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

In the Matter of: )
Administrative Civil Liability )
Complaint No. R3-2005-0137 )
Re: Los Osos Community Services )
District, Los Osos Wastewater )
Project )
San Luis Obispo County )
___________________________________)

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

VOLUME II of II

FRIDAY, DECEMBER 2, 2005

Recorded by:
Board Personnel

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
BOARD MEMBERS PRESENT
Jeffrey S. Young, Chairperson
Russell M. Jeffries, Vice Chairperson
Gary C. Shallcross
Daniel M. Press
John H. Hayashi

BOARD ADVISORS
Michael Thomas, Assistant Executive Director
Sheryl Schaffner, Attorney

WATER BOARD PROSECUTION STAFF
Roger Briggs
Lori Okun
Matt Thompson
Sorrel Marks
Harvey Packard

LOS OSOS COMMUNITY SERVICES DISTRICT
John McClendon, Attorney
Jon Seitz, Attorney/Consultant
Dan Bleskey, Interim General Manager
Lisa Schicker, President, Director
Chuck Cesena, Director
John Fouche, Director
Bruce Buel, General Manager on administrative leave

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
ALSO PRESENT

Ed Moore
Monterey Mechanical

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
INDEX

Page

Proceedings                                      1
Hearing - continued                              1
Opening Remarks                                  1

Chairperson Young                                 1
Board Member Shallcross                          4

Exhibits (Letters) Distribution to Board         3
Administration of Oath                            7
LOCSD Presentation - resumed                     7

Bruce Buel                                       7

Direct Examination by Mr. Seitz                  8
Cross-Examination by Ms. Okun 20,51,56,124,128   8
Examination by Board                             40,51
Redirect Examination by Mr. Seitz                59
Cross-Examination of Panel by Ms. Okun           68

Regional Board Prosecution Staff Witness         106

Ed Moore (recalled)                              106
Redirect Examination by Ms. Okun                 106

Witness Christine Robertson, Office of Assemblyman Sam Blakesley 115
Direct Testimony                                  116

LOCSD Witness Robert Miller                      118
Cross-Examination by Ms. Okun                    118

Afternoon Session                                123

LOCSD Panel Witnesses                            124
Cross-Examination by Ms. Okun - resumed          124
Questions by Board                                127

Witness Al Barrow, CASE                          158
Examination by Board                             159

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
## INDEX

<table>
<thead>
<tr>
<th>Agency Policy Statements</th>
<th>165</th>
</tr>
</thead>
<tbody>
<tr>
<td>Darrin Polhemus</td>
<td>165</td>
</tr>
<tr>
<td>Direct Examination by Ms. Okun</td>
<td>165</td>
</tr>
<tr>
<td>Examination by Board</td>
<td>171</td>
</tr>
<tr>
<td>Cross-Examination by Mr. Seitz</td>
<td>173</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Public Comment</th>
<th>176</th>
</tr>
</thead>
<tbody>
<tr>
<td>Julie Biggs</td>
<td>177</td>
</tr>
<tr>
<td>Burke, Williams &amp; Sorensen</td>
<td></td>
</tr>
<tr>
<td>Joyce Albright</td>
<td>179</td>
</tr>
<tr>
<td>Taxpayers Watch</td>
<td></td>
</tr>
<tr>
<td>David Duggan</td>
<td>180</td>
</tr>
<tr>
<td>Resident, Los Osos</td>
<td></td>
</tr>
<tr>
<td>Eric Greening</td>
<td>182</td>
</tr>
<tr>
<td>Resident</td>
<td></td>
</tr>
<tr>
<td>Scott Kimura</td>
<td>184</td>
</tr>
<tr>
<td>Resident, Los Osos Valley</td>
<td></td>
</tr>
<tr>
<td>Al Barrow</td>
<td>187</td>
</tr>
<tr>
<td>CASE</td>
<td></td>
</tr>
<tr>
<td>Linde Owen</td>
<td>189</td>
</tr>
<tr>
<td>Resident, Los Osos</td>
<td></td>
</tr>
<tr>
<td>Daniela Anon</td>
<td>191</td>
</tr>
<tr>
<td>Resident, Los Osos</td>
<td></td>
</tr>
<tr>
<td>Alon Perlman</td>
<td>195</td>
</tr>
<tr>
<td>Resident, Los Osos</td>
<td></td>
</tr>
<tr>
<td>Questions by Board</td>
<td>196</td>
</tr>
<tr>
<td>Julie Tacker</td>
<td>200</td>
</tr>
<tr>
<td>LOCSD Director/Resident, Los Osos</td>
<td></td>
</tr>
<tr>
<td>Questions by Board</td>
<td>205</td>
</tr>
<tr>
<td>Chris Allebe</td>
<td>208</td>
</tr>
<tr>
<td>Resident, Los Osos</td>
<td></td>
</tr>
<tr>
<td>Questions by Board</td>
<td>210</td>
</tr>
</tbody>
</table>
# Index

**Public Comment - continued**

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alan Martyn</td>
<td>Resident, Los Osos</td>
<td>212</td>
</tr>
<tr>
<td>Bruce Payne</td>
<td>Resident, Los Osos</td>
<td>214</td>
</tr>
<tr>
<td>James Tkach</td>
<td>Resident, Los Osos</td>
<td>217</td>
</tr>
<tr>
<td>Questions by Board</td>
<td></td>
<td>218</td>
</tr>
<tr>
<td>Fred Delagatta (read letter for Ted Peterson)</td>
<td>Resident, Los Osos</td>
<td>220</td>
</tr>
<tr>
<td>Cynthia Hawley</td>
<td>Parker &amp; Hawley, LLP</td>
<td>223</td>
</tr>
<tr>
<td>Steve Senet</td>
<td>LOCSD Director/Resident, Los Osos</td>
<td>225</td>
</tr>
<tr>
<td>John Perkins</td>
<td>Resident, Los Osos</td>
<td>227</td>
</tr>
<tr>
<td>John Fouche</td>
<td>LOCSD Director/Resident, Los Osos</td>
<td>228</td>
</tr>
<tr>
<td>Questions by Board</td>
<td></td>
<td>230, 232</td>
</tr>
<tr>
<td>Steve Paige</td>
<td>Resident, Los Osos</td>
<td>235</td>
</tr>
<tr>
<td>Gail Mc Pherson</td>
<td>Los Osos Technical Task Force</td>
<td>Resident, Los Osos</td>
</tr>
<tr>
<td>Questions by Board</td>
<td></td>
<td>241</td>
</tr>
<tr>
<td>Vivian McNeill</td>
<td>Resident, Los Osos</td>
<td>243</td>
</tr>
<tr>
<td>Questions by Board</td>
<td></td>
<td>244</td>
</tr>
<tr>
<td>Marla Bruton</td>
<td>Coast Ocean Outfall Group</td>
<td>245</td>
</tr>
<tr>
<td>Wade Akle</td>
<td>Resident, Los Osos</td>
<td>246</td>
</tr>
<tr>
<td>Name</td>
<td>Title</td>
<td>Page</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Chuck Cesena</td>
<td>LOCSD Director/Resident, Los Osos</td>
<td>247</td>
</tr>
<tr>
<td></td>
<td>Questions by Board</td>
<td>249</td>
</tr>
<tr>
<td>Jan Di Leo</td>
<td>Resident, Los Osos</td>
<td>250</td>
</tr>
<tr>
<td>Karen Venditti</td>
<td>Resident, Los Osos</td>
<td>252</td>
</tr>
<tr>
<td>Richard Sadowski</td>
<td>Coast Ocean Outfall Group</td>
<td>255</td>
</tr>
<tr>
<td>Marla Bruton</td>
<td>Coast Ocean Outfall Group</td>
<td>257</td>
</tr>
<tr>
<td>Joey Racano</td>
<td>Coast Ocean Outfall Group</td>
<td>259</td>
</tr>
<tr>
<td>Don Bearden</td>
<td>Resident, Los Osos</td>
<td>262</td>
</tr>
<tr>
<td></td>
<td>Questions by Board</td>
<td>263</td>
</tr>
<tr>
<td>Barbara Akle</td>
<td>Resident, Los Osos</td>
<td>264</td>
</tr>
<tr>
<td>Bo Cooper</td>
<td>Resident, Los Osos</td>
<td>266</td>
</tr>
<tr>
<td>Lacey Cooper</td>
<td>Resident, Los Osos</td>
<td>268</td>
</tr>
<tr>
<td>Richard Margetson</td>
<td>Resident, Los Osos</td>
<td>271</td>
</tr>
<tr>
<td>Michael Moore</td>
<td>Resident, Los Osos</td>
<td>273</td>
</tr>
<tr>
<td>Frank Galicia</td>
<td>Resident, Los Osos</td>
<td>275</td>
</tr>
<tr>
<td>Vita Miller</td>
<td>Resident, Los Osos</td>
<td>276</td>
</tr>
</tbody>
</table>
## INDEX

