply research; and also wastewater  
8 management. Occasionally they do peer review,  
9 peer review process where they convene a panel of  
10 outside experts to review various large or  
11 complicated projects. Which, in this case, that  
12 was part of the original project scope is to make  
13 sure we had an independent peer review of the  
14 project report update.

15 MS. McPHERSON: And so that was the  
16 purpose of the work that they did for Los Osos  
17 CSD?

18 MR. MILLER: Correct. Correct.

19 MS. McPHERSON: What were some of the  
20 key conclusions?

21 MR. MILLER: The panel convened in  
22 November and a summary report, I believe, has been  
23 provided to staff, perhaps the Board. They  
24 concluded that wastewater management was very  
25 important in Los Osos, to get a project completed.

1 They also did validate the overall benefits of a  
2 land application program, and avoiding future  
3 regulations for groundwater recharge and those  
4 sort of things.

5 They concurred that beneficial reuse was  
6 the preferred ultimate method of effluent  
7 management. They also indicated that in reviewing  
8 some of the Regional Board Staff's comments and  
9 also reviewing some of the agricultural exchange  
10 concepts that some form of nitrogen removal was  
11 necessary to maintain what we're calling agronomic  
12 application of effluent.

13 And then I think they provided some  
14 useful input to the County in understanding the  
15 context of their review to take some first steps  
16 towards developing at least one viable project  
17 alternative, maybe more, based on some of the  
18 concepts presented in the Ripley plan.

19 So we felt like it was a helpful  
20 process, involved Regional Board Staff and County  
21 Staff, and a good first step for the County.

22 MS. McPHERSON: Did they give you a  
23 timeframe for a completed project or comment on  
24 that?

25 MR. MILLER: We did ask the panel, based

1 on information presented by the Board Staff and  
2 the County, to give an opinion on that matter.  
3 And they estimated a minimum of four years.

4 MS. McPHERSON: Okay.

5 MR. MILLER: But when you look at the  
6 range it would be four to five years documented in  
7 their report.

8 MS. McPHERSON: Did you believe -- yeah,  
9 I was going to ask if you believed that that was  
10 reasonable.

11 MR. MILLER: It seemed to be reasonable.  
12 Obviously there are some factors, such as  
13 litigation, that may be outside of that timeframe.

14 MS. McPHERSON: But for the project in  
15 general, without litigation, that would be  
16 considered perhaps reasonable?

17 MR. MILLER: Assuming a successful 218  
18 vote.

19 MS. McPHERSON: Um-hum.

20 MR. MILLER: This year.

21 MS. McPHERSON: Was this report shared  
22 with the Water Board Staff?

23 MR. MILLER: Yes.

24 MS. McPHERSON: Can you tell us who was  
25 specifically in attendance?

1 MR. MILLER: Matt Thompson and Allison  
2 Dominguez.

3 MS. McPHERSON: Who invited them?

4 MR. MILLER: NWRI, their chief executive  
5 Jeff Mosier extended invitations both to the  
6 Regional Board and to the County with the hope of  
7 getting a balanced discussion.

8 MS. McPHERSON: Who from the County  
9 attended?

10 MR. MILLER: It was Paavo Ogren, John  
11 Modell, their project manager, and several of  
12 their consultant team. I believe Lou Corollo  
13 (phonetic) from Corollo Engineering. And Carl  
14 Hadler also from Corollo, as I recall.

15 MS. McPHERSON: Do you believe that it  
16 was helpful to a successful process, the peer  
17 review, to have these people there?

18 MR. MILLER: I think it was critical.  
19 If they limited their comments to simply reviewing  
20 the report and didn't understand the context,  
21 which is that the County is taking the lead role  
22 on the project, I think that would have been a  
23 mistake.

24 I think in bringing the correct players  
25 together it does form a basis for hearing that

1 feedback during the discussions and providing a  
2 more useful product.

3 MS. McPHERSON: In your opinion, did  
4 they seem encouraged by the results?

5 MR. MILLER: I think the report  
6 indicates that they're supportive of the overall  
7 concepts and feel that the project report update  
8 was a useful document for the District and the  
9 community.

10 MS. McPHERSON: Some of the reasons  
11 given justifying individual enforcement actions  
12 was that we had no responsible lead agency. Do  
13 you think that that's the case today?

14 MR. MILLER: The County process, as  
15 outlined in their June staff report, provides a  
16 framework for the County's involvement. And that  
17 involvement includes identification of viable  
18 project alternatives; a technical advisory group;  
19 ultimately culminating in a 218 vote, I'm sure as  
20 everyone here knows.

21 And it's at that time that the County  
22 would convene a general election to provide some  
23 input and advisory vote. And based on the results  
24 of that, the board of supervisors would make a  
25 decision as to their next steps on the project,

1       assuming that the 218 vote passed.

2               But in terms of a normal process of  
3       advancing environmental review and retaining  
4       qualified consultants to advance the project, the  
5       County certainly has taken that role.

6               MS. McPHERSON:  So, if we look back over  
7       the last six to eight months, in your opinion  
8       would you think that the actions that have  
9       occurred and demonstrate reasonable progress  
10      towards a project?

11              MR. MILLER:  Yeah, assuming that  
12      everybody understands the approach on the project  
13      report update was to look at a different project,  
14      then, yes, progress towards a project has been  
15      made.  The normal process there would be project  
16      report update, providing the context for  
17      environmental review that's been done.  And then,  
18      of course, the County taking its role.

19              MS. McPHERSON:  You briefly described  
20      the process to deliver a project.  Can you tell me  
21      how the 218 assessment vote fits in and what is  
22      the timing?

23              MR. MILLER:  Yes.  The County, in order  
24      to avoid -- and they can probably testify to this  
25      better than I could -- undue costs to the general



1 public, the overall County ratepayer, has adopted  
2 a process wherein a 218 vote which identifies what  
3 we call the special benefit to all of the  
4 properties, would be held sometime next fall,  
5 August/September timeframe 207.

6 And that that process would precede any  
7 advisory election. And that's something that  
8 they've talked about in detail in their  
9 deliberations with their board; but that's their  
10 process.

11 MS. McPHERSON: And after the 218 vote  
12 passes, and if it's successful, then is it your  
13 understanding that the County would then do a due  
14 diligence review?

15 MR. MILLER: Yes, the board of  
16 supervisors still retains discretion to either  
17 take action on the project or not. So once the  
18 218 vote, if it is successful, passes then after  
19 the advisory vote they would make a decision after  
20 a due diligence process as to whether they would  
21 implement the project.

22 MS. McPHERSON: So what would you  
23 estimate would be the timeframe when the County  
24 actually took control of the project under their  
25 current plan?

1           MR. MILLER: My understanding, and  
2           that's again a question that could probably be  
3           directed to the County, is that in the latter half  
4           of 2008 is what they were targeting.

5           MS. McPHERSON: Okay, the County isn't  
6           here; Paavo is out of town. And so I'm sorry to  
7           ask you all these questions, but I know you're  
8           involved in those meetings.

9           In your opinion, would the use of the  
10          County as a lead agency better assure the delivery  
11          of a project? And I've kind of already asked that  
12          but I'm going to ask that again.

13          MR. MILLER: Meaning compared to the  
14          District?

15          MS. McPHERSON: Yes.

16          MR. MILLER: Given the financial  
17          capabilities of the County, also the environmental  
18          capabilities in that they have inhouse staff to  
19          perform some of those functions, the ability to  
20          achieve an acceptable rate on any bonding, and  
21          then the ability to deliver a large project of  
22          this magnitude, I would agree with that, that the  
23          County's probably the right entity to advance the  
24          project at this point.

25          MS. McPHERSON: Is the 2011 date for

1       hooking up, for individuals to hook up to a  
2       completed project a reasonable date?

3               MR. MILLER:  I --

4               MR. SATO:  I'll object to that question.  
5       Mr. Chairman, there's no foundation for that  
6       particular date used by Ms. McPherson.

7               MS. McPHERSON:  Well, the requirement is  
8       to hook up to a sewer.  And there's some people  
9       that have the perception that --

10              CHAIRPERSON YOUNG:  I'm going to let him  
11      answer the question.

12              MS. McPHERSON:  Yeah, there's some  
13      people that have the assumption that maybe that  
14      date is just to get the thing going.  And I  
15      understand, you know, how that works.

16              But, is it a reasonable date to hook up  
17      to a completed project?

18              MR. MILLER:  It obviously would depend  
19      on many factors.  Those of us who have carefully  
20      watched previous processes and the amount of  
21      litigation and other things, I don't know if  
22      you're making the assumption that there would be  
23      no litigation of an environmental document.  We've  
24      seen in the past significant delays associated  
25      with litigation.

1           That would be a date that would be  
2           consistent with a normal project process where an  
3           environmental document is adopted unchallenged,  
4           and permitting proceeds quickly.

5           So if there is litigation I could see  
6           that date -- too optimistic.

7           MS. McPHERSON: Okay. Are you aware of  
8           statements in 2005 during the meeting with the  
9           State Water Resources Control Board when they were  
10          trying to go ahead and continue a project and  
11          continue funding, where the representatives from  
12          the State Water Resources Control Board said the  
13          project would take eight to ten years?

14          MR. MILLER: I don't recall those  
15          specifically, no.

16          MS. McPHERSON: Do you recall the Board  
17          meeting when they denied the funding for what was  
18          considered or called at the time the Blakeslee  
19          compromise?

20          MR. MILLER: I recall hearing of the  
21          Board meeting, but didn't attend, didn't attend  
22          personally.

23          MS. McPHERSON: Okay, thank you. So,  
24          really, what date do you think is a realistic date  
25          to hook up to a sewer plant if all went smoothly

1 without litigation, for an actual hookup to the  
2 sewer? Because that's what individuals are  
3 required to do, is to hook up to the sewer.

4 MR. MILLER: In the previous project we  
5 had conceptualized that once the first phase of  
6 the collection system was completed we would give  
7 the average owner six to 12 months to effect a  
8 hookup.

9 So if the NWRI estimate is accurate in  
10 terms of a smooth process without litigation, four  
11 to five years is probably an appropriate estimate.  
12 The thought was to give the average homeowner six  
13 to 12 months to hook up.

14 Part of that was based on the overall  
15 regional ability to manage septage, to accomplish  
16 the sheer number of hookups; it's going to take  
17 some time. But, not an extended time. Six to 12  
18 months seemed to be a reasonable timeframe.

19 CHAIRPERSON YOUNG: I just want to ask  
20 one question. Does that four to five years  
21 include the six to 12 months?

22 MR. MILLER: No. No, that would be to  
23 deliver a completed project and begin --

24 CHAIRPERSON YOUNG: To begin the six to  
25 12 --

1 MR. MILLER: -- hooking up --

2 CHAIRPERSON YOUNG: -- month hookup  
3 process?

4 MR. MILLER: Right. I think some folks  
5 would hook up very quickly. We would hope to get  
6 the larger users so that the process, the  
7 wastewater plant biological process could begin.  
8 For instance, the mobile home parks, Bay Ridge  
9 Estates, Vista areas that have more users. Those  
10 would be properties we identified previously as  
11 wanting to hook up so you get some loading to the  
12 plant. And then the average, single family owner  
13 would take more time.

14 CHAIRPERSON YOUNG: Okay, thank you.

15 MS. McPHERSON: I have just one last  
16 question, and it's probably based on your opinion.  
17 But with all things considered with the timing of  
18 the vote and the possible perception of  
19 electioneering surrounding the CDO and the vote,  
20 would you think it might be a better date of the  
21 County approving acceptance of the project as the  
22 project date?

23 Right now it says, in the CDO, 2008 for  
24 a 218 vote. As a progress date, using instead the  
25 County's actual approval to accept the project?

1 Would that be a better measure?

2 MR. MILLER: I think I understood the  
3 question as if you were looking for an enforcement  
4 milestone would that milestone be either the  
5 successful completion of a 218 vote or not. Or  
6 would it be the County's discretionary decision to  
7 assume control of the project once a 218 vote is  
8 successful?

9 MS. McPHERSON: Yes, thank you.

10 MR. MILLER: Okay. I think both dates  
11 are very important. In terms of a final date,  
12 obviously that board of supervisors decision,  
13 since it could theoretically go either way, I  
14 think is perhaps the one critical milestone for  
15 establishing the remainder of the timeframe of the  
16 project.

17 But I think both milestones are  
18 important. For instance, you wouldn't necessarily  
19 want to delay that 218 vote more than you would  
20 want to, because as soon as we can get before the  
21 voters we'll know if there's a secure funding  
22 source. And that's a very important project  
23 milestone, also.

24 MS. McPHERSON: I thought of another  
25 question. In cease and desist orders it's common

1 to have milestones more than just these two.  
2 Sometimes they insert a time schedule order or  
3 something like that.

4 Is this -- would you think that that  
5 would be a good idea? Or do you think that it's  
6 fleshed out enough at this point to be able to  
7 assume certain milestones?

8 MR. MILLER: I think it would be  
9 prudent, since I know the County is, I'm sure,  
10 working on a critical path schedule, for their  
11 overall process, they've given the board of  
12 supervisors some general timeframes.

13 I think it would be prudent to have  
14 Board Staff obtain that schedule when it's ready.  
15 Certainly there's been a commitment on the 218  
16 vote and the timeframe there. I would really want  
17 to see the County lay out their schedule, as  
18 opposed to speaking for them.

19 But, I think as soon as that's done that  
20 would be an appropriate time to begin looking at  
21 inserting some dates.

22 MS. McPHERSON: And one last question  
23 about the NWRI report.

24 MR. MILLER: Sure.

25 MS. McPHERSON: Did they recommend a



1 unanimous location inside or outside of town?

2 MR. MILLER: They, and I don't want to  
3 misspeak here -- I did bring a copy of the report  
4 if anyone's interests.

5 Their statement was the given the number  
6 of problematic issues with the downtown site. It  
7 is the unanimous opinion of the panel that an out-  
8 of-town site is a better alternative.

9 MS. McPHERSON: Okay.

10 MR. MILLER: That was their statement.

11 MS. McPHERSON: Thank you very much.

12 MR. MILLER: Thank you.

13 CHAIRPERSON YOUNG: Any other questions  
14 or any other witnesses?

15 MS. McPHERSON: I do have other  
16 witnesses. But I didn't know if there were any  
17 others that wanted to ask any questions of this  
18 witness.

19 CHAIRPERSON YOUNG: Okay.

20 MR. THOMPSON: Chairman, permission for  
21 some brief cross-examination.

22 CHAIRPERSON YOUNG: Yeah, I think we  
23 will do that. Let's just see how we're going to  
24 kind of break that up. Let's see if anyone else  
25 has direct examination questions for him. And

1 then we'll give you an opportunity to cross-  
2 examine.

3 Do any other cease and desist order  
4 recipients want to ask any questions of Mr. Miller  
5 as part of this 45 minutes, as part of the 45  
6 minutes? That's what we're doing.

7 MS. McPHERSON: Okay.

8 CHAIRPERSON YOUNG: Mr. Duggan, but I  
9 think he doesn't want to -- Mr. Duggan, --

10 MR. DUGGAN: As long as it doesn't  
11 interfere with my case, my --

12 CHAIRPERSON YOUNG: It doesn't. This is  
13 not time taken from the 15 minutes. But it is  
14 time deducted. You've got 24 minutes left.

15 (Parties speaking simultaneously.)

16 CHAIRPERSON YOUNG: Your client did  
17 settle, right, Mr. Martyn?

18 MR. DUGGAN: No.

19 CHAIRPERSON YOUNG: No.

20 MR. DUGGAN: No.

21 CHAIRPERSON YOUNG: Okay.

22 MR. DUGGAN: My client is Cinthea  
23 Coleman. My name's Dave Duggan; my client is  
24 Cinthea Coleman. She has not settled.

25 CHAIRPERSON YOUNG: Okay.

1 MR. DUGGAN: I'm going to be brief.

2 CHAIRPERSON YOUNG: Well, you're asking  
3 questions of this witness.

4 MR. DUGGAN: I will. Mr. Miller, you  
5 are familiar with the hydrology of the basin, the  
6 Los Osos water basin, correct?

7 MR. MILLER: In general terms, yes.

8 MR. DUGGAN: And so your expertise was  
9 called as part of this group was to lend that kind  
10 of expertise, as well?

11 MR. MILLER: We've been, again, our  
12 expertise on hydraulics and hydrology from the  
13 groundwater basin's perspective is general. And  
14 would generally retain an expert such as Cleath  
15 and Associates to answer specific questions.

16 MR. DUGGAN: Okay, I didn't know that,  
17 and so I'll just go ahead and stop my questioning.  
18 Thank you.

19 MR. MILLER: Thank you.

20 CHAIRPERSON YOUNG: Okay. All right,  
21 Mr. Payne.

22 MR. PAYNE: Just one quick question.  
23 Was affordability and sustainability addressed in  
24 the study? Thank you.

25 MR. MILLER: If I understood the

1 question, the issue of sustainability was one of  
2 the requirements of the project scope that the  
3 consultant considers sustainability concepts, such  
4 as energy use, sludge production, those sorts of  
5 things.

6 The issue of affordability is something  
7 that the District Board has separated into a  
8 potential different study. And that, I believe,  
9 got as far as a draft request for proposals. But  
10 that was to go on a different parallel track, but  
11 I don't believe the District specifically pursued  
12 that analysis.

13 CHAIRPERSON YOUNG: Does Mr. Martyn have  
14 questions for this witness?

15 MR. MARTYN: One very brief question,  
16 Mr. Miller. Knowing the facts as you know them,  
17 and as you have testified here this morning, would  
18 you be inclined to sign the settlement agreement  
19 that's been proposed by the prosecution team?

20 MR. MILLER: I haven't reviewed that  
21 matter in detail, although I anticipate reviewing  
22 it at some point, since I do reside in the  
23 community, also.

24 CHAIRPERSON YOUNG: Okay.

25 MS. MCPHERSON: Thank you.

1                   CHAIRPERSON YOUNG: Does anyone else  
2 wish to ask Mr. Miller questions? Okay. Well,  
3 now then, the prosecution team. There's 22  
4 minutes left on that clock; and the clock is  
5 stopped.

6                   Mr. Sato, cross-examination of this  
7 witness?

8                   MR. THOMPSON: That'll be me.

9                   CHAIRPERSON YOUNG: That's fine.

10                  MR. SATO: Both of us will ask a couple  
11 questions, thank you.

12                  MR. THOMPSON: Thank you, Chairman;  
13 thank you, Rob, for coming in this morning.

14                  Are you familiar with the Los Osos/  
15 Baywood Park discharge prohibition and the basin  
16 plan?

17                  MR. MILLER: Yes.

18                  MR. THOMPSON: Does the Los Osos/Baywood  
19 Park discharge prohibition mean that septic system  
20 discharges are prohibited there within the  
21 prohibition zone?

22                  MR. MILLER: That's my understanding.

23                  MR. THOMPSON: Do you believe a  
24 community wastewater system is necessary to  
25 resolve the discharge prohibition?

1 MR. MILLER: Yes.

2 MR. THOMPSON: Do you have any  
3 information to suggest that the County will not be  
4 able to approve the benefit assessment in 2007?

5 MR. MILLER: No.

6 MR. THOMPSON: Are you familiar with the  
7 proposed cease and desist orders?

8 MR. MILLER: In general terms.

9 MR. THOMPSON: Okay. Are you aware that  
10 the January 11, 2011 date is not triggered unless  
11 the County does not approve the benefit  
12 assessment, or unless there is a material  
13 cessation of work?

14 MR. MILLER: I had heard that in  
15 conversation, yes.

16 MR. THOMPSON: That's all I have for you  
17 now. Thanks.

18 CHAIRPERSON YOUNG: Okay, --

19 MR. SATO: I just have a couple  
20 questions.

21 CHAIRPERSON YOUNG: Go ahead.

22 MR. SATO: Good morning, Mr. Miller. My  
23 name is Reed Sato and I'm the attorney for the  
24 prosecution team. I don't think you were here  
25 yesterday to hear introductions.

1                   Yeah, just quickly following up on the  
2                   questions that Mr. Thompson had, I think your  
3                   testimony that the approval of the benefits  
4                   assessment would be considered a critical  
5                   milestone to you in terms of the progress of the  
6                   sewer project?

7                   MR. MILLER: Yes.

8                   MR. SATO: And I just want to make sure,  
9                   in terms of looking at the cease and desist order,  
10                  have you actually read the proposed cease and  
11                  desist order?

12                  MR. MILLER: I read an early version; I  
13                  haven't read the most recent.

14                  MR. SATO: All right. So any questions  
15                  that had been placed to you by Ms. McPherson or  
16                  any of the designated parties is based upon a  
17                  characterization that they may have of the cease  
18                  and desist order, as opposed to any familiarity  
19                  that you have with that proposed order, is that  
20                  correct?

21                  MR. MILLER: Correct. Been trying to  
22                  answer based on the content of the question as  
23                  opposed to review of the order.

24                  MR. SATO: Okay. Well, and I think that  
25                  you talked about how you thought it would be

1 important that there be some type of -- if the  
2 sewer project goes forward with the County that  
3 there be some kind of schedule that the County  
4 would adhere to in order to get that project to  
5 completion, is that correct?

6 MR. MILLER: Correct.

7 MR. SATO: Okay. And I guess even  
8 though you haven't read the report, do you think  
9 it would be a good idea that within any proposed  
10 order addressing this matter that some reference  
11 be made to such a schedule by the County for  
12 completion of the project?

13 MR. MILLER: Would these be on  
14 individual orders, those milestone dates? Or on a  
15 general order to the County?

16 MR. SATO: In terms of reference to the  
17 orders to the County.

18 MR. MILLER: Those are important  
19 milestones for any project delivery.

20 MR. SATO: Thank you very much.

21 CHAIRPERSON YOUNG: Okay, 22 minutes  
22 left.

23 MS. McPHERSON: Okay, we'll call Tim  
24 Cleath.

25 CHAIRPERSON YOUNG: Okay. And would you



1 state and spell your name for the record.

2 MR. CLEATH: My name is Timothy Stephen  
3 Cleath; T-i-m-o-t-h-y, S-t-e-p-h-e-n, C-l-e-a-t-h.  
4 My address is 1390 Ocean Air Drive in San Luis  
5 Obispo.

6 CHAIRPERSON YOUNG: Okay, go ahead.

7 MS. McPHERSON: Okay. I wanted to ask  
8 you about your background and the extent of the  
9 work in Los Osos, very briefly because we don't  
10 have a lot of time.

11 MR. CLEATH: Okay. My background is I  
12 am a certified hydrogeologist, State of  
13 California, Number 81; a certified engineering  
14 geologist, number 1102 in the State of California;  
15 masters degree in geology from CalState University  
16 Los Angeles.

17 I've been working at our firm, Cleath  
18 and Associates. I'm owner of Cleath and  
19 Associates, a hydrogeologic engineering geology  
20 consulting firm. We've been working in Los Osos  
21 both on water and wastewater issues, as well as  
22 other geologic related issues for 20 years.

23 And we have been involved with  
24 evaluating wastewater disposal locations; also sea  
25 water intrusion issues. And other issues that

1 we've been working with the Los Osos Community  
2 Services District. We are currently going to be  
3 working with, consulting with the County, as well,  
4 on some of their considerations on this project.

5 MS. McPHERSON: Are you aware of any  
6 data that's been collected on individual  
7 properties in Los Osos?

8 MR. CLEATH: What kind of data?

9 MS. McPHERSON: Data from the septic  
10 tanks, specifically the 45 defendants.

11 MR. CLEATH: I'm not aware of any work  
12 that's been done specifically on those lots.

13 MS. McPHERSON: Okay. Have you read the  
14 Water Board's Staff report?

15 MR. CLEATH: My associate has read it.  
16 I've read his review of those comments on that  
17 staff report.

18 MS. McPHERSON: Can you tell me what the  
19 net difference in contaminant load reaching the  
20 groundwater between a functioning and a  
21 nonfunctioning septic tank might be?

22 MR. CLEATH: Can you give me that  
23 question one more time, please?

24 MS. McPHERSON: Can you tell me what the  
25 net difference in the contaminant load reaching

1 the groundwater in a functioning versus a  
2 nonfunctional septic tank?

3 MR. CLEATH: It all depends on what the  
4 contaminant is. And what type of -- what's meant  
5 by functioning and nonfunctioning. Generally the  
6 functioning onsite disposal system is intended to  
7 deal with microbial issues primarily; and also to  
8 allow nitrogen processing so that when it reaches  
9 the groundwater the ammonium and the other non-  
10 nitrate constituents would be dealt with.

11 MS. McPHERSON: Um-hum.

12 MR. CLEATH: How much loading there is  
13 from one, it all depends on the constituent.  
14 Generally the mineral pickup is not affected by an  
15 onsite wastewater disposal system.

16 MS. McPHERSON: Can you explain what it  
17 means by density in that report?

18 MR. CLEATH: Yes. Density has to do  
19 with the amount of onsite wastewater disposal  
20 systems that are located in a certain area.

21 MS. McPHERSON: Do you believe that the  
22 CDO pumping and inspection program will have a  
23 significant positive effect on the water quality  
24 before a community sewer plant is built?

25 MR. CLEATH: No.

1 MS. McPHERSON: So, are you saying from  
2 your expertise the CDO measures will not make a  
3 significant difference in the interim? Or even in  
4 the long term?

5 MR. CLEATH: That's correct.

6 MS. McPHERSON: Perhaps. Because  
7 otherwise we'd maybe wouldn't have a water quality  
8 problem at all if that were true. Is that a fair  
9 statement?

10 MR. CLEATH: Well, I don't know about  
11 that, but --

12 MS. McPHERSON: Okay.

13 MR. CLEATH: -- I don't think it would  
14 be a significant effect.

15 MS. McPHERSON: Okay, so the basic  
16 problem is septic tank density. Are you aware of  
17 the area called the prohibition zone?

18 MR. CLEATH: Yes.

19 MS. McPHERSON: Can you tell me why it  
20 is drawn to include the Elfin Forest?

21 MR. CLEATH: Why it is wrong to include  
22 the Elfin Forest?

23 MS. McPHERSON: Yeah. There's no  
24 housing there.

25 MR. CLEATH: Well, I don't -- yeah, I

1 don't know if it's right or wrong; I don't see  
2 that there's going to be a big problem in that  
3 area.

4 MS. MARKS: She said drawn.

5 MR. CLEATH: I'm sorry.

6 MS. McPHERSON: Drawn.

7 MS. MARKS: She said drawn.

8 MS. McPHERSON: They drew the line  
9 around the Elfin Forest, is what I was saying.

10 MR. CLEATH: Oh, I see. I don't know  
11 why they drew that line in that way.

12 MS. McPHERSON: Okay, if density is an  
13 issue, the Elfin Forest doesn't have houses is my  
14 point.

15 MR. CLEATH: Okay.

16 MS. McPHERSON: Do you believe that  
17 making sure some septic tanks are functioning well  
18 is a good idea?

19 MR. CLEATH: Oh, yes.

20 MS. McPHERSON: Okay, so if it's a good  
21 idea to maintain septic tanks, but it doesn't  
22 improve the water quality, can you tell me what  
23 the benefits might be?

24 MR. CLEATH: Well, generally with an  
25 onsite wastewater disposal system you want to make

1       sure that there's no surfacing of the effluent  
2       with health and safety concerns. Those are the  
3       primary things.

4               Also you want to give an onsite  
5       wastewater disposal system the ability to have  
6       some percolatability so that there is some process  
7       that occurs in the vadose zone above the water  
8       table.

9               MS. McPHERSON: Okay, so the staff  
10       report stated in its conclusion, in quotes, "The  
11       requirements of the CDO are reasonable interim  
12       measures to reduce the water quality effects of  
13       the ongoing illegal septic system discharges."

14              So, is that statement not really true?

15              MR. CLEATH: In my opinion, I don't  
16       think it would make a significant effect.

17              MS. McPHERSON: Okay. Did you find  
18       anything in the staff report that defined or  
19       quantified the benefit to water quality?

20              MR. CLEATH: No.

21              MS. McPHERSON: Are you familiar with  
22       the Yates and Williams study?

23              MR. CLEATH: Yes. They worked under our  
24       contract.

25              MS. McPHERSON: Are you aware that they

1       said that there's significant -- I'm sorry. Is it  
2       true that the significant changes in the upper  
3       aquifer will not occur based on the current CDO  
4       that's proposed, that it's going to take a few  
5       decades for any improvement?

6               MR. CLEATH: Well, they didn't address  
7       the CDO impacts, but in terms of the entire  
8       wastewater system being converted to a unified  
9       system, when they did the analysis they said 30 to  
10      40 years of time for there to be some substantial  
11      improvement in water quality.

12             MS. McPHERSON: So, in terms --

13             MR. CLEATH: But that refers mainly to  
14      mineral constituents like nitrates.

15             MS. McPHERSON: Okay. So in terms of  
16      this short timeframe of a couple of years or a few  
17      years to get a treatment plant built, would you  
18      agree that there's not going to be a significant  
19      or really any water quality improvement?

20             MR. CLEATH: I believe that any  
21      improvement would be very inconsequential, a very  
22      minor improvement that may be very just localized  
23      and very short term. But overall, long term,  
24      there'll be no impact other than very very minor  
25      localized impacts.

1 MS. McPHERSON: Okay. Thank you.

2 MR. CLEATH: Sure.

3 CHAIRPERSON YOUNG: Okay, so I guess  
4 we'll open it up into any of the other cease and  
5 desist order recipients that wish to ask more  
6 questions. There's 14 minutes left --

7 MS. McPHERSON: Yeah, I have two --

8 CHAIRPERSON YOUNG: -- for this --

9 MS. McPHERSON: I do have two more  
10 witnesses to call, so --

11 CHAIRPERSON YOUNG: Well, you've got 14  
12 minutes and 30 seconds, so --

13 MS. McPHERSON: They have cross-  
14 examination of witnesses, and I don't believe  
15 they're calling witnesses -- well, I don't know  
16 that for certain for every one of them.

17 CHAIRPERSON YOUNG: Yeah, I --

18 MS. McPHERSON: But they do have time  
19 for these guys individually, too.

20 CHAIRPERSON YOUNG: Yeah, Mr. Martyn, on  
21 behalf of whoever he's representing has 15 minutes  
22 later.

23 MS. McPHERSON: Okay, --

24 MR. DUGGAN: Duggan.

25 CHAIRPERSON YOUNG: With the individual



1           cease and desist order case. Duggan, pardon me.

2                   MS. McPHERSON: I was anticipating there  
3 wouldn't be very many witnesses called within each  
4 hearing, individual hearing. And so I didn't want  
5 to burn all of our time if they had individual  
6 time that might be available.

7                   So if they wanted to donate --

8                   CHAIRPERSON YOUNG: Well, that's up to  
9 them. If they want --

10                  MS. McPHERSON: If they did donate --

11                  CHAIRPERSON YOUNG: -- to do that now  
12 and then we'll set a separate clock and deduct  
13 from their 15 minutes.

14                  MS. McPHERSON: Okay. Well, I --

15                  CHAIRPERSON YOUNG: Okay.

16                  BOARD MEMBER SHALLCROSS: I didn't  
17 understand that Ms. McPherson got the whole 45  
18 minutes and no one else did.

19                  CHAIRPERSON YOUNG: No, no, no, she's  
20 not.

21                  BOARD MEMBER SHALLCROSS: Okay.

22                  CHAIRPERSON YOUNG: This is why Mr.  
23 Duggan is going to ask questions and others. But  
24 I think that they're trying --

25                  MS. McPHERSON: We're trying --

1                   CHAIRPERSON YOUNG: I know what you're  
2                   trying to do.

3                   MS. McPHERSON: -- to consolidate this.

4                   CHAIRPERSON YOUNG: But I'm hearing from  
5                   my colleagues, Ms. McPherson, that I'm --

6                   MS. McPHERSON: Not a problem.

7                   CHAIRPERSON YOUNG: -- going too far in  
8                   one direction. They don't like that. So, 45  
9                   minutes is going to stick. But, okay, Mr. Duggan,  
10                  go ahead.

11                  MR. DUGGAN: Dave Duggan, Los Osos, also  
12                  representing Cinthea Coleman. Mr. Cleath, you are  
13                  involved with the studies of the hydrology of the  
14                  basin, correct?

15                  MR. CLEATH: Correct.

16                  MR. DUGGAN: And are you familiar with  
17                  the, I guess they call it anomaly of the Los Osos  
18                  earthquake fault; I believe it's called strand B?

19                  MR. CLEATH: Yes, um-hum.

20                  MR. DUGGAN: And doesn't that fault  
21                  basically run, I would say, through the middle of  
22                  town towards Morro Bay?

23                  MR. CLEATH: That's where they have it  
24                  drawn, yes. I don't believe that it is actually  
25                  exists, personally, but I know that there's some

1 people who have postulated it.

2 MR. DUGGAN: Are you aware of the  
3 Coastal Commission's conditions relating to the  
4 approval of the permit for the wastewater  
5 treatment facility?

6 MR. CLEATH: Yes, um-hum.

7 MR. DUGGAN: And are you aware of  
8 condition 20 which they asked for, a hydrology  
9 study and --

10 MR. CLEATH: Right.

11 MR. DUGGAN: And are you aware that they  
12 accepted the maps that were included in the  
13 conditions as -- and accepted those. And in those  
14 maps they have strand B on the maps?

15 MR. CLEATH: I don't know all the  
16 specific details on that.

17 MR. DUGGAN: You do know that strand B  
18 is part of the process?

19 MR. CLEATH: Yes, it's been discussed  
20 for a long time.

21 MR. DUGGAN: Are you aware that around  
22 Pismo and 14th, and specifically on the east side  
23 of strand B of what's called a mounding of water,  
24 which is kind of an anomaly, I guess you would  
25 say. But it causes the flow of effluent or other

1 waters to flow east instead of into the Bay?

2 MR. CLEATH: If you postulate that the  
3 fault exists, you may say that there's a mound  
4 against the fault. In many respects some of those  
5 areas are perched, and that's why water levels are  
6 higher in those areas.

7 MR. DUGGAN: But the hydrology shows  
8 that the water flows east towards Los Osos Creek?

9 MR. CLEATH: If you go east of South Bay  
10 Boulevard, portions of that does flow towards the  
11 east, where it's Los Osos Creek.

12 MR. DUGGAN: To emphasize, since you  
13 don't subscribe to the fault being there, I won't  
14 ask any more questions about the fault. But, the  
15 permits are issued, are the conditions that were  
16 asked of the Los Osos so they can go forward with  
17 the project, there is not just your study, but  
18 other hydrologists that are involved with this, as  
19 well.

20 And they take -- and is that answer yes?

21 MR. CLEATH: There have been others --

22 MR. DUGGAN: Okay, and --

23 MR. CLEATH: -- investigating --

24 MR. DUGGAN: -- those -- and those other  
25 hydrologists and people who study hydrology submit

1       this data, and it's an assumption in most cases,  
2       this is really an assumption of data? In other  
3       words, nothing's absolute, but it's your best  
4       assumption?

5               MR. CLEATH: Certain things you make  
6       assumptions on, yes. Other things you have pretty  
7       hard data on, yes.

8               MR. DUGGAN: Okay, that's all I have,  
9       thank you.

10              CHAIRPERSON YOUNG: Okay. Mr. Payne,  
11       did you want to ask any questions?

12              MR. PAYNE: No, thanks.

13              CHAIRPERSON YOUNG: Okay. And, Mr.  
14       Rochte?

15              MR. ROCHTE: No.

16              CHAIRPERSON YOUNG: Okay. Anyone else  
17       who's a cease and desist order recipient wish to  
18       ask this witness any questions? Okay. I'll allow  
19       the prosecution team to do any cross-examination  
20       that they want.

21              MR. THOMPSON: Thanks, I'll make it  
22       brief. Thank you for coming, Mr. Cleath. Is your  
23       hydrogeology firm responsible for preparing  
24       groundwater monitoring reports for the Los Osos  
25       CSD?

1           MR. CLEATH: We are assisting the  
2           District with analysis of the data. We designed  
3           the monitoring plan and did it ourselves for the  
4           first few times. And the County has taken over  
5           the sampling and we evaluate their data and  
6           prepare the monitoring report now.

7           MR. THOMPSON: Okay, thank you. So then  
8           may I presume you're familiar with the groundwater  
9           monitoring well network?

10          MR. CLEATH: Very much.

11          MR. THOMPSON: Is that groundwater  
12          monitoring well network representative of  
13          groundwater in the Los Osos/Baywood Park  
14          prohibition zone?

15          MR. CLEATH: The answer to that really  
16          you have to understand why we designed the  
17          monitoring plan. The monitoring plan was done in  
18          order to evaluate baseline conditions for a  
19          wastewater treatment plant and the proposed  
20          disposal plan that they have. And so we're  
21          establishing baseline conditions.

22          We found that they're highly variable in  
23          nitrate concentrations. And it's one of those  
24          things where I wouldn't feel comfortable if you  
25          told me a block away we have a site and we have a

1 water sampling point over here, does that  
2 represent what's a block away. And I would say, I  
3 would be very careful to say that this is not  
4 designed to evaluate something at a different  
5 location.

6 In general, it does give you a picture  
7 of first water nitrate conditions. But I wouldn't  
8 even make an effort, in fact we've contoured --  
9 you've shown a map from the monitoring reports  
10 which shows a contoured nitrate concentration.  
11 But I don't think that that's -- in fact, in this  
12 most recent monitoring report we've taken out  
13 those contours. We've had caveats in those  
14 previous exhibits saying that this is general in  
15 nature.

16 But I think that if by contouring it,  
17 sometimes it gives you the feeling like  
18 everything's consistent between the points, and it  
19 isn't.

20 So, is it, in general, accurate  
21 presentation? Generally, yes; but, site-  
22 specifically, I would feel that you would need to  
23 do additional work.

24 MR. THOMPSON: Does shallow groundwater  
25 in the Los Osos prohibition zone exceed the

1 drinking water standard for nitrate?

2 MR. CLEATH: In some locations, yes.

3 MR. THOMPSON: Do you believe septic  
4 system discharges have degraded the groundwater  
5 quality?

6 MR. CLEATH: I do, yes.

7 MR. THOMPSON: Would you agree that  
8 septic system discharges should be eliminated to  
9 improve groundwater quality in the prohibition  
10 zone?

11 MR. CLEATH: I guess I don't have that  
12 authority. But, would it help to reduce the  
13 nitrate loading? As long as the new system deals  
14 with that, yes, I think that that would help.

15 MR. THOMPSON: Thank you, sir. That's  
16 all I have for you.

17 CHAIRPERSON YOUNG: Okay.

18 MR. PACKARD: I have one question.

19 CHAIRPERSON YOUNG: Sure.

20 MR. PACKARD: In your opinion is it  
21 reasonable for owners and operators of septic  
22 systems to pump and inspect those facilities from  
23 time to time?

24 MR. CLEATH: I think that the answer to  
25 that is yes. The frequency all depends on how the



1       septic tank is operating.

2               MR. PACKARD: Thank you.

3               CHAIRPERSON YOUNG: Hold on one second.

4               You know, a question I had has to do  
5 with Dr. Wickham's testimony. I don't know if you  
6 heard him --

7               MR. CLEATH: I did.

8               CHAIRPERSON YOUNG: -- at the first  
9 hearing?

10              MR. CLEATH: I heard him at other  
11 presentations, yes.

12              CHAIRPERSON YOUNG: Okay. Have you  
13 heard any of his opinions regarding aerial  
14 deposition of nitrogen from the emissions from the  
15 power plant?

16              MR. CLEATH: I don't believe it's  
17 significant.

18              CHAIRPERSON YOUNG: Okay.

19              MR. CLEATH: Yes, I did hear him say  
20 that. And I thought that was a little far-  
21 fetched, personally.

22              CHAIRPERSON YOUNG: Okay. All right.  
23 Thank you very much.

24              MR. CLEATH: Thank you.

25              CHAIRPERSON YOUNG: Unless you have any

1 follow-up --

2 MS. McPHERSON: Okay, next --

3 CHAIRPERSON YOUNG: -- questions, I mean  
4 you have 11 minutes. And if you wanted to do  
5 further questions --

6 MS. McPHERSON: I have another -- well,  
7 I have another witness I'm going to try to fit in  
8 in the 11 minutes.

9 CHAIRPERSON YOUNG: That's fine. Okay,  
10 thank you very much.

11 MR. CLEATH: Thank you.

12 MS. McPHERSON: Thank you. And I did  
13 have follow-up questions, but I think we'll just  
14 do our best to get as much in in this process as  
15 possible.

16 CHAIRPERSON YOUNG: Okay, well, he can  
17 be brought back if he's agreeable to that, in the  
18 individual 15 --

19 MS. McPHERSON: We're trying to avoid  
20 that so we can incorporate that time --

21 CHAIRPERSON YOUNG: Right, I understand.

22 MS. McPHERSON: -- and that's why I was  
23 suggesting that if people wanted to ask questions,  
24 cross-examine individually that they would use  
25 their time from their hearing, if they weren't

1 going to call him as a witness separately. But it  
2 was just a suggestion.

3 CHAIRPERSON YOUNG: All right.

4 MS. McPHERSON: The next witness is Rob  
5 Shipe.

6 CHAIRPERSON YOUNG: Okay.

7 MR. SHIPE: My name is Rob Shipe.

8 MS. McPHERSON: Rob has -- if we could  
9 stop the time. Rob has some documents that need  
10 to go on the overhead. The overhead isn't set up  
11 yet.

12 MR. SHIPE: Yeah, I could start with  
13 that. They're just going to need to be kind of  
14 flipped, whole sections at a time. If it would be  
15 easier, I could testify with a wireless mike and  
16 stand there and do it, myself.

17 MS. McPHERSON: That might be -- is that  
18 possible?

19 (Microphone check.)

20 MS. McPHERSON: No karaoke.

21 (Pause.)

22 MS. McPHERSON: Okay, I'll be asking  
23 some questions. State for the record your name.

24 MR. SHIPE: My name is Rob Shipe, R-o-b,  
25 S-h-i-p-e.

1 MS. McPHERSON: And what is your  
2 relationship to the proceedings today?

3 MR. SHIPE: I settled with the  
4 prosecution.

5 MS. McPHERSON: Did you prepare for the  
6 hearings?

7 MR. SHIPE: Yes, fully.

8 MS. McPHERSON: In front of you in the  
9 papers you have, is your evidence package called,  
10 Shipe 10-3 Info pdf, and it's located also on the  
11 website of the Water Board?

12 MR. SHIPE: That is correct.

13 MS. McPHERSON: There are two questions  
14 before the Board today. One is, are individuals  
15 responsible for the discharges in violation of the  
16 prohibition zone. And the second one, are  
17 remedies of the CDO appropriate. And I'll be  
18 asking about how the documents in your evidence  
19 package relate to these two questions before the  
20 Board.

21 MR. SHIPE: Okay.

22 MS. McPHERSON: Okay, so the first  
23 document you have up there, can you identify the  
24 document?

25 MR. SHIPE: This is the memorandum of

1 understanding with the Regional Water Quality  
2 Control Board and the County of San Luis Obispo.

3 MS. McPHERSON: Okay, what sections will  
4 you be referring to?

5 MR. SHIPE: Sections 1, 2 and 3; and  
6 specifically numbers 1 and 7 under 3.

7 MS. McPHERSON: Can you tell me what  
8 they say?

9 MR. SHIPE: Briefly, they clearly spell  
10 out that the County of San Luis Obispo is the  
11 agency that's responsible for discharges in Los  
12 Osos. And within the entire County, not just  
13 individual dischargers.

14 MS. McPHERSON: And what text -- can you  
15 identify the text that says that?

16 MR. SHIPE: Specifically, as we look at  
17 the bottom down here of 1, it says, in the County  
18 of San Luis Obispo the planning director is the  
19 administrator of the individual sewage disposal  
20 systems and regulations.

21 Section 2 states that the memorandum of  
22 understanding defines cooperative roles for the  
23 County of San Luis Obispo and the Regional Board  
24 with respect to the regulations of onsite sewage  
25 disposal systems, and compliance with the purpose

1 of intent of basin plan and applicable County  
2 ordinances and regulations.

3 MS. McPHERSON: Okay.

4 MR. SHIPE: Then into section 3, number  
5 1 basically says that the County representative  
6 responsible for making sure all septic tanks --  
7 responsible for septic tanks is responsible for  
8 all, making sure compliance with all ordinances  
9 and regulations.

10 MS. McPHERSON: Okay, now can you  
11 identify the next document for me, the February  
12 21, 1984 letter, to and from?

13 MR. SHIPE: Yes. The February 21, 1984  
14 letter was a letter regarding the passage of this  
15 bill from 8312, resolution 8312.

16 MS. McPHERSON: Okay, so the systems are  
17 under regulatory authority of the County and the  
18 Water Board?

19 MR. SHIPE: Yes.

20 MS. McPHERSON: And that shows a  
21 conditional waiver regulation?

22 MR. SHIPE: Yes. Number 1 says offsite  
23 disposal systems serving up to five dwelling units  
24 or designed for less than 2500 gallons per day are  
25 under the regulatory authority of the County of

1 San Luis Obispo. Regional Board, which has  
2 conditionally waived regulation of this size  
3 system need not be informed of approval or denial  
4 of these systems.

5 MS. McPHERSON: Okay. Is there other  
6 documentation that indicates who the responsible  
7 agency is? Do you find documentation, any  
8 documentation in the files that shows any other  
9 notification of authority that had been removed?

10 MR. SHIPE: There's nothing in what I  
11 saw that removed that authority. There was one  
12 letter from Roger Briggs dated, I believe it was  
13 February -- that's right, September 5th, which  
14 states that the Regional Board will now be  
15 reviewing all new additions within the prohibition  
16 zone.

17 MS. McPHERSON: Do you have that letter,  
18 number 21?

19 MR. SHIPE: Yes.

20 MS. McPHERSON: Can you put that up  
21 there on the overhead?

22 MR. SHIPE: Actually, on the list the  
23 County listed it as the 21st, but it was actually  
24 September 5th.

25 MS. McPHERSON: Okay.

1                   MR. SHIPE:  And that's the letter right  
2                   there.

3                   MS. McPHERSON:  And is that from Roger  
4                   Briggs?

5                   MR. SHIPE:  Let's look at the next page.  
6                   I believe it is.  Yes, I believe that's his name  
7                   and signature right there.

8                   MS. McPHERSON:  And does that say that  
9                   the Water Board will now approve any new buildings  
10                  or additions?

11                  MR. SHIPE:  Yes.

12                  MS. McPHERSON:  Okay.  What conclusions  
13                  did you reach when you reviewed these documents?

14                  MR. SHIPE:  It appears that the County  
15                  of San Luis Obispo is responsible for discharges  
16                  in this case from the Regional Water Quality  
17                  Control Board's perspective.

18                  MS. McPHERSON:  Not individuals?

19                  MR. SHIPE:  Absolutely.

20                  MS. McPHERSON:  Okay, regarding the  
21                  second question before the Board, are the  
22                  requirements in the CDO appropriate.  Can you  
23                  please refer back to the MOU.

24                  MR. SHIPE:  Okay.  Yes.  According to  
25                  the memorandum of understanding section 3, number



1 6, if I can pull that one forward --

2 MS. McPHERSON: Is that the section that  
3 states the Regional Board will keep the County,  
4 and specifically the Department of Planning and  
5 Building, informed of changes in regulations and  
6 guidelines?

7 MR. SHIPE: Yes, it is.

8 MS. McPHERSON: And from the review of  
9 the files and work with residents that you have  
10 done so far, what have you found?

11 MR. SHIPE: That the County has failed  
12 to adequately notify -- I'm sorry, strike that.  
13 The Regional Board has failed to properly notify  
14 the County of San Luis Obispo regarding the basin  
15 plan prohibition.

16 MS. McPHERSON: You looked through their  
17 files, and did you find some notifications  
18 regarding 8312?

19 MR. SHIPE: I found notifications  
20 regarding 8312; I found some notifications  
21 regarding the 1988 ruling. But I found nothing  
22 regarding 8313 in the County records.

23 MS. McPHERSON: So, did you find  
24 anything at all stating that it was a prohibition  
25 of discharges from individual households, or that

1       they were illegal, or that they were subject to  
2       individual enforcement and fines?

3               MR. SHIPE:  No.

4               MS. McPHERSON:  Did you find anything  
5       stating that the regulations must comply with the  
6       prohibitions?

7               MR. SHIPE:  I'm sorry, say that again?

8               MS. McPHERSON:  Did you find that they  
9       had anything state that they needed to comply with  
10      regulations regarding a prohibition zone?

11              MR. SHIPE:  Yes, there was a document  
12      that stated that they must stay in compliance with  
13      the prohibition.

14              MS. McPHERSON:  But nothing regarding a  
15      prohibition zone?

16              MR. SHIPE:  Well, there was on that  
17      first, says this one regarding 8312 from December  
18      16th, '83, your regulations must comply with items  
19      within the prohibitions section of this amendment.  
20      And once again, we're referencing the prohibitions  
21      within 8312, not the prohibition zone within 8313.

22              MS. McPHERSON:  So you found nothing  
23      regarding the notification of 8313 in the files?

24              MR. SHIPE:  No, there was nothing.

25              MS. McPHERSON:  Okay, I need to move on

1 because we have to go kind of quick here.

2 MR. SHIPE: Yeah.

3 MS. McPHERSON: I found -- when I was  
4 looking through your things I found a document  
5 relating to the 1988 ruling by the Water Board.

