

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

In the Matter of:)
)
Proposed Cease and Desist Orders)
Against Individual Property Owners)
and Residents in Los Osos/Baywood)
Park Prohibition Zone)
)
)
_____)

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

THURSDAY, MAY 10, 2007

9:05 A.M.

Reported by:
Richard A. Friant

BOARD MEMBERS PRESENT

Jeffrey S. Young, Chairperson

Russell M. Jeffries, Vice Chairperson

Daniel M. Press

Gary C. Shallcross

John H. Hayashi

Leslie S. Bowker

David Hodgkin

Monica S. Hunter

BOARD MEMBERS RECUSED - Agenda Item 4

Leslie S. Bowker

Monica S. Hunter

BOARD ADVISORS and ASSISTANTS

Michael Thomas, Assistant Executive Director

John Richards, Senior Counsel

Carol Hewitt, Executive Assistant

WATER BOARD PROSECUTION STAFF

Reed Sato, Director, Office of Enforcement

Harvey Packard, Division Chief

Allison Dominguez, Environmental Scientist

ALSO PRESENT

Lawrence Bishop

Rob Shipe

ALSO PRESENT

Gail McPherson

David Duggan

William Moylan

Beverly DeWitt-Moylan

Shaunna Sullivan, Attorney
Sullivan Associates

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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

2 9:05 a.m.

3 CHAIRPERSON YOUNG: Good morning,
4 everybody; I'm Jeff Young, Chair of the Central
5 Coast Regional Water Quality Control Board.
6 Welcome to San Luis Obispo. It's May 10th. And
7 we'll begin with our roll call. Ms. Hewitt.

8 MR. THOMAS: Before you do the roll
9 call, could the Board Members please turn your
10 microphones on when you respond to the roll call.

11 MS. HEWITT: Thank you. Monica Hunter.

12 BOARD MEMBER HUNTER: Here.

13 MS. HEWITT: David Hodgkin.

14 BOARD MEMBER HODGIN: Here.

15 MS. HEWITT: Daniel Press.

16 BOARD MEMBER PRESS: Present.

17 MS. HEWITT: Russell Jeffries.

18 VICE CHAIRPERSON JEFFRIES: Present.

19 MS. HEWITT: Jeffrey Young.

20 CHAIRPERSON YOUNG: Present.

21 MS. HEWITT: Gary Shallcross.

22 BOARD MEMBER SHALLCROSS: Here.

23 MS. HEWITT: John Hayashi.

24 BOARD MEMBER HAYASHI: Present.

25 MS. HEWITT: Les Bowker.

1 BOARD MEMBER BOWKER: Here.

2 CHAIRPERSON YOUNG: Thank you, Carol.

3 Okay, so we have two sets of microphones.

4 Okay, Mr. Thomas, would you like to do
5 introductions.

6 MR. THOMAS: Yes. To my right is Carol
7 Hewitt, our Executive Assistant. Further to the
8 right is John Goni, Water Resource Engineer, who
9 also helps out with our sound system.

10 To my left on the other side of Chairman
11 Young is John Richards, Board's Counsel on this
12 for the Los Osos case. And at the table in front
13 we have Harvey Packard, our Division Chief; and
14 Allison Dominguez, our Environmental Scientist.
15 And Allison will be presenting item number 3; and
16 I'll introduce other staff as they come up.

17 CHAIRPERSON YOUNG: Okay. I
18 understand --

19 AUDIENCE SPEAKER: We can't hear you in
20 the back of the room.

21 CHAIRPERSON YOUNG: Okay, we'll try to
22 speak a little louder. How's that? Is that
23 better?

24 AUDIENCE SPEAKER: That's better.

25 CHAIRPERSON YOUNG: Okay, thank you.

1 Folks, just so you know our general public comment
2 period for matters that are not appearing on the
3 agenda today will be tomorrow.

4 The public will be able to speak on any
5 of the agenda items that are on today's agenda by
6 filling out a speaker card and submitting it; and
7 putting down here which agenda item number they
8 wish to speak on; and filling it out; and
9 submitting that up here to Ms. Hewitt would be
10 fine.

11 AUDIENCE SPEAKER: That's tomorrow?

12 CHAIRPERSON YOUNG: General comments
13 from the public --

14 AUDIENCE SPEAKER: Oh, general. But if
15 you say a specific item we wish to address, is
16 that considered general?

17 CHAIRPERSON YOUNG: General in the sense
18 that you're not a party; you're kind of an
19 interested person.

20 BOARD MEMBER SHALLCROSS: They're not on
21 the agenda.

22 CHAIRPERSON YOUNG: Yeah.

23 AUDIENCE SPEAKER: Oh, okay.

24 CHAIRPERSON YOUNG: So, if there's
25 anything on today's agenda that anybody wishes to

1 comment, whether it involves them personally or
2 not, they can do so by filling out a speaker card.

3 AUDIENCE SPEAKER: Yes; and that will be
4 tomorrow.

5 CHAIRPERSON YOUNG: No. That will be
6 today.

7 AUDIENCE SPEAKER: Okay, thank you. Got
8 it, that clears it up.

9 CHAIRPERSON YOUNG: Okay, so I'm going
10 to go over it once more just so everyone's real
11 clear. Anything that's on today's agenda, the
12 Bishop property, the consideration of the panel
13 hearing, --

14 MR. THOMAS: Mr. Chairman.

15 CHAIRPERSON YOUNG: Yes.

16 MR. THOMAS: Mr. Richards, you can
17 correct me if I'm wrong here, but I don't believe
18 there's public comment on the panel hearing
19 recommendations. The public hearing portion is
20 closed.

21 MR. RICHARDS: There will be no
22 testimony on it. If the Board wishes to take
23 public comment, they may do so. But there's no
24 further testimony; the hearing has been conducted
25 and terminated.

1 MR. THOMAS: We did hear public comment
2 on January --

3 MR. RICHARDS: That's right. That's
4 right.

5 CHAIRPERSON YOUNG: Okay, so let's be
6 clear. That's agenda item 4. Okay, so for 4
7 there's no further comment. Okay.

8 But for item 3, 5 and 6, those three
9 items the public can fill out a card and comment
10 on them.

11 Anything not on the agenda that people
12 want to address the Board on, they can do so
13 tomorrow, where we have a block of time set aside
14 for that. Okay? Thank you. Mr. Thomas.

15 MR. THOMAS: Yes, a couple of other
16 things. We have hearing devices for the hearing
17 impaired, and they are out front with the
18 receptionist. You can sign out one of devices
19 with the receptionist and if you need help, Mr.
20 Goni, could you help people if they need help,
21 setting one of those up.

22 And also we have two supplemental sheets
23 for item number 6. They should be in your blue
24 folders. And we'll talk about those supplemental
25 sheets when we get to item 6.

1 CHAIRPERSON YOUNG: Okay. I do have a
2 few cards already that have put down agenda item
3 number 4, so I'm just going to put those aside.

4 MR. PACKARD: Mr. Chairman.

5 CHAIRPERSON YOUNG: Yes.

6 MR. PACKARD: Mr. Moylan asked that his
7 be placed in number 6 instead of number 4.

8 CHAIRPERSON YOUNG: Okay. And then
9 there's one here, Randy -- is it Tillotson?

10 MR. TILLOTSON: Yeah.

11 CHAIRPERSON YOUNG: Okay, there is no
12 agenda item number.

13 MR. TILLOTSON: Yeah, (inaudible).

14 CHAIRPERSON YOUNG: Okay, all right.
15 Does Ms. De Witt-Moylan also want to change hers
16 to number 6?

17 MS. De WITT-MOYLAN: If I can't speak on
18 item number 4 --

19 CHAIRPERSON YOUNG: Correct.

20 MS. De WITT-MOYLAN: -- I will speak on
21 item number 6, thank you.

22 AUDIENCE SPEAKER: Mr. Chairman, I would
23 like to do the same. I was going to speak for Mr.
24 Wilkerson on item 4. Can you move that to item 6?

25 CHAIRPERSON YOUNG: Why don't we move on

1 to our first agenda item, number 3.

2 Yes, Dr. Bowker?

3 (Pause.)

4 CHAIRPERSON YOUNG: Folks, both Drs.
5 Hunter and Bowker have not recused themselves from
6 this particular agenda item. The reason being
7 it's fairly specific in nature; it has to do with
8 a specific appeal of staff's decision regarding a
9 bathroom.

10 And I think our attorney felt that there
11 really was no issue involved with bias or
12 conflict. And certainly if either one of them
13 felt that they should recuse themselves, a Board
14 Member always has that opportunity to do so. I
15 didn't think there was any issue. And I think
16 they have both decided to go ahead and
17 participate.

18 So that's why they're here for agenda
19 item 3. But they will not participate with the
20 Board's deliberation on 4, 5 or 6.

21 Okay. Anything else that I should
22 address before we continue on? Okay.

23 MR. THOMAS: Item number 3 is the
24 Lawrence Bishop property in Los Osos. This is
25 Board consideration of an appeal by Lawrence

1 Bishop regarding staff's determination to deny
2 rebuild credit for an unpermitted existing
3 bathroom. And making the presentation will be
4 Allison Dominguez.

5 MS. DOMINGUEZ: Good morning, Chairman
6 Young and Members of the Board. I'm Allison
7 Dominguez. I would like to begin item 3 with a
8 general summary of the item.

9 Lawrence and Kathleen Bishop own, but do
10 not reside, at 1220 Santa Ysabel Street in Los
11 Osos. It's a single family residence that is
12 located in the prohibition zone.

13 On December 27, 2006, Lawrence Bishop
14 requested authorization from the Central Coast
15 Water Board to allow credit of an unpermitted
16 existing garage bathroom towards installation of
17 an equivalent bathroom in a house he rebuilt on
18 the site.

19 Staff denied the request in a letter
20 dated January 22, 2007. At the Board meeting held
21 on March 23rd of this year, Mr. Bishop spoke
22 during public comment and requested the Water
23 Board hear his request for authorization of the
24 unpermitted bathroom. The Board agreed to hear
25 his case.

1 The staff report for this item clearly
2 outlines staff's position on the item. Resolution
3 8313 prohibits the discharge of all wastes from
4 onsite systems. The current residence contains
5 only one legal bathroom; and only one legal
6 bathroom should be permitted in the rebuilt house.

7 I recommend that the Board concur with
8 staff's interpretation of the basin plan
9 prohibition which does not allow credit for the
10 unpermitted bathroom in the newly rebuilt house at
11 1220 Santa Ysabel, Los Osos.

12 I'm available for questions on this item
13 or anything else contained in the staff report.
14 Thank you.

15 CHAIRPERSON YOUNG: Dr. Press.

16 BOARD MEMBER PRESS: Thank you. The
17 unpermitted bathroom has been functional, right?

18 MS. DOMINGUEZ: Correct.

19 BOARD MEMBER PRESS: And has been in
20 use, presumably?

21 MS. DOMINGUEZ: It is functional, so
22 presumably, yes.

23 BOARD MEMBER PRESS: Okay. And the
24 County calls it legal nonconforming?

25 MS. DOMINGUEZ: If it was built prior to

1 1959, it was --

2 BOARD MEMBER PRESS: But the County
3 hasn't made Mr. Bishop take it out or unhook it?

4 MS. DOMINGUEZ: Correct.

5 BOARD MEMBER PRESS: Okay, thank you.

6 CHAIRPERSON YOUNG: Is the County going
7 to permit it as part of a plan? I mean, have they
8 accepted the plans and are just waiting for the
9 Water Board to decide whether --

10 MS. DOMINGUEZ: If it was located
11 anywhere else within the County they would allow
12 another bathroom to be permitted in a house. But
13 based on the fact that it's located in the
14 prohibition zone, they do not permit it until we
15 have concurred that it's acceptable.

16 CHAIRPERSON YOUNG: So the County's made
17 no decision?

18 MS. DOMINGUEZ: Correct.

19 CHAIRPERSON YOUNG: And if this was not
20 in Los Osos they would not?

21 MS. DOMINGUEZ: Based on the fact that
22 the septic could allow for an additional bathroom,
23 that it would be designed properly to accept that.

24 So, if there was no problem for the
25 house to have two bathrooms contained within it,

1 and the septic tank was designed for two bathroom,
2 it would be acceptable.

3 CHAIRPERSON YOUNG: Okay. Any other
4 Board questions? Mr. Hayashi.

5 BOARD MEMBER HAYASHI: So the septic
6 tank is not designed for two bathrooms?

7 MS. DOMINGUEZ: I actually do not know
8 the exact amount, or the tank size for the
9 property. But presumably it would be one
10 bathroom, the standard tank could accept two
11 bathrooms.

12 BOARD MEMBER HAYASHI: But it says here
13 the County considers it legal, or legal
14 nonconforming. Was it installed before 1959?