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resolutions</td>
<td>282</td>
</tr>
<tr>
<td>Document Issues</td>
<td>282</td>
</tr>
<tr>
<td>Outstanding Motions for Continuance</td>
<td>295</td>
</tr>
<tr>
<td>Due Process Issues</td>
<td></td>
</tr>
<tr>
<td>Schedule Discussions</td>
<td>307</td>
</tr>
<tr>
<td>Adjournment</td>
<td>313</td>
</tr>
<tr>
<td>Transcriber's Certificate</td>
<td>314</td>
</tr>
</tbody>
</table>

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
CHAIRPERSON YOUNG: Good afternoon, everybody. We are going to continue the hearing we started yesterday on the Los Osos administrative civil liability.

And before we immediately launch into that we made changes to today's agenda that I would like anyone else in the audience that came here thinking that there was going to be certain staff reports covered, we have essentially continued all of our other staff reports.

Mr. Briggs, do you mind mentioning -- well, if it's on the agenda that we have kind of continued --

MR. BRIGGS: Sure.

CHAIRPERSON YOUNG: -- so that anyone that is here thinking that they're going to be able to speak on something doesn't have to wait.

MR. BRIGGS: The items that we did not get to would be item number 12, which is the spills, leaks, investigation and cleanup staff's report specifically on Scotts Valley Dry Cleaner.

The perchlorate cases which includes Olin Corporation, McCormick Selph Corporation,
Whittaker Corporation and United Defense.

Item 17 is the enforcement status report, which is typically a written report anyway. Reports by Board Members. And then lastly, the Executive Officer's report.

CHAIRPERSON YOUNG: Okay, and what were we going to do about public comment, in general, for today's hearing -- pardon me, not today's hearing, for today's agenda outside of the hearing.

MR. BRIGGS: Right. We had public forum listed for after 1:00 p.m. today.

CHAIRPERSON YOUNG: Okay, so I guess once we convene after lunch we'll probably want to allot some time for that.

MR. BRIGGS: Okay.

CHAIRPERSON YOUNG: Okay, and then why don't we talk about what we're going to do here in terms of lunch so people have some idea as to when we might be targeting to break and how long that will be, so that the audience has kind of a heads up.

I think we certainly want to get through the CSD's case. We'll get that completed. We will get into policy statements by representatives...
of agencies, we want to get through that.

And we will get into the public comments

that are going to be made. That's item number 6.

Ms. Okun.

MS. OKUN: I think where we left off was

staff's cross-examination.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: I think they were finished

with their case.

CHAIRPERSON YOUNG: Okay. And so before

we start with that, Dr. Hunter and Dr. Bowker, for

those of you who weren't here yesterday, have both

recused themselves from this item. And they put

that on the record yesterday. Dr. Hunter lives in

Los Osos, so she is precluded from participating

in the item. And Dr. Bowker wanted to recuse

himself because of his wife's past involvement

with the CSD Board. He just felt that that would

be kind of cleaner if he was not involved in our

decision today.

And these are the letters. Michael, why

don't you tell us what these are.

MR. THOMAS: Yesterday Members of the

Board asked for letters from Monterey Mechanical,
as part of the Los Osos case. And we're now
distributing those letters to the Board Members.

CHAIRPERSON YOUNG: Okay, so these are for us down here. Okay. And the CSD has copies of these, also? Whatever was given to us I want to make sure they have a copy of.

MR. THOMAS: I have extra copies I can give to them.

CHAIRPERSON YOUNG: Can you please just hand them a copy so they don't have to search for it and they'll know what we are looking at.

Okay, thank you.

Mr. Shallcross wanted to make a few comments before we begin.

BOARD MEMBER SHALLCROSS: Yeah, thank you. In exchange sort of toward the end of the meeting yesterday where I was having an exchange with Ms. Schicker, unfortunately I let my frustration get the better of me. And I think it was inappropriate.

After the meeting I apologized to Ms. Schicker, and I'd like to extend my apology to the Board, to the parties and to the public.

I want to assure the parties that any decision I make in this matter is going to be based only on the evidence appropriate before the
Board in this matter.
And I have a suggestion that the Chair might want to consider. We have a uniformed policeman in the back. You might want to consider one behind my chair, here.
(Laughter.)
MR. SPEAKER: I would think you'd want him in front of you.
(Laughter.)
CHAIRPERSON YOUNG: Well, I don't think Ms. Schicker is going to do anything, and I --
BOARD MEMBER SHALLCROSS: No, no, that was for me.
CHAIRPERSON YOUNG: Oh.
(Laughter.)
CHAIRPERSON YOUNG: From doing what?
(Laughter.)
CHAIRPERSON YOUNG: Okay. Anything else we need to consider?
Let's see, Mr. Seitz and Ms. Schicker had made a request, I think, for a little additional time?
MR. SEITZ: Right, but I agree with Ms. Okun. I think we did leave it at this point, and I'll defer to her, as to whether she wants to
conduct a cross on the witnesses that have made
presentations, or wait until we do our last
witness. And I don't have a preference, so I'll
leave it --

MS. OKUN: Well, my recollection is that
Mr. Buel was going to testify regarding the OM&R
costs. And I don't know what other witness you
have left.

MR. SEITZ: Mr. Buel. We're going to --

MS. OKUN: Okay, yeah. Why don't we go
ahead and let them finish. And then we also need
to resolve the issue about the settlement
agreement.

CHAIRPERSON YOUNG: Okay. Do we have
that document with us today?

MR. McCLENDON: Yes.

CHAIRPERSON YOUNG: Okay. All right,
let's then deal with, let's see, Mr. Buel, if
you'd come to the podium.

And, by the way, folks, is anybody here
today that is going to speak on this matter in
public comment that did not take the oath
yesterday?

Okay. And are you going to speak today?

Okay. Yeah, I'm going to do it again. Why don't
you just hand it to me.

Whereupon,

ALL PROSPECTIVE WITNESSES
to be called as witnesses and to testify herein
were thereupon duly sworn, en masse:

CHAIRPERSON YOUNG: Yes? Okay. Thank
you very much.

All right, let's set our clock. Where
are we, Michael? This is staff's time right now?
Okay.

MR. SEITZ: Well, wait, I'm sorry, the
way I understood the exchange between Ms. Okun and
myself is that we would finish with Mr. Buel and
then she could conduct cross.

CHAIRPERSON YOUNG: Fine, okay.

MR. THOMAS: Seven minutes.

CHAIRPERSON YOUNG: Seven minutes. That
was up here on the clock when I got here.

All right, go ahead. Thank you.

MR. SEITZ: I have a document up here on
the board that Mr. Buel will be testifying to.
It's not really clear, but for the Board's
reference it's at the end of exhibit 15 in that
packet that I provided. It's the last document,
so if you can't read it from the board I'm just
trying to give you a heads-up that there's actually a written one in your documents.

DIRECT EXAMINATION

MR. SEITZ: Mr. Buel, do you -- I think, Mr. Buel, you have one in front of you, too, do you not?

MR. BUEL: Yes, Mr. Seitz. What I have is page 1 of the adopted fiscal year 05/06 budget.

MR. SEITZ: And what does that document depict?

MR. BUEL: What you're seeing on the screen, which is page 1 of the 05/06 budget is the reserve balances. This page depicts, by fund, the activities of each fund projected over the course of the year.