6 MR. SHIPE: Yes.

7 MS. McPHERSON: Specifically talking  
8 about a meeting held between two agencies.

9 MR. SHIPE: Yes.

10 MS. McPHERSON: What did those documents  
11 say regarding the 1988 ruling of this Board?

12 MR. SHIPE: Basically what it said, if I  
13 can find --

14 MS. McPHERSON: I'm sorry, can you put  
15 the letter from Paul Crawford to Roger Briggs up?

16 MR. SHIPE: Yes, this is a letter from  
17 Paul Crawford to Roger Briggs dated January 21,  
18 1988. And it reads: This is intended to  
19 summarize the conclusions reached at our meeting  
20 on January 21, 1988, which included John Goni and  
21 Jay Kano of your staff, Tim Mazzacano, County  
22 Director of Environmental Health, Fred Norton and  
23 Doug Morris of my staff, you and I."

24 "We met to clarify the provisions of  
25 your Board's order of January 8th, and we agreed

1 upon the following points, all of which resulted  
2 from the basic understanding that the order of the  
3 Regional Water Quality Control Board prohibits  
4 this office from issuing any construction permits  
5 which would result in new sewage discharge,  
6 increases in discharge from existing sewage  
7 disposal systems within the prohibition area."

8 And then it goes on to outline what  
9 those restrictions are. And --

10 MS. McPHERSON: Rob, --

11 MR. SHIPE: Yes.

12 MS. McPHERSON: Yes. Okay, so the  
13 restrictions that they outline, is that item 8 on  
14 there?

15 MR. SHIPE: One of the items is item 8.  
16 And that was an interesting item. As Mr. Thompson  
17 gave a possibility of avoiding discharges by  
18 getting a holding tank. But item number 8 on this  
19 says that holding tanks shall not be allowed as a  
20 method of sewage disposal. Which means the only  
21 option that he's giving us is would make us in  
22 violation of the basin plan.

23 MS. McPHERSON: Okay, thank you. In  
24 that with respect to the Paul Crawford from  
25 William Leonard, --

1 MR. SHIPE: Yes.

2 MS. McPHERSON: -- the second  
3 document, --

4 MR. SHIPE: That was a response.

5 MS. McPHERSON: Okay. And did Mr.  
6 Leonard sign the letter, himself?

7 MR. SHIPE: No. The letter from Mr.  
8 Leonard was not signed by Mr. Leonard, but instead  
9 it was signed for him by Roger Briggs.

10 MS. McPHERSON: Okay, so if the Board  
11 were to somehow find that the County was not  
12 responsible for the discharges; that, in fact,  
13 that their own staff was responsible for  
14 misinforming the agency responsible for making  
15 sure that we are complying with all ordinance and  
16 regulations in the basin, is that pretty much what  
17 we're talking about in the second question?

18 MR. SHIPE: Yes. Basically the Regional  
19 Board had a responsibility to notify the County of  
20 San Luis Obispo regarding any regulations on  
21 onsite systems. The Regional Board, specifically  
22 Roger Briggs, failed in that responsibility.

23 And because of that we have been  
24 notified in our community that the prohibition  
25 zone is a prohibition on building, a prohibition

1 on new sources of discharge.

2 MS. McPHERSON: Okay, so are you saying  
3 that the failure of 45 individuals to know about  
4 the basin plan prohibition is not a matter of  
5 ignorance of the law, it's a matter of being  
6 misinformed --

7 MR. SHIPE: Absolutely.

8 MS. McPHERSON: -- by the person who  
9 came up with the whole idea for the CDOs,  
10 themselves?

11 MR. SHIPE: Absolutely.

12 MS. McPHERSON: Can you tell me who you  
13 met with at the County?

14 MR. SHIPE: Yes. I spoke with a Mr.  
15 Doug Morris. He was actually at that meeting on  
16 January 21, 1988.

17 MS. McPHERSON: Can you tell us,  
18 somewhat quickly, about how your two-hour meeting  
19 progressed?

20 MR. SHIPE: Actually it wasn't a two-  
21 hour meeting. I ended up waiting around for two  
22 hours. I went down -- after deposing Mr. Briggs,  
23 he said a couple things and so I went down to the  
24 County offices to look up some of these documents  
25 to find out for myself.

1           I started asking about the prohibition  
2           zone and if I could find any information about the  
3           prohibition of discharges. And literally,  
4           everybody there looked at me like I was crazy.  
5           Because none of them had any idea -- and this is  
6           the Department of Planning and Building. These  
7           are the people who are supposed to be responsible  
8           for onsite systems within our community.

9           And so I went around, got passed around  
10          from person to person to person. I went through  
11          six or seven people. And then by the time I  
12          reached the end of it, I got ahold of Doug Morris.  
13          And actually I was the one who informed him that  
14          that 1980 ruling by your Board was a prohibition  
15          of discharges, not a prohibition against building  
16          any more.

17          MS. MCPHERSON: Mr. Shipe, what is the -  
18          - you have the Los Osos building moratorium  
19          document?

20          MR. SHIPE: Yes, I do.

21          MS. MCPHERSON: Page 17 --

22          CHAIRPERSON YOUNG: Ms. McPherson,  
23          you'll have to wrap it up because your time has  
24          expired.

25          MS. MCPHERSON: Okay, page 17. Is it --

1 CHAIRPERSON YOUNG: I'll give you one  
2 more question with --

3 MS. McPHERSON: Is it possible to use  
4 time out of my presentation to finish him?

5 CHAIRPERSON YOUNG: You know, --

6 MS. McPHERSON: Okay.

7 CHAIRPERSON YOUNG: -- my colleagues  
8 said no, so we're going to stick to that. This is  
9 the last question.

10 MS. McPHERSON: Okay. We'll be calling  
11 him back as a witness, then, during our --

12 CHAIRPERSON YOUNG: That's fine.

13 MS. McPHERSON: That would be okay?  
14 Okay, well, then we'll save the Los Osos building  
15 moratorium document. Let me see if there's --  
16 well, I guess we can start on that, we can go back  
17 to it.

18 What is the official policy on page 17?  
19 Can you read that?

20 MR. SHIPE: Yes. The official policy;  
21 this statement says: On Friday, January 8, 1988,  
22 the California Regional Quality Control Board  
23 imposed a moratorium on new sources of sewage  
24 discharge and increases of volume of existing  
25 sources in the community of Baywood/Los Osos. The



1 moratorium was imposed through the provisions of a  
2 memorandum of understanding executed between the  
3 County and the Regional Water Board in December  
4 1978, and imposes a variety of responsibilities on  
5 the County."

6 "The purpose of this memo is to set  
7 forth the official Department of Planning and  
8 Building policy regarding implementation of his  
9 moratorium by staff."

10 This document, everybody who has went in  
11 and asked for a building permit from the County in  
12 Los Osos has received this document. Everybody  
13 who has built in Los Osos has had a signed  
14 statement saying that they will comply with this  
15 document. And that if not it's a misdemeanor  
16 offense if they fail to comply with this document.

17 MS. MCPHERSON: We'll come back to that,  
18 okay, when we ask another question. I just want  
19 to wrap it up with this. The first paragraph  
20 reads: The Water Board ruling stated that it was  
21 a moratorium on new sources of discharge and  
22 increases in volume of existing sources"?

23 MR. SHIPE: That is correct.

24 MS. MCPHERSON: And that's what's cited  
25 in the MOU, and that's what's stated in the

1 official policy?

2 MR. SHIPE: Yes.

3 MS. McPHERSON: So the moratorium is on  
4 new sources of discharge and increases in volume  
5 of existing sources, not a ban on illegal septic  
6 tank discharge, is that correct?

7 MR. SHIPE: Yes.

8 MS. McPHERSON: Thank you.

9 CHAIRPERSON YOUNG: Okay, thank you.  
10 That time has expired, and the prosecution team  
11 can cross-examine Mr. Shipe if they wish to.

12 MR. SHIPE: Do you want to leave these  
13 up here?

14 MR. THOMPSON: You can leave those up  
15 there, that's fine. I'm going to turn it off; you  
16 can turn it off. But I would like you to stay up  
17 here. You can stand at the podium, if you'd like.

18 (Pause.)

19 MR. SHIPE: Okay, yes.

20 MR. THOMPSON: Thanks, Rob. I'm handing  
21 you a document. Could you read the header at the  
22 top there?

23 MR. SHIPE: Yes. "Discharge of Waste  
24 from Individual and Community Sewage Disposal  
25 Systems are Prohibited effective November 1, 1988

1 in the Los Osos/Baywood Park Area, and more  
2 particularly described as."

3 MR. THOMPSON: Okay, can you bear with  
4 me for a second, please.

5 (Pause.)

6 MR. THOMPSON: Okay. Sorrel, can you  
7 hand me page 4 from the basin plan, resolution  
8 8313 and that appendix.

9 (Pause.)

10 MR. THOMPSON: Thanks for your patience,  
11 Rob.

12 MR. SHIPE: Okay.

13 MR. THOMPSON: Is what you just read the  
14 first little paragraph at the top top there?

15 MR. SHIPE: Yes.

16 MR. THOMPSON: Okay. Is that Regional  
17 Board resolution 8313 that you're reading?

18 MR. SHIPE: It's part of it, yes.

19 MR. THOMPSON: Okay. Could you read  
20 that first paragraph again?

21 MR. SHIPE: Discharging waste from  
22 individual and community sewage disposal systems  
23 are prohibited effective November 1, 1988 in the  
24 Los Osos/Baywood Park area, and more particularly  
25 described as.

1           MR. THOMPSON: Okay, thank you. I've  
2 highlighted a box for you in my copy of the basin  
3 plan resolution.

4           MR. SHIPE: Yes.

5           MR. THOMPSON: Is that the same  
6 highlighted section as I'm pointing to there with  
7 this pen?

8           MR. SHIPE: Yes, it is.

9           MR. THOMPSON: Could you please read  
10 that for me?

11           MR. SHIPE: Be it further resolved that  
12 compliance with the above prohibition of existing  
13 individual or community sewage disposal systems  
14 shall be achieved in according to the following  
15 time schedule.

16           MR. THOMPSON: Does that statement refer  
17 to existing individual or community sewage  
18 disposal systems?

19           MR. SHIPE: Yes.

20           MR. THOMPSON: That's all I have for  
21 you, thank you.

22           MR. SATO: I have just a couple  
23 questions for you, Mr. Shipe. The letters that  
24 you presented to us today, it's fair to say that  
25 that's simply your interpretation of what the

1 letters say, is that correct?

2 MR. SHIPE: No. I don't think so. I  
3 think the letters speak for themselves and they're  
4 pretty clear.

5 MR. SATO: Exactly, the letters speak  
6 for themselves, thank you.

7 CHAIRPERSON YOUNG: Okay.

8 MR. SHIPE: Can I make one comment? If  
9 not, no problem.

10 CHAIRPERSON YOUNG: No, you can't, not  
11 unless there's a question pending before you.

12 All right, that concludes that portion  
13 of the hearing. So we will now begin the  
14 individual cease and desist order hearings.

15 We'll take a break so people can set up.  
16 And I guess then the prosecution team, is it your  
17 intent to start alphabetically?

18 Okay, so why don't we -- so Mr. Allebe  
19 would be first. And then who would be second?  
20 Did they settle?

21 MR. THOMAS: No.

22 CHAIRPERSON YOUNG: That's right. And  
23 then Ms. Coleman will be second. And who would be  
24 third? And then 1046, Douglas and Paula Dishen,  
25 would be third.

1                   So, we're going to take a ten-minute  
2       break.

3                   MR. THOMAS:   Who was third?   Dishen.

4                   CHAIRPERSON YOUNG:   Dishen.

5                   MR. THOMAS:   D-i-s-h-e-n.

6                   CHAIRPERSON YOUNG:   D-i-s-h-e-n.

7                   MS. McPHERSON:   Is there a Dishen here?

8                   CHAIRPERSON YOUNG:   I don't know, we'll  
9       find out.

10                   (Brief recess.)

11                   CHAIRPERSON YOUNG:   The first thing I  
12       wanted to take care of was just making sure that  
13       the documents that Mr. Shipe had used and relied  
14       upon at least were marked.   And then I would ask  
15       the prosecution team if they have any objection to  
16       those documents coming into evidence.

17                   MR. SHIPE:   Do you want me to tell you  
18       where they are?

19                   CHAIRPERSON YOUNG:   Well, you know,  
20       we --

21                   MR. SHIPE:   Okay.   No, I was just --

22                   CHAIRPERSON YOUNG:   -- have copies -- do  
23       you have copies of them?

24                   MR. SATO:   Yes, we do.   They were  
25       contained as part of, I believe, Mr. Shipe's

1           evidentiary submission.

2                   CHAIRPERSON YOUNG:  Okay.  I just want  
3           to make sure we know which ones he used, because  
4           they were not referred to except by date or by  
5           author.  There wasn't an exhibit number attached  
6           to each one.

7                   MR. SHIPE:  If I might answer, at the  
8           beginning Ms. McPherson referenced Shipe, 10/13,  
9           info pdf.  And that was the file.

10                   CHAIRPERSON YOUNG:  Okay, but I think  
11           there may be other documents in that that you  
12           didn't discuss, and so --

13                   MR. SHIPE:  That had all those documents  
14           in there.

15                   MR. SATO:  Well, I think it raises a  
16           good point, Mr. Young, that probably those things  
17           that Mr. Shipe did display on the LMO should be  
18           marked as some type of exhibit here.

19                   CHAIRPERSON YOUNG:  Okay.

20                   MR. SATO:  And so we know from the  
21           record what it was that was being referred to.

22                   CHAIRPERSON YOUNG:  Okay.  And are there  
23           any objections to them coming into the record?

24                   MR. SATO:  No objections.

25                   CHAIRPERSON YOUNG:  Okay.  Fine, so they

1 are --

2 MR. SATO: Other than they're simply  
3 documents.

4 CHAIRPERSON YOUNG: Okay.

5 (Pause.)

6 CHAIRPERSON YOUNG: All right, Mr.  
7 Murphy had asked me for time to do the CSD's  
8 closing. And I was going to let him do that  
9 before we begin the individual cease and desist  
10 order hearings. And I think we discussed that  
11 anyway early on.

12 So, go ahead. Let me just see how much  
13 time --

14 MR. MURPHY: Mr. Chairman, this will  
15 take two minutes.

16 CHAIRPERSON YOUNG: Two minutes?

17 MR. MURPHY: Don't worry.

18 CHAIRPERSON YOUNG: Okay.

19 MR. MURPHY: On behalf of our client I  
20 would like to thank you for your service to the  
21 state; thank the prosecution team for their  
22 vigorous protection of the state's waters.

23 As we all know, we're here today  
24 regarding two issues. First, our person to own or  
25 occupy each property discharging or threatening to



1 discharge in violation of the prohibition in the  
2 basin plan.

3 It is our contention that no evidence  
4 has been brought forward thus far to show that any  
5 individual person who owns or occupies any  
6 property is discharging or threatening to  
7 discharge. In the absence of any such information  
8 in the individual hearings to come, it is our  
9 contention that no CDOs or other enforcement may  
10 issue because there will be no competent evidence  
11 on which to issue them.

12 Second issue are the requirements of the  
13 proposed cease and desist orders the appropriate  
14 remedy for violations of the prohibition. Again,  
15 I think Rob Miller made some interesting comments  
16 today regarding the County critical path;  
17 regarding a better CDO that could be issued with  
18 more complete time schedules contained therein.

19 It's our contention that if you do go  
20 ahead and issue CDOs we ask that either you hold  
21 off on issuing them until the County develops a  
22 critical path that can be tied into the CDOs to  
23 make them a more practical and equitable document  
24 or order. Or in the alternative, to at least push  
25 back the 1/1/08 date for what I have called the

1 safe harbor in order to give some wiggle room for  
2 what, at last check, was a \$138 million public  
3 works project. It being our contention that one  
4 month of wiggle room is simply not enough for a  
5 project of that magnitude.

6 And that, again, as a practical and  
7 equitable matter, having the individual defendants  
8 lose the safe harbor due to that small bit of  
9 wiggle room would make these orders subject to  
10 review and potential vacation.

11 Thank you again for your service to the  
12 state. And I wish you all a happy holiday season.  
13 Thanks.

14 CHAIRPERSON YOUNG: Okay, thank you.  
15 The prosecution team would have an opportunity to  
16 provide any kind of a closing in response to that  
17 closing.

18 MR. SATO: We were hoping to reserve our  
19 right to close at the end of all of the  
20 proceedings.

21 CHAIRPERSON YOUNG: Okay, well, what  
22 will happen is the Board is going to adjudicate  
23 each CDO as they come up. And not at the end.  
24 So, as we go through this, each one is actually  
25 going to get an individualized hearing in that

1        regard.  So the Board is going to hear that  
2        evidence.  Then the Board is going to rule.  And  
3        then we will be done with that CDO.

4                MR. SATO:  May I consult just a moment  
5        with the prosecution team?

6                CHAIRPERSON YOUNG:  Pardon me?

7                MR. SATO:  May I consult for just a  
8        moment with the prosecution team?

9                CHAIRPERSON YOUNG:  Of course.

10               MR. SATO:  Thank you.

11               CHAIRPERSON YOUNG:  Yeah.

12               (Pause.)

13               CHAIRPERSON YOUNG:  Okay, what would you  
14        like to do?

15               MR. PACKARD:  We'll just make a brief  
16        statement, also.

17               CHAIRPERSON YOUNG:  Okay.  All right, go  
18        ahead.

19               MR. PACKARD:  As Mr. Murphy just  
20        mentioned, we are -- the Board is reviewing two  
21        main issues.  The first one, are persons who own  
22        or occupy each property discharging or threatening  
23        to discharge in violation of Los Osos/Baywood Park  
24        prohibition in the basin plan.

25               It's our assertion that the people named

1 in the proposed orders live on those premises;  
2 they have septic systems; and therefore there's no  
3 doubt that they are discharging in violation of  
4 the basin plan. So the answer to that first  
5 question is unquestionably yes.

6 The second is, are the requirements of  
7 the proposed CDO appropriate for this violation.  
8 And we also believe that the answer is yes.

9 Mr. Murphy says that perhaps we ought to  
10 wait for a better schedule from the County, but I  
11 think it's clear from the testimony, including Mr.  
12 Miller's testimony, that a better schedule does  
13 not yet exist. And that the January 1, 2008 date  
14 is the first best date that we have to put and  
15 enforce in these CDOs.

16 CHAIRPERSON YOUNG: Excuse me, we're  
17 getting a little bit of an audio interference from  
18 the back. Okay. Go ahead, Mr. Packard.

19 MR. PACKARD: It's clear that despite  
20 some of the testimony you've heard today that the  
21 individuals in the prohibition zone are the ones  
22 responsible for the discharge. The County's not  
23 responsible for the discharges that are taking  
24 place. The Regional Board is not responsible for  
25 the discharge. The individuals who live in the

1 prohibition zone and use septic systems are  
2 individually responsible for the consequences of  
3 violating the prohibition.

4 We'll hear some individual testimony a  
5 we move forward here, but our recommendation  
6 remains the same, that you adopt the CDOs at the  
7 end of each of those individual hearings.

8 Thank you very much.

9 CHAIRPERSON YOUNG: Okay, why don't we  
10 then begin with Mr. Allebe. Yes?

11 BOARD MEMBER SHALLCROSS: Mr. Chair,  
12 when is it appropriate for the Board to ask  
13 questions?

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

16 BOARD MEMBER SHALLCROSS: Okay. Well, I  
17 just have a -- I think on this issue of whether or  
18 not the folks are discharging, since it was  
19 brought up by the CSD's attorney on his closing,  
20 how did the prosecution team know who was living  
21 on what property within the zone? How did you  
22 know that these are the individuals that have  
23 houses --

24 MR. PACKARD: We got the original list  
25 from the County Assessor's Office.

1 BOARD MEMBER SHALLCROSS: Um-hum.

2 MR. PACKARD: And so we issued the  
3 proposed orders to the people named on the County  
4 assessment rolls.

5 We asked them to verify that they indeed  
6 live or own -- live at the property or own the  
7 property. And so we have, for most of them,  
8 verification that they actually do live or own at  
9 the facility -- at the property.

10 BOARD MEMBER SHALLCROSS: And is that in  
11 the record? The verifications.

12 MR. PACKARD: Yeah, those are in the  
13 form of letters or emails back from designated  
14 parties.

15 BOARD MEMBER SHALLCROSS: Okay.

16 CHAIRPERSON YOUNG: Did you receive any  
17 correspondence from anyone you sent letters out to  
18 based on the Assessor's list, whereby they said we  
19 don't live there, we don't own it, there's been a  
20 mistake; we don't have anything to do with that  
21 property?

22 MR. PACKARD: We sent originally 50, and  
23 five parties responded they don't live within the  
24 prohibition zone or are hooked to a community  
25 system. And those we withdrew.

1                   CHAIRPERSON YOUNG: All right, of the  
2                   45?

3                   MR. PACKARD: I don't believe so. Matt?

4                   MR. THOMPSON: Of the 45 that we sent  
5                   the proposed cease and desist orders to, I believe  
6                   there were two properties where it was occupied by  
7                   a tenant, okay. And so the owner acknowledged  
8                   that it was occupied by a tenant.

9                   In one case one of the tenants was a  
10                  contractor that was working on a sewer project;  
11                  and he moved out of town. And so that property  
12                  was unoccupied for awhile. And we've been in  
13                  communication with that person and -- the owner of  
14                  that property, and they told us that they were  
15                  going to find a new tenant. And so they were  
16                  basically saying that they're going to continue to  
17                  use the property.

18                  CHAIRPERSON YOUNG: Okay, but I guess my  
19                  question is you didn't get anyone to respond that  
20                  they were not an owner of one of the 45  
21                  properties.

22                  MR. THOMPSON: Correct.

23                  CHAIRPERSON YOUNG: Okay. All right,  
24                  any other questions from the Board? If not, we'll  
25                  go ahead then and start with order number 1019;

1 that would be Mr. Allebe.

2 And the order that we're going to follow  
3 is in the November 21st notice. And let me just  
4 go through this briefly. We're going to have a  
5 presentation of property-specific evidence of  
6 violations and need for each proposed cease and  
7 desist order by the prosecution staff.

8 Then we'll have cross-examination of  
9 prosecution team by the individual cease and  
10 desist order recipient.

11 Then we will have presentation of  
12 property-specific evidence by individual property  
13 owners or tenants subject to each proposed cease  
14 and desist order.

15 That will be followed by cross-  
16 examination of the individual property owners or  
17 tenants by the prosecution team.

18 And then rebuttal testimony by the  
19 prosecution team. And then rebuttal testimony by  
20 individual property owners or tenants.

21 After that then the Board will  
22 deliberate and decide what to do.

23 So, Mr. Sato, please proceed.

24 MR. SATO: Thank you. Matt Thompson  
25 will be making the presentation.



1                   MR. THOMAS: Harvey, can you please  
2 toggle to the --

3                   CHAIRPERSON YOUNG: Okay, and Mr.  
4 Richards just reminded me that we're going to have  
5 closing arguments then by the individuals named in  
6 the proposed cease and desist order, and then by  
7 the Water Board prosecution staff. Then we'll  
8 have the deliberation.

9                   And, Mr. Sato, you have 15 minutes;  
10 that's an estimated time, but that's what we were  
11 told was sufficient, so we will keep you to that.

12                  MR. PACKARD: We think that'll be plenty  
13 of time.

14                  CHAIRPERSON YOUNG: Okay. Mr. Allebe,  
15 if you want to stand up there you can, or you can  
16 sit down and wait. And then you'll be -- you can  
17 cross-examine from up there, or wherever you're  
18 seated, if you would like. But you can wait until  
19 they finish their presentation.

20                  Okay, ready?

21                  MR. THOMPSON: Yes, thank you.

22                  CHAIRPERSON YOUNG: Go. Okay.

23                  MR. THOMAS: I'm displaying here a map  
24 of the prohibition zone boundaries; that's the  
25 blue line outlining the community. All of the

1 designated parties' properties are depicted by  
2 blue dots on this map.

3 Christopher Allebe lived at 1071 Green  
4 Oaks Drive. He is order number 1019. And that  
5 location is depicted by a flag there. He's within  
6 the prohibition -- the property is located within  
7 the prohibition zone boundaries. We understand  
8 from the information provided by him that the  
9 property is occupied; that they utilize a septic  
10 system for wastewater management; and that the  
11 occupants are discharging waste from their septic  
12 system.

13 That'll be all for now.

14 CHAIRPERSON YOUNG: Okay. Mr. Allebe,  
15 you can cross-examine the prosecution team on  
16 their examination if you have any questions you  
17 want to pose to them based on the testimony that  
18 they just put forth.

19 MR. ALLEBE: Yes, I do.

20 CHAIRPERSON YOUNG: And you can do it  
21 from there or from up there.

22 MR. ALLEBE: No, I've left my paperwork  
23 at the podium.

24 CHAIRPERSON YOUNG: Wherever you want to  
25 do it is fine.

1                   MR. ALLEBE:  Okay.  Is the -- Chris  
2                   Allebe, A-l-l-e-b-e, 1019 CDO.  Is the burden of  
3                   proof on the Water Board that my residence is  
4                   discharging into the aquifer?

5                   MR. THOMPSON:  Yes.

6                   MR. ALLEBE:  Okay.  And how exactly was  
7                   it determined --

8                   MR. THOMPSON:  I'm sorry, Mr. Allebe --

9                   MR. ALLEBE:  -- that I'm discharging  
10                  into the aquifer.

11                  MR. SATO:  Let me add to that question.  
12                  I think the burden of proof is on the prosecution  
13                  team to show that you are in violation of the  
14                  discharge prohibition.

15                  MR. ALLEBE:  Exactly.

16                  MR. THOMPSON:  Could you restate your  
17                  second question?  I'm sorry.

18                  MR. ALLEBE:  How exactly was it  
19                  determined that the illegal discharge was entering  
20                  from my property into the aquifer?

21                  MR. THOMPSON:  Well, you did not  
22                  indicate otherwise, that you did not occupy the  
23                  property.

24                  MR. ALLEBE:  You're assuming, though,  
25                  that I'm discharging into the aquifer.

1 MR. THOMPSON: You notified --

2 MR. ALLEBE: On what basis?

3 MR. THOMPSON: You notified us that you  
4 occupied the property.

5 MR. ALLEBE: I occupy the property,  
6 yeah, that's true. But you aren't answering the  
7 question. How was it determined that I was  
8 committing an illegal act?

9 MR. THOMPSON: You did not indicate that  
10 you do not have a septic system.

11 MR. ALLEBE: Right. Okay, I guess what  
12 I'm getting at here, you know, I'm assuming that  
13 I'm presumed innocent.

14 MR. THOMPSON: We --

15 MR. SATO: Mr. Allebe, I think that's  
16 argumentative, but, yes, you should presume that  
17 we have an obligation to present information and  
18 evidence to this Board, either generally, and as  
19 it applies to your particular property, that there  
20 has been a violation, threatened violation of the  
21 discharge prohibition zone such that an order of  
22 the Board would be appropriate that we are asking  
23 for.

24 MR. ALLEBE: Yeah, well, I'm just  
25 talking about my specific property. I mean was

1       there actually -- I'm sorry -- was there actual  
2       test wells used to determine this on my property?

3               MR. THOMPSON:  As I testified earlier,  
4       no, sir.

5               MR. ALLEBE:  Okay, so there's no  
6       absolute scientific proof that I'm discharging  
7       into the aquifer?

8               MR. THOMPSON:  I think it's safe to  
9       assume that if you occupy your property you're  
10      discharging from your septic system in violation  
11      of the basin plan prohibition.

12              MR. ALLEBE:  Is that a legal assumption?

13              MR. THOMPSON:  I believe so, yes.

14              MR. ALLEBE:  Okay.  I'd also like all  
15      testimony from the CSD included by reference into  
16      my joint testimony.  Can you do that?  Okay.

17              CHAIRPERSON YOUNG:  Mr. Allebe.

18              MR. ALLEBE:  Yes.

19              MR. RICHARDS:  Excuse me, but when you  
20      refer to all the testimony of the CSD, are you  
21      referring to the statement that was made today by  
22      Mr. Murphy, or are you referring to the  
23      documentation that the CSD has provided?

24              MR. ALLEBE:  No, just any testimony that  
25      was given today by the CSD.

1                   CHAIRPERSON YOUNG: I think we've  
2 already agreed that all evidence that was  
3 submitted prior to the individual cease and desist  
4 order hearings would automatically be  
5 incorporated.

6                   MR. MURPHY: If I remember correctly,  
7 everything except the documents which have been  
8 objected to by Mr. Sato is automatically  
9 incorporated. Those documents will be dealt with  
10 on an individual basis when relied upon, is that  
11 correct?

12                   CHAIRPERSON YOUNG: Correct, that's  
13 right.

14                   MR. SATO: If I understand this correct,  
15 Mr. Chairman, we did object, except for the  
16 documents that we've objected to, which are both  
17 documents on exhibit A and exhibit B.

18                   CHAIRPERSON YOUNG: Correct. Okay. We  
19 will now go to -- got the cross-examination --  
20 okay, Mr. Allebe, you have 15 minutes.

21                   MR. ALLEBE: Okay, my --

22                   CHAIRPERSON YOUNG: Let me know when  
23 you're ready.

24                   MR. ALLEBE: All right, we're all set.

25                   CHAIRPERSON YOUNG: Okay, here we go.

1           MR. ALLEBE: Okay, this testimony will  
2 be slightly convoluted here. I don't have my  
3 photographic memory any more, so I have to kind of  
4 skip around; I have notes. So, bear with me.

5           Okay, I'm CDO Number 1019, Chris Allebe.  
6 I've been notified by the RWQCB to submit  
7 testimony in regards to the issuing of a cease and  
8 desist order on my real property located at 1071  
9 Green Oaks Drive in Los Osos, California. And to  
10 articulate reasons for not issuing such an order.

11           Mr. Bruce Payne, CDO Number 1000, my  
12 next-door neighbor at 1051 Green Oaks Drive; and  
13 our properties are similar square footage. We  
14 have two people living in each home, and Mr. Payne  
15 will submit technical and legal arguments that are  
16 essentially the same as my own. And we submit  
17 these arguments jointly.

18           My own additional arguments revolve  
19 mainly around the morality of this issue. This  
20 project was never cost/benefit sustainable. The  
21 idea of a zone within a community paying for a  
22 project this size and complexity that supposedly  
23 benefits the entire water basin is ridiculous.

24           We're having another unfunded mandate  
25 stuffed down our throats by people -- people that

1        have been paying for theirs and everyone else's  
2        problems via property and income, sales taxes for  
3        years. And now this project comes along that will  
4        almost double those obligations for 20 to 40  
5        years.

6                    All this to reduce a nonhazardous  
7        nitrate problem that may possibly show results in  
8        25 to 40 years. This is as per Metcalf and Eddy's  
9        reports.

10                   Don't expect us to vote on an open-end  
11        218 procedure with no spending cap; and also have  
12        no single-source bidding. I really don't see why  
13        this is not considered a public works project out  
14        of public funds, i.e., our money. At the very  
15        least we should be able to qualify for an  
16        interest-free SRF loan that would save us  
17        approximately \$20 million alone.

18                   I object to the methods used to choose  
19        the first 50 CDO victims here. Businesses were  
20        excluded. The random selection was complicated  
21        and not witnessed by both sides. We weren't the  
22        agency that issued the building permits for the  
23        homes now allegedly polluting our water supply.

24                   I don't see why any of us should get a  
25        CDO. We bought our properties in good faith and



1 now we are facing horrendous costs and disruption  
2 for basically one to two points of nitrate in the  
3 water.

4 You would have to consume 127 gallons of  
5 water at maximum allowable nitrate levels to  
6 consume the nitrate in a pound of bacon. I'll  
7 leave it to you to decide how ridiculous this is.

8 This awful cost with no clear benefit to  
9 the citizens or local ecostructure is the root  
10 cause of all the dissension over this matter.

11 I have some things to say about the  
12 revised settlement option. Okay, we can still be  
13 fined and punished if the County does not meet its  
14 projected deadlines. If the County doesn't put  
15 out, we shouldn't have to lose our houses over it.

16 We're supposed to believe that the Water  
17 Board will be reasonable if the timeline is not  
18 met. This selfsame Board has been very reluctant  
19 to grant continuances. We have two people I'm  
20 aware of that are hospitalized that claim they  
21 can't get a continuance.

22 We can still be -- the documents  
23 submitted here, the settlement agreement, still  
24 leaves us open to the every-other-month pumping,  
25 fines and other nondefined punishments.

1                   Now this is made the responsibility of  
2                   citizens who are and cannot afford to hire  
3                   attorneys. Roger Briggs is the primary  
4                   prosecution agent for the last hearings, is not  
5                   available for comment. And the Regional Board  
6                   refused to reveal his location. Only that he was  
7                   on some sabbatical.

8                   I've looked over all this paperwork in  
9                   reference to the wastewater project. I have about  
10                  an 18-inch stack. And there's nothing in any of  
11                  that paperwork that even encourages cooperation  
12                  between the CSD, the Water Board and now the  
13                  County. The County, even at this date, they  
14                  haven't officially taken over the project, have  
15                  already informed us that they've got their own  
16                  collection system in mind.

17                  I also have some concern if the County  
18                  doesn't produce and we enter into the fines,  
19                  departments, firing squads, whatever, how is the  
20                  penalty collected? In cash? By liens on the  
21                  individual houses? I'd like some clarification on  
22                  that.

23                  Just one example here is apparently what  
24                  we can expect from the Regional Board, here's an  
25                  article from the newspaper dated October 11th of

1 this year. And it's titled, "RWQCB now pushing  
2 for \$5000 fines." And it goes into the whole  
3 procedure. It's very difficult to believe you're  
4 going to be reasonable when articles like that pop  
5 up in the news media.

6 The cessation of discharge date of  
7 January 1, 2011. This looks real innocent, but in  
8 the past here, this is all dependent on the  
9 project moving forward.

10 Now, let's go over the project moving  
11 forward. It's been stopped plenty of times before  
12 through lawsuits, 218 failures, you name it,  
13 earthquakes, funding being pulled. This business  
14 of an inspector needing a C42 license to sign off  
15 our septic tanks, how long is that going to take  
16 for just -- there can't be more than a couple  
17 licenses out there in Los Osos. For 5000 property  
18 owners it's going to take ten years for that one  
19 guy to check all the tanks.

20 Again, you're asking the average private  
21 citizen to decide a complicated legal issue. This  
22 business about the -- and the settlement order,  
23 you mentioned that the staff has been responsible  
24 for signing people up. Now, I would expect if I  
25 signed a document I would want the Board to fully

1       approve everything in that document and sign it  
2       before I did. That's the normal way of doing  
3       things.

4               All right. My position is that the CDO  
5       system is not the remedy; it's not the right tool  
6       for the problem. It doesn't clean the water. It  
7       doesn't help fund the project. It doesn't help  
8       build trust for a 218 vote. The process to punish  
9       is just not just. There were no businesses  
10      selected. The random selection of CDOs, I was  
11      informed that two employees of the Water Board  
12      were the ones that ran that random selection.  
13      That's just not right. There should have been  
14      somebody there from all sides.

15             The fact that individuals are getting  
16      CDOs is unparalleled. That's apparently never  
17      happened before in the State of California.

18             We bought our properties in good faith.  
19      We've done nothing wrong. And now we're polluting  
20      the aquifer with nitrates. I've already stated my  
21      position on that.

22             This is one of my favorites.

23             (Laughter.)

24             MR. ALLEBE: I don't know how many -- I  
25      know there's at least two others, I'm completely

1 computer electronic illiterate. I don't know  
2 anything about running a computer and I guess I'm  
3 too old and stupid to learn, or stubborn.

4 But to ask me to send in 12 copies of  
5 every little piece of paper in my file, because I  
6 can't send it electronically, is just out of line.  
7 It's nearly impossible.

8 Myself, personally, I have no way of  
9 getting all my pals together and buying a bunch of  
10 shovels and building a sewer project. So,  
11 basically by signing any of these agreements I'm  
12 leaving myself wide open to lose my property.

13 If possible, I'd like to kind of  
14 transfer any time I have left to Mr. Payne, my co-  
15 worker.

16 CHAIRPERSON YOUNG: He has his own time  
17 slot, so, no.

18 MR. ALLEBE: All right.

19 CHAIRPERSON YOUNG: But if you want to  
20 call any witnesses, you want Mr. Shipe to get up;  
21 you want to ask him questions, or anyone else,  
22 you've got a couple of minutes left.

23 MR. ALLEBE: Okay, all right, Rob Shipe,  
24 please.

25 MR. SHIPE: Yes, Rob Shipe.

1                   MR. ALLEBE: Okay. Mr. Shipe, did you  
2                   depose Roger Briggs?

3                   MR. SHIPE: Yes, I did.

4                   MR. ALLEBE: And out of that deposition  
5                   was there anything mentioned about the settlement?

6                   MR. SHIPE: That is actually where the  
7                   settlement started. I was asking Mr. Briggs  
8                   questions about how we could stop this whole  
9                   process and not waste the Board's time and other  
10                  things like that. And basically he said he was no  
11                  longer in charge of the prosecution at that point,  
12                  and that Mr. Packard was.

13                  MR. ALLEBE: And did he make any mention  
14                  about the selection method for CDOs?

15                  MR. SHIPE: Yes, I believe he did. I  
16                  think he said it was just a random draw.

17                  MR. ALLEBE: How many people were you  
18                  able to contact that you were, in fact, having a  
19                  deposition?

20                  MR. SHIPE: I don't remember at this  
21                  point. It wasn't very many. The night before I  
22                  was a candidate for the Los Osos CSD.  
23                  Unfortunately I wasn't able to do any campaigning  
24                  because pretty much all my time was taken up  
25                  trying to get the settlement taken care of.

1                   And the day of the first candidates'  
2                   forum about 5:00 I received a phone call from Mr.  
3                   Sato trying to find out whether or not we were  
4                   going to be going with the deposition the next  
5                   day. And because, as I believe the Board knows,  
6                   there was a lot of questions on whether or not it  
7                   would go through. And then it finally ended up  
8                   going through, but we couldn't come to agreement  
9                   until the night before. Then I had to run out to  
10                  the candidates' forum, so I wasn't really able to  
11                  notify anybody.

12                  CHAIRPERSON YOUNG: Okay, final  
13                  question, --

14                  MR. ALLEBE: Final question.

15                  CHAIRPERSON YOUNG: -- yeah, and that'll  
16                  be the 15 minutes.

17                  MR. ALLEBE: Okay. In your opinion what  
18                  are the weak points in the settlement?

19                  MR. SHIPE: The weak points in the  
20                  settlement is, first of all, that it's enforced  
21                  under a cleanup and abatement order, as opposed to  
22                  be imposed as a time schedule order or something  
23                  like that.

24                  As I stated, my goal was to bring 40 to  
25                  45 people in. And the reason why is because I

1 believe the prosecution, their case was weak and  
2 they would lose. And my fear was that if they  
3 lost that it would stop a sewer project from going  
4 forward. And I wanted that to happen. And so I  
5 was trying to get the prosecution and other people  
6 to get to a point where we could settle this  
7 through informal enforcement or some other measure  
8 besides CDOs and cleanup and abatement orders.  
9 But we got what we got.

10 CHAIRPERSON YOUNG: Okay, thank you.  
11 Any cross-examination by the prosecution team of  
12 this witness or of Mr. Allebe?

13 MR. SATO: I don't have any questions  
14 for Mr. Shipe.

15 CHAIRPERSON YOUNG: Any for Mr. Allebe?

16 MR. SATO: Yes, I do, --

17 CHAIRPERSON YOUNG: Okay.

18 MR. SATO: And very briefly. Mr.  
19 Allebe, you were just asking Mr. Shipe about a  
20 deposition of Roger Briggs. And I believe that  
21 occurred in October, October 4, 2006, is that  
22 correct?

23 MR. ALLEBE: Well, I --

24 MR. SATO: If you recall?

25 MR. ALLEBE: Oh, I'm sorry, was that



1 being addressed to me? Okay. No, I don't recall.

2 MR. SATO: Okay, the deposition you were  
3 just asking Mr. Shipe about, you attended that  
4 deposition, isn't that correct?

5 MR. ALLEBE: Yes, I did.

6 MR. SATO: And do you believe that --  
7 you had the opportunity to ask questions at that  
8 deposition, isn't that correct?

9 MR. ALLEBE: Yes. Yes, I did.

10 MR. SATO: Okay. You have indicated  
11 that you're not aware that individual cease and  
12 desist orders have been issued anywhere in the  
13 State of California, is that correct?

14 MR. ALLEBE: Yes, I recall saying that.

15 MR. SATO: Okay. And what efforts have  
16 you made to find out whether such individual cease  
17 and desist orders have been issued in the State of  
18 California?

19 MR. ALLEBE: Well, I should probably  
20 rephrase that. There's been individual cease and  
21 desist orders on businesses and companies that are  
22 polluting the water supply, whatever. I'm not  
23 aware of any CDOs being placed on private citizens  
24 on a private residence.

25 MR. SATO: Okay. So I take it you're

1 not aware that the Lahontan Regional Board which  
2 is sometimes known as Region 6, has issued and  
3 have issued a number of individual cease and  
4 desist orders to residents in the area of the  
5 Eagle Lakes for septic tank discharges?

6 MR. ALLEBE: If I would be permissible,  
7 Mr. Shipe would be the one to answer that  
8 question. I'm not personally aware of it. Or if  
9 I was told I've forgotten it over time.

10 MR. SATO: All right. And I'd also like  
11 to know in terms of the evidence that has been  
12 listed on exhibit B, can you tell me whether any  
13 of the documents on there that you intended to  
14 rely on in your presentation?

15 MR. ALLEBE: I'm sorry, can you repeat  
16 that, please?

17 MR. SATO: Yes. There was an exhibit B  
18 submitted on behalf of the designated parties.  
19 And I wanted to know if there was any documents on  
20 that exhibit that you intended to rely upon for  
21 your presentation.

22 MR. ALLEBE: Okay, I'll need a minute.

23 (Pause.)

24 MR. ALLEBE: Okay. Yeah, I've  
25 incorporated by reference Mr. Bruce Payne's

1 testimony. And --

2 CHAIRPERSON YOUNG: And could you  
3 identify --

4 MR. ALLEBE: Okay, I'm aware of 85 --  
5 line 854. Okay, we've got the Blakeslee letter  
6 resolution; and the --

7 MR. THOMAS: Could you say these --

8 MR. ALLEBE: -- the Spalding report --

9 CHAIRPERSON YOUNG: Mr. Allebe, we need  
10 the numbers. If you can tell us what numbers --

11 MR. ALLEBE: Yeah, 850, 854, 859, 864  
12 and 867. Yeah, 869 on the next page -- I'm sorry,  
13 exhibit B; and 876 --

14 MR. SATO: Can I just -- I want you to  
15 keep answering, Mr. Allebe, but I'm going to move  
16 to strike 869; that was a document we already  
17 struck from the CSD's presentation.

18 CHAIRPERSON YOUNG: Okay. That  
19 objection is sustained.

20 MR. SATO: I'm sorry, Mr. Allebe, you  
21 can continue.

22 MR. ALLEBE: Okay, 876, 884, 881, 888,  
23 and Cleath on 896. Okay, shall I keep going?

24 CHAIRPERSON YOUNG: Yes.

25 MR. ALLEBE: 898, 905, 904, and I'm

1 going backwards --

2 MR. SATO: I'm sorry, let me just --

3 MR. ALLEBE: I'm sorry, I'm going a  
4 little backwards here. 903, '4 and '5.

5 MR. SATO: And I'll just ask to have 905  
6 struck from the record, because that was a  
7 settlement communication from the prosecution team  
8 to Mr. Allebe and others.

9 CHAIRPERSON YOUNG: Okay. I would agree  
10 with that. Sustained.

11 MR. ALLEBE: Okay, shall I continue?

12 CHAIRPERSON YOUNG: Yes.

13 MR. ALLEBE: Yeah, 909, '10 and '11.  
14 And then 916 and 917, 922 -- shall I keep going  
15 here?

16 CHAIRPERSON YOUNG: Yes.

17 MR. ALLEBE: Okay, 926, 927, --

18 MR. SATO: I'll move to strike 927 as  
19 irrelevant.

20 CHAIRPERSON YOUNG: That's a --  
21 sustained.

22 MS. McPHERSON: Can that be argued why  
23 that's needed?

24 CHAIRPERSON YOUNG: A public records  
25 request?

1 MS. McPHERSON: It's actually a packet  
2 of public records. It only goes to the question  
3 of why we're getting CDOs because the project was  
4 stopped and could have continued last November.  
5 And because the project was stopped we have CDOs.  
6 If the project was being built right now and  
7 construction had kept going, we would have never  
8 received a CDO, an enforcement action. The  
9 enforcement action's because the construction  
10 stopped on the project.

11 And this explains why the construction  
12 stopped. And it was not the fault of the  
13 individual, but a disagreement between the CSD and  
14 the State Water Resources Control Board.

15 CHAIRPERSON YOUNG: Yeah, how is that  
16 relevant to the issues that we've outlined? I  
17 mean what tendency does this document have to  
18 prove or disprove any facts or issues that are  
19 before us?

20 MS. McPHERSON: Well, it's just a cause  
21 and effect. It's a cause and effect. It's what -  
22 - it's pretty much why we're here. If that didn't  
23 -- we wouldn't be here had that not occurred. And  
24 it was way beyond the control of these  
25 individuals.

1 CHAIRPERSON YOUNG: Okay. Mr. Sato?

2 MR. SATO: I just don't think that  
3 that's -- that kind of issue is relevant to the  
4 inquiry that you're here making today. Simply  
5 that that is irrelevant.

6 CHAIRPERSON YOUNG: Okay.

7 MR. RICHARDS: I would be inclined to  
8 advise you that the circumstances arising in the  
9 context of the Community Services District's  
10 proposed project are not relevant to the issue of  
11 whether or not the individuals are discharging in  
12 violation of the prohibition, or whether or not  
13 the cease and desist order is an appropriate  
14 remedy for those violations, if, in fact, the  
15 Board finds that those violations are occurring or  
16 threatening to occur.

17 CHAIRPERSON YOUNG: Okay, I'm going to  
18 sustain the objection. So they won't come in.

19 MS. McPHERSON: Can you note our --

20 CHAIRPERSON YOUNG: It really -- your  
21 objection is noted.

22 MS. McPHERSON: Okay.

23 CHAIRPERSON YOUNG: It really is, at  
24 best, tangential to what is before us, at best.

25 MS. McPHERSON: I understand.

1                   CHAIRPERSON YOUNG:  And, you know, Mr.  
2                   Allebe, with all of these documents he's noting,  
3                   he really didn't refer to them in his, you know,  
4                   even in his letter submission.  And so, you know,  
5                   to allow them in because he's identified them, the  
6                   ones that we're going to allow in, you know, it's  
7                   hard for the Board.  I mean the Board isn't making  
8                   a decision because of a list of numbers and  
9                   documents.

10                   So, anyway, let's move on.  Those will  
11                   not come in.  That's 927.

12                   MR. ALLEBE:  Okay, 940, 943 --

13                   MR. SATO:  I object to the introduction  
14                   of 940.

15                   CHAIRPERSON YOUNG:  Okay, I'm going to  
16                   sustain that, because if it has to do with the  
17                   prohibition zone boundaries, that issue is not  
18                   before the Board.

19                   MS. McPHERSON:  That was submitted with  
20                   the original packet back in --

21                   CHAIRPERSON YOUNG:  Whose original  
22                   packet?

23                   MS. McPHERSON:  Bruce Payne and --  
24                   actually Bruce Payne and Chris Allebe submitted a  
25                   packet together --

1 UNIDENTIFIED SPEAKER: It's already  
2 there.

3 CHAIRPERSON YOUNG: Yeah, I know it's  
4 already there, but just because it's presented  
5 it's just been offered. And so we're not going to  
6 accept it.

7 MS. McPHERSON: But --

8 CHAIRPERSON YOUNG: Just because --  
9 someone could attach newspaper articles to their  
10 written submission. That doesn't mean it comes  
11 into the record.

12 MS. McPHERSON: But he was also a  
13 witness last April, on the witness list, but he  
14 wasn't --

15 CHAIRPERSON YOUNG: Well, witnesses can  
16 testify, okay. But, you know, that's not hearsay.  
17 The documents that have been created out of court  
18 are hearsay unless they came in under some  
19 exception.

20 MS. McPHERSON: Okay.

21 CHAIRPERSON YOUNG: And the prohibition  
22 zone boundaries are not at issue here. So 940 is  
23 out.

24 MR. ALLEBE: Okay, shall I continue?

25 CHAIRPERSON YOUNG: Yes.



1 MR. ALLEBE: All right, --

2 CHAIRPERSON YOUNG: Go through the list.

3 MR. ALLEBE: Okay, 945. Did I already  
4 say 943?

5 MR. THOMAS: Yes.

6 MR. ALLEBE: Okay. 950, --

7 MR. SATO: That is simply an article  
8 written by somebody. If they want it in evidence  
9 here, I don't really see the relevance.

10 CHAIRPERSON YOUNG: Do you have an  
11 objection to it, Mr. Sato?

12 MR. SATO: It is simply a newspaper  
13 article. I would object as to the relevancy. I  
14 shouldn't say, newspaper article, it's some kind  
15 of written article by this person, Mr. Lieberman,  
16 talking about certain subject matters. I don't  
17 know what it has to do with today. I certainly  
18 didn't hear Mr. Allebe argue anything within this  
19 document.