15 MS. DOMINGUEZ: The County has evaluated
16 the bathroom, and based on the style that it was
17 installed and the use -- or the stuff that was
18 installed within the bathroom was built in about
19 the 1970s is what they guesstimate it to be.

20 BOARD MEMBER HAYASHI: That's based on
21 the fixtures, right?

22 MS. DOMINGUEZ: Yes, --

23 BOARD MEMBER HAYASHI: I mean if it was
24 built in '59 to 1970, that's what, 11 years. So,
25 what could the odds of it being changed from an

1 old style, older water closet to a new one?

2 MS. DOMINGUEZ: Presumably that's hard
3 to determine.

4 BOARD MEMBER HAYASHI: So we cannot
5 determine for sure if it was built before '59 or
6 not?

7 MS. DOMINGUEZ: Based on what the County
8 has said it was built in the -- the current
9 bathroom that's there was in the 1970s, but it
10 could have been a replacement of a previous
11 bathroom.

12 BOARD MEMBER HAYASHI: Yeah. When was
13 the --

14 MR. BISHOP: Can I answer that question?

15 BOARD MEMBER HAYASHI: When was the
16 garage built?

17 MS. DOMINGUEZ: Right. Go ahead.

18 MR. BISHOP: I have been trying to
19 research this for quite awhile. The garage was
20 built in 1958 --

21 BOARD MEMBER SHALLCROSS: Can you say
22 who you are? Can you state your name, please.

23 MR. BISHOP: Oh, I'm sorry. I'm Larry
24 Bishop --

25 MR. THOMAS: Mr. Bishop, is your

1 microphone on?

2 MR. BISHOP: I turned it on to -- can
3 you hear me?

4 MR. THOMAS: Do you have a green light
5 there?

6 MR. BISHOP: There's a green light.
7 Okay. Larry Bishop, Los Osos.

8 I have been trying to research when this
9 bathroom was put in. The garage was built in
10 1958; the bathroom and a bedroom was in the garage
11 at that -- some time. The house was built in 1973
12 or '74.

13 And I have been unable to go back
14 through County records to find out if there was
15 ever a septic tank put in, or anything put in
16 prior to '73. So I can't prove that the bathroom
17 was there and remodeled; and I can't prove that it
18 wasn't there.

19 CHAIRPERSON YOUNG: When did you buy the
20 property?

21 MR. BISHOP: I bought the property two
22 years ago. And the person I bought it from is the
23 one that built the house in '74. But he has
24 dementia and has no clue what we're asking him.

25 BOARD MEMBER HAYASHI: Is there any

1 record in the title search or the -- about an
2 unpermitted bathroom?

3 MR. BISHOP: When I went through title
4 searching they only have on the computer back to
5 1990. And I was able to get back to 1972 through
6 all the searches, but I couldn't find anything
7 prior to that. And that was the date that the
8 previous owner bought the property.

9 BOARD MEMBER HAYASHI: So, the garage is
10 permitted?

11 MR. BISHOP: The garage is unpermitted.

12 BOARD MEMBER HAYASHI: It's not
13 permitted.

14 MR. BISHOP: Because it was built prior
15 to 1959.

16 CHAIRPERSON YOUNG: And the garage is
17 then --

18 BOARD MEMBER HAYASHI: So it was before
19 '59, it would not have been subject to a permit.

20 MR. BISHOP: That's correct.

21 CHAIRPERSON YOUNG: How were you able to
22 purchase a piece of property with an unpermitted
23 garage on the property? I don't understand that.
24 Doesn't the County have a mechanism?

25 MR. BISHOP: Well, if you -- you go

1 through a purchase procedures. If you disclose
2 anything that's wrong with the property during
3 that time of sale, it becomes a legal sale.

4 I have a document that's signed that the
5 bathroom and the garage was unpermitted. It was
6 signed by a lawyer for the seller. And on that
7 document it said that no permits were required at
8 the time.

9 Now, I can prove that the lawyer's
10 statement is wrong. That in '73 permits would
11 have been required. But, the document doesn't say
12 when the bathroom was put in or -- it just says it
13 was unpermitted.

14 CHAIRPERSON YOUNG: How have you been
15 using this bathroom since your purchase of the
16 property?

17 MR. BISHOP: Well, I've had the inside
18 of the house rented out, and I've been using the
19 garage for a workshop. So I've been using the
20 bathroom for the last two years.

21 CHAIRPERSON YOUNG: Sporadically?

22 MR. BISHOP: Yes.

23 CHAIRPERSON YOUNG: I mean no one's
24 living in the garage, I take it?

25 MR. BISHOP: Nobody's living in the

1 garage. Actually it's dangerous to live in the
2 garage because of all the other unpermitted stuff
3 that was done to the house.

4 I'm actually trying to bring the house
5 up to code. The safest way to do it is bulldoze
6 it and rebuild it.

7 CHAIRPERSON YOUNG: Right. See, the
8 concern I have, and I'm trying to look for some
9 leeway here, with something like this, is that the
10 prohibition speaks to not allowing any, you know,
11 increase in discharge.

12 And if you're using it in kind of a
13 sporadic level right now, certainly by getting it
14 permitted, bring it into the context of the full
15 residence, means it's going to be used, I would
16 assume, all the time.

17 Wouldn't that amount to an increase in
18 the flow of discharge?

19 MR. BISHOP: If we're having two people
20 live in the house, and we have two bathrooms, the
21 only thing it's going to do is make convenience.
22 It's not going to increase the amount of
23 discharge.

24 CHAIRPERSON YOUNG: Are you going to be
25 living there or renting?

1 MR. BISHOP: We're going to be renting.
2 We're going to be tearing it down and living
3 there.

4 CHAIRPERSON YOUNG: I see.

5 BOARD MEMBER PRESS: Mr. Chair.

6 CHAIRPERSON YOUNG: Yes.

7 BOARD MEMBER PRESS: I assume that the
8 facilities in the garage are probably not of the
9 most recent date, right? So, I imagine you don't
10 have a low-flow toilet in the garage, or low-flow
11 fixtures and so on?

12 MR. BISHOP: That's correct. All the
13 fixtures, the toilet, the shower, everything is
14 from '73.

15 BOARD MEMBER PRESS: Right, okay. So,
16 my sense is that this remodel is actually going to
17 bring things up to a much better standard. I
18 really don't see any reason why we have to deny
19 this. I just think that that's just ridiculous.

20 You had a situation where two bathrooms
21 were being used on the property. You're not
22 talking about having a fourplex in there with a
23 whole bunch of people. I just don't see it. I
24 think that it's not an improvement for water
25 quality, it's not necessary to be needlessly rigid

1 here.

2 CHAIRPERSON YOUNG: Okay. Mr.
3 Shallcross.

4 BOARD MEMBER SHALLCROSS: Yeah, just a
5 couple things. Is the bathroom in the new house
6 going to be in the garage?

7 MR. BISHOP: No, it's not. The two new
8 bathrooms are going to be in the bedrooms.

9 BOARD MEMBER SHALLCROSS: And how many
10 bedrooms are currently in the house?

11 MR. BISHOP: It's a two bedroom house
12 right now.

13 BOARD MEMBER SHALLCROSS: And how many
14 bedrooms are going to be in the new house?

15 MR. BISHOP: It will be a two bedroom
16 house.

17 BOARD MEMBER SHALLCROSS: Okay.

18 BOARD MEMBER HAYASHI: One last
19 question.

20 CHAIRPERSON YOUNG: Yes.

21 BOARD MEMBER HAYASHI: The new bathroom
22 is put in, the current bathroom in the house --

23 MR. BISHOP: There's one bathroom
24 permitted in the house now, and one unpermitted
25 bathroom.

1 BOARD MEMBER HAYASHI: And the other one
2 we have to assume is before '59 when permits
3 weren't required. So therefore, at that point it
4 would be legal. Does that make sense to you?

5 MR. BISHOP: If I could prove to you
6 without a shadow of a doubt that it was put in
7 '59, I would be here doing that.

8 BOARD MEMBER HAYASHI: All right, that's
9 all I needed.

10 CHAIRPERSON YOUNG: Mr. Thomas.

11 MR. THOMAS: Mr. Chairman, I just wanted
12 to point out that a few minutes ago you said that
13 increasing discharges would be illegal.

14 CHAIRPERSON YOUNG: Correct.

15 MR. THOMAS: That is true. It is also
16 true that the existing discharge is illegal.

17 CHAIRPERSON YOUNG: The problem with
18 that garage --

19 BOARD MEMBER PRESS: Because the
20 septic --

21 CHAIRPERSON YOUNG: -- from the septic
22 tank, itself, --

23 BOARD MEMBER SHALLCROSS: The septic
24 tank prohibition --

25 CHAIRPERSON YOUNG: Well, sure, right.

1 BOARD MEMBER SHALLCROSS: Mr. Chairman.

2 CHAIRPERSON YOUNG: Yes.

3 BOARD MEMBER SHALLCROSS: Can I ask our
4 counsel if we -- the claim and just go ahead and
5 grant this, that this in no way affects the
6 legality of the discharge.

7 MR. RICHARDS: That's correct. If the
8 property is within the prohibition zone the
9 discharge is prohibited; has been since 1988. And
10 allowing Mr. Bishop to replace one permitted
11 bathroom and one unpermitted bathroom, both of
12 which are discharging illegally, with two
13 permitted bathrooms, which will be discharging
14 illegally, is not going to change the status.
15 That is outside of this particular consideration.

16 BOARD MEMBER SHALLCROSS: Yeah, but
17 basically I just wanted to forestall any argument
18 that since we permitted, if we do permit this
19 bathroom, that somehow it takes it outside of the
20 basin plan, that we've somehow made that discharge
21 legal. So, thank you.

22 CHAIRPERSON YOUNG: Okay. Why don't we
23 hear from our public speakers on this. Did you
24 have anything else, Mr. Bishop, that you just
25 wanted to add. You've got time to do that. Do

1 you want to present anything?

2 MR. BISHOP: I have time to do that. I
3 would just like to add one more thing, --

4 CHAIRPERSON YOUNG: Sure.

5 MR. BISHOP: -- and I won't go through
6 my whole summary here.

7 CHAIRPERSON YOUNG: Well, take the time
8 you want.

9 MR. BISHOP: In the attachment number
10 one, the County wrote to Roger Briggs clarifying
11 the building moratorium. And the letter does not
12 refer to fixtures as being permitted or
13 unpermitted during that reference. It does
14 represent existing fixtures, fixture-for-fixture.

15 The attachment number two, a letter from
16 Roger Briggs to the County, provides further
17 clarification. The document provides explanation
18 for exemptions to it. I'm not asking for an
19 exemption; I'm asking fixture-for-fixture.

20 Now, if you notice that in item number
21 one indicates a building permit. Then it says,
22 or, item number two refers to a project, will not
23 generate new or increased waste discharge; and
24 item three is another or, that the project will
25 result in water quality.

1 And I am taking out a leach pit and
2 putting in a leach field. And reducing the
3 present bathrooms that were built in '70 to low
4 flow. So I'm improving water quality.

5 So even though I'm not asking for an
6 exemption, Roger Briggs' letter says that I have
7 the right to an exception. But I am only asking
8 for fixture-for-fixture.

9 Thank you.

10 CHAIRPERSON YOUNG: Anything else?

11 MR. BISHOP: That's all.

12 CHAIRPERSON YOUNG: Okay.

13 MR. BISHOP: Appreciate your help and
14 your time.

15 CHAIRPERSON YOUNG: Okay. Why don't we
16 move to our comment cards; then the Board can kind
17 of discuss what to do.

18 We're going to have people spell their
19 names. Will that kind of help you?

20 REPORTER: That would help, yes, thank
21 you.

22 CHAIRPERSON YOUNG: Okay. Let's start
23 with Mr. Shipe, Ms. McPherson, Mr. Duggan. That's
24 all I have for this one.

25 If you could spell your name for the

1 reporter, that would be helpful to him.

2 MR. SHIPE: Rob Shipe, R-o-b S-h-i-p, as
3 in Peter, -e. Resident of Los Osos.

4 CHAIRPERSON YOUNG: There we go.

5 MR. SHIPE: Okay. I'll go ahead and
6 keep it brief. Rob Shipe of Los Osos. I just
7 wanted to speak on Mr. Bishop's behalf.

8 Mr. Bishop -- I just wanted to make sure
9 all of you understood that Mr. Bishop was vitally
10 important to the whole settlement process that we
11 went through previously. And he's a very
12 reasonable man and I believe he's making a very
13 reasonable request. And I ask that it be granted.
14 Thank you.

