

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

In the Matter of:)
) Order No.
Public Meeting) R3-2006-0019
_____)

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

HEARING BEFORE USEPA and CCRWQCB
MORRO BAY/CAYUCOS WASTEWATER TREATMENT PLANT

THURSDAY, MAY 11, 2006

10:15 A.M.

Reported by:
Troy A. Ray

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

CCRWQCB BOARD MEMBERS PRESENT

Jeffrey S. Young, Chairperson

Russell M. Jeffries, Vice Chairperson

John H. Hayashi

Leslie S. Bowker

Monica S. Hunter

Gary Shallcross

USEPA

Alexis Strauss, Director, Water Division
United States Environmental Protection Agency
Region 9

Staff

Aaron Setren (via teleconference)

WATER BOARD STAFF

Roger Briggs, Executive Officer

Michael Thomas, Assistant Executive Officer

Carol Hewitt, Executive Assistant

Lori Okun, Counsel
State Water Resources Control Board

Matt Thompson, Engineer

Harvey Packard

DISCHARGER

MORRO BAY/CAYUCOS WASTEWATER TREATMENT PLANT

Bob Hendrix, City Manager
Janice Peters, Mayor
Robert Schultz, City Attorney
City of Morro Bay

DISCHARGER
MORRO BAY/CAYUCOS WASTEWATER TREATMENT PLANT

Betty Winholtz, City Council
Bruce Ambo, Public Services Director
Bruce Keogh, Wastewater Division Manager
David Phillips, Public Works Supervisor
City of Morro Bay

Robert Enns, Board President
Bonny Connelly, General Manager
Tim Carmel, General Counsel
Bill Gibeau, Board Member
Bill Callihan, Manager
Cayucos Sanitary District

Dr. Douglas Coats
Bonnie Luke
Marine Research

David Stringfield
Carollo Engineers

INTERESTED PERSONS

Jennifer Joswick

Steve Shimck, Executive Director
Otter Project

Joey Racano
Ocean Outfall Group

Kaya Freeman, Central Coast Regional Manager
Surfrider Foundation

Margaret Webb

Andrew Christie, Chapter Coordinator
Sierra Club, San Luis Obispo County

Noah Smuckler, Vice Chairperson
San Luis Bay Chapter
Surfrider Foundation

Alon Perlman

Peter Risley

I N D E X

	Page
Proceedings	1
Roll Call	1
Introductions	1
Opening Remarks	2
Approval of Minutes	3
Uncontested Items Calendar	4
Item 6 - Morro Bay/Cayucos Wastewater Treatment Plant, San Luis Obispo County Order No. R3-2006-0019	5
Opening Statements	5
Water Board Chairman Young	5
EPA Director Strauss	8
Witness Oath en masse	8
Water Board Staff Presentation	29
Discharger's Presentation	62
NRDC's Presentation	108
Comments - Interested Persons	27/196
Jennifer Joswick	27
Steve Shimck, Executive Director Otter Project	196
Joey Racano, Ocean Outfall Group	209
Kaya Freeman, Central Coast Regional Manager Surfrider Foundation	213
Margaret Webb	217

I N D E X

	Page
Comments - Interested Persons - continued	
Andrew Christie, Chapter Coordinator Sierra Club, San Luis Obispo County	219
Noah Smuckler, Vice Chairperson San Luis Bay Chapter, Surfrider Foundation	223
Alon Perlman	227
Peter Risley	231
Public Comment	234
Questions of Karen Worcester	242
Closing Summaries	261
NRDC	261,282
Discharger	266
Water Board Staff	275
Water Board Staff Recommendation	280
Closed Session Deliberation	289
Board Member Remarks	289
Board Member Bowker	290
Board Member Hayashi	292
Vice Chairperson Jeffries	293
Board Member Hunter	294
Board Member Shallcross	296
Chairperson Young	299
Vote	311
Discussion	311

I N D E X

	Page
Continuation Vote	315
Adjournment	315
Reporter's Certificate	316

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

P R O C E E D I N G S

1:50 p.m.

CHAIRPERSON YOUNG: Okay, folks, if we are ready we will begin, if everyone can take their seats.

Ms. Hewitt, would you like to conduct roll call. You act surprised. We did earlier, but now we have other Members.

MS. HEWITT: Correct. Monica Hunter.

BOARD MEMBER HUNTER: Present.

MS. HEWITT: Gary Shallcross.

BOARD MEMBER SHALLCROSS: Here.

MS. HEWITT: Russell Jeffries.

VICE CHAIRPERSON JEFFRIES: Present.

MS. HEWITT: Jeffrey Young.

CHAIRPERSON YOUNG: Here.

MS. HEWITT: John Hayashi.

BOARD MEMBER HAYASHI: Present.

MS. HEWITT: Les Bowker.

BOARD MEMBER BOWKER: Here.

CHAIRPERSON YOUNG: Okay, thank you.

Mr. Briggs, would you like to do introductions.

MR. BRIGGS: Thank you very much, Mr. Chairman. Good afternoon, everybody. We just heard from Carol Hewitt, our Executive Assistant

1 over there to my right. And seated next to her is
2 Michael Thomas, the Assistant Executive Officer.
3 Seated next to me on my left is Lori Okun, our
4 Counsel from the State Water Resources Control
5 Board. And seated next to her is Director of
6 the --

7 (Computer program interruption.)

8 MR. BRIGGS: That was an nice fanfare;
9 the timing was a little off.

10 (Laughter.)

11 MR. BRIGGS: -- from USEPA, and we will
12 be introducing Alexis more formally as we get to
13 item 6 on the agenda.

14 We have testimony cards available in the
15 back of the room that look like this. So if
16 you're interested in speaking on an item on the
17 agenda today, if you'd fill those out and turn
18 those in, that would help. Restrooms over here
19 out this way. We have supplemental sheets for
20 some of the items today. Those are materials that
21 were not available at the time the agenda, itself,
22 was sent out.

23 And I will mention which ones those are.
24 On item 6, for the Morro Bay/Cayucos Wastewater
25 Treatment Plant, we have a couple of supplemental

1 sheets. And by the way, if you are interested in
2 those items and you have not received those
3 through email or other means, we have some extra
4 copies in back.

5 For an item on tomorrow's agenda, the
6 perchlorate cases is item 9. We have a
7 supplemental sheet. On the consent calendar we do
8 have a supplemental sheet for item 14 on the Santa
9 Cruz Landfill. And then lastly, for the Executive
10 Officer's report, item 24, we have a supplemental
11 sheet.

12 I think that's it for now, Mr. Chairman.

13 CHAIRPERSON YOUNG: Okay. Item number
14 3, approval of March 24th meeting minutes.

15 VICE CHAIRPERSON JEFFRIES: So moved.

16 BOARD MEMBER BOWKER: Second.

17 CHAIRPERSON YOUNG: All those in favor?

18 (Ayes.)

19 CHAIRPERSON YOUNG: Any objections?

20 Okay, motion carries. The minutes are approved.

21 And I take it Mr. Secundy is not here?

22 MR. BRIGGS: Correct.

23 CHAIRPERSON YOUNG: Okay. So we'll have
24 no report by the State Water Resources Control
25 Board liaison.

1 We'll go to the uncontested items
2 calendar, agenda item number 5. Mr. Briggs.

3 MR. BRIGGS: Yeah, the actual
4 uncontested items calendar will be items 13
5 through 20. But we need to take item 13 off of
6 the consent calendar because of comments we
7 received.

8 And as I mentioned, we did have a minor
9 correction in the item 14. And other than any
10 cards we might have here, we would recommend
11 approval of the consent calendar. So let me just
12 check.

13 CHAIRPERSON YOUNG: Does any member of
14 the audience who is here wish to address any of
15 the proposed uncontested items on the calendar?

16 MR. BRIGGS: I don't have any other
17 cards here, either.

18 VICE CHAIRPERSON JEFFRIES: So, Mr.
19 Chair, I'll move items 14 through 20.

20 BOARD MEMBER BOWKER: Second.

21 CHAIRPERSON YOUNG: Okay.

22 All those in favor?

23 (Ayes.)

24 CHAIRPERSON YOUNG: All right. Any
25 opposed? All right, that motion carries.

1 We go to item number 6, the Morro Bay/
2 Cayucos Wastewater Treatment Plant, agenda item
3 number 6.

4 Mr. Briggs.

5 MR. BRIGGS: I have an opening statement
6 for you to read, Mr. Chairman.

7 CHAIRPERSON YOUNG: Okay. This is the
8 time and place for hearing by the California
9 Central Coast Regional Water Quality Control Board
10 and the United States Environmental Protection
11 Agency for consideration of the National Pollutant
12 Discharge Elimination System permit renewal for
13 the City of Morro Bay and the Cayucos Sanitary
14 District, San Luis Obispo County.

15 The Water Board will also consider a
16 settlement agreement that provides for upgrading
17 the wastewater treatment plant to full secondary
18 treatment standards by March 2014.

19 The USEPA Hearing Officer is Alexis
20 Strauss, Director of the Water Division of the
21 USEPA Region 9, which serves Arizona, California,
22 Hawaii, Nevada, the Pacific Islands and over 140
23 tribal nations. Director Strauss will make an
24 opening statement in just a moment.

25 The order of presentation at this

1 hearing will be as follows: Water Board Staff
2 presentation; Discharger's cross-examination of
3 Water Board Staff; and when I say NRDC, for those
4 of you who don't know who I'm referring to, it's
5 the National (sic) Resources Defense Council.

6 MR. BRIGGS: Natural Resources.

7 CHAIRPERSON YOUNG: What did I say?

8 MR. BRIGGS: National.

9 CHAIRPERSON YOUNG: National, well --
10 they cover a wide territory.

11 Okay. Natural Resources Defense
12 Council, NRDC; their cross-examination of the
13 Water Board Staff. Discharger's presentation.
14 NRDC's cross-examination of Discharger's
15 witnesses. NRDC's presentation. Discharger's
16 cross-examination of NRDC's witnesses. Comments
17 from other interested persons. NRDC's closing
18 summary, if any. Discharger's closing summary, if
19 any. Water Board Staff's closing summary and
20 recommendations.

21 Before I continue on, there may be a
22 couple of interested persons that have to leave
23 and can't be here after a certain time certain, so
24 I think there's only one or two individuals like
25 that. And I'm inclined to allow them to go ahead

1 and speak in the beginning, if that's what they'd
2 like, unless NRDC or the Discharger has any
3 objections to that.

4 MS. JAISWAL: No.

5 CHAIRPERSON YOUNG: Okay. Board
6 Members, the EPA Hearing Officer and Staff Counsel
7 may ask questions at anytime. Others may ask
8 questions at the conclusion of a witness'
9 testimony.

10 The Dischargers are allowed a combined
11 total of one hour. NRDC is allowed one hour to
12 make their presentations. Time for Board or EPA
13 questions and answers do not count against those
14 allocations. And I do keep track of the clock up
15 here and so I'm very mindful as to who is actually
16 presenting their case versus the Board kind of
17 interrupting that process and then asking
18 questions.

19 The EPA Hearing Officer or I may limit
20 cross-examination. During the time for interested
21 persons to comment, we'll call names based on the
22 speaker cards that you need to turn in to staff.
23 If you don't know, these are the white cards. I
24 have some of them up front.

25 Public comments are limited to three

1 minutes for each person. Persons speaking during
2 the public comment period may not be cross-
3 examined, but Board Members, the EPA Hearing
4 Officer or Staff Counsel may ask questions.

5 The evidentiary hearing will be followed
6 by Water Board deliberation. The Water Board may
7 take action today or defer action.

8 Each person who testifies at this
9 hearing shall begin by stating his or her name and
10 address unless the address has already been given.
11 All persons who may testify at this hearing please
12 stand right now. Even if you don't plan to
13 testify but are involved in this matter.

14 Raise your right hands and take the
15 following oath.

16 Whereupon,

17 ALL PROSPECTIVE WITNESSES
18 were, by Chairman Young, duly sworn.

19 CHAIRPERSON YOUNG: Did anyone say no to
20 that question? All right.

21 Director Strauss, welcome to the Central
22 Coast Region. And I understand you have an
23 opening comment to make, also.

24 DIRECTOR STRAUSS: Just a few
25 formalities, thank you.

1 Good afternoon. I'm Alexis Strauss; I'm
2 Director of USEPA's Water Division. This public
3 hearing regarding the City of Morro Bay and the
4 Cayucos Sanitary District's several National
5 Pollution Discharge Elimination System permits,
6 known as an NPDES permit, and the state waste
7 discharge requirements and monitoring and
8 reporting program, this hearing is now open.

9 As Chairman Young has stated, this
10 hearing is being held jointly by the U.S.
11 Environmental Protection Agency and the Central
12 Coast Regional Water Quality Control Board to
13 receive your comments on these jointly proposed
14 actions.

15 I've been authorized to serve as the
16 Presiding Officer for EPA for today's public
17 hearing. This hearing is being held pursuant to
18 state law and pursuant to part 124, title 40 of
19 the Code of Federal Regulations.

20 The plant discharges treated wastewater
21 to the Pacific Ocean. As the discharge does not
22 yet fully meet secondary standards, Morro Bay and
23 Cayucos have requested a waiver from the national
24 secondary treatment requirements under section
25 301(h) of the Clean Water Act.

1 EPA has primary regulatory
2 responsibility for determining whether this
3 discharge meets the requirements for continuing at
4 less than full secondary treatment. The Regional
5 Water Board will decide whether to concur in EPA's
6 tentative decision.

7 Public notice of the jointly drafted
8 NPDES permit was made in The San Luis Obispo
9 County Tribune; sent to all known interested
10 parties; and posted on the EPA and Regional Board
11 websites.

12 The written public comment period was
13 extended in a revised hearing notice which was
14 sent to all known interested parties and posted on
15 our websites. The hearing date was rescheduled
16 and the public comment period extended in a
17 revised hearing notice sent to all interested
18 parties and posted on the websites.

19 Revisions to the hearing notice
20 regarding EPA's appeal procedures were sent to
21 interested parties and posted on the websites. We
22 requested the written substantive comments be
23 submitted to the EPA and the Regional Board, and
24 are also accepting verbal public comments at
25 today's hearing.

1 You may submit your written statement
2 for the administrative record. Both written and
3 verbal comments, of course, receive equal
4 consideration from EPA and the Regional Water
5 Board.

6 After the close of the hearing and
7 comment period EPA and the Regional Board will
8 review and respond to all written and oral
9 comments received.

10 EPA will not make a decision on the
11 proposed draft permit until all comments submitted
12 during the comment period have been considered.
13 The Regional Board has considered all timely
14 written comments, will consider all oral comments
15 today, and as Chairman Young notes, may reach a
16 decision today.

17 The purpose of this public hearing is to
18 hear your comments. We, EPA, will not be engaging
19 in a dialogue on the merits of the issues,
20 themselves, today. And I will not be committing
21 EPA to any specific decision on the draft NPDES
22 permit. Rather it's my purpose to use this time
23 to hear and consider your comments.

24 If the Regional Board adopts the waste
25 discharge requirements today, that action would

1 constitute concurrence with the proposed EPA
2 waiver of secondary treatment requirements under
3 section 301(h) of the Clean Water Act and water
4 quality certification under section 401 of the
5 Clean Water Act.

6 Each person from whom we receive written
7 comments will be given notice of the EPA and
8 Regional Board decision on the final permit for
9 the Morro Bay and Cayucos wastewater treatment
10 plant. If you haven't submitted comments but
11 you'd like to receive notice of our decision,
12 please let us know today.

13 The final permit becomes effective 33
14 days following issuance by EPA. Pursuant to
15 40CFR124, a petition can be filed with the
16 Environmental Appeals Board to review any
17 condition of the federal permit decision. If a
18 request for review is filed, those conditions
19 which are uncontested go into effect pending
20 disposition of the request for review. Request
21 for review of a federal permit must meet the
22 requirements of 40CFR124.

23 Persons filing a request for review must
24 have filed comment on the draft permit or
25 participated in this public hearing. Otherwise,

1 requests for review may be filed only to the
2 extent changes from the draft to the final federal
3 permit decision.

4 A copy of the record of today's hearing
5 may be available for inspection at either EPA's
6 office in San Francisco or this Regional Board
7 Office.

8 And this concludes what I need to say as
9 Hearing Officer for EPA, and I appreciate your
10 level of interest in this very important matter,
11 and look forward to your comments. Thank you.

12 CHAIRPERSON YOUNG: Thank you, Director.
13 Before we begin with the Water Board Staff
14 presentation, I just have a question for the
15 various parties, whether there's any procedural
16 objections that they wish me to address at this
17 time?

18 Mr. Beckman.

19 MR. BECKMAN: Good afternoon, Mr.
20 Chairman, Director Strauss. David Beckman, NRDC.
21 We just wanted a clarification on the state of the
22 record. And also clarification about precisely
23 what you're considering here today with respect to
24 the upgrade schedule of the settlement agreement.
25 If you'd like to entertain those issues now, we'd

1 be happy to do so.

2 CHAIRPERSON YOUNG: Ms. Okun, do you
3 want to address that?

4 MS. OKUN: I'm not sure I understand the
5 question about the scope of the record. I'm not
6 sure what specifically that relates to. But I can
7 address the issue of the settlement agreement.

8 CHAIRPERSON YOUNG: Okay.

9 MS. OKUN: We have revised the
10 settlement agreement to include the new schedule
11 that Morro Bay and Cayucos adopted last week that
12 would provide for a full upgrade to secondary
13 treatment by March 31, 2014.

14 There were two other changes that were
15 made. One was to correct a typo that I believe
16 NRDC pointed out in a definition. It was a
17 reference to 13383 of the Water Code that should
18 have been 13385. And a sentence was also added to
19 clarify that the Executive Officer is not bound to
20 make any particular recommendation to the Board
21 until he hears all the evidence today.

22 CHAIRPERSON YOUNG: Okay. Anything
23 else, Mr. Beckman?

24 MR. BECKMAN: Thank you, Ms. Okun. The
25 question on the record was there have been some

1 correspondence, electronic and otherwise, between
2 the parties and the Water Board about whether
3 certain letters or studies attached to letters
4 were or were not part of the record. And I think
5 it would be appropriate for the Board Chair, or
6 whomever is going to make a ruling, to do so
7 before the hearing starts.

8 MS. OKUN: The --

9 CHAIRPERSON YOUNG: I think I've ruled
10 on everything that was presented to me.

11 MS. OKUN: There's a supplemental sheet
12 that went out Friday, I believe, that indicated
13 that the report submitted -- it was a copy of a
14 Heal The Ocean 2003 report that was excluded as
15 being outside of the scope of what NRDC was given
16 leave to submit by April 3rd. And I don't recall
17 anything else that was excluded.

18 MR. BECKMAN: Because we haven't
19 received any notice of that. And no reasons for
20 that. And indeed, didn't you extend the record
21 deadline, or the comment deadline with the
22 extension of the hearing date?

23 MS. OKUN: The date for nonevidentiary
24 policy statements was extended to May 1st. And
25 other than the NRDC letter regarding reasons for a

1 shorter time schedule we didn't receive any other
2 policy comments that I can recall, is that right?

3 MR. BECKMAN: So you're distinguishing
4 between the status of a party as to whether that
5 deadline would incorporate the study. So, in
6 other words, it would be okay for a member of the
7 public to submit the study, but not NRDC? I that
8 your ruling?

9 MS. OKUN: No, it would not have been
10 okay for a nonparty to submit the study. What we
11 extended the record for, as it said in the hearing
12 notice, which I think was dated March 30th, is
13 that anyone could submit nonevidentiary policy
14 statements up to two pages in length by May 1st.
15 That was in the published hearing notice.

16 And the ruling regarding the 2003 Heal
17 the Ocean report was in the May 5, 2006
18 supplemental sheet, which I believe was emailed to
19 all the parties. Wasn't it, Matt?

20 MR. THOMPSON: Yes.

21 MR. BECKMAN: Well, there's no ruling in
22 there. There may be some discussion about studies
23 that are not even named. If you'd like to rule,
24 we request that you make a ruling. If you do not
25 wish to make a ruling, that is fine. We would

1 certainly object strongly to exclusion of relevant
2 evidence, especially under the circumstances here.

3 CHAIRPERSON YOUNG: Okay, hang on, Mr.
4 Beckman. I've got a lot of yellow pages in front
5 of me.

6 (Pause.)

7 MR. BECKMAN: Mr. Chairman, if it would
8 assist you we could make an offer of proof as to
9 why the study's relevant.

10 CHAIRPERSON YOUNG: The rulings are
11 here; they're in a supplemental sheet for today's
12 meeting. Why don't I go over those rulings.
13 These were issues -- can we put them up on the
14 screen.

15 MS. OKUN: It's the May 5th supplemental
16 sheet.

17 CHAIRPERSON YOUNG: It's the May 5th
18 supplemental sheet.

19 Mr. Beckman, do you have a copy of the
20 May 5th supplemental sheet?

21 MR. BECKMAN: Yes, I do, Mr. Chairman.

22 CHAIRPERSON YOUNG: Okay. The rulings
23 begin on the front page in the right-hand column.

24 MR. BECKMAN: Yeah, we never received
25 this prior to right this second.

1 I suppose we would object to the fact
2 that notwithstanding the six weeks have passed, or
3 more, since these documents were submitted, that
4 this is transmitted at this point in time.

5 There's a lot of information, Mr.
6 Chairman, that has been transmitted at the last
7 minute, including an extensive legal memo that
8 went out about 48 hours ago from Ms. Okun; some
9 additional responses to comments that went out
10 last night. That kind of a process does not allow
11 for an orderly representation of our interests.

12 I do see that there is an order on that
13 matter. I think that we would just object to the
14 exclusion of the evidence.

15 CHAIRPERSON YOUNG: I've asked Ms. Okun
16 to go over the documents so that the rest of the
17 Board is aware of what's been excluded. If you
18 wish to make some comments to that proposed
19 ruling, go ahead, Mr. Beckman.

20 MR. BECKMAN: Yeah, very briefly.

21 (Parties speaking simultaneously.)

22 CHAIRPERSON YOUNG: -- describe for the
23 Board.

24 MR. BECKMAN: I'm sorry.

25 MS. OKUN: In terms of the timeliness of

1 the ruling there was no requirement that the
2 ruling be made before the hearing at all. But I
3 will go over what the rulings are.

4 It says that -- well, first of all, the
5 supplemental sheet that went out on May 5th
6 transmitted the new schedule that Morro Bay and
7 Cayucos agreed to last week. And also a proposed
8 monitoring schedule that the City of Cayucos had
9 agreed to at the time. Morro Bay subsequently
10 agreed to something different. But the parties
11 can address that.

12 The evidentiary rulings say that the
13 Chair's made evidentiary rulings on three
14 documents that the NRDC submitted after the
15 original comment due date. These rulings are as
16 follows:

17 The April 21, 2006 letter regarding the
18 issuance of the 301(h) waiver. The letter argues
19 that the upgrade timeline should be shorter based
20 on comparison to other facilities. It was
21 submitted after the deadline for evidentiary
22 submissions, but within the time for policy
23 comments of up to two pages. This letter will be
24 accepted as a nonevidentiary policy statement that
25 the Discharger should upgrade faster because other

1 facilities have done so. Staff has already
2 addressed this issue in the March 17, 2006
3 supplemental sheet, and will also be addressing it
4 in their presentation today.

5 There was a 2006 article by Truman
6 Miller, et al. And that was admitted into the
7 record.

8 And the final document is a 2003 report
9 by H. Kator. The Chair did not accept this report
10 because it did not respond to new facts and
11 information in the Discharger's March 3rd
12 submission. There were three reasons given in a
13 subsequent letter from NRDC explaining why this
14 document was submitted.

15 The first reason that the plant newly
16 claims that in 2005 it had no documented
17 exceptions to fecal coliform limits, and as such,
18 cannot pose any potential human health risks. And
19 this information was in its July 2003 supplement
20 to the permit renewal application. And that was
21 an extensive discussion of some fecal coliform
22 monitoring data to demonstrate that the subject
23 discharge does not pose any potential human health
24 risks.

25 Even in the absence of fecal coliform

1 exceedances of 2005 is discounted, the same
2 conclusions would apply based on the absence of
3 fecal coliform exceedances in previous years.

4 The second reason offered for the
5 document was that the plant newly claims that its
6 effluent cannot conceivably be considered to
7 contribute to degradation of water quality because
8 its effluent is thoroughly disinfected. This is
9 not a new claim. It's in section 3(e) of the
10 renewal application supplement.

11 The Discharger states there's no
12 evidence that the MBCSD discharge has or will
13 result in adverse impacts on recreational
14 activities. Wastewater is disinfected prior to
15 discharge and total coliform densities reduced to
16 negligible levels, especially after the wastewater
17 is diluted at least 133-fold within the 15-meter
18 zone of initial dilution.

19 The third reason was that the plant
20 newly claimed that it had conducted detailed plume
21 delineation studies on 28 separate occasions.
22 This was also in section 3(a) of its new
23 application and in all offshore monitoring reports
24 prior to and since July of 2003.

25 The Discharger provides extensive

1 discussion of its receiving water study, surveys
2 and results. And survey results are discussed
3 extensively by staff in a fact sheet of the
4 proposed permit.

5 CHAIRPERSON YOUNG: Okay, Mr. Beckman,
6 if you want to briefly put your further objections
7 on the record.

8 MR. BECKMAN: Thank you, Mr. Chairman.
9 The fundamental objection is that the Board Staff
10 will take evidence when it suits the position that
11 they are in favor of, and won't take evidence when
12 it contradicts the position that they're in favor
13 of.

14 In fact, Ms. Okun, in a response to the
15 State Water Board during the course of this
16 administrative proceeding, on behalf of the Board,
17 said that the fundamental thing that the Board was
18 trying to accomplish was to make decisions based
19 on all the evidence.

20 Here we submitted a study which
21 demonstrates that notwithstanding good bacterial
22 counts, i.e., lack of violations of the bacterial
23 pathogen indicators, that viruses can be suspended
24 in primary treated solids which can impact human
25 health. But the staff doesn't want to put that in

1 front of you. We're going to talk about bias
2 during our presentation, so I'll limit my comment
3 on that point to what I've just said.

4 More fundamentally, we're responding to
5 2005 evidence, which was just submitted to the
6 Board by the Discharger after our comment period
7 closed. So, the reasons that are stated in the
8 ruling that this information was discussed in 2005
9 misses the point. We're responding to new
10 evidence that was presented by the Discharger to
11 the Board after the fact of the comment period
12 closing.

13 We could not possibly have submitted the
14 study in response to that information before it
15 was published. And it was just published, or it
16 was just made available after the comment period
17 closed.

18 Secondly, what we're responding to is a
19 detailed 20-some-page letter from a consultant to
20 the plant. And the claims, I would imagine that
21 the representatives of the sewage discharge plant
22 would argue that that's information you should
23 consider, but was not part of the previous
24 submittal. That's why, presumably, they presented
25 the information.

1 The position that staff is taking is
2 that having allowed them to present that
3 information, that members of the public, and
4 indeed parties like NRDC are not able to respond
5 to the information because it might have been
6 buried in some other supplement to a previous
7 application that was submitted three years ago.
8 That's patently unreasonable. It's patently
9 unreasonable.

10 So, we strongly object. Not only to the
11 exclusion of that evidence, but to the underlying
12 perspective and arbitrariness that it reflects.

13 Thank you for the opportunity to address
14 that, Mr. Chairman.

15 CHAIRPERSON YOUNG: Let's see. Has the
16 Discharger commented on whether the documents
17 should or shouldn't be admitted?

18 MS. OKUN: They didn't object to them,
19 and they've had them, I believe, since April 3rd.

20 CHAIRPERSON YOUNG: Okay.

21 MS. OKUN: Or it actually may have been
22 earlier. That was with the March letter that you
23 submitted that? Okay. So, several months.

24 CHAIRPERSON YOUNG: First of all, let me
25 state this, Mr. Beckman. I make the rulings on

1 evidence, staff does not. Okay. This is not
2 staff's proposal for what should and shouldn't be
3 admitted into the record. I get the request for
4 what should come in, even when it's untimely. And
5 I make -- I discuss it with Ms. Okun and then I
6 decide what should happen.

7 What I'd like to know at this point is
8 whether -- and I don't know the gentleman
9 representing the Morro Bay or Cayucos, if you
10 could identify yourselves for me, I'd --

11 MR. KEOGH: I'm Bruce Keogh and I'm the
12 Manager of the wastewater treatment plant.

13 CHAIRPERSON YOUNG: Okay. And the
14 gentleman with you?

15 DR. COATS: I'm Dr. Coats with marine
16 research --

17 CHAIRPERSON YOUNG: Okay, --

18 DR. COATS: -- monitoring program.

19 CHAIRPERSON YOUNG: Does either Morro
20 Bay or Cayucos have any objections if we allow
21 these documents to come in?

22 MR. KEOGH: No, I --

23 MS. OKUN: One document --

24 CHAIRPERSON YOUNG: Just the one
25 document?

1 MS. OKUN: Yes.

2 CHAIRPERSON YOUNG: Okay.

3 MS. OKUN: 2006 article is it.

4 MR. KEOGH: No, there's no objection
5 from our side.

6 CHAIRPERSON YOUNG: Okay. Well, in
7 light of that, then the document will come in.

8 Okay. All right, any other procedural
9 issues to take up, Mr. Beckman?

10 MR. BECKMAN: One final one, Mr.
11 Chairman. Just about the time; we had asked for
12 two hours. You will be pleased to know that we're
13 not going to ask for two hours here. We do -- we
14 would like to request about an hour and 15, or an
15 hour and 20, and we'll try to do better than that.

16 CHAIRPERSON YOUNG: Okay, fine. And I
17 have offered that I would grant more time if you
18 guys stated a case for why you really needed it.
19 So it wasn't a hard-and-firm one hour, but I'm
20 just trying to keep everyone's feet to, you know,
21 the timeframe. So I appreciate an hour and 15
22 sounds very do-able, an hour and 20 minutes.

23 MR. BECKMAN: Thank you, Mr. Chairman.

24 CHAIRPERSON YOUNG: Okay. Any other
25 issues that we should take up at this time? Okay,

1 why don't we then proceed with the staff's
2 presentation of this agenda item.

3 MR. BRIGGS: Thank you, Mr. Chairman.

4 CHAIRPERSON YOUNG: Pardon me, Mr.
5 Briggs. Unless NRDC or the Discharger have any
6 objections, I think there's a couple of people in
7 the audience that wanted to leave early. They're
8 just -- they're interested persons. I'd like to
9 accommodate them, if that would be okay.

10 Yeah, who was the individual? Yeah, you
11 had specific -- Carol, you had mentioned an
12 individual? Is there a speaker card? Jennifer
13 Joswick. Okay, let's just take that one speaker
14 at this time.

15 MS. JOSWICK: I appreciate that very
16 much.

17 CHAIRPERSON YOUNG: Okay.

18 MS. JOSWICK: My name's Jennifer
19 Joswick. I live at 119 Morro in Shell Beach,
20 stating my address. I'm presently an English
21 instructor at Alan Hancock College, and I'm going
22 to teach a class now, so thank you for taking me.

23 I'm also a member of Surfrider. And
24 I've been here for five years, living on the
25 central coast. I used to live in Orange County

1 for about ten years. And before that, Los
2 Angeles. And I was always entranced by the
3 beautiful central coast beaches. And I've been
4 surfing for several years now, and was very
5 excited to move here to cleaner water in Pismo.

6 I was sadly dismayed that we do not have
7 adequate wastewater treatment facilities here.
8 Pismo has recently upgraded to secondary. I'm
9 hoping that since this has been upgraded, I
10 believe January, that I'm not going to have the
11 same illnesses that I had last summer that made me
12 very sick.

13 I wrote a editorial comment to The San
14 Luis Tribune, the newspaper, back in January,
15 telling them how ill I was last summer from
16 surfing.

17 So I would urge the Board to please move
18 for the greatest possible advancement to tertiary
19 for the current wastewater treatment plant in
20 Morro Bay because I can't think that our tourism
21 or our current recreation could suffer that any
22 longer. And to wait ten more years, it just seems
23 very unreasonable.

24 Thank you very much.

25 CHAIRPERSON YOUNG: Thank you for your

1 comments.

2 Okay, now we can go to staff's
3 presentation. And I'm going to start the clock at
4 60 minutes.

5 MR. BRIGGS: While you're doing that,
6 Mr. Chairman, I'll go ahead and introduce our
7 staff who's going to be making our presentation
8 and who's prepared this item and has actually
9 worked on it for quite a long time, and is glad
10 that we're getting close to the finish line, we
11 hope. And that's our Staff Engineer, Matt
12 Thompson.

13 CHAIRPERSON YOUNG: Okay. Go ahead.

14 MR. THOMPSON: Yes, thanks for that
15 introduction, Roger. Good afternoon, Director
16 Strauss, Chairman Young and Members of the Board.
17 Thank you for being here today.

18 I am very pleased to present this item
19 to you today. This is really the culmination of
20 several years of work for me, the City of Morro
21 Bay Cayucos Sanitary District, and the Natural
22 Resources Defense Council.

23 I am proposing a settlement agreement
24 for an upgrade -- for the upgrade and reissuance
25 of the NPDES permit for the Morro Bay/Cayucos

1 Wastewater Treatment Plant.

2 Before I give you my recommendation I'm
3 going to take about 25 minutes to describe the
4 wastewater discharge; discuss the circumstances
5 leading to the Discharger's decision to upgrade;
6 explain the proposed upgrade schedule and
7 settlement agreement; describe the Discharger's
8 monitoring program; summarize my data evaluation;
9 and summarize written comments that we've
10 received.

11 The City of Morro Bay and Cayucos
12 Sanitary District, which I will refer to as
13 Dischargers, jointly own the Morro Bay/Cayucos
14 Wastewater Treatment Plant. The facility is
15 designed to treat an annual average wastewater
16 flow of 2.06 million gallons per day. But
17 currently only receives approximately 1.2 million
18 gallons per day.

19 The facility is a split-stream process
20 of physical and biological treatment. All
21 wastewater receives primary treatment.
22 Approximately 1 million gallons per day then
23 received secondary treatment. Secondary treated
24 wastewater is blended with primary treated
25 wastewater when necessary, disinfected by

1 chlorination, and then dechlorinated prior to
2 discharge to the ocean.

3 I need to correct this. That should say
4 1.2 million gallons per day, excuse me. Due to
5 this blend of primary and secondary treatment the
6 facility operates under Clean Water Act section
7 301(h) modified NPDES permit.

8 This basically means the discharge is
9 allowed an exception to the technology-based
10 secondary treatment standards for suspended solids
11 and biochemical oxygen demand. All other
12 requirements of the Clean Water Act and the
13 California ocean plan apply to the discharge.

14 Blending of primary and secondary
15 treated wastewater is usually only necessary
16 during high flows such as during rainstorms and
17 some holiday weekends. The facility operators
18 maximize flow through the secondary treatment
19 process to avoid blending.

20 In 2005 blending occurred less than 7.5
21 percent of the year. This means wastewater
22 receives full secondary treatment for the majority
23 of the year. In 2005 the discharge met secondary
24 treatment removal efficiency standards for
25 suspended solids every month of the year. Average

1 suspended solids removal was over 93 percent; far
2 better than the secondary treatment standard of 85
3 percent.

4 The suspended solids removal efficiency
5 is the same or better than other nearby ocean
6 discharges, including Avila Beach and South San
7 Luis Obispo County Sanitation District.

8 Contrary to what some have said, Morro
9 Bay and Cayucos do not discharge raw sewage.

10 This is Morro Bay and this is the
11 wastewater treatment plant. Effluent is
12 discharged to the ocean through a 27-inch diameter
13 outfall that terminates in a 170-foot long
14 diffuser. The diffuser is 2700 feet from shore in
15 approximately 50 feet of water. The diffuser
16 achieves a minimum initial dilution of 133 parts
17 seawater for every part effluent. The zone of
18 initial dilution, which is represented by this
19 very small teal-colored area, is approximately 103
20 feet wide and 240 feet long.

21 The diffuser is approximately 1.1 miles
22 from Morro Rock, and 1.7 miles from the mouth of
23 Morro Bay. This is a very well mixed open ocean
24 environment. This is a west-facing sandy beach
25 with heavy wave action and is a popular surf spot.

1 This area supports several other beneficial uses
2 including marine habitat and fishing.

3 In anticipation of this permit
4 reissuance process, we approached the Dischargers
5 three years ago and asked them to consider a
6 proactive facility upgrade so that they may
7 eventually forego their 301(h) modified permit.
8 Our reason for requesting the upgrade was not
9 based on any evidence of impacts to water quality.
10 We want to insure the aging treatment plant
11 remains reliable and protects the ocean.

12 As called for in the California Water
13 Code, we have been encouraging the Discharger to
14 produce recycled water to reduce their dependence
15 on imported water supplies.

16 The Discharger initially considered
17 completing an upgrade at the end of the rated
18 useful life of the existing facility in 15 years.
19 After much opposition to that timing the
20 Discharger directed their engineering consultant,
21 Carollo Engineers, to develop a shorter upgrade
22 schedule.

23 In May 2005 Carollo presented the 9.5-
24 year timeline to the Discharger. The Discharger
25 accepted the 9.5-year timeline, and formally

1 proposed it to us in June 2005. We found that
2 schedule to be reasonable and proposed it to you
3 in the written materials for your March 2006
4 meeting.

5 However, after further opposition to
6 that upgrade schedule by some members of the
7 public, including the Natural Resources Defense
8 Council, the Discharger requested additional time
9 to consider shortening the schedule further. So
10 we agreed to delay this hearing until today.

11 The City of Morro Bay and Cayucos
12 Sanitary District held a joint public meeting on
13 April 27th and agreed to shorten the upgrade
14 schedule an additional 15 months. We sent this
15 new schedule to you via supplemental sheet early
16 this week.

17 Here's the schedule distilled down to
18 the most important steps. The Discharger will now
19 achieve full compliance with secondary treatment
20 standards by March 31, 2014, which is a little
21 more than seven years and ten months from today.

22 Although we may still not see eye to eye
23 with the NRDC on this schedule, we must thank the
24 NRDC for their contribution to this excellent
25 result.

1 We believe this is a reasonable schedule
2 to coordinate between the City and District,
3 develop a facility plan, obtain financing and
4 permits and design and construct the improvements.
5 The schedule allows the Discharger time to
6 properly plan for and complete environmental
7 review of tertiary treatment facilities to produce
8 recycled water.

9 We've incorporated this new schedule
10 into a revised settlement agreement. The
11 settlement agreement includes escalating
12 liquidated damages of \$100 to \$1000 per day if the
13 Discharger fails to meet a deadline in the
14 schedule. And force majeure provisions for any
15 event beyond the control of the Discharger.

16 The settlement agreement will take
17 effect if you concur in reissuance of the 301(h)
18 modified permit. Another 301(h) modified permit
19 is necessary because the timeline to achieve
20 compliance to secondary treatment standards
21 exceeds the five-year life of an NPDES permit.

22 The next permit in 2011 will include
23 full secondary treatment requirements. That
24 permit will be accompanied by a time schedule
25 order or other order to shelter the Discharger

1 from mandatory penalties until the upgrade is
2 complete.

3 Now I'm going to take a few minutes to
4 describe the Discharger's monitoring program in
5 order to explain why I believe reissuance of the
6 301(h) modified permit is appropriate.

7 The Discharger's monitoring and
8 reporting program is among the most comprehensive
9 and intensive of all ocean dischargers less than 5
10 million gallons per day in California. Every
11 important aspect of the treatment process
12 receiving waters, seafloor sediment and marine
13 life is monitored.

14 Influent and effluent quantity and
15 quality are routinely monitored to evaluate
16 treatment process efficiency. Effluent is
17 regularly monitored for conventional pollutants
18 such as suspended solids, pH, as well as whole
19 effluent toxicity and other specific toxic
20 pollutants.