We start with the starting fund balance in each fund. We show expenditures and revenues and changes in fund balance, getting to the bottomline on each fund, which is the projected reserve as of 6/30/2006.

MR. SEITZ: Okay, thank you. And this document more or less, at least for the Bay Ridge Estates, the fire department, Vista del Oro and the water department is consistent with those exhibits that we showed the Board regarding those
various zones of benefits that the District operates?

MR. BUEL: That is correct.

MR. SEITZ: Okay. So let's start with the Bay Ridge Estates, which I think is shown as fund 200. Do you have that?

MR. BUEL: That is correct. I have that.

MR. SEITZ: Okay, could you tell the Board what is the reserve for Bay Ridge Estates?

MR. BUEL: As of 6/30/05 the unaudited reserve was estimated at $65,684. The Board intentionally used $34,060 of reserves to balance the budget for that fund through the 05/06 fiscal period, resulting in an expected fund balance, as of June 30, 2006, of $31,624.

MR. SEITZ: And what is the purpose of that reserve fund of $31,624?

MR. BUEL: That's for emergencies, and also for cash flow problems. Essentially this fund provides the money to operate the septic system for these homes, and also the open space and drainage function.

So if there was a blowout, some type of a disaster, in that fund the reserve is
specifically earmarked to cover those costs.

MR. SEITZ: And the next fund over I see is fire, 300?

MR. BUEL: That's correct.

MR. SEITZ: Okay. And what is the reserve balance anticipated to be as of June 30, 2006?

MR. BUEL: This says $669,002. I'd like to note for the record that the Board, following the adoption of this budget, chose to implement a fire tax that's about $140,000 less than what we anticipated when we adopted the budget.

So that action would reduce the fund balance in this fund as of June 30, 2006, to approximately $529,000.

MR. SEITZ: And what services does our fire department provide the residents within the Los Osos Community Services District?

MR. BUEL: Well, two principal services. The first is response to fire emergencies. And then secondly all other life-threatening emergencies. We are first responders for any health problem reported through 9-1-1 or directly to the fire station.

MR. SEITZ: And what is the purpose of
that reserve?

MR. BUEL: This reserve is also intended for emergencies. For example, if there was a fire on the hill above Los Osos that would threaten the community, there's no funding currently that would pay for the extra cost of fighting such a fire. So that is for extraordinary situations.

MR. SEITZ: And the next one over is Vista del Oro. Again, that's a zone of benefit, a specific zone of benefit that the District operates?

MR. BUEL: That's correct.

MR. SEITZ: And what is the anticipated reserve balance as of 6/30/2006?

MR. BUEL: $19,720.

MR. SEITZ: And what is the purpose of that reserve?

MR. BUEL: Again, this fund is intended to provide for emergency costs. In this case, both the septic system is maintained by the District, and drainage. So problems with either of those systems may require a reserve.

MR. SEITZ: Okay. The next one over is water, 500. And in making this questioning here, we realize, and I think the prosecution staff has
agreed, that the water department is not at issue
in their ACL. But I still wanted to bring this to
the attention of the Board, how this fund
operates. And when you take a look at the
reserves, what they are actually made of.

Okay, and now we're taking a look at
this zone of benefit regarding the water
department. And what is the reserve shown for the
year 6/30/2006?

CHAIRPERSON YOUNG: Mr. Seitz, you have
a minute left.

MR. SEITZ: Thank you.

MR. BUEL: Roughly $3.5 million, but
that includes pipes and plumbing. Under Gasby-34
the water fund is an enterprise fund, and we must
report assets, both liquid and nonliquid assets.
I guess that's sort of a joke for the water fund.
(Laughter.)

MR. BUEL: But the last time it was
audited not under Gasby-34, there was around
$300,000 in liquid assets available to that fund.

MR. SEITZ: And the next fund over is
solid waste.

MR. BUEL: Yes, sir.

MR. SEITZ: And that shows a fund
balance of $1,231,114.

MR. BUÉL: That's actually wastewater.

MR. SEITZ: I'm sorry, wastewater.

MR. BUÉL: That fund is solely dedicated, the remaining balance is obligated under the bond covenants to cover the reserve required to hold bondholders whole in the case of a default on the bonds.

MR. SEITZ: And would that, in your opinion, be a restricted account?

MR. BUÉL: It is absolutely a restricted account.

MR. SEITZ: Okay. Just very quickly, I'll try to speed through this, Mr. Chair.

Solid waste, that is the franchise fees that we collect from our garbage collection?

MR. BUÉL: Yes, sir.

MR. SEITZ: And that shows a cash balance estimate of $244,554.

MR. BUÉL: Yes, sir.

MR. SEITZ: Would you agree that there is no septic tank maintenance or sewer issues involved with that fund?

MR. BUÉL: I would agree with that.

MR. SEITZ: And is that fund restricted?
MR. BUEL: Yes, that is restricted both by ordinance and resolution to paying for solid waste costs.

MR. SEITZ: And then the Cabrillo Estates. Is that in the prohibition zone?

MR. BUEL: No, sir, that is not in the prohibition zone.

MR. SEITZ: And now we'll go to the last one, is drainage.

MR. BUEL: Yes, sir.

MR. SEITZ: That shows a balance of $111,543 --

MR. BUEL: Um-hum.

MR. SEITZ: -- fund 800. What is that money for?

MR. BUEL: That is also for contingencies and emergencies. The District operates four pump stations, all of which are in the prohibition zone. But the funding is reserved for potential problems with those pumps or flooding that may result should the pumps fail.

MR. SEITZ: Let's go to the next one, parks-900.

MR. BUEL: Yes, that is a trust fund, actually, that the Board has established. Those
funds were inherited from the County, and they're in a trust fund specifically to pay for a future swimming pool for the community.

MR. SEITZ: Is there any monies within the District's reserves that are unaccounted for on this sheet?

MR. BUEL: Yes, there are. There are two funds. The first is the roughly $4 million that is the residual from the first disbursement from the state revolving fund.

The second is approximately $500,000 that is a settlement fund resulting from litigation with Chevron over an MTBE spill at the Bear Valley Garage.

MR. SEITZ: And is that money dedicated?

MR. BUEL: Yes. Both of those funds are dedicated.

MR. SEITZ: And what is the MTBE litigation dedicated to?

MR. BUEL: To water supply programs at the Board's specific authorization.

MR. SEITZ: Thank you. If the Chair or the Board has any questions --

CHAIRPERSON YOUNG: Okay. Let's just see, I gave you guys another two minutes as that
continued. Do you need any more time with this
witness, Mr. Seitz?

MR. SEITZ: I would like to have Mr. 
Buel testify as -- yesterday I obviously mis- 
tested as to 00-131 and how it came about. And 
I apologize to the Board for that testimony. I 
think it may more or less highlight why Mr. Grimm 
would have been a better person up here to ask 
those questions, to give that testimony. 

But I do want Mr. Buel to give us the 
history of 00-131, why it was, in his opinion, 
ended up being that time schedule order, and the 
subsequent actions of the District related to 00- 
131. 

And he can do it without me asking 
questions, I'm sure. 

CHAIRPERSON YOUNG: Okay. How much time 
do you think it'll take? 

MR. BUEL: I think I can do it in two 

minutes, Mr. Chair. 

CHAIRPERSON YOUNG: Okay, good. All 
right. Both sides have an additional four 

minutes. 

MR. SEITZ: Thank you. 

CHAIRPERSON YOUNG: Okay. So, I will go
ahead and reset this for two minutes. And, go
ahead, Mr. Buel.

MR. BUEL: As you already know, the
District election took place in 1998, November.
The Board was seated in early 1999.

The District initially looked at a pond
system. With a tremendous discussion and feedback
from your staff and the State Board Staff, the
Board ultimately rejected that system. But that
did set us back somewhat in time.

Your Board held a series of meetings in
early and mid 2000; and you directed your staff to
bring back and enforcement action in your October
meeting in the year 2000.

There were a number of discussions
between myself, then-President Bowker, and your
staff, Roger Briggs and Sorrel Marks, at that
time. And the discussion was what is an
appropriate timeline for an enforcement mechanism
like the time schedule order.