15 CHAIRPERSON YOUNG: Okay. Gail
16 McPherson.

17 MS. MCPHERSON: Gail McPherson,
18 M-c-P-h-e-r-s-o-n. I live in Los Osos. I'm
19 commenting on Mr. Bishop's request.

20 I don't think that there should be any
21 special treatment because somebody has signed a
22 settlement agreement. And I think that's probably
23 a bad idea.

24 But I do believe that there's 375
25 gallons per day of discharge assumed from many of

1 the residents in Los Osos. I think that the
2 randomly selected CDO recipient, Mr. Bishop, was
3 very unfortunate to be pulled out of the bingo, or
4 the lotto, bag in 2006.

5 But I believe that his concern about his
6 property being a fixture-for-fixture, and not as a
7 special exemption, ought to be considered. He is
8 already hooking -- agreeing to hook up to a sewer
9 when it becomes available, as provided in his
10 cleanup and abatement order. He's already paying
11 assessments on two properties for a sewer. And
12 he's already demonstrated that he's going to be
13 improving the property; he's not just simply
14 renting it out and letting people flush.

15 And I think based on the fact that the
16 allowance at 375 gallons per day for property, and
17 a septic system is going to be improved in the
18 interim, is probably sufficient to allow him to
19 have that, not exemption, but fixture-for-fixture
20 approval.

21 Thank you very much.

22 CHAIRPERSON YOUNG: Thank you for your
23 comments. Mr. Duggan.

24 MR. DUGGAN: Dave Duggan, Los Osos.
25 (inaudible). I don't approve of you approving

1 this. Why? Because what has not been mentioned
2 here is that there is a level three severity
3 rating in Los Osos for water. He'll be drawing
4 extra water from the basin. It will be degrading
5 the lower aquifer by creating more draw and we'll
6 have more seawater intrusion.

7 The more of these that are allowed that
8 will keep coming to you after this, and I'm sure
9 they're in there, the more will be drawn from the
10 lower aquifer.

11 As well as, my conversation with people
12 from the County, they're not going to permit this,
13 regardless of what you do. And I think this is a
14 waste of time. As well as, you're going out of
15 your way to treat this person differently after
16 the settlement. Why did he not come to you before
17 that? Seems to me that he's getting special
18 treatment because after the settlement agreement
19 was signed, and it was just brought up by Mr.
20 Sato, that that should be considered. No.

21 So I don't believe that this should be
22 approved. First, on the basis that it is an
23 illegal fixture, a bathroom not approved by the
24 County. We are in severity three rating with
25 seawater intrusion, which this will exacerbate.

1 And if you look at the circumstances
2 there's a lot of well, maybe, well, it could have
3 been before a certain time, or a certain date. We
4 need to work on facts here. When was it in place?
5 How many people are using it now? How many people
6 have been using it? And how many people are going
7 to use it afterwards? Is this going to be an
8 increase? It might be an increase of discharge
9 from what it is now.

10 So, I don't believe that this should be
11 granted. Thank you.

12 CHAIRPERSON YOUNG: Thank you, Mr.
13 Duggan.

14 MR. BISHOP: Mr. Chairman.

15 CHAIRPERSON YOUNG: Yes.

16 MR. BISHOP: May I clarify something?

17 CHAIRPERSON YOUNG: Sure, go ahead.

18 MR. BISHOP: Reference has been made to
19 a settlement. The settlement is not on this
20 property. The only thing that's against this
21 property is the notice of violation. I have not
22 brought up anything to do with the settlement; I
23 am not asking for any special treatment because of
24 that. I'm just one of the unfortunate to own two
25 pieces of property, and one getting hit.

1 Thank you.

2 CHAIRPERSON YOUNG: Okay. I have no
3 more speaker cards. Mr. Packard.

4 MR. PACKARD: May I make a few comments
5 in response?

6 CHAIRPERSON YOUNG: Of course.

7 MR. PACKARD: A couple things. The
8 County implements the basic plan prohibition in
9 the form of a building moratorium. So, since 1988
10 the County has not issued permits for any
11 construction or remodeling that would increase the
12 amount of flow into septic systems.

13 And they've used as a basis for that
14 counting fixtures as legally permitted fixture
15 units, or bathrooms or kitchens or whatever.

16 So staff doesn't necessarily have a
17 preference which way you go here, but recognize
18 that this will be a change in the way the County
19 and the Regional Board deals with these types of
20 requests. It may affect past and future
21 applicants.

22 Also, the County does not require low-
23 flow fixtures. It's my understanding there's no
24 requirement. So I would ask that if you do
25 approve this you condition that low-flow fixtures

1 be installed.

2 Also Mr. Bishop mentioned that the
3 settlement agreement he signed does not cover this
4 property. We would ask that you condition any
5 approval on Mr. Bishop entering into a settlement
6 agreement for this new property. Or we will
7 propose that we'll issue a cleanup and abatement
8 order before approving the construction of the new
9 house. That's it.

10 CHAIRPERSON YOUNG: That's an
11 interesting wrinkle.

12 MR. PACKARD: Actually, I will add that
13 in past approvals that staff has made for fixture
14 credits and new construction which replaces
15 existing construction, we've always required, as a
16 condition of approval, that they agree to hook up
17 to a sewer as soon as it's available.

18 So requiring a settlement agreement or a
19 cleanup order here would be nothing new as far as
20 we're concerned.

21 CHAIRPERSON YOUNG: John, can we make
22 that a condition?

23 MR. RICHARDS: You certainly could, yes.
24 I mean you should ask Mr. Bishop if he's willing
25 to accept that condition. But, you can certainly

1 make that a condition of your approval.

2 CHAIRPERSON YOUNG: But, of course,
3 staff issues those; the Board doesn't. CAOs.

4 MR. RICHARDS: Well, there is a
5 settlement agreement that the Board has approved.

6 CHAIRPERSON YOUNG: Right.

7 MR. RICHARDS: And if Mr. Bishop were
8 willing to sign that settlement agreement as a
9 condition of receiving this approval from the
10 Board, then that would be acceptable. It would be
11 equally permissible for the Board to craft a
12 condition that was substantially similar to that
13 as Mr. Packard has indicated, if the Board
14 requires that he hook up to the sewer.

15 CHAIRPERSON YOUNG: Any other Board
16 comments? Mr. Jeffries.

17 VICE CHAIRPERSON JEFFRIES: Thank you,
18 Mr. Chairman. Mr. Bishop, you have said that you
19 have two pieces of property in Los Osos. Do you
20 live on the other one now?

21 MR. BISHOP: Yes, I do.

22 VICE CHAIRPERSON JEFFRIES: And you're
23 planning on demolishing this building that's in
24 question today? It was up on the screen.

25 MR. BISHOP: We're going to demolish

1 that building and build a new house.

2 VICE CHAIRPERSON JEFFRIES: And so you
3 want to have, when you build the new building you
4 want to incorporate two legal bathrooms, that's
5 what you're asking for?

6 MR. BISHOP: I would like to bring the
7 entire house up to code.

8 VICE CHAIRPERSON JEFFRIES: And that's
9 being done --

10 MR. BISHOP: That would include two
11 bathrooms.

12 VICE CHAIRPERSON JEFFRIES: --
13 demolition. Are you going to sell your other
14 residence, or are you going to rent it out?

15 MR. BISHOP: I'm going to sell the other
16 residence. That is the residence that has the
17 settlement agreement against it.

18 VICE CHAIRPERSON JEFFRIES: Yeah, I
19 understand. My only concern is that, you know,
20 you may change your mind; you might decide to sell
21 the one that you're going to reconstruct with the
22 two -- if it's approved -- with the two bathrooms,
23 which might increase the discharge. I know your
24 indication has said that you're going to live in
25 it with your family.

1 Historically this Board has taken the
2 position, since the prohibition zone has been in
3 place, that we would not approve any increases in
4 discharges. This is kind of halfway in between,
5 because the bathroom has been there, whether it's
6 been legal or illegal. It's been there; it's been
7 operating.

8 I really don't know if it's going to
9 cause an increase. But my thoughts are that you
10 could build this and turn around and sell it, with
11 the two bathrooms, which we could have an increase
12 because the new owners would have a larger family
13 than you do. And we'd have an increase in
14 discharge.

15 My other question would be, with this
16 decision we're making something that was illegal
17 legal. And is that accepting in the future? Are
18 we setting a precedence that others in the
19 community might have the same situation and all of
20 a sudden we get a rash of appeals to make all
21 these other illegal restrooms, bathrooms, fixtures
22 legal.

23 And then the argument's going to be the
24 same that we've set a precedence and we'd be
25 caught in a big quandary of why did we do the

1 first one.

2 So, Mr. Richards, I have a question for
3 you. And I think you kind of answered this
4 before, but I was reading some of the item, and I
5 didn't really catch the total. I think Mr.
6 Shallcross was asking -- maybe I'll rephrase the
7 question.

8 If we agree to do this, and agree to the
9 appeal, then we're accepting an illegal facilities
10 to be legal. And we're accepting that the
11 possibility of increased discharge could happen.
12 Then, we, in my interpretation, would be in
13 violation of our own prohibition of discharge.
14 We're authorizing a discharge that's not legal at
15 this present time, to be legal.

16 Then are we also saying that the
17 prohibition is now legal because of that
18 authorization? I know it's two different issues,
19 but it all comes together in one.

20 Do you understand my question, Mr.
21 Richards?

22 MR. RICHARDS: Yeah, I understand your
23 question. Or at least I understand the quandary
24 that you're struggling with. And I'm not -- I'm
25 struggling with a way to answer your question.

1 First of all, to the extent that any
2 discharge from the subject property, the one we're
3 talking about here, is happening today within the
4 prohibition zone, it is a violation of the
5 prohibition, of the basin plan prohibition.

6 There are -- if I understood the
7 testimony correctly, there are two people living
8 in the house now. And Mr. Bishop uses the garage
9 as a shop. There are now discharges occurring as
10 a result of three persons using the house, two
11 residing there and one using the shop.

12 The Board would not be approving, if it
13 grants Mr. Bishop's appeal, the Board would not be
14 approving the discharge. And, in fact, if the
15 Board grants the appeal and Mr. Bishop remodels
16 the house with two bathrooms, any discharges to
17 the septic system would remain violations of the
18 basin plan prohibition.

19 VICE CHAIRPERSON JEFFRIES: That I
20 caught from --

21 MR. RICHARDS: And should the Board, at
22 some point, impose liability upon persons who are
23 violating the basin plan prohibition, then the
24 fact that they had approved this appeal would not
25 alter the status of the discharges as being in

1 violation.

2 VICE CHAIRPERSON JEFFRIES: I understand
3 what you're saying, but it's hard for me to
4 compute, because something that's illegal is
5 illegal to me. And to make it legal it kind of
6 changes the position of the discharge, in my own
7 interpretation.

8 MR. RICHARDS: I guess what it comes
9 down to is it's a -- I mean discharges in Los
10 Osos, all the discharges in Los Osos have been
11 illegal since 1988.

12 VICE CHAIRPERSON JEFFRIES: Yes, I
13 understand that. But now we're --

14 MR. RICHARDS: The question is, and yet
15 the Board has condoned, actually, during that
16 period of time, the building of a certain number
17 of houses and the remodeling of other houses
18 provided that the level of discharge, the level of
19 waste loading did not increase.

20 Now, Mr. Bishop is here before you
21 asking that you consider his appeal on that basis.
22 And if you are convinced that the level of
23 discharge in the Los Osos prohibition area is
24 going to increase as a result of this remodeling
25 activity, then you should deny his appeal.

1 If you're satisfied that the remodeling
2 project that he's proposing will not result in an
3 increase in the discharge within the basin, then
4 you would be in a position to consider it and
5 approve it, if you felt that was appropriate.

6 But approving a change in an illegal
7 discharge to be another form of an illegal
8 discharge is -- I mean, it's still an illegal
9 discharge.

10 MR. BISHOP: Mr. Chairman.

11 CHAIRPERSON YOUNG: Yes.

12 MR. BISHOP: If I could answer Mr.
13 Jeffries' question --

14 CHAIRPERSON YOUNG: Go ahead.

15 MR. BISHOP: When I applied for the
16 permit they gave me this covenant and agreement
17 restriction for use of property, which I must sign
18 and have recorded against my deed, that I will not
19 add bathrooms or bedrooms to this facility. So
20 this is the restriction that will be applied later
21 on to prevent -- and this goes with the deed so
22 future people cannot add bedrooms or bathrooms.

23 The reason I did not provide this to the
24 Board earlier is because in the last month it's
25 already been changed three times. And it's part

1 of what I have been trying to do, is get it to
2 become a legal document, because they wanted me to
3 sign this saying I completed the project before
4 they would give me a building permit. And I
5 didn't think I could perjure myself in that sense.