21 Receiving water monitoring includes both
22 surf zone monitoring and ocean monitoring near the
23 discharge. This is a figure depicting the eight
24 surf zone monitoring stations A through F, ranging
25 from 5600 feet upcoast of the outfall to 5000 feet

1 downcoast of the outfall. Graph samples are taken
2 at all of these stations on a weekly basis in the
3 summer months, and at least monthly during the
4 winter months.

5 Samples are analyzed for total and fecal
6 coliform organisms to assess conditions for water
7 contact, recreation and shellfish harvesting.

8 Here's a figure depicting the
9 Discharger's ocean monitoring stations. The
10 stations form a target-shaped grid around the
11 outfall diffuser.

12 To assess impacts of the discharge on
13 the receiving water, data are collected quarterly
14 by deploying electronic probes by boat at each
15 monitoring station to measure dissolved oxygen,
16 pH, salinity, temperature, density and light
17 transmittance at frequent intervals throughout the
18 entire water column. The data are interpolated to
19 create graphical cross-sections of the discharge
20 plume.

21 Here's an example of such a cross-
22 section of salinity from October 2004. This is
23 the ocean surface at the top, and this is the
24 seafloor and the outfall at the bottom. The
25 discharge plume is represented by the green and

1 red areas. These cross-sections are generated
2 quarterly and are used to evaluate the geometry
3 and behavior of the discharge plume under various
4 oceanographic conditions.

5 Recently the Discharger's consultant has
6 been towing the electronic probe over and around
7 the outfall while simultaneously recording its
8 location with precise GPS equipment to create a
9 very detailed representation of the discharge
10 plume.

11 Here is an example of tow survey results
12 from October 2003. The dotted line is the zone of
13 initial dilution. The discharge plume is
14 represented by the darker blue and red areas. You
15 can see that the discharge plume is rapidly
16 diluted within a very short distance from the
17 diffuser and is barely perceptible within just 50
18 meters from the diffuser.

19 Sediment monitoring is conducted
20 annually at nine stations surrounding the
21 discharge as shown in this figure to assess any
22 changes in the occurrence of pollutants and
23 sediment over time or in distance from the
24 outfall.

25 Parameters measured include sediment

1 particle size, BOD, sulfides, heavy metals and
2 persistent organic pollutants such as DDT.
3 Bottom-dwelling or benthic organisms are monitored
4 annually at these same stations. Benthic
5 organisms are used to represent marine life in the
6 vicinity of the outfall because they are most
7 likely to be exposed to pollutants in the
8 discharge. And they cannot move away from the
9 discharge like fish.

10 Benthic community health is represented
11 by indices of density, diversity, trophic levels,
12 species, dominants and richness. Statistical
13 evaluations of these indices are used to assess
14 any changes over time or in distance from the
15 outfall.

16 This is, indeed, a very powerful
17 monitoring program for a discharge of this size.
18 The large body of data generated by this
19 monitoring program should be weighed heavily when
20 considering reissuance of the permit. If you have
21 any questions regarding the monitoring program,
22 the designer and executor of the program, Dr.
23 Douglas Coats, is present here today.

24 The U.S. Environmental Protection Agency
25 Staff and your staff both completed independent

1 evaluations of the Discharger's permit application
2 and monitoring data record. EPA summarized its
3 evaluation in a tentative decision document dated
4 November 10, 2005, which is attachment 2 in your
5 March agenda package.

6 In short, EPA concludes that a balanced
7 indigenous population is being maintained in the
8 vicinity of the outfall, and recreational
9 activities are protected, also. And continued
10 maintenance of the balanced indigenous population
11 through the next permit cycle is likely assured.

12 EPA's tentative decision document is to
13 grant the Discharger's request for a 301(h)
14 modification.

15 If you can hold on for one second, we
16 have Aaron Setren of USEPA. He was the marine
17 scientist who authored the tentative decision
18 document. Harvey, I have his phone number right
19 here.

20 (Pause.)

21 MR. THOMPSON: We're going to patch
22 Aaron in, in case you guys have any questions
23 regarding the balanced indigenous population
24 stuff. But I think I'm going to go ahead and
25 proceed. Harvey, here's his number.

1 Okay, I'm going to continue, Harvey.

2 I'll wait. Okay.

3 MR. SETREN: Hello.

4 MR. THOMPSON: Aaron, it's Matt

5 Thompson; can you hear me?

6 MR. SETREN: Yes.

7 MR. THOMPSON: We're right in the middle

8 of my presentation. We wanted you to listen in

9 for the remainder, okay?

10 MR. SETREN: Okay.

11 MR. THOMPSON: Thanks. I also completed

12 a detailed evaluation of the Discharger's

13 monitoring data. This evaluation included all

14 relevant limitations, including effluent

15 limitations for suspended solids, BOD, pH and

16 other parameters, as well as receiving water

17 limitations for bacteria, light transmittance,

18 dissolved oxygen, pH, sulfides in sediment,

19 organic materials in sediment, and marine life.

20 This evaluation is detailed in the fact

21 sheet portion of the permit which is attachment 3

22 in your March agenda package. The data is

23 compelling. The discharge consistently meets all

24 of the permit's effluent and receiving water

25 limitations. This should not be surprising. A I

1 said previously, the discharge actually meets
2 secondary treatment standards for suspended solids
3 every month of the year.

4 We have determined that the permit is
5 eligible for reissuance.

6 Several interested parties have
7 suggested that the discharge has impacted the
8 local sea otter population, so I'm going to take a
9 few minutes and discuss that in a little more
10 detail.

11 In April 2002 an association of
12 scientists, including those from the UC Davis
13 School of Veterinary Medicine, California
14 Department of Fish and Game and your staff
15 published coastal freshwater runoff is a risk
16 factor for toxoplasma gondii infection in southern
17 sea otters.

18 This study documented extensive
19 infection of southern sea otters along the central
20 coast by toxoplasma, a protozoan parasite known to
21 originate in land-based mammals, primarily cats.

22 The scientists theorized the sea otters
23 become infected by toxoplasma through consuming
24 shellfish which are filter feeders and accumulate
25 such microorganisms in their tissue.

1 More than 220 live and dead sea otters
2 were examined between 1997 and 2001 with the goal
3 of identifying spatial clusters and risk factors
4 for toxoplasma infection. The study revealed a
5 large cluster of toxoplasma-infected otters
6 centered around Morro Bay and Cayucos.

7 The same primary authors published
8 another study in 2005 titled transmission of
9 toxoplasma, clues from the study of sea otters as
10 sentinels of toxoplasma gondii flow in the marine
11 environment. That study produced the figure you
12 see here.

13 The study states otters from the Elkhorn
14 Slough/Moss Landing area and otters from Morro Bay
15 have the highest levels of exposure to toxoplasma.
16 Specifically, otters from the Elkhorn Slough area
17 were six times as likely, and otters from San
18 Simeon to Morro Bay were five times as likely to
19 have been exposed to toxoplasma than otters from
20 the more remote and rocky Big Sur coast.

21 These studies suggest the high rate of
22 infections is most closely associated with heavy
23 freshwater outflow. Note that the areas of
24 highest infection include Elkhorn Slough and Morro
25 Bay, the two largest estuaries on the central

1 coast. This makes sense; estuaries are a prime
2 environment for shellfish to feed on large volumes
3 of freshwater outflow. These estuaries also
4 provide shelter for sea otters.

5 Scientists have speculated that
6 flushable cat litter may be a source of toxoplasma
7 in domestic wastewater. So on March 2003 we
8 requested the Discharger evaluate its discharge as
9 a potential source of toxoplasma.

10 The Discharger collaborated with UC
11 Davis to monitor the discharge by hanging clusters
12 of mussels from buoys at each end of the outfall
13 diffuser. Any toxoplasma present in the discharge
14 will accumulate in the mussels over time.

15 The mussels were deployed on four
16 separate occasions covering all seasons in a one-
17 year period. This was really an innovative
18 application of accepted mussel monitoring methods
19 to monitor toxoplasma, monitor wastewater for
20 toxoplasma.

21 In a December 2004 letter Dr. Patricia
22 Conrad of the UC Davis School of Veterinary
23 Medicine states: We were able to complete testing
24 of 120 mussels that have been outplanted at the
25 Morro Bay outfall buoy; 30 mussels each in the

1 early dry season, late dry season, early wet
2 season and late wet season. Toxoplasma RNA was
3 not detected in any of the 120 mussels from the
4 outfall buoy that have been tested thus far.

5 These monitoring results suggest that
6 the subject discharge is not a significant source
7 of toxoplasma loading to Estero Bay.

8 The NRDC cast doubt on these results by
9 pointing out that this analytical methodology has
10 limitations. It is important to point out that
11 all scientifically defensible analytical
12 methodologies have detection limits.

13 I've been discussing toxoplasma, but I
14 must point out that toxoplasma is only a small
15 part of this complex sea otter mortality problem.
16 We know that sarcocystis nerona, a protozoan
17 parasite originating from possums, causes an
18 aggressive disease affecting the brains of sea
19 otters. Domoic acid intoxication, thorny-headed
20 worms from sand crabs, and various fecal-related
21 bacteria are also contributing to the problem.

22 The Natural Resources Defense Council
23 submitted an article currently in press entitled,
24 Salmonella vibrio clostridium and plesomanas in
25 marine and freshwater invertebrates from coastal

1 California ecosystems.

2 On March 20th the article author, Dr.
3 Woutrina Miller of UC Davis, provided a letter to
4 clarify the meaning of the study. We sent you a
5 copy of this letter with the blue sheets in
6 today's agenda package.

7 The letter states, in part: I would
8 like to clarify the study findings from our recent
9 research in the fecal protozoa and bacteria
10 present in mussels along the Central California
11 Coast.

12 The purpose of the studies was to try
13 out a new monitoring method for potentially
14 pathogenic microbes by outplanting sentinel mussel
15 batches in a manner similar to the state mussel
16 watch program that tests for pesticides and metal
17 contaminants, and then testing them for selected
18 fecal protozoa and bacteria.

19 The mussels were outplanted and
20 collected near sites exposed to the livestock
21 runoff, human sewage, or at sites distant to both
22 sources. Sites ranged from as far north as Bodega
23 Bay to as far south as Morro Bay.

24 Mussels were collected during the wet
25 and dry seasons over the course of three years as

1 the project evolved.

2 With regard to the Morro Bay sewage
3 outfall the sentinel mussel batches that were
4 tested for bacteria had similar findings to the
5 other mussel site outside Morro Bay near Motel
6 Point and the sites inside Morro Bay.

7 Mussels from the 2002 batches were
8 negative for all bacteria except low levels of
9 clostridium; and mussels from the 2003 batches
10 were negative except for low levels of vibrio. We
11 did not find that the Morro Bay sewage outfall was
12 a point source for fecal bacteria loading into the
13 near shore ecosystem in this study."

14 This item has generated a tremendous
15 volume of written comments. Those comments and
16 detailed responses are found in the permit fact
17 sheet and attachments, so I will only summarize
18 them here.

19 The Discharger requested several minor
20 revisions to the permit, mostly within the
21 monitoring program. We found these requests to be
22 reasonable and appropriate and recommend that most
23 be accepted.

24 The Discharger also requested that this
25 Region's wastewater collection system requirements

1 be removed from the permit because similar
2 statewide requirements are pending.

3 In our original response to comments we
4 recommended that requirements be retained because
5 it was unclear as to when the statewide
6 requirements would be adopted. However, State
7 Board adopted statewide general release discharge
8 requirements for sewage collection system agencies
9 on May 2nd.

10 The Discharger is required to apply for
11 coverage under the statewide general waste
12 discharge requirements within six months. The
13 statewide requirements supersede and are redundant
14 with our requirements, so we are now recommending
15 our wastewater collection system requirements
16 section 6(c)(3) and attachment G be removed from
17 the proposed permit.

18 We received over 2200 nearly identical
19 emails from across the nation in response to a
20 Natural Resources Defense Council member action
21 alert. Those emails urge you to reject the
22 proposed settlement agreement because they
23 consider the upgrade schedule to be too long.

24 Staff also received another 100
25 identical emails in response to the Defenders of

1 Wildlife action alert, also urging rejection of
2 the proposed settlement agreement. It is
3 important to note that these comments were
4 submitted in response to the originally proposed
5 9.5-year upgrade schedule.

6 NRDC submitted a comment letter
7 entitled, time is of the essence, the legal and
8 technical reasons why EPA and the Regional Board
9 must deny the 301(h) waiver and require upgrade of
10 the Morro Bay/Cayucos sewage plant as fast as
11 possible, which is attachment 4 in your March
12 agenda package.

13 NRDC's comments are supported by letters
14 by Dr. Mark Gold of Heal The Bay and environmental
15 engineer, Dr. Bruce Bell. The letters generally
16 cast out on the Discharger's monitoring program
17 and criticize the conversion schedule and
18 settlement agreement. Similar letters were
19 submitted by the Otter Project, the local chapters
20 of the Sierra Club and Surfrider Foundation,
21 California Coastkeeper Alliance, and Defenders of
22 Wildlife. These letters are included in entirety
23 as attachments in your March agenda package.

24 These arguments to deny the permit and
25 settlement agreement are largely based on

1 speculative and out-of-context statements
2 regarding sea otter health in the vicinity of the
3 discharge, and are not supported by actual data.

4 On March 3rd the Discharger submitted a
5 detailed response to the NRDC's comments, which is
6 included as attachment 12 in your March agenda
7 package. The Discharger argues that there is no
8 plausible link between the subject discharge and
9 toxoplasma infection in sea otters; and that there
10 is no evidence supporting NRDC's claims.

11 The Discharger's response includes
12 information from U.S. Geological Survey that has
13 been counting sea otters every spring for over 20
14 years. This chart depicts USGS' three-year
15 running averages of sea otter counts. This shows
16 that there's a positive growth trend in the sea
17 otter population. The most recent three-year
18 running average is 8 percent greater than the
19 previous average, and the greatest ever in the
20 study period.

21 On March 13th NRDC submitted a response
22 to the Discharger's response to its initial
23 comments. We transmitted that to you along with
24 our written response in a supplement sheet the
25 week prior to your March meeting. In summary,

1 NRDC asserts that you should not approve the
2 upgrade schedule because it could be done faster.

3 NRDC submitted follow-up comments on
4 April 3rd, which we transmitted to you with the
5 blue sheets that are part of today's agenda
6 package. In summary, NRDC's April 3rd submittal
7 challenges the Discharger's responses to its
8 original comments, and reiterates arguments made
9 in its original written comments.

10 Lastly, NRDC submitted a letter dated
11 April 21st which compares the proposed upgrade
12 scheduled to other treatment plants upgrades in
13 California. We sent that letter to you with the
14 supplemental sheet earlier this week. NRDC
15 suggests that the recent City of Pismo Beach
16 upgrade was completed in six years and four
17 months. And the City of Watsonville upgrade to
18 full secondary required only four years and nine
19 months. This is not consistent with our filed
20 records.

21 Our file records indicate the recent
22 City of Pismo Beach wastewater treatment plant
23 upgrade has actually required more than seven
24 years. Initial planning began in late 1998 in
25 response to cleanup and abatement order number 98-

1 83. That facility is still under construction.

2 The City of Watsonville upgrade to full
3 secondary required more than eight years. Initial
4 planning of that upgrade began in early 1985 in
5 response to cease and desist order number 84-48.
6 Construction was not completed until 1998, some 13
7 years later.

8 We have considered every argument
9 presented and found that none require denial of
10 the permit or settlement agreement. USEPA's
11 tentative decision document and your staff's
12 evaluation of compliance with permit requirements,
13 which are based on actual monitoring data from the
14 Discharger's approved monitoring program, both
15 support reissuance of the permit.

16 We see that you essentially have two
17 options: deny the permit and settlement agreement
18 or concur with reissuance of the permit and
19 effectuate the settlement agreement.

20 In order to deny the permit you would
21 have to conclude that the discharge does not meet
22 the requirements for a 301(h) modification. You
23 would have to require the Discharger to revise its
24 permit application; your staff would have to
25 redraft the permit to include full secondary

1 treatment requirements; and then we'd schedule
2 another hearing.

3 In the meantime the Discharger would
4 likely appeal the denial of the State Board,
5 because they cannot comply with secondary
6 treatment standards until the upgrade is complete.
7 Depending on the outcome, either NRDC or the
8 Discharger would likely challenge State Board's
9 decision. And these appeals and litigation would
10 likely delay resolution for one and a half years
11 or more.

12 The Discharger has very limited staff so
13 its focus would likely shift from completing the
14 upgrade to supporting its appeals.

15 The issuance of the permit will
16 effectuate a settlement agreement that requires
17 the Discharger to immediately begin the process of
18 upgrading its wastewater treatment plant, and
19 which will certainly lead to improved discharge
20 quality.

21 The schedule allows for development of
22 recycled water, a possibility we should be
23 embracing. The issuance of the proposed permit is
24 supported by a wealth of monitoring data.

25 The benefits of permit reissuance

1 clearly outweigh the actual or theoretical
2 downsides. We recommend you concur with EPA in
3 reissuance of the permit and effectuate the
4 settlement agreement.

5 Thank you. Any questions for me at this
6 time?

7 CHAIRPERSON YOUNG: A question I have
8 for you, and I'll stop the clock, you've got 26.5
9 minutes left. The issue of how quickly an upgrade
10 could take place would only be relevant if the
11 Board felt that a 301(h) waiver was inappropriate,
12 is that correct?

13 MR. THOMPSON: I believe that, yes.

14 CHAIRPERSON YOUNG: So if a 301(h)
15 waiver is appropriate then the issue of how much
16 time it takes the Discharger to upgrade is
17 essentially not mandated. I mean if they are
18 doing it voluntarily, then they're not -- there's
19 no forced compliance with a schedule?

20 MR. THOMPSON: That's correct.

21 CHAIRPERSON YOUNG: Okay. All right.
22 Director Strauss.

23 DIRECTOR STRAUSS: Just a quick
24 question, Matt. My apologies, a quick question.
25 You had said that in the Regional Board's files

1 the information on how long it took some other
2 plants like Half Moon Bay, Watsonville and Pismo
3 to upgrade was not consistent with the information
4 in NRDC's April 21st letter.

5 When I had read that letter, and it
6 comes close on the heels of this hearing, I
7 understand NRDC obtained the information from the
8 plants, themselves. And so is it possible that
9 the plants' information on how quickly they
10 achieved their upgrades and what may be in the
11 Regional Board's files are just off by a matter of
12 months or something?

13 MR. THOMPSON: No. The plant with the
14 significant disparity between NRDC's information
15 and ours is Watsonville. And Watsonville was
16 subject to a cease and desist order in 1984 that
17 required them to plan for and upgrade to full
18 secondary treatment in case they lost their 301(h)
19 modified permit.

20 Watsonville did that, but their 301(h)
21 modified permit was reissued, so they put that
22 plan on the shelf for a few years. And did not
23 pick it up again until the early 1990s when the
24 Monterey Bay sanctuary was being formed.

25 And so then when our NPDES permit was

1 reissued again in '93, accompanying that was a
2 cease and desist order 93-something, I don't know
3 the exact number. But that had a schedule of four
4 years and nine months. And so NRDC's schedule of
5 four years and nine months comes from that '93
6 cease and desist order.

7 But what's relevant here is that Morro
8 Bay has just started. They don't even have a
9 facilities plan yet. So the most appropriate
10 starting date is when they begin the facilities
11 planning. And so that's why I compared it to
12 1985. That's where the disparity is.

13 DIRECTOR STRAUSS: Okay, thank you.

14 CHAIRPERSON YOUNG: Okay, any other
15 Board -- yes, Mr. Shallcross or Dr. Hunter?

16 BOARD MEMBER SHALLCROSS: Can you put up
17 that first slide, again. I think it was the one
18 with the percentages; I think it was the second or
19 third slide.

20 Yeah. Can you explain what this is,
21 again?

22 MR. THOMPSON: Yeah. I'm sorry, TSS
23 means total suspended solids. And the secondary
24 treatment standards require removal of 85 percent
25 of suspended solids.

1 Now, Morro Bay has a 301(h) modified
2 permit, but they're pushing, you know, only half
3 of the flow through the plant that it is designed
4 for. And so they're able to achieve much better
5 suspended solids removal than called for in
6 secondary treatment standards.

7 They remove 93 percent of all the
8 suspended solids they receive in their influent.

9 BOARD MEMBER SHALLCROSS: Is that the
10 only constituent that we're talking about here?
11 Or are there other constituents where --

12 MR. THOMPSON: No, --

13 BOARD MEMBER SHALLCROSS: -- their plant
14 may fall below the secondary standards?

15 MR. THOMPSON: No, this is not the only
16 constituent. The other exception is for
17 biochemical oxygen demand. That's more difficult
18 to remove than suspended solids. And so Morro
19 Bay, I think it's used around 75 percent removal
20 on the average of BOD.

21 But you've got to keep in mind
22 biochemical oxygen demand is really only relevant
23 for inland water bodies. It's not really relevant
24 to the ocean. That's why the California ocean
25 plan does not have standards for biochemical

1 oxygen demand.

2 MR. BRIGGS: However, it is part of the
3 secondary treatment standard federally.

4 MR. THOMPSON: Right.

5 MR. BRIGGS: But Matt's correct in that
6 it is not included in the ocean plan.

7 BOARD MEMBER SHALLCROSS: Thank you.

8 CHAIRPERSON YOUNG: Any other Board
9 questions? Dr. Bowker.

10 BOARD MEMBER BOWKER: Both in your
11 initial presentation and in the staff report
12 prepared March 3rd the facility design flow was
13 given at 2.06 million gallons per day. And the
14 current flow is 1.2 million gallons per day.

15 I guess what I'm really asking is why
16 can't they treat the entire 1.2 million gallons
17 per day if the design flow is 2.06?

18 MR. THOMPSON: Yes. The design flow of
19 2.06 assumes significant blending of primary and
20 secondary treated wastewater. The secondary
21 treatment process at the facility only has a
22 capacity of 1.0 million gallons per day.

23 That's what I was trying to illustrate
24 with this flow chart. They can only push -- it's
25 only designed for 1.0 million gallons per day, but

1 I think they actually, their tendency is to push
2 more than 1.0 mgd through the secondary treatment
3 process.

4 I think the wastewater division Manager
5 Bruce Keogh would be a more appropriate person to
6 answer that if you're not satisfied with that.

7 BOARD MEMBER BOWKER: Since I asked
8 it --

9 MR. KEOGH: When the facility was
10 designed in 1984 the facility was designed for
11 2.06 million gallons of total treatment during dry
12 weather flow. They only designed 1 mgd of
13 secondary treatment into the process. So that's
14 the reason.

15 BOARD MEMBER BOWKER: Thank you.

16 CHAIRPERSON YOUNG: Okay, any other
17 Board questions? All right. Let me go down my
18 checklist here. Discharger's cross-examination of
19 Water Board Staff.

20 MR. KEOGH: We have no questions.

21 CHAIRPERSON YOUNG: Okay.

22 MR. BRIGGS: Can we interrupt for a
23 second?

24 CHAIRPERSON YOUNG: Yes.

25 MR. BRIGGS: You want to present that --

1 MS. OKUN: Do you have late revisions?

2 MR. BRIGGS: We're not quite done yet.

3 MR. THOMPSON: Bear with us for a
4 second.

5 CHAIRPERSON YOUNG: Okay. I guess I
6 jumped the gun thinking that --

7 MR. BRIGGS: Well, I think we led you
8 astray.

9 (Laughter.)

10 MS. OKUN: There's a couple of proposed
11 changes to the permit in response to comments.
12 These two changes are basically a restatement of
13 the law section (indiscernible) 5.59(b)(3) of the
14 NPDES regs, which say that a 301(h) permit can't
15 be issued unless the issuance assures compliance
16 with certain federal laws.

17 So this restates that regulation and
18 indicates a finding that EPA or the Discharger
19 shall obtain any certifications or permits and
20 undertake any consultations required by such laws.

21 And adds a prohibition that is similar
22 to a prohibition that's used in some water rights
23 permits that the State Board issues to clarify
24 that the discharge of waste can't cause a take
25 that violates the Endangered Species Act or

1 Environmental Protection Act. And obviously if
2 there's no take, or if there's a take with a
3 permit then there's no violation. But it's
4 staff's conclusion that there would not be a take,
5 because there's not an adverse impact on species.

6 Next slide. We made some changes,
7 basically just grammatical changes, to remove the
8 phrase 9.5 year in reference to their conversion
9 schedule, because the schedule's been shortened.
10 And we didn't define it as being a particular
11 number of years. So basically the reference is
12 just now to say that the conversion will be
13 complete according to the dates in the schedule.

14 The schedule itself to be consistent
15 with the new shortened schedule. And then the
16 last change is to remove any collection system
17 requirements that are not already discussed in
18 this presentation.

19 That's it.

20 CHAIRPERSON YOUNG: Okay. NRDC's cross-
21 examination of Water Board Staff. Mr. Beckman.

22 MR. BECKMAN: We don't have any
23 questions, Mr. Chairman.

24 CHAIRPERSON YOUNG: Okay. All right.
25 Discharger's presentation. And before we start

1 that, could you write down 26.5 minutes?

2 MR. BRIGGS: I deducted for Lori's.

3 CHAIRPERSON YOUNG: You did?

4 MR. BRIGGS: Yeah.

5 CHAIRPERSON YOUNG: Okay. Because
6 that's what's left on their clock. And we'll go
7 back to 60 minutes.

8 Okay, go ahead.

9 MR. HENDRIX: Thank you, Chairman
10 Jeffries (sic). My name is Bob Hendrix; I'm City
11 Manager for the City of Morro Bay. I'm here to
12 introduce our team that will make the presentation
13 today very quickly for you. I hope we can be very
14 brief. I know you've had a long day already
15 today. So we'll be as brief as possible.

16 CHAIRPERSON YOUNG: Actually it was
17 pretty light.

18 (Laughter.)

19 CHAIRPERSON YOUNG: This is only 3:00.

20 MR. HENDRIX: We have basically four
21 speakers we would like to present at this time.
22 They are the Cayucos Sanitary District Board
23 President, Robert Enns, who's present; Morro Bay
24 Mayor Janice Peters; Dr. Douglas Coats from Marine
25 Research who you've already talked with; and also

1 Bruce Keogh, who is our Wastewater Plant Division
2 Manager.

3 A number of other team members are here,
4 also. I want to name them so you'll be aware of
5 their presence. Morro Bay City Council Member
6 Betty Winholtz is here. Cayucos Sanitary District
7 Board Member Bill Gibeau. Cayucos Sanitary
8 District General Manager Bonny Connelly. Cayucos
9 Sanitary District General Counsel Tim Carmel.

10 Morro Bay City Attorney Robert Schultz;
11 Morro Bay Public Services Director Bruce Ambo;
12 Carollo Engineers partner David Stringfield;
13 Bonnie Luke of Marine Research; Morro Bay Public
14 Works Supervisor David Phillips; and Cayucos
15 Sanitary District (inaudible) Manager, Bill
16 Callihan. And that's the team that we've
17 assembled here.

18 Before I leave the podium I want to
19 thank Roger Briggs and the staff for all the work
20 they've done on this agreement with us. We're
21 here not because of a cease and desist order, but
22 because we want to be. And they've worked very
23 well with us to get this agreement together. And
24 we're all very appreciative of their efforts and
25 enthusiastic about moving forward.

1 Thank you.

2 CHAIRPERSON YOUNG: Thank you. Okay.

3 MR. ENNS: Good afternoon, I'm Robert
4 Enns, President of the Board of Directors of the
5 Cayucos Sanitary District. I would like to remind
6 everyone today that the motion that was made by
7 both Morro Bay and Cayucos was to get this plant
8 upgraded to secondary as quickly as possible.

9 So what we're talking about when we
10 refer to the timeline today is our confidence in
11 our ability to do that within a certain time
12 period, specifically eight years.

13 We have, in agreeing to the eight years,
14 gone against the recommendation of Carollo
15 Engineers, our consultant, who continues to say
16 the minimum time should be eight and a half years.

17 In the nearly 14 years that I've served
18 on the Cayucos Sanitary District Board, we have
19 spent over \$1 million monitoring our sewer
20 environment. I'm confident that based on that
21 data we have been good stewards of the
22 environment.

23 And finally, based on this eight-year
24 time schedule we should finish our upgrade over
25 seven months before Goleta finishes theirs. Thank

1 you very much.

2 CHAIRPERSON YOUNG: I just had a
3 question for you.

4 MR. ENNS: Yes, sir.

5 CHAIRPERSON YOUNG: The motion that your
6 Board voted on didn't have a date specific time
7 limit? It was just as soon as possible?

8 MR. ENNS: I think the motion had a
9 date-specific time, but it also included the
10 phrase, as quickly as possible.

11 CHAIRPERSON YOUNG: Okay. Because what
12 we have in front of us is a March 31, 2014 date.
13 Was that part of your motion?

14 MR. ENNS: -- several motions later, or
15 several --

16 CHAIRPERSON YOUNG: Okay.

17 MR. ENNS: -- several actions later.

18 CHAIRPERSON YOUNG: All right.

19 MR. ENNS: But our initial action was to
20 do it as quickly as possible.

21 CHAIRPERSON YOUNG: Okay, thank you.

22 MAYOR PETERS: Hello, Mr. Chairman and
23 Board Members, I'm Janice Peters, the Mayor of
24 Morro Bay. The Morro Bay and Cayucos JPA has been
25 working productively with the Regional Board for

1 several years on the goal of upgrading our
2 treatment plant, not just to secondary treatment,
3 but to full tertiary.

4 The City of Morro Bay strongly favors
5 tertiary and appreciates the fact that Cayucos,
6 despite the fact that they currently cannot use
7 the reclaimed water, is still willing to join with
8 us in this goal as an option.

9 Based on the recommendations from our
10 staff and Carollo Engineering, and after several
11 public hearings, our JPA Board approved a 9.5-year
12 schedule, allowing ample time for environmental
13 reviews and public hearings. But we've a stated
14 agreement that we would aim for an eight-year
15 completion date.

16 Under pressure from the NRDC and other
17 environmental groups, and against the
18 recommendation of our staff and consultants, last
19 week we did adopt the eight-year schedule.

20 This upgrade process represents the
21 largest expenditure in the history of our two
22 communities. And we're very aware of the
23 substantial rate increases that will be imposed on
24 our residents. While the increases cannot be
25 avoided, we can avoid potential penalty costs that

1 could be incurred if our schedule was reduced any
2 further.

3 We are all, and I'm sure you, too,
4 painfully aware of the delays that can happen in
5 the public approval process, as well as
6 environmental reviews. And it is only prudent to
7 allow sufficient time to navigate that process.

8 As we've already shown, we're moving
9 ahead at full speed. And in fact, we just awarded
10 the facility contract to Carollo Engineers. And
11 we continue to move at that speed.

12 Hopefully it will be smooth sailing all
13 the way and we will complete the project in less
14 than eight years. But we are all agreed and trust
15 that your Board agrees also, that the eight-year
16 schedule is a reasonable one.

17 I truly believe that the goal of
18 everyone here is to complete this upgrade as
19 quickly as possible. Toward that end, the support
20 and cooperation of the NRDC and the other
21 environmental agencies would help to achieve that
22 goal. However, to waste time, effort and money
23 arguing about a time period now is totally counter
24 productive and self defeating to what is our
25 stated mutual goal.

1 I would like to propose that we adopt
2 another anagram, CO3, communication, coordination,
3 cooperation. If we work together as CO3 we can
4 get this done quickly and positively. I thank you
5 for your consideration.

6 CHAIRPERSON YOUNG: Thank you. A
7 question I have for you. Do both of the two
8 powers that own this treatment facility, do they
9 have the funding in place necessary?

10 MAYOR PETERS: No, we do not.

11 CHAIRPERSON YOUNG: What has to happen
12 for that to take place?

13 MAYOR PETERS: Our rates will have to go
14 up -- will have to be probably tripled.

15 CHAIRPERSON YOUNG: Will the ratepayers
16 have to vote on that?

17 MAYOR PETERS: You know, I don't know
18 that. I don't think they have to vote on it, but
19 they can certainly protest it.

20 CHAIRPERSON YOUNG: Right. For both
21 powers, the rates can just be increased? Okay.
22 All right, thank you very much.

23 MS. OKUN: The facility also submitted
24 an application to the state revolving fund loan,
25 and they are on the priority list. They're not in

1 the A category, though. I was looking at that
2 recently. I can't remember what category it is,
3 so I don't know when they'll come up for funding,
4 but that's for a low-interest loan.

5 CHAIRPERSON YOUNG: Okay. Dr. Hunter.

6 BOARD MEMBER HUNTER: Yes, just really
7 quickly. The projected cost to ratepayers you
8 said could raise their rates by as much as three
9 times. Is there a dollar figure attached to that?
10 Do you have a projected --

11 MAYOR PETERS: I don't have a
12 projected -- probably Mr. Keogh would be able to
13 provide that.

14 BOARD MEMBER HUNTER: What's the current
15 rate?

16 MR. KEOGH: The current rate is, it's a
17 sliding scale, but I believe the base rate we just
18 implemented a three-year rate increase, and this
19 is the last year of the rate increase. I believe
20 we're at approximately \$18 right now. And we're
21 looking at probably two to three times that rate
22 by the time we're through with this project and
23 other collection system infrastructure repairs
24 that we've identified.

25 BOARD MEMBER HUNTER: Thank you.

1 VICE CHAIRPERSON JEFFRIES: Mr. Chair,
2 while the Mayor's still up there maybe she could
3 answer this question now. Then why is it taking
4 you 16 months to get financing completed when you
5 don't have to go to the people?

6 MAYOR PETERS: I will defer that also to
7 Mr. Keogh.

8 MR. HENDRIX: I think that we may be
9 missing in terminology here. If you're talking
10 about financing the project, we will need to
11 finance the project, which implies a borrowing.
12 And in order to do a borrowing we have to have a
13 plan. And we just don't yet have the underlying
14 information that would be necessary for us to do
15 the borrowing to finance the project.

16 The rate changes that would be
17 contemplated and hopefully implemented along the
18 way could be done by Council action in the case of
19 the City of Morro Bay. But they relate to cash
20 flow that would service the debt, not the actual
21 borrowing, itself. I hope that helps a little
22 bit.

23 VICE CHAIRPERSON JEFFRIES: No, not
24 really. I'm looking here at the schedule. It
25 says complete final plan for project financing

1 June 30, 2008. Submit proof of all necessary
2 financing that has been secured, including
3 compliance with proposition 218.

4 And part of my question then would be,
5 if you don't get any money from 218 then what are
6 you going to do?

7 MR. HENDRIX: A strategy that could be
8 adopted by the City Council, for instance, to
9 create a cash flow to satisfy this debt would be
10 the levy of a special tax. If we were to levy a
11 special tax to satisfy this debt, that would
12 require a two-thirds vote of the electorate --

13 VICE CHAIRPERSON JEFFRIES: Right.

14 MR. HENDRIX: -- and be subject to 218.
15 If they chose to proceed on the basis of
16 increasing rates, then 218 is not an issue.

17 VICE CHAIRPERSON JEFFRIES: Okay.

18 CHAIRPERSON YOUNG: Any other Board
19 comments or questions? Okay, I stopped that
20 clock, so do you have another --

21 MR. KEOGH: My presentation is next.

22 CHAIRPERSON YOUNG: Go ahead.

23 MR. KEOGH: My name is Bruce Keogh. I
24 am the Wastewater Division Manager for the City of
25 Morro Bay, and my primary job duties are to manage

1 the operations of the plant.

2 I'm here today to provide a brief
3 presentation and answer any questions that the
4 Board may have. I would like to thank all the
5 parties involved in this process, especially
6 Regional Board and EPA Staff, in particular, Matt
7 Thompson, for all their hard work through this
8 process that I would characterize as proactive and
9 cooperative. This hearing represents the
10 culmination of a lot of hard work and
11 determination on the part of everyone involved.

12 What I'd like to do is give you a brief
13 overview of the plant, and not repeat what Matt
14 did, since he did a good job. I would like to
15 emphasize and reinforce what he presented earlier,
16 that the plant is operating very efficiently and
17 will continue to perform at a very high level of
18 treatment for the foreseeable future.

19 The permit renewal process has us focus
20 an extraordinary amount of attention, discussion
21 and analysis by regulatory and environmental
22 organizations on this plant's 1.2 mgd discharge
23 and its longer term program.

24 The longer term program has consistently
25 documented that there have been no adverse impacts

1 to the receiving waters or the beneficial uses of
2 those waters.

3 We believe at this time it's time to
4 move forward and we urge the Board to issue us a
5 permit so that the vital resources of the City and
6 the District can be directed to the appropriate
7 topic, which is a successful completion of the
8 numerous tasks required throughout the upgrade
9 process.

10 This slide represents what all the
11 discussion and effort has been centered on. This
12 is (indiscernible) blending valve. When this
13 valve is open it allows for the blend of primary
14 and secondary effluent. When it's closed, which
15 it is for the majority of the time, all influent
16 entering the plant receives secondary treatment.

17 This operational strategy is a
18 modification to the design that was originally
19 meant in 1984, and it has been pushed forward to
20 maximize the treatment levels of the plant. In
21 the year 2005 the valve was closed 93 percent of
22 the year.

23 We've always operated the plant and will
24 continue to operate the plant to maximize the
25 performance of the plant and the historic high

1 quality of the effluent demonstrates the
2 effectiveness of this operational strategy.

3 This slide reinforces the high treatment
4 level that we get out of the treatment plant.
5 When Matt was discussing secondary treatment
6 standards, he talked about percent removal rates,
7 which is one of two criteria for secondary
8 treatment requirements. The other requirement is
9 monthly average of 3 mg/liter.

10 This slide, if you see the upper line on
11 the slide represents the permit limit. That's in
12 our present discharge permit. The lower line
13 represents actual secondary treatment limits of 30
14 mg/liter. And the bar graph down below represents
15 our monthly suspended solids averages for the last
16 two years. So you'll notice that the majority of
17 the time the plant is meeting not only percent
18 removal requirements, but total suspended solids
19 concentration requirements, as well.

20 The other thing I'd like to point out is
21 that, you know, there's been a lot of talk about
22 the plant not meeting Clean Water Act standards;
23 and, in fact, it does meet all state and federal
24 requirements at this time.

25 A major reason for the continued

1 efficiency of the plant has been a well-documented
2 aggressive operations and maintenance program that
3 has been well supported and funded by the City and
4 the District. This slide is a picture of a
5 clarifier drive replacement that was completed in
6 the year 2003.

7 Included on this slide are the annual
8 averages for suspended solids and BOD for the year
9 2005, emphasizing again the high operational
10 performance that we're getting out of the plant.
11 You can see that for BOD, as well as suspended
12 solids, it's a 85 percent removal. And we're very
13 close to that percent removal for BOD.

14 Another reason for the continued
15 operational efficiency of the plant has been some
16 innovative and proactive programs developed and
17 supported by the City and the District.

18 This slide shows the biosolids
19 composting operation developed by plant staff that
20 has been very well received by our public. This
21 is the only biosolids composting operation in San
22 Luis Obispo County. It represents the City and
23 the District's commitment to looking to the future
24 in developing sustainable strategy to the
25 increasingly controversial biosolids issue.

1 I believe that this represents a model
2 for a cost effective solution for the biosolids
3 issue in this County that has garnered a lot of
4 attention lately.

5 A second proactive program that we have
6 is a household hazardous waste facility that was
7 opened at the plant in the year 2001. It is the
8 only facility located in a wastewater treatment
9 plant in this County.

10 This facility accepts everything except
11 radioactive and explosive waste. It's free of
12 charge to the public and it's the second most used
13 facility in our County.

14 Last year it accepted more than 65,000
15 pounds of household hazardous waste such as
16 paints, pesticides, kitchen cleaners, varnishes;
17 and it also now accepts ewaste. And last year it
18 accepted over 30,000 pounds of ewaste, such as
19 computer monitors and tvs. It is also now
20 accepting batteries as they are no longer allowed
21 to go into the garbage.