20 CHAIRPERSON YOUNG: Right, okay; 950 is  
21 not coming in.

22 MR. ALLEBE: Okay, 952.

23 MR. SATO: Same objection.

24 CHAIRPERSON YOUNG: Yeah, not coming in.

25 MS. McPHERSON: He did mention that he

1 was afraid that he could lose his home, and that  
2 there -- you know, his property, and that did have  
3 to do with property.

4 CHAIRPERSON YOUNG: But he testified to  
5 that, so the Board has heard that testimony. But  
6 this is an article by someone else maybe talking  
7 about something similar --

8 MS. McPHERSON: Talking about real  
9 estate and --

10 CHAIRPERSON YOUNG: Well, but, you know,  
11 it's speculation as to whether that is going to  
12 happen at sometime in the future. I think Mr.  
13 Allebe's testimony goes to that. The article is  
14 not going to add to that. And the Board isn't  
15 going to be able to sit and read that article. I  
16 mean if it was important to him, he could have  
17 attached it like what Mr. Shipe did. He attached  
18 a number of papers that he thought was important  
19 to his case. And so the Board was able to read  
20 through those i their packet.

21 So, 952 will not come in.

22 MS. McPHERSON: Okay.

23 MR. THOMAS: Are there more?

24 CHAIRPERSON YOUNG: There's one last  
25 page. Any more? 953 is in and 954 is in.

1 Anything that the Board has done, or the Chair has  
2 done is part of the record. The settlement  
3 agreement, there's no problem with that. The  
4 declaration of Mr. Sato, that is -- that's the  
5 other case, isn't it?

6 But, 955 --

7 MR. THOMAS: No.

8 MR. SATO: No, that was in this matter.

9 CHAIRPERSON YOUNG: That was this one,  
10 so that's in, also. Yeah, and then 957 and 958  
11 should be in the Regional Board's files, so those  
12 would come in. Okay.

13 All right, next would be, Mr. Allebe,  
14 any rebuttal testimony?

15 MR. THOMAS: Are they done asking  
16 questions?

17 CHAIRPERSON YOUNG: Well, let's find  
18 out. Are you done?

19 MR. SATO: Yeah, we're finished  
20 regarding the documents. We'd like to take a  
21 couple minutes with some rebuttal.

22 CHAIRPERSON YOUNG: Well, it's not  
23 rebuttal yet. You're finishing your cross-  
24 examination of Mr. Allebe.

25 MR. SATO: Okay, just one quick

1 question.

2 CHAIRPERSON YOUNG: Okay. Mr. Allebe.

3 MR. SATO: Mr. Allebe, do you deny that  
4 you live at the residence address that the  
5 Regional Board Staff has identified for you?

6 MR. ALLEBE: I'm sorry, could you speak  
7 a little louder; I can't hear you.

8 MR. SATO: Is the information that we've  
9 got for you from the Regional Board correct that  
10 you reside at 1071 Green Oaks Drive in Los Osos?

11 MR. ALLEBE: Yes.

12 MR. SATO: And is it correct that you  
13 utilize a septic tank, an onsite septic system at  
14 that site?

15 MR. ALLEBE: If it's permissible I would  
16 choose to take the Fifth on that.

17 CHAIRPERSON YOUNG: Well, you can't do  
18 that because this is not a criminal proceeding.

19 MR. ALLEBE: Oh, it's not?

20 CHAIRPERSON YOUNG: No, it's not.

21 (Audience participation.)

22 CHAIRPERSON YOUNG: Some folks may think  
23 this is, but unfortunately, they would be mistaken  
24 if they believe that. This is an administrative  
25 hearing.

1           MR. ALLEBE: No, I just assumed if you  
2 were accused of a crime and there were penalties  
3 to pay for being convicted, that there would be --

4           CHAIRPERSON YOUNG: Crimes come out of  
5 the Penal Code.

6           MR. ALLEBE: Right.

7           CHAIRPERSON YOUNG: Okay. No one is  
8 mentioning Penal Code violations.

9           MR. ALLEBE: No, I understand that.

10          CHAIRPERSON YOUNG: Okay.

11          MR. ALLEBE: Okay.

12          MR. MURPHY: With all due respect, Mr.  
13 Chairman, the CDO, as proposed, would allow the  
14 executive officer to refer this matter to the  
15 attorney general for criminal prosecution. So, I  
16 do believe that because his testimony, if he gives  
17 it, would lead to an order that could result in  
18 criminal prosecution. He may have that right.

19                 I'd ask that counsel for the Board  
20 consider that. Thank you.

21          MR. SATO: I don't think that's a  
22 correct interpretation of the law. This is right  
23 now an administrative proceeding. We're entitled  
24 to ask questions and have those administrative  
25 questions. This is a civil, in the nature of a

1 civil proceeding at this point in time.

2 MR. RICHARDS: I would concur with Mr.  
3 Sato on this. This proceeding is not a criminal  
4 proceeding. And the possibility that there might  
5 eventually be a criminal proceeding that arises  
6 out of these circumstances is very remote and  
7 speculative.

8 Therefore, Mr. Allebe should answer the  
9 question.

10 CHAIRPERSON YOUNG: He should. I mean  
11 the Board has contempt powers. I don't want to go  
12 down that line with people, you know. Let me just  
13 suggest this, if you don't want to answer the  
14 question, Mr. Allebe, the Board is going to be  
15 able to take any inferences they want from your  
16 refusal to answer the question.

17 So, I think we'll leave it at that.

18 MR. SATO: Mr. Allebe, I was wondering  
19 if you could tell me that -- I think you already  
20 said in you slide up there that -- well, let me  
21 just ask you.

22 Are you interested in connecting to a  
23 community sewage treatment system?

24 MR. ALLEBE: Are you referring to the  
25 present settlement order?

1 MR. SATO: No, I --

2 MR. ALLEBE: Or am I willing to hook up  
3 to a system?

4 MR. SATO: Yes, are you willing to hook  
5 up to a system? That's my general question.

6 MR. ALLEBE: In other words, the  
7 system's there; am I willing to hook up to it?

8 MR. SATO: If there's a system there,  
9 are you willing to -- would you be willing to hook  
10 up to it?

11 MR. ALLEBE: Of course.

12 MR. SATO: Okay. And --

13 MR. ALLEBE: Would have done that 15  
14 years ago.

15 MR. SATO: -- are you familiar with the  
16 AB-2701 process?

17 MR. ALLEBE: Not exactly, no.

18 MR. SATO: Okay. And if you could just  
19 tell me in your own words, why would you be  
20 interested in connecting to a sewer if one was  
21 available to you?

22 MR. ALLEBE: Well, because, I mean,  
23 according to all the paperwork and procedures  
24 we've been going through for 10 or 15 years here,  
25 I'd probably be fined a zillion bucks if I didn't.

1 MR. SATO: So the only reason --

2 MR. ALLEBE: Okay, if I had an onsite  
3 system of my own and they put a community sewer  
4 in, I would not want to hook up to the community  
5 sewer if that was an option. But from what I've  
6 seen in all these proceedings, if and when it goes  
7 in, it won't be an option. You'll have to hook up  
8 to it or be fined accordingly.

9 MR. SATO: Thank you. We don't have any  
10 other questions.

11 CHAIRPERSON YOUNG: Okay. So now would  
12 be your opportunity for any rebuttal testimony.  
13 And by rebuttal, it's not open-ended. It's really  
14 any evidence to specifically rebut or -- where are  
15 we -- yes, pardon me, rebuttal testimony by the  
16 prosecution team. Go ahead.

17 MR. THOMPSON: Thanks. Everything I had  
18 was covered in cross-examination, so it's not  
19 necessary.

20 CHAIRPERSON YOUNG: Okay. And then  
21 there would be no rebuttal testimony by the  
22 individual because there's no rebuttal testimony  
23 by the prosecution team.

24 Okay, closing arguments then, would be  
25 Mr. Allebe. And then followed by the prosecution



1 team.

2 MR. ALLEBE: I don't feel I'm guilty of  
3 anything. And as far as the community of Los Osos  
4 is concerned, their heart's in the right place and  
5 they've tried countless times here to get in a  
6 wastewater system. We've had two CSDs that have  
7 let us down. And I really don't like seeing this  
8 inflicted on the general population.

9 This is something, I think, when it all  
10 started, if they'd have gone to everybody and  
11 said, okay, we're going to put in a sewer system  
12 and just put it in that would have been the end of  
13 it back in the '70s.

14 And the way this has gone, the amount of  
15 money involved, the big issue is cost. People in  
16 this community can't afford \$300 a month for a  
17 septic system, that the designers of such things  
18 tell us would make very little difference in the  
19 theory of the water supply.

20 That's all I have.

21 CHAIRPERSON YOUNG: Okay. Mr. Sato.  
22 Mr. Packard.

23 MR. PACKARD: I'd just reiterate that we  
24 believe we've proven the questions in front of  
25 you, that Mr. Allebe does, indeed, discharge in

1 violation of the prohibition zone and that CDO is  
2 a proper remedy for that violation.

3 CHAIRPERSON YOUNG: Okay, that closes --

4 MR. MURPHY: Mr. Chairman, before you  
5 close, I'd just want to renew the objection  
6 regarding Mr. Allebe that he was forced to testify  
7 in violation of -- over his Fifth Amendment  
8 objection. And just have that noted for the  
9 record.

10 And rather than make that objection, if  
11 it comes up again with further defendants, I'd  
12 like that noted as a continuing objection for the  
13 record.

14 CHAIRPERSON YOUNG: Okay. Now, I didn't  
15 think he answered the actual question that was  
16 asked of him.

17 MR. MURPHY: Did he not? Okay.

18 CHAIRPERSON YOUNG: No. He did answer  
19 questions subsequent to that, but not the first  
20 one.

21 MR. MURPHY: Okay, thank you, Mr.  
22 Chairman.

23 CHAIRPERSON YOUNG: Okay.

24 MR. SATO: So I take it that you  
25 withdraw the objection, then?

1 MR. MURPHY: As to Mr. Allebe, yes.

2 CHAIRPERSON YOUNG: Okay, so that'll  
3 conclude this part. The Board can go into  
4 deliberation on this, or we can just go ahead --

5 BOARD MEMBER HAYASHI: I have a  
6 question.

7 CHAIRPERSON YOUNG: Well, go ahead.

8 BOARD MEMBER HAYASHI: I have a  
9 question. There was a remark made about there was  
10 two people hospitalized that we did not make any  
11 arrangements for.

12 CHAIRPERSON YOUNG: Yes.

13 BOARD MEMBER HAYASHI: Is that correct?

14 CHAIRPERSON YOUNG: I got two. One of  
15 them, I believe, has settled.

16 BOARD MEMBER HAYASHI: Okay.

17 CHAIRPERSON YOUNG: But another one  
18 indicated to me that they'd come out of the  
19 hospital; they were in physical therapy and they  
20 were going to be home about this time.

21 BOARD MEMBER HAYASHI: Okay, physical --  
22 okay, I see.

23 CHAIRPERSON YOUNG: For some --

24 (Parties speaking simultaneously.)

25 CHAIRPERSON YOUNG: We're going to deal

1 with those once we get to the --

2 BOARD MEMBER HAYASHI: I just wanted, I  
3 just wanted, just for --

4 CHAIRPERSON YOUNG: Yeah.

5 BOARD MEMBER HAYASHI: -- just for my  
6 own sake, that they weren't in the hospital under  
7 dire needs and --

8 CHAIRPERSON YOUNG: Okay.

9 BOARD MEMBER HAYASHI: Okay, thank you.

10 CHAIRPERSON YOUNG: What would the Board  
11 like to do? Go ahead and open deliberate? Or go  
12 into closed session? Mr. Richards, any thoughts  
13 on that? It's up to the Board, I know.

14 MR. RICHARDS: It's up to the Board.  
15 The Board has the option to go into closed session  
16 and deliberate on testimony that has been  
17 presented to it. The Board would be entitled to  
18 have the benefit of Mr. Thomas' advice and mine in  
19 its deliberations in closed session.

20 Or the Board could choose to deliberate  
21 publicly.

22 CHAIRPERSON YOUNG: Okay.

23 MR. RICHARDS: And either way it's up to  
24 the Board to make that determination.

25 CHAIRPERSON YOUNG: Okay. I'm hearing

1 both Mr. Hayashi and Shallcross say they'd like to  
2 go into closed session. Is that okay? Fine.  
3 Okay, we will do that. And don't know when we  
4 would come out at this point.

5 BOARD MEMBER SHALLCROSS: Whenever we  
6 finish.

7 CHAIRPERSON YOUNG: Yeah, whenever we  
8 finish. So, move to closed session. And we will  
9 come back --

10 BOARD MEMBER SHALLCROSS: Maybe we can  
11 tell folks if it goes past noon, then we would  
12 break for lunch and not come back before 1:00 or  
13 something like that.

14 CHAIRPERSON YOUNG: Okay, that makes  
15 sense.

16 BOARD MEMBER SHALLCROSS: So folks  
17 aren't just lingering.

18 CHAIRPERSON YOUNG: Right. Okay, any  
19 last questions before we do that? Yes. Why don't  
20 you come up here quickly. I know you've already  
21 settled, so --

22 NUMBER 1029: Yes, sir.

23 CHAIRPERSON YOUNG: Yeah. 1029?

24 NUMBER 1029: Yes, sir, 1029. I just  
25 think I'm airing the opinion of the audience here

1 that we would like a public session for your  
2 deliberations. And I just wanted to make note of  
3 that for the record.

4 CHAIRPERSON YOUNG: Okay, thank you.  
5 All right, we're going to close and we will be  
6 back when we're finished. And I guess if we're  
7 not here before 12:00, we are going to break then  
8 between 12:00 and 1:00.

9 (Whereupon, at 11:33 a.m. the Board  
10 entered into closed session  
11 deliberations; and then subsequently the  
12 morning session of the hearings was  
13 adjourned, to reconvene at 1:00 p.m,  
14 this same day.)

15 --o0o--

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## 1 AFTERNOON SESSION

2 --o0o--

3 CHAIRPERSON YOUNG: All right, Mr.  
4 Thomas. And are we missing -- one, two, three,  
5 four, five, we're ready to go.

6 UNIDENTIFIED SPEAKER: Bang the gavel.

7 CHAIRPERSON YOUNG: Okay, folks, please  
8 take your seats.

9 We're going to complete the deliberation  
10 on a portion of this item publicly. We are going  
11 to discuss, though, what our findings were on the  
12 first part, and that is about whether there is a  
13 violation of the alleged basin plan prohibition.

14 And I'll tell you that the Board  
15 discussed that and we have found that there is a  
16 violation of the basin plan prohibition.

17 In terms of what the Board thinks should  
18 be done with the cease and desist order and the  
19 dates and things of that nature, we spent a lot of  
20 time discussing that. And we're probably going to  
21 complete that discussion here. We do have some  
22 questions for some of the designated parties that  
23 will help us in that in the completion and  
24 resolving that.

25 So, let's see, before we have any kind

1 of a vote, I think why don't we kind of discuss  
2 any thoughts we want to share with the, for  
3 instance, what I think we would call the liability  
4 portion of the issues in front of us. And that  
5 would be whether with respect to Mr. Allebe's  
6 property, you know, whether we have found that he  
7 is discharging or threatening to discharge in  
8 violation of the Los Osos/Baywood Park prohibition  
9 in the basin plan.

10 Dr. Press, do you want to --

11 BOARD MEMBER PRESS: Well, --

12 CHAIRPERSON YOUNG: Whatever you want to  
13 share.

14 BOARD MEMBER PRESS: -- I think that the  
15 prohibition is fairly clear. I think that there's  
16 a reasonable inference to be drawn from the prima  
17 facie evidence that we've been provided.

18 Mr. Allebe resides in the prohibition  
19 zone. He's not hooked up to a community treatment  
20 plant. He has not provided any evidence of having  
21 some treatment facility that doesn't discharge in  
22 the prohibition basin.

23 And so I'm satisfied that the  
24 prosecution team has demonstrated that he is in  
25 violation of the prohibition.



1                   CHAIRPERSON YOUNG:  Okay, any -- Mr.  
2                   Shallcross.

3                   BOARD MEMBER SHALLCROSS:  Yeah, just to  
4                   go into it a little more; and I think the  
5                   reasonable inference, a couple of things that go  
6                   to what Mr. Press alluded to, was, you know, if  
7                   Mr. Allebe weren't discharging he didn't bring  
8                   that as an affirmative defense.  I think a  
9                   reasonable person would have if they indeed  
10                  weren't discharging, would have indicated that  
11                  they weren't discharging.

12                  And also the fact that Mr. Allebe  
13                  refused to answer the question directly, I think,  
14                  reasonable inferences can also be drawn from that.  
15                  So, you know, I think all around the reasonable  
16                  inference is well supported in this case.

17                  CHAIRPERSON YOUNG:  Mr. Jeffries or Mr.  
18                  Hayashi, any thoughts?  You concur?  Mr. Jeffries,  
19                  any --

20                  BOARD MEMBER JEFFRIES:  I agree with my  
21                  colleagues; I came to the same conclusion that  
22                  they did.  And just because he refused to state,  
23                  you know, whether he had a septic tank or not,  
24                  that it was obvious to me that he had some kind of  
25                  a discharge.  And he's in the prohibition zone.

1 So consequently this CDO is appropriate.

2 CHAIRPERSON YOUNG: Okay. I, you know,  
3 concur, I agree with what has been said. I think  
4 that Mr. Allebe lives in the prohibition zone. He  
5 has admitted that two people live on his property.  
6 If there isn't a community system that he's hooked  
7 up to, and they're living there, they've got to be  
8 using water and discharging somewhere on the  
9 property.

10 And I think that there is certainly a  
11 reasonable inference to be drawn that that is what  
12 is occurring.

13 But this discussion is not what we spent  
14 a lot of time doing anyway. What we spent time  
15 doing was looking at the dates and the CDO,  
16 itself, the deadlines and kind of debated that.  
17 And I think we'll just try to finish that up at  
18 this point. Who wants to open that discussion up?

19 BOARD MEMBER: Go ahead.

20 CHAIRPERSON YOUNG: Go ahead. Well, Mr.  
21 Murphy, you had indicated, your last words were  
22 something to the effect of you felt the January 1,  
23 2008 deadline was problematic. Can you share with  
24 us your thoughts on what would be a more  
25 reasonable date to put in there?

1           MR. MURPHY: Well, I would focus first  
2           on Rob Miller's testimony of this morning. I  
3           don't believe that that helps you if you're going  
4           to issue an order today. But if you issued an  
5           order today and held it in abeyance until such  
6           time as the County came up with its critical path  
7           schedule, then you could include all of the  
8           critical path dates within the order, making sure  
9           what I call the safe harbor is available only to  
10          the extent that the County not only initiates the  
11          project, but continues the project, meeting the  
12          critical path dates going forward. That would be  
13          one way that you could have a more practical  
14          order.

15                 A second would be, frankly having not  
16          studied what the County's plans are, I don't know  
17          how many more months are necessary. I do know  
18          that a one-month window for a \$130 million project  
19          seems a bit of a push. So, I'm sorry I can't give  
20          you more than that. I certainly trust the  
21          judgment of the Board as to what type of window  
22          you think would be appropriate, but it does seem  
23          to me that the one-month window is a bit short for  
24          a project of that magnitude.

25                 CHAIRPERSON YOUNG: Okay. Well, we did

1 focus really on the language then in section A-1,  
2 which reads: In the event that the County is  
3 successful in approving a benefits assessment by  
4 January 1, 2008, to finance the construction, what  
5 would be a reasonable timeframe to allow? You  
6 know, assuming that they have the vote by sometime  
7 in December, to let that process have concluded  
8 itself.

9 BOARD MEMBER SHALLCROSS: And we might  
10 want to invite Mr. Allebe to, since it is --

11 MR. MURPHY: His order.

12 BOARD MEMBER SHALLCROSS: Yeah, to enter  
13 in on this.

14 CHAIRPERSON YOUNG: All right.

15 BOARD MEMBER SHALLCROSS: Yeah, I  
16 mean --

17 CHAIRPERSON YOUNG: Mr. Allebe, do you  
18 know what we're focusing on here, kind of a date  
19 that the prosecution team has suggested as the  
20 date by which the County is supposed to approve a  
21 benefits assessment. They have a January 1, 2008  
22 date in there.

23 MR. ALLEBE: I thought it was 2008?

24 CHAIRPERSON YOUNG: 2008, January 1 of  
25 2008.

1           MR. ALLEBE:  Would it be acceptable for  
2 Keith Wimer to comment on that?

3           CHAIRPERSON YOUNG:  Well, this is, you  
4 know, your individual hearing, so I would rather  
5 hear it from you.

6           MR. ALLEBE:  That would be acceptable as  
7 long as construction starts by 2010.

8           CHAIRPERSON YOUNG:  So you're saying  
9 that that --

10          MR. ALLEBE:  Rather than the 2008.

11          BOARD MEMBER SHALLCROSS:  So you're  
12 saying 2010 instead of 2008?

13          MR. ALLEBE:  Yes.

14          CHAIRPERSON YOUNG:  No, for  
15 construction.

16          BOARD MEMBER SHALLCROSS:  Oh, for  
17 construction.

18          CHAIRPERSON YOUNG:  Okay.  Well, what  
19 we're focusing on really is the assessments  
20 benefit approval by the County.  That's the  
21 milestone that the prosecution team has identified  
22 as triggering something.  And so that's --

23          MR. ALLEBE:  Yeah, that doesn't seem  
24 like enough time to me.

25          CHAIRPERSON YOUNG:  Okay, and how much

1 time do you think is enough time for that?

2 MR. ALLEBE: Well, that's hard to say  
3 because every project we've started so far has  
4 never met the timeframes.

5 CHAIRPERSON YOUNG: And, of course,  
6 this, it's not a timeframe for starting  
7 construction. It's just for the assessments  
8 benefit.

9 MS. McPHERSON: Is it possible for me to  
10 comment, because we've talked about this --

11 CHAIRPERSON YOUNG: Yes, go ahead.

12 MS. McPHERSON: -- in a lot of detail.  
13 That one section was very problematic through the  
14 entire settlement process, as well as the CDOs.

15 The issue was is that by tying it to the  
16 assessment vote at the 2008 date we didn't want to  
17 tie it to that. Putting it in there is fine as  
18 just a mention of it. But tying it to as long as  
19 construction starts by 2010 is better because then  
20 it doesn't encourage people to do onsite systems  
21 on their own.

22 And that was the fears. If you have  
23 that language in there, if the assessment vote  
24 fails, that 2008 date is a trigger for people to  
25 go their own way. And I don't think that's your

1 intent. And so we were trying very hard to  
2 develop language that would indicate that the 2008  
3 date was important, but that the 2010 or the 2011,  
4 whatever, as long as construction started by 2010  
5 we thought that was a good date.

6 CHAIRPERSON YOUNG: Okay, well --

7 MS. McPHERSON: That was a little  
8 different way of looking at it, but I think that  
9 it meets the requirement without forcing a vote,  
10 too.

11 CHAIRPERSON YOUNG: Right. Okay,  
12 doesn't really answer the question, but let's see  
13 what the Board wants to do with that.

14 BOARD MEMBER SHALLCROSS: I think that's  
15 problematic because if the assessment district  
16 isn't certified or whatever -- approved, you know,  
17 in a reasonably near future, then we have to wait  
18 till 2010 to do anything.

19 CHAIRPERSON YOUNG: Right.

20 BOARD MEMBER SHALLCROSS: And I think  
21 the whole point is, you know, our concern is that  
22 if there's an indication that the County's project  
23 isn't going forward, and I think that assessment  
24 level would indicate that, that this Board needs  
25 to somehow be involved in moving to the next step.

1 And I think waiting till 2010 is -- that's, you  
2 know, four years from now, or three years, is not  
3 something I would want to wait around for.

4 CHAIRPERSON YOUNG: Okay. Dr. Press, do  
5 you have any thoughts?

6 BOARD MEMBER PRESS: Well, yeah; I  
7 concur with Mr. Shallcross. My approach here has  
8 been to think about this issue both differently  
9 and similarly to how we think about other  
10 community treatment plants throughout our region.

11 We have, in the past, issued milestones  
12 for community treatment plants to be either built  
13 or upgraded because we wanted some assurance that  
14 progress was being made. So, the principle of  
15 milestones, the principle of progress is an  
16 important one, one.

17 Two, I want to remind everybody that  
18 this Board has never, since 1983, charged a single  
19 homeowner a dime or asked them to do a single  
20 thing. Not once.

21 AUDIENCE SPEAKER: (inaudible).

22 BOARD MEMBER PRESS: No, there has not  
23 been any CDO issued against any single individual  
24 homeowner since 1983. And what we've had is a  
25 situation where, for 23 years, there have been



1 discharges in the prohibition zone that are  
2 illegal; that are harming water quality.

3 For 23 years this Board has patiently  
4 waited for something to happen. So, another  
5 principle that I'm operating on is that there has  
6 to be responsibility at some point for water  
7 quality. If it's not on individual homeowners,  
8 and there are no firm milestones, then we will be  
9 in a situation where people will always come back  
10 and say, well, the assessment district didn't get  
11 formed, or the project got litigated, or the  
12 project got moved. And you could go on like this  
13 for another 30 years.

14 So, I would like to see some  
15 responsibility. I'd like to see the buck stop  
16 somewhere. And that's why I think CDOs are  
17 appropriate. But I also feel that we should be  
18 realistic about our first-time timeframe. I  
19 thought January 1, 2008 was not workable. I'm  
20 moved by the arguments that the designated parties  
21 have been making about that. I think we need some  
22 other date.

23 I was thinking that something further  
24 out in 2008 as a date at which the County could  
25 say we have an approved benefits assessment, or a

1 funding mechanism would be a good thing to do.

2 That's a pretty workable plan.

3 But if you want to start having  
4 milestones that are construction-related beyond  
5 2008, then I think Mr. Shallcross' concerns are  
6 really quite valid here. It means that  
7 potentially nothing could happen in the next three  
8 years. And I don't think that's appropriate. Not  
9 with an issue of this magnitude.

10 So, I'd like to see something later out  
11 into 2008 as the trigger point that we had in the  
12 CDOs.

13 CHAIRPERSON YOUNG: Well, it sounds like  
14 we're going to have to come up with that date --

15 BOARD MEMBER PRESS: Yeah.

16 CHAIRPERSON YOUNG: -- ourselves. Mr.  
17 Jeffries, any thoughts?

18 BOARD MEMBER JEFFRIES: Well, I'd like  
19 to move it out to July 1 of 2008 that they have  
20 some kind of funding mechanism in place. Whether  
21 it's a 218 vote, or if they have private financing  
22 or whatever.

23 BOARD MEMBER PRESS: Mr. Chairman, I'd  
24 like to disagree slightly with my esteemed  
25 colleague. I know it's not polite for junior

1 people to disagree with their wiser elder  
2 statesmen.

3 (Laughter.)

4 BOARD MEMBER PRESS: I'm sorry, it pains  
5 me. But I would suggest December 1, 2008 because  
6 it takes advantage of election cycles that I think  
7 would make it more likely for something productive  
8 to happen.

9 BOARD MEMBER HAYASHI: I would support  
10 that date, also.

11 CHAIRPERSON YOUNG: Which date is that?

12 BOARD MEMBER HAYASHI: The December  
13 date.

14 CHAIRPERSON YOUNG: Okay. Mr.  
15 Shallcross?

16 BOARD MEMBER SHALLCROSS: Yeah, I would  
17 support that date, also. And I'm concerned that  
18 maybe we can address this in a little bit about  
19 how that would affect the settlement agreement.  
20 But that's probably not for right now.

21 CHAIRPERSON YOUNG: Yeah.

22 BOARD MEMBER SHALLCROSS: That some  
23 folks have signed on. I mean I wouldn't want them  
24 to get stuck with a January 2008 date when other  
25 folks have a different date.

1 CHAIRPERSON YOUNG: Right.

2 BOARD MEMBER HAYASHI: Mr. Chairman, --

3 CHAIRPERSON YOUNG: Yes.

4 BOARD MEMBER HAYASHI: -- if we heard  
5 what we heard from everyone that's come before us,  
6 I think that December 31st date or 30th date  
7 should take care of everything that's out there.

8 CHAIRPERSON YOUNG: That was December  
9 1st.

10 BOARD MEMBER HAYASHI: Yeah, December  
11 1st date.

12 CHAIRPERSON YOUNG: Of 2008.

13 AUDIENCE SPEAKER: If you do it on the  
14 31st we could have a New Years Eve party.

15 BOARD MEMBER: We'll have kumbaya.

16 CHAIRPERSON YOUNG: Okay.

17 (Laughter.)

18 CHAIRPERSON YOUNG: Any other Board  
19 comments or thoughts on this? I think we can deal  
20 afterward with how to make this retroactive, after  
21 we complete this.

22 MR. RICHARDS: You're correct. The  
23 current issue before the Board is issuance of a  
24 proposed cease and desist order to Mr. Allebe.

25 CHAIRPERSON YOUNG: Right.

1           MR. RICHARDS:  If the proposed cease and  
2           desist order relaxes conditions that have been  
3           accepted by settling parties, that's a separate  
4           issue entirely.

5           CHAIRPERSON YOUNG:  Okay.  Yeah, any  
6           comments by the prosecution team if the Board  
7           votes on and accepts the December 1, 2008 date?

8           MR. PACKARD:  We have a slide from a  
9           County Staff report that we could put up; it shows  
10          some dates, if you're interested.

11          MR. THOMPSON:  Could you please title  
12          that, Harvey.

13          CHAIRPERSON YOUNG:  Is this a slide from  
14          the County?

15          MR. PACKARD:  Yes.

16          MR. THOMPSON:  This -- I'll explain it,  
17          Harvey.

18          CHAIRPERSON YOUNG:  Turn on your mike.

19          MR. THOMPSON:  Yes, Matt Thompson with  
20          the prosecution team.  What is about to be  
21          displayed is -- bear with me for a second, we've  
22          been having problems with this all day.

23                       (Pause.)

24          MR. THOMPSON:  Okay.  This is from a  
25          staff report by the County Staff to the County

1 Board of Supervisors from June of this year when  
2 it was anticipated that Assembly Bill 2701 would  
3 be passed. And this was the County's anticipated  
4 implementation schedule. And this --

5 MR. RICHARDS: Excuse me, Mr. Thompson,  
6 was this included in your documentation? And if  
7 so, where?

8 MR. THOMPSON: I don't think that it is  
9 included in our master documents list, but it is  
10 included in at least one of the designated  
11 parties' submittals.

12 MR. RICHARDS: Okay, do you know where?  
13 Do you know which submittal it was?

14 MR. THOMPSON: Well, if I --

15 MR. PACKARD: Exhibit B, number 857.

16 MR. RICHARDS: Okay.

17 MR. THOMPSON: What this shows, the  
18 third category there, the third bold line, the  
19 green line with the blue, you can see it says  
20 funding authorization, state constitution article,  
21 et cetera.

22 It says engineering report, and then  
23 prop 218 election starting in March 2007. And  
24 extending to August 2007. This is what the County  
25 Staff proposed to the board of supervisors in

1 June.

2 I'm not sure how this has changed since  
3 then, though.

4 CHAIRPERSON YOUNG: Did the board adopt  
5 it? Did they --

6 MR. THOMPSON: This was when the County  
7 was asking for -- the County Staff was asking for  
8 the board of supervisors' support of Assembly Bill  
9 2701 in concept, prior to Assembly Bill 2701 being  
10 passed.

11 CHAIRPERSON YOUNG: Is this still  
12 current, this timeline?

13 MR. THOMPSON: We do not have an updated  
14 timeline from the County.

15 BOARD MEMBER SHALLCROSS: Do you know if  
16 the 218 vote is going to be on the March ballot  
17 for sure? I was asking you --

18 MR. PACKARD: Can we clarify that this  
19 is a mail-in ballot, so there's no date specified  
20 for the election.

21 BOARD MEMBER SHALLCROSS: So it's not on  
22 the March ballot as -- okay.

23 MR. PACKARD: It could happen anytime  
24 when the County's ready to do it. In other words,  
25 it's not tied to a specific election date.

1                   BOARD MEMBER SHALLCROSS: Right. They  
2 don't have a date at the moment.

3                   MR. PACKARD: No.

4                   BOARD MEMBER SHALLCROSS: Okay.

5                   CHAIRPERSON YOUNG: And it is going to  
6 be a mail-in ballot?

7                   MR. PACKARD: That's my understanding.

8                   CHAIRPERSON YOUNG: And where does that  
9 understanding come from?

10                  MR. PACKARD: From the County.

11                  CHAIRPERSON YOUNG: From the County.

12                  MR. MURPHY: I can assist the  
13 prosecution team, the California Constitution  
14 requires it to be a mailed ballot.

15                  CHAIRPERSON YOUNG: Oh, it does?

16                  MR. MURPHY: Forty-five days later  
17 there's a hearing at which all of the property  
18 owners are allowed to come and speak. Or in the  
19 alternative, mail their ballot in.

20                  If there's a majority protest, the  
21 assessment is denied. If there is not a majority  
22 protest, the assessment moves forward, obviously  
23 pending any challenge that might occur, which has  
24 been one of our considerations.

25                  CHAIRPERSON YOUNG: Okay.



1                   BOARD MEMBER PRESS: Mr. Murphy,  
2 following up on that, is it your understanding  
3 that prop 218, the elections have to be  
4 exclusively mail ballots? Or can they be -- can  
5 they happen with other scheduled elections,  
6 primary or a general?

7                   MR. MURPHY: No, the ballots must be  
8 mailed to the registered property owner, so much  
9 as the CDOs were done by taking the County  
10 Assessor's list and mailing out. It's not an  
11 election of the people residing in the district,  
12 but of the properties.

13                   BOARD MEMBER PRESS: Yeah, I understand  
14 that. No, that part I understand.

15                   MR. MURPHY: Okay. So, if, for example,  
16 someone lived in Arizona they would have to be  
17 mailed a ballot and --

18                   BOARD MEMBER PRESS: Right, got'cha.  
19 Forgive me, but I don't believe that timeframe,  
20 I'm just not confident by that very narrow blue  
21 band up there. And I think we need to make it  
22 even, if it's a mail-in ballot and all the rest of  
23 it, I think we need to extend that.

24                   I'm willing to entertain different  
25 dates, but that, to me, it's just --

1                   CHAIRPERSON YOUNG: Well, using Mr.  
2                   Jeffries' timeframe of July 1 of 2008, essentially  
3                   extend it a year beyond what is there; and six  
4                   months beyond where it currently is.

5                   BOARD MEMBER PRESS: Um-hum.

6                   CHAIRPERSON YOUNG: And because it is  
7                   not going to be an election the way we thought it  
8                   might be --

9                   BOARD MEMBER PRESS: Right.

10                  CHAIRPERSON YOUNG: -- this means it  
11                  really can take place at almost anytime, and not  
12                  constrained by --

13                  BOARD MEMBER PRESS: Yeah, I understand,  
14                  yeah.

15                  CHAIRPERSON YOUNG: So, I would be more  
16                  in favor of the July 1st date at this point after  
17                  what I've seen.

18                  BOARD MEMBER JEFFRIES: I would agree to  
19                  that, too, since now we understand it is a mail  
20                  ballot.

21                  BOARD MEMBER SHALLCROSS: I would  
22                  support that, as well.

23                  CHAIRPERSON YOUNG: Okay. Well, if  
24                  there's no more discussion I'll entertain a  
25                  motion.

1 BOARD MEMBER PRESS: I'll move to accept  
2 the prosecution team's recommendation of a CDO.

3 CHAIRPERSON YOUNG: Okay.

4 BOARD MEMBER PRESS: With that date  
5 under A-1 modified, changed from January 1st to  
6 July 1st, 2008.

7 BOARD MEMBER SHALLCROSS: Second.

8 MR. PACKARD: -- ask one question?

9 CHAIRPERSON YOUNG: What was that? Yes.

10 MR. PACKARD: Does it also include the  
11 modification to include the pumping record from  
12 the County?

13 CHAIRPERSON YOUNG: Good point. Say it  
14 again, Mr. Packard, does it include the pumping?

15 MR. PACKARD: Do you wish to modify the  
16 proposal to include the certification from the  
17 County of pumping that was included in the  
18 settlement?

19 CHAIRPERSON YOUNG: Yeah, yeah, that's  
20 included. Thank you.

21 BOARD MEMBER PRESS: Well, we'd want  
22 to --

23 BOARD MEMBER SHALLCROSS: The form or  
24 the date --

25 MR. RICHARDS: You mean the form?

1 MR. PACKARD: The form, yeah.

2 BOARD MEMBER SHALLCROSS: Oh, okay,  
3 yeah.

4 CHAIRPERSON YOUNG: Right.

5 MR. RICHARDS: Mr. Packard, are you  
6 talking about the same language?

7 MR. PACKARD: The same language that was  
8 adopted with the settlement, yes.

9 CHAIRPERSON YOUNG: Yes. To be  
10 consistent with the respect to the requirement  
11 that the report be completed and then sent back to  
12 the Regional Board. And it's the form that's  
13 going to be attached to the settlement agreement  
14 will be attached to the CDO.

15 BOARD MEMBER SHALLCROSS: Mr. Chair, I  
16 still --

17 CHAIRPERSON YOUNG: It's the County  
18 form.

19 BOARD MEMBER SHALLCROSS: Can I ask a  
20 question?

21 CHAIRPERSON YOUNG: Of course.

22 BOARD MEMBER JEFFRIES: There was some  
23 discussion about the type of form that some of the  
24 homeowners felt that if they filled out one type  
25 of form they would have to pay some type of fee,

1 and if they filled out the other type they'd have  
2 to maybe not pay any fee.

3 And I have some concerns with that. I  
4 do want consistency and I do want standardization.  
5 And I'm happy with either one of the forms; I'm  
6 just trying to reduce the cost to the individual;  
7 of course, we just have the one CDO at the present  
8 time. And the ones that have settled.

9 So, I think we need to -- of course,  
10 there's some unknowns there. We don't know if the  
11 contractors would charge to fill out this  
12 individual form.

13 BOARD MEMBER PRESS: You don't know.

14 BOARD MEMBER JEFFRIES: We don't know.

15 BOARD MEMBER PRESS: You don't know.

16 You don't know if they would look at that and say,  
17 that's not what I have. You know, so, 85 bucks.

18 BOARD MEMBER SHALLCROSS: We don't have  
19 enough information on that.

20 BOARD MEMBER PRESS: No.

21 BOARD MEMBER SHALLCROSS: What I'd be  
22 happy with is going ahead with the same language  
23 as is in the settlement agreement currently. And  
24 if there's some big problem or if there's some big  
25 charge and we can use another form that's less

1       costly, you know, work with staff; give them that  
2       information and they can -- we can always change  
3       the cease and desist order and the settlement  
4       agreements can be changed, too, to reflect those  
5       concerns.

6                   BOARD MEMBER JEFFRIES:  Yeah, I agree  
7       with Mr. Shallcross.

8                   CHAIRPERSON YOUNG:  Okay.  So we --

9                   MR. PACKARD:  One more point, Mr.  
10      Chairman.

11                   CHAIRPERSON YOUNG:  Yes.

12                   MR. PACKARD:  The cease and desist order  
13      includes the same January 1, 2008 date in  
14      paragraph A-2.  And I'd recommend changing that  
15      date, also.

16                   CHAIRPERSON YOUNG:  Correct.  That  
17      should be changed also, then, to July 1 of 2008.

18                   Okay, so we have a motion.  Do we have a  
19      second?

20                   BOARD MEMBER HAYASHI:  I'll second.

21                   CHAIRPERSON YOUNG:  Okay.  Last  
22      questions?

23                   BOARD MEMBER JEFFRIES:  My question, Mr.  
24      Chair, was that in the settlement agreements we  
25      changed the dates from 2010 to 2011.  And I was,

1 in all my mess of papers up here, I was trying to  
2 find if the latest version of the CDO had  
3 reflected that date.

4 BOARD MEMBER PRESS: It is 2011.

5 BOARD MEMBER JEFFRIES: It is 2011,  
6 okay. I just wanted to make sure --

7 CHAIRPERSON YOUNG: Okay.

8 BOARD MEMBER JEFFRIES: -- we're  
9 consistent.

10 CHAIRPERSON YOUNG: All right, so we  
11 have a motion and a second. All those in favor?

12 (Ayes.)

13 CHAIRPERSON YOUNG: Any opposed? Okay,  
14 motion carries unanimously. Thank you, Mr.  
15 Allebe.

16 We will now continue with the second --

17 MR. ALLEBE: Okay, could I make one more  
18 statement?

19 CHAIRPERSON YOUNG: Sure.

20 MR. ALLEBE: In the proceedings today I  
21 don't see it on the chart you just showed, there's  
22 been no mention of an affordability study. And  
23 indirectly that's what's caused most of our  
24 holdups on these sewer projects. They find out  
25 what the thing's going to cost and nobody in the

1 world can afford it.

2 And Mr. Press' statement about having  
3 never fined any CDO holders, that's nice to hear,  
4 but I'm wondering if any of them had the amount of  
5 money hanging over their heads that we have.

6 Also, what happens if the 2008 deadline  
7 is missed? And for myself here, I -- okay, you  
8 haven't decided as yet whether I'm going to get a  
9 CDO or not?

10 CHAIRPERSON YOUNG: No, we just voted on  
11 that.

12 MR. ALLEBE: I'm sorry?

13 CHAIRPERSON YOUNG: Yeah, we just issued  
14 a cease and desist order to you. That's what the  
15 vote was.

16 MR. ALLEBE: Oh, okay.

17 CHAIRPERSON YOUNG: Yeah.

18 MR. ALLEBE: All right, I would -- just  
19 a minute here -- I would request that you hold  
20 that CDO in abeyance until after the 218 vote.  
21 And put in the language saying that this item is  
22 beyond my control, and I don't want to get fined  
23 for a delay by the CSD or the County.

24 CHAIRPERSON YOUNG: Okay, --

25 MR. ALLEBE: Is that acceptable?



1           CHAIRPERSON YOUNG:  -- well, we've heard  
2           it.  We already have the vote, so nothing else is  
3           going to be done with respect to that.

4           We move on now to the next cease and  
5           desist order.

6           BOARD MEMBER SHALLCROSS:  I would just  
7           like to say I think the language of the cease and  
8           desist order actually answers some of your  
9           concerns.

10          MR. ALLEBE:  I'm sorry --

11          BOARD MEMBER SHALLCROSS:  I think the  
12          language of the  cease and desist order actually  
13          answers some of your concerns.

14          MR. SATO:  Mr. Chair, before you  
15          continue on, in your last discussion you raised  
16          the issue of the potential effect on the  
17          settlement agreement that we've brought before you  
18          today.  And I was hoping it would be permissible  
19          that we could change the dates of January 1, 2008  
20          in the settlement agreement to July 1, 2008 to  
21          reflect --

22          CHAIRPERSON YOUNG:  Yes.

23          MR. SATO:  Thank you.  I have your  
24          authorization.

25          CHAIRPERSON YOUNG:  Yes, you do.

1                   BOARD MEMBER JEFFRIES: We need to do a  
2                   vote to --

3                   MR. RICHARDS: I was going to recommend  
4                   that you actually make a motion to that effect  
5                   and --

6                   BOARD MEMBER JEFFRIES: Mr. Chair, then  
7                   I would so move that we change the date in the  
8                   settlement agreement from January 1 of 2008 to  
9                   July 1 of 2008, all reflected dates.

10                  BOARD MEMBER PRESS: Can I make a  
11                  friendly amendment to what Mr. Jeffries said?  
12                  It's actually -- I think what we're actually doing  
13                  is accepting the prosecution team's suggested  
14                  change. Because we're not, it's not our  
15                  settlement, it's not ours to change.

16                  So, they've asked us for approval of  
17                  their proposed change. And so that --

18                  BOARD MEMBER JEFFRIES: That's true,  
19                  it's not our settlement.

20                  BOARD MEMBER PRESS: If we can make that  
21                  friendly --

22                  BOARD MEMBER JEFFRIES: Yeah, I --

23                  CHAIRPERSON YOUNG: So moved. Okay.

24                  BOARD MEMBER SHALLCROSS: I'll second  
25                  the motion.

1 CHAIRPERSON YOUNG: All those in favor?

2 (Ayes.)

3 CHAIRPERSON YOUNG: Any opposed? Okay,  
4 that motion also carries.

5 Okay, we'll go to proposed order number  
6 1002, Cinthea Coleman. Okay. Mr. Packard.

7 MR. PACKARD: We'll hear from Matt  
8 Thompson again.

9 CHAIRPERSON YOUNG: Okay.

10 MR. THOMPSON: Here again is a map of  
11 the prohibition zone. According to our records  
12 and documents submitted by Cinthea Coleman she  
13 lives at 1399 14th Street. She is proposed cease  
14 and desist order number R3 2006-1002. And the  
15 location of her property within the prohibition  
16 zone is shown by this green flag labeled 1002.

17 Based on the information she submitted  
18 she occupies the property. We presume she uses a  
19 septic system and therefore violates the basin  
20 plan prohibition.

21 That's all for now.

22 CHAIRPERSON YOUNG: Okay. Mr. Duggan,  
23 any cross-examination of the prosecution team?

24 MR. DUGGAN: Is there anything to cross-  
25 examine to. He just made a statement, but didn't

1 hear any evidence.

2 CHAIRPERSON YOUNG: You can ask any  
3 questions of the prosecution team based on the  
4 evidence that they have just offered.

5 MR. DUGGAN: On the evidence they've  
6 just offered?

7 CHAIRPERSON YOUNG: You're going to have  
8 your time slot to provide open testimony, but  
9 that's not right now. It's an opportunity to  
10 challenge the evidence that was just offered by  
11 the prosecution team.

12 MR. DUGGAN: Is this the -- okay, I'm  
13 asking the prosecution team, is this the extent of  
14 your evidence against Cinthea Coleman?

15 Oh, wait, my name's Dave Duggan,  
16 representing Cinthea Coleman. I need to know is  
17 this the extent of your evidence against Cinthea  
18 Coleman?

19 MR. THOMPSON: We previously presented  
20 evidence that is general to all of the properties.  
21 This is the specific evidence for Cinthea  
22 Coleman's property and proposed cease and desist  
23 order.

24 CHAIRPERSON YOUNG: And is that the  
25 septic and sewer service repair invoice in our

1 packet? Is that what you're referring to? Oh,  
2 Ms. Coleman --

3 MR. PACKARD: She did submit that, yes.

4 CHAIRPERSON YOUNG: Yeah.

5 MR. DUGGAN: It's hard to cross-examine  
6 a map. And specifically when that map has not  
7 been spoken towards in any detail.

8 BOARD MEMBER SHALLCROSS: Mr. Chairman,  
9 I can't hear Mr. Duggan very well.

10 MR. DUGGAN: I said it's hard to cross-  
11 examine a map, especially since the prosecution  
12 has not given me any details of this map.

13 BOARD MEMBER SHALLCROSS: What would you  
14 ask the map?

15 MR. DUGGAN: I wouldn't ask the map  
16 anything; that would be useless.

17 CHAIRPERSON YOUNG: Okay. All right.

18 MR. DUGGAN: And I'd ask them to provide  
19 more evidence of something that I can cross-  
20 examine, too, please, at this point. That's just  
21 a blanket statement with no proof behind it.

22 CHAIRPERSON YOUNG: Okay.

23 MR. DUGGAN: For the individual, and I'm  
24 asking would you present -- are you going to  
25 present -- okay, I'll ask, are you going to

1 present more evidence other than a map?

2 CHAIRPERSON YOUNG: Apparently not,  
3 unless it's going to come in as rebuttal testimony  
4 because this was their case-in-chief. Okay?  
5 We're now into the cross-examination by you. Next  
6 will be your opportunity to put evidence in --

7 MR. DUGGAN: But I'm asking the  
8 prosecution is there any other evidence that you  
9 could present that shows that Cinthea Coleman is  
10 discharging pollutants into the aquifer?

11 MR. THOMPSON: Well, now that you ask,  
12 Cinthea Coleman did submit evidence for the cease  
13 and desist order hearing. And she wrote in a  
14 handwritten note: We use four units of water a  
15 month. We've been advised not to pump for seven  
16 to eight years. Our septic is at its peak of  
17 performance and not failing. Also, we're 27 feet  
18 above groundwater." Dated October 7, 2006. She  
19 also provided a copy of an invoice from Advanced  
20 Septic, which indicates that her septic system was  
21 pumped out. We believe that's evidence of a  
22 septic system discharge.

23 MR. DUGGAN: My question was  
24 specifically towards pollutants. I specifically  
25 asked about discharge of pollutants. Would you

1 answer that question? What proof do you have that  
2 she is discharging pollutants into the aquifer?

3 MR. THOMPSON: If she is using a septic  
4 system then, yes, she is discharging pollutants.

5 MR. DUGGAN: What proof do you have that  
6 she is discharging pollutants into the water of  
7 the state?

8 MR. PACKARD: Actually all we're saying  
9 is that she is discharging waste within the  
10 prohibition zone.

11 AUDIENCE SPEAKER: That is not waste --

12 MR. DUGGAN: All she has referenced is  
13 water. Obviously the water that she says that  
14 they use -- I'm trying to ask you what proof do  
15 you have that she is discharging water into the --  
16 discharging pollutants into the water of the  
17 state.

18 Do you know for sure that this --  
19 whatever she is doing is reaching the aquifer?

20 CHAIRPERSON YOUNG: You know, I'm going,  
21 Mr. Duggan, try to contain that question --

22 MR. DUGGAN: Well, that's why it's hard  
23 to --

24 CHAIRPERSON YOUNG: -- but here's the  
25 reason. I know this has been asked repeatedly. I

1 have not heard the prosecution team make the  
2 allegation that anyone is discharging waste into  
3 the groundwater or the aquifer. Okay.