6 This is the document that will be on the
7 deed preventing any further stuff.

8 And I would like to just put a food for
9 thought about signing the settlement. If you
10 require me to sign a settlement it may be
11 interpreted later on that I was agreeing to settle
12 in order to get the bathroom. And I would not
13 want that type of statement to be put on this.

14 I have no question about signing the
15 settlement, but I don't really feel that if you
16 require it, it could come back later and say,
17 well, he signed the settlement; I want to have a
18 bathroom, I'll sign the settlement. I'd like it
19 to stand on its own merit. Thanks.

20 CHAIRPERSON YOUNG: Okay. Hang on, Dr.
21 Press. Dr. Hunter, are you sure you want to weigh
22 in on this?

23 BOARD MEMBER HUNTER: Yes, I do. Thank
24 you. I just would like to suggest that we look at
25 the broader situation. I think, Mr. Jeffries, you

1 raised a consideration that there may be many
2 unpermitted bathrooms that were built prior to, or
3 at least in the '50s. And that these are being
4 used currently and that we may see requests
5 similar to what we see here with Bishop's.

6 But I think, you know, I would like to
7 look at this in terms of the role that the Water
8 Board has to play in helping to shape the
9 transition. I think these bathrooms are being
10 used. There are many impacts of these bathrooms.
11 But ultimately they need to be upgraded.
12 Ultimately we need to see the kinds of changes
13 that help to improve the situation in Los Osos.

14 Certainly low-flow and upgraded fixtures
15 are one of those elements which Mr. Bishop is
16 committing to. What I think also, I haven't heard
17 anybody else mention, he's got a leach pit. And
18 he's in an area that is close to the Bay. I think
19 moving to a leach field is another improvement
20 that he's willing to put into place at a cost and
21 at a time when he is also going to be facing the
22 transition to hook up to the sewer collection
23 system.

24 So, I think, you know, the interim time
25 of six -- I won't guess how many years -- how many

1 years it will be before there is a hook-up
2 available for him, in the interim we have the
3 opportunity to see at least one more home shift to
4 a system that we know works a little more
5 efficiently and has less of an impact on the
6 groundwater.

7 So, for those reasons I would like to
8 consider that although there may be illegal
9 bathrooms, and we may see more people coming
10 forward as this decision, the implications of this
11 decision are better known in the community, I
12 still believe that the Water Board has a role to
13 play encouraging the current situation to move
14 forward, even if it's incremental.

15 CHAIRPERSON YOUNG: Thank you. Dr.
16 Bowker.

17 BOARD MEMBER BOWKER: Having purchased
18 two homes in Los Osos, many times when you
19 purchase a home you don't know whether your
20 bathroom is legal or not. You're just buying a
21 home.

22 And I think there's a fundamental
23 difference between purchasing a home with a
24 bathroom that turns out later to be unpermitted,
25 versus putting in your own unpermitted bathroom.

1 So it's a timing event.

2 So, the second part is if you do nothing
3 then you've got two bathrooms and a leach bed.
4 But if you grant this, then you have two low-flow
5 bathrooms and a leach field.

6 So, bottomline is you're going to draw
7 up less water, and given the way water bills are
8 going, you're going to save money.

9 CHAIRPERSON YOUNG: I think that that
10 raises kind of a good point. What's the flow rate
11 on the existing two fixtures? Are they the same
12 types of toilets? The two toilets that you've got
13 in there.

14 MR. BISHOP: The fixtures that are in
15 there are from 1973. So, that's what, I think
16 five or six gallons per flush.

17 CHAIRPERSON YOUNG: Okay, --

18 MR. BISHOP: -- compared to what a new
19 one would be; it would be either 1.6 or --

20 CHAIRPERSON YOUNG: Okay.

21 MR. BISHOP: And then showerheads would
22 be full force compared to low-flow for
23 showerheads.

24 CHAIRPERSON YOUNG: Okay. Well, right
25 there that makes sense. If you go to low-flow

1 versus the existing situation. Well, but how
2 often is the sporadic one, the one in the garage,
3 used? Is it like once a week, once every other
4 week?

5 MR. BISHOP: I'm getting to that age I
6 use it a lot more than I should.

7 (Laughter.)

8 CHAIRPERSON YOUNG: When you're in your
9 shop, huh? What about, are there two people
10 living there now that you're renting to?

11 MR. BISHOP: Right now the house is
12 empty because we already have the building permit
13 in hand and we're --

14 CHAIRPERSON YOUNG: Okay.

15 MR. BISHOP: -- to tear down the house.

16 CHAIRPERSON YOUNG: All right. How
17 many, since you bought it in 2004, at that time
18 how many people were renting?

19 MR. BISHOP: We had one person in the
20 house, because since 2004 we've been trying to
21 tear the house down.

22 CHAIRPERSON YOUNG: I see. And how many
23 people will be living there once it is rebuilt?

24 MR. BISHOP: There'll be two of us.

25 CHAIRPERSON YOUNG: Well, Russ, just

1 looking at the numbers there, you know, my issue
2 is not to increase waste discharge. That's where
3 I see the --

4 VICE CHAIRPERSON JEFFRIES: Well, my --

5 CHAIRPERSON YOUNG: -- the only
6 stumbling block here.

7 VICE CHAIRPERSON JEFFRIES: -- Mr.

8 Chair, my question was going to be, because I've
9 heard some, I think Mr. Packard alluded to -- my
10 understanding of what you said, Mr. Packard, was
11 there's no requirement in San Luis Obispo County
12 to have low-flow fixtures?

13 AUDIENCE SPEAKER: Yes, there is.

14 AUDIENCE SPEAKER: Yes, there is.

15 MR. PACKARD: That's my understanding.

16 I believe they're talking about making it a
17 requirement now. I've heard that there is no
18 current requirement.

19 VICE CHAIRPERSON JEFFRIES: Mr. Bishop,
20 then I will ask you, the requirements of the
21 building permit, does it specify what type of
22 fixtures that you have in your new facilities?

23 MR. BISHOP: I cannot tell you about
24 that. I had the architect design and put it all
25 in. I know that the bathrooms went in as low-

1 flow. And that's the approved fixtures that went
2 in during their calculations of energy and
3 conservation. That they handled all of that.

4 CHAIRPERSON YOUNG: We can just make it
5 a condition of --

6 VICE CHAIRPERSON JEFFRIES: Well, that's
7 a possibility.

8 CHAIRPERSON YOUNG: Yeah.

9 VICE CHAIRPERSON JEFFRIES: My other
10 question, Mr. Bishop, is are you going to build
11 this regardless?

12 MR. BISHOP: Yes. And even though
13 I've -- with the Board, the second bathroom will
14 be plumbed in. And as soon as we connect to the
15 sewer I will be able to get the permit and put it
16 in. So the house is going to be built.

17 CHAIRPERSON YOUNG: Dr. Press.

18 BOARD MEMBER PRESS: Well, we could
19 discuss hypotheticals all day. We could deny; he
20 could decide not to build; he could rent; he could
21 rent to people who would have a larger family; he
22 could rent to students. In Santa Cruz a garage
23 with a bathroom goes for, you know, 950 a month,
24 and so on.

25 So, in my view there's a clear benefit

1 to water quality. I would move to condition our
2 approval on Mr. Bishop's agreement to certify that
3 he'll put in low-flow fixtures. And that's it.

4 BOARD MEMBER HAYASHI: I second.

5 CHAIRPERSON YOUNG: You second it, Mr.
6 Hayashi?

7 BOARD MEMBER HAYASHI: Yes.

8 BOARD MEMBER SHALLCROSS: Can I just --

9 CHAIRPERSON YOUNG: Of course, Mr.
10 Shallcross.

11 BOARD MEMBER SHALLCROSS: I think we're
12 getting a little off, also, on whether or not the
13 bathroom is legal or not. That's a County issue.
14 We don't legalize bathrooms.

15 I think we should stick to what we do,
16 which is deal with water, water quality. And it
17 sounds like this is going to improve it by any
18 means. How many people move in is really
19 irrelevant. People move into houses all over the
20 prohibition zone. Two people move out, four may
21 move in. We have no control over that.

22 It sounds like he's doing the right
23 thing. I'm not too worried about a big rash of
24 others. We'll deal with those on a case-by-case
25 basis.

1 I did want to ask, Mr. Packard, what was
2 the language that you included in other folks' --
3 there was some language I think you said where
4 they agreed to hook up to a sewer.

5 I also don't want to get into having him
6 sign the settlement agreement. I think that
7 confuses the two issues. But if other folks are
8 required to abide by a condition to hook up to a
9 sewer as soon as it's available, I don't think
10 that's too much. Is that -- was that what

11 MR. PACKARD: Well, typically what we've
12 done is just make that a condition in a letter
13 that we'll issue to either the County or the
14 homeowner. It's not a very enforceable way of
15 doing it.

16 BOARD MEMBER SHALLCROSS: Okay, well,
17 then --

18 MR. PACKARD: Even if Mr. Bishop prefers
19 not to sign a settlement agreement, we have a
20 cease and desist -- or a cleanup and abatement
21 order draft that staff could issue unilaterally
22 that would take care of it.

23 BOARD MEMBER SHALLCROSS: I think I'm
24 ready to vote for it.

25 CHAIRPERSON YOUNG: Any other Board

1 comments or questions?

2 Okay, we have a motion. We've got a
3 second.

4 MR. RICHARDS: Who seconded it?

5 CHAIRPERSON YOUNG: Mr. Hayashi did.

6 MR. RICHARDS: Press made it and --

7 BOARD MEMBER SHALLCROSS: Yeah, Hayashi
8 seconded it.

9 MR. RICHARDS: -- Hayashi seconded it.

10 CHAIRPERSON YOUNG: Okay.

11 All those in favor of the motion?

12 (Ayes.)

13 CHAIRPERSON YOUNG: Any opposed? Okay,
14 motion carries unanimously. Thank you.

15 MR. BISHOP: Thank you, Mr. Chairman and
16 the Board, thank you very much.

17 (Whereupon, Board Member Bowker and
18 Board Member Hunter were recused.)

19 CHAIRPERSON YOUNG: Okay, we'll move on
20 to agenda item number 4. Consideration of panel
21 hearing recommendation to adopt proposed cease and
22 desist orders. There are two of them. Mr.
23 Thomas.

24 MR. THOMAS: Mr. Chairman, on January
25 22nd a panel of the Board considered cease and

1 desist orders against two property owners in Los
2 Osos. They heard the evidence submitted by the
3 prosecution team and the defendants; and heard
4 public testimony or public comments. And
5 unanimously recommended that the full Board adopt
6 the cease and desist orders.

7 You have the staff report that
8 summarizes the issues; and Mr. Richards and I will
9 answer any questions that the Board may have.

10 CHAIRPERSON YOUNG: Okay. John, what we
11 do is essentially just go into Board deliberation
12 right now?

13 MR. RICHARDS: That's right. Yes. This
14 is your opportunity. You've held the hearing; the
15 testimony is in; the argument has been presented
16 to the panel. The panel is making its
17 recommendation. And it's now the opportunity for
18 a quorum of the Board to deliberate on that
19 recommendation.

20 CHAIRPERSON YOUNG: Okay. Let me just
21 ask Mr. Hodgin, have you had a chance to review?

22 BOARD MEMBER HODGIN: Yes, I have.

23 CHAIRPERSON YOUNG: Okay. And can I
24 ask, what did you review for this item? What did
25 staff give you? Because I don't know. Was it a

1 transcript or a video or a DVD, or --

2 BOARD MEMBER HODGIN: Yes. I've
3 reviewed the video; also looked through the
4 transcript. And there have been several other
5 documents that I've been reading on this topic.

6 CHAIRPERSON YOUNG: Okay.

7 MR. THOMAS: Mr. Chairman.

8 CHAIRPERSON YOUNG: Yes.

9 MR. THOMAS: We sent the DVD --

10 CHAIRPERSON YOUNG: Okay.

11 MR. THOMAS: -- of the panel hearing;
12 and the evidence that was submitted by the
13 parties, all of the evidence. So, the evidence,
14 the DVD and the transcript from the hearing.

15 CHAIRPERSON YOUNG: Okay.

16 MR. THOMAS: Was sent out to the Board
17 Members.

18 CHAIRPERSON YOUNG: We need to ask Dr.
19 Press the same question. Yeah, he's kind of left
20 us.

21 VICE CHAIRPERSON JEFFRIES: You're not
22 going to ask me?

23 CHAIRPERSON YOUNG: You weren't there?
24 Okay. Mr. Jeffries.

25 VICE CHAIRPERSON JEFFRIES: I read all

1 202 pages.