It also occurred at that time that the
State Water Resources Control Board had renewed
the loan that had previously been dedicated to the
County of San Luis Obispo. In that order renewing
that loan the State Board had established a
timeline for construction of the project. That is the timeline that was ultimately written into time schedule order 00-131.

I think it's fair for the record to note that there was some discomfort on the part of the District. That that time schedule that was written into the state loan had been developed a year earlier, and it was clear in October 2000 that it was going to be difficult to meet that. Nevertheless, that was the timeline that the state had, and that's the timeline that your staff felt was most appropriate to adopt into time schedule order 00-131.

I'd also like to note for the record that the District had objected to the adoption of the time schedule order prior to and at that hearing, and did file a petition with the State Board following the hearing.

MR. SEITZ: Okay, I just have two quick questions, Mr. Chair.

CHAIRPERSON YOUNG: All right, go ahead.

MR. SEITZ: Thank you. Subsequent to that did the State Water Resources Control Board renegotiate the timeline?

MR. BUCEL: Yes, sir, they did.
MR. SEITZ: And is and was the District in compliance with that timeline?

MR. BUEL: Yes. The District is still in compliance with the State Board timeline. The expectation is that the District will complete the project by the end of 2007.

MR. SEITZ: And did you attempt to in any way adjust 00-131 on the basis of the Regional Water Quality Control -- State Water Resources Control Board's agreement to renegotiate the timeline?

MR. BUEL: Yes, I did. I had several meetings with Executive Director Briggs and his staff requesting that 00-131 be adjusted accordingly.

MR. SEITZ: And what was the response?

MR. BUEL: They felt that as long as we were making reasonable progress that there was no need to adjust time schedule order 00-131.

MR. SEITZ: Did you request that that be brought to the Board?

MR. BUEL: Yes, I did.

MR. SEITZ: And I'm talking about the Regional Water Quality Control Board.

MR. BUEL: Yes, I did.
MR. SEITZ: And what was the response?

MR. BUEL: That they did not believe that was necessary or appropriate.

MR. SEITZ: Thank you.

CHAIRPERSON YOUNG: Okay. You did use up all your time.

MR. SEITZ: I thank the Chair for the leniency.

CHAIRPERSON YOUNG: And I think you got everything in that you wanted to --

MR. SEITZ: I did.

CHAIRPERSON YOUNG: -- with this witness? Okay. Let's see.

Why don't we let prosecution do their cross-examination of this witness, and then we'll follow up if we have any questions. Would that be okay? Okay. Let's reset the clock.

MS. OKUN: Thank you. You just --

CHAIRPERSON YOUNG: Hang on, Ms. Okun, we've got to run our clock up here. Okay.

CROSS-EXAMINATION

MS. OKUN: You just testified regarding various funds that the District has; and you indicated that those funds were restricted to particular uses.
And when you talked about the solid waste fund you said it was restricted by a resolution or ordinance.

MR. BUEL: Um-hum.

MS. OKUN: Is that a resolution or ordinance of the District?

MR. BUEL: That is correct, yes.

MS. OKUN: And the restrictions on these other funds, are they restricted because of actions by the District or actions by statutes or bond provisions or other outside restrictions?

MR. BUEL: I cannot speak to the legal. Mr. Seitz would be better at that. But I can tell you that in the budget, in this 05/06 budget, is a resolution restricting each of these funds for specific purposes.

I'd be happy to deposit that with the Regional Board if that is the desire.

MS. OKUN: Yes, please.

MR. SEITZ: I would like to address the legal analysis of the solid waste fund, Mr. Chair.

CHAIRPERSON YOUNG: Excuse me. What are we doing? Shut it off. Okay.

Go ahead.

MR. SEITZ: I would like to, since, in
my opinion, Ms. Okun asked Bruce for a legal conclusion as to why the solid waste funds are restricted, I would like to give the legal analysis as to why they're restricted, with the Chair's concurrence, of course.

MS. OKUN: That's fine.

CHAIRPERSON YOUNG: Okay. How much time do you need to do that?

MR. SEITZ: Probably three minutes, I'm hoping. I just don't want to have the Board have a mis-impression that this Board unilaterally restricted the funds. They restricted them because of my legal opinion to the Board.

We took over solid waste after the District was formed. And one of the precepts of governmental funding at the special district level is that the funds that you accumulate have to reasonably relate to the services that you are providing.

And when we went through the LAFCO process, in order to achieve solid waste services to our residents, we were included in the franchise agreements with the County that the County had.

And when we took it over I recommended
to the Board very strongly, and we adopted resolutions to this effect and ordinances to this effect, that franchise fees were limited to providing solid waste services, or related solid waste services to our community.

And that's in an ordinance. It's not -- it's in a resolution and an ordinance. And that is the law, in my opinion, that we cannot be taking solid waste or garbage fees and using them in our water department, our sewer department, our drainage department or any other department.

BOARD MEMBER PRESS: Mr. Chair.

CHAIRPERSON YOUNG: Yes, okay.

BOARD MEMBER PRESS: Could I follow up?

CHAIRPERSON YOUNG: Go ahead.

BOARD MEMBER PRESS: Mr. Seitz, you've been taking us down a reasoning related to the discharger's ability to pay a civil liability.

This is what this is all about here.

Are you saying that essentially that the CSD, because it has not built a treatment plant, and because they are therefore not collecting fees, it cannot be fined for a violation of Porter-Cologne or the Clean Water Act. Is that essentially where we're headed?
MR. SEITZ: No.

BOARD MEMBER PRESS: Well, in what way, in what possible manner could this entity be fined for a violation of Porter-Cologne and Clean Water Act if you've told us that all of these funds are restricted or not available? I mean, how do you answer the discharger's ability to pay differently?

MR. SEITZ: You've put me in an awkward situation of having --

BOARD MEMBER PRESS: You've put us in an awkward situation, Mr. Seitz.

MR. SEITZ: I agree, and I'm not -- I agree that I'm putting you in an awkward situation. So I'm not here to cast aspersions. But also the question that you've asked me to do is to give you advice on how to enforce the Porter-Cologne Act against my client.

So let me say just one -- see if I can address it this way. In my opinion, under the ACL complaint that is before you, you cannot fine my client. That is, the allegations that are in this ACL complaint.

I am hesitant, you know, with that as my basic position, and I think it's legally the
correct position, is there another way that the
ACL complaint, under different causes of action,
under a different worksheet, under other
circumstances, and you had the wherewithal -- I
don't know how far I can go here -- if you have
the wherewithal to, say, bankrupt the Bay Ridge
Estates fund, bankrupt the individual funds that
are sitting up there, you're going to hear an
argument from me if you try it.

But, I'm saying it's -- that's all I'm
going to say.

BOARD MEMBER PRESS: Mr. Seitz, does it
seem problematic to you that in essence this
provision, ability to pay civil liability, here
essentially is fatal to any ACL, under your
reasoning, when a treatment plant has not yet been
built?

MR. SEITZ: I believe that an ACL
complaint based on a violation of 00-131 is
fatally defective as far as the District's legal
ability to collect the fines to pay the fine is
unenforceable.

BOARD MEMBER PRESS: But wouldn't that
be true of any situation in which a treatment
plant has not been built?
MR. SEITZ: I'm just -- I don't want to
argue with you because there's one rule, you never
argue with the judge. But I sort of feel this.
You're predetermining your actions here today on the
basis of fines. That's just one of you tools.

That's not the only tool that, in my
opinion, that you have. And that's the problem
with the way this ACL complaint is drafted. I'm
not going to tell your counsel how to draft a
better one.

And there's this sort of presumption
that the way to go about seeking enforcement of
00-131 is to fine the District.

Two things, one -- and I think we all
agree on this, all the testimony is -- putting the
District in bankruptcy is not going to solve water
quality issues. I don't think there's anybody in
this room that is going to argue with that. And
nobody in this room is going to argue that fining
the District isn't going to do anything but that.

You've seen the financials up here. You
know what's up there. You know what's in the
District's coffers.

So, I think this exercise a) is helpful,
because I think it educates not only this Regional
Board, but the audience. But I don't believe that you can sit back under 00-131 and have a defensible cause to bankrupt the District, because you're not going to clean up the groundwater basin.