22 The majority of this household hazardous
23 waste accepted here is recycled. And more
24 importantly, it does not get disposed of to the
25 sewers, storm drains or landfills.

1 The last slide I have here is one of the
2 most important, I think the most important
3 knowledge we have in solving our water quality
4 issues, is public education. The people standing
5 in the picture there are the operators of the
6 plant.

7 We have a very difficult time getting
8 public education out to our public. As much as I
9 invite people to the plant, I can't get them to
10 come. But I do encourage people to contact either
11 our treatment plant, or their local treatment
12 plant, and come down and take a tour. And see
13 what they can do to minimize the impacts on the
14 plant and its operation, and on the environment.
15 If anybody wants to take a tour, our phone number
16 is 772-6272. Or like I say, I would encourage you
17 to call your local wastewater treatment plant.

18 The last thing I would like to say is
19 thank you for your hard work and patience on this
20 matter. And we look forward to moving ahead and
21 working with Regional Board Staff to continue our
22 cooperative effort during the upgrade process.

23 The next speaker will be Dr. Doug Coats
24 of Marine Research, the coordinator of our
25 offshore monitoring program. Thank you.

1 CHAIRPERSON YOUNG: Excuse me, Dr.
2 Hunter has a question.

3 BOARD MEMBER HUNTER: Thank you. I'm
4 interested in the public education program that
5 you have. Do you have any information regarding
6 the proper disposal of cat litter?

7 MR. KEOGH: We are presently in contact
8 with Dr. Pat Conrad at UC Davis who has been a
9 collaborator on the toxoplasma issue. And she
10 developed a -- her team developed a flyer for, I
11 believe, Monterey County that deals with flushable
12 cat litter. And she's going to email me a copy of
13 that, and we're going to put that as a mailer in
14 our water bills.

15 BOARD MEMBER HUNTER: And do you do
16 any -- do you also conduct any kind of surveys to
17 see, you know, what kind of response, or what kind
18 of strategies might be changing at the household
19 level regarding dumping of toxic materials and
20 some of the ewaste that you're talking about?

21 MR. KEOGH: The only --

22 BOARD MEMBER HUNTER: Such a small
23 community; it would seem like a survey would be
24 really useful to see how effective, or where gaps
25 may be appearing, relative to education goals.

1 MR. KEOGH: The health and hazardous
2 waste facility is actually a partnership between
3 Integrated Waste Management Board and the City and
4 the District. And when the facility was first
5 opened up the reason that they approached us with
6 this concept was because they do do surveys of how
7 -- when you come in you have to fill out a form
8 with your name and address on it. And they look
9 at the demographics of that.

10 What they discovered was that Los Osos,
11 Morro Bay, Cayucos, Cambria area had -- they
12 weren't getting a lot of response at their other
13 facilities. And as soon as they opened our
14 facility they, I don't think they expected the
15 response they got. We are the second most used
16 out of the four facilities in the County.

17 CHAIRPERSON YOUNG: I'm kind of curious
18 whether there's any information or evidence that
19 people are actually flushing their disposable cat
20 litter into toilets. I know supposedly there is
21 disposable cat litter, but do we know that
22 anyone's actually flushing it in their toilets?

23 MR. KEOGH: At this point I don't think
24 I can answer that question. I have been in
25 contact with the investigators at UC Davis,

1 because we have worked with them with the mussel-
2 hanging program. And I believe that they may be
3 looking into that question to see what the real
4 effect is.

5 We know they're look at -- there is a
6 paper out there about the quantity of, I believe,
7 cat feces being deposited in the wild, as well.
8 And we're trying to get a copy of that paper.

9 CHAIRPERSON YOUNG: So we don't really
10 know? We don't really have any information at
11 this point?

12 MR. KEOGH: I don't have any information
13 at this point on that.

14 CHAIRPERSON YOUNG: Do you know if
15 there's been any studies that have found
16 toxoplasma in municipal wastewater effluent?

17 MR. KEOGH: I believe that we were the
18 first people, the first wastewater treatment plant
19 to try and address that issue with the folks out
20 at UC Davis. And my understanding is that they're
21 still trying to develop an analytical method or to
22 enhance the analytical method so that they can do
23 that. And certainly if and when that issue comes
24 out I'm sure we'll probably be testing for it.

25 CHAIRPERSON YOUNG: So right now the

1 only way to look for this parasite is to see if it
2 accumulates in bivalves? We can't identify it in
3 the wastewater stream, itself?

4 MR. KEOGH: That's correct. And the
5 reason -- originally we had a request from your
6 staff to perform analysis of toxoplasma in our
7 effluent, and the reason we went with the bivalves
8 was that was the only available technique at that
9 time.

10 CHAIRPERSON YOUNG: Director Strauss?

11 DIRECTOR STRAUSS: I think in the record
12 while in this situation bivalves were used and the
13 limitations of the methodology, particularly the
14 analytic limitations were noted, there were some
15 papers in the record about -- I mean obviously
16 finding positives for toxoplasma in sea otters,
17 themselves, and possibly some other organisms.

18 So, I think the difficulty is that one
19 needs to refine what is an appropriate method for
20 wastewater while you continue to use some of the
21 other organisms where you may find it positively.
22 But keep working on it.

23 CHAIRPERSON YOUNG: Right. No, I know
24 we'll keep looking. I'm just trying to start from
25 where we think the beginning of this should be,

1 and that is, you know, the dumping of this
2 material into toilets; and then to see if we can
3 trace it down through the wastewater stream.

4 DIRECTOR STRAUSS: I mean if someone --

5 CHAIRPERSON YOUNG: I know it's shown up
6 potentially in shellfish and in sea otters.

7 DIRECTOR STRAUSS: I think there's
8 potentially a stormwater pathway, too.

9 CHAIRPERSON YOUNG: Right.

10 DIRECTOR STRAUSS: And the idea that
11 people would actually ruin the vitreous china by,
12 you know, putting cat litter in there, you know,
13 defies the imagination. But, you know, I'm
14 thinking that maybe people are more inclined to
15 have it runoff, you know.

16 CHAIRPERSON YOUNG: Have you had cats?

17 DIRECTOR STRAUSS: No.

18 CHAIRPERSON YOUNG: You haven't? Well,
19 then you have to ask somebody who's had cats that
20 question.

21 (Laughter.)

22 CHAIRPERSON YOUNG: Anyway, okay, 46
23 minutes. Any other questions from the Board? All
24 right, next part of your presentation.

25 DR. COATS: I'm Dr. Doug Coats with

1 Marine Research, a specialist out of Ventura,
2 California. Marine Research has been responsible
3 for the monitoring program for this NPDES permit
4 for the last decade and a half. With me today is
5 Ms. Bonnie Luke, who is the Senior Marine
6 Biologist with Marine Research. She's Assistant
7 Program Manager for this monitoring program.

8 I want to cover, highlight three topics.
9 Some of this Matt has covered, so I'll just kind
10 of highlight some of the information.

11 The first topic is why we don't see any
12 evidence of impacts from this discharge, what
13 attributes of the discharge, despite this
14 intensive monitoring, what are the attributes of
15 the discharge. We surprisingly don't have any --
16 resulting in a lack of impacts.

17 So, I want to discuss briefly the
18 balanced indigenous population, or BIP. And why
19 we use benthic organisms or sediment dwellers to
20 assess that. And finally, I'm going to talk a
21 little bit about otter demography and in
22 particular what we know about the otter
23 populations within Estero Bay, itself.

24 So, on to the first topic. The reasons
25 we don't really see impacts from this particular

1 discharge is really three reasons. First, it's an
2 extremely low volume of discharge. It's 1.25
3 million gallons a day. It represents .1 percent
4 of the total California ocean discharge from
5 wastewater treatment plants. It's one-one-
6 thousandth of what everybody else is discharging.

7 It could be five times, or four times greater
8 and still qualify as a small discharger under EPA
9 standards.

10 The second reason we don't see impacts
11 offshore is that the effluent quality is
12 comparatively high. There's no heavy industry in
13 the collection system, so we don't see heavy
14 metals, that kind of thing.

15 As everybody has discussed before it's
16 near secondary treatment standards for suspended
17 solids. And finally, it receives full
18 disinfection before it's discharged, so it meets
19 water contact standards before it leaves the plant
20 without even considering the 100-to-1 dilution
21 that's normally allowed after the discharge.

22 And finally, because it's a deep-water
23 open-ocean discharge, it has rapid dilution
24 immediately after the discharge point. And as a
25 result there's very little deposition of suspended

1 solids. In fact, we haven't seen any evidence at
2 all of that.

3 And because of these attributes, EPA
4 designates these kind of dischargers as having a
5 low potential for impact.

6 And this series of graphics is just to
7 give you an idea of the scales that we're talking
8 about here. First one of the things to note is --

9 (Technical Difficulty Interruption.)

10 CHAIRPERSON YOUNG: We're going to take
11 a break. I stopped the clock anyway as soon as
12 the screen shifted off. So we'll let them do
13 that; we'll come right back.

14 How about we'll shoot for ten minutes
15 and when you hear me screaming over the intercom
16 that means to come back in here.

17 (Brief recess.)

18 CHAIRPERSON YOUNG: All right, please
19 continue. Okay, go ahead.

20 DR. COATS: Okay. This is a graphic to
21 show the scales of interest that we're talking
22 about here. One of the things I want to point out
23 on this scale is that there's a large distribution
24 of kelp beds up in this area and very little in
25 the Estero Bay area, where the discharge is, and

1 then kelp beds continue down here.

2 And the reason I want to point that out
3 is kelp beds are nursery area; they offer
4 protection for otters; they're a favorite habitat
5 for otters. They offer protection from both
6 inclement weather conditions, sea states. They
7 protect them from predators, sharks. They don't
8 get that protection down in the Estero Bay area
9 because it's essentially an open sandy coastline.

10 And so this is not a preferred habitat for
11 otters in this area.

12 I wanted to show you where in Estero Bay
13 the discharge is on a bigger scale than what Matt
14 had, I think. This is about 12 miles of
15 coastline. And what's of interest here is all the
16 otter census. A lot of the toxoplasma analysis of
17 the otters. And demographics and strandings are
18 done by coastline sections.

19 Well, the entire Estero Bay is
20 considered one coastline section. So when the
21 analysis is done for otters, whatever it may be,
22 it's typically considered as a whole.

23 And as you can see it's relatively
24 devoid of kelp. And the location of the outfall
25 is in a very exposed area where it's open ocean

1 conditions coming in. And because of that high
2 turbulence that results, there's a greater
3 dilution that's realized as soon as the discharge
4 occurs.

5 CHAIRPERSON YOUNG: I'm not sure what
6 point you were trying to make with that --

7 DR. COATS: The otter part of it?

8 CHAIRPERSON YOUNG: Yeah, all this about
9 where the kelp bed is and the fact that the census
10 point is the entire bay. What --

11 DR. COATS: Well, I was trying to show
12 the scale of the discharge. I'll get to the scale
13 of the discharge in the next slide. But a lot of
14 the discussion in the past has been about otter
15 strandings, and otter toxoplasmosis. Those
16 analyses are done on the entire 12 kilometer-long
17 area.

18 CHAIRPERSON YOUNG: Okay.

19 DR. COATS: So, the quote-unquote hot
20 spot is not a spot, it's an entire region of 12
21 miles long.

22 CHAIRPERSON YOUNG: Well, are all of the
23 census -- is that the same then for all the census
24 points?

25 DR. COATS: No. Actually the coastline,

1 if you look back here, there's another census.
2 And these vary year to year, but most recent years
3 there's another coastline section for census that
4 extends from San Simeon down to Point Cayucos.
5 And then another, and then there's one in Estero
6 Bay. And then there's another one to the south.

7 CHAIRPERSON YOUNG: So you're saying
8 that the census points are not equal in terms of
9 the amount acreage --

10 DR. COATS: Well, that; more to the
11 point is these are very large areas that they're
12 summarizing. And very large relative to the
13 discharge we're talking about.

14 And I also wanted to point out that this
15 is a different habitat, so we'll see later how
16 different the census numbers are in this region
17 and some of the reasons why that is.

18 CHAIRPERSON YOUNG: Okay.

19 DR. COATS: Okay, so I was looking
20 closer at the outfall, and this is a different
21 point I was making here, is that it's open-ocean
22 conditions. Again, this helps in the dilution and
23 dispersion of the effluent.

24 If you look closer, and this is the
25 graphic that Matt showed earlier with the stations

1 and how extensive the monitoring program is, we
2 monitor actually the effluent before it's even
3 discharged with 167 -- scan of 167 different
4 chemicals.

5 These benthic stations are the reference
6 stations. They're considered far too far from the
7 outfall to be influenced by any of the discharge.
8 This was in the original design of the program.
9 It's been confirmed in subsequent analysis.

10 And Matt showed you a different
11 realization. This is a different water quality
12 survey where we towed the CTE instrument a little
13 deeper. And what I've shown here is the
14 calculated dilutions based on the salinity.

15 In the green area at about 300 full
16 dilution. That means there's 300 parts seawater
17 to one part wastewater. You begin to lose any
18 capability to detect -- it's so dilute, the
19 wastewater, that you can't detect many of the
20 properties you normally think you'd be able to
21 see, such as suspended solids, dissolved oxygen,
22 that kind of thing.

23 The only thing that we're seeing at that
24 kind of area in the green is the salinity
25 signature. And we can trace that out to about

1 1000-to-1, little less than 1000-to-1. But at
2 that point all traces of the discharge wastewater
3 has disappeared despite the use of these
4 incredibly sensitive probes and instruments.

5 And it's interesting to note that this
6 is about a 50-foot zone of initial dilution. And
7 that's about 50 times smaller than the distance to
8 shore. So there's really a large buffer distance
9 between the shoreline, and an even larger distance
10 from the entrance to the Bay.

11 CHAIRPERSON YOUNG: A question I have
12 for you on that slide, and if you wouldn't mind --
13 I'm going to stop the clock while I --

14 DR. COATS: Okay.

15 CHAIRPERSON YOUNG: -- get into this.

16 You've read the '85 FDA study?

17 DR. COATS: Yes, sir.

18 CHAIRPERSON YOUNG: The dye study?

19 DR. COATS: Yes.

20 CHAIRPERSON YOUNG: So how do you
21 reconcile that dilution that you're depicting with
22 the fact that in that study they did trace fecal
23 coliform bacteria up into the Bay on an incoming
24 tide?

25 DR. COATS: The --

1 CHAIRPERSON YOUNG: I know that we had
2 disinfection now, we didn't then. But in terms of
3 dilution, how is it that if that model is correct,
4 in '85 they did find bacteria, in measurable
5 quantities, getting up into the shellfish beds?

6 DR. COATS: They didn't. And, in fact,
7 your own Regional Staff, I believe, Roger, you
8 were coauthor on that abatement order that
9 reviewed the distribution, and reviewed, in fact,
10 that FDA study.

11 In fact, I might have a graphic on it,
12 if you bear with me.

13 CHAIRPERSON YOUNG: Well, I do remember
14 reading the study 20 years ago.

15 DR. COATS: Right. It's been
16 discredited since then. The dye that they were
17 detecting was really background concentrations --

18 CHAIRPERSON YOUNG: In the Bay, itself?

19 DR. COATS: Yes. Just bear with me.

20 MR. BRIGGS: While you're looking for
21 that, it seemed to me that even if we gave credit
22 for those dye concentrations being real, which
23 were down in the 2 parts per billion range or
24 something like that, that we calculated this
25 incredibly large dilution beyond what Dr. Coats

1 was showing on the screen there. I think it was
2 something like 16,000-to-1 that you would have if
3 those fluorescein dye concentrations were real and
4 not some artifact from kelp or some other
5 background.

6 DR. COATS: Well, I'm having a little
7 trouble pulling it up.

8 MR. THOMPSON: Excuse me, Chairman. I
9 have the statement from the FDA study, if you want
10 me to clarify this.

11 CHAIRPERSON YOUNG: Do you want to put
12 it up on the screen, do you have this --

13 MR. THOMPSON: It's a 1983 document.
14 I'll just read it, it's two sentences.

15 CHAIRPERSON YOUNG: Okay.

16 MR. THOMPSON: Staff's analysis
17 indicates the FDA report's data support the
18 assumption of typical bacterial decay rates. FDA
19 reports the city plume concentrations of about 0.3
20 part per billion dye, not fecal coliform or
21 coliform, at stations 113, 114, and 110. I'm
22 sorry I don't know exactly where those are.

23 In summer it says, this indicates a
24 physical dilution of 16,700 parts seawater for
25 every part effluent.

1 And as we've, you know, pointed out
2 later, the actual detection limit we've since
3 learned for dye is higher than .3; it's like
4 around .5 because of, as you explained it,
5 efflorescence of naturally occurring
6 phytoplankton. Is that correct?

7 DR. COATS: Yeah, that's correct. And
8 the instruments that we use for tracking dye, and
9 we have some experience with this, have been
10 around for a long time and they've been used in
11 lakes and rivers. But when you get into the
12 ocean, especially this part of the coastline,
13 there's a high primary productivity which is
14 plankton, phytoplankton are generated.

15 And these very same instrumentation that
16 are used to detect the fluorescence of the dye,
17 with a very slight change in the filter, they're
18 the exact same instruments they use to evaluate
19 primary production to map the plankton
20 distribution.

21 And so they are -- the plankton,
22 themselves, produce a fluorescence that is
23 detected by these instrumentations. So, when you
24 go back and you're looking at dye, you reach a
25 level where your background concentrations and

1 what's more interesting is the plankton are very
2 patchy, too. So you can be easily fooled into
3 thinking that, oh, my gosh, I'm tracking a patch
4 of dye, when in fact you're tracking some
5 plankton.

6 These are very low levels. We're
7 talking about subparts per trillion concentrations
8 there. They're way down there.

9 CHAIRPERSON YOUNG: But didn't they
10 track the plume, itself?

11 DR. COATS: No, they really didn't --

12 CHAIRPERSON YOUNG: With some drogs --

13 DR. COATS: No, --

14 CHAIRPERSON YOUNG: -- or something?

15 DR. COATS: Well, they deployed drogs,
16 and it was more for tracking the general direction
17 of the flow at the time they were doing the study.

18 CHAIRPERSON YOUNG: That's what one
19 would do --

20 DR. COATS: Yeah, but the drogs didn't
21 go anywhere near the harbor entrance.

22 CHAIRPERSON YOUNG: The report that Matt
23 is reading, is that the staff's analysis of the
24 FDA's study?

25 MR. BRIGGS: That sounds like what

1 you're referencing.

2 MR. THOMPSON: That's correct.

3 CHAIRPERSON YOUNG: Okay. Is there an
4 FDA report with the data?

5 MR. THOMPSON: All we have is a staff
6 report summarizing the FDA report, I believe.

7 CHAIRPERSON YOUNG: Mr. Beckman -- Mr.
8 Beckman -- Mr. Beckman, is there an FDA report
9 that you've seen?

10 MR. BECKMAN: Yes, I think it's part of
11 the record.

12 CHAIRPERSON YOUNG: Okay. And that's a
13 separate document from what Mr. Thompson's
14 referring to?

15 MR. BECKMAN: That's correct.

16 CHAIRPERSON YOUNG: Okay. All right,
17 let's continue. Thank you.

18 DR. COATS: So this is the second topic
19 I wanted to cover, is why we use infaunal, these
20 are the sediment dwellers, to establish a balanced
21 indigenous population. This is really the gold
22 standard that's presented by EPA to evaluate these
23 ocean outfalls.

24 You know, it seems kind of strange to
25 think that you're going to use these tiny little

1 creatures in the sediment to evaluate. Why would
2 you do that? Well, probably because they are
3 small and densely populated. You can collect a
4 whole lot of them. And in two decades of
5 monitoring we've collected 142,000 of them and
6 identified what they were.

7 And anyone who's familiar with
8 statistics knows that the more sample points you
9 have, the more power you have to detect change.
10 So that's why they're used; is you can get a lot
11 of them.

12 The other attribute is that they're
13 extremely diverse. As you can see, there's three
14 completely different types of infauna shown here.
15 And they exhibit completely different responses to
16 pollutants. Some infauna are very tolerant of
17 organic loading from an outfall and they actually
18 thrive on it and are opportunistic when they're in
19 an outfall that deposits organics, they increase
20 in population.

21 Others are very sensitive. The filter
22 feeders are particularly sensitive to it, and they
23 disappear. So their diversity in response to
24 pollution is an important attribute in detecting
25 change, because you can compare say sites, the

1 population at a site that's very close to the
2 outfall with a population at a great distance or a
3 reference site, and see how those populations
4 change in terms of their feeding strategies.

5 And, as I mentioned, they have a
6 predictable response to pollutant exposure. Over
7 the many years scientists have evaluated each one
8 of these infauna, and by groupings they know which
9 ones are pretty tolerant to pollutants and which
10 aren't.

11 And an important aspect is that they
12 can't really escape pollution. They're kind of
13 tiny and they're stuck where they are. They're
14 not very mobile. As opposed to something like
15 monitoring fish or something more mobile. It's
16 kind of hard to tell where, if you have an
17 impaired organism, it's kind of hard to tell where
18 the fish really actually encountered the pollution
19 because it's moving around so much. These guys
20 are stuck where they are, so you have a kind of a
21 fixed pattern.

22 And finally, they represent the
23 middlemen or actually the low part of the food
24 chain. So they feed on detritus that falls out of
25 the water column. But they're also fed on by fish

1 and other things. So they kind of are an early
2 indicator of problems in the entire environment.

3 And with respect to their feeding
4 strategies, that's one of the parameters we look
5 at. And this is 20 years of data on what we call
6 the infaunal trophic index. It's really a ratio
7 between the number of healthy filter feeders in
8 your samples compared to the organic deposit
9 feeders.

10 And up in this region is considered
11 indicative, based on all the other studies that
12 have been done, this is indicative of clean
13 sediments because there's a large proportion of
14 filter feeders.

15 These individual dots are the actual
16 stations. The red dots represent stations that
17 are very close to the outfall. The black ones are
18 those benthic reference stations that I pointed
19 out earlier.

20 And you can see uniformly throughout the
21 20 years they've all been at a high level
22 indicating healthy, clean sediments. Moreover, if
23 there were impaired conditions you'd see a slow
24 separation of the red from the black, with the red
25 moving down, the ones near the outfall, moving

1 down into an impaired condition. And the blacks
2 probably staying the same.

3 But that's not what you see. Over 20
4 years they zig-zag up and down, but pretty much
5 they stay all the same.

6 And this isn't the only community
7 parameter we look at. We look at a variety of the
8 density, the number of species. the diversity.
9 And these are pretty diagnostic indexes of
10 potential pollution. Again, we look for a
11 separation in these lines, statistical analysis.

12 We also analyze the chemistry in the
13 same way. When we collect a sediment sample and
14 enumerate the organisms and identify them, we also
15 analyze part of that sample for the chemistry.
16 And we look for separation; again, if you had,
17 say, a lead problem around an outfall, you'd start
18 to see the red stations increase in concentration
19 relative to the black. But over the 20 years of
20 the study we haven't seen that.

21 I'm going to talk also a little bit
22 about the population increase, otter population.
23 In general this is the total populations, and from
24 about 1914 when there was a raft of small southern
25 otters off of Big Sur, it's increased to about

1 2700 otters today.

2 And this is not only a total population
3 increase, but also it reflects an expansion in
4 their range. So it's not as though this is a
5 density or anything, but they now, I think, extend
6 from -- where was it --

7 MS. LUKE: They extend from San Mateo
8 County south to almost Goleta; were found off
9 Santa Barbara County, south to Concepcion --

10 DR. COATS: That is the most recent data
11 we have. And so you can see that there are some
12 areas that they have declined in population here,
13 some fits and starts, on their way to recovery.
14 And, you know, the overall recovery for the
15 southern otter population hasn't been as rapid as
16 anticipated. In other areas the recovery has been
17 much quicker. So there are some issues with the
18 otter populations, as a whole.

19 To assess recovery and take a look at
20 the long-term populations, the USGS recommends
21 looking at a three-year average. And that's what
22 this timeline is here. So, some of these small
23 dips are probably not real, maybe just associated
24 with differences in the ability to see the otters
25 on a particular year when they were doing the

1 census.

2 And what's interesting is a lot of
3 discussion has been in the recovery plan for
4 otters, but that plan was produced in 2002 based
5 on data in 2002, which was immediately after a
6 decline and a leveling off. The recovery plan
7 didn't address this recent uptick in the otter
8 population.

9 What the recovery plan did present is
10 what they considered a threshold where the otter
11 might be delisted as a threatened species. And
12 that's about 3090 otters, and we're at 2700 now.
13 So I think it's safe to say with these fits and
14 starts they are on their road to recovery.

15 Let's look at Estero Bay in particular,
16 and otter populations. And again, this is the
17 census I was referring to. And this is that one
18 narrow area. And you can see that in the past six
19 years it has oscillated wildly. And there's
20 reasons for that.

21 One is that particular section of the
22 coastline, when they do the census, they do it
23 from aircraft. The other parts, or many of the
24 other parts they can do from the shoreline, which
25 is more reliable. The aircraft depends on weather

1 and things like that.

2 But the other real reason that they vary
3 so much is the population in Estero Bay consists
4 largely of transient males; they're not resident
5 to Estero Bay.

6 You can see that the estimated carrying
7 capacity of Estero Bay is about 89 otters. And
8 this fluctuates quite substantially about that.
9 The carrying capacity is considered what a
10 resident population based on the food availability
11 and the availability of protection would support.

12 Well, sometimes we have a lot more
13 otters than supposedly it can support, and on
14 occasion we have populations of less than 50. In
15 one census, the 2002, that are far below what it
16 could support.

17 And the point here is when you look at
18 the adjacent areas, this is into Cayucos. That's
19 a kelp area to the north. It's a much more
20 favored habitat for otters; and it supports an
21 overall larger population, similarly the Hazardous
22 to Pismo section does, as well.

23 The other thing to note, say the
24 Hazardous to Pismo, is it's pretty stable in their
25 populations except for this one incident. And

1 that's a huge population increase. And it was
2 documented as a raft of transient otters that just
3 happened to be in the area when they -- moving
4 through the area when they did their census. So
5 that's a reflection of this transient otter
6 population. And it's, in fact, what's going on
7 with Estero Bay here, as well.

8 The other thing to note is on the top of
9 these is the pup population relative to the
10 overall population of otters. And you can see
11 that in these kelp areas they are pupping areas
12 because there's a significant portion of the
13 population when they enumerated them were
14 identified as pups.

15 In the Estero Bay area very few pups.
16 And, in fact, 2002 there were zero pups counted.
17 And the same in 2005.

18 So, again, this tells us that the otters
19 that are in the Estero Bay area are probably
20 transient, the majority of them. And not resident
21 to the Bay. And that's confirmed in a recent -- I
22 think it's -- 2006 study by the MMS, conducted a -
23 - put transceivers on otters at two locations.
24 And they looked what happened, where they went.

25 This is a Point Concepcion group that

1 they tagged, and a San Simeon group that they
2 tagged. So they're bred at San Simeon and the
3 others at Point Concepcion. And then they tracked
4 them four to seven times a week over a long period
5 of time, many months.

6 You can see what happened to the Point
7 Concepcion otters is they traveled all over the
8 place. And they even ended up in Santa Cruz.
9 Similarly the San Simeon spread out, some of them
10 ended up at Santa Cruz. But what's interesting to
11 note is a lot of the trackings, they moved through
12 Estero Bay in both directions.

13 So that tends to support this idea that
14 the otter population is transient; it's moving
15 around a lot. And it's just noteworthy the
16 transceiver data supports that.

17 CHAIRPERSON YOUNG: So, let me just ask
18 the question, does that mean it's just
19 coincidental that there's a lot of otters picked
20 up in that area that have succumbed to toxoplasma?
21 I mean, how do you reconcile that information with
22 what you just said?

23 DR. COATS: Let's see --

24 CHAIRPERSON YOUNG: -- points you were
25 trying to make.

1 DR. COATS: Okay.

2 CHAIRPERSON YOUNG: I mean that was
3 suggested --

4 DR. COATS: Here's the plot that's been
5 shown. Okay, again, the area, these stars are
6 just a study site, okay. The real area that Pat
7 Conrad is showing here is a high toxo area. It
8 extends from Los Osos all the way up to San
9 Simeon.

10 So, first of all, that's a broad region.
11 And I think the implications, the hypothesis at
12 this point, because nobody knows, is that the
13 fresh water runoff from areas like Morro Bay and
14 Elkhorn Slough are a source of the toxoplasma
15 gondii-osis, those are the originators that come
16 from the cat feces. They're the ones that we
17 can't detect. That's just getting back to your
18 other question.

19 They're the ones that are tough to
20 detect, the originators of the pollution. Once
21 they get into a host such as a mussel, if it's
22 onshore a rat or something like that, then you can
23 easily detect it in their muscle tissue, in their
24 brain tissue. So once they're out of the
25 environment and in an organism you can detect

1 them.

2 But the real challenge here has been
3 where are the ocyts it's coming from. We know
4 they're showing up in otters over a broad region
5 here and here. But we don't know exactly where
6 they're coming from.

7 And like I said, the hypothesis is these
8 large fresh water runoff areas. But until they
9 develop a method to detect the ocyts, themselves,
10 we'll never find out.

11 CHAIRPERSON YOUNG: Okay. I think I
12 didn't make my question clear. So I apologize for
13 that.

14 Your comment was that the Morro Bay area
15 appears to be some transition zone where otters
16 are both moving up the coast and down the coast.

17 DR. COATS: No, my point is that --

18 CHAIRPERSON YOUNG: Where they can be
19 found in high numbers in that area? Isn't there a
20 permanent population of otters?

21 DR. COATS: Oh, I'm sure there is.
22 Probably located more in the Morro Bay Estuary,
23 itself. But the habitat is not conducive to
24 permanent residence. All I'm suggesting here is
25 that these otters, because they move so widely,

1 could have acquired their toxoplasma --

2 CHAIRPERSON YOUNG: Anywhere else.

3 DR. COATS: -- anywhere.

4 CHAIRPERSON YOUNG: Okay.

5 DR. COATS: That's the point.

6 So just to summarize, the reasons we
7 don't see any evidence of impacts is the very low
8 discharge volume, high effluent quality, and rapid
9 dilution in an open ocean environment.

10 We used evaluation of balanced
11 indigenous populations from high resolution
12 benthic studies. And finally, the otter
13 demography suggests that the otters are on a long-
14 term population increase with fits and starts in
15 between. And the Estero Bay otters are mostly
16 transient, and they aren't residents, most of
17 them, in the Estero Bay area.

18 CHAIRPERSON YOUNG: Okay, thank you.

19 You guys have 27 minutes still.

20 MR. KEOGH: I believe we're done at this
21 point.

22 CHAIRPERSON YOUNG: Okay. Thank you.

23 Let's see, that's Discharger's presentation.

24 NRDC's cross-examination of Discharger's

25 witnesses. Mr. Beckman.

1 MR. BECKMAN: Mr. Chairman, we don't
2 have any questions.

3 CHAIRPERSON YOUNG: Okay. And then we
4 would go to NRDC's presentation.

5 MR. BECKMAN: We need a couple minutes
6 to do this --

7 CHAIRPERSON YOUNG: Okay. We're not
8 going to take a break. We're going to get up to
9 do that, but we'll wait a couple of minutes. One
10 minute, okay.

11 (Pause.)

12 (Off the record.)

13 CHAIRPERSON YOUNG: Mr. Beckman.

14 MR. BECKMAN: Thank you very much, Mr.
15 Chairman, Director Strauss, Members of the Water
16 Board, Executive Officer Briggs and Staff Counsel
17 Okun. Thank you for the opportunity to present
18 our perspective on the issue before you today.

19 I'm David Beckman with NRDC. Anjoli
20 Jaiswal is here with me; she's going to do most of
21 the presentation. I wanted to give you a broad
22 sense of where we're going with our presentation
23 and what we hoped you'd take from it, and how
24 you'd integrate it with what you've heard so far
25 today, and what you have hopefully read in the

1 record.

2 There's a lot of detail; there's a lot
3 of technical information. And if I were you I'd
4 be wondering how do you sort that out. Well,
5 it's a couple things we'd like to suggest about
6 how to sort it out.

7 The first is to think about, because
8 you're the decisionmakers, you're the judges here,
9 who has the burden of proof. Who has to convince
10 you that the evidence supports their position.
11 And here nobody disagrees that that is the
12 Discharger. It is not the environmental groups.

13 It is not up to us to show you today
14 that it is absolutely certain that this discharge
15 is causing otter sickness or anything else. And
16 the reason that's the case, because 301(h) waivers
17 are rare exceptions to the fundamental precepts of
18 the Clean Water Act, the very basic standards.

19 That's why there's only a few dozen in
20 the country, and less than a handful in California
21 as you know. A 301(h) waiver is an exceptional
22 circumstance. And there has to be a very high
23 level of proof before it's appropriate to issue.

24 Our presentation is entitled in part,
25 time is of the essence, and you would think from

1 the presentations so far today that it wouldn't
2 matter whether this upgrade is accomplished in
3 five years or in eight or in 15. Well, that, from
4 our perspective, is simply untrue.

5 And from our perspective it is also
6 important to say the following: Rarely with
7 wastewater discharges do you have evidence like we
8 have here. Usually things are inconclusive; and
9 they're measured in parts per billion.

10 I'm not aware of any circumstance in
11 which a entity like yourself, a regulatory agency,
12 is being asked or has ever been asked to allow a
13 301(h) discharge into the geographic epicenter of
14 a disease pattern. Whether or not it's right on
15 top of a point -- the discharge point, or a few
16 miles away, that evidence is indisputable in the
17 record. It is indisputable. And it matters not
18 whether the otter population is going up a little
19 bit or down a little bit, it's a threatened
20 species under the Endangered Species Act.

21 We'll talk a little bit about the end,
22 about the selected information that we think you
23 have gotten, with all due respect to your staff.
24 But the presentation you've seen today is a great
25 example of it. You have seen the narrow

1 information that best supports the view of staff
2 and the Discharger, and they're one and the same
3 here, in terms of their alliance. What supports
4 their perspective.

5 And that's really unfortunate. Because
6 what you need to make a decision is a -- and what
7 the law requires be presented to you in a quasi-
8 adjudicative setting like this one, where you're
9 acting as judges, is at least a neutral
10 presentation of the pros and cons. And you
11 haven't gotten that. And that's regrettable.

12 We're going to try to even the score a little
13 bit.

14 Before we start our presentation I'd
15 just like to leave you with one other thought
16 because you might be thinking it. Is this a
17 situation where the environmental groups just
18 won't take yes for an answer? Is this a situation
19 where we sort of solved this problem and why are
20 we still here with all the problems that we don't
21 have to deal with?

22 We're sensitive to that. We have very
23 limited resources. And the two of us working on
24 this, and all sorts of other things throughout
25 California and the west. And we wouldn't be here

1 today if this problem has been solved. If eight
2 and a half years, which is approximately what the
3 upgrade schedule is, was okay.

4 And the reason it's not is because this
5 discharge is into the epicenter of disease. And
6 in that circumstance we ask you and the law asks
7 you to give the doubt to the public health and the
8 environment, not to the Discharger.

9 If there's any doubt in the circumstance
10 it should go to protection of the environment, and
11 not toward using a 301(h) waiver as a bureaucratic
12 tool to allow this Discharger to upgrade in a way
13 that it has desired to do.

14 With that I'm going to turn it over to
15 Anjoli to start the presentation.

16 MS. JAISWAL: Good afternoon, Members of
17 the Board, Director Strauss, I'm Anjoli Jaiswal
18 with NRDC.

19 Today we're here to ask you to do the
20 right thing. David, next slide, please. I only
21 have three points and here they are.

22 Our first point is to deny the 301(h)
23 waiver. Not just because that's a legal
24 requirement, but because that's the right thing to
25 do for the community, and that's what the evidence

1 shows.

2 We also urge you to require the plant to
3 upgrade the plant as fast as possible. And this
4 last point, David will cover it. It talks about
5 the arbitrary and unlawful administrative process
6 that has resulted to NRDC and other community
7 groups involved in this process.

8 So, moving to the first point, deny the
9 waiver. This has two points in it. The first
10 point, which I'm going to spend some time on, and
11 you've heard some discussion, is that the plant
12 has not satisfied the balanced indigenous
13 population requirement. That is the plant's
14 burden here.

15 The second point, the plant cannot meet
16 its burden of demonstrating compliance with water
17 quality standards. Again, this is the plant's
18 burden.

19 Next slide. So, as you know, we
20 submitted our comments in this report, and we
21 discussed all the legal requirements. I'm not
22 going to go through all of them, but I wanted to
23 highlight what they are, the critical important
24 ones.

25 These are legal requirements, federally,

1 federal requirements. Here's a provision from the
2 Clean Water Act, and it says that the discharge of
3 pollutants in accordance with such modified
4 requirements will not interfere alone or in
5 combination with pollutants from other sources
6 with the attainment or maintenance of that water
7 quality which assures the protection of -- the
8 protection and propagation of a balanced
9 indigenous population of shellfish, fish and
10 wildlife.

11 Put simply, the federal regulations ask
12 a balanced population of shellfish, fish and
13 wildlife must exist. The two -- put in the
14 federal regulations, it states it plainly.

15 Next slide. So what does that mean.
16 Well, here's what EPA guidance tells us it means.
17 EPA guidance says in assessing whether a balanced
18 indigenous population exists, whether there's a
19 potential impact, here are four critical
20 considerations, the four main objectives.

21 As we highlighted, one of the key
22 objectives is communities of threatened and
23 endangered species.

24 Next slide. This has been analyzed in
25 decisions before. Here's from the environmental

1 appeals board, which functions as an appellate
2 court for the EPA. And they have determined that
3 both individual and community considerations are
4 relevant.

5 Now, why is this important. This is
6 important because just in analysis of benthic
7 communities that you've heard from the plant is
8 not sufficient to meet their burden that they are
9 not impacting an individual species, such as the
10 sea otters.

11 The environmental appeals board goes on
12 to say that we are not prepared to assume that
13 because one community apparently has not been
14 affected, protection of other communities has been
15 demonstrated. So all the statistical gymnastics
16 that you've seen from the plant and all of its
17 graphing still does not squarely address their
18 burden here.

19 Again, the State Water Board defined it
20 similarly; degradation of biological population in
21 communities considers diminished members of
22 species or individuals of single species, such as
23 sea otter.

24 There's one more click. So what about,
25 in considering the threatened species, that these

1 are other considerations. And this is directly
2 from the EPA guidance on how this is supposed to
3 be properly done and properly assessed.

4 It says, you're supposed to consider
5 abundance. You're supposed to consider growth and
6 reproduction of populations. Disease frequency.
7 Presence or absence of indicator species,
8 indicator sentinels, keystones that say how the
9 ecosystem is doing.

10 Next slide, please. So there's no
11 debate here. The California sea otter is a
12 threatened species. It's been listed as a
13 threatened species since 1972 and it is struggling
14 for recovery.

15 Click. The current population is 2500
16 to 2700. Click. And so this is evidence right
17 here, the existence of the threatened species
18 alone is record evidence that the otter population
19 is not balanced; evidence that the plant has not
20 met its burden.

21 Okay, click. So, this is a interesting
22 point what you see. Let me just set it up for
23 you. This is a letter that the plant submitted
24 through its consultant, Marine Research
25 Specialists; you have it in your packet; I'm sure

1 you reviewed it.

2 What they say is the otter cannot
3 possible come into contact with T.Gondii. That
4 is, T.Gondii from its plant near that outfall.
5 Well, here's what they say in their 2005 report.
6 They say, well, actually we saw an otter right at
7 the diffuser, right at the diffuser structure.
8 And in their 2005 report they went on to say that
9 this statement supports that the otters' presence
10 and attests to -- I'm not -- that right, but
11 basically that there is an otter population there.