2 CHAIRPERSON YOUNG: Okay. And did you
3 watch anything?

4 VICE CHAIRPERSON JEFFRIES: No, I did
5 not. When I found out the length of the meeting
6 my wife wouldn't let me tie up the DVD that long.

7 (Laughter.)

8 VICE CHAIRPERSON JEFFRIES: So I read
9 all 202 pages during "Deal or No Deal".

10 CHAIRPERSON YOUNG: Okay. And, Dr.
11 Press, can you tell us what you reviewed in terms
12 of --

13 BOARD MEMBER PRESS: I read the
14 transcript, every single word.

15 CHAIRPERSON YOUNG: Okay. All right.
16 Well, the Board can deliberate on this and discuss
17 what to do. There's been a -- the panel has
18 recommended the adoption of the cease and desist
19 orders. Any comments? No comments. Okay.

20 How about, Dr. Press?

21 BOARD MEMBER PRESS: Yeah, Mr. Chair, I
22 feel that the CDO in this case, in terms of the
23 prohibition and the discharge, in my view is no
24 different than the others.

25 However, I have been getting

1 increasingly frustrated with the way the
2 discussion has centered on the maximum penalties.
3 In these CDOs we have maximum penalties of \$5000 a
4 day. And that, understandably, has made people
5 nervous about a scenario in which nothing
6 happened, the boom got lowered, and maximum
7 penalties were imposed. And people are afraid of
8 losing their homes.

9 The specter of that cost has so taken
10 over the discussion that we are, in my view,
11 getting away from water quality and the public's
12 interest in water quality.

13 So, I would be much happier with this
14 CDO, and others, if the maximum penalties were
15 lowered to a level that reflected the --
16 essentially that reflects the Water Code's
17 interest in making sure that dischargers don't
18 have an economic benefit from violating. In other
19 words, the equivalent to a sewer hookup or
20 something like that.

21 So, instead of \$5000 a day, I would cap
22 them at something like \$30 a day. Which, in my
23 view, is more along the lines of what, with
24 increasing costs, are the economic benefit
25 foregone from not being on a sewer line.

1 And that's still a lot of money, but
2 it's not the cataclysmic --

3 CHAIRPERSON YOUNG: It's \$5000 a day.

4 BOARD MEMBER PRESS: Yeah, it's not the
5 catastrophic specter. So, anyway, that's how I
6 would want to deal with the penalty portion of
7 these CDOs, so that the discussion can stay
8 focused on water quality.

9 CHAIRPERSON YOUNG: Okay. Mr.
10 Shallcross.

11 BOARD MEMBER SHALLCROSS: Yeah, I concur
12 wholeheartedly. And also I think it has to be
13 reiterated that whatever the cap, or any cap is,
14 that's the top. That doesn't mean that the Board
15 would necessarily impose that top figure.

16 I don't think we've ever imposed a top
17 figure on anybody, even the worst case discharger.
18 So, you know, folks should understand that the
19 Board can impose nothing if they want to. It's
20 within the discretion of the Board. And if it
21 certainly makes folks feel more comfortable -- I
22 know it would me -- that the top were some other
23 more reasonable figure, that that's fine with me.
24 And I think it's good, because we need to get this
25 \$5000-a-day issue off the table and talk about

1 what the real issues are here.

2 So, I wholeheartedly agree.

3 CHAIRPERSON YOUNG: Mr. Richards, can
4 the Board change the, you know, put a cap within
5 these two CDOs?

6 MR. RICHARDS: Certainly it could.

7 CHAIRPERSON YOUNG: Okay.

8 MR. RICHARDS: It could make findings;
9 it could adjust the directive provisions. But the
10 fact is that the CDO does not set or limit in any
11 way the Board's discretion. I mean, the proposed
12 CDO, as drafted, does not set or limit the
13 discretion of the Board in assessing liability.

14 CHAIRPERSON YOUNG: Right.

15 MR. RICHARDS: And, in fact, legally it
16 would be a little difficult for the Board to make
17 a directive in this or any other cease and desist
18 order that would bind the Board's discretion in a
19 subsequent enforcement proceeding based on the
20 cease and desist order.

21 The cease and desist order is an order
22 by the Board directing the discharger to cease
23 doing a particular thing, and possibly directing
24 the discharger to do other things in the interim.

25 You would be directing yourselves to do

1 something in the future if you said the Board
2 shall not impose liability of greater than a
3 certain amount in the cease and desist order.

4 So I think it would be perfectly
5 appropriate for the Board to include a finding in
6 the cease and desist orders that indicated what
7 the Board would contemplate as an appropriate
8 maximum of liability. But I think there is a
9 certain amount of difficulty in amending the order
10 part of the cease and desist order to set that
11 kind of limit.

12 CHAIRPERSON YOUNG: But why is that?

13 MR. RICHARDS: Just logistically. I
14 mean just the difficulty of using the order in
15 that way is -- it can be done. I mean, the Board
16 could say, and therefore it is hereby ordered
17 that, you know, the maximum liability shall not be
18 greater than so-and-so. It could be done.

19 I mean, it's awkward, but it could be
20 done.

21 BOARD MEMBER PRESS: Mr. Chair.

22 CHAIRPERSON YOUNG: Yes.

23 BOARD MEMBER PRESS: I think it's
24 already awkward. The CDO is, with the Water Code
25 penalty there, that made it awkward. And we

1 already have a maximum penalty. I don't see how
2 making one that is a different number is making it
3 any more awkward than --

4 CHAIRPERSON YOUNG: What is awkward the
5 way it is right now?

6 BOARD MEMBER PRESS: Well, right now
7 that's the maximum penalty; and as a kind of --
8 you know, why do you have penalties. You have
9 penalties so that --

10 CHAIRPERSON YOUNG: Yeah, but why is it
11 awkward. I know why we have penalties, but the
12 penalty comes right out of the Water Code.

13 BOARD MEMBER PRESS: I understand, but
14 it's awkward because it makes it so that the
15 discussion is all about this huge penalty instead
16 of --

17 CHAIRPERSON YOUNG: There are members of
18 the community that have hijacked that issue and
19 have made that a focus and that's what you're
20 wanting to address.

21 BOARD MEMBER PRESS: Well, anyway, I
22 just think that --

23 CHAIRPERSON YOUNG: I don't disagree
24 with you, that, you know, maybe we could modify
25 that cap. I just want to understand what we're

1 doing and whether we can really limit the future
2 Board that you and I may not be on.

3 BOARD MEMBER PRESS: Well, I think if
4 we're making findings that that is an appropriate
5 level, I don't see --

6 CHAIRPERSON YOUNG: Based on what we
7 know today.

8 BOARD MEMBER PRESS: That's right.

9 CHAIRPERSON YOUNG: And staff may issue
10 something in the future; there may be changed
11 circumstances; we don't know what those may be or
12 may not be.

13 BOARD MEMBER PRESS: I think -- I guess
14 what I'm saying is I find it hard to imagine that
15 a future Board would make findings that a single
16 septic tank should be penalized at the range of
17 scores of thousands, or hundreds of thousands of
18 dollars a year. That's really hard for me to
19 fathom.

20 CHAIRPERSON YOUNG: I don't disagree
21 with that.

22 MR. SATO: Mr. Chairman, would you be
23 willing to entertain comments from the prosecution
24 team?

25 CHAIRPERSON YOUNG: Of course. Well,

1 let's see. If we do that --

2 MR. RICHARDS: That kind of opens up --

3 CHAIRPERSON YOUNG: Yeah. If we do
4 that, Mr. Sato, then we --

5 MR. RICHARDS: -- listen to others.

6 MR. SATO: Well, I wanted to speak
7 specifically to the issue that Dr. Press raised;
8 and I think I can help you in terms of some legal
9 issues that's related to his suggestion.

10 CHAIRPERSON YOUNG: Okay, but --

11 MR. MOYLAN: I'd like equal time,
12 though.

13 MR. RICHARDS: Yeah, if you listen to
14 the prosecution team --

15 (Parties speaking simultaneously.)

16 MR. MOYLAN: I want equal time.

17 (Pause.)

18 MR. RICHARDS: This proceeding has been
19 agendized as an opportunity for the Board to
20 conduct its discussion and deliberate on the
21 recommendation of the hearing panel. And if the
22 Board wants to open its discussion further to
23 consult with the prosecution team on this, I think
24 that you'd better be prepared to listen to what
25 other parties have to say.

1 CHAIRPERSON YOUNG: All right. Let me
2 suggest this. Doesn't the Board have, within its
3 discretion, the right to ask questions of any of
4 the parties?

5 AUDIENCE SPEAKER: Chairman Young, would
6 you please, and would you ask the lawyer to speak
7 into the mike. It's very difficult to hear back
8 here. Thank you.

9 CHAIRPERSON YOUNG: Okay. Mr. Richards,
10 doesn't the Board have the right to ask questions
11 of the parties, even during deliberation, if they
12 want clarification?

13 MR. RICHARDS: Typically they do.

14 CHAIRPERSON YOUNG: Okay. And without
15 opening it up to the public.

16 MR. RICHARDS: That's true.

17 CHAIRPERSON YOUNG: Okay.

18 MR. RICHARDS: The Board controls the
19 process.

20 CHAIRPERSON YOUNG: Okay. We can ask
21 Mr. Sato, if we have any questions, we can ask Mr.
22 Moylan and Ms. De Witt-Moylan if they have any
23 questions of --

24 MR. RICHARDS: That would be true.

25 CHAIRPERSON YOUNG: -- kind of leave it

1 at that.

2 MR. RICHARDS: That's right.

3 CHAIRPERSON YOUNG: All right. Let me
4 hear from Mr. Hayashi.

5 BOARD MEMBER HAYASHI: I almost forgot
6 what I was going to ask. If we do something like
7 this, how are we going to differentiate between
8 the community septic tank. You know, where you
9 have -- if we're going to hold it to one, you
10 know, the \$30 a day. And you go to an apartment
11 building, how does that work?

12 CHAIRPERSON YOUNG: Well, I think that
13 discussion, if the Board decides to go down that
14 path then we would have to consider what to do
15 about the previously issued CDOs.

16 BOARD MEMBER HAYASHI: Correct.

17 CHAIRPERSON YOUNG: And then later any
18 subsequent enforcement actions and how to try to
19 equalize everything.

20 BOARD MEMBER HAYASHI: But I think
21 everybody would be on the same playing field.

22 CHAIRPERSON YOUNG: Well, I think that's
23 what we would want. Everyone's going to be
24 treated the same. So, maybe you're talking about
25 a per-day penalty per unit.

1 BOARD MEMBER HAYASHI: Per unit.

2 CHAIRPERSON YOUNG: Per unit. So, Mr.
3 Sato, let me ask you this: Do you have any
4 thoughts about Dr. Press' suggestion that the
5 Board -- and Mr. Moylan and Ms. De Witt-Moylan, do
6 you want to come up here and take a seat at that
7 table --

8 BOARD MEMBER HAYASHI: Chairman Young.

9 CHAIRPERSON YOUNG: Yes.

10 BOARD MEMBER HAYASHI: Whatever we do
11 today and the decisions that we make, that we're
12 saying if we make it for a Board after we're
13 gone --

14 CHAIRPERSON YOUNG: Right.

15 BOARD MEMBER HAYASHI: -- they're going
16 to have the same power that we have. They can
17 disregard what we've done, or they could go along
18 with what we've done. Hopefully that future Board
19 would take a little bit of -- would think about
20 how we came to our decision and go from there.

21 CHAIRPERSON YOUNG: To do that, Mr.
22 Richards, the Board would have to actually kind of
23 partially rescind.

24 MR. RICHARDS: To do what?

25 CHAIRPERSON YOUNG: To undo what we do

1 today. Assuming that we were to go down the path
2 and put a cap on --

3 MR. RICHARDS: Nothing would preclude a
4 future Board from disregarding the cap with
5 appropriate findings.

6 CHAIRPERSON YOUNG: With appropriate
7 findings, okay.

8 MR. RICHARDS: I mean they would -- in
9 order to impose a cap at this time, the Board
10 would have to make findings that justify the
11 imposition of the cap. In other words, it would
12 have to make findings that imposition of the
13 maximum liability would be inappropriate; and that
14 imposition of liability in excess of some amount
15 would be inappropriate, for whatever reason, based
16 on the statutory considerations.

17 The subsequent Board, in view of the
18 fact that there is not a lot of evidence in the
19 record regarding the proper amount of liability
20 that would be appropriate for whatever future
21 violation is out there, a future Board could
22 easily make contrary findings and say, having
23 considered the evidence in the record at this
24 point in time, in the future, we conclude that the
25 Board's prior finding was not justified, or may

1 have been justified then but isn't justified now,
2 and we conclude that we're going to disregard the
3 cap and do something entirely different.