Furthermore, the complaint is fatally defective because it's based on the prohibition zone. And there's no nexus between the District and the prohibition zone until a wastewater treatment project is actually in place where they can collect the monies to pay the fines.

BOARD MEMBER PRESS: Thank you.

CHAIRPERSON YOUNG: Mr. Seitz, are there any case authorities on point for this?

MR. SEITZ: Well, I would --

CHAIRPERSON YOUNG: Or is this totally novel.

MR. SEITZ: No. I'd say it's Article XIII of the California Constitution, as amended by Proposition 218.

CHAIRPERSON YOUNG: So there are no case authorities that look at similar --

MR. SEITZ: Is there any case authority where the Regional Water Quality Control Board has fined a District under these particular

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
circumstances, I don't -- probably not.

But I can go back to Lexis at my office
and punch this in, but I'm sure we're not going to
find it.

CHAIRPERSON YOUNG: Let me share with
you. My take on this is you're not suggesting
that legally we cannot impose civil liabilities on
the CSD for violating the time schedule order.
What you're suggesting is that how a fine would
get paid is very complex.

MR. SEITZ: I am --

CHAIRPERSON YOUNG: And I look at that
as really the District's conundrum to deal with.

MR. SEITZ: No, because when you take a
look -- I have two responses. One is I am
arguing, hopefully successfully, that legally you
will face a challenge where, and in my opinion,
the District will be successful if you try to
implement fines against the District based on the
violation of 00-131, period.

Number two. Even if that was to -- we
were to somehow lose that argument, my second
point is that under your worksheet and your
analysis you have to consider the financial
impacts of trying to enforce 00-131. And I
believe that the court is not going to say that
bankruptcy, fining a District and placing them in
bankruptcy is anything but arbitrary and
capricious on the part of this Board, as far as --
I'm not limiting myself here, by the way, I hope
everybody realizes -- trying to enforce it upon a
District that is financed as this District is.

Because you've seen the numbers up
there.

CHAIRPERSON YOUNG: Well, --

MR. SEITZ: Now, what I'm also trying to
say is that fining isn't the only way to enforce
the prohibition zone. You've been locked into a
position where only fines are before you.

There are other remedies. And I'm not
going -- unfortunately --

CHAIRPERSON YOUNG: And I --

MR. SEITZ: -- those I can't articulate.

MS. SCHAFFNER: Mr. Chairman, --

CHAIRPERSON YOUNG: Yes.

MS. SCHAFFNER: -- if I could just add
one potentially helpfully clarifying point. And
it goes to a word that Mr. Seitz just used that is
actually --

CHAIRPERSON YOUNG: Seitz.
MS. SCHAFFNER: I mean Mr. Seitz just used, which is actually reflected in the applicable statute. Porter-Cologne Water Code section 13327 requires that in determining the amount of a civil liability the Regional Board shall take into consideration the various factors laid out in that statute.

One of those factors to take into consideration is the ability to pay. Along with the nature, extent, gravity of the violations, you know, the water quality, all the other issues that come into play. History of compliance or noncompliance.

The ability to pay is not a determinative factor. You're only required to take it into consideration.

Clearly the CSD's position is that it is determinative, in their opinion, because it is such a major problem for them. But it is not a new circumstance that a discharger would have this opinion that the discharge would put the -- the ACL would put them out of business, make them bankrupt, they couldn't pay it.

I don't know if I've ever heard a significant enforcement action where that wasn't
argued.

I just wanted to make sure that we understand that it's not can they pay or can't they. If they can't, then you can't assess the penalty. You're only required to take it into consideration.

CHAIRPERSON YOUNG: Okay, --

MR. SEITZ: If I just might just comment. I don't disagree with what your counsel just said, but she had a whole list of elements that you are to consider. And one is, is the District is not responsible for the individual violations of its residents within the prohibition zone under 00-131. There is no nexus.

What we have is an empty shell of a zone that is not going to become operative until such time as the project is completed and sewer service is being provided to those residents within that zone.

Fining the District, the District, is not an appropriate action for violations of the prohibition, the general prohibition zone violation. 8313 goes to individual dischargers. It doesn't go to the District.

I mean if you -- and, again, I'm not
going to tell you how to draft the complaint,
but --

(Audience participation.)

MR. SEITZ: I know. -- but you've got
to understand, holding the general ratebase of the
Los Osos Community Services District for
violations of individual homeowners within a zone
is just strictly inappropriate.

CHAIRPERSON YOUNG: Well, that assumes
that we go with the basin plan prohibition
violations. Correct?

MR. SEITZ: Right. And it --

CHAIRPERSON YOUNG: So, let's -- that
makes an assumption.

MR. SEITZ: Okay.

CHAIRPERSON YOUNG: Let me ask you this.

What fine doesn't bankrupt the CSD?

MR. SEITZ: And that is the crux of the
issue, is why are we seeking fines when you have
other remedies.

CHAIRPERSON YOUNG: Well, but that's
your issue and your argument. My question is,
you're arguing we can't bankrupt the District, but
certainly the District is paying bills to many
people. It has some discretion over its funds.
And I'd like to know at what level a penalty, in your opinion, does not bankrupt the District.

MR. SEITZ: I mean I could be facetious in a response, and I don't want to be. But if you take a look at this, it's very, very, very, very little because of the way special districts operate.

For example, if you take the Cabrillo Estates. They're not in the prohibition zone. Are they going to get a legal opinion from me, or 99.9 percent of --

CHAIRPERSON YOUNG: Mr. Seitz, I don't know what your income flow looks like over time.

MR. SEITZ: That's what we're trying to show you.

CHAIRPERSON YOUNG: I don't -- I know, but how it changes month to month, quarter to quarter, do you get tax receipts from property taxes? Do you get property taxes --

MR. SEITZ: That's correct, and we show --

CHAIRPERSON YOUNG: Does that go to Sacramento first?

MR. SEITZ: Excuse me?

CHAIRPERSON YOUNG: Is that collected,
like all property taxes, by --

MR. SEITZ: Correct.

CHAIRPERSON YOUNG: Isn't that something that we could attach?

MR. SEITZ: And we showed -- I'm not -- I feel awkward answering that question, but we put up the property tax pie of where those monies went yesterday. And you saw a slide, and I hope I'm quoting this right, 98.9 percent of the property taxes are dedicated to the fire department in providing health, safety, EMT service, fire service within the District boundaries.

CHAIRPERSON YOUNG: Okay. All right, let's move on --

MS. OKUN: Well, I'd like to be able to respond to this.

CHAIRPERSON YOUNG: No. And I meant that, not to cut you off, but from any more Board comments on this.

Go ahead, Ms. Okun.

MS. OKUN: There's three issues I'd like to respond to. The first one is the ability to pay. And as Ms. Schaffner said, that's one of the factors in 13327.

But this action is based on section
13308 of the Water Code. And that section doesn't
require a consideration of these factors in
setting the amount of the penalty in the time
schedule order. What it requires a consideration
of is the amount necessary to achieve compliance.

Five years ago the Board determined that that
amount was $10,000 a day.

Once the Board gets to this point, which
is reducing that time schedule order to an ACL,
the Board can consider the 13327 factors if it
wants to justify imposing a lower penalty.

The second thing is that I think you
need to distinguish the ability-to-pay argument
and the issue of what issues the Board may be
facing in a collection action.

Obviously if there's an ACL, it's going
to be challenged. Eventually it will be reduced
to a judgment and the Board will have to collect.
And maybe there will be issues that we'll have to
face at that point, but we'll face them at that
point.

The third thing is the basis for
assessing a penalty on 00-131 versus assessing a
penalty on the basin plan prohibition. No matter
what we base the penalty on, it's based on the
District's discharges at Bay Ridge Estates, Vista del Oro and the fire department. It's not based on a basin-wide prohibition or discharges of other residents, other than the residents in these two subdivisions.

00-131 was based on cease and desist orders which, in turn, were based on the District's violations of the basin plan prohibition, which are the same violations that we would be referring to if we were recommending a penalty under 13350.

And then in terms of other remedies available to the Board, Mr. Seitz, can you elaborate on what those are?