12 Well, they can't have it both ways.
13 They can't say there's no way a otter comes into
14 contact with T.Gondii from our facility or from
15 our diffuser. And say, oh, and we've seen otters
16 right on top of our diffuser.

17 Again, they go on with this and they
18 say, but, you know, actually they even in all of
19 this evidence, and I'm covering five categories of
20 evidence here. This is the first category where
21 they say that a healthy balanced indigenous
22 population exists.

23 Well, in addition to the threatened
24 species, these are the stranding rates that we've
25 seen. And Cayucos, more their area, for

1 consecutive years, have had the highest stranding
2 rates for the California sea otter.

3 BOARD MEMBER SHALLCROSS: Excuse me, can
4 you tell me what a stranding rate is?

5 MS. JAISWAL: Yes. A stranding rate is
6 when they find the sea otters and they are either
7 struggling for recovery or they're dead, or they
8 find them and they soon die thereafter. And this
9 is the basis on which the necropsies are conducted
10 by specifically the scientists at UC Davis and
11 that research team.

12 Please ask me any clarification
13 questions. Okay, next slide.

14 Okay, now this should answer the
15 question some more. Steve Shimck, the otter
16 project; he's the Executive Director and I'm sure
17 today will probably discuss this more, submitted a
18 letter into the record in response to the marine
19 research specialist letter that the plant
20 submitted. He actually said the spring surveys
21 for 2005 found that the otter population is down.

22 Next click; there's a couple things in
23 here so I want to move quickly because of the
24 time. They are finding higher and higher
25 percentage of the population dead on the beach.

1 And there are attributing this to disease. I'm
2 going to get into that more.

3 Go to the next slide. Now you saw this
4 map; it's not a map that we created. In fact,
5 most of this evidence, all of this evidence is not
6 evidence that we have created, NRDC has created.
7 It's been from articles, from hard facts.

8 Here's one of them. This is from an
9 article from Patricia Conrad, one of the leading
10 otter scientists. And you've seen this map, so I
11 don't need to detail it too much, but I want to
12 highlight it shows that Morro Bay, Estero Bay is a
13 hot spot for T. Gondii infected otters.

14 The otters living in the area of Morro
15 Bay are nine times more likely to have T. Gondii
16 than seat otters elsewhere in their range. I
17 don't need to explain T. Gondii, do I? We've been
18 talking about that. Okay.

19 Here's another article, too. And this
20 one is from Dr. Melissa Miller, another leading
21 scientist whose name you must have heard and read
22 about in the papers amongst the parties and staff.
23 And she says, notably, interestingly this is a
24 growing region within the southern sea otter range
25 where primary treated municipal sewage is

1 permitted to be discharged into the near-shore
2 marine environment.

3 Again, this is a graph from UC Davis
4 team. And I know it's hard to read because of all
5 the colors and everything, but if you look at it
6 and what they actually say on the left side is
7 they say that nearly 50 percent of the otter
8 deaths are due to disease.

9 And then also the recovery plan, it says
10 while sea otter mortality has a variety of causes,
11 we know we've heard, you know, stormwater or other
12 sources, but it says that the single most
13 important known cause of mortality among the
14 southern sea otter is an infectious disease caused
15 by land-based sources. So a variety of causes,
16 it's coming from land-based sources of pollution
17 including the plant. That is part of the plant's
18 failing to show that its discharge is not
19 impacting the otter and a balanced indigenous
20 population exists.

21 CHAIRPERSON YOUNG: Can I just interrupt
22 one second on that, if it's okay with you. I
23 stopped the clock. If they tested their effluent
24 and they can't show that there's any toxoplasma in
25 the 120 mussels, what else can they do to meet

1 that burden?

2 MS. JAISWAL: Well, I'm glad that you've
3 asked that question. The testing that they've
4 done is inconclusive.

5 CHAIRPERSON YOUNG: It's state of the
6 art.

7 MS. JAISWAL: The testing, as I will get
8 to, maybe I should just advance to that slide.

9 CHAIRPERSON YOUNG: Well, I didn't want
10 to interrupt you, but that was --

11 MS. JAISWAL: Okay. I'm going to
12 address that. If you want me to address it now,
13 I'll advance.

14 CHAIRPERSON YOUNG: Address it when you
15 want to, but that's --

16 MS. JAISWAL: Okay, I certainly will.
17 Thank you for the question.

18 So here are what -- here's what T.
19 Gondii actually does to the sea otters. It causes
20 encephalitis, brain disease, which is like brain
21 disease, spasms, and I know this is a disgusting
22 picture so I'll just move quickly, but the T.
23 Gondii infection in the brain interacts with other
24 harmful effects to the otters like shark attacks
25 and heart failure.

1 Next slide. Okay. This is another
2 letter discussing the disease epicenter. This is
3 from Dr. Mazzet, who's the director of the UC
4 Davis research team. And she's saying that
5 specifically they found spatial clusters of
6 mortality due to T. Gondii encephalitis in Estero
7 Bay. There's a cluster happening right here in
8 Estero Bay.

9 And she says this clustering suggests
10 that there may be local factors enhancing T.
11 Gondii exposure or increasing sea otter
12 susceptibility in this particular area, local
13 factors.

14 Next slide, please. I'm sorry, and she
15 goes on, it says, it's not just us saying that the
16 otters are struggling in their recovery and have
17 recovery challenges, Dr. Mazzet says it here.
18 Saying that the otters are likely to continue to
19 face significant recovery challenges.

20 Okay, in addition to being a threatened
21 species and the high strandings and the disease
22 epicenter, you asked what the evidence is. Well,
23 the evidence shows harm to the otters. We have
24 listed nearly 20 studies done just since the plant
25 submitted its application or right when the plant

1 submitted its application.

2 The plant and staff, with all due
3 respect, doesn't even grapple with this evidence
4 and what it means. This is hard evidence showing
5 that the plant hasn't satisfied its burden;
6 showing that the may be a potential impact.

7 Next slide. This is another key feature
8 that we haven't heard a lot about today. But not
9 only is the sea otter an icon that drives tourists
10 here, that drives the economy, it represents the
11 overall health of the ecosystem in two ways.

12 This is the first way, it's a sentinel
13 species. This is an article by Dr. David Jessup,
14 who also studies sea otters. He said specifically
15 the unique biology of the sea otter makes them an
16 excellent sentinel species; one that can tell us a
17 lot about pollution problems and ecological
18 change. He's saying what happens to the sea otter
19 is going to happen to the rest of the ecosystem.
20 And the conclusion in this is that overall what we
21 see in the southern sea otters suggests there is a
22 near shore California marine ecosystem -- that the
23 near shore California marine ecosystem may be
24 sick.

25 Next slide. Here's the other key role

1 that the otter plays. This is an article by Dr.
2 Patricia Conrad at UC Davis. And she says that
3 the otter is a keystone species that controls the
4 destruction -- that controls the destruction of
5 kelp forests by grazing urchins and thus helps
6 maintain diversity of inhabitants and ecosystem
7 services including protection of the coastline
8 from erosion.

9 It plays a multiple role, but the otter
10 is what ties the ecosystem together. So not only
11 what hurts the otters is happening to the whole
12 system, but the whole ecosystem is dependent on
13 the otter.

14 Now, this study is interesting. We
15 submitted this into the record. It's a study by
16 the lead author is Dr. Woutrina Miller. Dr.
17 Miller, Woutrina Miller here, submitted -- we
18 submitted this, and I know that the Chair
19 graciously accepted it into the record, but I
20 wanted to note, too, this isn't the same study
21 that staff relies on, and submitted in your packet
22 got a letter from Marine Research Specialists is
23 where this letter comes from.

24 And the key conclusion in here is that
25 one of the study findings was that mussels

1 collected close to human sewage sources, sewage
2 outfalls and septic tanks, along the central coast
3 were 39 times as likely to have any of the study
4 bacteria compared to the mussels collected from
5 the locations distant to these sources.

6 Okay. Well, I was going to say about
7 it, that's okay, that's okay, let --

8 BOARD MEMBER SHALLCROSS: Was
9 toxoplasmosis one of the --

10 MS. JAISWAL: No. That's a very good
11 question. This was -- toxoplasmosis was not one
12 of the studies, was not one of the bacteria here.
13 However, the overall ecosystem and the pathogens
14 that are infecting marine life and the sea otter
15 is what's being discussed here, and how the impact
16 is from places where sewage plants are versus
17 where places where sewage plants aren't.

18 Okay. So you have all those five pieces
19 of evidence, that it's a threatened species,
20 right? You have the high stranding rates; you
21 have the disease epicenter; you have overall
22 unhealthy ecosystem; and you have all these
23 additional studies that have not been addressed.

24 That's the evidence already showing the
25 potential impact. Then more importantly, showing

1 that the plant has not satisfied the balanced
2 indigenous population requirement. It hasn't met
3 its burden.

4 You have all that. Well, that's how the
5 law is. There's another provision in the Clean
6 Water Act, and this is an absolute prohibition.
7 It says the prohibition is absolute, the
8 prohibition shall apply without a causal
9 relationship between such characteristics and
10 applicant's current proposed discharge.

11 Okay, so to clarify. Here is what the
12 prohibition is. Where the discharge of any
13 pollutant enters into a saline estuary --
14 estuarine waters, which at the time of the
15 application do not support a balanced indigenous
16 population of shellfish, fish and wildlife.

17 So if it enters an estuary like Morro
18 Bay Estuary, a nationally recognized estuary, the
19 first nationally recognized estuary, and there
20 isn't a balanced indigenous population, which all
21 the evidence is showing you, then it's clear,
22 absolute prohibition. There is no -- in terms of
23 enters, it's just, it's clear, it says does it
24 enter.

25 Well, here's what we know about that.

1 This is from the Marine Research Scientists'
2 letter again, and from the plant. From what
3 they're saying its wastewater constituents do not
4 enter Morro Bay Estuary in an ecologically
5 meaningful amount. Implicit in that statement is
6 the admission that the discharge actually does
7 enter the estuary.

8 And the only dye study that we have
9 that's been conducted, the only monitoring on the
10 fate and transport of this plant that's needed
11 here was done over 20 years ago. And it showed
12 actually that the discharge is entering the
13 estuary.

14 BOARD MEMBER SHALLCROSS: I have a
15 question.

16 MS. JAISWAL: Okay.

17 BOARD MEMBER SHALLCROSS: This is sort
18 of interesting to me because how much is too much?
19 Or is there some level where a little bit's okay?

20 MS. JAISWAL: No, a little bit is not
21 okay.

22 BOARD MEMBER SHALLCROSS: So like if one
23 molecule drifts down and goes in, that's not okay?

24 MS. JAISWAL: This is not --

25 BOARD MEMBER SHALLCROSS: And then --

1 just trying to figure out --

2 MS. JAISWAL: Right, but -- that's --

3 BOARD MEMBER SHALLCROSS: -- what you're
4 talking about here.

5 MS. JAISWAL: -- that's right. To
6 answer your question directly, the Clean Water Act
7 says enters. Because it's the protection that
8 estuaries deserve. Congress has determined
9 estuaries are so meaningful to ecosystems, we want
10 to protect them.

11 And over 30 years ago when they were
12 given these waivers for waivers to meeting basic
13 Clean Water Act standards, they said, well, you
14 know what, we know you ocean dischargers are
15 saying you want this waiver, that's what the
16 legislative history shows. And then they say, but
17 estuaries. We know estuaries are important. I
18 don't need to explain to this Board that protects
19 water quality why estuaries are important.

20 CHAIRPERSON YOUNG: No, we know that.

21 BOARD MEMBER SHALLCROSS: Well, --

22 CHAIRPERSON YOUNG: Mr. Shallcross'
23 point, you know, it's a point that I've been
24 thinking about, myself. Where is the line? And
25 he did use the extreme example as to is one

1 molecule that comes out of a discharge. Which
2 theoretically could happen for any of these plants
3 up and down the coast. If it gets into Morro Bay,
4 is that problematic?

5 MS. JAISWAL: Well, that's not what
6 we're talking about here.

7 CHAIRPERSON YOUNG: But, --

8 MS. JAISWAL: And I'll explain. The
9 amounts that you're talking about are not the
10 amounts in the study. In fact, there have been
11 several studies, and Mr. Briggs can probably
12 explain how these work better than I can, and have
13 been studied intensely in this area how the
14 estuary actually functions as a co
15 (indiscernible), and the water comes into the
16 estuary and it goes out of the estuary. This
17 heavy mixing so that it's not just small minuscule
18 insignificant transfer that's going on between the
19 two water bodies.

20 MR. BECKMAN: May I just add one thing
21 to this?

22 CHAIRPERSON YOUNG: Sure.

23 MR. BECKMAN: I think this goes really
24 to the questions generally that you have to
25 grapple with, which is when you're sitting as a

1 court what's the level of your own policy sense in
2 interpreting your obligation here today.

3 And the simple answer to the question is
4 that the law tells you what's reasonable. Whether
5 or not you think maybe the law should have said
6 something different. Maybe in you view, and I
7 don't know if this is your view, Mr. Shallcross,
8 or Chair Young, maybe it should have said in
9 ecologically meaningful amounts, which is how the
10 consultant from the plant modified it.

11 But that's not what this says. The
12 pollutant enters is the phrase. It's very simple
13 and very straightforward.

14 BOARD MEMBER SHALLCROSS: I'm just
15 trying to get a grasp on what that means. Because
16 I mean obviously if the discharge is to the
17 estuary, that's out.

18 MR. BECKMAN: Right.

19 BOARD MEMBER SHALLCROSS: Now, it's, you
20 know, down a block away from the mouth of the
21 estuary, obviously there's going to be impact.
22 But how far away does the --

23 MR. BECKMAN: Right.

24 BOARD MEMBER SHALLCROSS: -- at a point
25 you have to say it's so insignificant it doesn't

1 matter. I'm just trying to see if you have any
2 idea or could help me figure out where that line
3 is.

4 MS. JAISWAL: Yeah, well, thanks, David,
5 for that clarification. The law is clear that
6 it's entered. And to answer your question in
7 terms of the line, there's a heavy mixing rate
8 going on between Morro Bay and Estero Bay. So in
9 terms of the impact, it's significant. It's a
10 significant amount of mixing.

11 BOARD MEMBER SHALLCROSS: Okay, and do
12 you have like -- you were mentioning some dye --

13 MS. JAISWAL: We submitted that into the
14 record.

15 BOARD MEMBER SHALLCROSS: Do you have a
16 picture of it to show the --

17 MS. JAISWAL: You know, the --

18 BOARD MEMBER SHALLCROSS: -- plume
19 entering the --

20 MS. JAISWAL: I don't think it has a
21 picture. We actually -- we were looking for this,
22 and even though it's not our burden we were
23 looking for it, and --

24 BOARD MEMBER SHALLCROSS: Oh, it's not
25 your burden, but if --

1 MS. JAISWAL: No, I'm sure --

2 BOARD MEMBER SHALLCROSS: -- it might be
3 helpful to your case if you could show evidence to
4 the contrary.

5 MS. JAISWAL: Right. And we have that
6 study; we submitted it into the record. It's a
7 20-old study and we don't have a slide --

8 BOARD MEMBER SHALLCROSS: Okay, thank
9 you.

10 MS. OKUN: I just need to say one thing
11 about the term enters into the saline estuary,
12 that the statute actually says and discharge into
13 a saline estuary.

14 CHAIRPERSON YOUNG: It doesn't have the
15 word enters?

16 MS. OKUN: No, it doesn't.

17 CHAIRPERSON YOUNG: Mr. Beckman, is that
18 true?

19 MS. JAISWAL: No. That is true, Ms.
20 Okun, I believe you have the Code of Federal
21 Regulations right at your desk?

22 MS. OKUN: I'm looking at the statute,
23 but --

24 MR. BECKMAN: I would like to make a
25 point of order here. I would appreciate it if Ms.

1 Okun has -- if she wants to make an opposition
2 brief or an opposition argument, I think it would
3 be appropriate that she allow us to finish. If
4 there's some clarification about any of the
5 information we'd be happy to provide it. But
6 engaging in a to-and-a-fro with staff counsel is
7 precisely the type of bias that we have complained
8 about throughout this entire process.

9 CHAIRPERSON YOUNG: Mr. Beckman, I find
10 it very appropriate for the Board's attorney to
11 let us know if there's being any misstatement of
12 what the law is.

13 MR. BECKMAN: Well, so --

14 CHAIRPERSON YOUNG: And that's what I
15 would like to know right now.

16 MR. BECKMAN: Well, sir, you are the
17 Chair so you can run the hearing any way you want.
18 But I object for the record to the long history of
19 arbitrary and unfair treatment of critics of the
20 proposed action which has started at the beginning
21 of this year, is well documented by us, and
22 continues here.

23 Ms. Okun could well have critiqued the
24 presentations the night before, which were
25 selective, incomplete, and also subject to the

1 same type of micromanagement that Ms. Okun's doing
2 here. But she didn't.

3 And I think the Board needs to
4 understand, and we will get to this later, that
5 aside from the four corners of the merits between
6 you, that the actions of the Board and its staff
7 in dealing with people who don't agree with the
8 Board, have been regrettable. and in my
9 experience of 11 years at NRDC, and 15 practicing
10 law in California, I have never before seen
11 anything remotely like it.

12 CHAIRPERSON YOUNG: Well, Mr. Beckman,
13 you're entitled to your opinion. Your objection
14 is noted. And I want to get an answer to my
15 question as to what this section does state. So
16 you can put --

17 MR. BECKMAN: I just made my objection,
18 Your Honor.

19 CHAIRPERSON YOUNG: Fine.

20 MS. JAISWAL: Chairman Young.

21 CHAIRPERSON YOUNG: Yes.

22 MS. JAISWAL: Ms. Okun is reading from
23 the statute. This is from the federal regulations
24 which explain what the statute means and what the
25 statute says. It's at 40CFR125.59(b)(4).

1 MR. BECKMAN: Why don't we take a second
2 so Ms. Okun can --

3 (Parties speaking simultaneously.)

4 CHAIRPERSON YOUNG: Excuse me. Director
5 Strauss, since these are federal laws, do you have
6 any input into what is being debated here? No?
7 Okay.

8 MS. OKUN: That is what the regulation
9 says, it's not what the statute says.

10 MR. BECKMAN: Well, what are we citing,
11 Ms. Okun?

12 CHAIRPERSON YOUNG: Mr. Beckman, please.

13 MR. BECKMAN: My objection has been, I
14 assume, overruled?

15 CHAIRPERSON YOUNG: Is this what the
16 regulation says?

17 MS. OKUN: Yes.

18 CHAIRPERSON YOUNG: Okay. And what were
19 you referring to, the statute?

20 MS. OKUN: Yes.

21 CHAIRPERSON YOUNG: What does the
22 statute say?

23 MS. OKUN: No permit issued under this
24 subsection shall authorize the discharge of any
25 pollutant into saline estaurine waters which at

1 the time of application do not support a balanced
2 indigenous population of shellfish, fish and
3 wildlife.

4 And then it goes on to talk about
5 recreation.

6 CHAIRPERSON YOUNG: Director Strauss.

7 DIRECTOR STRAUSS: I don't know if it
8 would be helpful, but I think that the threshold
9 point here is whether or not a balanced indigenous
10 population exists. And there are different views
11 on this subject.

12 If a balanced indigenous population
13 exists, you go down one path. If it's found that
14 a balanced indigenous population does not exist,
15 then you are put in these various circumstances.

16 Historically that has been very rare,
17 but it still is very clear that if you find that
18 you don't have a balanced indigenous population
19 then the statute and regulations take you down
20 this path.

21 So the threshold question at the point
22 that Ms. Jaiswal is focusing on is whether or not
23 a balanced indigenous population exists.

24 And I would suggest that we could
25 continue to go through this and just bear that in

1 mind. It's more does there exist, and if so, one
2 thing. And if not, then the prohibition, et
3 cetera.

4 CHAIRPERSON YOUNG: Okay. Well, --

5 DIRECTOR STRAUSS: If that's helpful.

6 CHAIRPERSON YOUNG: -- that I
7 appreciate. What I was trying -- we were trying
8 to grapple with and was Board Member Shallcross'
9 question, as to what are we looking at when we
10 talk about discharge into saline waters. Does
11 that mean directly saline estaurine waters? Does
12 that mean outside the bay is okay?

13 DIRECTOR STRAUSS: The circumstance
14 where EPA faced this in Los Angeles was a
15 discharge into federal waters. And in this
16 situation the discharge into the bay, I mean I
17 think we have to be fairly clear about where we
18 were talking about a discharge into state waters
19 versus a discharge into federal waters, if that's
20 helpful.

21 CHAIRPERSON YOUNG: Well, how about just
22 forgetting about whether they're federal or state
23 waters, but whether they are saline and/or
24 estaurine waters. Forgetting about the label
25 state or federal. If these were all federal

1 waters how would you interpret it in terms of this
2 discharge occurring in its present location?

3 DIRECTOR STRAUSS: In its --

4 CHAIRPERSON YOUNG: Up the coast some
5 distance from the mouth of Morro Bay.

6 DIRECTOR STRAUSS: I mean it triggers an
7 EPA permit for a number of reasons, but I would
8 first have to cross the threshold of whether or
9 not a balanced indigenous population exists. And
10 I know you understand that.

11 CHAIRPERSON YOUNG: Okay, --

12 DIRECTOR STRAUSS: To me, saline versus
13 estaurine is covered when you get to the absolute
14 prohibition.

15 CHAIRPERSON YOUNG: And because EPA has
16 determined that a balanced indigenous population
17 is being maintained, you didn't get to the next
18 question, the next part of the analysis?

19 DIRECTOR STRAUSS: That is what is in
20 our proposed tentative decision and proposed
21 permit.

22 CHAIRPERSON YOUNG: Okay. All right.
23 Okay, let's continue.

24 MS. JAISWAL: Thank you, --

25 MR. BECKMAN: Is the record clear that

1 there was no inaccuracy in the citation?

2 CHAIRPERSON YOUNG: The record is clear
3 that that is a correct --

4 MR. BECKMAN: Thank you very much.

5 CHAIRPERSON YOUNG: -- and accurate
6 quotation from the --

7 MS. JAISWAL: Thank you.

8 CHAIRPERSON YOUNG: -- regulation.

9 MS. JAISWAL: My job as a lawyer is on
10 the line. You know, I attested that this was true
11 in preparing this.

12 CHAIRPERSON YOUNG: Okay.

13 MS. JAISWAL: But I'm just going to move
14 on.

15 CHAIRPERSON YOUNG: Okay.

16 MS. JAISWAL: Okay, let's see, so with
17 all this evidence what does it show. You see the
18 otter as a threatened species, struggling for
19 recovery. You see the high stranding rates; the
20 disease epicenter. The intensive legal study on
21 this issue; the additional studies that have been
22 done showing that a balanced indigenous population
23 of otters does not exist in Estero Bay and Morro
24 Bay.

25 Despite that, EPA concludes -- this is

1 its conclusion: EPA concludes that a balanced
2 indigenous population is being maintained in the
3 vicinity of the outfall. EPA did a benthic
4 analysis, a rote analysis that it does regularly
5 and hasn't squarely addressed all of this evidence
6 on the sea otter, with all due respect to EPA.

7 So, the Regional Board also has a duty
8 and obligation to research this and to study this.
9 And here's what the Regional Board Staff report,
10 this is the first staff report. And it has no
11 conclusion on the balanced indigenous population,
12 no clear conclusion.

13 Instead the staff report excerpts this
14 one statement from Pat Conrad, from Dr. Patricia
15 Conrad's study. You know, Chair Young, this is
16 your question I'm about to get to about the study
17 that was done. And the study is inconclusive. I
18 understand that staff put up that quote from that
19 letter, but staff ignored --

20 BOARD MEMBER SHALLCROSS: Can we put
21 that back up?

22 MS. JAISWAL: Sure. Okay, so this is
23 Patricia Conrad and she's saying, we are unable to
24 complete testing on the 120 mussels; it's not
25 finished; that had been outplanted at Morro Bay

1 outfall during that time. Toxoplasma RNA was not
2 detected in any of the 120 mussels from the
3 outfall buoy that have been tested thus far.

4 So that's one excerpt from the letter.
5 Here's the rest of the letter. If you would
6 please allow me to show you the rest of the letter
7 and then I will take your questions.

8 This is highly unusual. This is a
9 highly unusual letter that Dr. Conrad wrote to the
10 plant. And scientists don't usually put cover
11 letters explaining their studies and saying, oh,
12 wait, no, here, here are the limitations. And
13 it's not us saying it, this is Dr. Conrad saying
14 it. That there may be, it is possible that lower
15 concentrations of T. Gondii could have been
16 present in the shellfish, but they were not
17 detected at these low levels resulting in false
18 negatives.

19 This piece of evidence does not prove
20 that the plant has a clean bill of health.
21 There's nothing saying that the plant has a clean
22 bill of health. And misquoting, or taking one
23 piece and not representing what the lead scientist
24 has said in an unusual letter does not ameliorate
25 the plant's burden.

1 Questions?

2 CHAIRPERSON YOUNG: Well, I guess the
3 question was what else could the plant do? I mean
4 what else could science do? If they're using the
5 state of the art at this point. You're saying
6 that they, at this point, can never meet that
7 burden.

8 MS. JAISWAL: What I'm saying is what
9 the law requires as Director Strauss says. The
10 key question here is does a balanced indigenous
11 population exist. The overwhelming evidence is
12 no, it does not.

13 CHAIRPERSON YOUNG: And is that the
14 overwhelming evidence based on the fact that the
15 testing could not detect any toxoplasma?

16 MS. JAISWAL: In part, there's
17 inconclusive evidence that the plant can't show,
18 hey, it's not us. Because that's one thing you
19 could do to get this extraordinary 301(h) waiver.

20 But the overwhelming evidence, the hard
21 facts and the studies conducted by federal
22 agencies, state agencies --

23 CHAIRPERSON YOUNG: That said what?

24 MS. JAISWAL: -- universities saying
25 that the sea otter population was not balanced.

1 CHAIRPERSON YOUNG: Okay.

2 MS. JAISWAL: The first key question is
3 is the otter population balanced. There's
4 overwhelming evidence, and I just -- I've just
5 shown you bits and pieces of the evidence. We
6 discuss it in detail in our report. You can read
7 those 20 articles saying that the otter population
8 is not balanced and that it's struggling for
9 recovery.

10 CHAIRPERSON YOUNG: Okay, just
11 hypothetically, what population level, if any, do
12 you think the otter population has to reach?

13 MS. JAISWAL: That is not really the
14 question before us, but however to answer your
15 question, that is in the otter recovery plan,
16 which I have read. But I defer that to Mr. Shimck
17 to answer when he gives his comments, what the
18 population is.

19 But what we know is that the otter is a
20 threatened species listed federally since the
21 '70s, and that it is struggling for recovery.
22 That is a relevant question.

23 CHAIRPERSON YOUNG: Okay.

24 MR. BECKMAN: Before you go on, I would
25 just note that in the supplemental comments that

1 we provided on page 14 and 15 --

2 MS. OKUN: What's the date of the letter
3 that you're looking at?

4 MR. BECKMAN: April 3, 2006, I'm sorry,
5 it's -- yes, it's April 3, 2006. We discuss and
6 cite other ways of testing for T. Gondii, Mr.
7 Chairman. We do not agree, just based on the
8 statements of the plant, that the method that
9 they've chosen is the only way to test.

10 I think if you look at the evidence and
11 the citations you will see that there are other
12 studies that claim that there are other methods to
13 detect T. Gondii.

14 CHAIRPERSON YOUNG: That's in April
15 3rd --

16 MR. BECKMAN: 2006, 14 and 15.

17 CHAIRPERSON YOUNG: All right.

18 BOARD MEMBER HAYASHI: Chairman Young.

19 CHAIRPERSON YOUNG: Yes, Mr. Hayashi.

20 BOARD MEMBER HAYASHI: I have a
21 question. A balanced indigenous population, can
22 you not have two balanced, two populations that
23 are side-by-side with each other? So that you
24 have two populations that don't exactly mirror
25 each other, one at the outfall and one closer to

1 shore and one farther out.

2 MS. JAISWAL: I'm not sure I completely
3 understand the question.

4 BOARD MEMBER HAYASHI: Okay, by
5 definition -- give me your definition.

6 MS. JAISWAL: Sure. You know, David,
7 could you just go back, go back several slides to
8 the law. Keep going, it's several slides. I hope
9 the counter is -- it's like one of the beginning
10 slides. Okay.

11 BOARD MEMBER HAYASHI: What I'm saying
12 is can you have a balanced indigenous population
13 in a 50-yard area and have another balanced
14 indigenous population in a 100-yard-square area?

15 MS. JAISWAL: Right. It must assure a
16 balanced indigenous population in the zone of
17 initial discharge, as well as outside the zone of
18 initial discharge.

19 BOARD MEMBER HAYASHI: They don't have
20 to mirror each other?

21 MS. JAISWAL: A balanced indigenous
22 population has to exist in both areas.

23 BOARD MEMBER HAYASHI: Okay, but if you
24 have shellfish and everything living in each zone,
25 and you have a different makeup living in the next

1 population, you have two.

2 MR. BECKMAN: If I could just take a
3 stab at that question.

4 BOARD MEMBER HAYASHI: I'm just, you
5 know, --

6 MR. BECKMAN: Sure, that's a good
7 question. And we address it, I think, in the next
8 slide. Because I think what you're asking, and
9 tell me if this is the wrong or right track, is if
10 we had evidence that one population is healthy,
11 but we have evidence that another population in
12 the same area is not, how do we reconcile that, is
13 that the question?

14 BOARD MEMBER HAYASHI: Yeah, how do you
15 reconcile that it is not healthy if it's existing?

16 MR. BECKMAN: Right, and I think that
17 the answer to the question is if EPA had to look
18 at this in order to answer the BIP question
19 everywhere there were 301(h) waivers, and the
20 basic answer is that in determining whether you
21 have a balanced indigenous population, it's not
22 enough just to show that one or more of the
23 distinct populations in a particular region or in
24 a particular zone are healthy.

25 And this was -- actually you are not the

1 first to have to deal with this question. Some of
2 the state case law from the State Water Board
3 answered this. We are not prepared to assume that
4 because one community apparently has not been
5 affected, protection of the other communities has
6 been demonstrated.

7 Which is to say that based on the
8 evidence here on the otter problem, mortality and
9 morbidity, the presence of healthy related
10 populations like infaunal and benthic, doesn't
11 allow you to conclude that a BIP exists.

12 BOARD MEMBER HAYASHI: If you can go
13 back to the other one, the population of the otter
14 is still on the rise, is it not?

15 MS. JAISWAL: Fits and starts.

16 MR. BECKMAN: Yeah, I'm not sure what --

17 MS. JAISWAL: It depends on what range
18 you're talking. Overall range there has been a
19 slight recovery. But the scientists, and I wish
20 they were here today because they would tell you,
21 as they said in their letters, are facing serious
22 recovery problems. The population is not in --

23 BOARD MEMBER HAYASHI: But they are
24 gaining in numbers?

25 MS. JAISWAL: A slight increase.

1 BOARD MEMBER HAYASHI: That's all I
2 have.

3 MS. JAISWAL: Okay, well, --

4 MR. BECKMAN: -- statewide, I think the
5 answer. You're not focusing on statewide; the
6 relevant consideration for you is not what the
7 graph tracks out statewide, it's what's happening
8 within the area that you are considering issuing
9 one of three dozen waivers in this whole country.

10 MS. JAISWAL: And the high stranding
11 rates -- okay. So we keep going.

12 CHAIRPERSON YOUNG: One moment.

13 BOARD MEMBER SHALLCROSS: Still
14 following up on your answer just now. So we're to
15 focus on this area, the local area. I'm
16 interested in the otter deaths and strandings in
17 this local area.

18 MS. JAISWAL: Actually we have a slide
19 on that.

20 BOARD MEMBER SHALLCROSS: Okay, good.

21 MS. JAISWAL: And I must have been going
22 too fast.

23 BOARD MEMBER SHALLCROSS: Oh, no, that's
24 okay.

25 MS. JAISWAL: Let me slow down.

1 BOARD MEMBER SHALLCROSS: I wasn't
2 looking for that. What I'm looking for is a map
3 that shows where these deaths and strandings are.

4 MS. JAISWAL: Well, here, David, could
5 you please go back to that slide?

6 BOARD MEMBER SHALLCROSS: Is this
7 telling us?

8 MS. JAISWAL: No, the one with the otter
9 stranding, because that is -- there is a visual
10 map there. I mean a conceptual map. Forward.

11 MR. BECKMAN: I'm going to get fired.

12 (Pause.)

13 MS. JAISWAL: Okay, I'm going to answer
14 your question in two ways.

15 BOARD MEMBER SHALLCROSS: Okay.

16 MS. JAISWAL: Back. Okay, here we go.
17 So here is -- if you look at the locations, now
18 you have to visualize a map of the central coast,
19 which I'm sure you know very well.

20 It starts out so you can see where the
21 areas are, you know, it has Moss Landing, and it
22 goes down, Cambria, and then it goes down and
23 shows Cayucos and Hazard. This is direct data
24 from the U.S. Geological Survey data. They didn't
25 map it; I didn't create a map to show it. This is

1 what their evidence is. And it shows the highest
2 stranding rates in this area, in Estero Bay.

3 BOARD MEMBER SHALLCROSS: Okay, --

4 MS. JAISWAL: For two consecutive years
5 in a row. There's also the map from Patricia
6 Conrad.

7 BOARD MEMBER SHALLCROSS: Right. But
8 what I was mostly interested in, in the deaths.
9 If you had a map that showed not the stranding,
10 the stranding can be for any reason. It's not
11 just toxoplasmosis. Where the deaths of the
12 otters --

13 MS. JAISWAL: Sure, go ahead --

14 BOARD MEMBER SHALLCROSS: -- on the map,
15 but the ones that die of this disease.

16 MS. JAISWAL: Go ahead and click, David,
17 please, because this is -- please. Okay. These
18 are the hot spots, and these are the hot spots for
19 T.Gondii. As you can see the highlighted, the
20 highest rates. Morro Bay is the highest for T.
21 Gondii. And it's said that they are nine times
22 more likely to have toxoplasmosis from sea otters
23 elsewhere in their reach.

24 There's been intensive study about this
25 in several of the articles that shows that Morro

1 Bay is a hot spot for T. Gondii specifically.

2 BOARD MEMBER SHALLCROSS: So, I guess --
3 I mean this is along -- you're talking about the
4 red zone there, from San Simeon down to Morro Bay?

5 MS. JAISWAL: No, I'm talking about the
6 star.

7 BOARD MEMBER SHALLCROSS: Oh, the star.
8 And the star is in Morro Bay?

9 MS. JAISWAL: Yes, it is. In fact, it's
10 at the center of that range is directly, it's just
11 a few yards from the discharge point. If I had
12 that map that Matt Thompson had and that Carollo
13 had, that they both used, and we put the star.
14 It's like right at the mouth of, right before the
15 mouth of the Morro Bay Estuary, and then the plant
16 diffuser is right here.

17 BOARD MEMBER SHALLCROSS: Yeah, okay,
18 thank you.

19 MS. JAISWAL: Okay?

20 BOARD MEMBER SHALLCROSS: That's
21 helpful.

22 CHAIRPERSON YOUNG: That would seem to
23 contradict what the Discharger told us. That
24 those numbers were spread over that 12-mile red
25 zone. So in my mind now that's in dispute.

1 MS. JAISWAL: That may be --

2 CHAIRPERSON YOUNG: And I'd like to see
3 the data so I can, in my mind, get that resolved.

4 MS. JAISWAL: Okay, it's in the record;
5 and it's --

6 CHAIRPERSON YOUNG: Okay, if you'd go
7 back, I think your table had, was it Morro Bay to
8 Hazards Canyon or something?

9 MS. JAISWAL: That's the --

10 CHAIRPERSON YOUNG: Can we --

11 MS. JAISWAL: -- Geological Survey's
12 data, not ours.

13 CHAIRPERSON YOUNG: But didn't that
14 pinpoint the hot spot, also?

15 MS. JAISWAL: That pinpointed high --

16 CHAIRPERSON YOUNG: And prevalence?

17 MS. JAISWAL: As Mr. Shallcross astutely
18 pointed out, that was high stranding. And he
19 wanted to know about T. Gondii in particular. And
20 that's addressed in the studies and in the map.

21 And yes, it's the range. It's the range
22 where the outfall is. The outfall is right in the
23 heart of that range, and it's where it disperses
24 throughout the ocean and Estero Bay.

25 CHAIRPERSON YOUNG: Okay. I'm going to

1 push the clock again, because it's been off while
2 we've been enjoying this discussion.

3 MS. JAISWAL: Okay.

4 CHAIRPERSON YOUNG: We can continue. Go
5 ahead.

6 (Pause.)

7 MS. JAISWAL: Okay, so I've explained
8 how that study is inconclusive. And what we
9 wanted to see, what we wanted to know is what kind
10 of study did staff actually do here. Staff
11 received lots of information from us, and we had
12 an extended deadline for the plant only more
13 evidence was submitted.

14 And we wanted to see, what's their
15 discussion; how did they grapple with these five
16 categories of evidence showing imbalance. So we
17 requested it from staff in a Public Records Act
18 request. And this is a response letter; this is a
19 second response letter saying that the withheld
20 documents are all subject to attorney/client
21 privilege and work product. They sent an email
22 that I will get to later.

23 But what this said is that where are the
24 biologists, where are the Regional Board's
25 biologists on this. How are they looking at this,

1 at the main ecosystem. Where is that evidence?
2 As an attorney the only person critically involved
3 in all of these discussions to determine that a
4 balanced indigenous population exists, to answer
5 the scientific question and to recommend it to
6 you, the Board.

7 The evidence doesn't support staff's
8 conclusion. So, here' my conclusion five, and I
9 know that you've seen this scale before. And
10 here's the scale, you know, you have to weigh the
11 evidence here, and you have to weigh the evidence
12 in light of the burden, of course.

13 Well, what do you have on one side? On
14 the plant side you have supported assertions based
15 on inconclusive studies, on a single inconclusive
16 study, Pat Conrad's study. You have, as part of
17 that you have this statistical gymnastics going
18 on. And just to capture it without going into it,
19 you know, we all know that that theme is, quote,
20 there are lies, damn lies, and then there's
21 statistics. Well, you've seen the statistical
22 gymnastics going on by the plant today.

23 On the other side you have hard
24 evidence. Not evidence that we made up, hard
25 evidence that federal agencies stated -- these

1 scientists, hearing that the otter is a threatened
2 species. High stranding rates, consecutive years;
3 a disease epicenter. Intensive scientific
4 research on this issue because the otter is
5 struggling for recovery; because the population is
6 not in balance.

7 You have the overall unhealthy
8 ecosystem. And you finally have the estuary
9 prohibition. And you can do with that as you
10 wish, but that is just one of the many pieces of
11 evidence. The plant hasn't met its burden to show
12 that a balanced indigenous population exists.

13 And that's how it plays out. The 301(h)
14 waiver must be denied.

15 So I'm moving on to my second subpoint
16 for --

17 CHAIRPERSON YOUNG: One second. Dr.
18 Hunter has some questions.

19 MS. JAISWAL: Oh, yes, please.

20 BOARD MEMBER HUNTER: Just one question.
21 Actually I just want to clarify, make sure I
22 understand your point. It's your understanding,
23 or you're trying to make the case that because the
24 Morro Bay area records some of the highest
25 strandings that, itself, says that the population

1 is struggling, it's not a BIP. It's not
2 maintaining --

3 MS. JAISWAL: Yes.

4 MR. ALLEN: -- BIP status?

5 MS. JAISWAL: Yes. As well as the other
6 evidence that shows that.

7 (Parties speaking simultaneously.)

8 BOARD MEMBER HUNTER: That, by itself,
9 you say categorizes this area as not supporting a
10 BIP. And then in addition to that there is this
11 other information that mortality in this area for
12 sea otters also -- that there's a nine times
13 higher incidence of T. Gondii in the evaluation of
14 mortality for the area.