4 So, there's a great deal of difficulty
5 in attempting to bind that future Board;
6 especially in view of the fact that there has been
7 little testimony and little argument related to
8 the appropriateness of a level of liability that
9 should be assessed in the event of some
10 speculative future violation.

11 CHAIRPERSON YOUNG: Okay. Mr. Sato, any
12 comments about Dr. Press' proposal that perhaps
13 the per-day penalty be capped?

14 MR. SATO: Well, I'm certainly
15 sympathetic to -- and by the way, I'm Reed Sato;
16 I'm the Director of the Office of Enforcement for
17 the State Water Resources Control Board. I appear
18 here today as the legal counsel for the
19 prosecution team.

20 I am sympathetic to the concerns
21 expressed by Dr. Press. Usually where these kinds
22 of caps on penalties occur within an enforcement
23 proceeding are usually done by stipulation between
24 parties through a settlement-type process where
25 both entities agree that both prosecution and the

1 defendant would be limited. And then have that
2 agreement endorsed by a hearing body such as
3 yourself.

4 The problem with just coming up with
5 caps, and Mr. Richards has touched upon a number
6 of the difficulties, and there's a lot of case law
7 on the issue about whether or not one board can
8 bind a future board with regard to certain types
9 of enforcement issues. It's generally not done.
10 It's generally frowned upon.

11 The idea of having, you know, the range
12 of numbers available is to give boards the
13 appropriate discretion at the time when the facts
14 are in front of them, to weigh whatever issues
15 they have to weigh, and to impose the appropriate
16 sanction.

17 The only reason why we have the numbers
18 in the cease and desist order, and any other
19 orders that we would impose either in this
20 proceeding or any other proceeding, is to advise
21 the discharger what their exposure is. And to let
22 them know that in the future some range of
23 sanction may be available to a board in the event
24 that somebody does not comply with the order.

25 The problems, and I think the reason

1 that people have stayed away generally from trying
2 to establish caps early on, is that it's hard to
3 know what the appropriate cap is. And, two, it
4 requires a great deal of precision to get around
5 the legal sanctions against trying to establish
6 such a cap for the purposes of having one board
7 find for a completely separate and future board.

8 CHAIRPERSON YOUNG: What legal
9 sanctions?

10 MR. SATO: Pardon me?

11 CHAIRPERSON YOUNG: What legal sanctions
12 are you speaking of?

13 MR. SATO: Well, in the sense that those
14 types of caps are disregarded by the future board.
15 So, it's not -- I certainly think that this Board,
16 if you were interested, could do it on an advisory
17 basis. And say something, you know, we're looking
18 at this issue; we believe that, you know, the
19 maximum penalties would not be appropriate unless
20 the following, you know, bad things occur.

21 But to then try to hone it down to a
22 particular number, to a particular range, I mean
23 we're proposing certainly to do that within our
24 stipulated cleanup and abatement orders for the
25 next round of folks. And we think that we've come

1 up with a number that we think is relatively good.

2 But that is simply a recommendation by
3 the staff. It's not a binding type of document on
4 a future board.

5 And I'd be happy to address any specific
6 questions that Dr. Press or any of the Board
7 Members may have about this concept of caps.

8 You can certainly take it out of the
9 order, too. You could just refer to the statute,
10 as well. If the actual number is the thing that's
11 scary, simply refer to the statute.

12 CHAIRPERSON YOUNG: Okay. Mr. Moylan.
13 Mr. Sato took about --

14 MR. MOYLAN: My name is Mr. Moylan -- or
15 Bill, Bill Moylan. And I live in Los Osos and I
16 am, I'm one of the people on agenda item number 4,
17 along with my wife and the Wilkersons.

18 And I appreciate that Dr. Press was
19 concerned about the absolute number of \$5000 a
20 day, because that scares most everyone, including
21 myself. It's kind of a fear tactic imposed by the
22 Water Board, in my opinion.

23 And initially CDOs weren't, with those
24 kinds of numbers, weren't really meant for
25 individual residences. They were meant for big

1 polluters like oil companies or canning companies
2 or trucking companies that were deliberately
3 polluting. So the threat of \$5000 a day was
4 indeed a deterrent for them.

5 But \$5000 a day is ridiculous for an
6 individual residence, because it's not just a
7 deterrent, it does, in fact, imply that if you do
8 decide to apply the \$5000 a day cap, because there
9 is a cap there, it's only \$5000 a day, that the
10 people would have to vacate the premises in the
11 order to -- Matt Thompson, April 28, 2006 when he
12 was asked what would we do if we could not afford,
13 or if there was no sewer to hook up, he did say
14 you'd have to vacate the premises. Absolute
15 opposite of what Mr. Reed Sato said to Mr.
16 Wilkerson on January 22, 2007, where did you get
17 the idea that you would have to vacate the
18 premises. And Mr. Wilkerson just couldn't
19 remember it. But I had to ask Matt Thompson, did,
20 in fact, you say that we'd have to vacate the
21 premises on April 28, 2006. And he said, yes, I
22 did say that. And I said, thank you.

23 So, what I'd like to know is do you
24 intend to scare the living daylights out of people
25 and have them potentially move from their homes

1 with \$5000-a-day caps, or, as in the settlement
2 agreement that Mr. Reed Sato has proposed, only
3 \$100 a day, which sounds like a real deal.
4 There's a cap there, too, Mr. Sato.

5 So, I'd like to know what is reasonable.
6 And what is enough to make people think, we do
7 need a sewer; I don't want to get fined. Most
8 people already believe that. They do believe that
9 we want to have a wastewater treatment facility in
10 Los Osos.

11 So the issue of having a wastewater
12 treatment facility is not an issue. It's already
13 a given. We want that. It's just a matter of how
14 much it's going to cost and where it's going to
15 be. And also the type of system it's going to be.

16 Now, I'd like to go back to this cap of
17 \$5000 a day, or \$30 a day, or whatever. I think
18 it is reasonable to put a cap on cease and desist
19 orders for residences. And you have that
20 authority, just like Mr. Richards said.

21 Thank you.

22 CHAIRPERSON YOUNG: Okay, you have
23 another minute, almost two minutes. Did you want
24 to complete the --

25 MR. MOYLAN: Bev.

1 MS. De WITT-MOYLAN: Yes. I'm sorry,
2 I'm having a hard time hearing you.

3 CHAIRPERSON YOUNG: You've got a couple
4 more minutes.

5 MS. De WITT-MOYLAN: Thank you. I think
6 what I want to say is the fact that we're having
7 this discussion at all demonstrates how
8 inappropriate cease and desist orders or other
9 orders are to be imposed individually on
10 homeowners for a failure of government.

11 My husband and I signed a settlement
12 agreement. And that settlement agreement was that
13 we agree to hook up to a wastewater treatment
14 facility when one was available. That is
15 something that a homeowner can do. That is
16 something that a homeowner can afford.

17 If a homeowner deciding when a
18 wastewater treatment facility was available that
19 they did not want to hook up, if they refused to
20 hook up, then a cease and desist order would be
21 appropriate. But to impose any find on us at this
22 stage of the game is just ridiculous. We have no
23 way of complying with an order that tells us we
24 have to do something that doesn't exist.

25 So I want to say that I take this very

1 seriously. I know that people that I know in our
2 town take it very seriously. And I have to say
3 that I felt a little bit insulted, or maybe more
4 than a little bit insulted, by Mr. Jeffries'
5 comments regarding his observations and reading
6 our testimony at our hearing. To say that it
7 interfered with his time with his video player;
8 and that he had to squeeze it in during one of his
9 programs.

10 We have lived under this \$5000-a-day
11 fine for I don't know how many months, over a
12 year, since January 30, 2006. We take it very
13 seriously.

14 And I think the last thing that I would
15 like to say is why wasn't this discussion taken up
16 in January 2006. Many people have suffered
17 tremendously just from the idea of having this
18 \$5000-a-day fine, of having to leave our homes.
19 It's very real to us. And I hope that you take it
20 more seriously than it sounds like some of you
21 have. Thank you.

22 MS. SULLIVAN: I would like an
23 opportunity to address this on behalf of the
24 Wilkersons.

25 CHAIRPERSON YOUNG: You do, yeah, you

1 have four minutes.

2 MS. SULLIVAN: All right.

3 CHAIRPERSON YOUNG: Okay, go ahead.

4 MS. SULLIVAN: My name is Shaunna
5 Sullivan. On behalf of the other CDO recipients,
6 the Wilkersons, I would like to bring up a couple
7 points.

8 I appreciate Dr. Press' suggestion of a
9 maximum penalty, or a cap on that maximum penalty.
10 And I think it's a good one.

11 However, I think a maximum penalty is
12 really not being considered by this Board. The
13 real maximum penalty is requiring people to cease
14 discharge as of January 2011, which will require
15 them to vacate their homes.

16 And I would like the opportunity to
17 cross-examine Mr. Sato on that point, as well.
18 But I'd also like to bring up that if you're going
19 to consider a cap on the dollar amount, I would
20 suggest that you consider a cap on the maximum
21 penalty that we would suffer, which is enjoining
22 us from living in our homes come January 2011.

23 And I'd also like to know, since staff
24 is taking the position that regardless of what the
25 CDO states, that they can still charge a daily

1 liability for basin plan violations, is that in
2 addition to whatever amount is on the CDO? What
3 is meant with the statements made in the staff
4 report that needed a proposed settlement -- cease
5 and desist orders that will need past or ongoing
6 daily liability for basin plan violations. Is
7 that an additional amount you'll charge on top of
8 what you're talking about right now?

9 CHAIRPERSON YOUNG: Mr. Richards, the
10 answer to that is yes, right? The CDOs --

11 MR. RICHARDS: That's right. There is -
12 -

13 CHAIRPERSON YOUNG: -- with the ongoing
14 basin plan.

15 MR. RICHARDS: No, there are any number
16 of -- first of all there's nothing in the proposed
17 CDOs that talks about the amount of liability. It
18 simply says -- if I'm on the right document --
19 down at the bottom in bold type it says: Failure
20 to comply with the provisions of this order may
21 subject the discharger to further enforcement
22 action, including assessment of civil liability
23 under section 13268 or 13350 of the Water Code,
24 and referral to the Attorney General for
25 injunctive relief and civil or criminal

1 liability."

2 And that's sort of a -- that is the
3 standard language that's used in regional board
4 orders to indicate the fact that these orders are
5 enforceable in subsequent proceedings.

6 And the cited sections of the Water Code
7 provide for civil liability; and occasionally
8 criminal liability for violation. For instance,
9 falsification of a monitoring report to a regional
10 board can be referred to the district attorney for
11 criminal prosecution.

12 That does not set any particular
13 liability. The fact is that the statute does
14 allow the regional board to assess up to \$5000 a
15 day for various violations. One of those
16 violations is discharge in violation of an
17 enforcement order, either a cease and desist order
18 or a cleanup and abatement order.

19 Therefore, any person who violates the
20 terms of a cease and desist order is subject to
21 liability of up to \$5000 per day for that
22 violation.

23 Another basis for civil liability is a
24 discharge in violation of a prohibition. The
25 maximum liability is the same, is \$5000 per day

1 for each day of violation of a basin plan
2 prohibition.

3 CHAIRPERSON YOUNG: So I think --

4 MR. RICHARDS: Persons discharging to
5 septic systems in the Los Osos area have been
6 subject to a potential maximum liability of \$5000
7 a day for every day since 1988 in which they have
8 discharged to septic systems.

9 CHAIRPERSON YOUNG: And that liability
10 is not modified or waived or dispensed --

11 MR. RICHARDS: That is --

12 CHAIRPERSON YOUNG: -- upon the issuance
13 of the cease and desist order --

14 MR. RICHARDS: No. The cease and desist
15 order adds an additional obligation to do
16 specified things by specified dates. And
17 violation of those requirements is subject to a
18 separate assessment of civil liability.

19 CHAIRPERSON YOUNG: Okay. Yes.

20 MR. THOMAS: I just wanted to clarify,
21 Mr. Richards, that regardless of what this Board
22 can put into this cleanup and abatement order, or
23 what this Board says in adopting this order, or
24 even if they were to do something else, adopt a
25 resolution, say, with their opinion about what a

1 maximum fine should be, it does not trump the law
2 in any way.

3 MR. RICHARDS: That's true.

4 MR. THOMAS: A future board --

5 MR. RICHARDS: When the future board
6 comes to look at some future potential violation
7 it will have the full discretion provided by the
8 law. Now, as I indicated before, if this Board
9 has made findings about the appropriate level of
10 liability, it would have to address those findings
11 and make findings that would supersede them. But
12 nothing would preclude it from doing so.