MR. SEITZ: I'm sorry, Lori, I didn't catch the question.

MS. OKUN: Well, you --

CHAIRPERSON YOUNG: Did you really want to get into that, other remedies? I mean it's --

MS. OKUN: Never mind.

CHAIRPERSON YOUNG: I mean that --

BOARD MEMBER SHALLCROSS: Point of clarification --

CHAIRPERSON YOUNG: It's not really, it's not in the ACL, --
MS. OKUN: Okay.

CHAIRPERSON YOUNG: -- it's really not before us.

MS. OKUN: Okay, that's fine.

MR. SEITZ: Mr. President, I just want to make sure that the Board's aware that in section 8 of the prosecution team's rebuttal, third line down: Second, the complaint does not allege any violations of the cease and desist orders."

MS. OKUN: Right. It alleges violations of the time schedule order, or in the alternative, violations of the basin plan prohibition.

CHAIRPERSON YOUNG: Mr. Shallcross.

BOARD MEMBER SHALLCROSS: Yeah, Ms. Okun, I have a point of clarification.

I understand what you're saying, that the complaint alleging the basin plan violation is based on the entities, the fire station, et cetera.

Now, on the time schedule order part of the complaint, that's on the time schedule order violation. And what you're saying is the underlying -- is this what you're saying? The underlying prohibited discharges that give rise to
that time schedule order, are those the same
entities, the same four -- entities, and not on
the individual homeowner violations?

MS. OKUN: That's what I'm saying.

BOARD MEMBER SHALLCROSS: Thank you.

MS. OKUN: Mr. Buel, could you come back
up to the podium.

CHAIRPERSON YOUNG: Okay. I didn't have
the clock running when we had that brief
intermission, and I will restart it now.

MS. OKUN: Did you testify yesterday
that the District has the ability to allocate
property tax revenues to the various funds within
its jurisdiction?

MR. BUEL: I did.

MS. OKUN: Thanks. How much money did
you say was left of the SRF loan disbursement?

MR. BUEL: Roughly $4 million. We
received 6.4 million and we spent a little more
than 2.4 million.

MS. OKUN: What's the District planning
to do with that $4 million?

MR. BUEL: I can't answer --

MR. SEITZ: I object on the basis of
relevancy. Both parties have agreed that the SRF
loan monies in the responses to the Chair's
questions are not eligible for fining.

MS. OKUN: Okay, I'll withdraw the
question.

Does the District charge fees for the
users -- let me start over -- does the District
charge user fees for the septic system in the Bay
Ridge Estates and Vista del Oro subdivisions?

MR. BUEL: Yes, through an assessment
mechanism. We're obligated to provide those
services to those two funds, and we collect the
revenue to provide those services through annual
assessment that is collected along with the
property tax.

MS. OKUN: Okay, and those are user fees
for using the system?

MR. BUEL: Effectively, yes.

MS. OKUN: Regarding the time schedule
order, did the District ever challenge the
specific tasks that were in the time schedule
order? And I'm not talking about the due dates,
but the appropriateness of doing an EIR, of
submitting construction design plans, developing a
wastewater system. Did the District ever
challenge any of those specific tasks?
MR. BUEL: No.

MS. OKUN: Regarding the bids for the three construction contracts, did you ever recommend that the District reject those bids?

MR. BUEL: No.

MS. OKUN: In your opinion, had the District re-bid the contracts after it received those bids, would it have gotten lower bids?

MR. BUEL: No.

MS. OKUN: At some point did you do a calculation for the District of what the delay costs were for stopping the construction project?

MR. BUEL: I did discuss those potential delay costs with each of the contractors. And I concluded that the District would end up paying roughly $200,000 a day during a stop-work situation.

MS. OKUN: Thank you, that's all I have.

CHAIRPERSON YOUNG: I have a few questions for you, Mr. Buel.

We heard some testimony -- 53.10.

We heard some testimony yesterday about the Broderson site. And the engineering for the Tri-W site is to generate water that was rejected at the Broderson site, that 800,000 gallons a day,
is that accurate?

MR. BUEL: Well, I would prefer to use the word percolated. We're trying not to inject, but to --

CHAIRPERSON YOUNG: Okay.

MR. BUEL: -- allow gravity to take the treated wastewater and allow that percolation to transport the treated wastewater into the groundwater basin.

CHAIRPERSON YOUNG: Okay. And do you know what levels of nitrate that effluent is estimated to contain?

MR. BUEL: Well, the discharge order limits that to 7 mg/L of nitrate as nitrogen. And that compares to the state drinking water standard of 10. Our engineers predicted that our discharge would average closer to 5 mg/L of nitrate as nitrogen.

CHAIRPERSON YOUNG: Okay. I think we heard some testimony yesterday from Ms. Schicker, if I'm not mistaken, that she feels that the estimates, based on maybe new information that they have, that the District has, would have levels being discharged about 7.5 or 7.4 parts per million. Do you have any information?
MR. BUEL: I have no information that supports that.

CHAIRPERSON YOUNG: To support that, okay. And the percolation of this water, what is the anticipated goal in percolating water at that site?

MR. BUEL: Well, we did a series of hydrologic studies and modeling studies to determine the best location to recharge the upper basin and to cleanse the upper basin with this lower-nitrate water.

Understand, the concept of the entire system is to cut off the septic tanks so we're no longer discharging effluent from the septic tanks at 40 to 60 mg/L. And what we're doing is intelligently recharging the groundwater basin with treated effluent at 5 to 7 ml/L.

Our analysis indicated that we could discharge 800,000 gallons per day up at Broderson and never achieve a threat to the homes downslope. We wanted to maintain at least a 30-foot buffer between the top of the subsurface mound that's migrating downslope and the homes until we got down to the Bay.

And our concept at that point was to
install what we call harvest wells to remove that surplus groundwater as the mound hit the geographic slope of the surface water at the Bay, so that we would not flood those homes.

We were also hoping we could recharge a portion of the discharge, the recharge occurring at Broderson, would also work its way into the lower groundwater basin and help prevent salt water intrusion.

CHAIRPERSON YOUNG: Did you need to get permits from the Department of Health Services to do this?

MR. BUEL: No, we did not. We worked with DOHS, and their office wrote to your Board before you issued your discharge order indicating that they would not issue a separate permit and did not need to do so.

CHAIRPERSON YOUNG: Why? Because the quality of the water --

MR. BUEL: Primarily --

CHAIRPERSON YOUNG: -- this is going back into drinking water.

MR. BUEL: Well, it certainly is, but primarily there's a distinction under the law, and I hope I'm not stomping on counsel's feet here,
but the distinction under the law, what was
litigated in the CalCities v. Regional Board
lawsuit following the issuance of your discharge
order, the Superior Court determined that this was
primarily a discharge project and did not require
a separate permit from Department of Health
Services.

CHAIRPERSON YOUNG: Okay. Did Health
Services express any concern that this discharge
would get into the drinking water?

MR. BUEL: No. I believe they supported
that. I believe in the record you will find at
least two letters from Department of Health
Services indicating their belief that the
discharge of treated effluent with low nitrate
concentrations would result in the cleansing of
the upper basin.

CHAIRPERSON YOUNG: We also heard some
testimony about liquefaction issues at the
Broderson site.

MR. BUEL: Yes.

CHAIRPERSON YOUNG: Can you tell us, is
that a risk that was known? Or is that a real
risk?

MR. BUEL: Well, I have the
environmental impact report with me. Appendix D
to the draft environmental impact report is an
analysis of liquefaction. I'm not competent to
predict that. But Jonathan Blanchard, who is the
technician that prepared that, opined at that time
that the liquefaction risk with this project would
be no greater than it is currently in the District
with the rainfall and the discharge from the
septic tanks.

CHAIRPERSON YOUNG: Well, have we seen
any liquefaction from the septic tanks to this
point in time?

MR. BUEL: Not to my knowledge. But,
again, I'm way over my head --

CHAIRPERSON YOUNG: Okay.

MR. BUEL: -- in terms of this field.

CHAIRPERSON YOUNG: Okay. Do you know
of any additional information up until the time
you were put on administrative leave that would
have changed the potential risk of liquefaction at
the Broderson site?