15 So, those two together, but it's not one
16 or the other?

17 MS. JAISWAL: Exactly.

18 BOARD MEMBER HUNTER: So first you're
19 saying BIP doesn't exist, and we know this because
20 of the high level of strandings in this area. And
21 then in addition to that, we also see that there's
22 a nine time higher incidence of T. Gondii among
23 those that are stranded?

24 MS. JAISWAL: You're absolutely correct.
25 It works both ways; it's a cumulative assessment

1 of the evidence, and this individual evidence,
2 alone, supports that a balanced indigenous
3 population doesn't exist.

4 BOARD MEMBER HUNTER: Thank you.

5 CHAIRPERSON YOUNG: Mr. Shallcross.

6 BOARD MEMBER SHALLCROSS: Back in the
7 BIP. I'm trying to get this sort of nailed down.
8 So a BIP can just be one animal, I mean one
9 species? I thought you looked at the whole, like
10 all the animals together, a balanced indigenous
11 population.

12 MS. JAISWAL: That's a great question.
13 And EPA has addressed it, and the State Board has
14 addressed it. You look at the overall system, of
15 course, and you also look at individual species,
16 specifically threatened species.

17 Here's that slide again where the EPA,
18 it's EPA's appellate board here, the environmental
19 appeals board.

20 BOARD MEMBER SHALLCROSS: Now, is this
21 talking about threatened species or is this
22 talking about BIPs?

23 MS. JAISWAL: Both. This is talking
24 about threatened species and whether a balanced
25 indigenous population exists in this case. And

1 the State Board has similarly define it. It said,
2 having seen degradation in members of species or
3 individuals of a single species. So it's both of
4 those things that you brought up.

5 MR. BECKMAN: One just coda on that.
6 There are three quotations from three separate
7 sources, so if you're grasping or struggling with
8 the question, we would generally find that a
9 balanced indigenous population doesn't exist based
10 only on the otter situation, there are three lines
11 of evidence that are relevant to your
12 consideration.

13 We're the only party here who presented
14 any interpretative analysis on this question. The
15 first is a federal line of evidence, the EPA
16 appeals board, which is, as Anjoli said, their
17 administrative court, essentially, administrative
18 court.

19 The second is the State Water Board
20 decision, who is essentially your supreme court.
21 And the third is a water quality policy which, as
22 you well know, is a different type of animal, but
23 it's actually, you know, a regulation.

24 So you have two administrative decisions
25 and one regulation. And each of them says that in

1 order to determine whether a BIP exists you can
2 and must consider single species, not just the
3 complex of all species together.

4 CHAIRPERSON YOUNG: Director Strauss.

5 DIRECTOR STRAUSS: I thought it might be
6 helpful to Board Members, it's very rare that one
7 is talking about this particular topic. I had
8 brought some short notes, but our staff person,
9 Aaron Setren, is on the phone and could give a
10 general explanation of how EPA approaches this if
11 it would be helpful to Board Members.

12 CHAIRPERSON YOUNG: I think that would
13 be appropriate.

14 DIRECTOR STRAUSS: And then perhaps if
15 the Chair wishes, after his explanation, if there
16 are any followup questions I could then let him go
17 home.

18 CHAIRPERSON YOUNG: Okay.

19 DIRECTOR STRAUSS: Aaron, are you there?

20 MR. SETREN: I'm here.

21 DIRECTOR STRAUSS: Why don't you go
22 ahead with a brief explanation of the kind --

23 CHAIRPERSON YOUNG: Have you been
24 following this discussion?

25 MR. SETREN: Yes, I have, and to prove

1 I'm not the quintessential state bureaucrat on the
2 other end of the phone, let me tell you a little
3 bit about my background.

4 I've been with EPA for 16 years,
5 primarily doing marine discharge issues such as
6 this. In fact, I was involved with Morro Bay back
7 in the late '80s and early '90s. I did go to
8 CalPoly there at San Luis Obispo, took a couple
9 classes from Dr. Bowker. Went on and got a
10 graduate degree at San Diego State in marine
11 ecology. So I have a substantial background in
12 this issue.

13 The history of looking at the BIP is one
14 of holistic approach where you look at the ecology
15 of all the organisms that occur in the area where
16 the outfall is. The only reasonable approach to
17 assessing the health of a BIP is to have an area
18 outside of the influence of the outfall, an area
19 that's not affected by any kind of anthropogenic
20 pollutant sources. And that's what we call a
21 reference station.

22 You have that there at Morro Bay. In
23 fact, they've been collecting data on the zone of
24 initial dilution stations for over 15 years. And
25 at reference stations for the same period.

1 The one key thing is you do not take
2 into account transient species. Transient
3 species, as Dr. Coats said, could collect or could
4 be influenced by pollutants from sources far away
5 from the outfall. And that's why you do not
6 consider them. We don't look at birds; we don't
7 look at whales, porpoises, marine mammals, large
8 schooling fishes. We look at -- organisms that
9 hang out near the outfall, that are slow-moving or
10 nonmoving at all.

11 And you look at them over time. You
12 look at the way they occur in abundance, where
13 they occur, the diversity of organisms, and you
14 compare that to what you find at the reference
15 stations.

16 Without a doubt the Morro Bay outfall
17 has a balanced indigenous population and has had
18 one for the last 15 years. I'm happy to take any
19 questions if you have any.

20 CHAIRPERSON YOUNG: Well, did you look
21 at sea otters?

22 MR. SETREN: We do not look at sea
23 otters because they are transient.

24 CHAIRPERSON YOUNG: Okay. What do you
25 make of the fairly high rate of toxoplasma

1 incidence in otters in this area that's near the
2 outfall?

3 MR. SETREN: I've had discussions with
4 Dr. Conrad and met with her at UC Davis, and
5 talked to her about her research. It's a very
6 interesting organism. It requires the gut of a
7 cat. Any animal that falls within the family of
8 feline, so it could be a lion, a tiger, a cheetah
9 or domestic cat.

10 Cats pass the organism through it's
11 system into its feces. And as you well know,
12 whether it's a feral cat or domestic cat, most
13 cats go to the bathroom outside. They don't go in
14 litter boxes.

15 And those cats that use litter boxes --
16 I'm a cat owner, myself -- I have not met one
17 person that scoops cat poop and puts it in the
18 toilet. And most people put it in a garbage bag
19 and throw it away.

20 I think that it would be pretty hard-
21 pressed to have any evidence that shows that this
22 is going into the sewer system, through the
23 wastewater treatment plant, and causing impact to
24 the otter. And I think Dr. Conrad agrees with
25 that statement.

1 CHAIRPERSON YOUNG: Okay. Let's see.

2 Dr. Bowker.

3 BOARD MEMBER BOWKER: Hi, it's me,
4 again.

5 (Laughter.)

6 BOARD MEMBER BOWKER: I've been on the
7 Board dealing with outfall issues for what, five
8 years now or so. And one of the most interesting
9 concepts that I've grappled with was a BIC,
10 biologically indigenous community. And that was a
11 concept I thought was far-reaching and very
12 relevant.

13 What I'd like to know is how does a BIP
14 fit in with a BIC? I mean what are we talking
15 about, biologically indigenous populations?

16 MS. OKUN: It's actually balanced
17 indigenous population, and --

18 BOARD MEMBER BOWKER: Oh, balanced.

19 MS. OKUN: -- balanced indigenous
20 community, and they're basically synonymous.

21 BOARD MEMBER BOWKER: Oh, okay. As a
22 academician, I would say the focus is different.
23 But that's not a legal --

24 MS. OKUN: No.

25 BOARD MEMBER BOWKER: We're looking at

1 the complete assemblage.

2 MR. SETREN: Well, I think a good
3 analogy, Dr. Bowker, I know that you've done a lot
4 of rocky shore intertidal work, is that same
5 approach when you look at community assessment.
6 You look to see what organisms occur there in a
7 natural setting, and what those fluctuations are
8 over -- not only through seasonal approaches, but
9 also over time, long periods of time.

10 That way you have a good sense of what
11 life history structures are like; what
12 reproductive aspects are like for the different
13 organisms.

14 But those organisms, as a whole, in all
15 of their life history aspects in toto, make up the
16 balanced indigenous population.

17 BOARD MEMBER BOWKER: Okay, so that's a
18 community population of which a species might be
19 an indicator?

20 MR. SETREN: That's correct.

21 BOARD MEMBER BOWKER: Okay, thank you.

22 CHAIRPERSON YOUNG: Dr. Hunter.

23 BOARD MEMBER HUNTER: Thank you for your
24 information. I'm wondering, however, because the
25 otter is a threatened species, and because you're

1 talking about a holistic approach, focusing on the
2 sedentary population or species and determining
3 what impacts are occurring for that range,
4 wouldn't the otter, standing as a threatened
5 species, require that you at least consider what
6 the impacts might be?

7 Because according to the letter we saw
8 from U.S. Fish and Wildlife, they're not really
9 going to do anything unless you determine, or EPA
10 determines that there's some impact to a
11 threatened species. And yet you've just told us
12 that your analysis did not include an assessment
13 of the key threatened species.

14 DIRECTOR STRAUSS: Could I separate,
15 perhaps, --

16 BOARD MEMBER HUNTER: Yes.

17 DIRECTOR STRAUSS: -- at the pleasure of
18 the Board, the consultation under the Endangered
19 Species Act that we will do as a result of taking
20 a federal action, from EPA's determination in
21 considering today's testimony and the record
22 before us on whether or not a balanced indigenous
23 population exists.

24 There are ways of looking at this. Our
25 ongoing consultation with Fish and Wildlife

1 Service means that we are drafting a biological
2 assessment to consider all of the federally listed
3 species in the vicinity of the outfall that would
4 be in concluding that, having the Service review
5 that document would be part of EPA's
6 decisionmaking to follow on this application.

7 So, it is not, as Aaron had explained,
8 at this level of discharge the smaller dischargers
9 typically don't look at the more transient
10 species. So, while EPA in the record before the
11 public and you has not looked at it from the point
12 of view of a key factor in the BIP, we nonetheless
13 consider this a very important factor in our
14 Endangered Species Act consultation.

15 At the point that there are no further
16 questions for Aaron, I would, at some point, like
17 to release him. But he's been patient.

18 BOARD MEMBER HUNTER: Just one followup.

19 CHAIRPERSON YOUNG: Sure.

20 BOARD MEMBER HUNTER: I understand that
21 there will be an assessment specific to the
22 threatened species, but Aaron just explained to us
23 that you haven't done any assessment in this
24 holistic approach of the BIP.

25 Where or what data then will you bring

1 to bear on your assessment of impacts to the
2 threatened species?

3 MR. SETREN: Dr. Hunter, this is Aaron.
4 You know I think what needs to be understood here
5 is what the EPA follows and the applicant has
6 followed, is an approach that's been approved by
7 EPA for assessing of BIP. That's been in the
8 makings for over three decades now.

9 When 301(h) first came out EPA tasked a
10 number of contractors to put together guidance
11 documents on how to actually do an assessment for
12 a balanced indigenous population. And so there
13 the record's been kind of clear on the actual
14 approach.

15 So, Morro Bay, unlike any other -- I'm
16 sorry, like any other discharger, has used that
17 approach that's been approved by EPA. And the
18 approach generally relies on -- infaunal organisms
19 that occur in the sediment or on the sediment.
20 And they don't include transient organisms such as
21 the sea otter.

22 So, from that perspective, the applicant
23 and EPA have done, I think, an adequate job in
24 assessing where the balanced indigenous population
25 is for that outfall.

1 What you're bringing up is a good
2 question. The sea otter issue is fairly new.
3 It's recent within the last five years. And we --
4 I'm sorry -- as Alexis Strauss has said, we're
5 assessing that through the consultation with the
6 Fish and Wildlife Service.

7 MR. BECKMAN: Mr. Chairman, since you --
8 the number of Board questions, we sort of had this
9 testimony in the middle of our presentation I do
10 have a couple of points I'd like to make, if
11 that's acceptable.

12 CHAIRPERSON YOUNG: Sure.

13 MR. BECKMAN: Thank you. First of all,
14 I assume that there's no need to ask Aaron about
15 whether he is an expert on cat litter. I assume
16 that he's not proposing that he is telling us
17 exactly what's happening locally, is that right,
18 Aaron?

19 MR. SETREN: I'm sorry, I didn't quite
20 get the gist of your question.

21 MR. BECKMAN: You opined at the end of
22 your remarks that you thought it was highly
23 unlikely that there was flushable cat litter being
24 discharged into the collection system for this
25 plant.

1 And this is a surmise. You are not an
2 expert on this issue, is that not correct?

3 MR. SETREN: Well, actually I based that
4 comment on a discussion I had with Dr. Conrad just
5 six or eight weeks ago. And UC Davis has started
6 to conduct a survey. I know they haven't finished
7 it yet, but it is specific to the Morro Bay area
8 on what cat owners out there are actually flushing
9 cat litter down the toilet.

10 And so far, at least according to her,
11 there's not much evidence at all that anybody's
12 doing that. So that's what I based my comment on.

13 MR. BECKMAN: Right, but that's, you
14 know, interestingly that is not in the record.
15 That's not in the EPA documents. What is in the
16 record, from our April 3rd letter, are a series of
17 statistics which EPA evidently wasn't aware of,
18 which talk about how flushable litter is on the
19 rise in the United States and elsewhere.

20 Clearly nobody knows exactly what
21 people's habits are when it comes to this issue.
22 But I think it's important for the Board to
23 recognize that where Aaron's testimony is clearly
24 relevant with respect to what he did to prepare
25 the BIP, and I think his statement that otters

1 weren't considered is what we've been driving at
2 throughout this entire process. That is clearly
3 relevant; we have no objection to that.

4 But we do object to testimony about what
5 a conversation was with somebody about an ongoing
6 study. And if the Board has any questions about
7 the flushable issue, such as it is, the only
8 evidence that I'm aware of in this entire record
9 is evidence that we have submitted. And it
10 suggests that flushable litter is on the rise.

11 CHAIRPERSON YOUNG: Well, Mr. Beckman,
12 is that evidence that it's on the rise in terms of
13 being just purchased --

14 MR. BECKMAN: That's right.

15 CHAIRPERSON YOUNG: -- or used and
16 flushed? Because those are two different things.

17 (Parties speaking simultaneously.)

18 CHAIRPERSON YOUNG: -- so I'm clear what
19 you would like me to take from that evidence.

20 MR. BECKMAN: That's a good point, and
21 the evidence on this issue, I think we would all
22 agree, is sketchy. The evidence that we were able
23 to find after looking a long time was just really
24 economic statistics, marketing statistics about
25 what these companies are selling.

1 CHAIRPERSON YOUNG: Right.

2 MR. BECKMAN: It's not, nobody that I'm
3 aware of has done a study about how many people
4 prefer the flush method to the bag method to the
5 send-the-cat-outdoors method. And the point of
6 all of that is that you can't show, if you're the
7 discharger, that there isn't T. Gondii in your
8 discharge without that kind of information.

9 What's really interesting, though, if
10 you want to draw some conclusions based on the
11 evidence that is before you, as opposed to
12 speculation, is that marketing-wise these
13 companies that produce cat litter are selling more
14 and more flushable.

15 CHAIRPERSON YOUNG: Okay. You know,
16 just to follow up I think what Dr. Hunter said, I
17 think it is kind of an interesting point that the
18 BIP analysis does not include these transitory
19 species. That was kind of interesting.

20 And just because, Aaron, it's been going
21 on for 30 years, you know, in my mind i start to
22 question things after they haven't maybe evolved
23 after a certain point in time. So that, to me,
24 doesn't mean it's something to necessarily rest
25 on.

1 MR. SETREN: Can I interrupt you really
2 quick? The main problem with looking at transient
3 species when considering a BIP is that you have to
4 have something to compare them with.

5 CHAIRPERSON YOUNG: Right.

6 MR. SETREN: And we talked about a
7 reference station earlier, and you looked at sea
8 otters, what would you compare a sea otter in the
9 area of an outfall with? I mean there's a
10 scientific problem there.

11 MR. BECKMAN: Well, the problem here,
12 with all due respect, and I think it would be --
13 if the Board would like, Steve Shimck could
14 address the transient issue that you're working
15 with here.

16 Because it seems to me that there's a
17 false assumption being made by EPA Staff that's
18 leading them to a faulty analysis, faulty
19 scientifically and faulty legally.

20 There is no agreement among the parties
21 and the evidence doesn't suggest that otters are
22 transient. There is some suggestion that otters
23 move, and there was some indication in Dr. Coats'
24 presentation that they moved. Nobody disputes
25 that.

1 But do not think for a second that it is
2 a legitimate reason not to consider otters because
3 they, quote-unquote, are transient. That is not
4 an accepted fact.

5 And what is interesting about the 30-
6 year history that Aaron talks about is to the
7 extent that he's right what he's really saying is
8 that EPA is clearly not doing its job under the
9 rules which have been set out, which we have on
10 the screen. Aaron can't see them, but there are
11 three separate state and federal sources which say
12 you have to consider single species.

13 And I think the mistake that's been made
14 here, and the reason that you don't have the
15 ability to issue a 301(h) waiver is you haven't
16 studied the elephant in the room. And I don't
17 think you've heard some very good reasons why not.

18 CHAIRPERSON YOUNG: Okay, any other
19 Board questions? Should we let Aaron go?

20 DIRECTOR STRAUSS: If it would be
21 acceptable to the other parties in the room.

22 CHAIRPERSON YOUNG: Mr. Beckman? No
23 problem? Okay.

24 DIRECTOR STRAUSS: Aaron, thank you.

25 MR. SETREN: All right, thank you.

1 DIRECTOR STRAUSS: Okay, -- hang up.

2 CHAIRPERSON YOUNG: Thank you, Aaron.

3 Okay, we've had the clock not running
4 this whole time.

5 MS. JAISWAL: Thank you.

6 CHAIRPERSON YOUNG: So you still have
7 just under 30 minutes --

8 MS. JAISWAL: -- okay --

9 CHAIRPERSON YOUNG: -- hour.

10 MS. JAISWAL: I'm trying not to talk too
11 fastly, too quickly to get through it. Is that an
12 hour and 20 minutes, we only have half an hour?

13 CHAIRPERSON YOUNG: There's 30 minutes
14 left of the hour.

15 MS. JAISWAL: Okay, thank you.

16 CHAIRPERSON YOUNG: Mr. Beckman said he
17 thought he could do it with an hour and 15, an
18 hour and 20. I said that sounded good, let's see
19 where we are when we get to an hour.

20 MS. JAISWAL: Okay, great. So, the
21 second burden that the plant hasn't met. The
22 plant cannot meet the burden of demonstrating
23 compliance with the water quality standards.

24 Usually those standards, again in the
25 Code of Federal Regulations, and these are quotes

1 from them and they're correct. And the plant
2 bears the burden of showing compliance with all
3 applicable state and federal water quality
4 standards. And here is again -- both the zone of
5 initial discharge and beyond the zone of the
6 initial discharge.

7 Well, there's three main points that I
8 have here. Here's the first one. The plant is
9 increasingly unable to effectively handle flow.
10 And I'm going to explain this point. But what
11 this says here is the plant estimated what its
12 flows will be, and in 2003 they said well, -- and
13 they expect 1.2, by 2014 we expect 1.23.

14 Well, if you've been listening you'll
15 see this, right, which you have been, but today
16 the plant has already exceeded what it had
17 projected in 2014. It's already meeting 1.254.

18 Next slide. Why this is important.
19 This means several things, and I have a slide on
20 all the different aspects of what it means.

21 The increased flow means that less water
22 is being treated by secondary treatment. That
23 means that there's more water going on into the
24 ocean that's only primary treated. That means not
25 only more total suspended solids, but it also

1 means of the whole host of pollutants that go
2 along with it, metal, pathogens and bacteria. The
3 ones that we've been talking about here.

4 It also means, okay, this is -- I'm
5 going to explain what this letter is -- this is a
6 letter that we submitted along with our study with
7 the original comment deadline. And it's from Dr.
8 Bruce Bell. I know that the Board is familiar
9 with Dr. Bruce Bell, and EPA is, as well.

10 He has over 35 years of experience.
11 He's worked on plant upgrades, designs, schedules.
12 He specifically worked on the San Diego upgrade
13 secondary treatment. He also has extensive
14 experience in evaluating and monitoring models for
15 water quality impact.

16 And this is what he says, he says that
17 providing less than secondary treatment results in
18 adverse water quality impacts when compared to
19 full secondary. You're going to do a better job
20 when you have secondary of getting the bugs out of
21 the water. I mean that's how they -- that's what
22 it says.

23 He also says that partial secondary and
24 partial primary treatment that's going on here
25 will result in a higher effluent total suspended

1 solid concentrations than will ordinary secondary.
2 You'll not only get more solids going out there,
3 but what the solids actually do is -- this is from
4 Dr. Bruce Bell, is they interfere with the
5 disinfection because they shield, they function as
6 a cover because they're bigger. They shield the
7 pathogen organisms from disinfection.

8 Okay, no, I know that we saw these
9 statistics. We saw these percentages put up by
10 staff and the plant. And what they don't say is
11 that there have been clear violations here of
12 total suspended solids and other water quality
13 standards. We detail them in our report. These
14 have been going on since the plant submitted its
15 applications. And they have triggered mandatory
16 minimum fines to be paid by the plant.

17 One of them is dioxin; and full
18 secondary would have result in lower dioxin
19 discharges, as well. This is in addition to the
20 pathogens.

21 Okay. And the next point. This is a
22 letter from Dr. Mark Gold at Heal The Bay; and it
23 focuses on the recreational health impact. And
24 Dr. Gold, you know he's an expert in recreational
25 beach water quality and health, has been working

1 intensively in California. And I don't need to
2 explain to you his credibility and his expertise.

3 But he says overall it is my opinion
4 that the data referenced by EPA and the Regional
5 Board are insufficient to support their
6 conclusions that the plant's discharge poses no
7 potential health risk to people who use the nearby
8 waters for recreational purposes. There just
9 isn't enough data here, and he explains that.

10 He says what's also important is that
11 the data provided do not include enterococcus,
12 EPA's preferred fecal indicator, meaning that the
13 plant didn't use the best indicator for human
14 health impacts. So you can't really tell.

15 Dr. Gold also said there's been some
16 discussion about the plume study, and said, with
17 respect to the effluent from the plume, EPA and
18 the Regional Board do not refer to monitoring
19 information that would allow them to determine if
20 the plant's effluent plume comes back to shore and
21 poses potential human health risks. So it comes
22 back to the beach.

23 And I just wanted to talk about the
24 monitoring. Sure, they talked about, you know,
25 the various monitoring that they're doing. The

1 monitoring that hasn't occurred is a plume study
2 that studies the fact and transport going on here
3 with the discharge.

4 Here's the third point. These plume-
5 tracking studies are especially important where
6 outfalls are near shore. Just like the outfall
7 here. And here the outfall's half a mile from
8 shore and it's in 50 feet of water.

9 Well, what does that mean? Well, the
10 World Health Organization tells us what that
11 means. It says, the World Health Organization
12 recommends sewage outfalls to be a minimum of one
13 mile offshore and/or a minimum depth of 60 feet.
14 The plant couldn't even meet those standards.

15 They (indiscernible) water quality at
16 the plant; they didn't give information to insure
17 that all applicable water quality standards are
18 met; and that the discharge will allow for the
19 attainment and maintenance of water quality which
20 allows for recreational activities beyond the zone
21 of initial discharge.

22 Okay, now -- up -- back up, okay. So,
23 we've given you the various evidence, several
24 pieces, principally lack of a balanced indigenous
25 population, the otter population not being in

1 balance as one of the key reasons for denying the
2 waiver, as well as the water quality impacts, the
3 recreational impacts.

4 So that's one part of it. You can do
5 these together, but separately, you know, we urge
6 you to deny the waiver. But whether you deny the
7 waiver or not, your responsibility, this Board's
8 responsibility and obligation is to follow the
9 law. And the law requires an upgrade that is fast
10 as possible.

11 As the Board, it's your obligation to
12 implement the law and require the plant to upgrade
13 as fast as possible. So that was a report, and we
14 studied the list of legal standards in the report.
15 I'm not going to go into all of them there, but as
16 you know, it says as fast as possible.

17 I can see David's trying to hurry me
18 along here. Okay.

19 MR. BECKMAN: Just trying to keep up.

20 MS. JAISWAL: Okay, the next slide.

21 Again, this is from Dr. Bruce Bell. You'll
22 recognize the logo. And Dr. Bruce Bell used his
23 expertise; he used his expertise in analyzing the
24 schedule that the plant has proposed.

25 And Dr. Bell applied standard practices

1 in design and construction that are regularly
2 used. And he's dealt with plants of this size; he
3 has dealt with plants much larger, ten times
4 larger than this. I think 30 times, actually,
5 larger than this plant.

6 And here's what the schedule that he
7 came up with. He didn't come up with one
8 schedule, but two. One is an expedited schedule
9 of 56 months. And the second is a schedule of 79
10 months. That's four and a half years, and six and
11 a half years.

12 He did this assessment based -- this is
13 a facts-based assessment on what schedules can be,
14 applying reasonable and typical engineering
15 practices.

16 Well, these schedules show that the
17 proposed schedule by the plant could be much
18 shorter. He goes one step forward. Next slide,
19 please.

20 BOARD MEMBER SHALLCROSS: Excuse me,
21 does he have acquiring the money to build the
22 plant built into that?

23 MS. JAISWAL: Yes, he does. If you'd
24 like we can go back to it.

25 BOARD MEMBER SHALLCROSS: Yeah, I'd like

1 to see what that is --

2 MS. JAISWAL: -- it's on one of the --
3 it's task number three. Financial time and
4 funding.

5 BOARD MEMBER SHALLCROSS: Great, thank
6 you. Sometimes you go a little too fast.

7 MS. JAISWAL: Okay, I'm sorry. I'm
8 trying to slow down and I'm trying to -- our time.
9 Next slide. I think there's more, no, maybe
10 there's not, no. Oh, yes, there is. Okay.

11 So, I'll give you a minute to just look
12 at that, but I want to explain because there's a
13 lot of information up there. What Dr. Bell did is
14 he gave a series of recommendation on how the time
15 can easily be cut from the proposed conversion
16 schedule.

17 He looked at the design aspects and the
18 various planning aspects. One is that -- I'll
19 just highlight the last one, is to run the
20 elements of the facility's financial and
21 environmental -- like most plants do. In fact,
22 the plant's own engineers say that most plants do
23 that, their own consultants say it.

24 So, what does the plant say in response
25 to this? Keep going. Oh, back. The plant lists,

1 and this is their staff report, lists a laundry
2 list of excuses. When you look at these none of
3 them talk about engineering difficulties; none of
4 them talk about actual construction difficulties.
5 And I'm going to explain why when I next going
6 through these, that there's nothing more than
7 administrative, bureaucratic delay that protects
8 the plant. That is not one of the excuses under
9 the law. The upgrade must be as fast as possible.

10 Well, here's another interesting piece.
11 The plant proposed a time -- proposed -- well, let
12 me -- this is a chart from the plant where it
13 said, after the comments of mine, it submitted
14 this evidence, and it says, hey, we're comparing
15 to other plants. And here's what we say other
16 plants are doing. Can you click, please?

17 It looked at Half Moon Bay, Watsonville
18 and Pismo Beach. And in response to getting this
19 information, NRDC conducted a formal California
20 Public Records Act request. We got the actual
21 schedules. We got the actual charts from the
22 various sewage plants. And I know they're hard to
23 read up there, so the next slide explains them.

24 This shows Half Moon Bay was done in
25 three years and four months. It also, it says

1 several communities; it says Half Moon Bay,
2 Granada, Montara, that processes more in the plant
3 than the plant here.

4 The next one. Watsonville. Well, this
5 was the only one that staff addressed and said
6 how, but this isn't working, but we're using the
7 actual documents. This is an apples-to-apples
8 comparison from what the plant said under a formal
9 California Public Records Act request was their
10 time. These are the facts.

11 For Watsonville, it's four years and
12 nine months. It shows two communities, as well,
13 Watsonville and Pajaro. And it processes much
14 more than this plant.

15 And then there's Pismo Beach, which is
16 six years and four months, which processes more
17 than the plant here.

18 Well, we averaged these. And what it
19 shows is that for California central coast plants
20 of similar size, treatment complexity, that the
21 plant says, the plant, itself, this is a quote
22 from their letter, that these are similar size and
23 treatment complexities. They took an average of
24 five years because that's what the evidence shows.

25 Next slide. Okay, so you have Dr. Bell;

1 you have the central coast plants, the plant
2 identified, and those averages being five; Dr.
3 Bell's four and a half and six and a half.

4 Then you have, this Carollo Engineers,
5 and they were referred to earlier today. They are
6 the plant's consultants. Well, the plant, at one
7 point, has said we will offer our opinion that
8 eight and a half years is the quickest.

9 Next slide. Then again they say the
10 shorter eight-year schedule does not put undue
11 pressure on the engineer. And said that that
12 schedule is also as fast as possible and admitted
13 the -- engineering and possibilities.

14 The plant wasn't really asked to
15 construe what the JPA had set out to determine a
16 schedule that's as fast as possible. If it had,
17 when it did deal with this question, was when it
18 addressed Dr. Bell's schedules. And it says, the
19 timeline suggested by Carpenter Environmental
20 Associates, that's Dr. Bell, could be met in an
21 ideal situation. They're saying that their
22 schedules, that four and a half schedule and six
23 and a half schedule can mean that.

24 And, what does this mean? This means an
25 expedited schedule four and a half. That's as

1 fast as possible. But what does this mean? It
2 means that the six and a half schedule is clearly
3 do-able. The six and a half schedule more than
4 accommodates for all of the plant's concerns, all
5 of those administrative, bureaucratic reasons for
6 delay in a six and a half year schedule.

7 There's also been some discussion about
8 tertiary impacts. We all know that tertiary
9 impacts is the best -- tertiary treatment is the
10 best way to remove pollutants.

11 Well, this is a letter from the plant's
12 own consultants, Carollo from the plant. It says,
13 we have found that the timeline is not affected by
14 the consideration of secondary versus tertiary
15 treatment.

16 And here's Dr. Bell's overall
17 assessment. I think this summarizes it well. He
18 says there is nothing unusual or complex about
19 upgrading an existing plant to secondary or even
20 tertiary treatment. It has been done many times
21 in many places in far less than 9.5 years.

22 So, you don't have to just take Dr.
23 Bell's word for it, or the timelines from the
24 central coast plants, the plant identified showing
25 five years, four and a half. There's that

1 evidence.

2 There's also Carollos saying what's in
3 fact possible; they can meet the four and a half;
4 and they can meet the six and a half.

5 What we have here are a series of clips,
6 and I'm just going to run through them because I
7 believe they speak for themselves. But this first
8 one, I'll just set it up, is Regional Board Staff
9 acknowledging that a faster upgrade can occur.

10 Oh, sorry to bother you.

11 (Pause.)

12 (Video played: MR. SPEAKER: Although
13 we believe it could be somewhat
14 shorter.)

15 MS. JAISWAL: They believe it could be
16 shorter. How much shorter? Well, here is the
17 Mayor from Morro Bay and Cayucos. And here are
18 her statements:

19 (Video played: MAYOR: This is
20 (indiscernible) which will be much
21 shorter than (indiscernible).)

22 MS. JAISWAL: The goal will be much
23 shorter than the nine and a half years, saying
24 that it's possible. Next slide.

25 CHAIRPERSON YOUNG: Well, wait a minute.

1 Do you have anything in front of that? I mean
2 it's just hard --

3 MS. JAISWAL: Chairman Young, yes. We
4 have submitted all of these CDs into the record
5 for staff to review, for the Board to review. In
6 the interest of time, these are just examples.
7 And I was at the hearings; I know that what I am
8 speaking here today, and I testified on this.
9 Throughout these proceedings the plant said, the
10 JPA had said, the staff members have repeatedly
11 said that they know they can do a shorter schedule
12 than the one that's been proposed.

13 CHAIRPERSON YOUNG: All right, can you
14 just replay that, because it happened so quickly
15 I'm not even sure what I heard.

16 MS. JAISWAL: Okay.

17 (Video replayed.)

18 CHAIRPERSON YOUNG: Okay, so the Mayor
19 said it would be shorter than nine and a half
20 years.

21 BOARD MEMBER SHALLCROSS: She said it
22 was their goal.

23 CHAIRPERSON YOUNG: Their hope, okay.

24 (Parties speaking simultaneously.)

25 MS. JAISWAL: The goal will be much

1 shorter than nine and a half years.

2 CHAIRPERSON YOUNG: Okay. All right.

3 (Parties speaking simultaneously.)

4 MR. BECKMAN: We sat quietly and didn't
5 interrupt. And that would be useful, Mr.

6 Chairman, as the persons running the meeting, if
7 we would be given the same respect.

8 Now we could play these all day long,
9 but the record shows that we asked for longer, and
10 staff would not give us that time. And you, sir,
11 would not give us that time or any assurance of
12 it.

13 So please don't look at us with raised
14 eyebrows because we had to cut clips to fit within
15 a timeframe that was inadequate, and when we asked
16 for more. I mean it's really really an example,
17 again, of the unfair procedure.

18 If you would like, or if the Mayor would
19 like, we'd be more than happy to put the Mayor up
20 on the stand and she can testify. And then we can
21 cross-examine her. And we'll do the same for
22 Carollo; we'll do the same for Mr. Thompson; we'll
23 do the same for anybody else who'd like, for as
24 long as you would like.

25 CHAIRPERSON YOUNG: Mr. Beckman, I was

1 concerned about the context in which the statement
2 was made. That was all. Because it went by so
3 quickly and I wasn't sure what I heard. And that
4 was my concern.

5 MR. BECKMAN: Well, if you review the
6 record, Mr. Chairman, all of this information is
7 in the record. It's been excerpted in the record.
8 And we would have been very happy and had
9 originally much longer clips, but had to shorten
10 them in order to meet an hour request, or
11 requirement by the Water Board. We had asked for
12 more time. And if we'd had more time we wouldn't
13 be running into this.

14 So it's quite frustrating in presenting
15 information on such an important matter to be
16 limited in this way, and then to get catcalls or
17 the equivalent of it from the audience, and raised
18 eyebrows from yourself, when all we're trying to
19 do is stay within your requirements.

20 MS. OKUN: Just for the record, if I
21 could clarify. I think the problem was part of
22 the clips weren't audible. They are in the
23 record. NRDC can use its time however it wants,
24 but there's no requirement that all the evidence
25 in the record be replayed.

1 MS. JAISWAL: You know, let's go back
2 and play that from the beginning and we can turn
3 the volume up on the -- is it all the way? Okay.

4 (Video played: MR. SPEAKER: You want
5 it done faster, you set that as a goal
6 for your staff.)

7 MS. JAISWAL: That is Carollo saying,
8 "If you want it done faster, you set that as a
9 goal." That faster can be done. This is another
10 City Council Member:

11 (Video played: MS. SPEAKER: If it's
12 known to get done in seven years, why
13 aren't we setting that higher
14 standard?")

15 MS. JAISWAL: Saying we know they can
16 get it done in seven years. I mean that's as fast
17 as possible.

18 Now, here's the evidence that you have
19 on this, again, the scale in weighing it. From
20 one side you have the proposed schedule and the
21 basis for that, this administrative and
22 bureaucratic delay. That's all the reasons that
23 they've presented before you.

24 On the other side, you have all of the
25 evidence that supports that a faster schedule is

1 do-able. You have Dr. Bell's five years. You
2 have the average of the central coast plants,
3 which is also five years.

4 You have Carollo's admission that it can
5 meet Dr. Bell's four and a half and the six and a
6 half. You have Carollo's timeline showing how it
7 can be done faster. Tertiary impacts not being
8 relevant. And importantly, the otter.

9 Well, that's how it plays out. And so I
10 ask, in summing up here, to deny the waiver, and
11 to require that the plant be upgraded as fast as
12 possible. Not because, not just only because that
13 this is what the law requires, but also because
14 this is the right thing to do for this region, for
15 the environment, for the public health and for the
16 coastal dependent tourist economy.

17 CHAIRPERSON YOUNG: Okay.

18 MS. JAISWAL: Do you have questions?

19 CHAIRPERSON YOUNG: Yeah, Mr.

20 Shallcross.

21 BOARD MEMBER SHALLCROSS: Yeah, just a
22 suggestion. If you're trying to, you know, save
23 time, if you've got too short of a timeframe, you
24 have all these slides where the words sort of
25 slowly flowed in and everyone's waiting for that.

1 Why don't you just have slides where all the words
2 just show up at once. You know, you're waiting
3 for this bullet thing to pull in; and you're
4 standing there waiting for it. And we're all
5 standing here waiting for the next word. That
6 takes up a lot of time.

7 MS. JAISWAL: Thank you for the
8 suggestion.

9 BOARD MEMBER SHALLCROSS: And I think
10 that's probably something you should look at.

11 MS. JAISWAL: Thank you for the
12 suggestion.

13 CHAIRPERSON YOUNG: Okay, --

14 MS. JAISWAL: And now here we're moving
15 to our third point.

16 CHAIRPERSON YOUNG: Okay.

17 MS. JAISWAL: Which is separate.

18 (Pause.)

19 MR. BECKMAN: Mr. Chairman, we've
20 conferred and based on the tenor of the meeting,
21 we're not going to complete our presentation. It
22 is all on the record. We have a section on bias,
23 but I don't think that it would be useful to
24 present that information to you.

25 As Ms. Okun said, it's all in the

1 record. If you've read all of the matters that
2 are in the record you know about how seriously we
3 take these issues. We think they've animated the
4 entire process.

5 And I think with that we will reserve
6 the rest of our time. Thank you very much.

7 CHAIRPERSON YOUNG: Okay, when you say
8 reserve the rest of your time, what -- of the hour
9 you have about nine and a half minutes. Are you
10 saying that you are concluding your presentation
11 in its entirety?

12 MR. BECKMAN: We're concluding the
13 presentation, the affirmative presentation, in its
14 entirety, that's correct.

15 CHAIRPERSON YOUNG: Okay. All right.
16 I'm looking for that, okay. Discharger's cross-
17 examination of NRDC witnesses.

18 MR. KEOGH: We have none.

19 CHAIRPERSON YOUNG: Okay. Comments from
20 other interested persons. Well, then we get into
21 all the cards. Let me just find out what the
22 Board wants to do in terms of stopping for dinner.

23 Do we want to do that? Should we get
24 the interested persons? Try to get them? Because
25 we have a lot of cards. And so we've heard from

1 these?

2 Okay, we'll take a short break, and then
3 it looks like I've only got about eight, so that's
4 not problematic. We'll start with Steve Shimck,
5 Joey Racano, Kaya Freeman, Margaret Webb, Andrew
6 Christie, Noah Smulder --

7 AUDIENCE SPEAKER: Smuckler.

8 CHAIRPERSON YOUNG: Okay. Eric
9 Greening, Mr. Perlman, Peter, is it Brewer? And
10 then Peter Riskey.

11 Okay. So we will resume close to about
12 a quarter after.

13 (Brief recess.)

14 CHAIRPERSON YOUNG: Okay, let's resume.
15 Looks like Mr. Beckman has decided to leave the
16 hearing, is that right, Mr. Shimck?

17 MR. SHIMCK: I have no idea.

18 CHAIRPERSON YOUNG: Okay. Well, I see
19 that -- looks like he has left.

20 (Audience participation.)

21 CHAIRPERSON YOUNG: Okay. Well, I guess
22 we'll wait. Mr. Beckman, are you staying with us?

23 MR. BECKMAN: We will be waiting for the
24 conclusion of the hearing, yes.

25 CHAIRPERSON YOUNG: Okay. All right,

1 fine. I wasn't sure because I saw everything
2 removed from the table. We are ready to start
3 with interested persons' comments.