13 MR. THOMAS: We're calling it a cap, but
14 the cap is what is in the law; a true cap is what
15 is in the law.

16 MR. RICHARDS: That's right. And the
17 maximum liability available to the regional board
18 anytime it considers violations of cease and
19 desist order, violations of prohibitions and a
20 variety of other discharge violations is \$5000 per
21 day.

22 MR. THOMAS: So if the Board were to
23 talk about an upper limit now, and put it into
24 some document, it would be a preference at this
25 point in time. And that's it.

1 BOARD MEMBER PRESS: Excuse me, but that
2 would be done with findings. What Mr. Richards is
3 saying is that we would need to make findings.
4 And that a subsequent board would have to make
5 other findings that would then raise that maximum.

6 And, again, we have -- I mean it's clear
7 we have constraints on what we can do. We are not
8 the Legislature; we can't write the law. We're
9 given some discretion.

10 But what I'm trying to get at is to try
11 to, insofar as we are capable, I am trying to
12 signal a findings-based policy preference for a
13 level of maximum liability that I think is more
14 appropriate to the issue than what the maximum
15 allowed in the law.

16 We cannot control future boards, that's
17 clear. We can't rewrite the Water Code, that,
18 too, is clear. But we have the discretion,
19 according to Mr. Richards, to make findings and
20 express this current Board's policy preference.
21 And I think we should do that.

22 BOARD MEMBER SHALLCROSS: Mr. Chairman.

23 CHAIRPERSON YOUNG: Yes.

24 BOARD MEMBER SHALLCROSS: I've been sort
25 of wordsmithing here on something along the lines

1 of what Dr. Press is suggesting. And what I came
2 up with is including a finding that -- I would
3 like to include this in the past cease and desist
4 orders, too, however that's done -- and it would
5 be something like this:

6 Because the cease and desist order
7 recipient is a residence, this Board finds that
8 any penalties imposed for failure to comply should
9 not exceed \$30 per day unless specific findings
10 are made by the Board to justify exceeding that
11 amount."

12 BOARD MEMBER PRESS: I think you ought
13 to add some -- because the Water Code wants
14 usually to enumerate things like hardship and
15 economic benefit and so on, and so those should be
16 enumerated. That more than that would impose too
17 much hardship; that's one finding.

18 Another finding is that that level --

19 CHAIRPERSON YOUNG: More clearly relates
20 to the economic advantage --

21 BOARD MEMBER PRESS: Yes. Well, that
22 was the next point.

23 CHAIRPERSON YOUNG: Right.

24 BOARD MEMBER PRESS: Is that economic
25 advantage of not being on a sewer is certainly not

1 greater than \$900 a month in any kind of
2 reasonable scope.

3 So, you've got some deterrents; you've
4 got some economic advantage; you've got a
5 consideration of hardship. I mean I think it's
6 all -- those are good findings. And they are
7 findings that the Water Code asks us to make.

8 CHAIRPERSON YOUNG: Right. At the time
9 that there's a second hearing, not at this time --

10 BOARD MEMBER PRESS: Well, we can only
11 do at the time. This is the time, this is the
12 only time --

13 CHAIRPERSON YOUNG: Daniel, this is not
14 the time, under the law, for worrying about those
15 factors, so --

16 BOARD MEMBER PRESS: I understand.

17 CHAIRPERSON YOUNG: And you'll confuse
18 things by suggesting that every time that the
19 Board does something like this, it has to
20 entertain that. And it doesn't.

21 I think it's -- I agree with you that
22 it's appropriate that we signal what we would do
23 today, and what factors we think are important. I
24 think we should --

25 BOARD MEMBER PRESS: That's all I'm

1 doing.

2 CHAIRPERSON YOUNG: -- have a finding,
3 yeah.

4 BOARD MEMBER PRESS: That's all I'm
5 doing.

6 CHAIRPERSON YOUNG: Okay. Yeah, what
7 I'd like to do, and I'll go right back to you.

8 Ms. Sullivan, you have another couple of
9 minutes. I didn't want to cut you off --

10 MS. SULLIVAN: Oh, great. Good.

11 CHAIRPERSON YOUNG: So, go ahead.

12 MS. SULLIVAN: I would like to ask Mr.
13 Sato a question --

14 CHAIRPERSON YOUNG: Well, the testimony
15 phase has ended, so --

16 MS. SULLIVAN: Okay, then I'll just make
17 the statement: Mr. Sato has told me that he
18 believes the Board has the ability and will, if
19 they have to, make people move from their
20 residence. They will make them vacate the
21 residence, and that is the ultimate maximum
22 penalty we're looking at.

23 MR. SATO: That is not true. And that
24 is also a settlement -- any kind of communication
25 I've had with Ms. Sullivan --

1 CHAIRPERSON YOUNG: Okay, Mr. Sato. Mr.
2 Sato.

3 MR. SATO: -- is a settlement
4 communication.

5 CHAIRPERSON YOUNG: Mr. Sato, okay.

6 MR. SATO: And that would be an
7 unethical disclosure of any conversation that I've
8 had with her.

9 MS. SULLIVAN: There's been a complete
10 waiver of settlements right in your staff report.
11 You've attached it and waived any settlement.

12 CHAIRPERSON YOUNG: Okay.

13 MR. RICHARDS: This is not an
14 appropriate forum for this kind of discussion.
15 This is --

16 CHAIRPERSON YOUNG: Ms. Sullivan, you're
17 going to open up a whole thing with he-said, she-
18 said, and there's nothing we can do about that.

19 MS. SULLIVAN: I --

20 CHAIRPERSON YOUNG: If you are going to
21 refer to things in the settlement agreement that
22 are confidential, I don't know whether they are or
23 they aren't, you know we don't do that in --

24 MS. SULLIVAN: Okay.

25 CHAIRPERSON YOUNG: -- this kind of a

1 setting.

2 MS. SULLIVAN: I would just like this
3 Board to consider the ultimate maximum penalty
4 which would be ordering people to move from their
5 homes. And I would like to see this Board say,
6 no, we're not going to do that to you.

7 CHAIRPERSON YOUNG: Ms. Sullivan, is
8 there any language in these two CDOs that says
9 that someone is going to be ordered from their
10 home?

11 MS. SULLIVAN: Yes. If you look under
12 the two statutes that you referenced earlier, the
13 Water Code sections for penalties, and referring
14 to that Attorney General's Office, those refer to
15 a cessation --

16 CHAIRPERSON YOUNG: Moving people --

17 MS. SULLIVAN: -- of the prohibition, I
18 mean cessation of the discharge. And if he is not
19 capable of any other way, then it can be -- to
20 stop, the people will have to move to stop
21 discharging.

22 CHAIRPERSON YOUNG: That's a choice
23 people make. The Code does not say --

24 (Audience parties speaking
25 simultaneously.)

1 CHAIRPERSON YOUNG: Excuse me, the Code
2 does not say that the Water Board can make anybody
3 move from their homes. The Water Code says that
4 the Board can order a cease in discharge from a
5 prohibited activity. If people want to put in
6 some other alternative method to comply with the
7 prohibition, they can do so.

8 But you're confusing things.

9 MS. SULLIVAN: Actually, no. I would
10 like to --

11 CHAIRPERSON YOUNG: Show me the language
12 that says that the Water Board can order somebody
13 to move from their home.

14 MS. SULLIVAN: It's in the two Code
15 sections you just referenced.

16 CHAIRPERSON YOUNG: No. Show me. I've
17 read them.

18 MS. SULLIVAN: I don't have the section
19 in front of me. Sorry, I didn't bring it with me.

20 BOARD MEMBER SHALLCROSS: Let's move on.

21 MS. SULLIVAN: But I do think that
22 people shouldn't be forced to the election of
23 having to move from their home or face fines.
24 Which is the only way they can comply with
25 cessation of the discharging.

1 CHAIRPERSON YOUNG: Anything else?

2 MS. SULLIVAN: No.

3 CHAIRPERSON YOUNG: Okay. Mr. Thomas.

4 MR. THOMAS: I just wanted to follow up
5 on the conversation that we've been having.
6 Actually I wanted to make clear that I agree with
7 you, Dr. Press. Where I was going with this was
8 that I think that the upper limit that the Board
9 indicates should be based on something that's more
10 than an arbitrary number, like 30 or 100 or
11 whatever that number is.

12 And that instead you should reference
13 something that's more realistic such as the cost
14 of the facility.

15 So, the Board's assessment of penalties
16 would not be significantly greater than the
17 monthly cost of the facility. That's a real
18 number. We don't know what that number is, but it
19 is a real number.

20 BOARD MEMBER PRESS: Well, right, that's
21 the problem, is we don't -- I mean, --

22 BOARD MEMBER SHALLCROSS: That would --
23 I'm sorry.

24 BOARD MEMBER PRESS: Well, go ahead. I
25 suppose what you could do is you could say that

1 you could look at the assessments that were in
2 place a year and a half ago. I mean, you could
3 base it on those. You could take the average of
4 assessments in recent years in California. I
5 mean, if you want to do it that way. I don't
6 know.

7 MR. RICHARDS: The problem with any of
8 this is that there is no evidence in the record to
9 support those findings at this point, because
10 there was no testimony offered that would
11 establish what these costs would be or might be.

12 BOARD MEMBER SHALLCROSS: I think that
13 would be covered by whatever finding the board at
14 that time would make to impose, to impose
15 penalties. That would be a finding they could
16 make to impose penalties.

17 I don't think we need to do that
18 necessarily. I mean that specific.

19 MR. THOMAS: I had a suggestion along
20 those lines that one thing the Board could
21 consider is making a decision on the cease and
22 desist orders as they are written now. And at
23 item number six, today, you will be considering
24 future enforcement actions. And at that time the
25 Board could include in whatever the prosecution

1 team's decision is to move forward with
2 enforcement action, the Board could indicate its
3 preference regarding a cap. And give that
4 direction to the prosecution team, as far as
5 considering that in future actions.

6 CHAIRPERSON YOUNG: The question is,
7 Daniel and Gary, what --

8 BOARD MEMBER PRESS: Yeah, what is to be
9 done on these two CDOs. I'm not comfortable with
10 the -- just the reference to the statute with the
11 maximum penalty in there.

12 And since our actions don't bind future
13 boards from making their own findings, I don't
14 really see why we can't made different findings
15 right now --

16 CHAIRPERSON YOUNG: John, can't we
17 just -- we have evidence that they're homeowners.

18 MR. RICHARDS: You have evidence that
19 they're homeowners.

20 CHAIRPERSON YOUNG: Okay. We have
21 evidence that they use septic systems. I think
22 there was some testimony about the frequency of
23 pumping that would be imposed.

24 There hasn't been specific evidence of
25 the monthly cost that they would incur --

1 MR. RICHARDS: No.

2 CHAIRPERSON YOUNG: -- if they had to --

3 MR. RICHARDS: -- because --

4 CHAIRPERSON YOUNG: -- we have had in
5 other hearings. Is it entirely inappropriate to
6 refer to that other testimony?

7 MR. RICHARDS: No. You have, in the
8 record, the files of the Regional Board on these
9 matters, and the evidence that was adduced in the
10 other hearings.

11 But to -- we would have to go hunting
12 for that evidence to try and figure out what the
13 economic benefits might be; and what the levels of
14 hardship are.

15 I think that -- I mean it's possible to
16 do that. I think it would be --

17 CHAIRPERSON YOUNG: Well, is there --

18 MR. RICHARDS: Yeah, it would take some
19 time.

20 CHAIRPERSON YOUNG: Well, I think it was
21 during the ACL hearing against the CSD when we
22 probably heard that.

23 Gary, have you -- do you want to --

24 MR. RICHARDS: I'm not sure if that --
25 that's not part of the record of this proceeding.

1 CHAIRPERSON YOUNG: No, but that's what
2 I was referring to, that there are other
3 proceedings related to Los Osos where we've had
4 testimony in evidence. But then, again, Mr.
5 Hodgkin was not part of those.

6 BOARD MEMBER SHALLCROSS: Are you
7 suggesting that we restrict it to the benefit that
8 they would receive by not --

9 CHAIRPERSON YOUNG: Well, I was trying
10 to use -- trying to refer to all the evidence that
11 we could to base findings.

12 Gary, can you read what you have so far?

13 BOARD MEMBER SHALLCROSS: Yeah.

14 CHAIRPERSON YOUNG: Go ahead.

15 BOARD MEMBER SHALLCROSS: Because the
16 cease and desist order applies to a residence,
17 this Board finds that any penalties imposed for
18 failure to comply should not exceed \$30 per day
19 unless specific findings are made by the Board to
20 justify this exceedance.

21 And then Dr. Press suggested exceedance
22 of \$30 per day would likely cause undue hardship,
23 financial hardship; and would be unreasonably --
24 that's not the right word -- anyway, higher than
25 the benefit.