MR. BUEL: Well, we did do, as President
Schicker testified to your Board, a series of
additional studies in the design phase preparation
for the design.
As I've discussed those results with both Mr. Blanchard and Montgomery Watson Harza, the engineers doing the design, they felt that the percolation tests and the analysis of discharge routing the flows from the percolation supported the conclusions in the original analysis.

I believe that, based on what I know, what I've been told by what I believe are competent professionals, that there is no greater risk to liquefaction now today than was analyzed in the draft environmental impact report.

CHAIRPERSON YOUNG: Okay. There was also a graph put up of nitrate levels --

MR. BUEL: Um-hum.

CHAIRPERSON YOUNG: -- by the District's Engineer. Did you happen to see that when it was discussed? It tended to show lower levels of nitrate in groundwater throughout a number of wells.

MR. BUEL: Um-hum.

CHAIRPERSON YOUNG: And, you know, there's a different conclusion one could take from that graph versus the conclusion that one would take from the Water Board Staff's graph, which shows higher levels of nitrate.
Have you seen both of those graphs?

MR. BUEL: Yes, and I have the report that Mr. Miller was addressing yesterday, and the most recent report. He was using the October 2004 nitrate monitoring water quality report. I also have the April 2005 report with me today.

CHAIRPERSON YOUNG: Okay. Well, what can you tell us about the nitrate levels within the prohibition zone in groundwater?

MR. BUEL: Well, Mr. Miller was addressing 27 wells yesterday. Those are monitoring wells that were drilled by the District specifically to provide an analysis of first water, of the top of the upper aquifer for our analysis.

I believe what the monitoring that we've done shows over the last six years is that in the prohibition zone, there's 20 of those 27 wells that are actually in the prohibition zone, that the average concentration of nitrates in those wells exceeds the drinking water standard.

I agree with Mr. Miller that it has been rather flat. If you look back to our first samples and compare all of the samples over time, you will see variations in individual wells,
there doesn't appear to be currently a trend of increasing contamination.

As I stated, the monitoring wells in the prohibition zone currently exceed the drinking water standard for nitrate as nitrogen. But there is no apparent increase. And I agree with Mr. Miller's conclusion that the prohibition of discharge generated by 8313 since the moratorium went into place in 1988 has stabilized the problem, but has not eliminated the problem.

CHAIRPERSON YOUNG: Okay. This is not a scientific question or technical question. I'm more interested then in getting into the issue of how the CSD Board had voted prior to your administrative leave.

I guess when Measure B was proposed, as that came on the horizon, I know that the District filed a lawsuit.

MR. BUEL: Um-hum.

CHAIRPERSON YOUNG: I guess that went to a Board vote, a motion and a Board vote?

MR. BUEL: Yes, it did.

CHAIRPERSON YOUNG: Did all the Directors vote to file the lawsuit to challenge Measure B?
MR. BUEL: I believe we reported out of closed session, and I'd ask District Counsel to help me here, but I believe there was a report out of closed session that two of the Directors objected to the special counsel that was proposed to assist in that lawsuit.

CHAIRPERSON YOUNG: And who were those Directors?

MR. BUEL: I believe that's Director Schicker and Director Tacker.

CHAIRPERSON YOUNG: At that time, did those two Directors have any discussions with you, or did you overhear any discussions about what their position was with respect to Measure B or moving the site away from Tri-W?

MR. SEITZ: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

MR. SEITZ: I just want to register my objection here. And I'm not going to say don't answer the question, but I wanted to make sure I have a record of this.

That we have seen up here, we've argued it numerous times, the Board takes action by vote. And there was a vote taken. That vote is the vote of the District. Impinging on individual motives...
of various Board Members as to how they voted or
why they voted, to me, is irrelevant. It's the
vote of the District --

CHAIRPERSON YOUNG: Okay, Mr. Seitz, you
can state your objection --

(End Tape 4A.)

CHAIRPERSON YOUNG: -- for the record --

MR. SEITZ: Okay.

CHAIRPERSON YOUNG: -- and then in

closing argument you can address that if you wish.

Okay, you can answer the question.

MR. BUEL: My understanding is that both

Director Schicker and Director Tacker objected to

the use of McDonough and Allen. They felt that

McDonough and Allen had not adequately represented

the District in prior situations.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: Can I ask a few follow-up

questions?

CHAIRPERSON YOUNG: Sure, give me one

second.

And how about Measure B, was there

any -- I mean I know what Mr. Seitz' objection is,

but I'm interested whether you heard any

statements from Ms. Schicker or Ms. Tacker with
respect to their intent towards Measure B.

MR. BUEL: I do not remember. I don't have a clear recollection of any such statements.

CHAIRPERSON YOUNG: Okay. All right, Ms. Okun.

CROSS-EXAMINATION - Resumed

MS. OKUN: Yeah, I just wanted to follow up on the question -- or on the answer about the objection to McDonough and Allen because they didn't adequately represent the District in prior situations.

I don't know if you can tell me without disclosing anything from closed session, but did they specify which prior situations?

MR. BUEL: Mr. Chairman, if I might, I believe the concern was that both at the Coastal Commission and in preceding litigation in court hearings it was Director Schicker and Director Tacker's belief that Harriet Steiner and/or Stacy Sheston misrepresented facts.

MS. OKUN: Okay.

EXAMINATION BY BOARD - resumed

CHAIRPERSON YOUNG: Okay. General question. In your opinion, was the Tri-W site well engineered? Did you learn anything, you
know, after the plans were pulled together and prior to your being put on administrative leave? Was there any information that came to you that you know of that might suggest that the plant had deficiencies or was going to be problematic?

MR. BUEL: No. I continued to believe that a wastewater treatment facility at the Tri-W site can adequately meet the discharge requirements of your discharge order.

CHAIRPERSON YOUNG: Okay. All right. Michael, go ahead.

MR. THOMAS: Mr. Buel, you testified that you met with Water Board Staff and asked staff to adjust the schedule in the time schedule order --

MR. BUEL: Um-hum.

MR. THOMAS: -- to, and you said appropriately. Did you mean adjust it to the schedule that the State Board set for the loan?

MR. BUEL: Okay, and if I might, Mr. Thomas, what I'd like to do is to bifurcate your question into two parts.

The District fell out of compliance with time schedule order 00-131 as a result of litigation. We met the requirements for the
environmental impact report, for the project
report and for the financing. Those were all 2001
dates.

Where we fell out of compliance --
MR. THOMAS: Those were all compliance
dates in the time schedule order?
MR. BUEL: Yes, that is correct. Where
we fell out of compliance was start of
construction. What I went to staff in regard to,
with President Bowker at that time, was a request
immediately in the litigation phase prior to
actually failing to satisfy that next milestone in
00-131, and requested a change, because of the
litigation.

That was before the State Board changed
our timeline in our state revolving fund loan.
So, that's one set of circumstances.
Following the adoption of a revised time
schedule for the state loan, I also made a
request. So before and after. And after, I did
make the request that the time schedule order 00-
131 be adjusted to be consistent with the time
schedule order -- the time schedule milestones set
forth in the state revolving fund.

MR. THOMAS: And staff refused?
MR. BUEL: That is correct.

MR. THOMAS: At that time did you feel that staff was unreasonable in refusing?

MR. BUEL: Yes.

MR. THOMAS: In hindsight do you think they were unreasonable?

MR. BUEL: Yes.

MR. THOMAS: Today, given what's happened, do you still think that staff was unreasonable at that time?

MR. BUEL: Yes.

MR. THOMAS: Okay, thank you.

CHAIRPERSON YOUNG: I have a couple of questions. Mr. Buel, you referred to litigation delaying satisfaction of the dates in the time schedule order. Who was generating the litigation?

MR. BUEL: We had, I believe, six different claimants, Bob Van Reed (phonetic) from the South Bay Property Owners Association; Cynthia Coleman on behalf of herself; Al Barrow on behalf of CASE; Kay Swanson on behalf of the Concerned Citizens of Los Osos; and Gordon Hensley on behalf of the Taxpayers Watch.

CHAIRPERSON YOUNG: Okay. Did the
attempt to get a coastal development permit before
the Coastal Commission cause any delays?