4 MR. BECKMAN: Well, you clearly are not
5 listening to us, so there's no need for us to sit
6 at the table.

7 CHAIRPERSON YOUNG: That's your
8 decision.

9 Okay, we're going to start with comments
10 from other interested persons. Steve Shimck.
11 Then Joey Racano and Kaya Freeman.

12 MR. SHIMCK: Good afternoon, everyone.

13 CHAIRPERSON YOUNG: Good afternoon.

14 MR. SHIMCK: My name is Steve Shimck and
15 I am Executive Director of the Otter Project
16 located near Monterey. My address is 3098 Stewart
17 Court, Marina, California.

18 My comments are kind of in two sections.
19 One section is what I prepared, and then one
20 section is kind of otter stuff that I've heard
21 that I want to comment on. I will try and go very
22 quickly.

23 We applaud everybody's efforts to try
24 and fix this problem. I mean let's face it, the
25 Clean Water Act said that we were supposed to have

1 secondary treatment quite awhile ago.

2 So here we are, many years later,
3 finally trying to bring a plant into compliance,
4 and they're working with us. I think, you know,
5 they're stating that they want to come into
6 compliance. That's a good thing.

7 We are concerned and we're a little bit
8 confused over the calendar. I was also at the JPA
9 hearing and, you know, there was just massive
10 confusion over is this an eight-year plan, is this
11 a 8.8-year-3-month plan, 8-year-5-month plan. I
12 heard the resolution in the way that I heard it
13 was that it was for an eight-year plan. And it
14 was my understanding that that was when it was all
15 supposed to start. And which was the original
16 plan, which was last -- or November.

17 We don't want to be dragged into the
18 technical arguments about toxoplasmosis. Maybe
19 we're going to get dragged in there, but we don't
20 want to go there. We think that there's just a
21 basic fundamental issue. And here's some givens:

22 Otters are dying of disease. We know
23 that. We know that they are dying of disease in
24 unusual numbers in Estero Bay. We know that.

25 So the question before you isn't this

1 whole question of the details of toxoplasmosis and
2 whether or not you can test for it, whether or not
3 you cannot test for it. The issue is much more
4 basic than that.

5 Do you think that the plant is
6 discharging pathogens into the Bay? That's the
7 question. And if that plant is discharging
8 pathogens into the Bay, it needs to be cleaned up
9 as soon as possible and a waiver cannot be
10 granted.

11 You know, I think there's all this cloud
12 around here about, you know, how many otters are
13 there, what's happening, are they dying of
14 disease, which diseases. They are dying of
15 disease. We could show plenty of data. They're
16 dying in unusual numbers. And I think that
17 there's tons of research out there that you're
18 probably aware of that even if the plant dilutes
19 its material as they've said that they do,
20 sanitizes their -- disinfects their material,
21 which we know is not entirely effective,
22 especially with material of this type, it is not
23 going to be a hundred percent effective. So,
24 that's the question.

25 As far as the sea otter material, sea

1 otters are recovering, but very slowly. There was
2 that question. Originally there were around
3 16,000 sea otters along the coast of California.
4 Today there are less than 3000.

5 They are recovering in fits and starts.
6 And the recent recovery, the most recent research
7 shows that the spike in recovery has been mostly
8 males. And there is serious doubt of whether or
9 not we have a viable population here. So we have
10 serious reason to be worried.

11 Statements about transient otters, those
12 otters are not transient. You can look at the
13 slide that he showed and it shows that they're not
14 transient. Basically what his assertion was, was
15 that the otters tagged at Point Concepcion moved
16 through the area going to Santa Cruz, and that
17 makes the local population transient. That's not
18 true.

19 If you look at his slide it had red dots
20 which were the otters that were tagged near San
21 Simeon. Those red dots, except for very few
22 exceptions, stayed put. The blue dots, the otters
23 that were tagged down at Point Concepcion, which
24 are transient, moved through the area.

25 He pointed at all the blue dots and

1 said, look, they're all transients. It's simply
2 not true. Not true.

3 You have local otters washing up on the
4 beach dead of disease. Period.

5 CHAIRPERSON YOUNG: A question, Mr.
6 Shimck. We have a hot spot up in Monterey
7 evidently?

8 MR. SHIMCK: Yes.

9 CHAIRPERSON YOUNG: And we don't have
10 any discharge of primary treated effluent in a
11 blended fashion.

12 MR. SHIMCK: Yes.

13 CHAIRPERSON YOUNG: So, in my mind that
14 seems to weaken the argument that primary treated
15 effluent may be causing the parasite to get into
16 the otters in the Estero Bay.

17 MR. SHIMCK: I think that what you're
18 trying to do is get very specific with something
19 that's not that clear. So I'm sympathetic to
20 exactly what you're saying, and empathetic with
21 it.

22 I think that there's two components to
23 disease. One component is susceptibility to
24 disease, in other words immune function. The
25 second component is exposure to the disease. Both

1 things have to happen.

2 And so up in the Elkhorn Slough area you
3 have a spike in a chemical called butyl tin. And
4 that butyl tin is known to be an immune
5 suppressant. So you've got these two factors
6 going on. And so, you know, we could argue again
7 till we're blue in the face about, you know, is it
8 susceptibility to disease, or the disease. I --

9 CHAIRPERSON YOUNG: But where would the
10 toxoplasma be coming from up in Elkhorn Slough
11 area?

12 MR. SHIMCK: Well, I think it could be
13 coming from nonpoint source pollution, I really
14 do.

15 CHAIRPERSON YOUNG: Okay.

16 MR. SHIMCK: And I think that also one
17 of the contributors here is nonpoint source
18 pollution. That does not deny the fact that it's
19 probably also coming from the pipe.

20 I mean I think the full argument, I'm
21 expressing personal opinion now, but I think the
22 whole argument of do you know that somebody is
23 flushing the kitty litter, you know, I think that
24 that's kind of dodging the bullet.

25 I mean we know that that product is on

1 the market. We know that those people are buying
2 it off the shelf as a flushable kitty litter. We
3 know that that market segment is expanding. And
4 to say, oh, but they're not really using it. I
5 don't think that that passes the straight-face
6 test.

7 CHAIRPERSON YOUNG: Well, I haven't
8 bought any in a long time. I have had cats, you
9 know, years and years ago. So, you know, I do
10 have my own personal experience with cat litter.
11 And I don't know whether even today you could --
12 they sell a nonflushable and a flushable version.

13 MR. SHIMCK: Yes, both products are on
14 the market.

15 CHAIRPERSON YOUNG: Okay. Mr.
16 Shallcross.

17 BOARD MEMBER SHALLCROSS: Yeah, have
18 there been any studies done to show that the
19 percentage of otters that are dying in the area
20 and washing up, the locals versus the transients?

21 MR. SHIMCK: I think --

22 BOARD MEMBER SHALLCROSS: Or are they
23 tagged, or is there some way to know?

24 MR. SHIMCK: I don't think that they
25 know, but I know that in a response that was put

1 in the record by the Discharger, I don't know what
2 else to call them except the Discharger, but in a
3 response their hypothesis is that these are
4 washing up from long distances. And that's not
5 what was said here, but that is in their response.

6 And, you know, that cannot be the case
7 because the otters that are necropsied are fresh
8 dead otters. And an otter stays fresh dead for a
9 very short period of time. So we're not talking
10 about otters that have washed from miles and miles
11 and miles away.

12 And I think, so the question is, are
13 these resident otters or not.

14 BOARD MEMBER SHALLCROSS: Right.

15 MR. SHIMCK: And I don't think we have a
16 really good answer to that question.

17 BOARD MEMBER SHALLCROSS: Okay.

18 MR. SHIMCK: But I do think that it is
19 not correct to say the otters in this area are
20 transient otters. You could go to Morro Bay at
21 any moment, probably today, and see mothers with
22 pups. Mothers with pups have very small home
23 ranges.

24 BOARD MEMBER SHALLCROSS: Okay. And do
25 you have any clear idea of where the main deaths

1 are occurring along the local coast?

2 MR. SHIMCK: Where the main deaths --

3 BOARD MEMBER SHALLCROSS: Yeah, are they
4 all occurring within the estuary? Or are most of
5 them occurring south of the estuary, north of the
6 estuary?

7 MR. SHIMCK: I don't know.

8 DIRECTOR STRAUSS: Okay.

9 MR. SHIMCK: But I would say that there
10 was a statement made earlier that was incorrect
11 and that statement was that the segments move
12 around, and that the segments are not of equal
13 size. That is not correct. The segments have
14 been the same. They are 20 kilometer segments,
15 and they have been the same for many years.

16 BOARD MEMBER SHALLCROSS: Those are the
17 study areas --

18 MR. SHIMCK: The study areas. So, in
19 other words, I'm certain that there is finer
20 grained data on that. I don't have it.

21 BOARD MEMBER SHALLCROSS: Okay, thanks.

22 CHAIRPERSON YOUNG: Any other questions?

23 VICE CHAIRPERSON JEFFRIES: Mr. Chair.

24 CHAIRPERSON YOUNG: Mr. Jeffries.

25 VICE CHAIRPERSON JEFFRIES: Thank you,

1 Mr. Chair. Mr. Shimck, you answered most of my
2 questions. One, I was concerned about the
3 transient, and I know that otters are not too
4 transient. Some of them are, some of them are
5 not.

6 I know some of them have been placed
7 away, tried to move the population, and they move
8 back to the area that they were originally from.

9 MR. SHIMCK: That's right.

10 VICE CHAIRPERSON JEFFRIES: You also
11 touched, and I was wondering how nonpoint source
12 also affected the otters, and you briefly
13 addressed that.

14 In your studies that your foundation has
15 done, did you see more of a trend of pathogens and
16 deaths in populated areas where there is a
17 discharge of some kind, either stormwater or a
18 sewer discharge?

19 MR. SHIMCK: Yeah, let me first make
20 note --

21 VICE CHAIRPERSON JEFFRIES: Do you know
22 where I'm going with this?

23 MR. SHIMCK: I do, but let me first make
24 something really clear. We're advocates, so you
25 know, we're not research --

1 VICE CHAIRPERSON JEFFRIES: I understand.

2 MR. SHIMCK: So, yes, I don't want
3 people to say, oh, he's a researcher and therefore
4 he's unbiased. We're advocates, okay. But I will
5 try and say that I think that there is some bias
6 in the information as to where otters' carcasses
7 are found. In other words, along the Big Sur
8 coast, you don't have as many beaches, and you
9 don't have as many people on what little beaches
10 there are. So, in other words, you don't have
11 carcass recovery along those areas.

12 You do have to compare apples against
13 apples and look against these long strands of
14 beach. But, again, I think that we have enough
15 apples to compare here. In other words, I don't
16 think we can say, oh, you know, Morro Bay is the
17 only piece of sand and the only populated area,
18 and therefore you don't really know that it's a
19 spike. I really do think that we know that it's a
20 spike in sea otter mortality.

21 As far as the -- and so I think I'm
22 trying to answer that question of populated versus
23 not populated. I think that that data is
24 confounded by where carcasses are recovered; and
25 they tend to be recovered in more populated

1 places. That would skew the data.

2 VICE CHAIRPERSON JEFFRIES: Would you
3 like to talk about the issue of the mortality
4 around Pacific Grove a few years back, with the
5 discharges?

6 MR. SHIMCK: You know, see, I think
7 that, you know, the Otter Project has engaged on
8 the issue of discharges, chemical contaminants,
9 biological contaminants. And here's again the
10 back to basics. Let's just cut through the
11 clutter.

12 We believe that otters will be healthier
13 in a cleaner ocean. It's just that simple. And I
14 believe that if these point sources of pollution
15 would be removed, if we were to figure out ways to
16 deal with some of our nonpoint sources of
17 pollution, as we move towards a cleaner ocean
18 things will get better. I have faith in that.

19 And frankly, I think the law has faith
20 in that. I think that that's the guidance that we
21 really have, is let's clean things up and things
22 will get better.

23 And so, again, we just have to see that
24 it's not a matter of is nonpoint source pollution
25 the bigger culprit. That's not the question. Is

1 the Morro Bay/Cayucos, is that end of the pipe a
2 contributor. If it is, it should be fixed.

3 CHAIRPERSON YOUNG: I would agree that's
4 a key question, you know, to boil everything down
5 to really what's before us. Is there a BIP, and
6 is there a problem with the outfall with respect
7 to parasites coming out of it.

8 MR. SHIMCK: But I think there was
9 guidance in the law. In other words, and I'm not
10 a lawyer, you are; but I'm not a lawyer. I read
11 the word, and this was kind of a scientific term,
12 so it kind of caught my eye.

13 One of the statements was that you don't
14 have to have necessarily a causal relationship.
15 If you have something out of whack, you know, it's
16 not a BIP. And we have something out of whack in
17 the immediate vicinity of this outfall.

18 But to me this is just simpler. Isn't
19 it nice not to be a lawyer.

20 (Laughter.)

21 CHAIRPERSON YOUNG: Another question.

22 MR. SHIMCK: Sure.

23 CHAIRPERSON YOUNG: Is anyone tracking
24 otters out at the Islands?

25 MR. SHIMCK: Yes.

1 CHAIRPERSON YOUNG: And --

2 MR. SHIMCK: Well, I mean --

3 CHAIRPERSON YOUNG: -- in terms of
4 mortality and causes and doing any --

5 MR. SHIMCK: Out at the Islands, I mean
6 your question would be Sand Neck --

7 CHAIRPERSON YOUNG: Yeah.

8 MR. SHIMCK: -- and that's the only
9 island where there is any tracking. And they do
10 do regular surveys of the population out at Sand
11 Neck.

12 CHAIRPERSON YOUNG: Have they picked up
13 any bodies to do --

14 MR. SHIMCK: Very rarely. There was
15 one, I mean again, in an island situation, you
16 don't have the deposition that you have on a
17 coastal situation.

18 CHAIRPERSON YOUNG: Okay. All right,
19 any more questions for Mr. Shimck? All right,
20 thank you very much.

21 MR. SHIMCK: I do want to say thank you
22 for your hard work.

23 CHAIRPERSON YOUNG: All right. Mr.
24 Racano. Then Kaya Freeman and Margaret Webb.

25 MR. RACANO: Where do these go? Pass to

1 the Board. Thank you.

2 Honorable Board, Staff, friends, friends
3 at home, Joey Racano. I'm with the Ocean Outfall
4 Group. And today that's what we're here
5 discussing, ocean outfall.

6 I have a website. You know what it's
7 called? It's called stopthewaiver.com. So I
8 think that gives you a little idea of what I've
9 been doing for the last decade.

10 Now, in Orange County they had a waiver,
11 a 301(h) waiver that allowed them to dump extra
12 fecal debris in the water. And they got an 11-
13 year timeline to do a project 120 times larger
14 than this. That simply cannot be reconciled here
15 with this eight-year timeline.

16 So you have to deny this waiver. Do us
17 a favor, stop the waiver.

18 I will tell you about all these studies.
19 I'll tell you what the studies don't say. Not one
20 study will you find that says that the ocean is a
21 garbage pail to be used as a cheap dumping ground
22 for the detritus of society.

23 Now, there are many threats to this
24 watershed. Only a regional plan makes sense, and
25 it's the white elephant in the living room, the R-

1 word. No one's talking about the R-word.

2 Earlier today you had Los Osos in here.

3 And we've all been working together on those

4 issues. Now we've got Morro Bay and Cayucos in

5 here. All lined up next to each on the coast.

6 Otters within 75 kilometers nine times more likely

7 to be infected with the disease that they're

8 probably not catching from the outfall, but they

9 are probably having a weakened immune system from

10 the outfall, and winding up with toxoplasmosis.

11 Now, as far as otters running around up

12 and down, no. According to Haley DeBris of UC

13 Davis, the males are the ones who are basically

14 dying in the prime of life, and they are the ones

15 who do the traveling and are exposed to all

16 freshwater inlets. The females tend to stay.

17 Now, I've been down to Morro Stand where

18 most of the otters are dying and washing up. And

19 I had one wash up at my feet, and I'm not there

20 that often. What are the odds?

21 As far as effect, it is not true when

22 you say there is no effect. And I'll tell you

23 why. Because when you take these zones of initial

24 dilution, what happens there is if you look at the

25 benthic creatures, the creatures that don't move

1 around, that is the wrong place to be looking.
2 It's like power plants. Everybody talks about the
3 outfall. No, look at the intake. That's where
4 the problem is. It's transference, again.

5 And I urge this Board to take a look at
6 the creatures that are being forced away, the ones
7 that can travel away from that outfall. They do.
8 And what happens is they are no longer represented
9 in that area, causing a dead zone where the ocean
10 is no longer in a state of health and abundance
11 that it was before the discharge. The creatures
12 that could leave, did. That tells you right there
13 there is an effect.

14 Now, I could go on about -- yes, sir?

15 CHAIRPERSON YOUNG: I was going to ask
16 you to wrap it up, please.

17 MR. RACANO: Yes, sir, and so I shall,
18 Mr. Young.

19 Then there's also that last problem of
20 endocrine disruptors that wreak havoc with the
21 reproductive systems of animals. What's happening
22 is by trying to cut corners, and disinfecting less
23 than fully secondarily treated sewage, what we
24 wind up with is chemical reactions that create
25 chlorinated hydrocarbons which tend to be worse

1 than the sewage was in the beginning.

2 We need primary treatment, full
3 secondary treatment, which was the law 33 years
4 ago. And we need to stop saying that we are in
5 compliance with the Clean Water Act. Waivers
6 don't put you into compliance, they bring you
7 around compliance.

8 Thank you for this opportunity to
9 address you, as usual. Thank you.

10 CHAIRPERSON YOUNG: Thank you. Kaya
11 Freeman, followed by Margaret Webb; and then
12 Andrew Christie.

13 MS. FREEMAN: Hello, thank you, good
14 afternoon, Director Strauss, Chairman Young and
15 Members of the Board.

16 My name is Kaya Freeman and I'm a
17 Central Coast Regional Manager for the Surfrider
18 Foundation, a national organization dedicated to
19 the protection and restoration of our coastal
20 waters, and representing the voice of ocean users.

21 Clean ocean water is a pinnacle issue at
22 our national headquarters and for the local San
23 Luis Bay Chapter. Unfortunately, due to the
24 unpredictable schedule for public comment today,
25 you don't see the usual public out today. But I

1 represent many Surfrider locals who would like to
2 be here to ask you, the agencies, to reject the
3 waiver and enforce an upgrade to secondary
4 treatment as soon as possible, in four to six
5 years. And ask you, the Dischargers, to invest in
6 the future of your communities and upgrade to
7 tertiary treatment.

8 But I admit I'm perplexed with respect
9 to the hard work and research the already involved
10 parties and agencies have done. I don't
11 understand why we need to prove that this upgrade
12 is needed. We have the law.

13 Also, both Morro Bay and Cayucos have
14 agreed to the need for the upgrade to full
15 secondary, and even Morro Bay understands they
16 need to go to tertiary. So the time has been
17 wasted, in my opinion, trying to defend the
18 outdated and archaic treatment technology
19 currently in use. Time that could be better used
20 getting Cayucos to see the benefits of tertiary
21 treatment, for example.

22 I'm also shocked we have to work so hard
23 to get the agencies to understand the urgency of
24 this situation. Or that you could even consider
25 issuing a fourth waiver.

1 Let's not forget how far we've slipped
2 from the original goals of the Clean Water Act.
3 The zero discharge goal called to eliminate
4 discharge of all pollutants into navigable waters
5 in 1985. Not only did the Clean Water Act allow
6 over ten years for upgrades since its passage, and
7 yet dischargers have had since 1985 for minimum
8 upgrades. Don't let the monitoring deflect the
9 true issues at hand.

10 Secondary treatment is the law. Its
11 necessity is already proven. No more delays
12 should be allowed. And unfortunately, the time
13 for a comfortably paced upgrade is long gone.

14 As we spelled out in our letter dated
15 February 3rd, the credibility of the agencies is
16 at risk if you continue to allow Morro Bay and
17 Cayucos to take advantage of a waiver that was
18 intended to be only temporary.

19 We understand that the current law
20 compels dischargers to do only secondary, but
21 Surfrider encourages Morro Bay and Cayucos have
22 the foresight and planning to visualize the not-
23 so-distant future when tertiary treatment may
24 actually be the new minimum standard in
25 California.

1 For example, the Morro Bay Estuary was
2 unequivocally identified by the state Marine Life
3 Protection Act process as an area that should be
4 protected. May I continue, please? I just have a
5 little bit more.

6 CHAIRPERSON YOUNG: Sure.

7 MS. FREEMAN: Thank you. -- should be
8 protected for its intrinsic value, and the law is
9 expected to be implemented in 2007.

10 So just to quickly recap our major
11 concerns. Most evidence that Morro Bay's water
12 quality is not up to standard including toxic
13 metal accumulation around the pipe, acute toxicity
14 by chlorine and dioxin in the effluent.

15 Number two is urgent issue and we are
16 concerned about the continued degradation of water
17 quality during this delay, the decisionmaking.
18 The secondary treatment may not be enough. The
19 U.S. Commission on Ocean Policy indicates the EPA
20 should work with states to require advanced
21 nutrient removal from wastewater treatment
22 discharges that degrade water quality standards.

23 And even suggest that primary and
24 secondary waste treatment have not been effective
25 in removing nitrogen and phosphorus.

1 So, in conclusion we see a huge
2 opportunity for these -- to offset their
3 dependence on imported water, as was mentioned,
4 and do tertiary treatment. And let me just tell
5 you that we stand behind the community, the
6 Commission on Ocean Policy and concerned groups to
7 ask you to deny this waiver and to encourage this
8 upgrade as soon as possible.

9 Thank you.

10 CHAIRPERSON YOUNG: Thank you. Margaret
11 Webb.

12 MS. WEBB: Hi, I'm Margaret Webb. I am
13 a homeowner in Morro Bay; I'm a taxpayer; and I'm
14 a ratepayer. And I'm here representing myself
15 basically. I want to thank you all for your hard
16 work and all the information and work that's gone
17 into this.

18 My daughter also resides in Morro Bay.
19 And she and I are both frequent beach users. We
20 go out in the water, we love the water.

21 I'm very concerned about this waiver.
22 I'm concerned about the water quality. And I
23 think this is an issue as much for public health
24 as it is for anything else. And for me I really
25 would seriously ask that you consider encouraging

1 Morro Bay and Cayucos to go to full tertiary
2 treatment as soon as possible.

3 There's a lot of people, I represent as
4 friends, as neighbors, who couldn't be here
5 because of the time it would take during their
6 working hours, but I'm very concerned about this
7 public health issue, and I really hope that this
8 Board will make the right decision and speed up as
9 soon as possible the complete tertiary treatment
10 of the sewage that we put out in the water. We
11 have to minimize and mitigate our human impacts on
12 the ocean. And we're only hurting ourselves.

13 Thank you very much.

14 CHAIRPERSON YOUNG: Okay. Ms. Webb, do
15 you understand that going to full tertiary is not
16 an option that the Board can impose on any
17 discharger?

18 MS. WEBB: I'm encouraging that full
19 tertiary treatment be something that ultimately
20 will be the goal.

21 CHAIRPERSON YOUNG: Okay. And because
22 you are a ratepayer and --

23 MS. WEBB: Yes.

24 CHAIRPERSON YOUNG: -- and resident --

25 MS. WEBB: Yes.

1 CHAIRPERSON YOUNG: -- they are your
2 best audience.

3 MS. WEBB: Yes, and --

4 CHAIRPERSON YOUNG: -- to persuade and
5 encourage. And, you know, the Board really has
6 very -- a more limited role in that regard.

7 MS. WEBB: As a ratepayer clean water is
8 the ultimate priority for me and my family.

9 CHAIRPERSON YOUNG: Okay, thank you for
10 your comments.

11 MS. WEBB: Thank you.

12 BOARD MEMBER SHALLCROSS: And you've got
13 everybody in town here.

14 (Laughter.)

15 MS. WEBB: I do know we're going to get
16 increases.

17 CHAIRPERSON YOUNG: Okay. Mr. Christie.
18 And then Noah Smuckler; and then Eric Greening.

19 MR. CHRISTIE: Before you start the
20 clock our comments are in response to senior
21 counsel's memo of March 21st that was circulated
22 by Matt Thompson I think about two days ago. We
23 didn't finish our comments until last night, so
24 I'd like permission to submit the written comments
25 for the administrative record and do a three-

1 minute verbal summary.

2 CHAIRPERSON YOUNG: No written comments
3 are being received at this time.

4 MR. CHRISTIE: I believe I heard
5 Director Strauss mention that at this hearing --

6 CHAIRPERSON YOUNG: Well, I guess for
7 her purposes that would be different.

8 MR. CHRISTIE: One for the EPA?

9 DIRECTOR STRAUSS: Pardon me. EPA has
10 slightly different procedures. And accepts
11 comments through the close of the comment period,
12 which I believe is the end of this evening's
13 hearing.

14 MR. CHRISTIE: Very good.

15 My name is Andrew Christie. I am the
16 Chapter Coordinator for the Sierra Club in San
17 Luis Obispo County. I'm speaking on behalf of our
18 2500 members.

19 Pertaining to the March 21st memo from
20 senior counsel, concerning legal status of the
21 301(h) waiver and the definition of a balanced
22 indigenous population, we note that to deny that
23 high mortalities do not constitute the unbalancing
24 of the balanced indigenous population counsel
25 cites EPA guidance to the effect that, quote, "the

1 term population does not mean a reproductive unit
2 of a single species, but rather all biological
3 communities existing in the receiving water body."

4 And that tells us that there is a need
5 for an explanation of ecosystems and ecosystem
6 management principles, as the emphasis here should
7 be on the definition of balanced, not necessarily
8 population.

9 The notion that populations exist
10 separately from each other and obvious impacts on
11 one or more occur in a vacuum with no effect on
12 others is a belief not presently held in high
13 regard in scientific circles. It is a
14 particularly foolhardy notion when applied to the
15 sea otter, a keystone species of coastal
16 ecosystems, an animal on which the balance of
17 entire ecosystems rests.

18 We must protect the elements of the
19 ecosystem essential to support a balanced
20 indigenous population. See the 1972 report from
21 the House/Senate Congress Committee amending the
22 federal Water Pollution Control Act: such owner or
23 operator would have to show that elements of
24 aquatic ecosystems which are essential to support
25 a balanced indigenous population of fish,

1 shellfish and wildlife would be protected." End
2 quote.

3 This is the intent of Congress and for
4 this reason the Board cannot find that the marine
5 environment around this Discharger's outfall was a
6 balanced indigenous population thus an inordinate
7 number of dead otters.

8 A decline in a keystone species is a
9 change of appreciable magnitude in the community,
10 as a whole, and it's why attempting to fix the
11 problem sooner rather than later would be a good
12 idea. (inaudible) testing technology available
13 which has been put into establishing the presence
14 or absence of T. Gondii which should have a
15 minimal nonfatal effect on otherwise healthy sea
16 otters.

17 In August 2004 Environmental Science and
18 Technology reported the discovery of the
19 hypersensitivity of marine mammals which means a
20 dysfunction in the immune system, and could affect
21 an animals ability to cope with infections.
22 Researchers found a correlation between
23 hypersensitivity reactions and in blood
24 concentrations of molybdenum, titanium, nickel,
25 chromium, aluminum, lead and tin. -- were found

1 to be particularly susceptible to the neurotoxic
2 effects of metals. And as Dr. Bell has pointed
3 out, the Discharger has toxic metals in his
4 outfall.

5 The effect of neurotoxins being emitted
6 at the outfall pipe as the immune systems of local
7 sea otters deteriorates, leaving them more
8 susceptible to fatal outcomes of T. Gondii
9 infections, whatever the origin, appear to have
10 drawn far less official attention than the
11 potential poses of T. Gondii, itself. And should
12 be the subject of far more.

13 At least half of all otter mortalities
14 are attributable to disease is part of a
15 considerable and growing body of evidence that the
16 otter immune system is compromised.

17 Thank you.

18 CHAIRPERSON YOUNG: Thank you. Noah
19 Smolder (sic). Eric Greening and Alon Perlman.

20 MR. SMUCKLER: Good evening, thank you
21 for having me tonight. My name is Noah Smuckler.

22 CHAIRPERSON YOUNG: I apologize.

23 MR. SMUCKLER: No problem. I'm a
24 resident of Morro Bay, 2970 Elm Avenue; it's in
25 the northern section of Morro Bay. And I happen

1 to be a member of the City's Public Works Advisory
2 Board and I'm speaking tonight as the Vice Chair
3 of the San Luis Bay Chapter of the Surfrider
4 Foundation. We represent over 500 local surfers,
5 beach enthusiasts and water lovers.

6 And we have been an active participant
7 in this discussion for as long as I've been
8 involved with this Chapter, which is three years
9 now. We've been participating in the different
10 meetings including those that had presentations by
11 some of the consultants, breaking down the
12 different benefits of where to do and the
13 timeline, and where to go in the upgrade process.

14 We've also had a tour of the wastewater
15 treatment plants, which we appreciated. And from
16 these experiences and just being a part of the
17 community we have confidence in wastewater
18 treatment plant operators and the staff that's
19 down at the plant.

20 The question is not do we feel like
21 these guys and gals are doing a good job. It is
22 do we feel like we need to make this investment.
23 And we do. We need to invest in a situation that
24 acknowledges the ocean as our top resource and
25 asset.

1 In regards to water quality and public
2 health, and also in regards to the water quality
3 as a foundation for economic and tourist-based
4 economy.

5 And along those lines we see that our
6 marine environment is being heavily impacted, not
7 only here locally but worldwide. We hear, of
8 course, every day about extinction rates going
9 through the roof. The trends toward global
10 warming. And here locally we do have a water task
11 force that has been doing volunteer water sampling
12 throughout the County and submitting it to a lab
13 in San Luis. And we are seeing some very high
14 numbers.

15 So, we feel like the time is now to
16 start to make those decisions that take
17 responsibility for what we have the ability to
18 influence. And that is something, because there
19 are a lot of contributions, as Steve so well
20 pointed out. There are other factors here. But
21 it comes down to what can we do to have an
22 influence on our local environment.

23 And this is one of those decisions that
24 really will make an impact. It might not be the
25 one sole source of problems that we have, but it's

1 a step in the right direction.

2 So we would ask that we make this
3 investment in our future generations and recognize
4 water as the vital resource that it is. Although
5 we don't -- have a couple last statements --
6 although we don't -- really aren't talking about
7 what sort of project, we request if we are going
8 to take the requested eight-year timeline, let's
9 do something innovative.

10 Let's take this, let's be the leaders in
11 this world and do something like what they did up
12 in Petaluma, where they created a marshland out of
13 their wastewater and are reclaiming it, and
14 holding onto it as the vital resource it is.

15 Let's look at something like the
16 Petroyal Creek project, where we would be taking
17 that water and using it to recharge our wells, and
18 to do something regionally that takes care of a
19 lot of problems. It turns into a win/win/win
20 situation instead of sewage being continually
21 talked about as a problem, and not the asset that
22 it is, because we're mixing it with our most
23 valuable resource.

24 Very quickly, thank you for having this.
25 And it was a long meeting. There's other people

1 that would have liked to have been here, but I
2 think it's important that you guys did allow this
3 to occur, and this is an open process. So, thank
4 you, again.

5 CHAIRPERSON YOUNG: Thank you for your
6 comments. Where is Mr. Greening?

7 AUDIENCE SPEAKER: Had to leave.

8 CHAIRPERSON YOUNG: He had to leave,
9 okay. Mr. Perlman.

10 MR. PERLMAN: Hello. My name is Alon
11 Perlman. I live in the famous prohibition zone in
12 Los Osos. I'm also running for LOCAC which is the
13 area of North Baywood. And that brings me to my
14 major point which is think outside the box.

15 Because running for LOCAC, LOCAC is
16 constrained to its own area. The block and the
17 power plants are in our viewshed, but we can't do
18 anything about it. Which is fine. In LOCAC I
19 plan to deal with local matters.

20 CHAIRPERSON YOUNG: What is that?
21 LOCAC?

22 MR. PERLMAN: I'm getting to that. Los
23 Osos Community Advisory Council, it relates to the
24 County. You, on the other hand, are responsible
25 for an area that, if I'm not mistaken, goes from I

1 believe up north it goes all the way to Scotts
2 Valley, where I will admit about three years ago I
3 threw some cat litter directly into my sister's
4 toilet not knowing, house-sitting. It went into a
5 septic system and the clay is probably still in
6 there.

7 However, I hope Mr. Briggs is not taking
8 notes in order to prosecute me individually on
9 that.

10 (Laughter.)

11 MR. PERLMAN: What I really want t talk
12 about is a huge picture of a huge picture which
13 has to do with the marine estuary. This estuary,
14 the fish that live in this estuary go from Point
15 Eugenie in Baja and they go to Eugene, Oregon, at
16 the very minimum. This is a vital, very important
17 fish -- the future of fish in this entire area,
18 which is the future of the economy, which is the
19 future of tourism, everything is tied in strictly
20 to the health of this very Bay that's close to us.
21 And any action that you take will have
22 implications there.

23 So, I ask you to look at the very larger
24 picture. Stop the waiver. But really change the
25 way you go about doing business. Because I am

1 seeing in your, as a regulatory agency, a tendency
2 to think of things in a lawyerly way. Which
3 means, for example, one day you are all the
4 prosecution, and if the glove fits, then your
5 client is guilty -- or sorry, got that wrong, but
6 if the client is wearing Superbowl rings and the
7 glove doesn't fit, and you flip around.

8 This is a situation that happened in Los
9 Osos. Matt has made a presentation in Los Osos
10 where he says the water travels in a straight line
11 right down 150 feet. And that's where the
12 nitrates are.

13 Yet, with this presentation we are
14 seeing data adopted to look good that says, for
15 example, that the salinity is dispersed very
16 quickly as it leaves the pipe.

17 Well, you are putting somewhat saline
18 discharges into a ocean. Yes, the salinity is
19 going to dissipate very quickly.

20 CHAIRPERSON YOUNG: Did you mean fresh
21 water discharges?

22 MR. PERLMAN: Excuse me?

23 CHAIRPERSON YOUNG: Did you mean fresh
24 water discharges into saline?

25 MR. PERLMAN: I do believe the -- the

1 glossy PowerPoint presentation showed immediate
2 dilution of salinity; I believe that was the
3 measure. It's a very good measure, and it does
4 allow understanding of the immediate flows.

5 But to the public it is interpreted as,
6 oh, all the pollution's gone away. When you put
7 salt water into salt water, yes, it will dissipate
8 very quickly. And that's what you get as a
9 discharger.

10 When you're using that as a measure
11 you're going to have very pretty pictures that
12 say, oh, in 50 feet it's all gone. But when
13 you're dealing with biological organisms and heavy
14 metals and chlorinated biphenyls and halides and
15 all those things which you guys know are what are
16 causing problems, that is what needs tracking.
17 And, yes, some of that stuff does go around the
18 Rock and enter the Bay.

19 Not in a huge amount, but you, as a
20 Board, really need to stop being lawyers and learn
21 to be scientists. And not talk about a dilution
22 of 1000 in 1 percent -- in one aspect is allowable
23 because you've already had staff decide it for
24 you. And in another respect, oh, this is a
25 terrible polluter and we must prosecute him, a

1 single individual with a septic tank. Sorry for
2 drifting into that subject.

3 And thank you very much for your time.

4 CHAIRPERSON YOUNG: Okay, thank you.

5 MR. PERLMAN: By the way, I have -- this
6 is the Estuary Tidings; I have additional copies.
7 I don't -- so you may not. Have you received
8 that?

9 CHAIRPERSON YOUNG: Yes.

10 MR. PERLMAN: I do have extra copies
11 here. Thank you.

12 CHAIRPERSON YOUNG: Okay, thank you.
13 Peter, is it, I want to say Brewer, but I don't
14 think that's the correct last name?

15 MR. RISLEY: Risley. That's not my
16 name.

17 CHAIRPERSON YOUNG: That's not you? 630
18 Quintano Road.

19 MR. RISLEY: Not me.

20 CHAIRPERSON YOUNG: Okay. Not here.
21 And then Peter Risley. There we go. That's the
22 last speaker card I have. But if there's anyone
23 else in the audience that wishes to address us
24 that hasn't, please fill out a speaker card and
25 come forward.

1 MR. RISLEY: Honorable Board and EPA,
2 what I want to talk about is the local situation
3 in my area, Morro Bay. I had the unfortunate
4 experience of going to some of the JPA meetings
5 and seeing what was going on for the past, I
6 think, year and a half or so.

7 And it was obvious that there were
8 members of the JPA that were sandbagging. And I
9 didn't understand why. I think I figured it out.
10 They wanted to maintain their low rates. That was
11 the real issue.

12 Building a new plant costs money. And
13 they had low rates; they wanted to maintain low
14 rates. The longer they could put off building
15 another plant, the better for their local
16 situation.

17 Now, of course, they didn't say that.
18 But I think that there were members on the Morro
19 Bay that also were happy not to have to take on
20 another project, even though at the time in the
21 past Morro Bay was flush with a lot of money and
22 could do it.

23 But they chose, because of the JPA
24 agreement, which creates a situation where one
25 side can basically sandbag the other side, and

1 hold up actions. And it took a tremendous amount
2 of effort from the environmental community to put
3 pressure on these guys to start talking real,
4 getting down to the issues. You are not aware of
5 that because you didn't see it. And this is my
6 opinion, of course.

7 Well, I think part of the reason why
8 they were allowed to do this and why it happened
9 was because unfortunately, Honorable Board, you
10 guys weren't flashing the yellow light, weren't
11 demanding compliance, or they felt that you
12 weren't. And they felt that they could get away
13 with it.

14 And recently it was 15 years; we finally
15 got them down to eight years. But the real issue
16 is that they're not going to do anything unless
17 they are forced to do it. I think we should do it
18 sooner than eight years. I think it's possible.
19 But without you guys putting that pressure on them
20 they're not going to do it, because they've proved
21 by their actions that they would not go forward
22 with anything unless they were pushed.

23 And the JPA agreement, by the way, I
24 would like to change for Morro Bay. I think it's
25 a bad agreement for Morro Bay. That's not of your

1 interest.

2 Thank you very much.

3 CHAIRPERSON YOUNG: Thank you for your
4 comments. Okay, that's the last interested
5 person.

6 Let me just ask this. On our agenda we
7 have public comment after 4:00. And is there
8 anyone here that wished to address the Board on
9 any issue that's not related to Morro Bay and
10 Cayucos? Or anything else on the agenda?

11 AUDIENCE SPEAKER: (inaudible).

12 CHAIRPERSON YOUNG: That was your
13 reaction, right?

14 MR. RACANO: I was going to talk about,
15 that's right. You know what, you guys got a job
16 to do, stop the waiver.

17 (Laughter.)

18 CHAIRPERSON YOUNG: Okay. I think
19 that's the only other thing on the agenda, right,
20 Mr. Briggs, would have been that.

21 MR. SMUCKLER: This is just personally.
22 With wastewater treatment systems now I see us
23 taking two positives -- I've been wanting to say
24 this for awhile to as many people as I can say it,
25 but we're taking two positives, I believe humanure

1 or man manure, or whatever you want to call it, is
2 potentially a positive in a lot of other
3 countries. It's used as a major resource for land
4 applications. Separated from the rest of the
5 industrial waste, and kept as what it is.

6 And it's a beneficial. Of course, our
7 water is a major positive. And right now we're
8 putting them together and we're ending up with a
9 negative. And I think that's a problem that, you
10 know, it's much bigger than this meeting, but I
11 just felt like you couldn't get the -- pass that
12 chance up to say it here tonight. Thanks.

13 CHAIRPERSON YOUNG: Okay. You mean the
14 re-use of the sludge that's been processed?

15 MR. SMUCKLER: The idea of taking
16 humanure and composting it and using it --

17 (Parties speaking simultaneously.)

18 CHAIRPERSON YOUNG: Have you seen the
19 difficulties that Los Angeles is having and Kern
20 County in doing just that?