4 So that is not what they are alleging.  
5 What they're alleging is that there is a discharge  
6 of waste from the property in violation of the  
7 prohibition zone and the basin plan amendment.

8 MR. DUGGAN: Well, I would ask that you  
9 not argue the prosecution's case, please.

10 CHAIRPERSON YOUNG: Well, I'm not, but I  
11 want to keep to what's relevant and, you know, we  
12 can burn up a lot of time on issues that are  
13 really not before the Board.

14 MR. RICHARDS: The Chairman is -- it's  
15 clear what the Chairman is doing is clarifying for  
16 your benefit what has been argued by the  
17 prosecution.

18 MR. DUGGAN: Nothing has been argued by  
19 the prosecution is my point.

20 MR. RICHARDS: The prosecution is  
21 arguing that they have presented evidence showing  
22 that there has been discharge of waste from the  
23 site in violation of the prohibition. It is up to  
24 the Board to decide whether that evidence is  
25 sufficient to support the issuance of the cease



1 and desist order under section 13301 of the Water  
2 Code.

3 The prosecution has not argued that  
4 there has been a discharge of pollutants. They  
5 have not argued that there has been a discharge to  
6 the water body.

7 MR. DUGGAN: According to the CDO --

8 CHAIRPERSON YOUNG: Well, hang on a  
9 second. You will be able to make any arguments  
10 you wish when we --

11 MR. DUGGAN: Well, I'm responding to --

12 CHAIRPERSON YOUNG: -- when we close --

13 MR. DUGGAN: Okay.

14 CHAIRPERSON YOUNG: I understand, but --

15 MR. DUGGAN: Okay, well, then I'm going  
16 to ask --

17 CHAIRPERSON YOUNG: -- you're not going  
18 to be --

19 MR. DUGGAN: -- the question --

20 CHAIRPERSON YOUNG: -- precluded from  
21 arguing what you think should be the violation.  
22 But that's not what is being alleged as the  
23 violation. So, if you want, what we should do is  
24 just switch to -- I think we're probably done with  
25 the cross-examination part, and --

1           MR. DUGGAN: No, we are not. I have  
2 questions to ask.

3           CHAIRPERSON YOUNG: Okay. Cross-  
4 examination questions.

5           MR. DUGGAN: -- the CDO. Does it not  
6 state in number 2, the first page of the CDO, is a  
7 discharging septic system, liquid waste -- septic  
8 system, liquid waste and discharges from the  
9 septic system, eventually to the groundwater.  
10 That's the wording of the CDO.

11           So, what proof do you have that she is  
12 discharging waste into the groundwater? It's in  
13 the CDO.

14           MR. PACKARD: The finding in the cease  
15 and desist order is a statement of our belief that  
16 every septic system that discharges within the  
17 prohibition zone, the waste from those discharges  
18 eventually reach groundwater.

19           MR. DUGGAN: So this is a question of  
20 waste and not just a discharge? Is that not  
21 correct?

22           CHAIRPERSON YOUNG: That's correct.

23           MR. DUGGAN: So where is your proof that  
24 this individual's waste from discharge is reaching  
25 the groundwater?

1           MR. PACKARD: We've submitted all the  
2 data we plan to submit.

3           MR. DUGGAN: I guess from his non-answer  
4 I can assume that there is no --

5           CHAIRPERSON YOUNG: Well, he said --

6           MR. DUGGAN: I can infer --

7           CHAIRPERSON YOUNG: -- he said he  
8 submitted --

9           MR. RICHARDS: He has answered your  
10 question. If you wish to make arguments based  
11 upon his answer then you have an opportunity to do  
12 so when you present your case. But at this point  
13 in time he has answered your question.

14          CHAIRPERSON YOUNG: Any more cross-  
15 examination questions, Mr. Duggan?

16          MR. DUGGAN: There's nothing to cross-  
17 examine.

18          CHAIRPERSON YOUNG: Okay.

19          MR. DUGGAN: -- since McCarthyism has  
20 this been --

21          CHAIRPERSON YOUNG: Okay. Well, you'll  
22 have time to argue. Let's go then to your case.  
23 You'll have 15 minutes. Are you ready?

24          MR. DUGGAN: Just give me a second.

25                 (Pause.)

1           MR. DUGGAN: From the beginning of  
2 this -- unless I can turn the mike up, because I  
3 am speaking loudly.

4           From the beginning of this issue of the  
5 CDOs, or even before the issues of the CDO, this  
6 Board at the ACL hearing expressed the need to  
7 bring CDOs forward.

8           And that was derived from the fact that  
9 there was an election, an election of three people  
10 into the LOCSD who wanted to move and improve the  
11 sewer in Los Osos. I'll have you know that people  
12 outside the prohibition zone also voted these  
13 people in. And they are not to be punished by any  
14 CDO. And yet they elected these people, as well.

15           There are also people that are -- and I  
16 don't know how Cinthea Coleman voted, but several  
17 people, many people did not vote for these new  
18 board members. So whatever decision these board  
19 members made was beyond her control to stop the  
20 project.

21           Of course, there are concerns by the  
22 people -- and therefore it was beyond Cinthea  
23 Coleman's means to provide for a wastewater  
24 treatment facility because of what the Los Osos  
25 Community Services District did. They stopped the

1 project. No doubt.

2 Let's look at why they stopped the  
3 project first. I have here federal Clean Water  
4 Act codes. And these are some of the concerns  
5 that I have been expressed to one, some of the  
6 reasons why.

7 Section 218, cost effectiveness. It is  
8 the policy of the congress that a project for  
9 waste treatment and management undertaken with  
10 federal financial assistance under this Act by any  
11 state, municipality -- municipality, any state  
12 agency shall be considered as an overall waste  
13 treatment system for waste treatment and  
14 management, and shall be the system which  
15 constitutes the most economical and cost effective  
16 combination of devices and systems.

17 The concern of the LOCSD is that this  
18 was not that reason. Though the reason they  
19 stopped has nothing to do with the fact that  
20 Cinthea Coleman had no power to stop them from  
21 stopping the project. And I don't know whether  
22 she voted for them or not. But a collective  
23 punishment for a community because of the act of a  
24 few politicians, I believe, is completely unfair  
25 and so does Cinthea Coleman.

1           Also in section B of that same code,  
2 administrator approves any grant to any state,  
3 municipality or any municipality or any state  
4 agency for erection of building, acquisition or  
5 alteration, remodeling improvement, or extension  
6 of any treatment works where the administrator  
7 shall determine that the facility of which such  
8 treatment works are a part constitutes the most  
9 economical and cost effective combination of  
10 treatment works over the life of the project to  
11 meet the requirement of this Act, including but  
12 not limited to the considerations of construction  
13 cost, operation, maintenance and replacement cost.

14           Those are the concerns stated by the  
15 LOCSD. That's why they stopped the project.  
16 Stopping this project was beyond any powers that  
17 Cinthea Coleman had. She could not stop them from  
18 stopping the project. She could not intervene.

19           It also says in section C the  
20 administrator shall require value engineering  
21 review in connection with any treatment works  
22 prior to the approval of any grant. The SRF loan,  
23 I believe, did not have the oversight that should  
24 have been involved. And I believe the LOCSD has  
25 pointed that out. Cinthea Coleman, I don't know

1        what she believes or what she doesn't believe, or  
2        whether she voted for this CSD, but they stopped  
3        the project, she did not.

4                    And this goes on, too. For the purpose  
5        of this subsection the term value engineering  
6        review means a specialized cost control technique  
7        which uses a systematic and creative approach to  
8        identify and to focus on unnecessary high cost in  
9        a project in order to arrive at a cost saving  
10       without sacrificing the reliability or efficiency  
11       of the project. That was a concern of the LOCSD.  
12       Cinthea Coleman did not have the power to stop  
13       them from stopping the project, regardless of what  
14       they thought.

15                    Let's go on further to something else.  
16        It was stated that data is being used to ascertain  
17        whether or not there was pollution going on within  
18        what is now termed as the prohibition zone. And I  
19        questioned a lot of that data the other day,  
20        yesterday, talking about whether or not you should  
21        use drinking water wells for test wells; whether  
22        they're private or owned by the municipality or  
23        whichever.

24                    And, of course, we went around about  
25        whether it should be used or not. And I stated

1 that the basin plan says it is not recommended.

2 Can I have that map back up? 1002,  
3 Cinthea Coleman's house. Taken from the ground  
4 level monitoring management plan, which is  
5 required by the Coastal Commission as a  
6 requirement before they could issue the permit for  
7 the LOCSD to move forward with the wastewater  
8 project.

9 At present most of the wastewater  
10 returned to the groundwater basin east of the so-  
11 called strand B, where the Los Osos flows towards  
12 Morro Bay. However, a sizeable portion flows east  
13 towards the Los Osos Creek due primarily to the  
14 pronounced mound of groundwater that has been  
15 mapped in the vicinity of Pismo Avenue and 14th  
16 Street.

17 Now, I don't know if you can see it, but  
18 Cinthea Coleman is just north of that mound. That  
19 mound is basically from Pismo Street, which is  
20 this next block down, and then over. And so any  
21 discharges that Cinthea Coleman may have would  
22 reflect into the nearest test well which way the  
23 water is flowing. Because of the mounding  
24 anything on one side of the mound, the south side  
25 of the mound, would flow towards one direction,



1 eastward. And anything on the other side of the  
2 mound would flow to the northern side. So we're  
3 looking at south and north here.

4 Where she lives the discharge from her  
5 and many other people in that community, in that  
6 section of the community, flows towards the test  
7 well 8 and 2. 0.8 nitrates, that is what that is  
8 reading there.

9 Now, as I said before, I've been before  
10 this Board before and the prosecution found that  
11 my arguments had no merit. And twicfold I  
12 believe my merit's been proven.

13 I have looked and studied. I'm on the  
14 water ops committee of Los Osos CSD and even  
15 before that. I have been studying the hydrology  
16 of the basin, including the geology of the basin  
17 and the effects to certain geological --  
18 geological I guess you would call them  
19 abnormalities, such as the Los Osos earthquake  
20 fault.

21 But what is clear that anybody on the  
22 north side of that mounding water, and not only 45  
23 to 50 feet above any groundwater that is  
24 registered there, that as it gets closer to that  
25 test well, it shows 0.8. Well below the standard

1 of 10 mg/liter. So I don't believe that there is  
2 any proof to show that Cinthea Coleman's waste  
3 discharge is polluting the waters of the state.

4 Let's go further. Make sure I have this  
5 in order. What is -- do I have a time limit on  
6 this --

7 CHAIRPERSON YOUNG: You do; you have  
8 five minutes and 20 seconds.

9 MR. DUGGAN: Oh, I'm ahead of schedule.  
10 Let's look again at data. It's been suggested  
11 that an isotopic study be taken to determine what  
12 the background levels are, what I call as the  
13 natural nitrates that are occurring into the basin  
14 should be done. And I wholeheartedly agree with  
15 that.

16 Until you do an isotopic study to  
17 distinguish between manmade nitrates, nitrates  
18 from discharges from septic tanks, and natural  
19 occurring nitrates in the soil due to age-old and  
20 ancient vegetation decomposition you're not going  
21 to know for sure exactly what's going on in the  
22 water basin. The characteristics of the water is  
23 not getting a true evaluation of what truly is,  
24 without that baseline being set.

25 Having that being said, the basin plan,

1       when the prohibition was established I believe  
2       that there was not sufficient evidence to  
3       establish the prohibition zone. I'm not going to  
4       question whether the prohibition is legal, just  
5       the data that was used to establish the  
6       prohibition zone.

7               The basin plan -- I'll find it right  
8       here -- here we go. The basin plan, section 7-D-  
9       1, corrective actions for existing systems. And  
10      it states here individual disposal system can be  
11      regulated with relative ease when they are  
12      proposed for -- site. It goes on, for new systems  
13      regulations generally provide for good design and  
14      construction practices.

15             A more troublesome problem is presented  
16      by older septic tanks, systems where designs and  
17      construction may have been less strictly  
18      controlled, or where land development has  
19      intensified to an extent that percolation systems  
20      are too close together and there's no room left  
21      for replacement leachfields.

22             Where this situation develops to an  
23      extent that public health hazards and a nuisance  
24      condition develop, most effective remedy is  
25      usually a sewer system.

1           Well, without taking that baseline to  
2           establish what your data is for naturally  
3           occurring nitrates to the system, your data is  
4           compromised.

5           Let's go on. Soil percolation rates are  
6           particularly fast, groundwater degradation is  
7           possible, particularly increasing in nitrate  
8           concentration. We have been told that we all know  
9           that Los Osos' soil is some of the best soil there  
10          is for denitrification.

11          Our first step, the soil percolation  
12          rates are particularly fast, groundwater  
13          degradation is possible, particularly increasing  
14          in nitrate concentrations. Sewer systems planning  
15          should be emphasized in urbanized areas served by  
16          septic tanks. A first step would be a monitoring  
17          system involving surface and groundwater to  
18          determine whether the problems are developing.

19          Where septic tank systems in urban areas  
20          are not scheduled for replacement with a sewer,  
21          which I believe was premature in this case,  
22          because you didn't do the proper isotopic studies,  
23          as well as collect the data correctly, and where  
24          public health hazards are not documented, septic  
25          tank maintenance procedures are encouraged to

1       lessen the probability that a few major failures  
2       might force the sewerage of an area which  
3       otherwise could be retained on an individual  
4       system without compromising water quality.

5                What comes first? Septic maintenance  
6       come first. Before the determination of whether  
7       or not the groundwater's being affected by  
8       everybody in the community or a few people in the  
9       community. And you cannot collect that data till  
10      you have that baseline set at what is naturally  
11      occurring. And so isotopic studies will tell you  
12      whether it's farm animal, human or pharmaceutical,  
13      whatever. It will give you those baselines to  
14      work from. We do not have those baselines. No  
15      isotopic study has been completed to make this  
16      determination.

17               How much time do I have left?

18               CHAIRPERSON YOUNG: Forty seconds.

19               MR. DUGGAN: Well, with the time I have  
20      left, I'll just say that I believe these CDOs  
21      are --

22               CHAIRPERSON YOUNG: And you will have  
23      some additional time to give some closing  
24      statements.

25               MR. DUGGAN: Well, since I don't have

1 very much time I'll go ahead and close with what I  
2 have. I think --

3 CHAIRPERSON YOUNG: Okay. All right,  
4 any cross-examination by the prosecution team?

5 MR. THOMPSON: Mr. Duggan, do you know  
6 if Cinthea Coleman discharges from her septic  
7 system?

8 MR. DUGGAN: Are you asking me to bear  
9 evidence against Cinthea Coleman?

10 MR. THOMPSON: Do you have evidence that  
11 she does not discharge from her septic system?

12 MR. DUGGAN: He is asking --

13 CHAIRPERSON YOUNG: Well, you are --

14 MR. DUGGAN: -- me the question --

15 CHAIRPERSON YOUNG: -- you are --

16 (Parties speaking simultaneously.)

17 MR. DUGGAN: -- do I know if Cinthea  
18 Coleman -- I can state that Cinthea Coleman will  
19 not incriminate herself.

20 CHAIRPERSON YOUNG: Well, you are acting  
21 on her behalf. You have her authorization to --

22 MR. DUGGAN: And actually the  
23 prosecution is asking me to do his job. And you  
24 do realize that criminal charges can be brought  
25 against Cinthea Coleman. And so anything she says

1 or allows me to say for her can be used and held  
2 her in a court of law.

3 CHAIRPERSON YOUNG: Well, we've already  
4 addressed that. That's speculation, not arising  
5 out of this proceeding. It's --

6 MR. DUGGAN: As I read the  
7 enforcement --

8 CHAIRPERSON YOUNG: -- something else --  
9 excuse me, Mr. Duggan, something else would have  
10 to happen whereby something gets referred to the  
11 attorney general's office, or the district  
12 attorney's office. That is not being proposed at  
13 this time. You don't --

14 MR. DUGGAN: At this time.

15 CHAIRPERSON YOUNG: If you don't want to  
16 answer I'm not going to force you, but the Board  
17 will be entitled to make whatever inferences, take  
18 whatever inferences it wants from your refusal to  
19 answer the question.

20 MR. DUGGAN: And I'll state my -- this  
21 statement on the fact that your own enforcement  
22 policies state that this can happen. That she can  
23 be charged with a criminal offense. And it's in  
24 your own enforcement policies.

25 CHAIRPERSON YOUNG: Mr. Duggan, you've

1       been asked a question. Can you give an answer to  
2       the question?

3               MR. DUGGAN: Might as well ask me if  
4       she's ever been associated with the communist  
5       party.

6               CHAIRPERSON YOUNG: He didn't ask you  
7       that question.

8               MR. DUGGAN: Well, he's asking her to  
9       incriminate herself.

10              CHAIRPERSON YOUNG: Okay. Do you have  
11       another -- he's not going to answer, do you have  
12       another question?

13              MR. SATO: Just so we don't leave this  
14       thing hanging, if Mr. Duggan, on behalf of Ms.  
15       Coleman, can just tell us exactly how the response  
16       to a particular question will incriminate the  
17       witness? Can you let us know how that would  
18       happen?

19              MR. DUGGAN: Repeat the question. I  
20       didn't understand the question.

21              MR. SATO: I asked you whether if you  
22       could explain to us why you believe that there'd  
23       be something incriminating about the statement  
24       that we asked -- the question that we asked you to  
25       respond to.



1                   MR. DUGGAN:  There we are again.  You're  
2 asking me whether or not she has something to  
3 hide.

4                   MR. SATO:  No.  I would just ask you to  
5 explain how the response to our question would  
6 incriminate Ms. Coleman.

7                   (Parties speaking simultaneously.)

8                   MR. DUGGAN:  -- for itself, and I don't  
9 think any court of law would allow you to re-ask  
10 that question in that way.  And still I would have  
11 to plead the Fifth in her benefit.

12                   MR. SATO:  I now believe that because  
13 I've asked it this way that you have failed to  
14 sustain your burden of proving that the privilege  
15 applies.  But I'm not going to press this any  
16 further.

17                   And since Mr. Duggan has apparently  
18 completed the conclusion of the testimony for Ms.  
19 Coleman, then we note that he did not refer to any  
20 of the documents on exhibit B, and therefore for  
21 the record on this particular proceeding we ask  
22 that all the documents -- or none of the documents  
23 on exhibit B be entertained by the Board.  
24 Provided, of course, those documents that were  
25 already introduced are in the Board's records as a

1 result of Board documents. Documents that were  
2 already introduced and allowed to be introduced in  
3 the general presentation section.

4 MR. DUGGAN: Not true. I did refer to  
5 studies, not by name, but in general. I said that  
6 I --

7 (Parties speaking simultaneously.)

8 MR. SATO: -- certain give --

9 MR. DUGGAN: I have -- I have evidence,  
10 or exhibits that I do want to be allowed that  
11 include maps of the hydrology. Well, Mr. Allebe,  
12 let's talk about fairness, which is part of your  
13 enforcement policy, fairness and equal. He did  
14 not mention any of these items in this, and yet he  
15 was allowed to pick from here.

16 MR. SATO: I've thought of a more  
17 efficient way to go through this.

18 MR. DUGGAN: Well, I guess he's giving  
19 the Board direction on how to proceed? Is he  
20 advising the Board on how to proceed?

21 CHAIRPERSON YOUNG: Yeah, we did give  
22 Mr. Allebe the opportunity to go through that  
23 list.

24 MR. SATO: Well, I'm certainly -- to the  
25 extent that Mr. Duggan said that he relied on some

1 documents now, even though he didn't mention them,  
2 I'm more than happy to allow him to identify what  
3 those documents were.

4 CHAIRPERSON YOUNG: Right.

5 MR. SATO: But as to the rest, I think  
6 they should be stricken; simply not part of the  
7 record of his proceeding.

8 CHAIRPERSON YOUNG: All right.

9 MR. SATO: Or Ms. Coleman's proceeding,  
10 excuse me.

11 CHAIRPERSON YOUNG: Well, you know,  
12 really the problem with this, or the difficulty is  
13 that in a proceeding like this it's really a -- on  
14 appeal it's a challenge to what, you know, the  
15 staff has done. And that's why the staff's files  
16 come in, because it's a challenge against the  
17 agency.

18 When a party is involved in that  
19 proceeding and wants to make use of documents,  
20 and, you know, simply refers to them without  
21 really getting into the details of the documents  
22 and elaborating with them, it's real hard for the  
23 Board to give much weight to those documents.

24 I then --

25 MR. DUGGAN: I could have but I would

1 take longer than 15 minutes.

2 CHAIRPERSON YOUNG: I understand that.  
3 And that's kind of why, you know, I allowed Mr.  
4 Allebe, you know, to put those documents in. I'm  
5 going to give you the same opportunities. If you  
6 want those documents that Mr. Allebe identified to  
7 also come in? Are there other ones?

8 We actually, I think, went through each  
9 one. We went --

10 MR. DUGGAN: I'm only taking from the  
11 same list that he took from.

12 CHAIRPERSON YOUNG: Yeah, the same list  
13 would be fine. If you're going to rely on those,  
14 those can come in.

15 MR. DUGGAN: And also, too, on his  
16 cross-examination, and I'm sorry to say that he  
17 said he had evidence that Cinthea Coleman said  
18 that she used X amount of water. Now, you can  
19 draw any inference from that, and still not have  
20 to ask me whether she's discharging into the  
21 waters. And I should have said that before. But  
22 he did say that. Did he not? He had evidence  
23 that she said she used --

24 CHAIRPERSON YOUNG: She submitted  
25 evidence. This is in her handwriting.

1 MR. DUGGAN: Correct.

2 CHAIRPERSON YOUNG: And she gave the  
3 Board --

4 MR. DUGGAN: And that, he can draw any  
5 inference about discharges from that that he  
6 wishes to.

7 CHAIRPERSON YOUNG: But he's entitled to  
8 ask any questions he wants.

9 MR. DUGGAN: And she's entitled not to  
10 answer the questions.

11 CHAIRPERSON YOUNG: Well, she is. She  
12 is, and --

13 MR. DUGGAN: In fact, I believe there  
14 has been a lot relayed to this Board by her  
15 request through me, and that this one sticking  
16 point, the McCarthyism of this one sticking point  
17 is really a travesty.

18 You know what happened to Mr. McCarthy.

19 CHAIRPERSON YOUNG: Okay. Let's see, --

20 MR. DUGGAN: Are we going to go on to  
21 these --

22 CHAIRPERSON YOUNG: -- any other  
23 testimony? Any rebuttal testimony?

24 MR. SATO: We have no rebuttal.

25 CHAIRPERSON YOUNG: No rebuttal

1 testimony.

2 MR. SATO: Oh, I guess we -- go ahead.

3 BOARD MEMBER JEFFRIES: Mr. Chair, could  
4 I --

5 CHAIRPERSON YOUNG: Yes.

6 BOARD MEMBER JEFFRIES: -- point of  
7 clarification. What are we letting in and what  
8 are we not letting in?

9 CHAIRPERSON YOUNG: The same documents  
10 that Mr. Allebe -- that we allowed him to go  
11 through on his list after his testimony.

12 BOARD MEMBER JEFFRIES: That's what I  
13 thought I heard, but I wasn't sure.

14 CHAIRPERSON YOUNG: Just though, it's  
15 that list.

16 BOARD MEMBER JEFFRIES: Was Mr. Duggan  
17 arguing against that?

18 CHAIRPERSON YOUNG: No, he's not. He  
19 said that that was the same list that he would --  
20 would be acceptable --

21 MR. DUGGAN: I'm just going to say, I'm  
22 going to state the ones that I had referred to,  
23 not the ones that Mr. Allebe referred to  
24 specifically. But they're on the same list.

25 BOARD MEMBER JEFFRIES: Well, but there

1 were some on that list that were excluded.

2 CHAIRPERSON YOUNG: Yeah, I --

3 MR. DUGGAN: I'm just going to go  
4 through my list if that's okay.

5 CHAIRPERSON YOUNG: Go ahead.

6 MR. DUGGAN: See if he has any  
7 objections. Upper aquifer management plan, --

8 CHAIRPERSON YOUNG: Give us the number.

9 MR. DUGGAN: -- which is number --

10 CHAIRPERSON YOUNG: You have to give us  
11 the number.

12 MR. DUGGAN: 864.

13 CHAIRPERSON YOUNG: 864.

14 MR. DUGGAN: 868.

15 CHAIRPERSON YOUNG: 868, who is Mary  
16 Ellen?

17 MR. DUGGAN: That is referring to  
18 conversations how to not get a CDO, which referred  
19 to the Tri-W site.

20 CHAIRPERSON YOUNG: But who's Mary  
21 Ellen?

22 MR. DUGGAN: She's -- I don't have to  
23 know this person personally, do I?

24 CHAIRPERSON YOUNG: I can't hear you.

25 MR. DUGGAN: Do I need to know her

1 personally?

2 CHAIRPERSON YOUNG: You need to know --  
3 is someone else talking to me?

4 MR. DUGGAN: This is a conversation from  
5 the interest party. Do you object to this being -  
6 -

7 MR. SATO: We object. There's no  
8 foundation.

9 MR. DUGGAN: The foundation --

10 CHAIRPERSON YOUNG: I'm trying to find  
11 out who Mary --

12 MR. DUGGAN: Sorrel Marks testified  
13 earlier that she and the staff on more than one  
14 occasion urged people to get the LOCSD to restart  
15 the Tri-W project to avoid a CDO.

16 CHAIRPERSON YOUNG: Okay, wait, let's --

17 MR. DUGGAN: And that has been  
18 established.

19 CHAIRPERSON YOUNG: Okay, hold on. Did  
20 this document come in with Mr. Allebe?

21 MR. SATO: No, it did not.

22 CHAIRPERSON YOUNG: It did not. Okay.  
23 This document is not coming in. Whose notes are  
24 they? Mary Ellen's?

25 AUDIENCE SPEAKER: Yes.



1                   CHAIRPERSON YOUNG: Yes. Okay. No. If  
2 it was a prosecution team's notes I would say yes.  
3 But Mary Ellen's notes, that's inadmissible  
4 hearsay.

5                   MR. DUGGAN: I won't quibble the --  
6 okay, that's okay, we won't -- 884.

7                   CHAIRPERSON YOUNG: 884, groundwater  
8 management plan. Okay. Did that come in on  
9 the --

10                  MR. DUGGAN: 881.

11                  CHAIRPERSON YOUNG: Hold it. Okay, that  
12 comes in. 881? Yeah, what is --

13                  MR. DUGGAN: Excuse me, I'm sorry.

14                  CHAIRPERSON YOUNG: -- 881?

15                  MR. DUGGAN: 891, I'm sorry, 891.

16                  CHAIRPERSON YOUNG: 891, okay.

17                  MR. DUGGAN: 892, --

18                  CHAIRPERSON YOUNG: Okay.

19                  MR. DUGGAN: -- 893, --

20                  CHAIRPERSON YOUNG: Okay.

21                  MR. DUGGAN: -- 894, and 896.

22                  CHAIRPERSON YOUNG: Well, we're going to  
23 need --

24                  MR. RICHARDS: Mr. Duggan, am I correct  
25 in understanding that you are not requesting the

1 admission of document number 881?

2 MR. DUGGAN: Yes. I'm sorry, I made a  
3 mistake. I need glasses.

4 MR. RICHARDS: Thank you.

5 MR. DUGGAN: I think I made a mistake.  
6 I know I didn't -- once I could have been  
7 mistaken.

8 Can I -- should I go --

9 CHAIRPERSON YOUNG: All right, continue.

10 MR. DUGGAN: 918, --

11 CHAIRPERSON YOUNG: Which one?

12 MR. DUGGAN: 918.

13 CHAIRPERSON YOUNG: 918, 918, okay.

14 MR. DUGGAN: 923.

15 CHAIRPERSON YOUNG: Okay.

16 MR. DUGGAN: 837.

17 CHAIRPERSON YOUNG: 8 or 937?

18 MR. DUGGAN: I mean, sorry, 937.

19 CHAIRPERSON YOUNG: 927? 937. Okay.

20 MR. DUGGAN: I believe that's all. And  
21 also two of the ones that were allowed by Mr.  
22 Allebe if that's possible.

23 CHAIRPERSON YOUNG: Okay. All right.

24 Mr. Sato, any objections?

25 MR. SATO: No.

1                   CHAIRPERSON YOUNG: Okay. All right.

2                   No rebuttal.

3                   Okay, why don't we have then closing  
4 arguments.

5                   MR. THOMPSON: We have brief rebuttal.

6                   CHAIRPERSON YOUNG: You do?

7                   MR. THOMPSON: Yeah, 30 seconds.

8                   CHAIRPERSON YOUNG: Okay.

9                   MR. THOMPSON: To the extent that Mr.  
10 Duggan challenges the propriety of the prohibition  
11 zone I just want to point out that the many  
12 scientific studies and monitoring data supporting  
13 the propriety of the prohibition zone are  
14 summarized in the prosecution team's written  
15 submittals. That's all.

16                   CHAIRPERSON YOUNG: Okay. Any rebuttal  
17 by yourself?

18                   MR. DUGGAN: Only to say that as you  
19 look through my documents you know that I've  
20 picked most of the water geological and  
21 hydrological studies, probably of which many which  
22 he's referring to. And I will remind you of, of  
23 course, the test well I was referring to, to  
24 consider the fact that perhaps the pollutants  
25 which the prosecution is talking towards are not

1 reaching the waters of the state.

2 CHAIRPERSON YOUNG: Okay, thank you. Do  
3 you want to make any other closing arguments, or  
4 have you already given those to us?

5 MR. DUGGAN: How much time do I have?

6 CHAIRPERSON YOUNG: Five minutes.

7 MR. DUGGAN: Okay. On Cinthea Coleman's  
8 behalf, you have no proof that I am willing to  
9 comply --

10 BOARD MEMBER JEFFRIES: Mr. Chair, can I  
11 interrupt Mr. Duggan?

12 CHAIRPERSON YOUNG: Yes.

13 BOARD MEMBER JEFFRIES: I cannot hear  
14 him properly.

15 MR. DUGGAN: Okay.

16 BOARD MEMBER SHALLCROSS: Put the mike  
17 down a little.

18 MR. DUGGAN: You have no proof that I am  
19 unwilling to comply with your requirements; and in  
20 fact, you have just the opposite, because there is  
21 no proof of discharge of pollutants. I am going  
22 to speak toward the fair and firm and consistent  
23 regulation and enforcement.

24 Since 1983 this Board and this  
25 prosecution team, not specifically these people,

1 could have brought cease and desist orders to  
2 individuals in this community. And yet they did  
3 not. They had a failure to act. Regardless of  
4 whether it was through litigation or political  
5 reasons, or other agencies stopping the project.  
6 Not until this recall election was there a move  
7 towards cease and desist orders.

8 For 23 years, and we heard it from the  
9 prosecution, 23 years this has been going on.  
10 That was their failure, not Cinthea Coleman's  
11 failure.

12 The cease and desist orders, before she  
13 bought her home or took possession of her  
14 property, could have been issued long before that.  
15 As well as a waste treatment facility could have  
16 been built long before that. Beyond her control.

17 Your own enforcement policy, standard  
18 enforcement orders. Orders shall be consistent as  
19 appropriate for the specified circumstances  
20 related to the discharge. And to be consistent  
21 with the applicable water quality control plans.

22 I don't see any consistency here. Why  
23 not five years ago? Why not two years ago? Why  
24 not 15 years ago? The sledge hammer effect of a  
25 CDO at this time smacks of politicalism to begin

1 with. And I'm afraid to say that it's true.  
2 Something happened after the recall election which  
3 made certain individuals act upon CDOs, and of  
4 course, the ACLs.

5 And those ACLs are being acted upon even  
6 before the final votes of that election had been  
7 counted. And you understand Mr. Briggs testified  
8 to that. He started that ACL action before the  
9 final vote. And I was there on that Friday when  
10 the final vote was counted. And it was -- he  
11 acted long before that. This was a political  
12 maneuver in my mind to collectively punish the  
13 people of Los Osos.

14 There was no determination to stop the  
15 project at the time that he began the move against  
16 the community of Los Osos. Roger Briggs.

17 Reed Sato, when I read the press release  
18 about him coming on board here, I got it sent to  
19 me. It was like the gunslinger. I expected him  
20 to be a lot older. And that he takes down the big  
21 corporations, so that siccing on the peons in Los  
22 Osos. The big scare. We got the enforcer  
23 coming. But actually after talking to him  
24 and seeing him, I find him a very agreeable man.

25 Cinthea Coleman has been put through

1       mental anguish because of these proceedings.  
2       That's why she's not here. She can't function  
3       because of what's going on with this Regional  
4       Water Quality Control Board.

5               I would also say, too, that Mr. Sato  
6       said that there was no environmental justice issue  
7       here. Just today I found that a couple are  
8       willing to settle because they could not get a  
9       translator. They're French. They're a minority.  
10      They live within the prohibition zone. They could  
11      not get their paperwork in French. I think we  
12      have ourselves an environmental justice issue  
13      concerning minorities in Los Osos.

14             I don't believe the prosecution has  
15      thought this through, not only with the data, not  
16      only with the prohibition zone and the way that  
17      they're trying to issue these CDOs, the way  
18      they're trying to get the community's attention.  
19      I believe they are indifferent to the low-income,  
20      the minorities of Los Osos, who cannot afford the  
21      hammer of \$500 a day, \$5000 a day; or trying to  
22      force the property owners to choose the first  
23      wastewater project that comes along regardless of  
24      what it costs.

25             Thank you.

1                   CHAIRPERSON YOUNG:  Okay, thank you.  
2           Any rebuttal, closing argument?  Do we have that  
3           in here?  We don't have that in here.  Okay.

4                   All right.  Testimony -- what's that?

5                   MR. PACKARD:  We can close at this  
6           point, I think.

7                   CHAIRPERSON YOUNG:  Yes.

8                   MR. PACKARD:  It's clear that Ms.

9           Coleman is --

10                   CHAIRPERSON YOUNG:  Excuse me.  Mr.  
11           Payne, --

12                   MR. PAYNE:  Yeah?

13                   CHAIRPERSON YOUNG:  -- could I ask you  
14           if you're going to sit where you're at, we can  
15           hear your chit-chatting from this distance.  And  
16           it's a little annoying.  So, if you want to talk  
17           while the proceedings are going on, if you want to  
18           do so quietly, if you could please move further  
19           back?  Because it's interfering with our ability  
20           to hear people that are testifying that are  
21           speaking very softly.

22                   You can stay where you're at, but please  
23           no more chit-chatting.

24                   MR. PAYNE:  I apologize.

25                   CHAIRPERSON YOUNG:  Okay.  All right,



1 Mr. Packard.

2 MR. PACKARD: Ms. Coleman clearly is  
3 discharging waste in violation of the prohibition  
4 zone. We ask that you make that finding and issue  
5 the cease and desist order, as amended previously  
6 for Mr. Allebe.

7 CHAIRPERSON YOUNG: Okay. All right,  
8 the testimony period is closed. We're on to Board  
9 deliberation. What does the Board want to do?

10 BOARD MEMBER PRESS: I move that we  
11 accept the recommendation of the prosecution team  
12 and issue the CDO, as amended for Mr. Allebe.

13 CHAIRPERSON YOUNG: Okay.

14 BOARD MEMBER SHALLCROSS: I think it's  
15 clear, not only from a reasonable reference, but  
16 from Ms. Coleman's own documents, that she's  
17 obviously discharging.

18 CHAIRPERSON YOUNG: Right.

19 BOARD MEMBER SHALLCROSS: So, I don't  
20 think we even have an issue there.

21 CHAIRPERSON YOUNG: Right.

22 BOARD MEMBER SHALLCROSS: So I think we  
23 should go ahead and -- I support issuing the cease  
24 and desist order.

25 CHAIRPERSON YOUNG: Okay. Mr. Hayashi?

1 BOARD MEMBER HAYASHI: I concur.

2 CHAIRPERSON YOUNG: Okay. We have a  
3 motion, right? A second?

4 BOARD MEMBER SHALLCROSS: Second.

5 CHAIRPERSON YOUNG: All those in favor?  
6 (Ayes.)

7 CHAIRPERSON YOUNG: Any opposed? Okay,  
8 this motion carries unanimously.

9 The next one would be Douglas and Paula  
10 Dishen, number 1046. Are they here? Okay.

11 BOARD MEMBER SHALLCROSS: Who?

12 CHAIRPERSON YOUNG: 1046 would be next.  
13 We don't have --

14 (Parties speaking simultaneously.)

15 CHAIRPERSON YOUNG: I don't think we've  
16 received any written documents from them? Mr.  
17 Packard?

18 MR. PACKARD: Which one are we on now?

19 CHAIRPERSON YOUNG: I believe we would  
20 be skipping down to 1046.

21 MR. PACKARD: We have no written  
22 testimony from that party.

23 CHAIRPERSON YOUNG: Nothing.

24 MR. PACKARD: So Matt will make a brief  
25 statement.

1                   BOARD MEMBER SHALLCROSS: I thought  
2 Colin settled, no?

3                   MR. PACKARD: Colin did, yes.

4                   BOARD MEMBER SHALLCROSS: And that's not  
5 who we're on?

6                   CHAIRPERSON YOUNG: No. We're after  
7 number 1029.

8                   BOARD MEMBER SHALLCROSS: Okay.

9                   CHAIRPERSON YOUNG: 1046.

10                  BOARD MEMBER SHALLCROSS: Okay.

11                  MR. THOMPSON: Yes, according to the  
12 County Tax Assessor's records Douglas and Paula  
13 Dishen live at 1755 12th Street in Los Osos. They  
14 are proposed cease and desist order 1046. And the  
15 location of their property is shown by the little  
16 flag here labeled 1046.

17                  They have not provided any evidence that  
18 they do not discharge from their septic system.

19                  CHAIRPERSON YOUNG: Have you had any  
20 contact with them? Because there's nothing in our  
21 packet. There's no letters from them? Has any  
22 mail been returned to you that you have addressed  
23 to their address?

24                  MS. THOMAS: I recall some email, but  
25 I'd have to go back. I don't believe we have any

1 returned mail, regular mail.

2 CHAIRPERSON YOUNG: Any other  
3 information for us? That's it.

4 MR. THOMPSON: That's all we have at  
5 this time.

6 (Pause.)

7 CHAIRPERSON YOUNG: I'd like to hear  
8 from our counsel what -- this is our first one  
9 where not only are the parties not present, but  
10 they have not submitted anything in writing to us.  
11 And all that we have is the prosecution team's  
12 statements at this point.

13 And, Mr. Richards, what are the options  
14 of the Board at this point?

15 MR. RICHARDS: Well, obviously the Board  
16 has many options, including deferring this matter  
17 to a later time today; deferring it to some other  
18 time. Or proceeding in the absence of the  
19 designated parties in this case.

20 This is the time and the place for the  
21 hearing on this matter. It was properly noticed.  
22 The notices were posted on the web and sent to all  
23 of the designated parties.

24 Therefore, the Board is perfectly within  
25 its rights to proceed based on the evidence

1 presented; and deliberate on the evidence  
2 presented such as it is.

3 CHAIRPERSON YOUNG: Okay.

4 BOARD MEMBER PRESS: Mr. Chair.

5 CHAIRPERSON YOUNG: Yes, Dr. Press.

6 BOARD MEMBER PRESS: Could I just state  
7 a preference?

8 CHAIRPERSON YOUNG: Yes.

9 BOARD MEMBER PRESS: For taking this  
10 particular case and moving it to the bottom of the  
11 stack of ones that are before us today.

12 CHAIRPERSON YOUNG: Okay.

13 BOARD MEMBER SHALLCROSS: I would agree  
14 with that.

15 CHAIRPERSON YOUNG: Okay.

16 BOARD MEMBER SHALLCROSS: I just have  
17 one question. Did we receive a request for  
18 continuance from these folks?

19 CHAIRPERSON YOUNG: No.

20 BOARD MEMBER SHALLCROSS: Okay. Thank  
21 you.

22 CHAIRPERSON YOUNG: And that would be my  
23 only concern is that this is a situation where  
24 they haven't submitted anything whatsoever. And  
25 they're not here. It's a little different than,

1       you know, there's some ongoing issues that we have  
2       with some parties that have been pleading and  
3       asking for continuances --

4                 BOARD MEMBER PRESS: I understand. My  
5       motive here is in the outside chance that there is  
6       -- that perhaps the staff was wrong, there was no  
7       email from them, they didn't get contacted. I  
8       just would like to --

9                 CHAIRPERSON YOUNG: You want to be sure  
10       there was some contact.

11                BOARD MEMBER PRESS: -- raise the  
12       confidence that there was contact there.

13                CHAIRPERSON YOUNG: Okay.

14                BOARD MEMBER PRESS: And if emails could  
15       be produced, or something could be produced, then  
16       I'd feel more comfortable about proceeding. But,  
17       otherwise, I could -- we could give the benefit of  
18       the doubt, we could say that for some reason we  
19       don't know, contact was not made. That's the  
20       outside chance that I'd like to just defer, or  
21       investigate a little further. Allow to  
22       investigate by moving this to the bottom of the  
23       stack.

24                MR. PACKARD: Can I make a suggestion,  
25       also. If you do that that'll allow us to go

1 through our stack of certified mail receipts, and  
2 we can identify those whom we have receipts for.

3 BOARD MEMBER PRESS: Right.

4 CHAIRPERSON YOUNG: That would be fine,  
5 actually. Yeah. If you have that information,  
6 that would be helpful. So we'll move this one  
7 down, then, to the bottom of the stack. All  
8 right.

9 And then we will proceed. (Name  
10 redacted) will be number 1034. Is she here?

11 NUMBER 1034: I am redacted.

12 CHAIRPERSON YOUNG: Okay. Is that you?  
13 Are you 1034?

14 NUMBER 1034: Yes, I am 1034.

15 CHAIRPERSON YOUNG: Okay. Did you take  
16 the oath earlier?

17 NUMBER 1034: Yes, I did.

18 CHAIRPERSON YOUNG: You did, okay.  
19 Wonderful.

20 NUMBER 1034: My name is 1034.

21 CHAIRPERSON YOUNG: 1034, okay. All  
22 right. You can stand up there but what will  
23 happen is the prosecution team is going to have  
24 its opportunity to put on its evidence. And you  
25 can sit up here at this table, if you wish.

1                   NUMBER 1034: I am not supposed to have  
2 my name and address together, and you have it  
3 together on that.

4                   MR. THOMPSON: It's redacted.

5                   CHAIRPERSON YOUNG: That was my mistake.  
6 We've got two forms up here; one is yellowed,  
7 highlighted for that purpose. The other one  
8 isn't.

9                   MR. THOMPSON: Thanks for catching that.

10                  CHAIRPERSON YOUNG: So, 1034, would you  
11 like to sit over here at this table?

12                  NUMBER 1034: It would be more  
13 comfortable here. I've been sitting all day.

14                  CHAIRPERSON YOUNG: Okay. That's fine.

15                  BOARD MEMBER JEFFRIES: Please speak  
16 into the microphone so I can hear you.

17                  NUMBER 1034: Okay, I'm sorry.

18                  BOARD MEMBER JEFFRIES: Thank you,  
19 that's good.

20                  NUMBER 1034: I'm not used to a  
21 microphone, but I'm used to speaking loud in my  
22 classroom.

23                  CHAIRPERSON YOUNG: Okay, Mr. Sato, as  
24 soon as you're ready.

25                  MR. THOMPSON: Well, this will work.



1 The party before you lives at 1709 14th Street in  
2 Los Osos. The proposed cease and desist order  
3 number is 1034. And the location of the property  
4 is shown here with the flag labeled 1034.

5 She has not submitted any evidence to  
6 suggest that she is not discharging from her  
7 septic system. That's all.

8 MR. PACKARD: Actually I will add that  
9 she did submit a letter which states that in clear  
10 terms she does have a septic tank and has had it  
11 pumped lately. So I don't think there's any  
12 argument about that part of it.

13 CHAIRPERSON YOUNG: Where is that  
14 letter?

15 MR. PACKARD: I have it in my binder  
16 under the name.

17 CHAIRPERSON YOUNG: It's staring at me.  
18 Okay. Okay, fine. Any other testimony? Mr.  
19 Sato?

20 MR. PACKARD: Not at this time.

21 CHAIRPERSON YOUNG: Not at this time,  
22 okay. 1034, you can cross-examine the prosecution  
23 team staff.

24 NUMBER 1034: What proof do you have  
25 that a lower level of enforcement would not

1       achieve your goals?

2               MR. PACKARD:  Could you repeat that?

3       Repeat the question, please.

4               NUMBER 1034:  What proof do you have  
5       that a lower level of enforcement would not  
6       achieve your goals?

7               MR. PACKARD:  One of our goals is to  
8       establish deadlines by which the designated  
9       parties and the County and others show progress on  
10      constructing a wastewater treatment system.  As I  
11      explained yesterday, I don't think we have very  
12      many other less-formal possibilities for  
13      enforcement actions that can put into place an  
14      enforceable date.  And that's why we're using a  
15      cease and desist order.

16

17               (Pause.)

18              MR. SATO:  Mr. Chair, we settled with  
19      Mr. Shipe.  And if he wants to participate in  
20      these proceedings we're happy to have the hearing  
21      back on for his cease and desist order.  I think  
22      this kind of back-door way that he's participating  
23      is not really in the spirit of what I thought  
24      people who settled with the prosecution team would  
25      engage in.

1                   So I invite him to either decide,  
2                   declare. Do you want to settle or do you want to  
3                   be part of the CDO process.

4                   CHAIRPERSON YOUNG: It is, you know, --

5                   NUMBER 1034: Can I remind you at this  
6                   point that he is down as a witness for me so I can  
7                   have him ask -- I can ask --

8                   CHAIRPERSON YOUNG: Well, he can be a  
9                   witness for you during your case-in-chief if you  
10                  want to ask him questions at that time. So, that  
11                  would be acceptable. But it is disconcerting to  
12                  have people running around, whispering in  
13                  everyone's ears, handing them notes and things of  
14                  that nature. So, --

15                  NUMBER 1034: You did tell us to  
16                  collaborate on our defenses.

17                  CHAIRPERSON YOUNG: I was hoping it  
18                  would be done before today. Okay.

19                  NUMBER 1034: Some of us are very busy  
20                  people.

21                  CHAIRPERSON YOUNG: All right.

22                  NUMBER 1034: What proof do you have  
23                  that you couldn't achieve interim compliance with  
24                  a letter?

25                  MR. PACKARD: None.

1                   NUMBER 1034: Because I would. What  
2 proof do you have I won't hook up to the treatment  
3 facility voluntarily when it is in place?

4                   MR. PACKARD: None.

5                   NUMBER 1034: Okay, because I don't need  
6 a CDO to hook up. And what proof do you have that  
7 I won't cease discharges without a CDO?

8                   MR. PACKARD: No proof.

9                   NUMBER 1034: Thank you. Should I go  
10 ahead and present my case at this time?

11                  MR. SATO: Let me just answer, there's  
12 one piece of proof that we do have. We offered  
13 all of the CDO recipients the opportunity to sign  
14 our settlement agreement. And one of the things  
15 in the settlement agreement was that somebody  
16 would cease discharge by a date certain based upon  
17 the terms of that agreement.

18                  So, to the extent that Number 1034 did  
19 not take advantage of our settlement offer  
20 suggests to us some -- proof is too strong a word,  
21 I'm sure, but some indication that, you know, she  
22 wouldn't cease the discharge.

23                  NUMBER 1034: But that's not taking into  
24 consideration --

25                  MR. SATO: I'm not trying to argue --

1 NUMBER 1034: -- that we were ready --

2 MR. SATO: I'm not trying to argue with  
3 her, --

4 NUMBER 1034: -- to sign --

5 MR. SATO: -- I'm just --

6 CHAIRPERSON YOUNG: Right.

7 MR. RICHARDS: This is not the time for  
8 you to --

9 NUMBER 1034: Okay.

10 MR. RICHARDS: -- present your case.

11 NUMBER 1034: Okay.

12 CHAIRPERSON YOUNG: You can ask him  
13 another question.

14 NUMBER 1034: I'm not a lawyer, I'm  
15 sorry.

16 CHAIRPERSON YOUNG: Okay. Any more  
17 questions for them based on their testimony?  
18 Based on their case?

19 NUMBER 1034: Can I ask a question about  
20 why the Sullivan settlement was not accepted?

21 CHAIRPERSON YOUNG: No, because that's  
22 not before us. I mean there's no evidence of  
23 that, and that's another settlement agreement.  
24 I'm not --

25 NUMBER 1034: Because I was prepared to

1 sign that one.

2 CHAIRPERSON YOUNG: Yeah. You can tell  
3 us what you want. You're going to have --

4 NUMBER 1034: Okay.

5 CHAIRPERSON YOUNG: Right now we're  
6 going to go into 15 minutes and --

7 NUMBER 1034: Okay.

8 CHAIRPERSON YOUNG: -- I'm going to let  
9 you go at it.

10 NUMBER 1034: Okay.

11 CHAIRPERSON YOUNG: Argue whatever you  
12 want and put on whatever you want. You can do it  
13 up there, sitting down. You can --

14 NUMBER 1034: I'd prefer to do it up  
15 here.

16 CHAIRPERSON YOUNG: Okay, go ahead. I'm  
17 going to start the clock.

18 NUMBER 1034: Okay. Prior to purchasing  
19 my home in --

20 MS. McPHERSON: Excuse me, I meant to  
21 put the slide up here and it's not --

22 CHAIRPERSON YOUNG: Okay. This is a  
23 cumbersome procedure, but it actually goes towards  
24 higher levels of due process being offered,  
25 believe it or not. But essentially giving people

1 the opportunity to engage in this and make sure  
2 they can cross-examine, you know, the opposing  
3 party like this, and be given time slots and  
4 things like that goes towards due process,  
5 doesn't take from it.