1 CHAIRPERSON YOUNG: And maybe that is
2 the problem. That's where we don't have the
3 evidence to support the latter part of those
4 findings.

5 BOARD MEMBER SHALLCROSS: Well, that's
6 in the law.

7 CHAIRPERSON YOUNG: Well, what you
8 wrote; the first sentence you wrote, as stated --

9 BOARD MEMBER SHALLCROSS: Oh, I see.

10 CHAIRPERSON YOUNG: -- I think is fine.

11 BOARD MEMBER SHALLCROSS: Okay.

12 CHAIRPERSON YOUNG: As far as I'm
13 concerned. And, John, do you find a problem with
14 that if the Board votes to adopt the CDOs and just
15 makes this finding?

16 BOARD MEMBER SHALLCROSS: Based on the
17 fact that they're residences.

18 MR. RICHARDS: No, I think the evidence
19 before the Board could probably justify that
20 finding.

21 CHAIRPERSON YOUNG: Good, okay. So --

22 BOARD MEMBER HAYASHI: Make the motion.

23 CHAIRPERSON YOUNG: I think we take out,
24 Daniel, the part you wanted because we don't have
25 the evidence in this hearing to support that. But

1 we leave in the first part that Gary had written.

2 BOARD MEMBER PRESS: Yeah, well, I'm
3 happy with Mr. Shallcross' language.

4 CHAIRPERSON YOUNG: Okay.

5 BOARD MEMBER PRESS: I mean, personally,
6 I feel that there's a prima facie case to be made
7 that as homeowners in California 2007 there are
8 certain economic limits that speak to the hardship
9 factor and speak to the economic advantage factor.
10 And those are prima facie evidence, constitutes
11 prima facie.

12 Anyway, but I'm happy with his language.

13 CHAIRPERSON YOUNG: Okay.

14 MR. SATO: May I make a comment, Mr.
15 Chairman?

16 CHAIRPERSON YOUNG: Sure.

17 MR. SATO: I just want to point out
18 that, you know, the Water Board's enforcement
19 policy talks about the weighing of factors with
20 regard to the statutes 13350 and 13385. And
21 certainly economic benefit is one of those issues
22 that people should look at.

23 And certainly it is appropriate for this
24 Board to instruct future boards that if they want
25 to emphasize the consideration of those kinds of

1 factors on a discharger, that would certainly be
2 appropriate.

3 One of the concerns that everybody has
4 with just tying a future penalty just to economic
5 benefit, is that there is really no disincentive
6 for noncompliance. It's simply the cost, your
7 violations continue simply to be the cost of doing
8 business. What happens if people -- there is
9 nothing for somebody to do to come into
10 compliance, that they simply just pay the money,
11 don't stop the discharge, and just pay the money,
12 pay the money, pay the money.

13 Where will you get the compliance with
14 the discharge prohibition if the only factor that
15 you're looking at, or the thing that you want to
16 peg your penalty to is just economic benefit.
17 You'll have no disincentive. And that is set
18 forth in the Water Board's enforcement policy.

19 CHAIRPERSON YOUNG: Okay.

20 MR. MOYLAN: I'd like to address that.

21 CHAIRPERSON YOUNG: You can. Let me
22 reset it.

23 MR. MOYLAN: Mr. Sato was saying what's
24 the incentive for them to comply; they just pay
25 the money, pay the money, pay the money. Even at

1 \$30 a day that's \$900 a month. I doubt that there
2 are more than ten people in this room right now
3 that could afford \$900 a month out of pocket
4 besides their other living expenses.

5 So, that is an incentive. \$30 a day is
6 a major incentive. \$5000 a day is a killing
7 incentive. \$100 a day is a killing incentive.
8 That would be \$3000 a month.

9 Nobody wants to go with this as far as
10 having to pay fines. I told you before, and I
11 still believe most of the people I talk to in Los
12 Osos want to get this thing moving ahead. They
13 want the County process to move forward.

14 So, there is an incentive in the town to
15 go forward with this. \$30 a day is still \$900 a
16 month. There aren't very many people that can
17 even afford that.

18 CHAIRPERSON YOUNG: Okay. Ms. Sullivan.

19 MS. SULLIVAN: I'll just leave it at
20 that.

21 CHAIRPERSON YOUNG: Okay.

22 MS. SULLIVAN: I think Mr. Moylan
23 expressed it quite well.

24 CHAIRPERSON YOUNG: All right, Ms. De
25 Witt-Moylan, do you want to use your minute?

1 Okay. Well, we can have a motion. We
2 have some language that's been proposed.

3 BOARD MEMBER HAYASHI: But what sentence
4 are you going to leave off?

5 BOARD MEMBER SHALLCROSS: It's just the
6 bit about hardship.

7 BOARD MEMBER HAYASHI: Well, read the --
8 give me the proposed language or some --

9 BOARD MEMBER SHALLCROSS: Okay. Because
10 the cease and desist order applies to a residence,
11 this Board finds that any penalties imposed for
12 failure to comply should not exceed \$30 per day
13 unless specific findings are made by the Board to
14 justify such an exceedance.

15 BOARD MEMBER HAYASHI: That's fine.
16 I'll move; I'll second.

17 BOARD MEMBER SHALLCROSS: And just to
18 make this clear, that doesn't mean that the fines
19 would be \$30. They could be up to \$30 a day. So
20 it could be \$1 a day. So, just --

21 CHAIRPERSON YOUNG: And they could go
22 over that if --

23 BOARD MEMBER SHALLCROSS: But there
24 could be no --

25 CHAIRPERSON YOUNG: -- a future board

1 does make specific findings that is warranted.
2 So, I think the intent here is to kind of signal,
3 you know, the Board's appreciation for the fact
4 that you are homeowners. And that obviously \$5000
5 a day would be exorbitant.

6 MR. MOYLAN: To say the least.

7 CHAIRPERSON YOUNG: We understand that,
8 but that's simply because the law allows that for
9 this type of enforcement action.

10 So I'm in favor of that language. I
11 want to say something before we vote, and that is,
12 and, Ms. De Witt-Moylan, you referred to this.

13 And I need to make this very clear
14 because you said that this action essentially sets
15 you down the road to being moved out of your home
16 if we don't modify that cap.

17 And the public needs to understand
18 something. These CDOs, the ones that were
19 previously issued, do nothing but set the stage
20 for another enforcement hearing, which staff would
21 bring at some time that hasn't even been
22 determined will exist.

23 So the issuance of these CDOs imposes no
24 monetary penalty on you unless there's another
25 hearing. Okay. Nothing is going to happen other

1 than the deadlines have to be complied with.

2 Okay.

3 MS. De WITT-MOYLAN: May I just respond?

4 CHAIRPERSON YOUNG: No. No.

5 Just so everybody knows, I think Ms.
6 Schicker and whoever else wanted to speak on
7 number 4, the public is not speaking on this
8 issue. Only the parties are, because the Board
9 asked specific questions of Mr. Sato; and then we
10 gave equal time to the other parties.

11 MS. SCHICKER: What's the legal statute
12 that allows me not to speak?

13 CHAIRPERSON YOUNG: Okay, the public --
14 any other comments? Okay.

15 Go ahead, Mr. Shallcross, did you want
16 to -- did you make the motion?

17 BOARD MEMBER SHALLCROSS: I move it.

18 CHAIRPERSON YOUNG: You second?

19 BOARD MEMBER HAYASHI: I second it, with
20 that addition.

21 CHAIRPERSON YOUNG: Okay, all those in
22 favor of the motion with --

23 (Ayes.)

24 AUDIENCE SPEAKER: Un-legal.

25 CHAIRPERSON YOUNG: Any opposed?

1 AUDIENCE SPEAKER: I am.

2 BOARD MEMBER SHALLCROSS: And is there
3 some way that we can include this language in the
4 other -- the previous cease and desist orders?
5 How do we do that? Can we amend them?

6 CHAIRPERSON YOUNG: Mr. Hodgin, you were
7 a no vote?

8 BOARD MEMBER HODGIN: No, I was a yes
9 vote.

10 CHAIRPERSON YOUNG: You were a yes. Did
11 anyone vote no?

12 BOARD MEMBER SHALLCROSS: No.

13 CHAIRPERSON YOUNG: Okay. All right.

14 MR. SATO: Mr. Chairman, point of
15 clarification. Did that motion, was that intended
16 to cover both orders?

17 CHAIRPERSON YOUNG: Yes. Both of the
18 two that were, by the panel recommendation. Okay.

19 Now, Mr. Shallcross raises a good point,
20 and that is what about the previously issued cease
21 and desist orders. And, Mr. Richards, what can
22 the Board do about adding -- do we have to reopen
23 with a noticed hearing?

24 MR. RICHARDS: Yes, that's essentially
25 the only way to amend a cease and desist order.

1 CHAIRPERSON YOUNG: To add a special
2 finding.

3 MR. RICHARDS: To add a finding.

4 CHAIRPERSON YOUNG: Okay.

5 MR. RICHARDS: I think that --

6 BOARD MEMBER HAYASHI: We have to open a
7 complete hearing?

8 MR. RICHARDS: Well, the problem is that
9 you -- I mean, here's the problem. You could
10 certainly have -- you could propose to amend the
11 cease and desist orders to add this finding. And
12 the notice would go forth that the cease and
13 desist orders would be reconsidered to add that
14 particular finding.

15 But the problem is that it would require
16 a hearing, and as we've seen, it's very difficult
17 to keep people to the issues involved.

18 BOARD MEMBER HAYASHI: Why can't we just
19 notice it? Why don't we notice it, that we're
20 making these findings; that we're going to make
21 these retroactive to the ones previous. And if
22 any of the parties have a problem let them
23 respond. If they don't want to accept it, they
24 don't have to accept it.

25 MR. RICHARDS: Well, you can try to do

1 it by a stipulation.

2 BOARD MEMBER HAYASHI: Well, then so
3 stipulated.

4 BOARD MEMBER SHALLCROSS: Let's do it
5 that --

6 (Laughter.)

7 MR. RICHARDS: No. A stipulation
8 would -- I mean you could ask the parties who have
9 received the cease and desist orders to stipulate
10 to the amendment and offer them an opportunity for
11 a hearing.

12 BOARD MEMBER HAYASHI: Then let's do it
13 that way. If they don't want to take it, they
14 don't have to take it.

15 CHAIRPERSON YOUNG: Okay, I missed that
16 last part, but I think that, Gary, we could do
17 this offer to amend by stipulation, is that right?

18 BOARD MEMBER SHALLCROSS: Would we need
19 to have a hearing on that?

20 CHAIRPERSON YOUNG: Not --

21 BOARD MEMBER SHALLCROSS: If they're
22 stipulating, why --

23 MR. RICHARDS: Well, if they stipulate
24 to the amendment of their cease and desist order
25 to add that finding, you would not have to have a

1 hearing.

2 BOARD MEMBER SHALLCROSS: Okay.

3 MR. RICHARDS: But you have to offer
4 them an opportunity for a hearing.

5 BOARD MEMBER SHALLCROSS: Okay, and if
6 the hearing's opened up then anything can be
7 changed.

8 MR. RICHARDS: Then it --

9 BOARD MEMBER SHALLCROSS: For just that
10 issue.

11 MR. RICHARDS: The difficulty is to
12 limit the hearing to the issue of that particular
13 finding.

14 BOARD MEMBER SHALLCROSS: Well, maybe
15 staff could come back with a recommendation.

16 CHAIRPERSON YOUNG: Okay, and is that
17 our staff or the prosecution team that does that?
18 This is something --

19 BOARD MEMBER SHALLCROSS: Well, the
20 cease and desist order is issued by us, not the
21 prosecution team.

22 CHAIRPERSON YOUNG: Right. But in terms
23 of this contact, is it something, Michael, that
24 you can approach --

25 BOARD MEMBER SHALLCROSS: Yeah, maybe

1 Michael --

2 (Parties speaking simultaneously.)

3 MR. THOMAS: I have a recommendation.

4 Wait until item number six, where we consider
5 future enforcement actions.

6 CHAIRPERSON YOUNG: Okay. All right, we
7 can take that up then. Thank you, we're done with
8 this agenda item.

9 Why don't we take a break because it is
10 12:00. Dr. Press, take a break? Okay.

11 And when we come back we will start with
12 agenda item number 5. Well, we have to take a
13 break anyway.

14 AUDIENCE SPEAKERS: How long?

15 AUDIENCE SPEAKER: And what time?

16 CHAIRPERSON YOUNG: An hour; one hour.

17 (Whereupon, at 12:01 p.m., the reporter
18 was excused from further duties and
19 released for the day.)

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CERTIFICATE OF REPORTER

I, RICHARD A. FRIANT, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Central Coast Regional Water Quality Control Board Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of May, 2007.