21 MR. SMUCKLER: Yes, but I think it is
22 possible, especially if you keep the two separate,
23 especially industrial waste is much different from
24 -- well, residential waste happens to be pretty
25 toxic at times, too, because of all the things

1 that are available to people in their homes.

2 But I feel like the -- people are ready
3 to go home, but I just couldn't resist. This is
4 my first meeting at the Regional Water Quality
5 Board, and I felt like this is definitely a forum
6 for this discussion.

7 CHAIRPERSON YOUNG: Okay, thank you.
8 All right.

9 DIRECTOR STRAUSS: May I, sir?

10 CHAIRPERSON YOUNG: Of course.

11 DIRECTOR STRAUSS: With regard to the
12 gentleman's comments in the earlier part of Mr.
13 Keogh's presentation on biosolids, there's a
14 symposium that we're sponsoring I think in
15 Sacramento July 13th. You'll find it on EPA's
16 Region 9 website.

17 It is, as Chairman Young mentioned, a
18 very significant issue to be dealing with
19 biosolids from -- in California, and we've been
20 looking at ways to try and connect things that are
21 possible within the state to try and -- absent the
22 outcome of the Kern County elections -- to make
23 this turn into something more positive statewide.

24 There was a lot of pressure to try and
25 bring in the ag component into overall biosolids

1 management. I think we're just too much novices
2 to be able to adeptly in one day in a free
3 workshop get through all of this. So we
4 consciously chose to focus just on this.

5 But it's meant to have a statewide focus
6 and to see if we could. So if anybody's finding
7 it convenient to join us, we'd like to have some
8 constructive suggestions. Thank you.

9 CHAIRPERSON YOUNG: Okay, thank you.

10 MR. BRIGGS: Mr. Chair?

11 CHAIRPERSON YOUNG: Yes.

12 MR. BRIGGS: Are we back to Morro Bay/
13 Cayucos now?

14 CHAIRPERSON YOUNG: Yes.

15 MR. BRIGGS: After the interlude --

16 CHAIRPERSON YOUNG: Mr. Perlman, did you
17 have another comment that you wanted to get in?

18 MR. PERLMAN: I appreciate that -- it is
19 actually about Morro Bay/Cayucos -- I believe Mr.
20 Keogh could tell us, but it is possible to pick up
21 the humanure at the plant, I believe, is that
22 correct? And I would mention that it is defined,
23 back to the scientist side, it is defined as far
24 as heavy metals are concerned, but I believe it's
25 otherwise undefined. And I'm just mentioning that

1 to you to remind you people that it's best not to
2 over-label categories, again think outside the
3 box.

4 Because if it's undefined it may
5 scientifically could be shown to have toxo gondii,
6 also. That's just a reminder that there are no --
7 we all live in the same basin, and so the legal
8 definitions aren't necessarily what is important.
9 The real importance is that we live, mutualize our
10 resources and don't poison each other.

11 Thank you very much.

12 CHAIRPERSON YOUNG: Okay, thank you.

13 Mr. Briggs.

14 MR. BRIGGS: We're back to the Morro
15 Bay/Cayucos --

16 CHAIRPERSON YOUNG: Yes.

17 MR. BRIGGS: -- I presume? There were a
18 lot of references to Woutrina Miller's paper, and
19 it's Woutrina Miller, et al. One of the et al's
20 is here as one of the co-authors, Karen Worcester.
21 And I just wanted to let the Board know that she
22 is available for answering questions. And if you
23 don't have any questions, we might have a question
24 or two for her.

25 CHAIRPERSON YOUNG: Okay, well, at this

1 point do we want to break for dinner?

2 MR. BRIGGS: I just wanted to point that
3 out before --

4 CHAIRPERSON YOUNG: Would you be around
5 after dinner? Okay.

6 VICE CHAIRPERSON JEFFRIES: Mr. Chair,
7 what do you think the timing to complete this
8 item?

9 AUDIENCE SPEAKER: Finish it up --

10 CHAIRPERSON YOUNG: Oh, no, we're going
11 to finish it up, yeah.

12 MS. OKUN: Don't forget Ms. Strauss has
13 to drive back to San Francisco.

14 CHAIRPERSON YOUNG: Okay. Well, do you
15 want to just push on and --

16 VICE CHAIRPERSON JEFFRIES: Well, I
17 don't want to be eating at 9:00 or 10:00, but --

18 CHAIRPERSON YOUNG: Well, that's why
19 you're raising --

20 VICE CHAIRPERSON JEFFRIES: Well, I'm
21 asking the question, Mr. Chair, how much time do
22 you think is going -- needs to conclude this
23 hearing.

24 CHAIRPERSON YOUNG: Okay, well, let's
25 see. How much time have we allotted for closing

1 arguments? Is that part of the time that we have
2 granted?

3 MS. OKUN: No.

4 CHAIRPERSON YOUNG: It's not?

5 MS. OKUN: And the Discharger may have a
6 response to the evidence that's been put on so
7 far.

8 CHAIRPERSON YOUNG: Okay.

9 MS. OKUN: And I believe NRDC had some
10 time that they reserved.

11 CHAIRPERSON YOUNG: They have time?
12 They have ten minutes of their hour, and then they
13 had suggested they needed some more time. I don't
14 know whether they still want to use that or not.
15 Staff has how much time?

16 MR. BRIGGS: Probably ten minutes or so.

17 CHAIRPERSON YOUNG: About ten minutes.

18 MR. KEOGH: Mr. Chairman.

19 CHAIRPERSON YOUNG: Yes.

20 MR. KEOGH: We're going to be brief in
21 our closing argument, so we're not planning on
22 presenting a lot more information here. We have a
23 couple minor rebuttals.

24 CHAIRPERSON YOUNG: Well, let's push on
25 and let's just see how far we can get with

1 everything. So, we'll next -- well, you say that
2 the Discharger may have some rebuttal? Rebuttal
3 comments?

4 MS. OKUN: Well, where are we in the
5 hearing proceedings?

6 CHAIRPERSON YOUNG: Well, we are down,
7 that is not in here, by the way, any rebuttal.
8 But we've just completed comments from other
9 interested persons. We're now at NRDC's closing
10 summary.

11 MR. BRIGGS: I think we should ask any
12 questions that we have of Ms. Worcester before any
13 closings.

14 CHAIRPERSON YOUNG: Okay. Well, what
15 about the Discharger's rebuttal?

16 (Parties speaking simultaneously.)

17 MR. KEOGH: I believe it says rebuttal-
18 slash-closing summary, if any.

19 CHAIRPERSON YOUNG: Okay. Do we have
20 any questions for Ms. Worcester before she takes
21 off?

22 MS. WORCESTER: I'll stay.

23 CHAIRPERSON YOUNG: You'll stay? Well,
24 but if we have closing, then your comments have to
25 come in, I think, before that because they might

1 be -- they'd be considered in the evidence, so --

2 MR. BRIGGS: I think now would be the
3 opportune time for that.

4 CHAIRPERSON YOUNG: Okay. Karen, I have
5 a couple questions for you about the otters and
6 the parasite.

7 What is your sense for any of these
8 point source treatment plants being a source of
9 this parasite?

10 MS. WORCESTER: Well, I think that it is
11 a classic example of a problem from multiple
12 sources. And the work that we did showed several
13 risk factors, one of which was the Albion Elkhorn
14 Slough area for toxo. But another, which was
15 fresh water influence. That was the part of the
16 study that I actually helped contribute to, was
17 developing the model for the flow, influents in
18 the marine area. That obviously implies that there
19 are multiple sources including stormwater,
20 certainly, and probably river runoff.

21 I would think that being that -- is
22 fairly large, probably most important aspect of
23 the treatment is the removal of solids and
24 achieving a high level of removal. It is
25 important to insure that the risk is reduced.

1 I would expect that someone out there is
2 flushing their cat litter. I just imagine that
3 that's probably true. I don't think that's really
4 arguable.

5 I don't think compared to other probable
6 sources, like runoff from the land, and the amount
7 of solids that you see in stormwater runoff and
8 river runoff, it's significant. But, I would
9 suspect that you could have discharges from
10 treatment plants.

11 CHAIRPERSON YOUNG: If you could
12 compare, and I know this is more just like an
13 estimate than anything, or maybe not even that,
14 maybe it's, you'll have to tell me, would you have
15 any basis for quantifying --

16 MS. WORCESTER: No.

17 CHAIRPERSON YOUNG: No.

18 MS. WORCESTER: No. And I don't think
19 the researchers would, either. I mean they put
20 pest organisms out at the outfall. They did not -
21 - with the best available test they had, did not
22 detect the organism. But no researcher would tell
23 you that means beyond a shadow of a doubt it's not
24 there.

25 But certainly they didn't detect it, and

1 that's a good sign. So.

2 CHAIRPERSON YOUNG: If it's there, would
3 it be getting through the blended treatment
4 process with disinfection and be viable?

5 MS. WORCESTER: I would imagine it's
6 possible it could be viable. I mean, presumably
7 the trickling filters would remove a lot of that
8 type of thing and that would be a real important
9 part of the treatment. They're tough, they're
10 tough organisms.

11 But the other thing to remember is the
12 primary probable mechanism of getting into the sea
13 otter is most likely through their food, their
14 diet. So it has to get into a mussel first.

15 CHAIRPERSON YOUNG: It would have to be
16 a bivalve.

17 MS. WORCESTER: Yeah. It's unlikely
18 that they're picking it up by swimming through the
19 water. It's more likely that they're -- and
20 that's why we're seeing it more in sea otters than
21 other types of marine mammals because they are
22 eating shellfish which tend to accumulate all
23 kinds of things.

24 CHAIRPERSON YOUNG: Does this parasite
25 appear in other marine mammals?

1 MS. WORCESTER: I don't know of any
2 incidences of it. I think there's been some; I
3 think they've seen it in sea otters in Alaska.
4 But I don't know of other marine mammals.

5 CHAIRPERSON YOUNG: Are there deaths
6 from toxoplasma in Alaskan sea otters?

7 MS. WORCESTER: I would imagine. I know
8 I read that there was some level of presence
9 there, it was in the teens, I think. But I don't
10 know the actual mortality rates.

11 CHAIRPERSON YOUNG: Well, because then
12 that begs the question whether that's a natural,
13 you know, parasite.

14 MS. WORCESTER: Right. I think one
15 thing I'd like to say is that, in fact the
16 researchers have been very concerned that we're
17 overly focused on a single organism, and there are
18 multiple organisms that are causing problems. And
19 some of them recently maybe even more so than toxo.
20 And many of them point to other mechanisms of the
21 disease transport.

22 A good example is sarcocystis, because
23 for example the 2004 mortality event in this area,
24 a large portion of that was from sarcocystis,
25 something like 12, 14 otters died from

1 sarcocystis. So that organism is found in
2 opossums. So that implies that there's definitely
3 a mechanism moving cysts from opossums out into
4 the ocean environment. And presumably no one's
5 flushing opossum litter, so. You never know,
6 though.

7 But all I'm trying to make the point is
8 that it's really complicated. Some of the
9 diseases may be diagnosed as the primary cause of
10 death, but there's a secondary cause that's very
11 important reason. For example, for shark attack,
12 or what-have-you.

13 So, we have a letter. I don't know
14 whether it's in the record or not, from Dr.
15 Jessup, really just trying to make that point,
16 that he was concerned that some of the other
17 significant causes of death not be lost in the
18 shuffle.

19 And there's a lot of research right now
20 happening on what's really going on. For example,
21 there's going to be a paper coming out soon on
22 domoic acid as a significant cause of death in the
23 2003 mortality event. A lot of domoic acid
24 toxicity.

25 Also there's some recent research by

1 Carl Mayer, Monterey Bay Aquarium, that the
2 acampacephalin (phonetic), the thorny-headed worm
3 that in one paper was as significant a cause of
4 death as toxoplasma, may actually be a different
5 species than the ones farther north that may be
6 more infective.

7 So there's a lot of research coming out
8 right now about many of the causes of death. And
9 it's kind of a -- it's a big picture, there's a
10 lot of reasons that these things could be
11 happening. And I think it's important we keep
12 that perspective.

13 Also that the research team is actively
14 seeking funding to improve their toxoplasma
15 methodologies. And also we have applied for a
16 Proposition 50 grant to look, actually in
17 partnership with the Sea Clean program, which is
18 the monitoring program run by our wastewater
19 treatment plant dischargers in the Monterey Bay
20 area, they're looking at pairing monitoring in
21 effluent, in mussels and in the adjacent water.
22 And looking very specifically at some of these
23 organisms as concern, to see what they find.

24 CHAIRPERSON YOUNG: When you compare
25 what's happening to the otters along the central

1 coast, you look at all the different causes of
2 death that I think were put up as a big pie chart,
3 you compare that to what's happening to Alaskan
4 otters, what do you see? Is it similar?

5 MS. WORCESTER: I don't think I can
6 answer that question --

7 CHAIRPERSON YOUNG: I think you said
8 you'd seen that comparison?

9 MS. WORCESTER: Not directly. I know we
10 do have a high proportion of deaths in this area
11 related to land-based diseases.

12 CHAIRPERSON YOUNG: Okay, so what should
13 the Water Board be doing, then, that it may not be
14 doing, or maybe that it is doing to possibly
15 address this?

16 MS. WORCESTER: You mean the whole
17 issue?

18 CHAIRPERSON YOUNG: Well, I mean the
19 issue of, if it's land-based contamination
20 affecting otters, and they are a beneficial use,
21 then it seems like there should be perhaps a more
22 concerted effort to address that.

23 MS. WORCESTER: I think that really
24 looking at our stormwater programs is going to be
25 very important, what's coming off the land,

1 absolutely.

2 CHAIRPERSON YOUNG: Okay, maybe what
3 I'll do is ask for maybe a staff report on this
4 maybe in the next agenda or two that maybe we can
5 just talk about this item. Because I think it's
6 an important one.

7 MS. WORCESTER: Yeah. I think it's a
8 classic, well, multiple-source problem. It
9 sources multiple problems and so it's going to
10 take many different prongs, a many-pronged
11 approach.

12 CHAIRPERSON YOUNG: Well, I'd be
13 interested in knowing what our strategy is and
14 approaches. And because it has multiple sources,
15 I think we need to be still looking at that.

16 MS. WORCESTER: One of the components of
17 the grant I referred to is going to be running
18 discharge through a wetlands, both in the
19 laboratory and up in the Morro/Cayo area to look
20 at how effective the wetland is -- for these
21 various pathogens. I think that has some more
22 promise.

23 CHAIRPERSON YOUNG: Any questions for
24 Karen? Okay. Thank you.

25 Why don't we then jump to NRDC's closing

1 summary.

2 MR. BRIGGS: Can I interrupt again?

3 CHAIRPERSON YOUNG: Yes.

4 MR. BRIGGS: You didn't ask about
5 whether we had questions for NRDC, and this isn't
6 really a question, but I had a comment. And I
7 think it's only fair that I make the comment
8 before NRDC closes, because it has something to do
9 with one of their submittals.

10 CHAIRPERSON YOUNG: Okay. Go ahead.

11 MR. BRIGGS: But I think it's
12 appropriate to bring it up now rather than in my
13 summary.

14 And actually it has to do with the paper
15 which you just ruled on at the start of this
16 proceeding, which you allowed in, which wasn't
17 allowed in before. And that was the Heal The
18 Ocean submittal.

19 That paper references -- it has 31
20 different references in its reference list at the
21 end. And I have to admit, I did not read all
22 those references. But the conclusion of the paper
23 cites one reference, and in fact it cites that
24 reference twice. And it seems to solely rely on
25 that reference, and it's Pearson from 1975.

1 And it says based on this Pearson paper,
2 and his comments -- based on his comments,
3 desirable goals to improve coastal beach water
4 quality would require or would apply to advanced
5 tertiary treatment for the effective removal of
6 various constituents.

7 And it refers to specifically Dr.
8 Pearson's paper which is called, Conceptual Design
9 of Marine Waste Disposal Systems, presented in
10 London, September '74. I couldn't find that exact
11 paper. I did find a paper that has exactly the
12 same title that was given a few months later,
13 earlier, I guess it was, in Italy. And I believe
14 it's the same information, since it's the same
15 title of the paper.

16 What Dr. Pearson did was he modeled
17 three different scenarios. A was high-level
18 treatment with a short outfall and very little
19 dilution. B was a longer outfall with
20 intermediate dilution and secondary treatment.
21 And C was 75 percent removal of suspended solids,
22 which happens to be the waiver level of removal
23 the same as Morro Bay, and with the greatest
24 amount of dilution and it most closely matched
25 Morro Bay's situation. So it almost exactly

1 described the City of Morro Bay's current
2 situation.

3 He went through the analysis and what he
4 concluded is that the obvious preference of
5 alternative C is shown through that work.

6 So his conclusion is exactly the
7 opposite of the conclusion that is drawn in this
8 paper, which seems to rely in that conclusion
9 solely on his work.

10 So I just thought that was necessary for
11 the record, and like I said, I thought it was fair
12 to bring that up before NRDC makes their closing
13 statement in case they'd like to address that.

14 CHAIRPERSON YOUNG: Okay. Mr. Beckman,
15 how much time would you like?

16 MR. BECKMAN: Well, I'd like to address
17 that point if I could.

18 CHAIRPERSON YOUNG: Okay.

19 MR. BECKMAN: I'd like to ask a couple
20 questions of Mr. Briggs if I could.

21 CHAIRPERSON YOUNG: Sure.

22 MR. BECKMAN: Mr. Briggs, why did you
23 take it upon yourself to review the citations in
24 that study?

25 MR. BRIGGS: When I read the paper that

1 part didn't ring true to me.

2 MR. BECKMAN: Did you read every paper
3 that's been submitted to the record?

4 MR. BRIGGS: As I said at the outset of
5 my statement, I did not read all those references,
6 but --

7 MR. BECKMAN: Did you read every paper
8 that has been submitted as part of the record by
9 the parties?

10 MR. BRIGGS: I try to keep up with all
11 the submittals.

12 MR. BECKMAN: Okay, that wasn't the
13 question I asked. I asked did you read every
14 paper that had been submitted by the parties.

15 MR. BRIGGS: I can't say --

16 MR. BECKMAN: Yes or --

17 MR. BRIGGS: -- I can't say that I read
18 every --

19 MR. BECKMAN: Is that a no? Or a
20 didn't?

21 MR. BRIGGS: I can't say that I read
22 every word.

23 MR. BECKMAN: Did you read -- what
24 percentage of the papers submitted by the parties
25 would you say that you read?

1 MR. BRIGGS: I can't hazard a guess.

2 MR. BECKMAN: Why can't you?

3 CHAIRPERSON YOUNG: Mr. Beckman, --

4 MR. BECKMAN: I'm entitled to cross-
5 examine Mr. Briggs. These are very reasonable
6 questions, sir. Are they not?

7 CHAIRPERSON YOUNG: He's given you an
8 answer.

9 MR. BECKMAN: Well, no, he hasn't. He
10 said he can't say what he's done. Did I mis --

11 (Parties speaking simultaneously.)

12 MR. BECKMAN: Did I misinterpret your
13 answer, Mr. Briggs?

14 CHAIRPERSON YOUNG: Why don't you go
15 ahead and attempt to answer it one more time. I
16 thought he said he could not give you an answer as
17 to the proportion.

18 MR. BECKMAN: Why don't you remember --

19 MR. BRIGGS: Well, for example, --

20 CHAIRPERSON YOUNG: That -- that --

21 MR. BECKMAN: Could I finish my
22 question?

23 CHAIRPERSON YOUNG: You know something,
24 Mr. Beckman, --

25 MR. BECKMAN: Yes, Mr. Young?

1 CHAIRPERSON YOUNG: I will count to ten
2 to --

3 MR. BECKMAN: Well, I've counted to
4 1000.

5 CHAIRPERSON YOUNG: Go ahead.

6 MR. BECKMAN: The question I had asked
7 Mr. Briggs was why are you unable to tell us here
8 today the type of preparation that you did with
9 respect to review of the studies that have been
10 submitted on the record on this matter. You said,
11 I think, and if I'm wrong please correct me, that
12 you are not sure what you have read, as a matter
13 of percentage you can't hazard a guess.

14 MR. BRIGGS: For example, you referred
15 to a DVD. I did not review the DVD. There are
16 numerous references, as I just said when I made my
17 statement, that I have not read.

18 MR. BECKMAN: Okay. And so, why did you
19 choose, given that you have not read many other
20 studies, or that might mischaracterize what you
21 said, let me rephrase it.

22 Given that you have not read all of the
23 information that's been presented, why did you
24 choose to go to the internet, I suppose, and do
25 some cross-referencing and find some talk that was

1 given in Italy 30 years ago to raise a point about
2 a conclusion in a paper that NRDC submitted?

3 MR. BRIGGS: You submitted this paper.
4 It was March 13th, I read your entire submittal.
5 That part did not ring true to me, that's what I
6 said. So, --

7 MR. BECKMAN: Did the -- sorry, go
8 ahead.

9 MR. BRIGGS: -- I investigated that.
10 And the reason it didn't ring true is because I
11 was in Dr. Pearson's classes at the time of these
12 papers, and it did not -- it sounded exactly the
13 opposite of what Dr. Pearson was teaching at that
14 time.

15 MR. BECKMAN: The rest of the
16 information that we submitted, based on your
17 answer, I assume that it does ring true, is that
18 right?

19 MR. BRIGGS: No.

20 MR. BECKMAN: But you just said that you
21 reviewed this because it didn't ring true,
22 correct?

23 MR. BRIGGS: Right.

24 MR. BECKMAN: So were there other things
25 that didn't ring true, and did you review those?

1 MR. BRIGGS: There were lots of things
2 that didn't ring true, and we've had lots of
3 discussion with our team in terms of how we are
4 responding to the evidence that has been
5 submitted. And that's part of what we've been
6 doing here today.

7 MR. BECKMAN: Could you elaborate about
8 that answer? I'm not sure I follow. You had lots
9 of discussions with your team about how to respond
10 to the evidence?

11 MR. BRIGGS: Right. And there are a lot
12 of opinions that have been submitted, and we don't
13 agree with every single opinion that has been
14 submitted. I think that's very obvious.

15 MR. BECKMAN: Why did you not, or other
16 members of your staff, summarize some of those
17 other matters with respect to the information, for
18 example, that's been submitted by the Discharger?

19 Why, sir, --

20 MR. BRIGGS: We --

21 MR. BECKMAN: Let me just finish my
22 question. I'll rephrase my question.

23 MR. BRIGGS: I assumed you'd finished.

24 MR. BECKMAN: Why, sir, are you focusing
25 solely during the course of this hearing on a

1 citation from a paper that we submitted, when that
2 citation is not even relevant to the point for
3 which the paper was submitted, as you'd
4 acknowledge, right?

5 MS. OKUN: He didn't say he was solely
6 relying on that citation.

7 CHAIRPERSON YOUNG: You can answer the
8 question.

9 MR. BRIGGS: You're asking why I took a
10 look at that part that didn't ring true?

11 MR. BECKMAN: Yeah, I'm interested in
12 hearing and probing a little bit to understand why
13 you're focusing on this solely during this hearing
14 when there have been hundreds of studies that have
15 been presented. Why are you raising a question in
16 a pointed fashion about one citation in one paper
17 that NRDC submitted?

18 MR. BRIGGS: Because I thought it was
19 blatantly the opposite of what the author had
20 concluded. And now, with -- the paper was not
21 allowed initially, and now the paper has been
22 allowed. And I think it's important, in terms of
23 completion of the record, to make that point.

24 MR. BECKMAN: Are you going to review
25 all of the other citations submitted by Dr. Coats?

1 CHAIRPERSON YOUNG: Well, obviously he's
2 not going to be able to do that --

3 MR. BECKMAN: I'm not asking you,
4 Chairman Young, --

5 CHAIRPERSON YOUNG: -- because --

6 MR. BECKMAN: -- I'm not asking you the
7 question.

8 CHAIRPERSON YOUNG: Yeah, but obviously
9 he can't, because we're concluding this pretty
10 soon. So, it's kind of a rhetorical question.

11 MR. BECKMAN: No, it wasn't a rhetorical
12 question.

13 CHAIRPERSON YOUNG: Well, how can he
14 review anything more when we're going to be
15 concluding shortly?

16 MR. BECKMAN: Well, I think he easily
17 could if he wanted to treat the parties fairly.
18 Why couldn't he, sir? Why couldn't you --

19 CHAIRPERSON YOUNG: Okay, let's move on.
20 Closing arguments. How much time do you need?

21 MR. BECKMAN: Well, I'm not --

22 MS. OKUN: -- to address one thing for
23 the clarity of the record. There's been some
24 discussion of citations within documents that are
25 in the record. A document doesn't get into the

1 record just by being cited in another document
2 that's part of the record. So these citations
3 aren't in the record.

4 Mr. Briggs referred to a paper, and it
5 is not currently in the record. So I think that
6 you should rule on whether or not to let it into
7 the record.

8 CHAIRPERSON YOUNG: The paper that's
9 cited?

10 MS. OKUN: The paper, the 1975 paper
11 that Mr. Briggs was discussing is not in the
12 record.

13 CHAIRPERSON YOUNG: Okay, but it is
14 cited, correct?

15 MS. OKUN: It's cited in another
16 document that you let into the record this
17 afternoon.

18 CHAIRPERSON YOUNG: That begs the
19 question. If we let a paper in that has
20 citations, are we necessarily letting all of the
21 citations in?

22 MS. OKUN: No, not unless somebody
23 introduces those documents --

24 CHAIRPERSON YOUNG: Well, they do not
25 come in.

1 MS. OKUN: Right, except that in this
2 case Mr. Briggs is discussing one of the cited
3 documents, so I think that you need to indicate
4 whether the 1975 article Mr. Briggs is discussing
5 is in or out of the record.

6 CHAIRPERSON YOUNG: Well, it's out of
7 the record. As are any of the other citations
8 that might be in any of the papers.

9 Okay, let's get back to where we were
10 at.

11 MR. BECKMAN: Well, this is exactly the
12 point, Members of the Board. This is exactly the
13 point. You have a discussion brought up
14 pointedly; unique practically in the entire
15 discussion here before you, about a citation in
16 one of dozens and dozens and dozens of evidence
17 that's been submitted that's not even in the
18 record.

19 If this doesn't suggest to you that your
20 staff is treating parties equally, dispassionately
21 and in a quasi-adjudicative way, i.e., like a
22 court, then I don't know what does.

23 We had today examples that really make
24 the point that this process has been a sham. Ms.
25 Okun, picking a quotation and casting aspersions

1 as to whether we're representing an important
2 point of law incorrectly. But more to the point,
3 did she do that with any of the other citations
4 that were submitted by anybody?

5 The answer's obvious. Now, this Board,
6 through its staff and through your inaction by not
7 speaking up and doing something about it during
8 the process, has allowed staff to pick sides,
9 prejudge the outcome and then to do everything
10 possible that it could to keep NRDC from making
11 the case, which was made anyway. Which is that a
12 301(h) waiver can't be issued here.

13 And, in fact, usually at hearings like
14 this you just hear recaps of evidence, you just
15 hear things you've heard before. But this was an
16 interesting hearing, because you heard EPA Staff
17 say that they didn't look at the elephant in the
18 room. Their balanced indigenous population, on
19 which this decision presumably rests, doesn't look
20 at a sentinel species, a keystone species,
21 something that matters. You don't need to be a
22 scientist to know that it matters. You don't.
23 You all know that.

24 What else did you hear? You heard
25 Katrina -- excuse me, Karen Worcester, who notably

1 didn't tell you that it's not coming from the
2 sewage plant, the single piece of evidence the
3 sewage plant and your own staff relied on. She
4 has a caveat, and it's an important caveat. It's
5 not just one that's standard about detection
6 limits. It's saying that the type of T.Gondii
7 infection or dispersal that you will see in an
8 open ocean environment we can't catch with our
9 testing methods.

10 All of that leads to one conclusion.
11 And it's the obvious conclusion. You don't give a
12 basic waiver which is rare in this country when
13 that discharge is into an area of known disease, a
14 threatened species.

15 That's the legal conclusion. But that's
16 also the common sense conclusion.

17 What you can do to rescue this
18 proceeding, and to some extent to rescue the
19 reputation of this Board, is to do the right thing
20 substantively. And then to figure out where your
21 staff, and with all due respect to the staff and
22 the Chair, aided and abetted evidently by the
23 Chair, is going wrong in dealing with the public.

24 Now, we'll go back to our office and you
25 all can say, oh, those NRDC lawyers. But we

1 represent more people in this state in terms of
2 environmental concerns than virtually any group
3 you'll see. And we appear and work cooperatively
4 and collegiately with boards across this state.

5 And we have one big problem, and it's
6 dealing with this Board and this staff. And I
7 submit to you that you should figure out why.
8 Maybe you'll conclude that you come down in the
9 middle.

10 But I'll tell you something, this
11 discussion about whether there should be regional
12 boards in this state, and it's always been my view
13 that there should. Because they're close to the
14 people; they allow folks to come and talk; there's
15 something quintessentially democratic about this
16 kind of a process.

17 But the experience I've had here and the
18 experience we've had on stormwater issues is
19 leading me to change my mind. I mean maybe we
20 would be better off with folks who know the rules,
21 who do their jobs, who treat people fairly even if
22 they disagree with them. That's not happened
23 here, and that's a darned shame.

24 I have one final thing to say and this
25 is to EPA. I do believe, aside from the problem

1 with the BIP, that the consultation which you
2 admitted, or your staff admitted, had not yet
3 happened, must happen. Not only by law, but by
4 common sense. You should be consulting with these
5 agencies before you render a decision. It appears
6 that hasn't happened; I think you said that it
7 hasn't happened.

8 DIRECTOR STRAUSS: (inaudible).

9 MR. BECKMAN: It's been what?

10 DIRECTOR STRAUSS: It has been underway.

11 MR. BECKMAN: Underway, right. Well, I
12 think it should conclude. So here's a
13 constructive solution. Deny the waiver. But if
14 you're thinking that you don't want to deny the
15 waiver, think about this option. Tell the parties
16 to go back and see if they can work it out. EPA,
17 get your consultation finished and bring everybody
18 back in a month.

19 I think those are the two things you
20 should consider doing today. The evidence
21 strongly leads you in one direction. But not
22 knowing what you're all thinking, I would suggest
23 to you that if you're not sold, you certainly have
24 heard enough today that you should have some
25 serious doubt.

1 And you've heard that the consultation
2 proceedings that are supposed to happen haven't
3 happened. And you've heard that EPA hasn't even
4 studied the otter in its conclusion. So you
5 really don't have a basis to approve the waiver
6 today. So we ask you not to do that.

7 And we ask you to fix the system. Thank
8 you very much.

9 CHAIRPERSON YOUNG: Thank you for your
10 comments. The Discharger's closing summary, if
11 any?

12 DR. COATS: Yeah, I wanted to clarify
13 some technical points that there seems to be some
14 confusion about, and some other issues.

15 First of all, it was stated that EPA
16 hasn't addressed the otter issue at all. Well,
17 you heard Aaron say that he met with Pat Conrad,
18 and in fact, discussed the very issue. And one of
19 the co-authors on the seminal paper of toxoplasma
20 is one of the staff members of the Regional Board.
21 So it has been addressed.

22 The balanced indigenous population needs
23 to be reviewed in the sphere of the influence of
24 the outfall. We don't discuss otter problems or
25 species that reside in San Francisco with regard

1 to this particular outfall.

2 And in evaluating the BIP and looking at
3 individual species, the incidence of a disease in
4 a group of species or a species is not indicative
5 of an imbalanced population. All species have
6 some level of disease. The otters happen to have
7 a disease called toxoplasma. They have many other
8 kinds of diseases that are causing problems with
9 mortality, as well.

10 And, in fact, with regard to toxoplasma
11 they, in fact, have found toxoplasma in high
12 seropositivity to it. In other words, it exists
13 in a wide range of marine mammals, not just
14 otters. It's in sea lions, dolphins, a wide range
15 of otters.

16 What the real issue -- and the other
17 part is just because a species is threatened
18 doesn't mean it's imbalanced. We've seen with in
19 the case of the otter, the population is actually
20 increasing. The population is really the issue.
21 And it's the population around the outfall,
22 itself, it's not the population at some distance.

23 If I could get that graphic up; it was
24 the one that everybody's been showing with the big
25 blue star. That blue star is a study site.

1 That's where they looked at mussels. That's not
2 indicative of what the otter population was doing
3 there. It was that long red strip that stretched
4 from San Simeon down to Los Osos that was at
5 issue.

6 And that was not the otter deaths from
7 toxoplasma, that was seropositivity. That means
8 they were showing an indication that they were
9 infected with it, not necessarily dying from it.
10 So I think there was some confusion about that.

11 And there was a question about
12 toxoplasmoses getting through treatment processes.
13 Well, the seminal paper stated unequivocally that
14 treatment processes have little effect on the
15 survival of Oosis.

16 In terms of the mussel data, all assays
17 have detection limits. Chemistry assays, they all
18 have detection limits. What Pat Conrad stated is
19 that the detection limit could not find, it
20 wouldn't be able to detect low levels of Oosis in
21 the water.

22 That's saying that it probably could
23 detect high levels, and in fact the reason they
24 deployed the mussels is there's been laboratory
25 studies where they've tested that capability for

1 the mussels to concentrate Oosis and for them to
2 measure it. So they can measure it in the lab.
3 And they went out and deployed it at the outfall
4 and didn't find it.

5 In terms of the effluent reaching the
6 estuary. I think that's a good point. I can't
7 sit here and say that one molecule never enters
8 the estuary of the effluent. But, by the same
9 token, I can't say that past those effluent, one
10 molecule of that ever enters the estuary, either.

11 But it's not an issue because if it
12 were, why isn't the national estuary program
13 raising it as an issue.

14 And in terms of the health effects from
15 the discharge. Again, I go back to the scale
16 argument. The shoreline is 50 times more distant
17 than the scale of that footprint of that plume.
18 It meets bacterial standards before it even goes
19 out the pipe; and meets the water quality
20 bacterial standards even before it has a
21 hundredfold dilution.

22 That concludes my part.

23 MR. STRINGFIELD: David Stringfield,
24 partner in Carollo Engineers; put together the
25 various timelines. And there's one of them. They

1 just asked me to comment on these. And you've
2 heard various scenarios, and you've heard some
3 explanations today that are very good about why
4 they differ. I don't think anyone's lying;
5 everyone just has different data, different files.

6 All of these jobs are Carollo Engineer
7 jobs. All of these jobs were done by my partners
8 who are still working with me today. Personal
9 communications, and in some cases where the
10 archives aren't too old, I went and got the
11 billing records. Some of them the archives were
12 too old, so it's just conversations with my
13 partners.

14 In actually two projects at Watsonville,
15 one was a secondary treatment project that we're
16 talking about. And the first cease and desist
17 order, you've heard that, started in '84. We came
18 onboard in 1993. That's when we started on it.
19 And it was commissioned in 1998, the end of 1998,
20 with a lot of hurry and flurry to meet that
21 deadline. So that was a 14-year project. Was
22 working on -- project, but --

23 CHAIRPERSON YOUNG: Excuse me.

24 MR. STRINGFIELD: Yes.

25 CHAIRPERSON YOUNG: This wasn't put in

1 the record, was it?

2 MS. OKUN: All the parties' PowerPoint
3 presentations will be part of the record, but he's
4 testifying.

5 CHAIRPERSON YOUNG: But was this slide
6 part of your presentation?

7 MR. STRINGFIELD: No. I haven't made a
8 presentation.

9 CHAIRPERSON YOUNG: No, but I mean the
10 Discharger's presentation, it did not include this
11 slide?

12 UNIDENTIFIED SPEAKER: It was part of
13 my --

14 CHAIRPERSON YOUNG: Well, but is this
15 information, is it gleaned from documents that
16 you've submitted or testimony that you offered?

17 MR. STRINGFIELD: Yes.

18 CHAIRPERSON YOUNG: Okay.

19 MR. STRINGFIELD: In fact, it was shown
20 earlier as a reference to what -- NRDC's
21 presentation there was a summary of these in
22 different format. And that's where they showed
23 how it was a shorter time period. So I believe
24 these are consistent with what was in my letter
25 that's in the record.

1 CHAIRPERSON YOUNG: Okay.

2 MR. STRINGFIELD: There's a second
3 project we're working on, tertiary project. Let's
4 go on to the next one. We need to go back, we
5 weren't at the first one.

6 Okay, Pismo Beach, that's a project I
7 worked on, myself, from the beginning to the end
8 with Carollo Engineers. And we answered the
9 request, the proposal for studies, and were
10 selected to start the project in 1998.

11 And as was indicated, that project isn't
12 quite done yet. It will be several months before
13 that project is done. So it had, what I call
14 eight to nine year duration because in my
15 presentation in my letter, I said it takes a
16 couple years to get to a cleanup and abatement
17 order, you know, normally. They don't just show
18 up on the door and that's the start of a project.
19 So that's how I -- that's how that duration
20 stretches out to eight to nine years.

21 Probably need to go back one more. Half
22 Moon Bay, that's also one of Carollo's projects.
23 And, again, we answered solicitation to proposals
24 in 1989 -- well, the proposals were issued in
25 1989. We began our services in 1993 to finish off

1 that project. And the plant was commissioned in
2 1998.

3 So the project had been going on quite
4 awhile before we started working on it. And the
5 graphs that you saw earlier reflected when we
6 started on the project and how we could finish the
7 project from that point on. The project was
8 ongoing at that time, so that one, that's how I
9 came up with nine years on that one.

10 And I think that's all we wanted to go
11 over.

12 CHAIRPERSON YOUNG: Any other comments?

13 MR. CARMEL: Director Strauss, Chairman
14 Young, Members of the Board, my name's Tim Carmel.
15 I'm yet another lawyer. I'm here to synthesize
16 and summarize in about 20 minutes all the evidence
17 that's before you. Only kidding.

18 Just briefly, we tend to lose focus in a
19 long hearing, in the minutiae of a long hearing,
20 what we're here to discuss and what the seminal
21 issue is:

22 Does the weight of the evidence that's
23 been presented before you today and in the
24 administrative record satisfy the findings
25 required to issue a 301(h) modified discharge

1 permit. That's it.

2 We concur with your staff that the great
3 weight of evidence does support that conclusion.

4 The diseased and dying otters are a
5 terrible thing. No one argues that point. But
6 there's no credible evidence in the record that
7 there's any relationship between dead and dying
8 otters and the plant's discharge. And that's in
9 light of its extensive monitoring program.

10 Similarly, the record demonstrates
11 there's a balanced indigenous population, whether
12 you include otters or not.

13 Lastly, the plant, its discharge
14 characteristics demonstrates that there's a very
15 very low potential for adverse environmental
16 impacts. The record is replete with that
17 evidence.

18 With regard to the conversion schedule
19 we submit that when other evidentiary apples you
20 just saw are compared with the apple before you,
21 our conversion schedule is a reasonable schedule
22 and it comports with the law.

23 And you have to recall the term, as
24 quickly as possible, is modified by the terms, in
25 light of technical, operational and economic

1 factors. Because those all bear on the decision
2 as to how long your upgrade is going to take.

3 So, notwithstanding the conversion
4 schedule, on Cayucos' behalf, we're going to do
5 this as fast as we possibly can. That's our
6 mission; that's what we do.

7 Based on the great weight of the
8 evidence we strongly encourage that you issue the
9 permit and approve the settlement agreement, and
10 allow us to get on with our project.

11 Thank you.

12 CHAIRPERSON YOUNG: Thank you. Any
13 other comments from the Discharger? No. Okay.
14 Does staff have any closing comments?

15 MR. THOMPSON: Yeah, I just need a
16 couple of minutes, I need to respond to a couple
17 of things before I give my closing.

18 For the record, the NRDC argued that
19 reissuance of the 301(h) modified permit is
20 prohibited under 40CFR125.59(b)(4) because the
21 discharge of pollutants enters into the saline
22 estuarine waters.