6 NUMBER 1034: Okay.

7 CHAIRPERSON YOUNG: So, anyway, go  
8 ahead.

9 NUMBER 1034: Okay, prior to purchasing  
10 my home in 1992 the septic tank was inspected and  
11 repaired according to the specifications and  
12 approval of the San Luis Obispo Department of  
13 Planning.

14 The memorandum of understanding between  
15 the County and the Regional Water Board gave the  
16 County responsibility for the septic systems of  
17 Los Osos. The County is a discharger. New  
18 sources of discharge were prohibited in this  
19 agreement. My house and septic system were  
20 permitted on April 4 of 1977, before the MOU.

21 After moving in my new neighbors and I  
22 obtained the proper permits for removal of the  
23 eucalyptus trees which posed a continued threat to  
24 our septic systems. Through much hard work this  
25 house became my home.

1           My tank was pumped last in August of  
2           2006 by Al's Septic pumping service, and reported  
3           to be functioning normally. This was five months  
4           prior to receiving a proposed CDO.

5           The Regional Water Board Staff has  
6           neglected to enforce 8313 for over 20 years. And  
7           now the first communication with me regarding a  
8           discharge violation is a proposed cease and desist  
9           order delivered to my mailbox in late January of  
10          2006.

11          At no time was any effort made by the  
12          County or the Water Board Staff to develop a  
13          septic management plan which could have had a  
14          considerable effect on protecting the water basin  
15          and the Bay if they felt the contentions of  
16          pollution were true.

17          In fact, in over 20 years the Water  
18          Board Staff had no idea which citizens were  
19          properly maintaining their septic systems as was  
20          evident in the May 2006 hearing.

21          Building has continued over the water  
22          table, both inside and outside the prohibition  
23          zone. The citizens of Los Osos have questioned if  
24          there really was a problem would the building be  
25          allowed to continue. The inconsistent message



1 presented to the citizens by the County and the  
2 Regional Water Board, combined with questionable  
3 test results for early studies, has caused  
4 confusion and dissension in Los Osos.

5 Since challenges to the prohibition zone  
6 were never allowed by the Water Board, many  
7 residents continue to question the evidence and  
8 the motives.

9 I have submitted a picture of the house  
10 next door to mine. The developer who purchased  
11 this very small, one-story home was issued a  
12 building permit to double the cubic footage after  
13 I had been issued a proposed CDO. Obviously an  
14 increase in size will allow this home to  
15 comfortably accommodate more people. And it now  
16 has the potential to increase discharges.

17 Should I therefore assume that my  
18 discharges are not a problem, since our side-by-  
19 side lots are at the same elevation and have the  
20 same soil composition?

21 My home sits on the north side of this  
22 new construction. And no longer receives any  
23 sunlight due to the massive increase in height. I  
24 will now have to build a second story to receive  
25 any sunlight in my windows and skylights,. Will I

1 receive the same rights to add space without  
2 bedrooms and bathrooms, and again receive  
3 sunlight? Or will I have to wait for a sewer  
4 connection?

5 I always knew that I would have to build  
6 up to make my house habitable if the house next  
7 door added a second story. But I was truly  
8 shocked to find myself fighting this prosecution  
9 during the building process.

10 The inconsistent policies of the Water  
11 Board Staff has caused extreme mental anguish and  
12 distress, as I have endured the constant clamor of  
13 construction while taking numerous days away from  
14 work to prepare for my defense as each new case is  
15 brought against me.

16 When I first received the proposed CDO,  
17 being somewhat of an environmentalist I  
18 immediately explored alternative compliance that  
19 would reduce my suspected impact on the  
20 environment. After exploring the EPA website I  
21 felt that a composting toilet would be a  
22 reasonable alternative. After all, they are used  
23 successfully in many countries.

24 Mr. Thompson informed me that Dr. Greg  
25 Thomas of San Luis Obispo County Environmental

1 Health has indicated that he will not approve  
2 composting portable or incinerator toilets in Los  
3 Osos. I immediately called the County to find out  
4 why. And was told that this was at the direction  
5 of the Regional Water Board Staff. When the  
6 employee realized I was a proposed CDO recipient  
7 he immediately said that he couldn't talk about it  
8 and hung up.

9 I finally had that aha moment.  
10 Understanding that this prosecution was not about  
11 protecting the environment, but instead a  
12 political power play at my expense. I would like  
13 you to check out the new addition next door.

14 The prosecution team should not be  
15 seeking CDOs on individual property owners in Los  
16 Osos. This process is prejudiced against  
17 individual property owners who cannot afford the  
18 level of representation required to challenge the  
19 Water Board prosecution teams. Lawfirms with  
20 experience working with clients on Water Board  
21 issues require, at a minimum, a retainer of  
22 \$20,000 to \$50,000. Costs quickly mount while  
23 working through the regional and state water  
24 boards. Experienced firms realize that a fair  
25 trial will not occur until the case is appealed to

1 the courts with an impartial judicial process.

2 This system may be effective for  
3 corporations and large municipalities with legal  
4 staff. But it is inherently unfair to individuals  
5 for alleged violations that are well beyond the  
6 scope of individual control. I am unfairly  
7 burdened with proving my innocence in this  
8 undemocratic process.

9 My October 4, 2006 request for  
10 deposition of Roger Briggs was quashed because it  
11 was not timely. But the prosecution documents  
12 were not posted for review until October 4, 2006.  
13 Mr. Briggs, a key figure in this hearing, due to  
14 his involvement in the enforcement actions, the  
15 basin plan and in other supporting evidence, needs  
16 to be available. I cannot have a fair hearing if  
17 the prosecution team continues to conduct this  
18 hearing and Mr. Briggs is not made available as a  
19 witness.

20 I moved to Los Osos for health reasons.  
21 Breathing the fresh air, eating healthy foods and  
22 drinking plenty of Los Osos water was getting me  
23 back on my feet. These improvements have been  
24 difficult to maintain for the last ten and a half  
25 months. The stress of a difficult job combined

1 with the hopelessness of this situation has caused  
2 me many days of physical pain.

3 We have been deemed guilty unless we can  
4 prove our innocence. As we tried to make our case  
5 we were blocked at every turn. The case against  
6 us was rewritten; our arguments were dismissed as  
7 irrelevant; and our subpoenas were quashed; and  
8 our evidence denied. We struggled to defend  
9 ourselves up against two experienced prosecution  
10 teams.

11 The Regional Water Board Staff continues  
12 to portray the citizens of Los Osos anti-sewer.  
13 But the Water Boards prevented the November 2005  
14 compromise plan that would have had us well on our  
15 way to a completed project. Efforts by  
16 Assemblyman Blakeslee and the CSD to continue the  
17 project at a preferred location were railroaded;  
18 and the selected course of action by the Regional  
19 Water Board Staff was to fine the CSD out of  
20 existence.

21 This town has repeatedly asked for an  
22 affordable environmentally sustainable wastewater  
23 system out of town. The Regional Water Board  
24 continues to try to dictate the manner of  
25 compliance. I am currently paying an assessment

1 for a wastewater plan and will hook up to a sewer  
2 as soon as it is made available to my property.  
3 Los Osos is not anti-sewer.

4 The Water Board needs to stop trying to  
5 bend the will of the people, and instead focus on  
6 the common environmental goals. It is time for a  
7 cooperative effort with open, honest communication  
8 and the use of current valid and reliable science  
9 to determine how to best protect the environment.

10 As a teacher I feel morally obligated to  
11 challenge this CDO. The citizens of Los Osos have  
12 been failed by local government, county government  
13 and state government agencies. We are  
14 individually being held accountable for these  
15 failures. We are the scapegoats because we have  
16 the least power.

17 The Regional Water Board has no evidence  
18 that my individual property is polluting. I am  
19 innocent. In my classroom I have a poster that  
20 says, stand up for what is right, even if you're  
21 standing alone. It's time for me to walk the  
22 walk.

23 And I would also like to incorporate by  
24 reference all oral testimony, arguments and  
25 documents submitted by the CSD and the following

1 individual defendants: 1029, Rob Shipe, Laurie  
2 McCombs and Tim Rochte. I would also like to  
3 submit the petition and briefing that went before  
4 the Superior Court on December 13th; and I object  
5 to the denial of the document 927.

6 CHAIRPERSON YOUNG: Is that on exhibit  
7 B?

8 MR. RICHARDS: Excuse me, could you  
9 repeat the testimony and documentation that you  
10 wanted to incorporate. I've got 1029, --

11 NUMBER 1034: Okay. Oral testimony --  
12 oh, 1029, Rob Shipe, --

13 MR. RICHARDS: Yes.

14 NUMBER 1034: -- Laurie McCombs and Tim  
15 Rochte.

16 MR. SATO: Just a point of  
17 clarification. Since Mr. Rochte or Ms. McCombs, I  
18 don't believe, have yet testified, I'm not sure  
19 what documents it is that are being incorporated  
20 here.

21 NUMBER 1034: They are in their evidence  
22 that has been submitted.

23 MR. SATO: Okay, in their evidence; so I  
24 don't think that there's evidence necessarily  
25 identified on part of exhibit B, so my question

1 would be, just as a point of clarification, is  
2 there anything else on exhibit B that you are  
3 seeking to utilize in your case?

4 NUMBER 1034: To be perfectly honest  
5 with you, I've been -- I was sick for four days  
6 and did not have time to review that completely.  
7 I would like to, you know, I would like to -- any  
8 documents that specifically are aligned to what I  
9 have, my evidence, or my testimony, I would like  
10 to have incorporated. Because I honestly can't  
11 say exactly which ones they are.

12 I asked for an extension. I am a full-  
13 time teacher. I have a very rough job, and I did  
14 ask for extension so I would have time to look  
15 through those specific documents.

16 CHAIRPERSON YOUNG: What is the number  
17 that you were -- was it 971?

18 NUMBER 1034: The objection --

19 CHAIRPERSON YOUNG: 92 -- public records  
20 request.

21 NUMBER 1034: 927, those are the  
22 documents regarding why the sewer plant was --

23 CHAIRPERSON YOUNG: All right. So your  
24 objection is noted --

25 NUMBER 1034: Okay.



1                   CHAIRPERSON YOUNG:  -- on that.  And I  
2                   guess then the documents that are in Mr. Rochte's  
3                   packet are simply his letter and an invoice.  
4                   So, --

5                   NUMBER 1034:  Okay, and his testimony;  
6                   and there are documents in the CSD documents that  
7                   support his --

8                   CHAIRPERSON YOUNG:  Okay.  All right.  
9                   Well, you realize it's kind of difficult because  
10                  he -- we're going to decide your case now.  We  
11                  have no idea what he's going to say because he  
12                  hasn't done it yet.

13                  NUMBER 1034:  I know.

14                  CHAIRPERSON YOUNG:  So, --

15                  NUMBER 1034:  But upon appeal --

16                  CHAIRPERSON YOUNG:  Yeah.  All right.

17                  BOARD MEMBER SHALLCROSS:  Didn't you  
18                  also want the -- did we rule on that, something  
19                  from the December 13th case?

20                  NUMBER 1034:  Yes.

21                  CHAIRPERSON YOUNG:  Oh, yeah.  I think  
22                  we ruled on those as being, they're pleadings and  
23                  briefings.  I mean when you talk about briefs,  
24                  these are arguments that lawyers make, --

25                  NUMBER 1034:  Um-hum.

1           CHAIRPERSON YOUNG:  -- you know, to a  
2           court to persuade them.  And there's opposing  
3           briefs.  Did you want all briefs or just the ones  
4           that were prepared by the --

5           NUMBER 1034:  I would like the ones  
6           prepared by Shauna Sullivan.  I was included in  
7           that.

8           CHAIRPERSON YOUNG:  Right, okay.  Those  
9           won't come in, any of the briefs or pleadings in  
10          any of the cases.

11          NUMBER 1034:  Okay.

12          CHAIRPERSON YOUNG:  Okay.  Prosecution  
13          team's opportunity to cross-examine 1034.

14          MR. SATO:  We have no questions.

15          CHAIRPERSON YOUNG:  No questions.  Okay.  
16          Any rebuttal testimony by the prosecution team?

17          MR. SATO:  No.

18          CHAIRPERSON YOUNG:  Okay.  Any  
19          additional testimony?

20          NUMBER 1034:  Excuse me.

21          CHAIRPERSON YOUNG:  Yeah.

22          NUMBER 1034:  At what point in this  
23          process do I call a witness forward?

24          CHAIRPERSON YOUNG:  Well, that was the  
25          time.

1 NUMBER 1034: Yeah, --

2 CHAIRPERSON YOUNG: After your speech.

3 So I think you still had a couple of minutes --

4 NUMBER 1034: Yes.

5 CHAIRPERSON YOUNG: -- on that, so I'll  
6 run this backward.

7 NUMBER 1034: I'm sorry, I don't  
8 understand the --

9 CHAIRPERSON YOUNG: And give you two  
10 minutes --

11 NUMBER 1034: -- full process here.

12 CHAIRPERSON YOUNG: That's all right.

13 So did you want to ask questions of Mr. Shipe?

14 NUMBER 1034: Yes, sir.

15 CHAIRPERSON YOUNG: Okay. Take the  
16 witness stand, Mr. Shipe. Raise your right hand.

17 MR. SHIPE: I already did my oath.

18 CHAIRPERSON YOUNG: Okay. Okay, go  
19 ahead.

20 NUMBER 1034: Okay, Mr. Shipe, what is  
21 the Los Osos moratorium official policy?

22 MR. SHIPE: If you look at page 17 in  
23 the packet that I was showing you earlier, that  
24 one page, basically it's the -- Los Osos building  
25 moratorium. And the first paragraph reads just

1       like I said earlier. And basically it says that  
2       the Regional Water Quality Control Board made a  
3       ruling that new sources of discharge were made  
4       illegal by the January 8, 1988 prohibition.

5               And they are notifying us under the  
6       memorandum of understanding -- under the  
7       responsibilities through the memorandum of  
8       understanding.

9               NUMBER 1034: The memorandum -- I'm  
10      sorry.

11              MR. SATO: Excuse me, what document --  
12      I'm sorry. I'm not exactly sure what document is  
13      being relied upon by Mr. Shipe.

14              MR. SHIPE: Okay, would you like it up?

15              CHAIRPERSON YOUNG: What's that, Mr.  
16      Sato?

17              MR. SATO: I'm sorry, I wasn't sure what  
18      document is being relied upon by Mr. Shipe.

19              CHAIRPERSON YOUNG: Sounded like -- was  
20      it the memorandum of understanding, Mr. Shipe?

21              MR. SHIPE: Actually it's a thing called  
22      Los Osos Building Moratorium. And it's issued --

23              MR. RICHARDS: Mr. Shipe, is that  
24      document included in your package?

25              MR. SHIPE: Yes, it is.

1 MR. RICHARDS: Okay, --

2 MR. SHIPE: It said, Shipe, 1013 info,  
3 pdf.

4 MR. RICHARDS: I have your file here in  
5 front of me. Let me just go through it. What  
6 does the document say? What's the heading?

7 MR. SHIPE: Los Osos Building  
8 Moratorium.

9 Ms. McPherson can put a copy up on the  
10 overhead.

11 MR. RICHARDS: That would be helpful.

12 MR. SHIPE: Okay. And on the front side  
13 of it you'll see where it goes through the whole  
14 thing. And on the back side it has a map of the  
15 prohibition zone. On your document, it's two  
16 pages.

17 MR. RICHARDS: Two pages.

18 MR. SHIPE: But like I said, the front  
19 side is where it says new sources of discharge are  
20 illegal; and on the back side shows the map of the  
21 prohibition zone.

22 (Pause.)

23 MR. SHIPE: There you go. Slide it down  
24 a little. Get that first paragraph in there.

25 On Friday, January 8, 1988, the

1 California Regional Water Quality Control Board  
2 imposed a moratorium on new sources of sewage  
3 discharge and increases in volume of existing  
4 sources in the community of Baywood/Los Osos. The  
5 moratorium was imposed through the provisions of  
6 the memorandum of understanding. You can read the  
7 rest yourself. It's pretty clear.

8 And as you go down the document, the  
9 area where it applies, number one, the area  
10 subject to the moratorium on the attached map is  
11 known as the prohibition area. And this is what  
12 everybody in Los Osos has been notified, that the  
13 prohibition area is a building prohibition, not a  
14 discharge prohibition.

15 NUMBER 1034: Okay, so the moratorium is  
16 on new sources of discharge and increases in  
17 volume, not a ban on illegal septic tank  
18 discharge?

19 MR. SHIPE: Absolutely, --

20 MR. SATO: I want to object --

21 MR. SHIPE: -- according to this  
22 document.

23 MR. SATO: Let me object to this line of  
24 questioning here. The document speaks for itself.  
25 And I think if Mr. Shipe is going to be able to

1 give us some testimony about the background of the  
2 document or the way that it was put together or  
3 anything like that, that might be relevant.

4 But to simply tell us what the document  
5 says, or read to us I don't know is particularly  
6 probative, relevant or helpful.

7 MR. SHIPE: Okay, I can give background  
8 on the document.

9 CHAIRPERSON YOUNG: Well, I don't even  
10 think that it really requires a witness to talk  
11 about the document. You know, 1034 can just put  
12 the document up and ask us to read it. And then  
13 later argue whatever she would like from that  
14 document. But, you know, this is kind of  
15 cumbersome and really doesn't require another  
16 witness.

17 NUMBER 1034: I have -- can I just ask -  
18 - it's my time.

19 CHAIRPERSON YOUNG: Well, it is, and I'm  
20 going to give you the time, but -- you have a  
21 minute and 24 seconds to go.

22 NUMBER 1034: Has anyone ever been  
23 notified of this?

24 MR. SHIPE: Yes. Everyone that has ever  
25 asked for a building permit within the prohibition

1 zone has been notified.

2 MR. SATO: I would object, lack of  
3 foundation.

4 MR. SHIPE: Okay.

5 CHAIRPERSON YOUNG: Sustained.

6 NUMBER 1034: Okay. Again, for new  
7 sources of discharge and increases in volume,  
8 right?

9 MR. SHIPE: Yes. Basically this, if I  
10 can put this document up?

11 MR. SATO: Same objection.

12 CHAIRPERSON YOUNG: The witness -- Mr.  
13 Shipe, you have to testify from personal  
14 knowledge, not what you think or believe may have  
15 happened.

16 MR. SHIPE: I understand that. The  
17 document that is being put up is a document that  
18 must be signed by everybody who requests a  
19 building permit within the prohibition zone. And  
20 you have to sign this document. It's right there.  
21 And I'll be quiet and you can read, yourself, and  
22 see what it says.

23 CHAIRPERSON YOUNG: And how do you --

24 NUMBER 1034: Is that in my time?

25 CHAIRPERSON YOUNG: What is your basis



1 for making that statement?

2 MR. SHIPE: When I went down to talk to  
3 the Department of Planning and Building, this is  
4 what they explained to me what the prohibition  
5 zone was. And what I'm saying is when I -- this  
6 is the statement that they have everybody sign.  
7 If you want to build in Los Osos in the  
8 prohibition zone, this is the statement you have  
9 to sign.

10 CHAIRPERSON YOUNG: All right.

11 MR. SHIPE: I tried to ask them how many  
12 were issued; they had no idea.

13 CHAIRPERSON YOUNG: Okay. Well, I think  
14 what you want the Board to take from this is that  
15 the County has been laboring under some belief  
16 different than what was in the Water Board's  
17 order.

18 NUMBER 1034: And the County and the  
19 people of Los Osos.

20 CHAIRPERSON YOUNG: The County -- no,  
21 the County of San Luis Obispo --

22 NUMBER 1034: And the people.

23 CHAIRPERSON YOUNG: Well, the individual  
24 people that come up here and tell us that, that's  
25 one thing. We're not going to -- you can't make

1 statements about everybody --

2 NUMBER 1034: Okay.

3 CHAIRPERSON YOUNG: -- because I don't  
4 know that.

5 NUMBER 1034: I'm telling you that --

6 NUMBER 1034: As far as you're  
7 concerned --

8 NUMBER 1034: -- this is my belief.

9 CHAIRPERSON YOUNG: -- that's been your  
10 belief. Okay. All right. Mr. Shipe, you've  
11 settled. You've had your time.

12 MR. SHIPE: I understand.

13 CHAIRPERSON YOUNG: Public comment;  
14 interested persons.

15 MR. SHIPE: I'm waiting on a question.

16 CHAIRPERSON YOUNG: Okay. Your time is  
17 up on that.

18 NUMBER 1034: Okay, thank you.

19 CHAIRPERSON YOUNG: Okay. Now, where we  
20 were at, though, was I believe any rebuttal  
21 testimony by 1034. Is that where --

22 MR. RICHARDS: She's testified.

23 CHAIRPERSON YOUNG: Prosecution team did  
24 not have rebuttal testimony, correct?

25 MR. SATO: I think we were going to

1 reserve it. We didn't know that she was going to  
2 call Mr. Shipe.

3 CHAIRPERSON YOUNG: Okay.

4 MR. RICHARDS: At the moment we're still  
5 in 1034's main presentation. She has called her  
6 witness and presented her case.

7 CHAIRPERSON YOUNG: Right, yeah.

8 MR. RICHARDS: Okay, so now it would be  
9 the opportunity for the prosecution team to cross-  
10 examine her witnesses.

11 CHAIRPERSON YOUNG: I know, we're  
12 backing up because --

13 MR. RICHARDS: I know we're backing up.

14 CHAIRPERSON YOUNG: Yeah, okay. All  
15 right. Prosecution team's time to cross-examine.

16 MR. SATO: We don't have any cross-  
17 examination questions.

18 CHAIRPERSON YOUNG: No cross-  
19 examination, okay. Now we're into rebuttal  
20 testimony by the prosecution team.

21 MR. PACKARD: I think the Board probably  
22 understands this, but let me just point out that  
23 the building moratorium imposed by the County, you  
24 know, that's the restrictions that they're putting  
25 on building permits in response to the prohibition

1 established by the Board. They're not necessarily  
2 the same thing.

3 The prohibition in 8313 I think you all  
4 understand; it's clear. The moratorium imposed by  
5 the County is also clear. They're not going to  
6 allow any new or additional sources of discharge.

7 So I don't think there's much to argue  
8 there, and we'll leave it at that.

9 CHAIRPERSON YOUNG: Okay. All right.

10 BOARD MEMBER SHALLCROSS: Can I ask a  
11 question?

12 CHAIRPERSON YOUNG: Yes, Mr. Shallcross.

13 BOARD MEMBER SHALLCROSS: On the  
14 building moratorium did the County impose the  
15 building moratorium?

16 MS. MARKS: Yes, the County's building  
17 moratorium is their effective tool to implement  
18 the discharge prohibition.

19 BOARD MEMBER SHALLCROSS: Okay. And so  
20 the building moratorium was to address new  
21 buildings and new build add-ons to existing  
22 buildings?

23 MS. MARKS: Correct. If those additions  
24 would create waste discharges.

25 BOARD MEMBER SHALLCROSS: Okay. So is

1 it my understanding that the order under -- was it  
2 8312 -- '13 --

3 MS. MARKS: 8313 is the prohibition.

4 BOARD MEMBER SHALLCROSS: -- includes  
5 more than just building moratorium.

6 MS. MARKS: 8313 addresses all of the  
7 onsite discharges within the prohibition area.

8 BOARD MEMBER SHALLCROSS: Okay. So you  
9 wouldn't put -- the County didn't put that in  
10 their building moratorium, the issues dealing with  
11 already. Okay, I just wanted to get that cleared  
12 up. I was trying to figure out why we're talking  
13 about the County's building moratorium.

14 MS. MARKS: Right, because the  
15 moratorium is --

16 BOARD MEMBER SHALLCROSS: As opposed to  
17 the order under which --

18 MS. MARKS: -- about --

19 BOARD MEMBER SHALLCROSS: -- we're  
20 dealing here with today.

21 MS. MARKS: Yes, it's a moratorium  
22 against issuing permits in the future.

23 BOARD MEMBER SHALLCROSS: Okay.

24 CHAIRPERSON YOUNG: Okay. Then any  
25 rebuttal testimony?

1           NUMBER 1034: No, not at this time.

2           CHAIRPERSON YOUNG: Okay. Then what we  
3 would do is have any closing arguments that you  
4 want to make.

5           NUMBER 1034: I just feel that the  
6 Regional Water Board, along with the County and  
7 the previous CSD really failed the citizens of Los  
8 Osos, and we're being punished for it. And I hope  
9 that we can have communication in the future so  
10 that we are allowed to be involved in the process.  
11 Because as long as I've lived in Los Osos I've  
12 never known the truth; honestly, I've never known  
13 the truth about what was going on.

14           Mr. Briggs, I'm sorry, but he was not  
15 upfront with us. I feel that there's -- taking  
16 him out of town during these proceedings is  
17 verified to me that he needs to cover up  
18 something. And we had so many questions to ask  
19 him.

20           CHAIRPERSON YOUNG: Okay. Prosecution  
21 team, closing arguments.

22           MR. PACKARD: Again, it's clear that  
23 there is a discharge of waste in violation of the  
24 prohibition here. And we recommend that you adopt  
25 the cease and desist order.

1           CHAIRPERSON YOUNG: Okay. This matter  
2 is submitted to the Board for deliberation. Any  
3 Board discussion? Down at this end? None. Mr.  
4 Shallcross.

5           BOARD MEMBER SHALLCROSS: Yeah, I mean I  
6 think everyone who's come before us, including Ms.  
7 34, --

8           CHAIRPERSON YOUNG: 1034.

9           BOARD MEMBER SHALLCROSS: -- Ms. 34 --  
10 anyway, you know, have raised really good issues.  
11 And they're issues that I'm certainly concerned  
12 about. Unfortunately, those aren't issues that  
13 are before us. I mean a lot of those issues  
14 aren't before us. And unfortunately aren't  
15 relevant to the issues that we have to decide on,  
16 which is the prohibition within 8313.

17           And after having said that, I mean it's  
18 almost like a strict liability issue. You know,  
19 if a person is living in the prohibition zone and  
20 discharging, under the prohibition then I have to  
21 find that they're in violation. And that's  
22 unfortunate, but that's what we're left with.

23           So, I would move the cease and desist  
24 order, as amended previously.

25           CHAIRPERSON YOUNG: Okay. That's a

1 motion. A second?

2 BOARD MEMBER HAYASHI: Second.

3 CHAIRPERSON YOUNG: Okay. Any other  
4 Board comments? The only thing I would add to the  
5 comments is that, you know, as I've sat back  
6 listening to lots of testimony from many people in  
7 Los Osos over the months and months and months of  
8 this and the previous ACL issue, you know, have  
9 been implemented, it just strikes me in a certain  
10 way that everybody is blaming all of their  
11 government entities, you know, that they elect  
12 into office and that represent them.

13 And I have not heard anybody take any  
14 responsibility even to the smallest amount and  
15 say, you know, we're part of this problem, or I  
16 contributed to it somehow.

17 And it bothers me to some degree. And  
18 I'm --

19 NUMBER 1034: Can --

20 CHAIRPERSON YOUNG: This is my time now.  
21 People elect representatives to the County and to  
22 the CSD. And to say that what they do is, you  
23 know, beyond your reach to me is just, I don't  
24 accept that statement, myself. Okay.

25 And I think that everybody in Los Osos



1 needs to face that fact, that they are responsible  
2 for how they cast their ballots one way or the  
3 other. And as this continues to progress they  
4 need to completely engage the process. They may  
5 not get what they want, but they need to, you  
6 know, move it forward. Whatever comes out of it,  
7 they need to keep the process moving forward.

8           There's some idea that this Board should  
9 maybe start with notices of violation, friendly  
10 letters. Certainly we would have some people  
11 saying we'll do what you want voluntarily. I'm  
12 quite certain there will be others that won't do  
13 that. There will be others that will just ignore  
14 everything that we send out.

15           It makes is very difficult and  
16 challenging to try to treat everybody the same.  
17 You know, it almost forces us to treat everybody  
18 differently based on their own individual  
19 circumstances. And that creates an administrative  
20 burden for the agency.

21           So, it seems like people are holding out  
22 for something very very specific in Los Osos. And  
23 don't die on the vine over that; you know, don't  
24 fall on the sword over that, whatever it may be.

25           NUMBER 1034: Have to do what's right.

1                   CHAIRPERSON YOUNG:  And that's fine, and  
2                   you know, that's like you could perish by doing  
3                   what you feel is right.  And if that's what your  
4                   constitution is made up of and for, I don't have a  
5                   problem with that.  People should do what they  
6                   feel is right.  But there can be consequences for  
7                   doing that.

8                   NUMBER 1034:  Yes.  Has the Regional  
9                   Water Board ever taken responsibility for their  
10                  actions?

11                  (Audience participation.)

12                  CHAIRPERSON YOUNG:  You know, --

13                  NUMBER 1034:  I mean we've buried this  
14                  over and over again --

15                  CHAIRPERSON YOUNG:  Let me just say  
16                  this.  You know, the Water Board is a regulatory  
17                  body, okay, to protect water quality.  It  
18                  implements the federal Clean Water Act, the State  
19                  Water Code.  It doesn't get involved with entities  
20                  in their designing and building of wastewater  
21                  plants.

22                  Entities come to us when they have a  
23                  project that they want to get permitted.  But we  
24                  don't get involved with those details.  We set  
25                  standards for compliance.  That's --

1 NUMBER 1034: I have to disagree.

2 CHAIRPERSON YOUNG: Well, that's fine,  
3 but that's not the way I perceive our function.  
4 And so, you know, -- now I hear people saying that  
5 we should have done something much earlier. Well,  
6 I guess the agency is damned if they do and damned  
7 if they don't.

8 And so it has come to this point and  
9 this is what the prosecution team has brought  
10 before us as, in their best judgment, the best way  
11 to go forward. I don't think we can say that  
12 they're wrong.

13 Anyway, that was my brief comments. We  
14 have a motion and a second. We'll have a vote.

15 All those in favor?

16 (Ayes.)

17 CHAIRPERSON YOUNG: Any opposed? Okay.

18 Thank you for your comments, 1034.

19 All right.

20 BOARD MEMBER HAYASHI: Mr. Chairman.

21 CHAIRPERSON YOUNG: Yes.

22 BOARD MEMBER HAYASHI: You know, I have  
23 a little problem with the procedure of taking  
24 somebody that didn't show up and putting them to  
25 the bottom of the stack. Everybody else is here

1 on their time, and they're here. I mean time's  
2 valuable to everybody. And I think if they're not  
3 here on time, if they haven't made arrangements, I  
4 don't think we should just continue to put them on  
5 the bottom of the stack.

6 CHAIRPERSON YOUNG: Okay. Any other  
7 Board thoughts about that?

8 BOARD MEMBER PRESS: Well, I just think  
9 that if we had even a receipt of certified mail or  
10 some kind of email exchange that would insure that  
11 somebody had responded or had known that they had  
12 received it. That's all. I'm not sure that's  
13 very much to ask.

14 BOARD MEMBER SHALLCROSS: Yeah, I agree  
15 with Mr. Hayashi, however it just occurred to me  
16 that if we do move those folks to the bottom of  
17 the stack before we deal with them, that will  
18 allow the folks who are here to be addressed much  
19 sooner.

20 BOARD MEMBER PRESS: Right, yeah.

21 CHAIRPERSON YOUNG: Right.

22 BOARD MEMBER SHALLCROSS: So, while I  
23 agree with Mr. Hayashi I think, yeah, we should  
24 just put them to the bottom and deal with them  
25 later.

1                   CHAIRPERSON YOUNG: Okay. Then we would  
2 have, I believe, Number 1047, is that correct?  
3 And that's Jane and Edwin Ingan, Ingan. Is that  
4 correct?

5                   MR. THOMPSON: Yes. But I would first  
6 ask you to find out if they are here. They are  
7 another one of those parties that we have not  
8 heard much from.

9                   CHAIRPERSON YOUNG: Okay. Is either  
10 Jane or Edwin Ingan in the audience? Okay,  
11 apparently not. No correspondence from them?

12                   MR. THOMPSON: They are similar to the  
13 Dishens, in that we have not heard, and we have  
14 not had much correspondence from them.

15                   CHAIRPERSON YOUNG: Okay. So you did  
16 send things out by certified mail, is that  
17 correct? And you do have a log?

18                   MR. THOMPSON: Yes. And we have the  
19 certified mail receipts here for most of those  
20 folk.

21                   CHAIRPERSON YOUNG: Well, then let's  
22 back up to 1046. Do you have the Dishens?

23                   MR. THOMPSON: Yeah, we have -- did you  
24 say the Dishens?

25                   CHAIRPERSON YOUNG: Yeah.

1                   MR. THOMPSON: Yeah, I have a certified  
2 mail receipt here for the Dishens.

3                   CHAIRPERSON YOUNG: It's been signed by  
4 them?

5                   MR. THOMPSON: Yes.

6                   CHAIRPERSON YOUNG: Can you put that on  
7 the projector?

8                   MR. THOMPSON: Yes.

9                   CHAIRPERSON YOUNG: With the signature.

10                   (Pause.)

11                   CHAIRPERSON YOUNG: Okay.

12                   MR. THOMPSON: It's a little bit out of  
13 focus. This --

14                   CHAIRPERSON YOUNG: Well, I can read it.  
15 It says Paula --

16                   MR. THOMPSON: This is a certified mail  
17 receipt for the prosecution team's rehearing  
18 documents. This was in response to your order to  
19 the prosecution team to resubmit its documents.  
20 We sent that the first week of September. This is  
21 the certified receipt for that mailing. This is  
22 the same address to which I believe the advisory  
23 team has been sending all the same notices.

24                   CHAIRPERSON YOUNG: Okay. All right.

25                   Dr. Press.

1 BOARD MEMBER PRESS: Mr. Shallcross.

2 BOARD MEMBER SHALLCROSS: I think we  
3 still should deal with them all later. I mean  
4 even the few minutes that it's going to take to  
5 deal with this is going to make the folks who are  
6 here wait that much longer.

7 CHAIRPERSON YOUNG: Okay.

8 BOARD MEMBER SHALLCROSS: So why don't  
9 we just put them to the bottom of the stack.

10 CHAIRPERSON YOUNG: Okay.

11 BOARD MEMBER SHALLCROSS: And maybe  
12 they'll show up, who knows.

13 CHAIRPERSON YOUNG: Okay. All right,  
14 then I believe we would go to 1014, Michael  
15 Javine. Is he here? Okay. Mr. Thompson.

16 MR. THOMPSON: Yeah, again I could show  
17 you a map where he lives.

18 CHAIRPERSON YOUNG: But --

19 MR. THOMPSON: But he is, again, another  
20 one of those parties that has not submitted  
21 anything.

22 CHAIRPERSON YOUNG: All right, let's  
23 continue to move down the list.

24 MR. THOMPSON: For which we could  
25 provide a certified mail receipt.

1                   CHAIRPERSON YOUNG: That was 1014. How  
2 about 1004, Dennis and Sally Joller. Are they  
3 here?

4                   MR. THOMPSON: The Jollers are  
5 different. They have been submitting written  
6 comments. They do have -- there's a section in  
7 your designated party submittals for the Jollers.

8                   CHAIRPERSON YOUNG: Yes, okay.

9                   MR. THOMPSON: So I'm going to go ahead  
10 and show the map where they are.

11                  CHAIRPERSON YOUNG: Well, in their  
12 packet I see that we do have a letter from them,  
13 plus the San Luis Obispo County septic  
14 verification form that shows that Clay's Septic  
15 and Jetting, Inc. pumped their tank on July 31 of  
16 '06.

17                  BOARD MEMBER PRESS: Mr. Chair, the  
18 letter's a little unclear. It sounds like they  
19 were trying to settle. Were they proposing a  
20 settlement agreement that was not the same as the  
21 one that the one that the prosecution team had  
22 negotiated? It's a little unclear.

23                  MR. PACKARD: The settlement that you  
24 see there in their package is a version that their  
25 attorney offered --



1 BOARD MEMBER PRESS: I see, okay.

2 MR. PACKARD: -- that we did not agree  
3 to.

4 BOARD MEMBER PRESS: Thank you.

5 CHAIRPERSON YOUNG: Okay. Well, Mr.  
6 Shallcross, we have documents from them, a letter  
7 from them.

8 BOARD MEMBER SHALLCROSS: And is the  
9 prosecution's case over? Case-in-chief?

10 CHAIRPERSON YOUNG: They haven't put it  
11 on.

12 BOARD MEMBER SHALLCROSS: Okay. That's  
13 all --

14 CHAIRPERSON YOUNG: But they're not  
15 here.

16 BOARD MEMBER SHALLCROSS: Understand.

17 CHAIRPERSON YOUNG: Okay, do you want  
18 them to go forward with this particular one, or do  
19 you want to move this down to the bottom of the  
20 list? This is a little different than the others  
21 in that --

22 BOARD MEMBER SHALLCROSS: It's a little  
23 different, but at the same time I'm concerned  
24 about people who have sat here for, many of them,  
25 two days, and --

1                   CHAIRPERSON YOUNG:  But these people are  
2                   foregoing an opportunity to present oral argument.

3                   BOARD MEMBER SHALLCROSS:  Okay, then  
4                   maybe we can deal with it --

5                   CHAIRPERSON YOUNG:  So there is a  
6                   detriment to not being here.

7                   BOARD MEMBER SHALLCROSS:  Well, I think  
8                   there will be at the end of the -- when we get to  
9                   them finally.  I don't know.

10                  CHAIRPERSON YOUNG:  When we get to the  
11                  end of --

12                  BOARD MEMBER SHALLCROSS:  When we put  
13                  them to the bottom and they're still not here,  
14                  they won't be in any different situation than they  
15                  are now.

16                  CHAIRPERSON YOUNG:  Okay.  All right, so  
17                  we can go ahead and take care of this one.

18                  BOARD MEMBER SHALLCROSS:  If you want,  
19                  sure.

20                  MR. RICHARDS:  Mr. Shallcross is  
21                  suggesting that you defer these people and other  
22                  people who are not here present.  And deal with  
23                  them at the end of the meeting in order to use the  
24                  time now available for the people who are here, in  
25                  view of the fact that the Jollers' default won't

1 have changed by the end of the meeting.

2 CHAIRPERSON YOUNG: Okay. That's fine.  
3 All right. Next one would be, I believe, 1023, if  
4 I'm not mistaken.

5 MR. SATO: Yes.

6 CHAIRPERSON YOUNG: Okay. And I have a  
7 yellow band across this number. So, is anyone  
8 here representing 1023? Okay.

9 How about the next one, 1040; CDO  
10 recipient 1040.

11 MR. THOMPSON: They are a party similar  
12 to the Jollers, in that they have been submitting  
13 written comments, but I don't believe they're  
14 here. I got an email yesterday that they're out  
15 of town.

16 CHAIRPERSON YOUNG: Okay. All right.  
17 And then the next one I believe would be 1003, Mr.  
18 Martyn, is that correct?

19 MR. MARTYN: That's correct.

20 CHAIRPERSON YOUNG: Yes, okay.

21 BOARD MEMBER SHALLCROSS: Maybe -- could  
22 move away, you know. Thanks. Yeah. You can sit  
23 there.

24 CHAIRPERSON YOUNG: Go ahead.

25 MR. RICHARDS: You should first present

1 it to Mr. Sato.

2 CHAIRPERSON YOUNG: Yeah, make sure he  
3 gets a copy.

4 MR. RICHARDS: And also to your court  
5 reporter.

6 CHAIRPERSON YOUNG: Yeah, and then a  
7 copy for the court reporter, too, would be  
8 helpful.

9 Mr. Martyn, please give one to the court  
10 reporter.

11 MR. MARTYN: I wanted to make a copy of  
12 that because I wanted you to see the dates of when  
13 I received that.

14 MR. RICHARDS: Mr. Martyn, if you want  
15 to admit any documents into evidence the time to  
16 do that has passed. If you want to try and get it  
17 admitted now you need to show it to Mr. Sato and  
18 make an offer of proof.

19 MR. MARTYN: I'm doing what the Chairman  
20 asked me, to show this to you on the date -- this  
21 is just proof of the statement that I made  
22 regarding the date that I received this.

23 CHAIRPERSON YOUNG: Okay, when it's your  
24 time to use your 15 minutes then you can go ahead  
25 and address your interest in getting that document

1 in; or talking from the document.

2 MR. MARTYN: Very good. I was going to  
3 make a copy of it, but you said to show it to you,  
4 so I --

5 CHAIRPERSON YOUNG: Okay. Why don't you  
6 have a seat and we will have the prosecution team  
7 begin their case. This is on 1003. Mr. Sato.

8 MR. THOMPSON: Yes, Matt Thompson,  
9 prosecution team, again. The County Assessor's  
10 list and the evidence submitted by Alan and  
11 Jacqueline Martyn indicate that they live at 2248  
12 Fresno Street in Los Osos. Here is a map of the  
13 prohibition zone depicting the location of the  
14 Martyn's property.

15 Mr. Martyn has, in fact, submitted  
16 evidence that he does have a septic tank in his  
17 submittals on November 15th, for example. The  
18 second paragraph he says he does not believe he's  
19 a polluter. "I'm not guilty; there is no  
20 scientific evidence that my individual home septic  
21 tank is polluting."

22 Later in his objection to formal  
23 enforcement orders he says: not guilty; septic  
24 tank is operating as designed and permitted, et  
25 cetera.

1                   That's all for now for me.

2                   CHAIRPERSON YOUNG:   Okay.   Yes, Mr.  
3   Jeffries.

4                   BOARD MEMBER JEFFRIES:   Are you going to  
5   allow this information just handed out --

6                   CHAIRPERSON YOUNG:   Well, I think what  
7   this is, Mr. Martyn, this is really what you're  
8   going to be reading from?

9                   MR. MARTYN:   Part of that, but, Mr.  
10   Chairman, I'm going to preface my remarks by  
11   having Mr. 1029, who's going to be providing some  
12   of the testimony that'll be presented on an  
13   overhead presentation, as well.

14                   CHAIRPERSON YOUNG:   Well, if you --

15                   MR. MARTYN:   And this is going to be my,  
16   you know, my summation argument.

17                   CHAIRPERSON YOUNG:   Okay.   And that's  
18   what I understood it to be, Mr. Jeffries, so I  
19   wasn't --

20                   BOARD MEMBER SHALLCROSS:   Are there any  
21   other copies?   We didn't get any.

22                   CHAIRPERSON YOUNG:   Right there.   Okay.

23                   MR. SATO:   I have a comment, Mr.  
24   Chairman.

25                   CHAIRPERSON YOUNG:   Yes.

1           MR. SATO: First of all, this other  
2 document, "Friendly Words from Your Neighbors?" I  
3 move to strike this. This is irrelevant and  
4 somewhat inflammatory, I think, also.

5           CHAIRPERSON YOUNG: Well, taken out of  
6 context, also. So, --

7           MR. SATO: And this is, in fact, not a  
8 summary of any kind of testimony, I don't think is  
9 going to be provided.

10          CHAIRPERSON YOUNG: All right.

11          MR. SATO: And let me identify --

12          CHAIRPERSON YOUNG: Yeah, and actually  
13 this is not going to come into evidence, what he's  
14 handed us. The Board's going to have it in front  
15 of them if he's going to be reading; we can use it  
16 to take notes. But it's not going to be an  
17 exhibit admitted into evidence.

18                 The same with the attachment, "Friendly  
19 Words from Your Neighbors?". So, --

20          MR. SATO: All right. I would have been  
21 willing to offer Mr. Martyn the opportunity to  
22 submit this document in view of his oral  
23 testimony, but if that's --

24          CHAIRPERSON YOUNG: Right.

25          MR. SATO: -- your decision.

1 CHAIRPERSON YOUNG: Okay. Mr. Martyn.

2 MR. MARTYN: Yes, Mr. Chairman.

3 CHAIRPERSON YOUNG: Okay, it's your  
4 opportunity to ask any questions of the  
5 prosecution team.

6 MR. MARTYN: Certainly. My questions  
7 are -- this is not going into my time, is that  
8 correct, my 15 minutes?

9 CHAIRPERSON YOUNG: It is not.

10 MR. MARTYN: Thank you, sir. I'd like  
11 to ask the prosecution what proof do you have that  
12 a lower level of enforcement would not achieve  
13 your goals?

14 MR. PACKARD: We have no specific  
15 evidence or proof.

16 MR. SATO: Let me also just add that I  
17 think that we answered these types of questions  
18 previously from one of the prior CDO recipients.  
19 So, it's asked and answered, in one sense.

20 MR. RICHARDS: Well, would you care to  
21 make a stipulation in regard to the answers to  
22 these questions?

23 MR. SATO: Well, you know, I say that,  
24 asked and answered. I mean those were separate  
25 proceedings technically. And so I'm just



1 suggesting perhaps to Mr. Martyn, more than  
2 anybody else, that, you know, we've answered those  
3 types of questions already.

4 But if he feels the need to have this on  
5 the record in his particular proceeding, you know,  
6 I'm not going to object to that.

7 CHAIRPERSON YOUNG: Well, but I guess if  
8 you would agree then that any of the testimony  
9 that your team has given in the other CDO  
10 proceedings then could be incorporated in each  
11 succeeding hearing.

12 MR. SATO: We actually assumed that that  
13 was the case already.

14 CHAIRPERSON YOUNG: Okay, well, I wasn't  
15 making any assumptions because we were going to  
16 treat each of these, you know, as separate  
17 hearings unless somebody made a request to  
18 incorporate by reference certain documents. We  
19 were going to do that automatically.

20 So, okay, Mr. Martyn, then the answers  
21 to some of these questions that I think maybe Ms.  
22 McPherson had helped prepare, the answers that  
23 were given previously by Mr. Packard are going to  
24 stand and they're going to be used by everyone  
25 else if they want.

1                   MR. MARTYN:  And they would be  
2                   incorporated into my questions --

3                   CHAIRPERSON YOUNG:  They're  
4                   incorporated, correct.

5                   MR. MARTYN:  That's fine.

6                   CHAIRPERSON YOUNG:  Okay.

7                   MR. MARTYN:  I appreciate that very  
8                   much.

9                   MR. PACKARD:  Including the answer Mr.  
10                  Sato gave regarding the settlement.

11                  CHAIRPERSON YOUNG:  Yes.  Any other  
12                  questions for the prosecution team?

13                  MR. MARTYN:  I don't know if this  
14                  question has been asked.  I don't recollect.  But  
15                  what proof do you have that I won't cease  
16                  discharge without a CDO?

17                  MR. PACKARD:  I believe that's pretty  
18                  similar to a previous question.  And, again, it's  
19                  perhaps not proof, but Mr. Martyn did not take  
20                  advantage of the settlement offer that was  
21                  previously offered.  So I have some indication  
22                  then.

23                  CHAIRPERSON YOUNG:  Any other questions?

24                  MR. MARTYN:  No other questions, Mr.  
25                  Chairman.

1                   CHAIRPERSON YOUNG: Okay. So what we do  
2 now is go to your presentation. You'll have 15  
3 minutes to tell us what you would like. You can  
4 have witnesses to ask questions of. That's up to  
5 you.

6                   MR. MARTYN: I'd like to start off by  
7 thanking Mr. Shallcross for allowing the people  
8 that are here to appear, since we have been here  
9 for two days, and appreciate that consideration.

10                   Having said that, I'd like to say that  
11 we are -- and I am, and we are at a very distinct  
12 disadvantage appearing before you. Our key  
13 witness, Mr. Briggs, is not here. He is the  
14 architect, the creator, the perpetrator of this  
15 travesty that has happened on Los Osos.

16                   I, as an individual, on two occasions  
17 over the 42 years I have lived in Los Osos, have  
18 proposed a sewer system be installed in Los Osos.  
19 Never once did I have any support at any given  
20 time from this agency. Not once.

21                   We struggled, we fought and we could  
22 have put it in for a minutia in the cost of money  
23 of what's it's going to cost us now. \$20 million  
24 at one time, and 80 percent of that would have  
25 been paid by federal and state funds.

1                   But as this -- compliance and in the  
2 past, you know, this agency, Mr. Chairman, has  
3 done little or nothing except attack us and  
4 prosecute us.

5                   Now, what I'm going to do, I'm going to  
6 call up a witness, Mr. 1029, who's coming in to  
7 assist. And we're going to put our presentation  
8 on the overview. So, if you'll go ahead, Mr.  
9 1029, I'd appreciate that.

10                  CHAIRPERSON YOUNG: Well, what you need  
11 to do is ask him questions. No, actually, I think  
12 if you want him to help you put that on, I don't  
13 see a problem with that. No, go ahead.

14                  MR. MARTYN: All right, thank you.

15                  NUMBER 1029: Mr. Chair, I'm actually  
16 1029.

17                  MR. SATO: Mr. Chair, I don't think for  
18 these purposes that 1029 gets to assert 1029  
19 anymore. He has now been called as a witness.  
20 He's apparently volunteering as appearing as a  
21 witness. I don't quite understand --

22                  CHAIRPERSON YOUNG: But isn't that what  
23 Mr. Shipe has done?

24                  MR. SATO: No. Mr. Shipe has appeared  
25 as Mr. Shipe.

1                   MR. MARTYN: Mr. Chairman, I had asked  
2 you if this was permissible in mounting my  
3 defense. And I realize that he has settled, but  
4 he has also agreed to help me. And I don't think  
5 that --

6                   CHAIRPERSON YOUNG: I think he's going  
7 to identify himself.

8                   MR. DER GARABEDIAN: That's fine; name,  
9 no address.

10                  CHAIRPERSON YOUNG: Okay, go ahead.

11                  MR. DER GARABEDIAN: Board, I'm John der  
12 Garabedian, good afternoon, again.

13                  CHAIRPERSON YOUNG: Okay.

14                  MR. DER GARABEDIAN: I'm assisting Mr.  
15 Martyn. We're just going to go over a few points  
16 real quick, as soon as we get it up here.

17                  We wanted to make the point that this  
18 entire process is confusing to the public. The  
19 CDOs are really intended, as we understood the  
20 regulations, for industry and industrial  
21 dischargers.

22                  Industry has the capability to properly  
23 defend itself, to appear at these hearings, to  
24 fully understand these hearings and the  
25 ramification of these hearings. And to understand

1 the consequences thereof. CDOs were simply never  
2 intended for individual homeowners.

3 I think even over the last two days it's  
4 become clear to me that even myself, sitting  
5 through these hearings for two days, that there's  
6 actually so a disconnect between your Board, your  
7 staff and the audience as to what effect settling  
8 versus having these CDOs issued upon us will  
9 actually have upon our individual lives. I think  
10 your Board doesn't believe the, quote, sledge  
11 hammer that one party testified.

12 And I don't actually know the truth, but  
13 I think that disconnect is there. That industry  
14 and opposing counsels understand the weight of  
15 what's actually going on here. And the public  
16 just doesn't have a grasp of it. We don't deal  
17 with this every day. We weren't trained in it.  
18 We're trying to learn from books and staff, and  
19 it's just not what we do.

20 Mr. Chair, you don't want to hear this,  
21 but we do believe you're holding individuals  
22 responsible for items outside of their control.  
23 Things have happened; we are responsible for our  
24 actions. But we are not responsible for other  
25 people's actions, whether we elect them or elect

1 other folks.

2 Your comment a moment ago that we do  
3 need to take some responsibility actually brought  
4 me right back to the fact that we did recall three  
5 board members about a year ago in attempting to  
6 grasp control of a situation that the town did  
7 feel was out of control. They weren't recalled by  
8 a mandate, but all three were recalled as you  
9 folks probably know. And I think that was a clear  
10 signal that the town is attempting to rectify this  
11 problem.

12 There are a lot of procedural notices  
13 and issues; it's been raised enough. And Mr.  
14 Martyn wanted that in his testimony.

15 The enforcement is neither timely nor  
16 consistent. Your own water quality enforcement  
17 policy, revised February of 2002, states that  
18 enforcement actions should be taken, quote, "as  
19 soon as possible after discovery of violation."  
20 We're over 20 years past the 8313 and 8312  
21 resolutions. There has been no timely action.

22 My research showed that over the last  
23 six years there's been a total of 189 CDOs issued  
24 throughout the entire State of California, total.  
25 Yet, the Board is proposing to issue upwards of

1 5000 against our community.

2 Nitrate levels are actually declining.  
3 I looked at records for the years 1983 where they  
4 totaled 902 mg/liter. Where the total of 2005 was  
5 down to 248 mg/liter, as a total, not an average.  
6 They've dropped nearly 75 percent over the last 20  
7 years.

8 We do still need a sewer treatment  
9 system, but the urgency may not be as much as  
10 staff would believe, or possibly the Board would  
11 believe.

12 Finally, we would like to say that under  
13 California Water Code section 13050(c) the section  
14 states a person includes any city, county,  
15 district, the state and the United States to the  
16 extent authorized by federal law. That's the  
17 entire section.

18 I would submit to staff and Board that  
19 under that section to which you're enforcing, no  
20 one here is a person. We are not city, we're not  
21 a county, we're not a district. And we are not a  
22 person, by your own statute.

23 I would also submit that the resolution  
24 8313 has never identified any individuals that are  
25 targeted for prosecution.



1           There was never an affordability study  
2 done on the failed project. There's not been one  
3 done on the proposed actions. And this study is  
4 required under California Water Code or the water  
5 quality enforcement policy.

6           Finally, staff report of July 9, 2004,  
7 I'll just let you read it. These are quotes out  
8 of the staff report. And I believe it showed  
9 staff's intention that CDOs should not be issued  
10 to individual parties.

11           That's it. Thank you.

12           CHAIRPERSON YOUNG: Okay.

13           MR. MARTYN: Thank you very much, John.  
14 Board Members, staff and CDO recipients and  
15 interested parties, the reason we are here today  
16 is because you have selected us to possibly  
17 receive a CDO. Our fate rests in your hands and I  
18 don't think you listen to us without prejudice,  
19 without malice and with an open mind.

20           The prosecution staff has decided that  
21 the citizens of Los Osos who live in the  
22 prohibition zone have needed a wastewater  
23 treatment facility ostensibly to clean up the  
24 upper aquifer of Los Osos. This decision, on its  
25 face, sounds like a good and righteous idea. And

1 we want the Board to know that we are not opposed  
2 to a water treatment center. We're in favor of  
3 clean, pure water. We always have been.

4 I was in favor of a sewer two times, as  
5 I testified earlier. We have spearheaded an  
6 effort for a sewer back in the '70s when the cost  
7 was negligible, as I said. The cost will now put  
8 a hardship on many of us. However, we are in  
9 favor of establishing a wastewater treatment  
10 center and agree to hook up as soon as one is  
11 available.

12 Having said that, and having good clean  
13 water is not the issue here today, regardless of  
14 what the prosecution is saying. The issue today  
15 is how to get good clean water. It is the Water  
16 Board's position that having a wastewater  
17 treatment facility in Los Osos will clean the  
18 upper aquifer. This is what the Water Board  
19 wants. And yet we really don't know if a sewer or  
20 any other wastewater treatment facility will  
21 remove the nitrates from the aquifer.

22 A sewer was built in Arroyo Grande and  
23 the nitrate levels in Arroyo Grande's aquifer went  
24 up. And Morro Bay, which has had a sewer for 40  
25 years, in September had to stop using state water

1 from the state water pipeline due to needed  
2 pipeline repairs. For a few days Morro Bay drew  
3 water from its wells, and had to warn the  
4 townspeople not to drink the water because of the  
5 very high nitrates, up to 90 parts per million.

6 But we are not suggesting that we do not  
7 build a sewer treatment facility in Los Osos. We  
8 are just saying that our nitrate level may go up  
9 instead of down if we build the sewer. And if it  
10 does go up instead of down, will the Water Board  
11 reimburse the people of Los Osos if the nitrate  
12 levels in Los Osos rise after building a plant?  
13 What benefits have we gained?

14 We believe we should enter into a  
15 contract and would be happy to sign it today on  
16 the spot that we will build a treatment plant  
17 whose cost is fully reimbursable ten years after  
18 the construction the nitrate levels rise. If the  
19 Water Board's position is positive about a sewer  
20 lowering the nitrates, then entering into a  
21 binding and reimbursable contract with Los Osos  
22 should not be a problem. If it is a problem, then  
23 obviously the Water Board is not sure that it will  
24 lower the nitrates.

25 What we are in favor is a wastewater

1 plant. With a threat that if we don't put one in  
2 by a certain date that most say is unrealistic  
3 we'll be faced with a horrible fate of not using  
4 our septic system, threats and fines and the  
5 possibility of having to abandon our home simply  
6 because a wastewater plant is not in place by an  
7 arbitrary date is inhumane and cruel. It is a  
8 nightmare that we and 44 other randomly selected  
9 homeowners have had to endure for almost a year  
10 now.

11 We consider ourselves good citizens, but  
12 after nearly a year of threats, ridiculous \$5000-  
13 a-day fines, and having our homes taken away by a  
14 government bureaucracy with no checks and  
15 balances, we must confess this CDO process has  
16 taken its toll on my and my wife physically and  
17 emotionally.

18 The reality of this continued harassment  
19 of hearing dates being changed again and again and  
20 again; the constant battle of putting together  
21 evidence to prove a negative that we are not  
22 polluting; the continued restrictions of the very  
23 nature of due process in this land of the free and  
24 the home of the brave has had us question the  
25 basic freedoms and democratic nature of this land

1 we dearly love.

2 I have always given the United States of  
3 America that one is innocent until proven guilty.  
4 And now the Water Board has told us that we must  
5 prove innocence because we are guilty. The very  
6 substance of what due process is, and the burden  
7 of proof is lying with the accuser, has been  
8 uprooted and turned upside down. Suddenly the  
9 accused must prove he is innocent, and the burden  
10 of proof lies on the accused. This kind of  
11 justice is the same kind of justice that was  
12 applied during the Inquisition.

13 There is a settlement agreement that the  
14 Water Board has proposed that say will consider  
15 compliant discharger if we sign it. And I say  
16 will be given special dispensation if only we will  
17 sign it. The catch is that we still have not  
18 stopped using our septic tank and no sewer is in  
19 progress by January 1st of 2011. This is no  
20 better than a CDO in the fact it does have a  
21 cessation or discharge agreement with it.

22 We are here to tell you that we are  
23 compliant discharger. We have complied with the  
24 Water Board. We intend to comply with the Water  
25 Board.

1                   And in closing I'd like to say that I  
2                   won't sign anything that says we will stop using  
3                   our septic tank if there is no progress in the  
4                   wastewater treatment plant at the drop-dead date  
5                   of January 1, 2011. We have no control of that  
6                   date. If we did, we would sign it in a heartbeat.  
7                   We will sign up to connect to a sewer as soon as  
8                   one's available. We will pump our tanks once  
9                   between now and January 11th. We will vote yes on  
10                  the 218 vote. But do not ask us to sign something  
11                  that we have no control over.

12                  You say we have our vote and if we vote  
13                  appropriately we can help control the  
14                  implementation, assert this is true. We have one  
15                  vote; one vote does not a sewer make. Again, I  
16                  would like to say for the record that we are  
17                  compliant dischargers; that we want to say that  
18                  our septic system is working properly and not  
19                  polluting.

20                  Thank you, Mr. Chairman.

21                  CHAIRPERSON YOUNG: Okay. Thank you.  
22                  That was pretty close to your time. Cross-  
23                  examination by the prosecution team, Mr. Sato.

24                  MR. SATO: We have no cross-examination  
25                  questions. We simply have the same issue with the

1 type of exhibits that Mr. Martyn wishes to  
2 incorporate from exhibit B.

3 CHAIRPERSON YOUNG: Okay. And --

4 MR. SATO: As he again did not reference  
5 any documents at all in his presentation, other  
6 than --

7 CHAIRPERSON YOUNG: Well, I think in his  
8 written submission he did make a request. I don't  
9 know if you've taken a look at it recently. He's  
10 also incorporating by reference all documents in  
11 exhibit A and B. These are submitted by the CSD  
12 and other defendants. He wants to join all other  
13 testimony previous and future.

14 How about, Mr. Martyn, in terms of the  
15 documents that we are going to accept, how about  
16 the same ones that we did for Mr. Allebe, and then  
17 -- who came next?

18 MR. MARTYN: Mr. --

19 CHAIRPERSON YOUNG: Yeah, we made --

20 MR. MARTYN: Yes, that is correct. I  
21 want to incorporate those, as well, Mr. Chairman.

22 CHAIRPERSON YOUNG: Yeah, the ones that  
23 we previously incorporated from exhibit B. Okay,  
24 those will come in for his hearing.

25 MR. SATO: If that's acceptable to him,

1 that's acceptable for us.

2 CHAIRPERSON YOUNG: Okay. Is that okay  
3 with you, Mr. Martyn?

4 MR. MARTYN: That's fine, thank you.

5 CHAIRPERSON YOUNG: Okay. All right.  
6 Any rebuttal testimony, Mr. Sato?

7 MR. THOMPSON: Yeah, Matt Thompson,  
8 prosecution team. I just need to clear up some  
9 things for the record. There is one witness --  
10 there was one witness that suggested that nitrate  
11 concentrations in Los Osos have gone down. There  
12 is a detailed explanation in my written submittals  
13 that demonstrates that nitrate concentrations have  
14 not decreased in the last 20 years. They have, in  
15 fact, increased.

16 The comparison to Morro Bay is  
17 inappropriate. The nitrate detected in Morro  
18 Bay's drinking water came from water supply wells  
19 in the Chorro Creek and the Morro Creek Valley,  
20 and is outside of the urbanized area. It could  
21 not have been influenced by their wastewater  
22 system.

23 And as far as the assertion that if you  
24 eliminate -- well, I just want to point out that  
25 if you eliminate the source of groundwater



1       contamination then nitrate concentrations will  
2       eventually go down. This is not just a water  
3       pollution principle; this is common sense.

4               That's all, thank you.

5               CHAIRPERSON YOUNG: Okay. Any rebuttal  
6       testimony, Mr. Martyn or --

7               MR. MARTYN: Well, I have just one issue  
8       to bring up, Mr. Chairman. And I was just  
9       wondering if the prosecution was aware of a  
10      criminal/civil complaint data that has been  
11      compiled regarding Mr. Roger Briggs, Executive  
12      Director of the Water Quality Control Board. If  
13      any of them are aware of this particular report?

14              MR. SATO: I believe that's a document  
15      that we asked to be stricken from the record.

16              CHAIRPERSON YOUNG: Okay. All right.

17              MR. MARTYN: That's the reason I asked  
18      that, because I was wondering if that was the  
19      reason that Mr. Briggs had been sequestered from  
20      not being here, Mr. Chairman. Thank you.

21              CHAIRPERSON YOUNG: Okay. All right,  
22      let's move then to --

23              MR. DER GARABEDIAN: Mr. Chair?

24              CHAIRPERSON YOUNG: Yes.

25              MR. DER GARABEDIAN: You did look at me

1 on the rebuttal question. Was I allowed to  
2 answer?

3 CHAIRPERSON YOUNG: Well, it's -- he sat  
4 down so I think he's kind of done with his case at  
5 this point. Mr. Martyn, you still have an  
6 opportunity to provide a closing argument. Do you  
7 want to do that?

8 MR. SATO: As Mr. Martyn's coming up can  
9 I just make one statement for the record, is that  
10 Mr. Briggs has not been sequestered.

11 CHAIRPERSON YOUNG: Okay. Did you have  
12 some rebuttal testimony, Mr. Martyn, that you  
13 wanted to offer?

14 MR. MARTYN: I'd probably have to keep  
15 you here till midnight, and I don't want to do  
16 that to any of you. So, I'm --

17 CHAIRPERSON YOUNG: Well, rebuttal  
18 testimony is testimony specifically geared to  
19 contradict evidence that the prosecution team has  
20 put in. So it's not another chance to open up and  
21 tell us anything in the world you want. But it's  
22 specific to allow you to contradict their  
23 testimony.

24 MR. MARTYN: Well, the only point I  
25 would bring up, Mr. Chairman, would be with

1        regards to the Morro Bay high levels of nitrate in  
2        the water supply.

3                CHAIRPERSON YOUNG:    Okay.

4                MR. MARTYN:    Because they were so --

5                CHAIRPERSON YOUNG:    Can you speak up a  
6        little bit?

7                MR. MARTYN:    I'm just recovering from an  
8        \$85,000 throat operation; I'm sorry if I, you  
9        know, don't make myself too clear.

10                And I do feel very strongly that the  
11        point I'm trying to make is that we do not know,  
12        this Board does not know, this agency does not  
13        know, this prosecution team does not know that  
14        putting in, even though I'm proposing that we do  
15        it to satisfy the, you know, the demands that are  
16        being made by the state and the Water Quality  
17        Control Board and the Environmental Protection  
18        Agency, we do not know categorically that it's  
19        going to lower the nitrate levels after we put  
20        this mega-sewer system into Los Osos.

21                And as evidence, you know, I refute, you  
22        know, that they're not acknowledging the fact that  
23        the nitrate levels, you know, in the Morro Bay  
24        water, in the user wells down there, that the  
25        nitrate levels just skyrocketed.    I mean so bad

1       that the community and the City told the citizens  
2       not to drink their own water that was coming from  
3       their wells.

4               I'm just wondering if that's going to  
5       happen to our water, also, Mr. Chairman. Thank  
6       you.

7               CHAIRPERSON YOUNG: Okay.

8               MR. MARTYN: I believe that's all I  
9       have, Mr. Chairman.

10              CHAIRPERSON YOUNG: Okay, fine; thank  
11       you. We'll now proceed to closing arguments.  
12       Harvey -- I mean, pardon -- Mr. Packard.

13              MR. THOMPSON: I think that was his  
14       closing.

15              MR. PACKARD: That was Mr. Martyn's  
16       closing argument?

17              CHAIRPERSON YOUNG: No, that was really  
18       his rebuttal testimony. I take it he -- he does,  
19       yeah, pardon me. Do you have any other? Okay.  
20       It's kind of getting late and long, and I'm  
21       getting a little sidetracked here with the details  
22       we have of who goes when.

23              MR. RICHARDS: My understanding was that  
24       Mr. Martyn had actually intended to use the  
25       written material that he had passed out to the

1 Board as his closing statement. And I believe  
2 that he has actually provided that --

3 CHAIRPERSON YOUNG: Right.

4 MR. RICHARDS: -- at this time.  
5 However, if he wants another opportunity to make  
6 an additional closing statement, that would be up  
7 to you to decide whether that's appropriate.

8 CHAIRPERSON YOUNG: Okay. Do you want  
9 to make an additional closing statement, Mr.  
10 Martyn?

11 MR. MARTYN: I would like to have John  
12 make that statement regarding, you know, regarding  
13 the nitrate levels, if he'd be kind enough to do  
14 that for me.

15 CHAIRPERSON YOUNG: This is a closing  
16 statement based on the evidence that you have  
17 already put into the record, a concluding  
18 statement. Argument.

19 MR. MARTYN: All right, Mr. Chairman, I  
20 would just like to reiterate some of the  
21 statements, but perhaps put some emphasis on them.

22 One is the fact that we have tried to  
23 repeatedly in Los Osos -- I'm making reference to  
24 the remarks that you made earlier, that nobody's  
25 taking responsibility, you know, for actions.

1                   And I can say that I, on two very  
2                   serious occasions, made tremendous efforts, in  
3                   other words, to put in a sewer system, affordable  
4                   sewer system into Los Osos. We had the  
5                   bondholders up here from Beverly Hills ready to  
6                   underwrite the balance of putting it in.

7                   And I look at, you know, people like Ms.  
8                   McPherson and many other people in the community  
9                   have worked very diligently to try, you know, and  
10                  bring consensus into the community.

11                  I see what our current CSD directors are  
12                  doing, what they have done to try and move this  
13                  process forward. I see what the Water Quality  
14                  Control Board, with Mr. Briggs, indeed, in  
15                  stopping the loan and the agreement that  
16                  Assemblyman Blakeslee, who is my Assemblyman, made  
17                  a valiant effort and was jumping a quagmire to try  
18                  and solve it. And behind the scenes, by the same  
19                  agency, you know, prosecutors who railroaded, you  
20                  know, our possibility of continuing that progress.

21                  Somebody else made a comment, I did not  
22                  wish to make it, but it was actually true, it was  
23                  nothing but political retaliation because as  
24                  evidenced, you know, by the comments that were  
25                  given to Mr. Briggs, fine the people in Los Osos

1 as much as you can.

2 You know, just before even the new  
3 directors had taken a seat, you know, this agency  
4 was being pushed and promoted politically to stop  
5 the process, you know, to punish Los Osos when we  
6 had our Assemblyman out there trying to work out a  
7 deal with Mr. Polemus. And they made sure they  
8 railroaded that so that, you know, we would go,  
9 you know, down the tubes in the way we were  
10 approaching.

11 I can tell you this, that I'm not saying  
12 that facetiously. I think they have a member who  
13 I heard him say sometime back that he's on the  
14 city council.

15 I've been involved with politics, Mr.  
16 Chairman, you know, for 40 years. I served on the  
17 Central Committee for 30 -- 20 on the State  
18 Central Committee. I was on the Attorney  
19 General's Advisory Council.

20 And I know that what basically happened,  
21 and the reason we're sitting here was politically  
22 motivated. It had nothing, and it has nothing to  
23 do with clean water.

24 And I realize that people are being made  
25 to suffer. We have 5000 other people that are, or

1 4500, whatever, that you are going to prosecute.  
2 Unjustly, I might add. I realize you're doing  
3 your job. I've been told that there exists an  
4 incestuous relationship and I don't want to  
5 believe that. I want to give you gentlemen the  
6 benefit of the doubt that you're serving here to  
7 better the community, better our water. But that  
8 there was an incestuous relationship between the  
9 prosecution and this Board. I don't believe that.  
10 And I believe that you're serving, you know,  
11 because you're dedicated people, trying to do what  
12 is best for the community and for the state.

13 So, for your service I thank you,  
14 because I know that it does take a lot of effort  
15 and a lot of time and energy for what you're  
16 doing. And I do thank you for that.

17 Thank you, all.

18 CHAIRPERSON YOUNG: Okay, thank you for  
19 your comments. Mr. Sato, any closing arguments?

20 MR. PACKARD: The prosecution team  
21 states that the record is clear that Alan and  
22 Jacqueline Martyn are discharging in violation of  
23 the basin plan prohibition, and we recommend you  
24 adopt the cease and desist order.

25 MR. SATO: I just want to add one



1 statement, too, to the closing argument. In this  
2 particular case, you know, I've listened to the  
3 comments that Mr. Martyn has made, and you know,  
4 how he talks about how our settlement proposal  
5 would have had them stop using their septic tank  
6 if now sewer had been in progress by January 1st  
7 of 2011.

8 I think that this Board and hopefully  
9 members of the public who have seen these  
10 proceedings realize that that's simply not the  
11 case. And that there were, and still are,  
12 opportunities for people to take advantage of a  
13 settlement with the prosecution team, rather than  
14 face a CDO. Thank you.

15 CHAIRPERSON YOUNG: Okay. This matter  
16 is submitted. What would the Board like to do?  
17 Discussion? A motion? Mr. Jeffries.

18 BOARD MEMBER JEFFRIES: Well, I don't  
19 think there's any doubt that Mr. Martyn lives in  
20 the prohibition zone, and there's no question that  
21 he is discharging. And listened to his comments  
22 very closely.

23 I have some concerns about people  
24 continuing making statements that this is a  
25 political decision. I don't know what that means.

1 I have not been contacted by any political being  
2 to ask me to vote one way or the other. And --

3 MR. MARTYN: I said (inaudible), sir,  
4 I'm sorry.

5 BOARD MEMBER JEFFRIES: Well, I'm  
6 speaking for myself because the allegations have  
7 been made. I don't know if it's made to me,  
8 individually, or to the Board. And I don't  
9 believe any Board -- and I'm not going to respond  
10 for every Board Member, but I don't believe that  
11 they've been contacted by any elected official in  
12 this area or in the State of California to vote  
13 one way or the other.

14 We serve at the pleasure of the Governor  
15 because we're appointed by the Governor. We come  
16 from different regions of this Region to give our  
17 abilities and our backgrounds and our knowledge to  
18 make intelligent decisions. And sometimes it's  
19 very difficult. My heart wants to go one way one  
20 time, but I have to face the facts and go the  
21 other way.

22 And you referred to somebody on this  
23 Board that was a city council member. And that  
24 was me. And I'm a former Mayor of the City of  
25 Salinas. And I understand totally this whole

1 issue. And I'm sitting here trying to sort out  
2 these individuals, not yours only, but everybody  
3 else who's testified previous meetings and this  
4 particular meeting.

5 And I've said earlier today, or maybe I  
6 said it yesterday, that my basic job here is to  
7 make sure that the waters of California are as  
8 clean as we can possibly get them. And our  
9 standards have been set by the federal government,  
10 as well as the State of California.

11 And those are things that we, or I have  
12 to make decisions on. It's not on my personal  
13 belief or my personal relationship with anybody.  
14 If I had any here, I'd have to put those aside.  
15 So, consequently then, I really have basically no  
16 choice to move that -- move on this CDO, Mr.  
17 Chair.

18 CHAIRPERSON YOUNG: Is that a motion?

19 BOARD MEMBER JEFFRIES: Yes, sir.

20 BOARD MEMBER SHALLCROSS: I'll second  
21 it. I just would like to point out that whether  
22 you're polluting, whether you're discharge is  
23 polluting in some way is not an issue that's  
24 before us today.

25 A lot of people keep talking about how

1 their septic tanks are working. That's not an  
2 issue before us today. Before us is whether or  
3 not you live in the prohibition zone and whether  
4 you're discharging. So, that was for another day;  
5 that's what the prohibition zone was set up for.

6 So, I'll second the motion.

7 CHAIRPERSON YOUNG: Okay. Any more  
8 Board discussion? All right.

9 All those in favor?

10 (Ayes.)

11 CHAIRPERSON YOUNG: Any opposed? Okay,  
12 motion carries. Thank you, Mr. Martyn.

13 MR. MARTYN: Well, thank you. And I  
14 just would like to clarify that I in no way want  
15 to make an inference there is anything political,  
16 the Board Members. I was referring to the  
17 prosecution team. And I have data to support  
18 that.

19 CHAIRPERSON YOUNG: Okay.

20 MR. MARTYN: That'll probably come out  
21 when we bring it to appeal, bring it to a federal  
22 prosecutor.

23 CHAIRPERSON YOUNG: All right, thank  
24 you.

25 MR. MARTYN: Thank you.

1 CHAIRPERSON YOUNG: Okay.

2 MR. RICHARDS: Mr. Chairman.

3 CHAIRPERSON YOUNG: Yes.

4 MR. RICHARDS: I'm not sure that it was  
5 articulated explicitly that the motion to issue  
6 the cease and desist order in this case includes  
7 the amendments to the cease and desist order that  
8 were made in prior cases.

9 CHAIRPERSON YOUNG: It was, so it's  
10 meant to be included.

11 BOARD MEMBER SHALLCROSS: And it should  
12 be for all future ones.

13 CHAIRPERSON YOUNG: And it would be for  
14 all future ones, too.

15 BOARD MEMBER SHALLCROSS: It was decided  
16 that way.

17 CHAIRPERSON YOUNG: Right. Okay, what  
18 do we want to do? It's five after 4:00, and  
19 clearly we're not going to get through everybody  
20 that we've got, unless we're going to go late  
21 tonight, but that's not --

22 UNIDENTIFIED SPEAKER: How many of us  
23 are still here?

24 CHAIRPERSON YOUNG: Yeah. How many  
25 people in the audience, I know Mr. Rochte is one,

1 and Mr. Payne is another. Anyone else who is  
2 here?

3 MS. McPHERSON: Laurie McCombs.

4 CHAIRPERSON YOUNG: Laurie McCombs.  
5 Yeah, that's right, 1026. So, there's really  
6 three more to do of those people that are here, is  
7 that correct?

8 BOARD MEMBER SHALLCROSS: I think we  
9 need to finish them tonight.

10 CHAIRPERSON YOUNG: Okay, the --

11 BOARD MEMBER SHALLCROSS: The three that  
12 are here and then it probably wouldn't take us  
13 very long to deal with the ones who aren't here.

14 CHAIRPERSON YOUNG: Is that acceptable?

15 BOARD MEMBER PRESS: You're certain  
16 there's only three that are here?

17 BOARD MEMBER SHALLCROSS: Can we see  
18 hands of folks who are here? Okay. And then  
19 let's just --

20 BOARD MEMBER: Cut it off at --

21 BOARD MEMBER SHALLCROSS: At those  
22 three.

23 CHAIRPERSON YOUNG: All right. So we  
24 will move --

25 BOARD MEMBER PRESS: We should break

1 first?

2 BOARD MEMBER SHALLCROSS: Yeah.

3 CHAIRPERSON YOUNG: Do you want to break  
4 first? Okay, how much time do you want? Okay, a  
5 few minutes.

6 As soon as you see us back in here ready  
7 to go, then that's when we'll start. About 4:15  
8 or so.

9 (Brief recess.)

10 CHAIRPERSON YOUNG: All right, the next  
11 one would be, I guess, McCombs, right? Rochte?  
12 No? There's three more we're going to do that  
13 were here.

14 No, it's McCombs, right? And Payne,  
15 okay. Ms. McPherson, right? We are going to do  
16 Laurie McCombs?

17 MS. MCPHERSON: Yes, that's correct.

18 CHAIRPERSON YOUNG: Okay. That's number  
19 1026. Mr. Sato.

20 MS. MCPHERSON: Can I go ahead and  
21 get --

22 MR. PACKARD: Actually we'll go first;  
23 Matt will make a presentation.

24 MS. MCPHERSON: That's right.

25 MR. THOMPSON: Here is a map of the

1 prohibition zone. Laurie McCombs is a designated  
2 party that has submitted replies to emails, and  
3 who we have been corresponding with. And we have  
4 plenty of evidence that she's been receiving our  
5 documents.

6 She's represented by --

7 AUDIENCE SPEAKER: Get the right house,  
8 though.

9 MR. THOMPSON: She's represented by Ms.  
10 McPherson; I think that demonstrates she's --

11 CHAIRPERSON YOUNG: Is that the right  
12 house, Ms. McPherson?

13 MS. McPHERSON: It doesn't appear to be  
14 the right house. I believe she's more up by  
15 the --

16 CHAIRPERSON YOUNG: Well, how about the  
17 address?

18 MR. THOMPSON: Okay.

19 MS. McPHERSON: Yeah, --

20 CHAIRPERSON YOUNG: Is the address  
21 correct?

22 MS. McPHERSON: 1327 16th Street.

23 CHAIRPERSON YOUNG: Is that correct?

24 MS. McPHERSON: 1327 --

25 MR. THOMPSON: Okay, I will stipulate



1       that this -- there seem to be a lot of people that  
2       believe that this is labeled wrong. That's a  
3       possibility. But her address is 1327 16th Street.  
4       These are the numbered streets, so there's 16th  
5       Street. This is, I think, 1st; or this is 1st,  
6       I'm not sure. Yeah, this is 1st right here, and  
7       2nd. And it's numbered to 16. All of these  
8       numbered streets are within the prohibition zone  
9       boundaries.

10                So we contend that McCombs' property is  
11       located within the prohibition zone boundary. I  
12       think that Ms. McPherson might even stipulate to  
13       that, as well.

14                CHAIRPERSON YOUNG: Well, where is 16th  
15       Street?

16                MS. MCPHERSON: No, I wouldn't. I would  
17       want to know which of these dots represents her  
18       house. If you've been there and --

19                CHAIRPERSON YOUNG: I guess on cross-  
20       examination they'll have to take, you know, you'll  
21       take that up with him. So, go ahead.

22                MR. THOMPSON: Okay. As I said, I'm  
23       contending that the McCombs property is located  
24       within the prohibition zone. Ms. McCombs has not  
25       submitted any evidence to suggest that she does

1 not have a septic system discharge.

2 That's all for now.

3 CHAIRPERSON YOUNG: Okay, and I don't  
4 see that we have any written submissions from her.  
5 Okay. All right, is that the prosecution team's  
6 case? Mr. Sato?

7 MR. SATO: I believe that is our case.

8 MR. PACKARD: Actually I will just add  
9 that 16th Street on the map is the third street  
10 from the right on the east side; and it's totally  
11 within the prohibition zone. We have signed  
12 certified mail cards that she has signed saying  
13 that she received mail at that address. So I  
14 don't think there's any disagreement there.

15 CHAIRPERSON YOUNG: All right.

16 MR. THOMPSON: Yeah, I just want to  
17 point out I probably made a mistake. But it's  
18 probably one of these properties along here.

19 MS. McPHERSON: No, no, that's --

20 MR. THOMPSON: Okay, would somebody like  
21 to point out where 16th Street is?

22 (Audience participation.)

23 CHAIRPERSON YOUNG: No, we're -- no.

24 MR. THOMPSON: Okay.

25 (Parties speaking simultaneously.)

1 MS. McPHERSON: We don't want to help  
2 them do their job.

3 CHAIRPERSON YOUNG: Okay. Ms.  
4 McPherson, cross-examination?

5 MS. McPHERSON: Yes, thank you. Gail  
6 McPherson for Laurie McCombs. I wanted to ask if  
7 the cease and desist orders are for nitrogen  
8 loading on the basin.

9 MR. PACKARD: They are not.

10 MS. McPHERSON: Can you tell me what  
11 they're for?

12 MR. PACKARD: The cease and desist  
13 orders, I think, speak for themselves. They, if  
14 ordered by the Board, require individuals to hook  
15 to a community sewer system when that's available.

16 MS. McPHERSON: Are you aware that Ms.  
17 McCombs only had one week to examine, or less than  
18 one week to examine the latest version of the  
19 modified CDO and settlement agreement? And never  
20 had an opportunity to meet or have a question-and-  
21 answer period with staff members from the Water  
22 Board to explain what they meant? What the  
23 language, the regulatory language meant.

24 MR. SATO: I guess we don't know when  
25 she received the document. I don't know that it's

1 true that she didn't have the opportunity to talk  
2 with anybody at the -- at least on the prosecution  
3 team about what something may or may not have  
4 meant, because I think we indicated in our  
5 communications that we would be willing to talk to  
6 anyone about the settlement proposal.

7 MS. McPHERSON: And when did that  
8 communication, when was that mailed out?

9 MR. THOMPSON: We've had a lot of  
10 written communication, Gail. Can you tell me  
11 which dated document you're referring to?

12 MS. McPHERSON: I'm referring to a  
13 document that was, I believe, dated the 1st of  
14 December. And it did not have the modified CDO or  
15 the settlement offer attached to it. It just  
16 referenced a lot of people that had not been  
17 working with an attorney. I think it included a  
18 lot of people who were not. But I believe that's  
19 the document I'm talking about.

20 MR. THOMPSON: Are you referring to the  
21 prosecution team's legal and technical scientific  
22 rebuttals to the designated parties' responses --

23 MS. McPHERSON: No.

24 MR. THOMPSON: -- to the proposed cease  
25 and desist orders?

1 MS. McPHERSON: No. That actually was  
2 only received by Ms. McCombs last Wednesday, two  
3 days ago. This one I'm talking about is the offer  
4 for a settlement, or to review the modified CDO,  
5 which we're discussing the modified CDO today.  
6 Not one of the ones that she reviewed in April or  
7 September.

8 MR. PACKARD: We need a better --

9 MS. McPHERSON: Or January.

10 MR. PACKARD: -- identification of the  
11 document before we can give any specifics about  
12 it.

13 MS. McPHERSON: The December 1st notice  
14 of settlement.

15 MR. THOMPSON: Okay, Gail, --

16 MS. McPHERSON: It's your document.

17 MR. THOMPSON: -- the document is a  
18 proposed notice of the revised settlement option.  
19 it's dated December 6th.

20 MS. McPHERSON: Oh, sorry.

21 MR. THOMPSON: And it was sent out  
22 Thursday, December 7th.

23 MS. McPHERSON: Okay. So that would  
24 give about one week for her to receive that and  
25 examine it; and then locate a copy of both the

1 modified CDO and the settlement offer.

2 MR. THOMPSON: Well, we need to clarify  
3 something. Was McCombs one of those represented  
4 by Shauna Sullivan?

5 MS. McPHERSON: No, I don't believe she  
6 was at that time.

7 MR. THOMPSON: Okay. So, yeah, she was  
8 sent it on Thursday, December 7th. And so, yeah,  
9 your question, did she have about a week to review  
10 it.

11 MS. McPHERSON: Um-hum.

12 MR. THOMPSON: That's right. That's  
13 correct.

14 MS. McPHERSON: Did you have an offer of  
15 staff or an ombudsman to work with any of these  
16 people who may have responded or not responded  
17 based on confusion over the technical language of  
18 your notices?

19 MR. THOMPSON: In the letter we asked  
20 that if anybody had any questions they could  
21 contact us any time. I think the fact that, you  
22 know, about 25 parties have settled suggests that  
23 some people understood it.

24 MS. McPHERSON: I would not characterize  
25 that agreeing to something as understanding it. I

1 think I'd like to -- I'd like to just state for  
2 the record that I don't think that that's a  
3 conclusion.

4 AUDIENCE SPEAKER: That's their opinion.

5 MS. McPHERSON: That's your opinion and  
6 the IRS, nobody understand that, and people file  
7 documents and sign them all the time.

8 What was the issue --

9 CHAIRPERSON YOUNG: You're not --

10 MS. McPHERSON: I'm sorry, --

11 CHAIRPERSON YOUNG: You're not  
12 testifying, are you, --

13 MS. McPHERSON: I'm sorry, I'm not. I  
14 apologize for that.

15 CHAIRPERSON YOUNG: -- Ms. McPherson?  
16 Okay. All right.

17 MS. McPHERSON: I took exception to his  
18 remark. When was the issues of pollution in the  
19 basin plan and the prohibition zone up for  
20 discussion if today is not the day?

21 MR. PACKARD: What do you mean by up for  
22 discussion?

23 MS. McPHERSON: It's been said over and  
24 over that the time to challenge, to discuss, to  
25 question, to review the basin plan prohibition

1 zone and different pollutants that have led us to  
2 this day are not up for discussion. And I wanted  
3 to know when was the time that this should have  
4 happened. And at what opportunity could these  
5 people have brought these issues and questioned  
6 them? It is the foundation for the cease and  
7 desist orders.

8 MR. PACKARD: The Board adopted the  
9 resolution in 1983, not without public drafts,  
10 public hearings and everything attendant with  
11 them. So that was the time.

12 MS. McPHERSON: Are you aware of the  
13 change in the law that stated that your challenge  
14 would be only if you had enforcement actions  
15 pending? And then later it changed to a timeframe  
16 that surrounded the adoption of the basin plan  
17 amendment.

18 MR. PACKARD: -- the specifics --

19 MR. SATO: Let me just say, Ms.  
20 McPherson, we've addressed this issue in our  
21 rebuttal statement dated December 1, 2006.

22 MS. McPHERSON: Well, Ms. McCombs didn't  
23 have time to read that. She just received that  
24 this week.

25 The basin plan specifies certain



1 constituents that led to the prohibition. Can you  
2 tell me what those constituents that led to the  
3 prohibition are?

4 MR. THOMPSON: Yeah, I'm looking at the  
5 findings of resolution number 8313. And they  
6 mention nitrogen, bacteria, you know, as total and  
7 fecal coliform levels.

8 That's about it in this quick read.

9 MS. McPHERSON: So it's pathogens and  
10 nitrogen?

11 MR. SATO: I'd like to say -- I mean Mr.  
12 Thompson is not speaking from any direct knowledge  
13 about how this basin plan was developed. He's  
14 simply reading from the document, itself. The  
15 document speaks for itself. I'm not certain what  
16 this line of questioning is going to lead to with  
17 regard to the issues that are supposed to be  
18 before the Board today.

19 CHAIRPERSON YOUNG: I would agree with  
20 you.

21 MS. McPHERSON: So, what actions are you  
22 taking to control nitrogen in other areas of your  
23 responsibility? Are you issuing cease and desist  
24 orders in other areas for nitrogen? And this goes  
25 to consistency.

1           MR. PACKARD: We do have an agricultural  
2 regulation program which addresses nitrate issues.  
3 And a nonpoint-source program.

4           MS. McPHERSON: Are you issuing -- I  
5 asked if you were issuing any CDOs on other areas  
6 for nitrogen.

7           MR. PACKARD: I'm not aware of any.

8           MS. McPHERSON: No individuals? No  
9 individual property owners anywhere else?

10          MR. PACKARD: Not that I'm aware of.

11          MS. McPHERSON: 8313 and the 1988  
12 prohibition was based on the highest density areas  
13 of Los Osos in 1983. Are you aware of how many  
14 homes were added between 1983 and 1988?

15          MS. MARKS: Approximately 800.

16          CHAIRPERSON YOUNG: You know, let me do  
17 this. Normally I don't want to start limiting  
18 testimony, but it's not going to matter what their  
19 answer is to that one way or the other because it  
20 doesn't go to prove or disprove any of the issues  
21 in front of us.

22                 So I do want to be able to get Mr. Payne  
23 in and Mr. Rochte in before we conclude tonight.  
24 And we have a few other issues that we want to tie  
25 together. And --

1 MS. McPHERSON: They have given me many  
2 of the things that they're interested in cross-  
3 examining, and their cross-examination would  
4 probably be a lot less because of this. But I  
5 wouldn't want to limit Ms. McCombs' opportunity to  
6 ask questions and find out the basis for this.

7 CHAIRPERSON YOUNG: I know, but, you  
8 know, Ms. McPherson, as I sit --

9 MS. McPHERSON: Because we're tired.

10 CHAIRPERSON YOUNG: -- as I sit here and  
11 I have certain things to decide in front of me,  
12 I'm listening carefully to what everybody says.  
13 And I'm weighing it, does it prove or disprove  
14 anything that's in contention.

15 And so I'm just telling you that this  
16 line of questioning isn't helping, in my opinion,  
17 my Board. So I would appreciate it if your  
18 questions were more focused on what really is at  
19 issue here.

20 The basin plan is the basin plan. It  
21 was adopted 8313. That's back in the '80s. They  
22 testified that the time period for challenging it  
23 has passed. You know, what efforts they have made  
24 since then to regulate nitrogen in Los Osos, right  
25 now I don't know. And I don't know that their

1 answer would -- it doesn't have any bearing on  
2 what we're forced to consider today.

3 That doesn't mean that those aren't  
4 important issues. But not everything that is  
5 important to what's happening in Los Osos is in  
6 front of us. Just very selected items.

7 MS. McPHERSON: This just goes to her  
8 defense. Did you conduct an economic analysis of  
9 the impact of these enforcement efforts prior to  
10 proposing them on the individuals or the  
11 community?

12 MR. PACKARD: We have some understanding  
13 of the costs of compliance.

14 MS. McPHERSON: Did you do any kind of  
15 economic analysis?

16 MR. PACKARD: Can you clarify what you  
17 mean by economic analysis?

18 MS. McPHERSON: Well, in the enforcement  
19 guidelines they suggest that you do an economic  
20 analysis for the impacts on the individual as well  
21 as the community. And then there's also an  
22 important kind of rule-of-thumb that you don't  
23 provide an economic benefit to somebody who's  
24 polluting.

25 Is there a document that we could refer

1 to for that economic analysis?

2 MR. PACKARD: No.

3 MR. SATO: I'm just going to interpose  
4 an objection that I'm not sure that the part of  
5 the policy that you seem to be referring to  
6 applies in this particular situation. It sounds  
7 like what you're doing is talking about the policy  
8 that applies to the issuance of administrative  
9 complaint liability, which is a different kind of  
10 analysis and a different type of procedure.

11 MS. McPHERSON: What is the consequence  
12 of the 2008 date in the modified cease and desist  
13 order?

14 MR. SATO: I think the document speaks  
15 for itself.

16 MS. McPHERSON: what is the consequence  
17 of the failure of the Blakeslee plan? Because  
18 what we've been hearing is that as long as the  
19 Blakeslee plan goes forward, there's no problem  
20 with that 2011 date.

21 What I'm asking is what is the  
22 consequence if it doesn't go forward? If it  
23 fails? Is the consequence an ACL?

24 MR. SATO: Well, I don't know -- I think  
25 the consequence of the proposed cease and desist

1 order is that there should be a cessation of  
2 discharges. I mean that is the requirement.

3 And the law provides for if somebody  
4 fails to comply to the cease and desist order  
5 certain penalties and certain remedies available  
6 to the Water Board. But I certainly can't say  
7 what those would be, because we don't know whether  
8 anybody is going to violate a cease and desist  
9 order.

10 MS. McPHERSON: But don't you think it  
11 might be important for the Board to know what  
12 those penalties might be while they impose these  
13 upon people? You don't know what exactly they  
14 might be, but in stating that there is a possible  
15 failure of the Blakeslee plan, then they would  
16 know going in that this is not an innocuous  
17 document, or the CDO is not without teeth. Is  
18 that true?

19 MR. SATO: Presumably the CDO does have  
20 teeth. And I'm assuming that the Board has been  
21 well advised as to what teeth the CDO has.

22 MS. McPHERSON: And I'm concerned  
23 whether or not the public has been advised of  
24 such. Have you advised the public of the teeth  
25 that are there if there's a failure? Because I've

1 heard a lot of information and read the documents.  
2 And mostly it says that it isn't a problem as long  
3 as the Blakeslee plan goes through. But it  
4 doesn't give the flip side.

5 Did you give the flip side?

6 MR. SATO: The statute provides for the  
7 enforcement options available for the failure to  
8 comply with the cease and desist order. I don't  
9 know what else you're talking about in terms of  
10 talking about the benefits of the Blakeslee  
11 legislation.

12 I can tell you that if you're referring  
13 to any communications that we had that were some  
14 of the communications, --

15 MS. McPHERSON: No, I'm not.

16 MR. SATO: Okay, then -- but if you were  
17 I'm going to object to those, because I think we  
18 were trying to --

19 MS. McPHERSON: I'm not.

20 MR. SATO: -- be very --

21 (Parties speaking simultaneously.)

22 MR. SATO: -- possible to advise the  
23 community about what the consequences were --  
24 excuse me, what the benefits and what our proposed  
25 settlement agreement would accomplish.

1 MS. McPHERSON: I was just trying to  
2 find out what that statute is, because when people  
3 look it up and they see that it's \$5000 a day in  
4 fines, and ceasing of the discharge; and then  
5 people say, you won't lose your house. It's very  
6 hard for them to see how they couldn't lose their  
7 house in that situation, that circumstance. And I  
8 think outreach might be a good idea.

9 You've testified that that hasn't been -  
10 - there hasn't been outreach or information on  
11 that.

12 I wanted to just ask a couple of  
13 questions about responsibility because there's  
14 been some discussion about taking responsibility.  
15 Would you consider voluntary compliance with a CDO  
16 requirement by pumping the tanks and meeting all  
17 the requirements of the CDO prior to, and entering  
18 into settlement negotiations even though they  
19 weren't completed, or consummated, would you  
20 consider that taking responsibility?

21 Pumping the septic tank; inspecting the  
22 system; paying an assessment; offering a proxy  
23 vote on their 218 vote; and willing to sign an  
24 affidavit that they will hook to a treatment  
25 plant. Would that be considered, that voluntary



1 effort, taking responsibility?

2 MR. SATO: First of all, I thought that  
3 you just told us that Ms. McCombs was not part of  
4 any settlement group negotiating with the  
5 prosecution team.

6 MS. McPHERSON: She came to me when she  
7 wanted to have somebody help her with this, and  
8 didn't understand the modified CDO, what the  
9 consequences were, the settlement. And she didn't  
10 really have time to research enough to know what  
11 she was getting into when she signed it. As I  
12 believe many many others were also in that  
13 situation.

14 And so I'm just asking the question with  
15 the efforts that she has taken, and I named them  
16 off, I rattled them off, would you consider her a  
17 responsible, compliant, cooperative discharger?

18 MR. SATO: I would just say that I would  
19 consider a compliant discharger someone who enters  
20 into a settlement agreement with the prosecution  
21 team.

22 MS. McPHERSON: Even if they haven't had  
23 time to negotiate it, to understand it, to have it  
24 explained to them? But they're here today because  
25 their continuance is denied?

1           MR. SATO: I think that -- I'm not  
2 exactly sure what all the circumstances are, but I  
3 believe that we gave everybody the opportunity to  
4 settle with us who wanted to. I don't know that  
5 we were ever contacted by -- I certainly was not  
6 contacted by Ms. McCombs. And I can't speak for  
7 anybody else on the prosecution team.

8           MS. MCPHERSON: Okay.

9           MR. SATO: And they're suggesting that  
10 there weren't --

11          BOARD MEMBER SHALLCROSS: Mr. Chair.

12          CHAIRPERSON YOUNG: Yes.

13          BOARD MEMBER SHALLCROSS: A lot seems to  
14 be being made about when the settlement agreement  
15 was offered, or even developed. And from my  
16 understanding, a settlement agreement can happen  
17 on the steps of the -- you know, right outside the  
18 door.

19                 So I don't believe there's any  
20 requirement of any time that a settlement  
21 agreement can be offered or should be offered, ha  
22 to be offered, or agreed to. I mean that's  
23 between the two parties.

24                 I don't know what the legal --

25          CHAIRPERSON YOUNG: Well, there is --

1                   BOARD MEMBER SHALLCROSS:  -- what the  
2 point she's trying to make is.

3                   CHAIRPERSON YOUNG:  I understand, yeah.  
4 Parties settle after the jury has been seated, and  
5 they don't like the jury.

6                   MS. McPHERSON:  Of course, this isn't a  
7 criminal action --

8                   CHAIRPERSON YOUNG:  I know, but --

9                   MS. McPHERSON:  -- but I --

10                  CHAIRPERSON YOUNG:  -- the point is  
11 there's no --

12                  MS. McPHERSON:  -- I don't disagree.  I  
13 don't disagree.  We don't disagree with that.  I'm  
14 just trying to get out there that while some  
15 people who signed the settlement are called a  
16 cooperative discharger, and the others are not,  
17 that there is a very gray area there between  
18 whether they had an opportunity to understand  
19 enough to sign on.

20                  But in every other way have demonstrated  
21 that they're fully cooperative.  That was my only  
22 point.

23                  BOARD MEMBER SHALLCROSS:  Well, maybe  
24 the prosecution can refrain from characterizing  
25 the people who signed the agreement and the people

1 who didn't in any particular way. If that's your  
2 complaint, you sure spent a lot of time on a very  
3 small unimportant point.