23 I submit that this section of law
24 intends to prohibit issuance of 301(h) modified
25 permits for direct discharges into saline

1 estaurine waters, not this discharge to the open
2 ocean.

3 NRDC largely bases this argument on a
4 1986 dye study which suggested that the discharge
5 may enter the mouth of the Bay under certain
6 infrequent oceanographic conditions.

7 NRDC omits that this study found that
8 the discharge was diluted from 16,700 to 91,000
9 parts sea water for every part effluent before
10 entering the mouth of the Bay. And this was
11 during flood tide conditions when the mouth of the
12 Bay was hardly estaurine.

13 This extremely high level of dilution
14 before reaching the mouth of the Bay is verified
15 by the Discharger's current offshore monitoring
16 program, which is superior to the 1986 dye study
17 in tracking the fate and transport of the
18 discharge plume. And which indicates that the
19 discharge is diluted by hundreds of parts of sea
20 water within several meters of the outfall. And
21 that the discharge plume is imperceptible at the
22 mouth of Morro Bay. The stated prohibition really
23 should not apply to this case.

24 Next, NRDC suggested during their
25 presentation, that I omitted discussion of

1 suspended solids and dioxin effluent limitations.
2 For the record I discussed extensively all of the
3 Discharger's effluent violations in the fact sheet
4 portion of the permit.

5 In short, the dioxin effluent 30-day
6 average limitation of .52 pg/liter was violated on
7 July 10, 2002. The reported dioxin concentration
8 was .56 pg/liter, 8 percent greater than the
9 effluent limit. This exceedance was much smaller
10 than the 20 percent instrumentation calibration
11 standard. The Dischargers state that the
12 particular dioxin -- that was responsible for the
13 violation is ubiquitous in the environment.

14 And it is also possible that this
15 violation could be attributed to laboratory
16 contamination which is commonplace when measuring
17 concentrations at this very low level.

18 The suspended solids effluent maximum
19 limit of 105 mg/liter was violated on August 26,
20 2002 and September 11, 2002. The suspended solids
21 effluent monthly average limit of 70 mg/liter was
22 exceeded in September 2002.

23 The violations resulted from an upset of
24 the biological treatment process which was later
25 attributed to a distinct alteration of influent

1 characteristics by excessive loading of pH
2 neutralization chemicals from an industrial
3 laundry facility.

4 The industrial laundry facility
5 discontinued use of the suspect chemicals and
6 biological treatment performance subsequently
7 improved and the violations ceased. There have
8 been no other violations of suspended solids
9 effluent limits since 1998.

10 You issued mandatory penalties totaling
11 \$15,000 for these and other effluent violations in
12 July 2000 and November 2003.

13 NRDC and Dr. Mark Gold suggested the
14 Discharger's monitoring program cannot show
15 compliance with water recreation standards. This
16 is not true. The Discharger's extensive beach
17 monitoring program demonstrates that there is no
18 impacted beach water quality from the subject
19 discharge.

20 I analyzed all surf zone total coliform
21 monitoring data collected since 1993, over ten
22 years of data. The data set consisted of 385 to
23 390 samples at each monitoring station. With the
24 exception of the monitoring station at the mouth
25 of Morro Creek, the annual median of each

1 monitoring station was well below 70 mpm per 100
2 ml. Well below water contact recreation
3 standards.

4 NRDC points out that Dr. Mark Gold is
5 unable to determine if the discharging plume comes
6 back to shore. The Discharger's intensive
7 offshore monitoring program clearly illustrates
8 the discharge plume is rapidly diluted within a
9 short distance from the outfall and is not coming
10 back to shore.

11 Dr. Mark Gold of Heal The Bay correctly
12 points out that the current beach monitoring
13 program does not include enterococcus monitoring.
14 Enterococcus monitoring was not required by the
15 California ocean plan when the existing monitoring
16 program was approved. The proposed monitoring
17 program includes enterococcus monitoring. Such
18 monitoring will not be required until the proposed
19 permit is reissued.

20 Lastly, NRDC points to Watsonville and
21 Pismo Beach to suggest the Discharger's proposed
22 upgrade schedule is too slow. As I said
23 previously, the Watsonville upgrade required more
24 than eight years, and the Pismo Beach upgrade has
25 taken more than seven years.

1 And so in conclusion I must reiterate
2 that reissuance of the permit will effectuate a
3 settlement agreement that requires the Discharger
4 to immediately begin the process of upgrading its
5 wastewater treatment plant, and which will
6 certainly lead to improved discharge quality.

7 The issuance of the proposed permit is
8 supported by a wealth of monitoring data.

9 I recommend you concur with EPA in
10 reissuance of the permit and effectuate the
11 settlement agreement. Thank you.

12 CHAIRPERSON YOUNG: Okay, Mr. Briggs.

13 MR. BRIGGS: Just to add, as a closing
14 thought, that is our recommendation. And I think
15 this argument that molecules of water could enter
16 the estuary is taking it to the extreme.

17 We have a finite amount of water on
18 earth; it is constantly being recycled. So you
19 take that to the extreme and any source of
20 discharge will eventually end up anyplace else.

21 And as Mr. Shallcross said, does that
22 mean one molecule going in is too much. And the
23 answer from NRDC was yes. And I think it's up to
24 this Board to take into consideration some
25 perspective on that issue.

1 And I agree that there are lots of
2 forces out there. The land runoff seems to be
3 implicated for the most part in terms of sea otter
4 problems. We've heard actually some conflicting
5 information in terms of suspended solids removal
6 perhaps being more effective in limiting any
7 discharge of cysts versus Dr. Coats referred to a
8 seminal paper saying that the treatment level
9 doesn't seem to matter much.

10 It's likely that there are sources from
11 any discharge, whether it's any treatment plant up
12 and down the coast, any stormwater outlet, any
13 fresh water creek. As Karen Worcester pointed
14 out, it's a much bigger problem, and there are
15 many other threats to sea otters aside from
16 toxoplasma. And I think it's important to keep
17 that in perspective, as well, in the lot of things
18 that we do need to do in terms of protecting this
19 very important species.

20 As far as the allegation that we did not
21 consider sea otters, we've obviously spent more
22 time in our hearing today talking about sea
23 otters. And that issue in our presentation, we
24 actually spent, I think, equal if not more time on
25 the sea otter issue as opposed to benthic

1 organisms and the monitoring data that we have on
2 those critters.

3 So it's just not true to say that we've
4 ignored the sea otter issue. I think we've it
5 taken into consideration, and I think this
6 recommendation is appropriate.

7 I think it's a great thing that the City
8 and the District have come forward with this
9 project; it's a great opportunity to move forward
10 and get past this contentious issue in an
11 expeditious fashion.

12 We agree that the original schedule was
13 not as fast as possible, because that was not the
14 standard. This was a voluntary upgrade. And I
15 think it's great that the parties have agreed to
16 expedite that schedule from the original schedules
17 and they are where they are now.

18 I think the most expeditious way for us
19 to get to our ultimate goal is to concur with EPA
20 on the issuance of this permit.

21 CHAIRPERSON YOUNG: Okay, Mr. Beckman
22 wanted a few more minutes to --

23 MR. BECKMAN: I just, for the record I
24 have an obligation to object to the new evidence
25 that was submitted on the schedules. That was at

1 least substantially new evidence. And anybody who
2 compares the presentation to what was presented
3 earlier, it's new evidence. So I'd like to object
4 to consideration of that.

5 CHAIRPERSON YOUNG: Okay. All right.
6 That closes -- we're going to go to deliberation,
7 Dr. Bowker, is that okay?

8 BOARD MEMBER BOWKER: Fine, I'm ready.

9 CHAIRPERSON YOUNG: Okay. Ms. Okun.

10 MS. OKUN: I just have a couple of legal
11 issues that I wanted to address.

12 CHAIRPERSON YOUNG: Okay.

13 MS. OKUN: The standard here is that the
14 Discharger has to demonstrate there's a balanced
15 indigenous population within the zone of initial
16 dilution and in all areas that are potentially
17 impacted by the discharge. It's a balanced
18 indigenous population of fish, shellfish and
19 wildlife; not a balanced indigenous population of
20 one particular species.

21 I did not find any authority which held
22 that one stressed species proved that there was
23 not, or precluded a finding of a balanced
24 indigenous population. It is correct that there's
25 EPA guidance that the presence of threatened or

1 endangered species is something to consider. And
2 staff has considered it.

3 But being required to consider something
4 isn't the same as being required to conclude if
5 there's an endangered species present that there's
6 not a balanced indigenous population.

7 There's been a couple of State Board
8 orders that have considered this issue. One of
9 them was for a 301(h) waiver in Watsonville,
10 which, as you've heard, they've given up. But
11 that discharge was to Monterey Bay.

12 The State Board did discuss the presence
13 of sea otters and the fact that they were a
14 threatened species, and they did approve the
15 301(h) waiver for that discharge.

16 In the (inaudible) case which was in
17 Oxnard, I believe, the NRDC did correctly cite the
18 State Board's opinion that in that case the
19 presence of a healthy benthic community didn't
20 necessarily indicate a balanced indigenous
21 population. But that was for a new discharge. It
22 wasn't a situation like here where there have been
23 years of data that has been analyzed. And, in
24 addition, in that case EPA and TetraTech had
25 concluded there was some evidence that there were

1 other species that were not balanced in the area
2 of the outfall.

3 So, I'm not going to repeat the whole
4 memo that I wrote, but the consideration of this,
5 as I read it, is a consideration of the entire
6 community, considering impacts on an individual
7 species, but looking at whether there's a balance
8 community.

9 The cases where it's clear there's not a
10 balanced indigenous community is where there's a
11 wholesale shift to pollutant-tolerant species, or
12 from cold water species to warm water species.
13 And that hasn't happened here. We're not saying
14 those are the only times when you can find that if
15 it's not present, that's at one end of the
16 spectrum. And we're pretty much at the other end
17 of the spectrum here.

18 The other view as to the prohibition on
19 discharges into saline estuarine waters, the
20 regulation does say that the 301(h) waiver is
21 prohibited if the discharge enters into a saline
22 estuarine water that doesn't support a balanced
23 indigenous population.

24 But the statute that that regulation is
25 interpreting prohibits discharges into saline

1 estaurine waters. And I think that you have to
2 read that statute when you're looking at a case
3 like this where you're, you know, whether there's
4 a one molecule really. You have to interpret that
5 language to be consistent with the purpose of the
6 301(h) requirements, which is to assure that
7 there's a balanced indigenous population. And if
8 it's just one molecule, that will assure that
9 there's a BIP.

10 And, again, we're somewhere in the
11 middle of the spectrum, or not -- maybe not in the
12 middle, but not all the way at that end of the
13 spectrum. And I actually disagree with Mr.
14 Thompson. I think that that prohibition isn't
15 limited to a direct discharge into a saline
16 estaurine water, but consistent with the other
17 requirements of 301(h). There has to be some
18 demonstration that there's some impact or
19 potential impact on those waters.

20 And it's up to the Board to determine,
21 based on the evidence that you've heard, whether
22 or not that's the case here.

23 CHAIRPERSON YOUNG: We're supposed to
24 use federal law to make that determination?

25 MS. OKUN: The State Board orders are

1 interpreting federal law, so there really is no
2 state law, other than -- that I know of, other
3 than under either the Clean Water Act or 316(a)
4 which interprets a similar requirement for thermal
5 discharges.

6 CHAIRPERSON YOUNG: All right. Mr.
7 Shallcross, did you have a --

8 BOARD MEMBER SHALLCROSS: I just wanted
9 to know if we're going into closed session for
10 deliberation.

11 MS. OKUN: It's up to the Board. It's
12 noticed for closed session deliberations. And
13 there's a few bases for that. One is that you can
14 always deliberate in closed session on a quasi-
15 adjudicative matter.

16 And the other one is that there's a
17 substantial exposure to litigation in this case;
18 basically both sides have threatened to sue us, so
19 I think that there is a substantial exposure.

20 CHAIRPERSON YOUNG: What would the Board
21 like to do?

22 BOARD MEMBER SHALLCROSS: I'd like to go
23 into closed session.

24 CHAIRPERSON YOUNG: You would. Dr.
25 Hunter?

1 BOARD MEMBER HUNTER: -- not certain.

2 CHAIRPERSON YOUNG: You're not certain.
3 Dr. Bowker?

4 BOARD MEMBER BOWKER: I'm fine any way
5 you want to go.

6 CHAIRPERSON YOUNG: Okay. Mr. Hayashi?

7 BOARD MEMBER HAYASHI: I'm fine any way
8 you want to go.

9 CHAIRPERSON YOUNG: Okay. Mr. Jeffries?

10 VICE CHAIRPERSON JEFFRIES: You're the
11 Chairman.

12 CHAIRPERSON YOUNG: You're the Vice
13 Chair. You don't care?

14 VICE CHAIRPERSON JEFFRIES: My
15 preference, I think that, you know, we should go
16 in closed session.

17 CHAIRPERSON YOUNG: Okay. Why don't we
18 do that then. I just think that's -- if there's a
19 split in the Board, that that's a safer thing to
20 do.

21 MS. OKUN: And you don't have to conduct
22 the entire deliberation in closed session. You
23 can come back out and continue deliberation.

24 DIRECTOR STRAUSS: Respecting that
25 indication of the Board, I would use this -- when

1 you may adjourn to closed session I would depart.

2 CHAIRPERSON YOUNG: Okay.

3 MR. BECKMAN: And I just object again
4 for the record that you would deliberate without
5 the public present on matters that's public
6 interest. I don't agree that there's
7 authorization to do it. For the record we object
8 to that.

9 CHAIRPERSON YOUNG: Okay. All right,
10 let's go into closed session. No idea when we'll
11 come out. Well, let's shoot for 8:30 then.

12 (Whereupon, the Board Members adjourned
13 to closed session.)

14 CHAIRPERSON YOUNG: Okay, are we all
15 here? We had an interesting discussion. I can
16 tell you that I don't know what's going to happen
17 until everybody finishes deliberating and
18 discussing what they would like to do.

19 Okay, let's see, Lori -- and that was
20 Alexis, so --

21 BOARD MEMBER: Did she leave for good?

22 CHAIRPERSON YOUNG: No. We just can't
23 see her over everybody's heads.

24 All right. Dr. Bowker, would you like
25 to --

1 BOARD MEMBER BOWKER: I guess I'll start
2 out.

3 CHAIRPERSON YOUNG: -- thoughts out.

4 BOARD MEMBER BOWKER: Just my
5 observations on things in the proceedings so far.
6 First of all, I think it's been firmly established
7 that there is a high otter mortality; and there's
8 also a waste discharge.

9 But I would point out that correlation
10 does not imply cause and effect. Let me give you
11 an example. There's a positive correlation
12 between church attendance and crime rate. So I
13 would not want to be in the position of saying
14 that church attendance causes crime.

15 So, that aside, the question now becomes
16 what is the likelihood that the discharge is a
17 significant contributor to water problems. And I
18 think there has been substantial evidence based on
19 the mussel study, the dilution study, the benthic
20 infaunal studies and the monitoring program that
21 the wastewater treatment plant is not a
22 significant contributor. And I haven't heard
23 testimony that it is, in fact.

24 Okay, the Board is more or less on
25 record as sundowning 301(h) waivers. And that

1 goes way back to the Goleta hearings. So the
2 question before us, as I see it, is what is a
3 timely manner to achieve this end, and what is the
4 appropriate mechanism to allow this to be done.

5 And that's where I'm leaving it.

6 CHAIRPERSON YOUNG: You're leaving with
7 a question?

8 BOARD MEMBER BOWKER: Well, I have my
9 own opinion, I think. Should I say my opinions?

10 CHAIRPERSON YOUNG: You can do whatever
11 you want.

12 BOARD MEMBER BOWKER: I think it's a
13 reasonable approach to grant a waiver because, a)
14 it does allow the City to achieve this transition,
15 and to either benefit from it, including the
16 agreement. And it seems a reasonable approach.
17 And the differences between various timelines are
18 in the neighborhood of a year.

19 So I think that's a reasonable approach
20 to get the job done. And I guess I would also, I
21 understand, given that there were four coastal
22 301(h) waivers, that the only one that will be
23 left is San Diego, didn't they get a five-year
24 extension? So we are making progress in
25 sundowning our 301(h) waivers.

1 CHAIRPERSON YOUNG: Okay. Mr. Hayashi.

2 BOARD MEMBER HAYASHI: Yes. I'll just
3 pick up from where I last left off. I like the
4 concept of this settlement agreement. And I think
5 I'm hearing everybody wants to make this work and
6 get it done as fast as you can to secondary
7 treatment.

8 I hear this tertiary, you know, like
9 Cayucos said, we want to go to tertiary treatment;
10 and I think I heard Morro Bay say they wanted to
11 go to tertiary treatment. I don't know if that's
12 a part of the settlement agreement, or it can be a
13 part of it.

14 I am thinking that in order to get this
15 done we're going to have to -- or I think you're
16 going to have to issue the waiver to get you
17 through the first five years of this project. And
18 if your settlement agreement, if everything in the
19 settlement agreement says that you guys are not
20 going to ask for another waiver at the end of five
21 years, you'll be left with a time schedule order
22 that needs to be completed up to this eight-year
23 period.

24 Be advised that during the last three
25 years while you're on this time schedule, you'll

1 be subject to penalty if you violate any of the
2 discharge requirements that you have today.

3 So it would be in your best interest, if
4 you really want to get this thing done, to work
5 hard and get it done in five years, as opposed to
6 eight years. And I think you would be money
7 ahead, and everybody would be happy.

8 That's just my way of thinking right
9 now.

10 CHAIRPERSON YOUNG: Mr. Vice Chair.

11 VICE CHAIRPERSON JEFFRIES: Well, I'd
12 like to say to Morro Bay and Cayucos, I appreciate
13 them stepping up and recognizing that they need to
14 change their type of discharge, but I -- Dr.
15 Bowker addressed that we've been trying to sunset
16 301s, and I've been -- I'm the oldest member of
17 this Board, going way back trying to sunset some
18 of those 301s along this coast, this very pristine
19 coast.

20 I think I've heard enough evidence here
21 today and tonight that leaves a great doubt in my
22 mind that there is a correlation between the
23 discharge and the problems with the sea otters. I
24 don't know if it can contribute totally to that
25 particular discharge, but it's obvious by the way

1 the wording is stated in the law that if there's
2 any then there should be some kind of correction.

3 So, without taking a whole lot of time,
4 it's getting late, I will not support renewing the
5 waiver.

6 CHAIRPERSON YOUNG: Okay. I'll start at
7 this end. Dr. Hunter.

8 BOARD MEMBER HUNTER: Thank you. And,
9 boy, this is a really tough decision. Considering
10 the issue of BIP I think is one question that we
11 need to help to kind of understand what we've had
12 in terms of information today, and questions that
13 we still have about whether or not a BIP exists.

14 You know, from what I heard EPA has
15 determined that there is a BIP. And that's
16 important to consider. And I think staff has also
17 come to the same conclusion and they're
18 recommending that we consider that a BIP exists,
19 and therefore we can proceed with this waiver.

20 So I have to look at that and what that
21 means.

22 However, there's still impacts to
23 threatened species that I think hasn't been
24 answered. EPA hasn't finished their work and that
25 concerns me. They haven't completed their section

1 7 consultation, which is an important analysis
2 which, you know, U.S. Fish and Wildlife hasn't
3 weighed in. We saw the letter that said kind of
4 deferred, we'll wait and see what EPA decides.

5 I think the uncertainties of the mussel
6 study, the three-year study. And we're talking
7 about bio-accumulation. That leaves me perplexed.

8 And then we have the uncertainties of
9 the contributing factors of heavy metals and other
10 contaminants that are in that waste discharge, and
11 how that might be affecting the immune system of
12 the threatened species.

13 And I think probably what we didn't talk
14 about today very much, and it's a question in my
15 mind, is if we see an impact to a threatened
16 species, then what does that say about what's
17 happening to health impacts in the recreational
18 area that is so important to the Morro Bay area.

19 I understand that the City of Morro Bay
20 and Cayucos have worked very hard; the community
21 is supporting this effort. I think there is a
22 strong sentiment in the community. We heard some
23 folks today come forward and express their
24 feelings of urgency that the Cities get their
25 facility upgraded, secondary, and even tertiary

1 treatment.

2 And I think that the settlement
3 agreement that they put forward is a good effort
4 to recognize what they can do in a practical
5 sense, but to also set some goals for themselves.

6 Board Member Hayashi mentioned that
7 issuing the waiver would set up a five-year period
8 in which you would have the opportunity to make
9 some serious and significant progress. At the end
10 of that time you'll be facing a time schedule
11 order that would begin to impose penalties. And
12 you've agreed to all of those conditions.

13 However, I, and as a new Board Member
14 I'm taking this decision very seriously, as we all
15 are, but, again I don't have a long view of the
16 effort of trying to eliminate the modified 301(h)
17 permits.

18 I think on the weight of the points that
19 I just raised, I would not support issuing another
20 waiver. And that's where I stand right now.

21 CHAIRPERSON YOUNG: Mr. Shallcross.

22 BOARD MEMBER SHALLCROSS: Yeah. On her
23 basic comments I agree --

24 CHAIRPERSON YOUNG: Dr. Hunter you mean?

25 BOARD MEMBER SHALLCROSS: I was just

1 going to say, I agree with Dr. Hunter.

2 CHAIRPERSON YOUNG: Okay.

3 BOARD MEMBER SHALLCROSS: We can do it
4 that way, we can put the pronoun first --

5 CHAIRPERSON YOUNG: I just want to make
6 sure that --

7 (Laughter.)

8 BOARD MEMBER SHALLCROSS: I'm in basic
9 agreement. I think there's a real perplexing
10 issue. I think the BIP issue, which is just sort
11 of the threshold issue, is very close. I'm a
12 little concerned with the unfinished mussel
13 monitoring, also.

14 I was impressed with Ms. Jaiswal's
15 arguments, as quick as they were. I would have
16 liked to have seen her be able to focus on a few
17 things and not try to cover everything. But I
18 thought she brought up some very important points
19 that we need to take care of.

20 I was also very moved and even though
21 they may not be considered evidence, the community
22 members speaking, and also the folks from the
23 various nonprofit environmental groups. I thought
24 they were compelling.

25 I'm concerned about the City's -- or the

1 City -- the Discharger's what's going to happen
2 next. I mean I think NRDC should be careful what
3 they wish for here, because I think what we're
4 looking at is a settlement in which the Discharger
5 is going to lose their waiver in five years and
6 be, you know, wide open to penalties, and also a
7 time schedule order.

8 And this may not be the sort of thing
9 that you look at when you're coming down, when
10 you're looking at a legal issue like the BIP, but
11 you know, if we don't grant the waiver, the
12 Discharger surely will appeal. And if they win at
13 the state level you're not going to have a
14 judgment order -- you're not going to have a
15 settlement order, I mean. You're just going to
16 have a waiver that they can continue to go for in
17 the next five years.

18 At least with the settlement agreement
19 you know they're not going to go for a waiver
20 again.

21 Now, you know, arguably there won't be
22 waivers, and so having said that, I'm going to
23 have to go with no, vote against the waiver. I
24 just don't think -- legally I just don't think
25 it's there. As much as I would like to, because I

1 think the settlement agreement is a good thing.

2 But I can't vote for the waiver based on
3 the fact that I think the settlement agreement's a
4 good thing. They're two separate issues.

5 And I thought Ms. Jaiswal did a fine
6 job. Unfortunately her cohort was bent on some
7 sort of self destructive mode. I don't know what
8 that was about, and it wasn't helpful.

9 But, anyway, that's how I'm voting.

10 CHAIRPERSON YOUNG: Well, this is an
11 interesting thing for me to have to kind of weigh
12 in on. Because I've been so involved, myself,
13 with the ocean for so many years and years.

14 And, you know, my own personal
15 preference is that we just not even -- we don't
16 even have ocean discharges to begin with. And
17 that even tertiary treatment is kind of, you know,
18 a waste of that resource. That the water should
19 be completely reclaimed. We really don't do
20 enough studying to determine the effect of so many
21 constituents in wastewater.

22 However, I don't want to let my own
23 personal agendas get in the way of what I think
24 I'm required to do as a dispassionate Board Member
25 in terms of analyzing what the evidence is and

1 what I think should be done.

2 And I take a look at this analysis in
3 terms of is there a BIP. I start with that
4 question. And I would say that in terms of the
5 definition that we have, I think that a BIP has
6 been determined and established by the evidence.

7 I will wholeheartedly agree that there
8 is a problem with sea otters. There's no question
9 about that. There's no question that there are
10 toxic hot spots of otters along the central coast.

11 I'm somewhat troubled by trying to put
12 the blame on the Discharger for the lack of the
13 occurrence of the parasite in the wastewater
14 stream is something that is their burden to
15 overcome. I don't think that's fair at all. I
16 think that in terms of the analysis that has been
17 done, I think they have done what is reasonably
18 required under the circumstances to do.

19 It would be easier for me if I saw some
20 evidence that there were parasites in the
21 wastewater stream and that they had ended up in
22 the shellfish, or one or the other. An occurrence
23 somewhere in that linkage for me. It's not there.

24 And it's true we could -- and the more
25 we look the more we find things in life, and I

1 think we have to wait for that to happen, if it
2 even is going to exist in this situation. To
3 suggest that the parasite is in the wastewater at
4 this point would be more in tune with speculation
5 than in looking at any hard evidence that it is
6 there.

7 I'm very persuaded by the fact that we
8 have a toxic hot spot up in an area where there is
9 no blended or primary sewage being discharged. I
10 can't escape that fact. That just jumps right
11 out.

12 I do think that the parasite and the
13 problem is most likely, very likely coming from
14 land-based practices. No question in my mind.

15 So I get to the BIP question in the
16 analysis, which is where I think that we all need
17 to go through, we have to visit that process and
18 reconcile that in our minds. And I come up with
19 that the BIP has been established.

20 And even if I feel that the definition
21 of the BIP should be broader than it is, I also
22 can see the reasoning for not including transitory
23 species, because you never know where they've
24 been, what they've picked up. And to focus on the
25 infauna, I think, is the way that the law was

1 created and has been established. EPA's
2 interpreting it that way. And I don't know how,
3 you know, we can try to circumvent that and get
4 around it.

5 There's a practical side to my decision,
6 and that has to do with kind of the bottomline.
7 Where are we going with this. We all want to get
8 to a cleaner outfall, a cleaner effluent. And the
9 NRDC has done a tremendous job in convincing Morro
10 Bay and Cayucos that they were going to face a
11 serious challenge if they attempted to not agree
12 to secondary treatment at some point in the
13 future. Because I don't think that this, we would
14 be here today having this discussion if that
15 didn't happen.

16 But in looking at this in a practical
17 sense, we're looking at a year or 18 months
18 difference between I think what has been proposed
19 and what is being suggested. And I think that
20 taking a path, at least in my mind, that invites
21 the most reasonable or predictable way to get to
22 that point is also prudent.

23 I know that the State Board has, at
24 least with the Goleta waiver, they overturned it,
25 and returned it back to the Goleta Sanitary

1 District, and they had that waiver for at least
2 another five-year period. I don't know if it was
3 a ten-year period.

4 And I think when you have two agencies
5 that both agree on that definition and this
6 conclusion, I think that that is a stronger
7 position to put forth.

8 I'm hopeful that the settlement
9 agreement was certainly done in good faith and
10 would not be changed. Or a future city council
11 would think otherwise in terms of undoing
12 something.

13 But depending on where this vote comes,
14 and right now it looks like it might be three-to-
15 three and deadlocked, I don't know what'll happen
16 until we actually take the vote, but my decision,
17 at least at this point, would be to go with
18 staff's recommendation to allow for the settlement
19 agreement to take place and to issue the waiver
20 for a five-year period.

21 So, Ms. Okun.

22 MS. OKUN: Before you vote, because it
23 does look like you're heading towards a three-to-
24 three vote, there's an exception to the BIP
25 requirement that we haven't really discussed, that

1 I think the Board should consider. And you may
2 want to deliberate about that before you vote.

3 But, even if the permittee cannot
4 demonstrate that there's a balanced indigenous
5 population, there's an exception that would allow
6 for a 301(h) waiver --

7 CHAIRPERSON YOUNG: Is that in saline
8 waters?

9 MS. OKUN: Distressed waters.

10 CHAIRPERSON YOUNG: Yeah, waters --

11 MS. OKUN: No, this is different.

12 CHAIRPERSON YOUNG: Okay.

13 MS. OKUN: There's the saline waters
14 provision is a prohibition. But if there's a
15 discharge that's not into saline waters, if it's
16 into the ocean which is one of the things that the
17 Board needs to determine. You've heard staff's
18 opinion.

19 Even if there's not a BIP applicant is
20 entitled to a 301(h) waiver if the discharge does
21 not or will not contribute to, increase, or
22 perpetuate the stress conditions; contribute to
23 further degradation of the biota or water quality
24 if the level of human perturbation from other
25 sources increases and retards the recovery of the

1 biota or water quality if the level of human
2 perturbation of other sources decreases.

3 So, basically what that distills down to
4 is that if the stress conditions or the absence of
5 a BIP is caused by other sources, and the
6 Discharge isn't contributing to it, and isn't
7 preventing the stressed waters from regaining a
8 healthy condition, if all the other sources of
9 pollution were removed, then a 301(h) waiver is
10 still available.

11 CHAIRPERSON YOUNG: What happens if we
12 have a tie vote?

13 MS. OKUN: If there's a tie vote the
14 Board has not issued the 401 certification in the
15 concurrence, the motion doesn't carry. What the
16 regulations say is that if EPA has not received
17 the state concurrence when it issues its tentative
18 decision, it can give the state a reasonable
19 period of time to grant or deny the concurrence.
20 If the state does nothing within that period of
21 time, then it's deemed granted.

22 So, so far EPA hasn't imposed any
23 deadline to grant or deny the concurrence. If
24 there's a three-to-three vote and nothing else
25 happens, I'm not sure what will happen

1 procedurally. They may wait to see what happens
2 in terms of a petition before they require that
3 certification. But there is a risk that EPA could
4 say grant or deny the certification within 30 days
5 or it's deemed granted.

6 So, if there is a three-to-three vote,
7 the Board could consider a motion to deny the
8 waiver or to deny the concurrence. And maybe the
9 vote will be different.

10 CHAIRPERSON YOUNG: But it is this Board
11 that does that vote, not the State Board. And
12 when EPA issues that request, who is it issuing
13 the --

14 MS. OKUN: It's issued to this Board.
15 And the way the regulations read, if the state
16 doesn't do anything within the specified period of
17 time, then a concurrence is deemed granted. So
18 unless the State Board stepped in and I guess the
19 Executive Director of the State Board could grant
20 or deny the concurrence.

21 The Executive Officer could grant or
22 deny the concurrence; he has that authority under
23 the regulations. But it's been this Board's
24 practice not to delegate that to the Executive
25 Officer in cases of 301(h) waivers.

1 So there is a risk that EPA could cause
2 the waiver to be deemed granted. If there's some
3 additional information such as a section 7
4 consultation or additional analysis from EPA that
5 the Board thinks would change its mind or be
6 useful to continuing consideration of this matter,
7 you could continue it.

8 CHAIRPERSON YOUNG: Without voting?

9 MS. OKUN: With or without voting. If
10 there's a three-to-three vote and the concurrence
11 isn't granted, you could vote to -- someone could
12 move to take up the matter at a future meeting.
13 EPA still may decide to set this deadline.

14 CHAIRPERSON YOUNG: Okay.

15 MS. OKUN: The deadline just has to be a
16 reasonable period of time.

17 CHAIRPERSON YOUNG: Okay. But Dr. Press
18 is now precluded from being involved in this,
19 unless he was to listen to the entire transcript?

20 MS. OKUN: Right.

21 CHAIRPERSON YOUNG: So if he chose to do
22 that, then he could participate at some point?

23 MS. OKUN: Right.

24 CHAIRPERSON YOUNG: In another vote.

25 Okay. Well, that is kind of where we're at. Any

1 more comments, or shall we vote?

2 MS. JAISWAL: I just have a matter for
3 the record. I'd like to -- I'm sorry to
4 interrupt. I'd like to object to the stressed
5 waters discussion being brought up after you
6 deliberated, after you've made your decision here.
7 It's again a tactic by staff that's in the
8 eleventh hour.

9 We would have discussed this. We've
10 discussed it in our papers. But it is not as Ms.
11 Okun has described it. That is not how the law
12 works. The burden again is on the plant with the
13 stressed waters exception.

14 And I wanted to state it for the record,
15 that they have to show that -- under the burden
16 they have to show that the reason why the otters
17 are dying is entirely, solely, such language, is
18 from another human source. They have to be able
19 to point to that source.

20 Once they do that there are three very
21 stringent standards that they have to meet.

22 I just wanted to state my objection for
23 the record.

24 CHAIRPERSON YOUNG: Thank you. Okay.

25 Okay, Dr. Hunter, did you want to

1 discuss some more?

2 BOARD MEMBER HUNTER: I just wanted to
3 clarify, Lori, if I understood your comment about
4 postponing our vote until after the section 7
5 consultation occurs. Can you just kind of cover
6 that again?

7 MS. OKUN: The Board doesn't have to
8 vote now, basically. You can continue it if
9 everyone knows how -- all the Board Members know
10 how they're going to vote and there's no
11 additional evidence that's going to come in.
12 Unless Dr. Press is going to watch the video and
13 participate in the vote so that there's an odd
14 number of people voting there's really no reason
15 to continue it.

16 But if the Board does want to hold the
17 evidentiary portion of the hearing open, or reopen
18 the evidence for specific additional evidence to
19 come in, or for any additional evidence to come
20 in, if you think that would help your decision,
21 someone can move to continue the matter, as long
22 as the continuance specifies what the state of the
23 record is so the parties know what evidence you're
24 going to accept.

25 CHAIRPERSON YOUNG: Okay. Is there a

1 motion?

2 BOARD MEMBER BOWKER: I'll move to
3 accept the staff's recommendation. Is that the
4 way I should put it?

5 CHAIRPERSON YOUNG: Yes. And that would
6 be probably with the changes that Ms. Okun put up
7 on the screen, the language changes?

8 BOARD MEMBER BOWKER: Yes, yes.

9 CHAIRPERSON YOUNG: And that
10 recommendation is to accept the settlement
11 agreement and to reissue --

12 BOARD MEMBER BOWKER: Right.

13 CHAIRPERSON YOUNG: -- the 301(h)
14 waiver, is that correct?

15 BOARD MEMBER BOWKER: Um-hum, that is
16 correct.

17 CHAIRPERSON YOUNG: Okay. Is there a
18 second?

19 VICE CHAIRPERSON JEFFRIES: Don't need
20 one, Mr. Chair, but I suggest you take a roll call
21 vote.

22 CHAIRPERSON YOUNG: Oh, we will, Mr.
23 Vice Chair.

24 Okay, why don't we just go down the
25 line.

1 BOARD MEMBER: Aye.

2 BOARD MEMBER: Aye.

3 BOARD MEMBER: No.

4 BOARD MEMBER SHALLCROSS: I thought it's
5 a roll call?

6 CHAIRPERSON YOUNG: Okay, go ahead.

7 MS. HEWITT: Les Bowker.

8 BOARD MEMBER BOWKER: Yes.

9 MS. HEWITT: John Hayashi.

10 BOARD MEMBER HAYASHI: Yes.

11 MS. HEWITT: Russell Jeffries.

12 VICE CHAIRPERSON JEFFRIES: No.

13 MS. HEWITT: Jeffrey Young.

14 CHAIRPERSON YOUNG: Yes.

15 MS. HEWITT: Gary Shallcross.

16 BOARD MEMBER SHALLCROSS: No.

17 MS. HEWITT: Monica Hunter.

18 BOARD MEMBER HUNTER: No.

19 CHAIRPERSON YOUNG: Okay. Three-three
20 vote. That is where we're at.

21 VICE CHAIRPERSON JEFFRIES: Mr. Chair,
22 since we've basically taken no action on this then
23 I suggest that we set another time and place to
24 continue this discussion.

25 MS. OKUN: I'm not sure what the

1 continued discussion would involve, or what it's
2 being continued for?

3 VICE CHAIRPERSON JEFFRIES: I would like
4 to hear the results of what EPA is going to do
5 with their --

6 CHAIRPERSON YOUNG: Consultation.

7 VICE CHAIRPERSON JEFFRIES: --
8 consultation, yeah. Thank you for the word.

9 CHAIRPERSON YOUNG: Well, that sounds
10 like it's not a continued discussion but it sounds
11 like what you would like to have happen is almost
12 like an effort for reconsideration.

13 VICE CHAIRPERSON JEFFRIES: Yes.

14 CHAIRPERSON YOUNG: And possible Board
15 action. And perhaps Dr. Press' involvement in
16 this. So, --

17 VICE CHAIRPERSON JEFFRIES: Well, that's
18 a possibility.

19 MS. OKUN: Procedurally I'm not sure
20 that that's the appropriate way to -- one thing
21 the Board could do is at this point the waiver
22 isn't granted or denied. If there's additional
23 evidence to consider we could re-agendize this
24 matter.

25 CHAIRPERSON YOUNG: Okay. And we could

1 wait for EPA.

2 BOARD MEMBER: Continue it until the
3 consultation is done.

4 MR. THOMPSON: All suggestions from EPA
5 is that the consultation may take months, if not
6 years.

7 CHAIRPERSON YOUNG: Months, if not
8 years?

9 MR. THOMPSON: That's the anecdotal
10 information we have from EPA. It's a very long
11 involved process. That's what we've been told.

12 CHAIRPERSON YOUNG: But is that to this
13 specific consultation, or to consultations in
14 general?

15 MR. THOMPSON: That is to this specific
16 consultation.

17 CHAIRPERSON YOUNG: Okay.

18 MR. THOMPSON: There's still internal
19 debate at EPA whether they're going to do it, or
20 they're going to require Fish and Wildlife Service
21 to do it. Fish and Wildlife Service is asserting
22 that USEPA do it. In which case they got to get
23 scientists from the national level involved.

24 CHAIRPERSON YOUNG: Okay.

25 MR. THOMPSON: I say this because it's

1 not going to be weeks.

2 MR. BRIGGS: But perhaps this outcome
3 will affect the priorities of that?

4 CHAIRPERSON YOUNG: All right.

5 MR. SHIMCK: Very quickly, --

6 MS. OKUN: Excuse me, Mr. Chair, the
7 evidentiary portion of the hearing is closed.

8 CHAIRPERSON YOUNG: I know. I know.

9 MR. SHIMCK: I accept that, but --

10 CHAIRPERSON YOUNG: Yeah.

11 MR. SHIMCK: -- consultations don't
12 always take that long. The military has gone
13 through one at Vandenberg and it went through very
14 quickly. They don't always take that long.

15 CHAIRPERSON YOUNG: Okay. All right.
16 Well, we're done for this evening. I guess --

17 MS. OKUN: Did you want to entertain a
18 motion to continue this matter?

19 CHAIRPERSON YOUNG: Well, to have Dr.
20 Press be involved in this, which I think might be
21 helpful to getting a vote, what do we need to do?

22 MS. OKUN: You can vote to continue it.

23 CHAIRPERSON YOUNG: Okay.

24 MS. OKUN: Put it on a future agenda
25 when he's had the opportunity to review the

1 record.

2 CHAIRPERSON YOUNG: Okay.

3 BOARD MEMBER SHALLCROSS: I'll move
4 continuation.

5 BOARD MEMBER HUNTER: I'll second.

6 CHAIRPERSON YOUNG: Okay.

7 All those in favor?

8 (Ayes.)

9 CHAIRPERSON YOUNG: All right. Any
10 opposed? All right, motion carries unanimously.

11 All right, thank you very much. We have
12 concluded our hearing this evening.

13 (Whereupon, at 9:05 p.m., the hearing
14 was adjourned, to reconvene sine die.)

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CERTIFICATE OF REPORTER

I, TROY A. RAY, 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 Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of June, 2006.

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