4 MS. McPHERSON: Well, okay. But it does  
5 say so in the settlement agreement that they are  
6 given favorable treatment because they are  
7 cooperative dischargers.

8 BOARD MEMBER SHALLCROSS: That's part of  
9 the settlement agreement; that's fine. Anything  
10 can be in there.

11 MS. McPHERSON: Okay.

12 CHAIRPERSON YOUNG: Ms. McPherson, I'll  
13 give you until ten of to complete your cross-  
14 examination.

15 MS. McPHERSON: I'm finished with my  
16 cross-examination.

17 CHAIRPERSON YOUNG: Okay.

18 MS. McPHERSON: I just had -- I wanted  
19 to just touch on that, the in order to do so in a  
20 timely manner the prosecution should be advised of  
21 your decision to accept the settlement as soon as  
22 possible. And it was just that that was --

23 CHAIRPERSON YOUNG: Is that a question?

24 MS. McPHERSON: No, I just -- I'm  
25 finished with the cross-examination.

1 CHAIRPERSON YOUNG: Okay, thank you.

2 MS. McPHERSON: I'm sorry that because  
3 it's late in the day and that we're all tired,  
4 that I'm not afforded the same amount of patience  
5 as the earlier people.

6 CHAIRPERSON YOUNG: Well, we're not  
7 tired, but there are other people that have been  
8 here all day long and I want to make sure we take  
9 care of what their individual cases, so --

10 MR. RICHARDS: Mr. Chairman, I think I'd  
11 also like to point out --

12 MS. McPHERSON: Mr. Rochte has said to  
13 take your time. He's next up. And last.

14 MR. RICHARDS: Excuse me --

15 BOARD MEMBER SHALLCROSS: You're getting  
16 your time.

17 MR. RICHARDS: -- while I'm talking I'd  
18 appreciate it --

19 MS. McPHERSON: I apologize.

20 MR. RICHARDS: -- if you'd refrain.

21 Mr. Chairman, I think it's very  
22 important to note that your discussions with Ms.  
23 McPherson have not been based on your lack of  
24 patience or the Board's lack of patience. But on  
25 the fact that her questioning has been exceeding

1 the scope of --

2 CHAIRPERSON YOUNG: I understand.

3 MR. RICHARDS: -- the testimony and  
4 relevance. And it's not a matter of the Board  
5 being tired or impatient. It's a matter of the  
6 Board wanting to keep these proceedings on track  
7 with relevant testimony and questions in cross-  
8 examination that are on point.

9 CHAIRPERSON YOUNG: Okay. Let's move  
10 then to presentation of property-specific evidence  
11 by the individual property owner. All right, Ms.  
12 McPherson, you have 15 minutes.

13 MS. MCPHERSON: I'm putting a face to  
14 the property owner. Her home was built in the  
15 '50s, pre-8313; and her home was purchased in  
16 1987, pre-moratorium.

17 The CDOs -- and I'm going to be reading  
18 from here, and it doesn't quite coordinate, so  
19 bear with me. The CDO for individuals is not the  
20 right enforcement tool. Cease and desist orders  
21 against individual residents are never really  
22 recommended according to the State Water Resources  
23 Control Board policy because citizens do not hold  
24 discharge permits and have no control over the  
25 collective sewage treatment in the district.

1           Further, individual citizens and the  
2 Water Board randomly selected residents, and  
3 they're ill-equipped to really provide the site-  
4 specific evidence for their defense, as well as  
5 the prosecution, who has none.

6           The individual -- the average citizen is  
7 called to respond to an incredible process that's  
8 manifestly unfair when applied to the average  
9 citizen. Ms. McCombs objects to the consolidated  
10 hearings because those who follow her may make a  
11 better case and may be able to afford attorneys  
12 and have a better outcome that will deprive her of  
13 the same benefit.

14           Documents in the record and statement  
15 challenging the validity of the basin plan and  
16 other actions, and failures by the Water Board and  
17 government entities should be reviewed, as it is  
18 the very basis for the enforcement action against  
19 Ms. McCombs and others.

20           Ms. McCombs objects to being precluded  
21 from raising questions and having Mr. Briggs  
22 present to answer questions concerning the basis,  
23 motivation, interest, goals and purposes of the  
24 enforcement actions against her.

25           It is Ms. McCombs' testimony to the

1 Board that the prosecution has presented nothing  
2 to indicate her property is illegally discharging  
3 from the individual septic system; that she is  
4 polluting or threatening to pollute the  
5 groundwater from her specific property.

6 Ms. McCombs states that she never at  
7 anytime was notified that her property or her  
8 treatment system located at 1327 16th Street was  
9 illegal upon the purchase of her property. And  
10 she didn't hear anything about illegal system  
11 until she was served the enforcement order.

12 Ms. McCombs' home was built prior to the  
13 prohibition moratorium. Her home is legally  
14 permitted with a septic system that is operating  
15 properly. She recently pumped her system, and she  
16 submitted the receipt as proof of compliance with  
17 terms of the CDO. And I have that.

18 She's never had possession of any  
19 materials or literature to tell her her system was  
20 illegal. She's compliant with the terms of the  
21 CDO. She's paying a sewer assessment. And she is  
22 currently paying for a sewer project. She's been  
23 cooperative and compliant as it is not different  
24 than those who relinquished their right to a  
25 hearing by accepting a settlement enforcement



1 order. And that she has met all the terms of the  
2 enforcement action prior to the hearings, and as  
3 soon as she was informed of this requirement.

4 She objects to the prosecution staff  
5 handling the settlement in that she was not  
6 afforded access to negotiation or input into the  
7 process, and demonstrated all the same cooperative  
8 efforts except relinquishing her right to a  
9 hearing. And she hasn't been given consideration  
10 as those who have waived the hearing process.

11 She has no more ability on her own to  
12 comply with the basin plan or Water Board  
13 requirements to build a project. She's come into  
14 compliance and provided -- as provided in the  
15 Water Code. She has no assistance to come into  
16 compliance, as is provided in the Water Code. And  
17 no remedial action in the form of a letter to  
18 comply, or any kind of progressive enforcement  
19 that has happened to assist her in that way.

20 The burden of proof is the Water  
21 Board's; and they're required to notify, assist  
22 and apply progressive enforcement is at the heart  
23 of the enforcement guidelines.

24 And she intends to incorporate the  
25 testimony of the CSD and others, preserve her

1 constitutional rights with the presumption of  
2 innocence. There is no evidence the property is  
3 polluting; no progressive enforcement attempted;  
4 lack of due process protections. She's claiming  
5 that the remedy will not improve water quality.

6 She's willing to accept a work plan that  
7 is already cooperative and compliant with all  
8 requirements. And she's already paying her  
9 assessment. Targeting individuals is the wrong  
10 tool.

11 And then, of course, with AB-2701 the  
12 conditions have changed since enforcement was  
13 initiated; and maybe it's not necessary.

14 Ms. McCombs and others believe that it's  
15 contrary to your policy and it contradicts past --  
16 as we noted in the earlier presentation, their own  
17 recommendations. And she also believes, under the  
18 Porter-Cologne Act, that it's not in the best  
19 interest of the people of the state.

20 Because CDOs regularly involve extensive  
21 capital improvements beyond the scope of a single  
22 property, after looking at the policy as a whole  
23 it's clear that the Water Board does not consider  
24 CDOs to be an appropriate prosecution tool against  
25 private citizens, because citizens hold no

1 discharge permits and have no control over sewage  
2 or stormwater collection and treatment. They  
3 don't build treatment plants.

4 A group prosecution necessarily implies  
5 a scientific, technical and environmental evidence  
6 that the Water Board would possess. Would not  
7 only justify the prosecution, but the evidence  
8 applies equally to all properties. And, of  
9 course, that cannot possibly be the case.

10 The Water Board should be required to  
11 prosecute individuals based on individual, site-  
12 specific evidence because the cost has the  
13 potential to be very high. The Water Board never  
14 looked at whether any of these properties are  
15 individually polluting.

16 For evidence of pollution on septic  
17 tanks, the guidance suggests that you must include  
18 site-specific and property-specific details,  
19 groundwater quality, depth to groundwater and  
20 direction of flow, soil types and hydrogeologic  
21 characteristics of the subsurface, proximity to  
22 surface waters, flood potential, nitrogen loading  
23 from septic tanks and individual and cumulative  
24 impacts of this discharge to the groundwater  
25 basin.

1           The boundaries are interesting. The  
2 boundaries for the zone were very arbitrary when  
3 they were first established, and without much  
4 science. This was a question in a letter to Roger  
5 Briggs in 2002. It said, what different in water  
6 quality information, hydrology, ability to  
7 subdivide, zoning and land use potential gave the  
8 Water Board reason to draw the prohibition  
9 boundary in 1983.

10           The answer is, it was staff's best  
11 professional judgment, based upon all the  
12 information and data at that time on where the  
13 prohibition boundaries should be drawn -- it says  
14 probation, it should say prohibition, sorry --  
15 should be drawn, and the prohibition boundary was  
16 established to prevent any new discharges within  
17 the zone. And that was written in 2002 by Roger  
18 Briggs.

19           He goes on to say and conclude with, the  
20 discharge prohibition zone was also established to  
21 encourage the County of San Luis Obispo and now  
22 the LOCSD to develop a solution to ongoing water  
23 quality impacts from the existing discharges. The  
24 enforcement against individuals is just not  
25 appropriate.

1           In closing, these proposed CDOs are not  
2           unlike going to a high school. And that high  
3           school isn't doing very well on the tests. And so  
4           you randomly select 45 students and you tell them  
5           that if the entire school's test scores do not  
6           improve, then you're going to expel them. Not  
7           only would the 45 students not have any control  
8           over the entire student body, but this method is  
9           widely recognized as unjust and coercive.

10           And we ask that you rethink this; come  
11           up with another strategy that does not involve the  
12           consequences that are way beyond the control of  
13           the discharger. And with that I would conclude my  
14           remarks.

15           CHAIRPERSON YOUNG: Okay. Cross-  
16           examination of Ms. McPherson by prosecution team?

17           MR. PACKARD: We have one question.

18           MR. SATO: Just a couple quick  
19           questions. Ms. McPherson, what efforts did Ms.  
20           McCombs take to try to secure Mr. Briggs'  
21           testimony?

22           MS. MCPHERSON: She received  
23           documentation in mid-September concerning the new  
24           case that was filed. And she did not have any  
25           idea on how to subpoena Mr. Briggs. But when she

1 did ask a friend, she had heard that subpoenas had  
2 been denied by the Board in April. And so she  
3 assumed that that would not be a possibility.

4 MR. SATO: So she made no affirmative  
5 effort to try to secure his deposition testimony,  
6 is that correct?

7 MS. McPHERSON: What happened was when  
8 she --

9 MR. SATO: Is that correct, yes or no?

10 MS. McPHERSON: Can you ask it again?  
11 I'm sorry.

12 MR. SATO: Did she make an affirmative  
13 effort to try to secure Mr. Briggs' deposition  
14 testimony?

15 MS. McPHERSON: Only through inquiries  
16 to other people in the community. She may have  
17 received misinformation, perhaps. But from the  
18 April meeting all of the subpoenas had been  
19 quashed then, and they have been since. We have  
20 no subpoenas that have been accepted. So I think  
21 she had the impression that no matter what she  
22 might do with her limited knowledge of the  
23 process, it would not be successful.

24 MR. SATO: So the answer is no. Also,  
25 in terms of what kind of efforts did Ms. -- or did

1 Ms. McCombs ever make any efforts to contact any  
2 member of the prosecution team to talk about an  
3 alternative resolution of her proposed CDO?

4 MS. McPHERSON: I think she did, yes.

5 MR. SATO: And who did she contact?

6 MS. McPHERSON: I would believe it  
7 probably was Matt Thompson, but I couldn't -- I  
8 couldn't --

9 MR. SATO: You don't know?

10 MS. McPHERSON: I know that she talked  
11 to Sorrel Marks, maybe. I don't know. I know  
12 that she talked to somebody about that. She --

13 MR. SATO: When you say you know she  
14 talked to somebody, I mean it sounds like you  
15 don't know whether she talked to somebody.

16 MS. McPHERSON: No, I do know that she  
17 talked to somebody at the Water Board -- I'm  
18 sorry. Oh. I'm referring to Tim Rochte's because  
19 he did assist her and they both -- April 28th and  
20 in a meeting on August 24th I initiated along with  
21 fellow proposed CDO recipient, Ms. Laurie McCombs,  
22 with prosecution staff member Sorrel Marks and  
23 Allison -- she had a different last name then --  
24 Muholland (phonetic), and urge you and Mr. Briggs  
25 to consider measures other than CDOs on properties

1 in order to achieve the mutual goal of clean  
2 water.

3 And then she renewed that in a document.  
4 And she said, among other things, about the septic  
5 tank pumping and being a cooperative discharger,  
6 and that they wanted to find another way. But  
7 then she never was contacted about a settlement  
8 offer. Or able to negotiate that.

9 MR. SATO: I don't have any other  
10 questions.

11 CHAIRPERSON YOUNG: Okay. Any rebuttal  
12 testimony by the prosecution team?

13 MR. PACKARD: Yes, we do.

14 MR. THOMPSON: Yeah, just to clarify.  
15 Laurie McCombs lives at 1327 16th Street. This is  
16 where she lives. The prohibition zone boundary  
17 is, the closest boundary runs along South Bay  
18 Boulevard there. Basically that bold yellow line,  
19 and then it runs around here. So I think it  
20 demonstrates that she lives within the prohibition  
21 zone boundary.

22 That's all.

23 CHAIRPERSON YOUNG: No further rebuttal  
24 testimony? Okay. Ms. McPherson, any rebuttal  
25 testimony?



1 MS. McPHERSON: Well, just that the  
2 nearest well is that .8 mg/liter. So if we're  
3 relying on well data instead of site-specific, I  
4 would just want to point out that between that and  
5 the density issues of the Elfin Forest, which is  
6 an area that was slated for high-density condos  
7 that never happened, and never will, does break  
8 down that whole density issue. And that there  
9 isn't pollution in that area.

10 So I would think that that would help to  
11 at least paint a picture of what this individual  
12 discharger has going on in her neighborhood, or at  
13 least close to her property.

14 CHAIRPERSON YOUNG: Okay. Closing  
15 arguments. Ms. McPherson.

16 MS. McPHERSON: Well, I would say that  
17 Ms. McCombs is not polluting. She does not admit  
18 to any such charge. She wants to be considered  
19 innocent and have evidence to that effect put  
20 forth, rather than just assume that she's within  
21 a -- because she's living in a certain town that  
22 she's automatically individually responsible to  
23 build a treatment plant.

24 And would just ask that if a CDO is --

25 (Cellphone ringing.)

1                   CHAIRPERSON YOUNG:  Maybe that's Ms.  
2                   McCombs watching you on television and maybe  
3                   disagreeing with your testimony.

4                   MS. McPHERSON:  Maybe she wants -- yeah.  
5                   Maybe she needs to talk to you here.

6                   (Laughter.)

7                   MS. McPHERSON:  I lost my train of  
8                   thought, sorry.  The question is, is that if  
9                   you're going to rule and give her a CDO, she needs  
10                  to know what the worst case scenario is.  Because  
11                  she can't control what the County does.

12                  And also that because you're going to  
13                  issue these to 4700 others, that she would ask if  
14                  you do issue it that you hold it in abeyance and  
15                  not launch any of them until you can launch them  
16                  all at the same time so there's no advantage or  
17                  disadvantage.

18                  She realizes that if she were to sell  
19                  her property, and the property next door was up  
20                  for sale, that there would be a real problem with  
21                  her getting the same price as the property next  
22                  door without a CDO.  She is aware of the banks  
23                  that have said that there is a problem getting  
24                  equity loans with the same value as a house  
25                  without a CDO.

1           So I think if you could take that into  
2           consideration and maybe launch these all at the  
3           same time, that that would be equitable.

4           CHAIRPERSON YOUNG: Okay. Mr. Sato,  
5           closing arguments.

6           MR. PACKARD: The evidence and testimony  
7           that you've heard today makes it clear that Ms.  
8           McCombs does live within the prohibition zone; she  
9           is discharging in violation of the basin plan; and  
10          we recommend you adopt the amended cease and  
11          desist order.

12          MR. SATO: And just one other comment is  
13          that listening to Ms. McPherson's closing  
14          statement, I mean there's really no effort on the  
15          part of the prosecution team to make any  
16          individual build a sewage treatment facility.

17          What we are trying to do is get people  
18          to comply with the prohibition zone. How they  
19          comply with the prohibition zone is up to them.

20          CHAIRPERSON YOUNG: Okay. All right,  
21          the matter is submitted. Board comments?

22          BOARD MEMBER PRESS: Mr. Chair.

23          CHAIRPERSON YOUNG: Yes, Dr. Press.

24          BOARD MEMBER PRESS: This is speaking to  
25          the issue of individual CDOs, and I've said this

1 before, and I'll just say it again. I feel like  
2 the Board actually has fewer options than the  
3 designated parties seem to think.

4 After 23 years it's entirely possible  
5 and reasonable for a Board to wonder how quickly  
6 progress would be made. I think that's a fairly  
7 mild statement.

8 And so, as a Board Member, my confidence  
9 about a sewage treatment plant happening along the  
10 same timelines, sort of quickly and with a kind  
11 of --

12 CHAIRPERSON YOUNG: Determination.

13 BOARD MEMBER PRESS: -- yeah, is not  
14 high. And so that's why I feel like I have few  
15 options here to hold the dischargers accountable  
16 to the public benefit that I am sworn to protect.  
17 How do I -- so to put it in starker, less genteel  
18 terms, if the individuals are not held  
19 responsible, and if it's entirely possible that  
20 the County or the CSD or some as yet unknown  
21 entity doesn't succeed, how do I -- what -- how do  
22 I go back to the public, to the citizens of  
23 California and say who's accountable, who ought to  
24 we hold responsible for this.

25 That's my fundamental bedrock problem.

1 And I don't especially like, you know, just to put  
2 it on the record, I don't like voting for  
3 individual CDOs. This is not something that I, as  
4 a matter of philosophy, this is where I'd like to  
5 go.

6 I echo Mr. Shallcross' sentiment, that  
7 this is not the greatest form of water policy. It  
8 really isn't. But I just see so few and such  
9 lousy options that this is what we've been left  
10 with.

11 CHAIRPERSON YOUNG: Any other Board  
12 comments?

13 Okay. There was a question posed by Ms.  
14 McPherson about Ms. McCombs would like to know  
15 what is the maximum potential downside for this  
16 CDO. I think you just need to read the CDO, and  
17 it's quite apparent. Any potential penalty,  
18 dollar penalty, has to be determined by the Board.  
19 So there's no way to tell at this point. You can  
20 read the statutes and see what they require in  
21 following what the CDO says.

22 But eventually, if it should come to  
23 that, there would be another hearing. And this  
24 Board would sit here having that discussion,  
25 what's the appropriate dollar amount. I don't

1 know. And they're not going to be able to tell  
2 you. No one is.

3 I mean you can read through the CDO and  
4 the mandates of it, and you can come up with all  
5 kinds of scenarios. And we have done that in our  
6 deliberations. And we're just going to have to  
7 see what happens with this. Hopefully the  
8 community will finally come together and get  
9 something that, you know, a majority of them can  
10 agree upon.

11 Anyway, do I have a motion?

12 BOARD MEMBER SHALLCROSS: Yeah, based on  
13 the evidence that we've heard, I move the adoption  
14 of the CDO.

15 BOARD MEMBER PRESS: Second.

16 CHAIRPERSON YOUNG: Okay. Second. And  
17 I guess before we vote, --

18 MS. McPHERSON: Is that as amended?

19 BOARD MEMBER SHALLCROSS: Oh, yeah.

20 CHAIRPERSON YOUNG: Yes, it's amended  
21 like the others --

22 (Parties speaking simultaneously.)

23 BOARD MEMBER SHALLCROSS: Yeah, I think  
24 we indicated earlier that they all -- as amended,  
25 if we issued any further ones.

1 CHAIRPERSON YOUNG: And I do have --

2 MR. RICHARDS: That was the  
3 recommendation of the prosecution team.

4 CHAIRPERSON YOUNG: Right.

5 BOARD MEMBER SHALLCROSS: Right.

6 CHAIRPERSON YOUNG: And I want to  
7 acknowledge the concern that people are all  
8 treated the same, you know. I don't know what the  
9 prosecution team has in store for the remaining  
10 people, but I hope that whatever road you take  
11 that we can try to get everybody, you know, in the  
12 same status as soon as possible. You know,  
13 however we're going to do that.

14 So, you don't have to give me an answer  
15 to that. I'm not asking for one. It's just a  
16 statement.

17 Okay, we have a motion and a second.

18 All those in favor?

19 (Ayes.)

20 CHAIRPERSON YOUNG: Any opposed? Okay,  
21 motion carries. Thank you.

22 Mr. Payne.

23 BOARD MEMBER SHALLCROSS: And while he's  
24 coming up I had something I wanted to ask staff.

25 CHAIRPERSON YOUNG: Go ahead.

1                   BOARD MEMBER SHALLCROSS: I think it was  
2 Ms. 23 or 34, I can't remember -- 34, Ms. 1034.  
3 In her presentation we saw that house that was  
4 built next door. And, boy, it looked like a  
5 violation to me. And if staff could look into  
6 that, I'd appreciate it, and give us a report  
7 back.

8                   CHAIRPERSON YOUNG: Yeah, I would echo  
9 that. I would just like to know what's going on.

10                  MR. PACKARD: I would appreciate hearing  
11 from Ms. 1034 the name and address of that  
12 property so we can look into that.

13                  CHAIRPERSON YOUNG: Okay, you can take  
14 care of that after this meeting. But I would like  
15 that to come back on the EOS report at the next  
16 Board meeting.

17                  BOARD MEMBER SHALLCROSS: And I think we  
18 should direct that to Mr. Thomas at this point,  
19 not the prosecution.

20                  CHAIRPERSON YOUNG: You're right. Okay.  
21 Mr. Payne, you're up. And you can, first what's  
22 going to happen is the prosecution team is going  
23 to do its case; you can sit down over here if you  
24 want or you can stand up there the whole time,  
25 it's up to you. Want to stand up there?



1                   MR. PAYNE: I'll stand. My wife is my  
2 partner in this, and she'll be at the other  
3 speaker.

4                   CHAIRPERSON YOUNG: Okay. All right.  
5 Let's see, this is case 1000. All right, Mr.  
6 Packard.

7                   MR. PACKARD: Mr. Thompson.

8                   MR. THOMPSON: Yeah, thanks, Harvey.  
9 Again, this is a map of the prohibition zone.  
10 Bruce and Antoinette Payne live at 1061 Green Oaks  
11 Drive. I think Mr. Allebe testified earlier that  
12 they're next-door-neighbors, or they live close  
13 by.

14                   But this is the location of Bruce  
15 Payne's property within the prohibition zone  
16 boundaries. And Mr. Payne has not submitted any  
17 evidence that he does not have a septic system  
18 discharge.

19                   That's all for now.

20                   CHAIRPERSON YOUNG: Okay. Let me -- we  
21 do have -- okay, letters from Mr. Payne. All  
22 right, Mr. and Mrs. Payne, any cross-examination  
23 of the prosecution team witnesses? Do you want to  
24 ask some questions about their testimony?

25                   MRS. PAYNE: Bruce does.

1                   CHAIRPERSON YOUNG: Okay.

2                   MR. PAYNE: In reference to the map on  
3 the wall there, I'd like everybody to take a look  
4 at the far north there, a little square block that  
5 has a 52 in it. That particular well has  
6 consistently tested not ever higher than 30, and  
7 between 20 and 30 since 1983, which is the  
8 earliest tests I've got.

9                   Also on the same -- well, the October  
10 paper that I --

11                  MR. RICHARDS: Mr. Payne.

12                  MR. PAYNE: Pardon me?

13                  MR. RICHARDS: Are you going to ask the  
14 prosecution staff questions? You will have an  
15 opportunity to present your testimony later. Now  
16 is your time to cross-examine the prosecution  
17 staff regarding the testimony they have made.

18                  MR. PAYNE: Did you know -- anybody on  
19 the prosecution staff, do you know that that well  
20 tested consistently as April and also as late as  
21 November, the next month that was taken, never  
22 tested more than 30 and has been consistently  
23 between 20 and 30 since 1983? Do you know that?

24                  MR. THOMPSON: This map was provided by  
25 the CSD. We do have the long-term history of

1       nitrate concentrations for all these wells. We  
2       are aware of the long-term history.

3               MR. PAYNE: The things I wanted to bring  
4       out on this is that the prosecution team has  
5       deliberately chosen a map that has a very high  
6       concentration of nitrates and the sheet that for  
7       all those wells had asterisks behind that and  
8       behind several other wells that said there's new  
9       forms of nitrate been found.

10              CHAIRPERSON YOUNG: Okay, Mr. Payne,  
11       you're going to have 15 minutes to go ahead and  
12       testify, --

13              MR. PAYNE: Okay.

14              CHAIRPERSON YOUNG: -- but right now  
15       just keep it to questions you want to ask of them.

16              MR. PAYNE: Has anybody on the  
17       prosecution team checked to see whether I have a  
18       permitted gray water disposal line? And would you  
19       know whether I'm dumping my port-a-potty in the  
20       legal place to dump port-a-potties? A dump  
21       station, as they're called. People with, other  
22       people with SUV --

23              MR. PACKARD: Mr. Payne, your submittal  
24       to us mentions that you do have a septic tank and  
25       that it's been recently pumped.

1                   MR. PAYNE: Oh, there's one on the  
2 property, yes, sir. And we are in compliance. We  
3 had that pumped. It was pumped; actually when  
4 this process started, it had been pumped within  
5 three years at that time. And we had it pumped  
6 again, so it's now been pumped twice in six years.  
7 But it is on the property and that's why you have  
8 that in your --

9                   CHAIRPERSON YOUNG: Okay, but what is  
10 your question for them?

11                   MR. PAYNE: I asked them if any of them  
12 knew whether I had a permitted gray water and  
13 wasn't dumping anything in my septic tank.

14                   CHAIRPERSON YOUNG: Okay.

15                   MR. THOMPSON: Okay. No, we don't know  
16 if you have a gray water system.

17                   MR. PAYNE: So basically my guilt or  
18 innocence is based on an assumption, same as  
19 everybody else?

20                   MR. THOMPSON: Well, I would argue that  
21 if you got a gray water system, that's also -- and  
22 you're discharging, that's also a discharge of  
23 waste.

24                   MR. PAYNE: If I had a permit for that,  
25 it's discharge, huh?

1           MR. PACKARD:  If you have a gray water  
2           system that goes to, to me it means you also have  
3           a black water system.

4           MR. PAYNE:  Okay.  What if the discharge  
5           pipe from my septic tank was about six feet from  
6           the borderline to the moratorium zone, and it  
7           actually dumped outside the moratorium zone?

8           MR. SATO:  Let me just --

9           MR. PAYNE:  -- discharging, right?

10          MR. SATO:  Let me just object to the  
11          question that I can't tell whether Mr. Payne is  
12          asking a hypothetical or whether he is making some  
13          kind of factual statement and then asking a  
14          question about that set of facts that applies to  
15          his property.

16          CHAIRPERSON YOUNG:  See, the difficulty,  
17          Mr. Payne, is you're asking him a hypothetical  
18          question, but --

19          MR. PAYNE:  I thought it was quite well  
20          spent.  If I'm that close to the moratorium zone,  
21          do they know that my discharge doesn't go outside  
22          the moratorium zone.

23          MRS. PAYNE:  I'll just restate that  
24          because our property does -- I'll restate that if  
25          I may because we're working together.

1 CHAIRPERSON YOUNG: Okay.

2 MRS. PAYNE: Okay.

3 MR. PAYNE: Don't incriminate us.

4 MRS. PAYNE: I won't.

5 (Laughter.)

6 MRS. PAYNE: What I'm saying is that --

7 CHAIRPERSON YOUNG: And your name,  
8 please, is?

9 MRS. PAYNE: I'm Antoinette Payne.

10 CHAIRPERSON YOUNG: Okay.

11 MRS. PAYNE: And our property does back  
12 up to -- our property is right on the line of the  
13 prohibition zone, meaning the properties in back  
14 of us are not in the prohibition zone.

15 So his question is saying that in the  
16 event that he runs a pipe from our house outside  
17 the prohibition zone, would he be polluting.

18 MR. PAYNE: That's hypothetical.

19 (Laughter.)

20 CHAIRPERSON YOUNG: Yeah.

21 MR. PAYNE: They can't answer that;  
22 that's hypothetical.

23 CHAIRPERSON YOUNG: Okay.

24 MR. PAYNE: The pipe could already be  
25 there; they don't know whether it is or not.

1 CHAIRPERSON YOUNG: Well, they don't.

2 MR. PAYNE: That's right, so I'm being  
3 charged as a discharger inside the moratorium --

4 CHAIRPERSON YOUNG: But, it's --

5 MR. PAYNE: -- zone, and they have no  
6 proof.

7 CHAIRPERSON YOUNG: Well, the facts that  
8 are the basis for the hypothetical question are  
9 not in evidence.

10 MR. PAYNE: I just made it evidence.  
11 It's a hypothetical question in evidence. I said  
12 it in the microphone.

13 CHAIRPERSON YOUNG: Okay. All right.  
14 Any other questions for them, Mr. or Mrs. Payne?

15 MR. PAYNE: No, only before I forget it,  
16 on these CDOs that are being issued now, they will  
17 be held, I'm assuming and I want to know this,  
18 this is hypothetical, also, I guess -- will they  
19 be held in abeyance until all 4000-some-odd-  
20 hundred dischargers are CDO'd?

21 CHAIRPERSON YOUNG: Well, you're asking  
22 questions of the prosecution team.

23 MR. PAYNE: Yeah.

24 CHAIRPERSON YOUNG: You can direct that  
25 to Mr. Sato if you want.

1                   MR. PAYNE: Anybody who wants to answer  
2 it.

3                   MR. SATO: I have no understanding at  
4 this point in time that they will be held in  
5 abeyance.

6                   MR. PAYNE: Could you repeat that a  
7 little slower? I listen with a draw.

8                   MR. SATO: I have no understanding at  
9 this time that they will be held in abeyance.

10                  MR. PAYNE: Okay. This is more to the  
11 prejudice that's taking place in this hearing. I  
12 want it to be noted.

13                  CHAIRPERSON YOUNG: You'll be able to  
14 make that statement when you give us your closing  
15 argument, or when you put on your case. And you  
16 have 15 minutes to tell us anything you want.

17                  Any other questions for the prosecution  
18 team right now?

19                  MR. PAYNE: No. I'd like my wife to  
20 read a little something she has printed up, and  
21 then I'll come back to what I have.

22                  CHAIRPERSON YOUNG: Well, before we do  
23 that, because that will -- if she wants to read  
24 something she can do. But we're going to go in  
25 procedure here, all right? Let me get my --



1                   Okay, so what we'll do is we'll start  
2                   the 15 minutes, Mr. and Mrs. Payne. I don't care  
3                   how you divide it up; if you want to bring  
4                   witnesses on, you want to read something, he wants  
5                   to read something. I'm going to start the clock  
6                   as soon as you start speaking.

7                   MS. McPHERSON: Before you start the  
8                   clock we need to have the screen.

9                   CHAIRPERSON YOUNG: I can't hear you,  
10                  Ms. --

11                  MR. PAYNE: The mike isn't turned on  
12                  evidently.

13                  MS. McPHERSON: Well, that's not -- we  
14                  need to use the screen, so --

15                  BOARD MEMBER SHALLCROSS: They want to  
16                  use the screen. Can you remove what's on the  
17                  screen?

18                  (Pause.)

19                  MRS. PAYNE: I'm just going to take a  
20                  minute of our time and just let you know who we  
21                  are.

22                  CHAIRPERSON YOUNG: Okay.

23                  MRS. PAYNE: I just assume that all the  
24                  people on the Board, as well as the prosecution  
25                  team, are just very happy that they didn't decide

1 that Los Osos would be a great place to live. We  
2 did.

3 I have lived in Los Osos since 1988. I  
4 moved there with my daughter when she was seven.  
5 She went to Sunnyside and I got my real estate  
6 license. In 1985 I met Bruce, and when I lived on  
7 Bush Drive by the community park.

8 In 2003 we bought the home we have now  
9 on Green Oaks Drive. And in 2004 we got married  
10 at the Little Orthodox Church that was on 10th  
11 Street, and then had a party at our house.

12 We had the tank pumped and inspected  
13 when we bought the home in 2003. And then  
14 recently in September of this year.

15 Bruce's kids are grown, and my daughter  
16 is 25 now, living in San Francisco. We just live  
17 there alone, the two of us. Bruce is retired and  
18 I'm still selling real estate countywide.

19 Bruce has been very involved in the Los  
20 Osos sewer issues. He has a strong sense of right  
21 and wrong and can't stand to see people taken  
22 advantage of if he can help it. He believes with  
23 his whole heart that the costs, location and  
24 technology of the sewer that was in place with the  
25 old CSD is wrong.

1           I am of the mind that we need to come to  
2 a compromise with regard to location; find a more  
3 ecologically sustainable system; and incur the  
4 expense that it will take. Mostly we need to get  
5 rid of the prohibition zone and have everyone in  
6 town chip in.

7           A month ago, or several months ago now,  
8 because I wrote this awhile back, Bruce was  
9 changing the spark plugs in his truck so he could  
10 pass smog when suddenly he went blind in one eye.  
11 the ophthalmologist said that stress could be a  
12 leading factor for this happening. He has been  
13 under a lot of stress, researching and everything  
14 for the defense for the CDO.

15           And I'd just like to just let you know  
16 that that's who we are. We've done nothing wrong.  
17 We just happen to live in Los Osos. We think Los  
18 Osos is a great place to live. And it's very hard  
19 to be in this position.

20           I'd also like to say, as Gail said, that  
21 even in selling real estate, I know that having a  
22 CDO on my property prohibits me from selling my  
23 property if I want to. We have plans. We want to  
24 be doing something else. And what that does is it  
25 creates an unfair economic advantage to other

1 people in town who did not have a CDO on their  
2 property. And according to the Water Code I  
3 understand that you're not supposed to create an  
4 unfair economic advantage.

5 So, that's my part of the presentation,  
6 and I'm going to give this to Bruce.

7 MR. PAYNE: Okay, how much time do I  
8 have left?

9 CHAIRPERSON YOUNG: Twelve minutes.

10 MR. PAYNE: Okay. First off, I'd like  
11 to read a little bit of law. Federal Clean Water  
12 Act section 603(d) bars the State Water Board from  
13 loaning state revolving fund money to any agency  
14 unless the agency has an established and dedicated  
15 source of revenue to repay the loan.

16 This section states types of assistance,  
17 except as otherwise limited by the state, are  
18 water pollution control revolving fund of the  
19 state under this section, may be used only to make  
20 loans on the condition that the receipt of the  
21 loan will establish a dedicated source of revenue  
22 for the repayment of the loan.

23 US Code Title 33, section 1383 (d) and  
24 the State Water Code section 13408 both state  
25 exactly the same rule that the State Water Board

1 has authority to loan the state revolving funds  
2 only when the borrower has a dedicated source of  
3 revenue to repay the loan.

4 And it's been stated in this same  
5 lawsuit several times, and by attorney Seitz,  
6 unless an assessment district or special tax  
7 district is created pursuant to the provisions of  
8 218, the district has no ability to exact or  
9 collect rates and charges for services that are  
10 not available.

11 So, somebody, I believe it was Mr.  
12 Jeffries, said this is not political. I disagree  
13 that this is not a political hearing. Number one,  
14 Mr. Young quoted, and I quote, said right out very  
15 bluntly at some other meetings on this CDO  
16 hearings that his goal was to change the political  
17 will of this community.

18 Another thing he said about CDOs was  
19 just because they've never been given before is no  
20 reason they shouldn't be given now. And in my  
21 opinion the reason they haven't been given before  
22 is because they're either illegal or immoral or  
23 indiscretionate or just not right. There's  
24 another term, in-something that I can't remember.

25 One of the things that I feel is this

1 has nothing to do with clean water because, as Mr.  
2 Cleath from the water company said, it'll take 30  
3 years before we see any reduction in nitrates.

4 As far as septic tank use is concerned,  
5 Santa Cruz County -- you're well aware that they  
6 have a septic tank management program and I would  
7 hope that you're well aware of say Boulder Creek  
8 where there's house on top of other house with  
9 flag lots and what-have-you, on very steep ground.  
10 With very shallow surface soil. Right above the  
11 San Lorenzo River, which is part of Santa Cruz  
12 City's drinking water supply.

13 We would like to have a similar septic  
14 tank management program. It should have been  
15 instilled; I believe there was something about  
16 that in 8312 that we should instill a water  
17 conservation and septic tank management program.  
18 Was that 8312 before 8313?

19 Another thing that I'd like to say, as  
20 far as this being a political action is concerned,  
21 this is very transparent government action. It's  
22 very transparent that you're setting us up to have  
23 a hammer to drop on our heads if we don't vote yes  
24 on a 218 vote for anything the County projects.  
25 And we cannot vote for something that's going to

1 put us in debt 160-million-plus, which is what the  
2 project we stopped was.

3 I'm sorry Mr. Jeffries wasn't able to  
4 stop the Salinas project; he ran on stopping it.  
5 Our board felt that we had a definite right and  
6 that the loan was illegal, which I just read you  
7 the law. And it should never have been given.  
8 Everything that's been done to this community  
9 since the recall signatures were certified has  
10 been to force us to put that miserable Tri-W  
11 Montgomery-Watson mess, which creates three major  
12 problems that don't exist now, to solve a problem  
13 that may or may not exist; that won't make any  
14 difference for 30 years; and we're going to spend  
15 \$100 million to find -- \$200 million to find that  
16 out?

17 I think that's unreasonable and whatever  
18 was attempt at fining people into voting the way  
19 you think they ought to vote on a 218 vote is  
20 concerned, I recommend that we fight that a  
21 hundred percent.

22 As far as this solution that you have, I  
23 forget what you call it, this thing you wanted  
24 people to sign so that they wouldn't get a CDO.  
25 The way I read that the only thing it says about

1 not getting a CDO is that you'll give a CDO to my  
2 neighbors, and myself and whoever else doesn't  
3 sign that thing, before I get one. But that  
4 doesn't say any -- there's no guarantee that the  
5 people who sign that won't get a CDO. So I think  
6 they want to look very seriously at something  
7 before they write it.

8 And anybody can correct me if they can  
9 show me the wording that says that people who sign  
10 that aren't going to get a CDO.

11 I got other things here. I think the  
12 County should be a designated party. They are the  
13 people who gave those permits. And although you  
14 don't want to hear any history, I feel very  
15 strongly that those who ignore history are doomed  
16 to repeat it.

17 And the fact is that one of those  
18 permits the County gave had water standing on the  
19 surface when they gave the permit. They dug the  
20 trenches to put the footer in and they had to pump  
21 the water out of them before they poured the  
22 cement.

23 They put the septic tank in full of  
24 water, and it still floated. They had to put  
25 rocks in it to sink it into the hole. This is



1 totally unacceptable by any standards of  
2 leachfield permitting.

3           And then on top of it we had a lot of  
4 75-foot lots; this thing was -- the whole place  
5 was cut up in 75-foot lots. But there are some in  
6 Cuesta-by-the-Sea where they split them in half  
7 and made 37.5-foot lots. The County permitted  
8 septic tanks with leachfields on 37.5-foot lots.  
9 Which I think the County should be responsible for  
10 picking up all of that leachate and taking it  
11 outside of town to process it.

12           We have a good plan. Ripley's designed  
13 something for us. It's about half the cost of  
14 Montgomery-Watson's nightmare, that solves the  
15 problem of discharges and it does it economically  
16 and efficiently.

17           We are setting up an ag exchange; Mr.  
18 Hayashi might be interested in that. One of the  
19 things that we decided for sure is a pound of  
20 nitrogen in the water is a pound of nitrogen the  
21 farmer doesn't have to buy. This is also a pound  
22 of nitrogen that he has bought that won't be  
23 settling into the groundwater.

24           How am I doing on time?

25           CHAIRPERSON YOUNG: You have four

1 minutes.

2 MR. PAYNE: Four minutes. I would like  
3 to say I have contributed numerous pages of data  
4 concerning the nitrates in groundwater things,  
5 such as a Black and Veatch study; and also Wade  
6 Brim's evaluations of wells.

7 I don't know if any of you read Wade  
8 Brim's, or whatever you call, history, but he  
9 worked for the Water Board many many years, maybe  
10 longer than some of you have been. And he went to  
11 retire in Los Osos, and got stuck or excited, or  
12 whatever. He tried to solve this problem. And I  
13 couldn't contact him for a witness. I believe  
14 he's passed on.

15 CHAIRPERSON YOUNG: Mr. Payne, I just  
16 want to ask you a question. I've stopped your  
17 clock.

18 MR. PAYNE: Sure.

19 CHAIRPERSON YOUNG: Would you be willing  
20 to sign the settlement agreement if you knew that  
21 the cease and desist order was not going to be  
22 issued?

23 MR. PAYNE: Is there a guarantee in  
24 that?

25 CHAIRPERSON YOUNG: I think that there

1 is a guarantee that if you sign the settlement  
2 agreement you would not be issued a cease and  
3 desist order.

4 MR. PAYNE: I think the way I read it,  
5 it said my neighbors and myself who didn't sign  
6 it, would be the last ones to get a cease and  
7 desist order. But that my neighbors who didn't  
8 sign it -- I'm sorry, it says that the people who  
9 signed it will not be issued a CDO first. But  
10 they were not guaranteed not to get a CDO.

11 CHAIRPERSON YOUNG: That's --

12 MRS. PAYNE: Can I ask a question?

13 CHAIRPERSON YOUNG: Yes.

14 MRS. PAYNE: Is the settlement agreement  
15 an abatement order, so it's almost the same as a  
16 cease and desist order?

17 CHAIRPERSON YOUNG: It's very similar,  
18 but it's not a cease and desist order. But  
19 really, to be --

20 MRS. PAYNE: But it's a cleanup and  
21 abatement order?

22 CHAIRPERSON YOUNG: It has portions --  
23 well, maybe Mr. Sato can address what it has in  
24 it. One is substituting the other, so there  
25 wouldn't be a cease and desist order issued,

1       there'd be a settlement of that.  But, the Board  
2       is not going to issue a cease and desist order if  
3       someone has signed the settlement agreement.

4               MR. PAYNE:  They're not?

5               CHAIRPERSON YOUNG:  No.

6               MR. PAYNE:  Sounded to me like it was a  
7       hypothetical question when you started out.

8               CHAIRPERSON YOUNG:  Not at all.

9               MR. PAYNE:  I read that agreement.

10              CHAIRPERSON YOUNG:  I'm telling you, Mr.  
11       Payne, this Board is not going to issue you a  
12       cease and desist order if you agree to the  
13       settlement.

14              MRS. PAYNE:  Can I ask what the  
15       consequences are of the settlement?

16              MR. RICHARDS:  The consequences of the  
17       settlement are that -- and Mr. Sato will explain  
18       for fully, since it's the settlement that he has  
19       negotiated with parties -- but the settlement  
20       provides the Regional Board with an enforceable  
21       agreement between it and the settling parties, by  
22       which the settling parties promise to do certain  
23       things by certain times.

24              MRS. PAYNE:  Right.  But in the event  
25       those things cannot be --

1                   MR. RICHARDS:  And they subject  
2 themselves --

3                   MRS. PAYNE:  -- attained, though, --

4                   MR. RICHARDS:  And they subject  
5 themselves to the possibility of certain  
6 enforcement consequences.  The enforcement  
7 consequences are based on the enforcement  
8 provisions applicable to cleanup and abatement  
9 orders rather than those applicable to cease and  
10 desist orders.

11                   Except for the fact that the minimum  
12 liability imposed on persons who violate cleanup  
13 and abatement orders has been waived in that  
14 context.

15                   The consequences of violation,  
16 therefore, of violating a cease and desist order  
17 and violating the agreement are essentially  
18 similar.

19                   MRS. PAYNE:  So in the event that the  
20 timelines cannot be met, because that's really the  
21 concern, that you're suggesting that people hook  
22 up to a sewer before a sewer may be available, so  
23 in the event that we sign the settlement and we  
24 cannot hook up to a sewer because there isn't a  
25 sewer available, then we have the option of either

1       vacating our property or incurring fines. Is that  
2       accurate?

3               CHAIRPERSON YOUNG: No, it depends on  
4       whether there's been an assessment benefit put  
5       into effect; and there is progress towards a  
6       project. The only thing that would trip that 2011  
7       deadline, if I'm not mistaken, would be if there  
8       is a material cessation in the progress of getting  
9       the sewer built.

10              MRS. PAYNE: As there was before.  
11       They're trying to prevent a stoppage of a project.

12              CHAIRPERSON YOUNG: Any material  
13       cessation is the word that's used. It's broad and  
14       flexible for that purpose. Some Board Members  
15       have thought maybe there should be very definite  
16       described timelines put in with a foundation put  
17       in, things of that nature. But that -- I like the  
18       concept that it's flexible and broad that way.  
19       Could be anything.

20              MRS. PAYNE: Now, the people that you've  
21       already voted to give CDOs to --

22              CHAIRPERSON YOUNG: That's past.

23              MRS. PAYNE: So they are not available  
24       to settle at this point?

25              CHAIRPERSON YOUNG: They haven't

1 settled; and the orders have been issued.

2 MRS. PAYNE: I see. So basically Bruce  
3 and I are on the line right now --

4 CHAIRPERSON YOUNG: Well, you're right  
5 on the cusp. I just picked up what he was saying.  
6 I'm giving you an opportunity. You're very  
7 concerned about the possible detrimental effect of  
8 the CDO on your property. And I'm just saying  
9 that there is an option that the prosecution team  
10 is attempting to make available.

11 MR. SATO: Can I say something, too?

12 CHAIRPERSON YOUNG: Yes, go ahead.

13 MR. SATO: I can just say that in every  
14 settlement proposal we have received back from any  
15 potential settler, they have also included a  
16 enforcement mechanism for violations of the  
17 agreement.

18 And in only the ones that I have seen so  
19 far those proposals have included the ability to  
20 have the agreement enforced under section 13350.  
21 And so that whether you call it a cleanup and  
22 abatement order, whether you call it a time  
23 schedule order, whether you call it a cease and  
24 desist order, all of those have the same penalty  
25 provisions available.

1           MR. PAYNE: Okay, since he mentioned  
2 that last term there, TSO, we had a discussion at  
3 the golf course meeting; and as far as I'm  
4 concerned, that 2010 figure is what it was then,  
5 that's the same as a time study order. And I  
6 mentioned that at the time.

7           I see now that they've negotiated up one  
8 year, to 2011, January 1, 2011. And this is the  
9 same kind of stuff that's been going on with the  
10 time study order since before -- well, in the  
11 '80s. There were time study orders in the '80s  
12 for the County. And again, and again, and again  
13 they were moved up.

14           We inherited the TSA-9 or whatever they  
15 were called, time study order. And every time we  
16 asked for an extension we got one year. Morro Bay  
17 asked for an extension of their ocean outfall and  
18 they got what, eight, ten years.

19           I would say if you want me to sign an  
20 agreement to quit trying to defend myself, I would  
21 suggest put in that agreement that we have till  
22 2015 with no further enforcement action until  
23 2015. And also take out the thing that says we  
24 have no -- we give up our right to a hearing.

25           CHAIRPERSON YOUNG: Mr. Payne, I'm not



1       trying to force you into anything. I'm trying to  
2       respond to your wife's testimony about the effect  
3       of the cease and desist order --

4               MR. PAYNE: Yeah, we --

5               CHAIRPERSON YOUNG: -- to let you know  
6       that there is an alternative to a potential  
7       detrimental effect of that. You don't have to  
8       take it, okay? We'll go ahead. We've got a few  
9       minutes left. You would have to work out those  
10      terms with Mr. Sato anyway, if you had something  
11      else in mind. And we're really past that at this  
12      point.

13              MR. PAYNE: Oh, we're already past the  
14      negotiations, so --

15              MR. SATO: Well, let me just say also  
16      that he is represented by counsel on settlement  
17      issues, so I, in fact, cannot work it out with him  
18      directly.

19              CHAIRPERSON YOUNG: Are you represented  
20      by Ms. Sullivan?

21              MR. PAYNE: Only for that --

22              CHAIRPERSON YOUNG: For the settlement  
23      agreement?

24              MR. PAYNE: -- lawsuit that got thrown  
25      out just recently about --

1 CHAIRPERSON YOUNG: Okay, --

2 MR. PAYNE: I was looking at the  
3 settlement she was negotiating, yes.

4 CHAIRPERSON YOUNG: Okay.

5 MR. PAYNE: I will look at any decent  
6 and negotiate. But to just --

7 CHAIRPERSON YOUNG: Okay, let's do this.  
8 You've got --

9 MR. PAYNE: -- push up a TSO one year  
10 and say we're giving you a big deal, no thanks.

11 CHAIRPERSON YOUNG: You've got three  
12 minutes left on your presentation.

13 MR. PAYNE: Oh, okay. On page 3 of this  
14 revised settlement option it says the Water Board  
15 determines there's a material cessation of the AB-  
16 2701 process, then the revised settlement option  
17 would require you to cease discharges within two  
18 years after the cessation. What kind of a time  
19 study order is that? And that's right in the  
20 settlement agreement option.

21 I still say, and just as you said a  
22 minute or two ago, you're not trying to get me to  
23 agree to any kind of a settlement; you're just  
24 telling me that you're going to slap a CDO on me  
25 if I don't agree to a settlement. I think that's

1 pretty much saying that you're trying to get me to  
2 sign one.

3 CHAIRPERSON YOUNG: I'm telling you that  
4 the Board will consider issuing the proposed cease  
5 and desist order if you haven't already settled.  
6 So, you've got two minutes left.

7 MR. PAYNE: Okay, 15 minutes. I spent  
8 three minutes at a time for several years speaking  
9 to the old CS Board that we finally had to recall  
10 because they wouldn't listen to what we had to  
11 say.

12 And they were able to pick a date 90  
13 days out from when the election was to have  
14 themselves recalled. This gave the state the time  
15 to make, fund an illegal loan, to force us into  
16 doing a project because they thought they'd have  
17 us so far into debt we wouldn't be able to stop  
18 it.

19 And this is what this whole thing is  
20 about, is Montgomery-Watson's miserable project,  
21 outrageously expensive. I doubt if anyplace in  
22 this whole district that you go over has a higher  
23 price per capita for a wastewater treatment system  
24 that's an experiment, by the way. American Canyon  
25 hasn't been in operation long enough to be more

1 than an experiment. I'm talking about over seven  
2 years, which they were trying to tell us, those  
3 builders would last seven years; and they cost a  
4 half-million dollars.

5 After we threw the thing out we find  
6 out, no, no, we were quoting three to five years.  
7 The point being, it's an experimental process and  
8 it's way too expensive for 4700 people to pay for.

9 Is my time up yet?

10 CHAIRPERSON YOUNG: You have 15 seconds.

11 MR. PAYNE: I wish I had time to mount a  
12 campaign to get you all recalled because you're  
13 going to vote me a CDO and I don't want one.

14 My wife has a final word on whether we  
15 accept anything or not, so go for it.

16 (Laughter.)

17 MRS. PAYNE: I just would like to ask if  
18 you could guarantee that there's no prosecution if  
19 I give you my proxy vote for the 218.

20 CHAIRPERSON YOUNG: We can't do that at  
21 all. We can accept the settlement agreement, but  
22 to start accepting your proxy vote, obviously that  
23 vote, I think, has to pass by what, 66 percent or  
24 something like that, a two-thirds vote?

25 MRS. PAYNE: Right, but you're saying

1 I'm responsible, I'm responsible. My  
2 responsibility I give to you, you know, I want it  
3 to happen.

4 CHAIRPERSON YOUNG: Unfortunately,  
5 everyone will be in the same boat. Those that  
6 vote for it and those that don't vote for it. And  
7 I don't know how else to, you know, to split the  
8 baby on that.

9 MRS. PAYNE: I know, and I know he just  
10 told me that it's up to me to settle --

11 CHAIRPERSON YOUNG: It's up to you.

12 MRS. PAYNE: Yeah, I know he just said  
13 that.

14 CHAIRPERSON YOUNG: Well, --

15 MRS. PAYNE: So I need to confer with  
16 him.

17 CHAIRPERSON YOUNG: Okay, well, if you  
18 don't -- what we have now is --

19 BOARD MEMBER PRESS: Mr. Chair, if I  
20 may?

21 CHAIRPERSON YOUNG: Yes.

22 BOARD MEMBER PRESS: It's time for a  
23 break.

24 CHAIRPERSON YOUNG: Well, you know, --

25 BOARD MEMBER PRESS: It's time for --

1 maybe it's time for --

2 CHAIRPERSON YOUNG: Mr. Hayashi, you  
3 have to leave at 6:00?

4 BOARD MEMBER PRESS: Just a few minutes.

5 CHAIRPERSON YOUNG: Okay.

6 BOARD MEMBER SHALLCROSS: We're not  
7 going to get to the --

8 CHAIRPERSON YOUNG: Well, Mr. Rochte is  
9 waiting.

10 BOARD MEMBER PRESS: He said take your  
11 time.

12 (Laughter.)

13 CHAIRPERSON YOUNG: No, he didn't. Did  
14 you?

15 MR. ROCHTE: My wife says, though, no.

16 CHAIRPERSON YOUNG: Yeah.

17 (Laughter.)

18 BOARD MEMBER SHALLCROSS: Well, you  
19 noticed he's over there and he's over here.

20 CHAIRPERSON YOUNG: Yeah. What does  
21 this mean, Mr. Rochte? Go ahead and --

22 MR. ROCHTE: Take your time.

23 CHAIRPERSON YOUNG: Okay. We'll take a  
24 break until what, five of?

25 BOARD MEMBER PRESS: Just a few short

1 minutes.

2 CHAIRPERSON YOUNG: A few short minutes,  
3 okay. Five minutes. A five-minute break.

4 (Brief recess.)

5 CHAIRPERSON YOUNG: Okay, Ms. Payne.

6 MRS. PAYNE: I'm going to choose to  
7 settle.

8 CHAIRPERSON YOUNG: Okay.

9 MR. PAYNE: Under duress.

10 CHAIRPERSON YOUNG: Under duress, okay.  
11 I want Mr. Payne's signature on the settlement  
12 agreement.

13 (Laughter.)

14 CHAIRPERSON YOUNG: Do we have it, Mr.  
15 Payne?

16 MR. PAYNE: I don't know how to write.

17 CHAIRPERSON YOUNG: Mr. Payne, do you --  
18 I mean I'm not going to have Mrs. Payne agree to  
19 settle, and then later find out that that didn't  
20 include your intent.

21 MR. PAYNE: You've always said of the  
22 agreements, that if one party signed, everybody  
23 signed.

24 CHAIRPERSON YOUNG: I know, but I want  
25 to make sure that this is something that the two

1 of you are agreeing to.

2 MRS. PAYNE: He's not really agreeing to  
3 it, but he said that I could make the decision.

4 CHAIRPERSON YOUNG: Okay, fine. Yeah.

5 MR. SATO: -- I can get it on the  
6 record.

7 Let me just get it on the record that  
8 Mr. and Mrs. Payne are both indicating that they  
9 will sign up to the revised settlement agreement  
10 that was approved by this Board yesterday,  
11 correct?

12 MRS. PAYNE: Yes.

13 MR. SATO: I don't want the under  
14 duress. I either want a yes or a no. Because I  
15 don't want any questions raised about whether Mr.  
16 Payne did or did not agree to this.

17 CHAIRPERSON YOUNG: Yeah, it's --

18 MR. PAYNE: I think we --

19 BOARD MEMBER SHALLCROSS: It's a yes or  
20 no.

21 MRS. PAYNE: Yes, he's --

22 MR. PAYNE: Unless my hearing's clear  
23 off I believe that Jeffrey Young, Chairman, stated  
24 definitely that I would get a CDO if I didn't sign  
25 this. That's duress.



1           CHAIRPERSON YOUNG: No, I did not say  
2 that. I said the Board would consider issuing a  
3 cease and desist order if you didn't have a  
4 settlement in place.

5           MR. PAYNE: I saw the consideration that  
6 took place on the people before me, and that set a  
7 precedent. I can count on precedents, I believe.

8           CHAIRPERSON YOUNG: Okay.

9           MRS. PAYNE: We're settling.

10          MR. PAYNE: Yeah, we're settling, and  
11 I'm settling under duress because I don't want a  
12 CDO.

13          CHAIRPERSON YOUNG: Mr. Sato said he's  
14 not going to accept the settlement under duress.

15          MR. PAYNE: Well, then is he going to  
16 put a guarantee in it that we're not getting a CDO  
17 ever?

18          BOARD MEMBER SHALLCROSS: I think we  
19 should just go ahead --

20          MR. PAYNE: Or just a thing that says  
21 our neighbors and friends get a CDO before we do?

22          CHAIRPERSON YOUNG: Let's just go ahead.

23          BOARD MEMBER SHALLCROSS: Yeah, let's  
24 please move ahead.

25          CHAIRPERSON YOUNG: Okay.

1 MRS. PAYNE: Just move ahead, please.

2 CHAIRPERSON YOUNG: Okay.

3 MRS. PAYNE: Let's just move ahead; it's  
4 okay.

5 BOARD MEMBER SHALLCROSS: We don't have  
6 an agreement here, it's clear to me.

7 CHAIRPERSON YOUNG: Well, I think Mrs.  
8 Payne thinks that there is an agreement.

9 MRS. PAYNE: Well, you -- I thought that  
10 there was something offered here.

11 BOARD MEMBER SHALLCROSS: We can't  
12 accept an agreement under duress. It's not valid.

13 MRS. PAYNE: Okay, well, --

14 MR. PAYNE: What do you think the rest  
15 of the people signed this for?

16 MRS. PAYNE: Bruce, --

17 MR. PAYNE: Give me the damned paper.

18 MRS. PAYNE: He's going to sign it.

19 CHAIRPERSON YOUNG: Well, I don't know  
20 what's in front of you, but I need to make sure  
21 that it's not something you feel you're doing  
22 under duress.

23 MRS. PAYNE: It's fine.

24 MR. PAYNE: What is this you want me to  
25 say?

1 (Laughter.)

2 MRS. PAYNE: Listen, he's --

3 CHAIRPERSON YOUNG: That you're  
4 willingly choosing to sign the settlement  
5 agreement in lieu of having the Board consider  
6 issuing a cease and desist order.

7 MR. PAYNE: Does this also say that the  
8 staff won't continue to prosecute me?

9 CHAIRPERSON YOUNG: I think any  
10 potential prosecution that may occur is spelled  
11 out in the settlement agreement. You know, under  
12 those terms that Mr. Sato has put in there.

13 MRS. PAYNE: I think that at this point  
14 that we will settle. Bruce is not happy about it,  
15 but that doesn't make any difference because he  
16 told me I could make the decision. So, I think we  
17 should just take it from there.

18 CHAIRPERSON YOUNG: It's okay that he's  
19 not happy about it; that I can appreciate. But I  
20 don't -- when he uses the word duress, that has a  
21 legal context to it. And he's shaking his head  
22 like yes, he is under duress. So, that's kind of  
23 a problem.

24 MRS. PAYNE: Well, --

25 MR. RICHARDS: If Mr. Payne feels that

1 he is signing this under duress, I cannot, in good  
2 conscience, advise the Board that this is a  
3 settlement offer that they should accept.

4 MRS. PAYNE: I understand.

5 MR. RICHARDS: And I doubt if Mr. Sato  
6 would be prepared to accept a settlement offer  
7 under those circumstances. And under those  
8 circumstances I would have to recommend to the  
9 Board that their only option would be to go  
10 forward and consider issuance of the cease and  
11 desist order.

12 MRS. PAYNE: Okay.

13 MR. RICHARDS: Whether or not they do  
14 that is within the discretion of the Board.

15 MRS. PAYNE: I think that you just have  
16 to understand that Bruce is trying to save face at  
17 this point. So, --

18 MR. PAYNE: I spoke at a lot of meetings  
19 for many years against this Montgomery-Watson  
20 outrageously stupid, totally weird expense. It  
21 was absurd, it's --

22 MRS. PAYNE: You're going to save time.  
23 I just want to do this.

24 MR. PAYNE: The point is that a lot of  
25 people thanked me for fighting for them in

1 stopping this project so that they aren't paying  
2 for a \$134 million illegal loan.

3 CHAIRPERSON YOUNG: It doesn't stop you  
4 from doing that, Mr. Payne. You can fight all you  
5 want, but this --

6 MR. PAYNE: It gives them my example of  
7 signing something.

8 MRS. PAYNE: Okay, but --

9 MR. PAYNE: So, basically --

10 CHAIRPERSON YOUNG: Okay, --

11 MR. PAYNE: -- I'm not even on title.

12 Why don't she sign it for herself. That's okay.

13 CHAIRPERSON YOUNG: She has title to the  
14 property?

15 MRS. PAYNE: Right.

16 MR. PAYNE: Totally.

17 CHAIRPERSON YOUNG: All right. Does  
18 that make a difference, Mr. Sato?

19 MR. SATO: I believe that they were both  
20 CDO recipients.

21 CHAIRPERSON YOUNG: Yeah, okay.

22 MR. SATO: Let me just say, Mr.  
23 Chairman, that we have no cross-examination; we  
24 have no rebuttal. So I think we're ready to move  
25 to closing.

1           BOARD MEMBER SHALLCROSS: Yeah, why  
2 don't we move ahead if we're not going to get --

3           CHAIRPERSON YOUNG: Move ahead to finish  
4 the CDO consideration --

5           BOARD MEMBER SHALLCROSS: Yeah, if we're  
6 not going to get some sort of agreement, we can't  
7 sit here all night.

8           MRS. PAYNE: So we did say we were.

9           MR. PAYNE: We don't have the damned  
10 thing to sign.

11          MRS. PAYNE: Yeah.

12          BOARD MEMBER PRESS: Mr. Chair.

13          CHAIRPERSON YOUNG: Yeah.

14          BOARD MEMBER PRESS: I wonder if what  
15 the Board is asking, which is, in the plainest of  
16 language, is whether the Paynes are willing to  
17 settle even though they don't like it, they don't  
18 like it. It's not -- and to make a distinction  
19 between duress, which has a legal connotation that  
20 says that this Board is threatening you and saying  
21 sign or else --

22          MRS. PAYNE: Right, which is not so.

23                   (Audience participation.)

24          BOARD MEMBER PRESS: If that's what  
25 you're saying, your prerogative is to say that.

1 On the other hand what you could say is, I don't  
2 like this whole stinking thing, but I'm going to  
3 take a settlement because I'd prefer not to have a  
4 CDO hanging over my property because I'd like to  
5 sell it, something like that.

6 I mean, I'm just asking if that's -

7 MRS. PAYNE: Okay, is that okay?

8 MR. PAYNE: -- wording, you got the  
9 thing to sign?

10 MRS. PAYNE: Okay, thank you.

11 CHAIRPERSON YOUNG: Okay.

12 BOARD MEMBER PRESS: Maybe we could hear  
13 it. If this is an accurate representation of what  
14 you're feeling, maybe you could let us know.

15 MRS. PAYNE: Do you want to say that or  
16 do you --

17 MR. PAYNE: I thought it was good  
18 wording --

19 CHAIRPERSON YOUNG: Okay. And I don't  
20 think there's anything ready to be signed at this  
21 juncture, is that right, Mr. Sato?

22 MR. SATO: That's correct.

23 CHAIRPERSON YOUNG: Okay. So what we  
24 have is your agreement to sign the current  
25 settlement agreement. We'll accept that.

1 MRS. PAYNE: Okay.

2 CHAIRPERSON YOUNG: And we'll accept Mr.  
3 Payne's statement that what Dr. Press had said  
4 really kind of reflects his feelings --

5 MRS. PAYNE: Thank you.

6 CHAIRPERSON YOUNG: -- that he --

7 MR. SATO: Well, let me just say  
8 moreover I think that the forbearance of any  
9 further --in this matter, in this proposed CDO  
10 proceeding, is, in fact, legal consideration for  
11 Mr. Payne and Mrs. Payne's agreement.

12 CHAIRPERSON YOUNG: All right, okay.  
13 So we have, then, dealt with this. Thank you very  
14 much.

15 MRS. PAYNE: Thank you. I just didn't  
16 understand that last thing Mr. Sato said?

17 CHAIRPERSON YOUNG: Well, he's saying  
18 that there is kind of an unstated offer not to  
19 prosecute by way of signing the agreement.

20 MRS. PAYNE: I see, okay, good.

21 CHAIRPERSON YOUNG: Part of what you're  
22 giving up, part of what they're giving up by  
23 having you sign it is they're not going to  
24 prosecute you, okay, with the cease and  
25 desist --



1                   MR. PAYNE:  And not giving up my right  
2  to appeal?

3                   CHAIRPERSON YOUNG:  Well, that is  
4  true, --

5                   MR. RICHARDS:  That's true.

6                   CHAIRPERSON YOUNG:  -- Mr. Payne.  That  
7  is true.  Okay?

8                   MR. PAYNE:  I thought I had one of those  
9  agreements --

10                  CHAIRPERSON YOUNG:  Okay, but you're  
11  going to sign that actually later, Mr. Payne.  You  
12  don't have to sign it right now.

13                  MRS. PAYNE:  It's not ready.

14                  MR. PAYNE:  Oh, okay.

15                  CHAIRPERSON YOUNG:  Yeah.

16                  MRS. PAYNE:  It's going to get changed.

17                  MR. PAYNE:  You guys haven't signed it  
18  yet, either, have you?

19                  MRS. PAYNE:  They're going to change  
20  some things on it.

21                  CHAIRPERSON YOUNG:  No, it's actually an  
22  agreement between the prosecution team and  
23  yourselves.  Okay.  I don't think the Board is  
24  going to sign that document.

25                  Thank you.  I just -- we need to move,

1       you know, Mr. Rochte, we're not going to get to  
2       your matter, unfortunately.

3               What the Board is going to do though is  
4       to call the rest of the names on the list and see  
5       who's here and who isn't. And then the Board is  
6       going to discuss what to do.

7               MR. SATO: Mr. Chairman, if I may --

8               MR. PAYNE: So I don't have a CDO?

9               CHAIRPERSON YOUNG: Wait. What's that?

10              MS. McPHERSON: -- doesn't have a CDO?

11              MR. SATO: I thought, Mr. Chairman,  
12       before you move on, move to the next matter, I  
13       just want to clarify for the record, if, in fact,  
14       now we have -- Mr. Payne has now settled and he  
15       has --

16              MR. RICHARDS: I am a little troubled by  
17       the fact that Mr. -- that you pointed out, and I  
18       have confirmed, according to my list, that Mr.  
19       Payne was represented for the purposes of  
20       settlement by Ms. Sullivan.

21              (Parties speaking simultaneously.)

22              MR. SATO: I think that he is certainly  
23       entitled to make a decision. We weren't  
24       negotiating terms about that. But if that, you  
25       know, if people feel like he needed to get

1       counsel, and if he feels like he needs to consult  
2       with counsel, you know, it's usually the  
3       negotiations that I'm concerned about having  
4       without the presence of counsel.

5                I believe that Ms. Sullivan was telling  
6       people that she was not going to be representing  
7       them here at this hearing.

8                MR. RICHARDS: That is my understanding,  
9       as well. Thank you.

10               MRS. PAYNE: -- to say that's accurate.  
11       And also that Ms. Sullivan was representing other  
12       people in regards to the settlement that chose to  
13       settle anyway.

14               MR. PAYNE: The settlement that she  
15       negotiated was dropped because we couldn't get any  
16       farther with it. Thank you.

17               MR. SATO: Let me just state for the  
18       record that since Mr. and Mrs. Payne have settled,  
19       I'd like to strike from the record all the  
20       testimony in their hearing, because we didn't  
21       resolve -- it didn't go forward.

22               CHAIRPERSON YOUNG: Well, that should be  
23       stricken. Nothing was concluded.

24               MS. McPHERSON: Well, for the record,  
25       others would like to have that incorporated into

1 their record.

2 CHAIRPERSON YOUNG: Well, but that  
3 wasn't a concluded hearing. That wasn't a  
4 concluded CDO. It ended up in a settlement. So,  
5 other people will just have to have --

6 MR. RICHARDS: Mr. Chairman.

7 CHAIRPERSON YOUNG: Yes.

8 MR. RICHARDS: I think that in view of  
9 the fact that we have allowed the designated  
10 parties to rely upon the testimony and  
11 documentation provided by other settling parties,  
12 that it would not be inappropriate to allow the --

13 CHAIRPERSON YOUNG: This is why we have  
14 lawyers.

15 BOARD MEMBER PRESS: I agree; I agree.

16 CHAIRPERSON YOUNG: Okay.

17 MR. RICHARDS: -- to allow them to --

18 MR. SATO: Okay, I withdraw my  
19 objections; we can keep going.

20 CHAIRPERSON YOUNG: Okay. All right.  
21 What is next?

22 BOARD MEMBER SHALLCROSS: We're going to  
23 lose a quorum, so --

24 CHAIRPERSON YOUNG: Okay, let's see what  
25 we've got. What happened to Number 1039? How did

1 we get down to -- what happened here? Did we ask  
2 if General and Mary Mason were here, 1039?

3 We did skip -- we didn't get down that  
4 far.

5 MR. RICHARDS: When you asked who was  
6 here, the people who were here --

7 CHAIRPERSON YOUNG: Were those three.

8 MR. RICHARDS: -- were Ms. McPherson for  
9 Ms. McCombs, Mr. Rochte and Mr. and Mrs. Payne.

10 CHAIRPERSON YOUNG: Okay.

11 MR. RICHARDS: And none of the others  
12 were present.

13 CHAIRPERSON YOUNG: Okay, so let's go  
14 through this list. Is -- 1039, General and Mary  
15 Mason here, 1039? Okay. Any correspondence from  
16 them? Mr. Thompson?

17 MR. THOMPSON: What we do have from the  
18 Masons to verify that they received information  
19 from us is they did sign on to be represented by  
20 Sullivan and we do have a certified mail receipt.  
21 We could display it if you need us to.

22 CHAIRPERSON YOUNG: Okay. All right.  
23 How about then 1017, Dustan Mattingly?

24 MR. THOMPSON: I received a note just  
25 about half an hour ago. Let me display it. He

1 settled at the last second. This note was handed  
2 to me by David Duggan one-half hour ago.

3 CHAIRPERSON YOUNG: Okay. Is Mr. Duggan  
4 here?

5 MR. DUGGAN: Right here.

6 CHAIRPERSON YOUNG: Okay. I take --

7 MR. DUGGAN: I do know the details of  
8 why he didn't show. There was a death, I believe,  
9 in the family and he had just come back from a  
10 funeral. And regardless of what the reason was,  
11 when I did contact him he was willing, and without  
12 prejudice, to accept settlement.

13 CHAIRPERSON YOUNG: Okay. And we don't  
14 have a notarized authorization for you to --

15 MR. DUGGAN: To say that, --

16 CHAIRPERSON YOUNG: Yeah, to represent  
17 him. And so --

18 MR. DUGGAN: But I did -- I did --

19 CHAIRPERSON YOUNG: So, Mr. Sato, how do  
20 you feel about accepting the handwritten note?

21 MR. SATO: Is the handwritten note  
22 from --

23 MR. DUGGAN: It's from him, and he  
24 signed it.

25 MR. SATO: Okay. That's his signature?

1 MR. DUGGAN: That's his signature.

2 MR. SATO: I think for these purposes we  
3 can accept it.

4 CHAIRPERSON YOUNG: Okay. All right.  
5 Okay, how about then 1020 I think would be the  
6 next one, Julie Miller and Lawrence Kleiger. What  
7 can you tell me about them?

8 MR. THOMPSON: The Millers, that's Julie  
9 Miller and Lawrence Kleiger; they have submitted,  
10 I think Lawrence Kleiger submitted information for  
11 the April hearing. And we've been sending all our  
12 correspondence to the same address.

13 I don't know if they've submitted  
14 comments; I don't believe they've submitted  
15 comments for this hearing. But Julie Miller, I  
16 don't know what her status is or her relation is  
17 to Kleiger, but I think they both live there. She  
18 was one of the parties that signed on to be  
19 represented by Sullivan in the settlement  
20 agreement. So I think that suggests that she's  
21 received information from us.

22 MR. THOMAS: Mr. Chairman, Mr. Kleiger  
23 contacted me and asked that he be heard on Friday  
24 instead of Thursday.

25 CHAIRPERSON YOUNG: Oh, that's right.

1 That's right. That he was busy on Thursday. I  
2 think I saw that email.

3 BOARD MEMBER SHALLCROSS: Well, he's not  
4 here.

5 CHAIRPERSON YOUNG: Yeah, this is  
6 Friday. Okay. 1016, the Mortaras.

7 MR. THOMPSON: I'm sorry, could you  
8 repeat your question?

9 CHAIRPERSON YOUNG: The next one would  
10 be the Mortaras, number 1016.

11 MR. THOMPSON: Oh, as far as we do have  
12 certified mail receipts. They have submitted  
13 communication to us in the past. I don't know if  
14 they've submitted, you know, official evidence for  
15 this hearing.

16 They are the folks who I believe are  
17 hospitalized right now? But they have been  
18 involved. They, in fact, came into the office and  
19 met with us. And tried to talk us out of the  
20 CDOs, so they have been in the loop.

21 CHAIRPERSON YOUNG: Do we have any  
22 written correspondence from them? Yes, we do.  
23 Why don't we just take a look at it.

24 (Pause.)

25 CHAIRPERSON YOUNG: You know, for the



1 Board to know, we did get a letter on November  
2 27th, actually received it on the 28th, from them  
3 stating that they had some health issues; had been  
4 in the hospital. It didn't indicate that they  
5 were in the hospital at the time.

6 Really their request was to grant  
7 clemency and to remove them totally from the list;  
8 as an alternative to have a continuance on the  
9 hearing date, perhaps some time in late January or  
10 February is when they would be able to attend a  
11 hearing.

12 I had denied the request. Okay. Within  
13 a day or two. And it's really, I'll leave it up  
14 to the Board to decide, you know, whether --  
15 obviously with Mr. Rochte, he's going to get  
16 another date because he's here. And so there is  
17 going to be a time to consider any of these other  
18 matters that are not finished today.

19 BOARD MEMBER SHALLCROSS: They asked for  
20 a continuance?

21 CHAIRPERSON YOUNG: They did ask for a  
22 continuance; I had denied it.

23 BOARD MEMBER SHALLCROSS: Well, I  
24 wouldn't be adverse to allowing them to continue  
25 it to when we have this gentleman back.

1                   CHAIRPERSON YOUNG:   Okay.  Does the rest  
2   of the Board feel that way?

3                   BOARD MEMBER JEFFRIES:  I don't have any  
4   problem.  They got medical problems.  Should be  
5   some consideration.

6                   BOARD MEMBER SHALLCROSS:  Yeah.

7                   CHAIRPERSON YOUNG:  Okay.  All right.  
8   Okay, we got 1016; in fact, Mr. Rochte, that's  
9   what's going to happen here.

10                  BOARD MEMBER:  Ask him if he'd like to  
11   settle.

12                  CHAIRPERSON YOUNG:  What's the next one?  
13   The Moylans are in a different situation.  It's  
14   not health problems, but they also submitted a  
15   request because Mrs. Moylan -- pardon me, Mrs.  
16   DeWitt-Moylan -- shame on me -- Mrs. DeWitt-Moylan  
17   had a class that she had to take -- chose to take  
18   to get certification as part of her training for  
19   her job.  It's offered, I think, three or four  
20   times a year.  She had paid \$400, I believe, for  
21   the class.  Mr. Moylan said in his correspondence  
22   that he had to accompany her.

23                  BOARD MEMBER SHALLCROSS:  To class?

24                  CHAIRPERSON YOUNG:  To the class, which  
25   is like in Long Beach, I believe.  It's not in

1       this area.  So, anyway -- and they had asked quite  
2       some time ago for the continuance, and I told them  
3       that the Board would not rule on that until we got  
4       to the hearing.  He actually called me and got me  
5       on the phone, ex parte, and asked me to please  
6       consider the request.  And I simply told him at  
7       that time I wouldn't make a decision at that  
8       point.

9                   I later, as we got closer to the  
10       hearing, denied the request.  But, you know, the  
11       Board can tell me what they want to do about that.  
12       If we want to continue that with Mr. Rochte's and  
13       the Mortaras.

14                   MR. RICHARDS:  I would urge the Board to  
15       consider continuing their matter, as well, in view  
16       of the fact that the Board would not have been  
17       able to get to their proceeding today --

18                   BOARD MEMBER SHALLCROSS:  Right, anyway.

19                   MR. RICHARDS:  -- in any event.

20                   BOARD MEMBER JEFFRIES:  Mr. Chair, also,  
21       teachers have to continue education for  
22       certification for certain types of elements of  
23       teaching degrees.  I don't need to tell Dr. Press  
24       that, but with us continuing to change the dates  
25       trying to find a date that was for all of us to

1 meet, how would a person be able to schedule those  
2 kind of educational advantages, and knowing that  
3 they'd be able to attend this or that.

4 CHAIRPERSON YOUNG: Yeah.

5 BOARD MEMBER JEFFRIES: So I would be in  
6 consideration of adding them to a future hearing.

7 CHAIRPERSON YOUNG: Okay.

8 BOARD MEMBER PRESS: Mr. Chair, at the  
9 risk of sounding cold-hearted, to me it's not that  
10 this was an event or a class that had to be  
11 attended. That's not as compelling to me. What's  
12 compelling is that we can't get to it. We're  
13 going to lose a quorum. So why not just take all  
14 of the cases that we can't get to tonight, our  
15 quorum is leaving, and have a panel -- well, have  
16 either a continuance to a panel hearing, or to a  
17 regular Board and other hearing date; just handle  
18 everything that remains that way.

19 BOARD MEMBER SHALLCROSS: Yeah. My  
20 concern is the folks who asked for a continuance  
21 were doing the right thing. And the folks who  
22 just didn't show up and didn't bother letting  
23 anyone know --

24 BOARD MEMBER PRESS: I understand.

25 BOARD MEMBER SHALLCROSS: -- shouldn't

1 get the --

2 BOARD MEMBER PRESS: But it would be a  
3 different matter if we were maintaining a quorum  
4 past 6:00. And then we could do what you suggest.  
5 We could have handled the ones that had no  
6 communications, that had no -- that didn't --

7 BOARD MEMBER SHALLCROSS: What if they  
8 want to show up at that point?

9 BOARD MEMBER PRESS: Pardon me?

10 BOARD MEMBER SHALLCROSS: What if they  
11 show up at that point?

12 BOARD MEMBER PRESS: Well, then they  
13 show up. I mean I don't see how --

14 BOARD MEMBER SHALLCROSS: What I think  
15 that does is it sends a message that if you don't  
16 show up, --

17 CHAIRPERSON YOUNG: You get a second  
18 chance.

19 BOARD MEMBER SHALLCROSS: -- you get a  
20 second crack at it.

21 BOARD MEMBER PRESS: Well, okay, but --

22 BOARD MEMBER SHALLCROSS: Without even  
23 going to the trouble of asking for a continuance.

24 BOARD MEMBER PRESS: -- Mr. Shallcross,  
25 I'm not sure what future processes we are setting

1 precedent for, since we don't know what future  
2 processes are. We don't know if we're going to do  
3 this sort of incredibly long hearing for every  
4 single one of them, or if there's going to be  
5 something else, you know.

6 So, I'm not sure that precedent is -- it  
7 may be inapposite here.

8 BOARD MEMBER SHALLCROSS: Okay, maybe  
9 precedence is the wrong word. I just think we're  
10 sending a bad message, not only in this case, but  
11 in future situations where we may be engaged in  
12 enforcement or other things, you know. I can hear  
13 them saying, well, you let those folks, you know,  
14 shine you on.

15 BOARD MEMBER PRESS: If you can persuade  
16 your colleague to the left to stay to --

17 BOARD MEMBER SHALLCROSS: I've been  
18 trying, thanks.

19 (Laughter.)

20 MR. SATO: Can I make a suggestion,  
21 Members of the Board? I think that with the  
22 people who have not showed up for their assigned  
23 hearing, I would simply call the matters. And  
24 then you could just rule on them now. I mean,  
25 they have waived the right to a hearing. We've

1 submitted evidence on each and every one of them.

2 CHAIRPERSON YOUNG: The problem is we  
3 don't have time now because we have a Board Member  
4 that needs to leave now. We're kind of at the  
5 end.

6 MR. SATO: I think it would take five  
7 minutes.

8 BOARD MEMBER HAYASHI: We could rule on  
9 everybody that didn't show up that did not ask --

10 BOARD MEMBER SHALLCROSS: For a  
11 continuance.

12 BOARD MEMBER HAYASHI: -- that did not  
13 ask for a continuance.

14 CHAIRPERSON YOUNG: Okay.

15 BOARD MEMBER HAYASHI: And I would move  
16 that.

17 CHAIRPERSON YOUNG: Well, okay, --

18 BOARD MEMBER HAYASHI: That would  
19 default them.

20 CHAIRPERSON YOUNG: Okay. Well, we need  
21 to continue going down through this list because  
22 we haven't done that yet. And so far what I have  
23 is --

24 BOARD MEMBER SHALLCROSS: -- do it as  
25 you're going down the list.

1 BOARD MEMBER HAYASHI: Yeah.

2 CHAIRPERSON YOUNG: Can we do a quick  
3 default, Mr. Richards?

4 BOARD MEMBER HAYASHI: That would be a  
5 roll call default.

6 MR. RICHARDS: Essentially. I mean the  
7 fact is that this is the time and the place for  
8 the hearing. The evidence is in the record. And  
9 unless the prosecution is recommending something  
10 other than issuance of the cease and desist order  
11 for one or more, I think the prosecution would  
12 probably be recommending a single outcome. And I  
13 think the Board could handle these proceedings  
14 summarily.

15 NUMBER 1029: Mr. Chair.

16 CHAIRPERSON YOUNG: Yes.

17 NUMBER 1029: May I have five seconds?

18 CHAIRPERSON YOUNG: Well, go ahead --

19 BOARD MEMBER SHALLCROSS: We don't have  
20 five seconds.

21 CHAIRPERSON YOUNG: Yeah, we really  
22 don't.

23 NUMBER 1029: I'm just wondering if you  
24 were to continue everyone, if perhaps after  
25 today's proceedings their minds might change.



1 Perhaps Mr. Sato's team might reach more  
2 settlements. And it could be a win/win.

3 CHAIRPERSON YOUNG: I don't know.

4 NUMBER 1029: I just wanted to ask,  
5 thank you.

6 BOARD MEMBER SHALLCROSS: We're losing  
7 our quorum so it doesn't matter.

8 CHAIRPERSON YOUNG: Hang on one second.

9 BOARD MEMBER HAYASHI: I make a motion  
10 that we --

11 CHAIRPERSON YOUNG: Marsha Robinson,  
12 1028.

13 MR. THOMPSON: She was a late settling  
14 discharger. She's agreed to settle.

15 CHAIRPERSON YOUNG: Okay. All right.  
16 Mr. Rochte, we have. And then just Randall and  
17 Carol Schuldt, 1013.

18 MR. THOMPSON: They are settling  
19 dischargers, as well.

20 CHAIRPERSON YOUNG: They are. Thomas,  
21 then. All right, Katherine Thomas and Barry  
22 Carney, 1045.

23 MR. THOMPSON: They settled.

24 CHAIRPERSON YOUNG: They settled? Okay,  
25 Charles and Norma Wilkerson.

1           MR. PACKARD:  Actually, with respect to  
2           Wilkerson even though they have submitted some  
3           information and they're represented by counsel,  
4           it's come to my attention that some of our  
5           mailings came back returned and were sent to the  
6           wrong address.  So I don't know exactly what mail  
7           they have received and what they haven't.

8           So if there will be another hearing I'd  
9           recommend we move them to the next hearing.

10          CHAIRPERSON YOUNG:  Okay, well, they  
11          would have to be, I think, continued in that  
12          matter.

13          All right, so what I have pulled out is  
14          four cases, 1016, 1015, 1041 and 1008, I believe  
15          then, where there is -- Mr. Rochte's here, and the  
16          other three have requested something, health or  
17          the school issue, and then the problem with the  
18          address.

19          Those I would suggest that we take with  
20          a subpanel.  And we'll set up a subpanel hearing  
21          for those sometime in maybe January or February.  
22          But as soon as we can.

23          And the others, I guess you want to go  
24          by default, go ahead, which ones are they?

25          MS. MCPHERSON:  Excuse me, I'm sorry,

1 I --

2 CHAIRPERSON YOUNG: Yes.

3 MS. McPHERSON: -- I just wanted to  
4 bring to your attention that I brought an envelope  
5 when I -- we first started the hearings from  
6 Wilkerson. And I believe that he indicated that  
7 he has illness in the family, people to take care  
8 of, and he was willing to settle.

9 CHAIRPERSON YOUNG: Okay. You know, you  
10 might have given me that. But, I --

11 MS. McPHERSON: He brought it to my  
12 house the night before the hearing.

13 CHAIRPERSON YOUNG: Okay. Yeah, because  
14 we're going to continue his. I suggest you have  
15 him contact Mr. Sato.

16 MS. McPHERSON: Okay.

17 CHAIRPERSON YOUNG: Okay. All right.  
18 Which are the ones that I think you're proceeding  
19 by default with?

20 MR. THOMPSON: Yeah, I'm going to go  
21 through a list of those that have not settled,  
22 that have not showed up today. I'm going to read  
23 you the names, and then I'm going to go through  
24 the maps really quickly to show you where they're  
25 located.

1                   It's Dishen --

2                   CHAIRPERSON YOUNG: I don't think we'll  
3 need that. I think --

4                   UNIDENTIFIED SPEAKER: The names.

5                   MR. THOMPSON: Okay, the names are --

6                   CHAIRPERSON YOUNG: The names, and if  
7 you can tell us -- and the addresses; and if  
8 they've received your correspondence.

9                   MR. THOMPSON: The first one is order  
10 number 1046, Douglas and Paula Dishen; they're at  
11 1755 12th Street.

12                   The next one is Jane and Edwin Ingan;  
13 proposed CDO order number 1047. They are at 1197  
14 6th Street.

15                   The next one is Michael Javine,  
16 J-a-v-i-n-e. And he is located at 1411 14th  
17 Street.

18                   And then the next one I have are Dennis  
19 and Sally Joller at 1546 8th Street.

20                   CHAIRPERSON YOUNG: What number is that?

21                   MR. THOMPSON: Order number 1004.  
22 Joller, J-o-l-l-e-r.

23                   The next one I have on my list is a  
24 redacted name. The order number is 1023; and the  
25 address for that property -- this was a party that

1 also requested their address be redacted from  
2 public information, so I'm going to have to  
3 display a map briefly.

4 BOARD MEMBER SHALLCROSS: No.

5 CHAIRPERSON YOUNG: No, I think you can  
6 tell us if it's in the prohibition zone.

7 MR. THOMPSON: Okay, it's in the  
8 prohibition zone.

9 The next party is another redacted  
10 information party; their order number is 1040.  
11 They're on Lilac Street, which is in the  
12 prohibition zone.

13 The next party is General and Mary  
14 Mason; order number 1039.

15 I think you have it noted that Dustan  
16 Mattingly is a settling discharger.

17 CHAIRPERSON YOUNG: Yes.

18 MR. THOMPSON: And then there is Julie  
19 Miller and Lawrence Kleiger. And they are order  
20 number 1020. And they are located at 312 Mar  
21 Vista Drive, which is in the prohibition zone.

22 And we've continued the Mortaras and the  
23 Moylans. Did we also continue the Wilkersons?

24 CHAIRPERSON YOUNG: And Rochte.

25 MR. THOMPSON: And Rochte, correct. So

1 the last one --

2 CHAIRPERSON YOUNG: Yeah, 1015.

3 MR. THOMPSON: The last one I have on  
4 this list is I think Miller and Kleiger, order  
5 number 1020.

6 BOARD MEMBER SHALLCROSS: And I think  
7 for showing up we should put Mr. Rochte first --

8 (Laughter.)

9 BOARD MEMBER SHALLCROSS: -- at the  
10 continuation.

11 CHAIRPERSON YOUNG: And what about 1045?

12 BOARD MEMBER SHALLCROSS: Whatever you  
13 want.

14 CHAIRPERSON YOUNG: 1045.

15 MR. THOMPSON: They settled.

16 CHAIRPERSON YOUNG: They settled, okay.

17 All right, so these properties are in the  
18 prohibition zone?

19 MR. THOMPSON: Yes.

20 CHAIRPERSON YOUNG: Okay. Are there  
21 people living at these properties?

22 MR. THOMPSON: To our knowledge, yes.  
23 There is one that is somewhat unique; it appears  
24 to be a business called Ingan Fresh Produce. That  
25 would be the property at 1197 6th Street that's

1 owned by Jane and Edwin Ingan.

2 CHAIRPERSON YOUNG: Okay.

3 MR. THOMPSON: Their mail to that  
4 address has been forwarded to another address in  
5 Los Osos. And we have certified mail receipts  
6 that they've received our correspondence.

7 CHAIRPERSON YOUNG: Okay. All right.  
8 Well, is there a motion?

9 BOARD MEMBER PRESS: Well, Mr. Chair, do  
10 you want a motion and a vote on each one? Is that  
11 how it needs to be done?

12 MR. RICHARDS: It does not need to be  
13 done. As long as it's very clear that this is the  
14 list of proposed cease and desist orders that you  
15 are considering, and that --

16 BOARD MEMBER PRESS: Okay, so that  
17 should be part --

18 MR. RICHARDS: You can do it  
19 collectively.

20 BOARD MEMBER PRESS: -- that should be  
21 part of the motion.

22 CHAIRPERSON YOUNG: Yes.

23 BOARD MEMBER PRESS: All right, so I  
24 move that the Board adopt CDOs, as amended,  
25 against recipient numbers 1046, 1047, -- there

1 needs to be one for the 14th Street, you didn't  
2 name that --

3 CHAIRPERSON YOUNG: 1014.

4 BOARD MEMBER PRESS: -- 1014, okay. So  
5 I'll start again.

6 I move that the Board adopt the amended  
7 CDOs against 1046, 1047, 1014, 1004, 1023, 1040,  
8 1039, 1020.

9 CHAIRPERSON YOUNG: Okay, is there a  
10 second?

11 BOARD MEMBER HAYASHI: Second.

12 CHAIRPERSON YOUNG: All those in favor?

13 (Ayes.)

14 CHAIRPERSON YOUNG: You got the second?  
15 Okay. All those in favor?

16 (Ayes.)

17 CHAIRPERSON YOUNG: Any opposed? Okay,  
18 motion carries. Thank you.

19 So, Mr. Hayashi, you can go, and then --

20 (Parties speaking simultaneously.)

21 CHAIRPERSON YOUNG: Let's see, Mr.  
22 Hayashi, would you be available for a subpanel?

23 BOARD MEMBER HAYASHI: Send me the  
24 dates.

25 CHAIRPERSON YOUNG: Okay. All right.



1       Because you and I are closest. And then either  
2       whoever is available from the north, Dr. Press,  
3       Mr. Jeffries or Mr. Shallcross --

4               BOARD MEMBER JEFFRIES: As long as it's  
5       not on January 5th; I've got a grandchild coming.

6               CHAIRPERSON YOUNG: Okay. I've got my  
7       calendar right now. And I don't mind trying to  
8       pick a date in January. I know Mr. Rochte's here  
9       so he'd have the benefit of -- we could work with  
10      his schedule and do something.

11              You want to proceed that way, Mr. Sato?

12              MR. SATO: Yes, that would be fine.

13              CHAIRPERSON YOUNG: Okay. Let's see,  
14      December, January.

15              (Pause.)

16              CHAIRPERSON YOUNG: Well, January 15th,  
17      January 16th.

18              UNIDENTIFIED SPEAKER: The 15th is a  
19      holiday.

20              CHAIRPERSON YOUNG: Okay. I've got  
21      January 18th and 19th available. Are those okay  
22      with you? Yeah, we have to also work with our  
23      counsel who works for the San Diego Regional  
24      Board. So the 19th is not good for you?

25              MR. RICHARDS: No.

1                   CHAIRPERSON YOUNG:  Okay.  How about  
2  Monday, the 22nd?  Mr. Richards?

3                   MR. RICHARDS:  Could work.

4                   CHAIRPERSON YOUNG:  Mr. Sato?

5                   UNIDENTIFIED SPEAKER:  Is that a  
6  holiday?

7                   (Parties speaking simultaneously.)

8                   CHAIRPERSON YOUNG:  It's January.

9                   MR. RICHARDS:  One of those days is  
10  Martin Luther King's birthday --

11                   BOARD MEMBER JEFFRIES:  15th of January.

12                   MR. RICHARDS:  That's the only one in  
13  January.

14                   BOARD MEMBER JEFFRIES:  Presidents' Day  
15  is February the 19th.

16                   CHAIRPERSON YOUNG:  Okay, so the 22nd of  
17  January?  I'm just waiting for Mr. Richards to --

18                   MR. RICHARDS:  Well, I'm a little  
19  uncertain because the San Diego Regional Board  
20  meeting that was supposed to be held on Wednesday  
21  was canceled, and the Executive Officer is  
22  attempting to set the meeting up on the week of  
23  the 22nd at some time, as a postponed --

24                   CHAIRPERSON YOUNG:  Do they do it on a  
25  Monday?

1                   MR. RICHARDS: Typically they meet on  
2                   Wednesdays.

3                   CHAIRPERSON YOUNG: Okay, can we take  
4                   Monday and you can tell him when we --

5                   MR. RICHARDS: Okay, all right.

6                   CHAIRPERSON YOUNG: -- leave that you're  
7                   busy --

8                   MR. RICHARDS: We can do that.

9                   CHAIRPERSON YOUNG: -- on Monday if you  
10                  don't mind. Mr. Sato, is that okay with you?

11                  MR. SATO: Yes, the 22nd is fine.

12                  CHAIRPERSON YOUNG: The other members of  
13                  the team? I guess they're going to be here  
14                  anyway. It's a Monday. Okay.

15                  UNIDENTIFIED SPEAKER: What is a  
16                  subpanel?

17                  CHAIRPERSON YOUNG: What'll happen is  
18                  this. There will be three of us; we'll do  
19                  everything we did today, and we will, I think we  
20                  vote, don't we?

21                  MR. RICHARDS: No, you will make a  
22                  recommendation --

23                  CHAIRPERSON YOUNG: To the full Board.

24                  MR. RICHARDS: You will hold the  
25                  hearing.

1 CHAIRPERSON YOUNG: Yeah.

2 MR. RICHARDS: And then you will make  
3 your recommendation, based on the evidence  
4 presented, to the full the Board at a subsequent  
5 meeting.

6 CHAIRPERSON YOUNG: Right. So, it's  
7 kind of a somewhat truncated, and there's no  
8 deliberation. The following meeting I think is in  
9 February -- do you know, Mr. Thomas, when that is?

10 MR. THOMAS: Matt, do you have the --

11 BOARD MEMBER PRESS: The 9th.

12 CHAIRPERSON YOUNG: The 9th. So  
13 February 9th. But this would have to be put on  
14 the agenda. We could do that now.

15 MR. RICHARDS: This would have to be put  
16 on the agenda for February 9th to consider the  
17 recommendations of the hearing panel.

18 CHAIRPERSON YOUNG: Right. And we could  
19 do that soon? Whenever that agenda goes out?

20 MR. RICHARDS: Whenever that agenda goes  
21 out.

22 CHAIRPERSON YOUNG: Okay, so that's what  
23 we would do. And the full Board -- well, the five  
24 of us, not the other two who are disqualified,  
25 would then -- and they have to hear -- I think

1       they have to look at the --

2               MR. RICHARDS:  They have to look at the  
3 transcript; they have to have access to the  
4 documents, and either listen to the tape, look at  
5 the transcript.

6               MR. THOMAS:  They already have.  There's  
7 no new evidence for this continued hearing.

8               CHAIRPERSON YOUNG:  Well, these --

9               MR. RICHARDS:  No, --

10              (Parties speaking simultaneously.)

11              MR. RICHARDS:  -- testimony.

12              CHAIRPERSON YOUNG:  Testimony at the  
13 hearing, they're going to have to review.  And  
14 then they'll vote.  Then we will vote.

15              MR. ROCHTE:  I believe under the  
16 circumstances if it happens (inaudible) --

17              THE REPORTER:  Are we on the record  
18 still?  Would you like to close the meeting to  
19 discuss the date or are we staying on the record  
20 for this?

21              CHAIRPERSON YOUNG:  I think we're on the  
22 record for this.  Go ahead, Mr. Rochte.

23              MR. ROCHTE:  This is Tim Rochte, 1015.  
24 The circumstances that have led us to this point  
25 this evening seem to have provided a wonderful

1 opportunity for a continuation of the negotiations  
2 for further settlement that were held because Mr.  
3 Sato and Shauna Sullivan and others said we ran  
4 out of time. And you folks did a good job by  
5 sticking to your calendar.

6 But, hey, something happened on the way  
7 to the forum. I'd like to know if negotiations  
8 can continue between the prosecution team and the  
9 parties.

10 CHAIRPERSON YOUNG: Oh, well,  
11 definitely. Just like with anything else you  
12 could settle on the courthouse steps or during the  
13 whole process, like what happened with the Paynes.  
14 So, --

15 UNIDENTIFIED SPEAKER: I think they're  
16 going to have a divorce --

17 CHAIRPERSON YOUNG: Okay. January 22nd  
18 is our date. What time, Mr. Richards, then for  
19 you to make it convenient for you to get here?  
20 And Mr. Sato, also, when would you want to start?

21 MR. SATO: I'd prefer 1:00.

22 CHAIRPERSON YOUNG: Okay. All right.  
23 That's okay with me.

24 MR. RICHARDS: That'll be fine.

25 MR. ROCHTE: The follow-up meeting in

1 February is in Salinas?

2 CHAIRPERSON YOUNG: It probably is,  
3 yeah. And what happens, Mr. Rochte, is once the  
4 panel takes the evidence there's no more testimony  
5 when the full Board, the full panel --

6 MR. ROCHTE: On the 22nd?

7 CHAIRPERSON YOUNG: That's right, yeah,  
8 22nd is it. The February meeting would simply be  
9 to really deliberate.

10 Okay, 1:00, January 22nd for 1016, 1015,  
11 1041, 1008. That concludes today's hearing.  
12 Thank you very much. We are off the record.

13 (Whereupon, at 6:33 p.m., the meeting  
14 was adjourned.)

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## CERTIFICATE OF REPORTER

I, RICHARD A. FRIANT, 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 meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of January, 2007.