   MR. BUEL: Yes, substantially. If I
might just back you up. Once the Board had
selected the Tri-W site, and had certified the
final environmental impact report, we immediately
sought an amendment to the local coastal program
for the Tri-W site.

   There was approximately a four-acre
portion of the 11-acre property that was
inappropriately zoned for public facilities.

   We went through a process where the
County Planning Commission approved that
amendment. The board of supervisors approved that
amendment, and in May 2002 that went to the
Coastal Commission.

   The Coastal Commission granted that
amendment. And then CASE, Al Barrow on behalf of
CASE, litigated that issuance.

   So that did slow down the process at
that point. Also in regard to the permit, itself,
once we finalized the amendment to the local
coastal program, we immediately applied to the
County for a coastal development permit for the
project.
We were successful in getting a coastal development permit issued by the Planning Commission. But that was appealed. That was in May of 2003. That was appealed, and the appeal was then heard by the board of supervisors, San Luis Obispo County Board of Supervisors in October of 2003.

And that was then appealed directly to the Coastal Commission. And that hearing took place in April of 2004.

The Commission, at that time, rejected the County permit and took jurisdiction. So the coastal development permit was not issued — well, the approval of the coastal development permit was not authorized by the Commission until August of 2004. And we were not actually issued the permit well into 2005.

CHAIRPERSON YOUNG: Okay, thank you.

MS. OKUN: Actually, I have some follow-up questions to that.

CHAIRPERSON YOUNG: Okay.

CROSS-EXAMINATION - Continued

MS. OKUN: Who did you say appealed the County permit in 2003?

MR. BUEL: I believe there were three
appellants. I believe Julie Tacker, Al Barrow and Prabham Butha (phonetic) were all appellants.

MS. OKUN: Were there any entities or organizations that were appellants?

MR. BUEL: Yes, I believe that Ms. Tacker at that time was representing CCLO, and I believe that Mr. Al Barrow was representing CASE.

MS. OKUN: Okay. And was the Los Osos Technical Task Force involved in those appeals?

MR. BUEL: I believe they were involved in the appeal of the board of supervisors' approval to the Coastal Commission.

MS. OKUN: Thank you.

CHAIRPERSON YOUNG: Okay, Mr. Thomas, you had a couple of questions.

MR. THOMAS: Yes.

CHAIRPERSON YOUNG: Go ahead.

MR. THOMAS: Thank you. A question for Ms. Okun, and you can correct me. I'm going to try and interpret your testimony --

MS. OKUN: I didn't present any testimony; I presented legal argument.

MR. THOMAS: Your legal argument.

I think that you said that when the Board adopted the time schedule order it decided
that $10,000 a day was the appropriate fine if there was a violation of the order?

MS. OKUN: Well, it determined that $10,000 a day was the amount needed to obtain compliance. And the only thing that would cause those penalties to be due and payable would be a violation.

MR. THOMAS: Okay, so if, then, in the future there was a violation and the Board determined that there was a violation, I think what you were saying is that the Board has to assess the maximum liability unless it makes a finding according to the mitigation factors that would reduce that amount?

MS. OKUN: That's what it says in the statute.

MR. THOMAS: Do you think the Board understood that when they adopted the time schedule order?

MS. OKUN: I don't know.

MR. THOMAS: Okay. Mr. Seitz.

CHAIRPERSON YOUNG: Yeah, go ahead.

MR. SEITZ: I just have some redirect for Mr. Buel.

CHAIRPERSON YOUNG: Well, you don't have
any more time. But I --

MR. SEITZ: But, still, he's giving --

CHAIRPERSON YOUNG: I understand that.

MR. SEITZ: Okay.

CHAIRPERSON YOUNG: The Board can ask

questions of any witness at any time, and I don't

take it off anyone's clock. But I will give you

two minutes --

MR. SEITZ: Thank you.

CHAIRPERSON YOUNG: -- to do that. I'm

just trying to --

MR. SEITZ: I know.

CHAIRPERSON YOUNG: -- contain this.

REDIRECT EXAMINATION

MR. SEITZ: Mr. Buel, you said that you

had the most recent nitrate monitoring program,

April 2005?

MR. BUEL: I do.

MR. SEITZ: Could you turn to page 10,

please. Are you there?

MR. BUEL: I am there.

MR. SEITZ: Under long-term trends,

starting with the second paragraph, could you read

that into the record, please, along with the

monitoring well data?
MR. BUEL: The interpretation of long-term trends was conducted visually from the graphs. Fifteen wells showed no discernible long-term trend of increasing or decreasing nitrate as nitrogen and TDS -- that's total dissolved solid concentration -- and two wells had records considered too short for interpretation.

Three wells that appeared to have long-term trends in the September 2003 review have since been reversed. Potential long-term trends for the remaining seven wells in the monitoring well network are discussed below.

And I'm going to shorten the reference.

13-L5 shows an increased TDS concentration since 1996. 13-Q1 shows increasing nitrate and total dissolved solid concentrations between '82 and '98. Nitrate as nitrogen concentrations lowered at the replacement well.

7-Q1 increasing nitrate as nitrogen concentrations between '82 and '96. 8-N2 generally decreasing nitrate as nitrogen and total dissolved concentrations since 2002. 18-N1 decreasing nitrate as nitrogen concentrations mostly since September 2003.

18-R1 increasing total dissolved solid
concentrations mostly since 1994. And 20-B decreasing nitrate as nitrogen concentrations since 2002.

MR. SEITZ: And that was the basis of Mr. Miller's testimony yesterday?

MR. BUEL: I'm not sure. Mr. Miller seemed to be referring to the October 2004 report. But I can't confirm that or deny that.

MR. SEITZ: Thank you.

CHAIRPERSON YOUNG: Okay, so he doesn't know. Okay, thank you, Mr. Buel. Is the Board done with questioning?

Okay, with this witness. Thank you very much.

Go ahead, Mr. Thomas, you have a question?

MR. THOMAS: Mr. Seitz, --

MR. SEITZ: Yes.

MR. THOMAS: -- a question. Are you legal representative for the CSD Board of Directors only?

MR. SEITZ: Well, first of all, at this point I'm neither. I'm Special Counsel to the District.

But if you're talking about during my term, I can recite what was in my contract.
MR. THOMAS: No, no. I was trying to
get to whether you are representing the Board of
Directors, as a body, or the electorate, the folks
sitting behind you.

CHAIRPERSON YOUNG: But, wait, I don't
know --

MR. SEITZ: Okay, well, let me see if I
can --

CHAIRPERSON YOUNG: I'm going to impose
an objection, Mr. Seitz.

MR. SEITZ: Okay.

CHAIRPERSON YOUNG: What's the relevance
of who he represents? He's here, he's
representing the District. And I'm not sure
what --

MR. THOMAS: I'm trying to determine if
Mr. Seitz, in his opinion, is representing both
the District and the citizens of Los Osos. And
the reason I'm asking the question is -- you can't
answer until we're done here.

MR. SEITZ: Okay.

(Laughter.)

MR. THOMAS: The reason I'm asking the
question is that the legal argument that Mr. Seitz
is presenting seems to me, and I'm not an
attorney, but it seems to me he's saying you
cannot assess liability against the CSD for these
various reasons.

And to me that logically might lead the
Board to ask the question, who can we assess
liability against.

CHAIRPERSON YOUNG: Okay, well, you
don't have to answer the question, Mr. Seitz, if
you don't want to. I'll leave it up to you.

MR. SEITZ: Well, no, I think an answer
is forthcoming. I represent the Board.

CHAIRPERSON YOUNG: Right, thank you.

MR. SEITZ: The Board pays my bills.

CHAIRPERSON YOUNG: Right. I don't
think you have fee agreements with 5000
homeowners, right?

MR. SEITZ: Just to be clear, though,
those 5000 homeowners within the prohibition zone
are residents of the District. And the members in
the prohibition zone vote, have voted -- vote for
seating of the District Board of Directors. And
they're the same residents that overwhelmingly
approved the assessment district.

And by the way, there's a difference
here. Because when you're talking about the
assessment district, you're talking about property
owners. When you're talking about voting for
members of the Board, you're talking about
registered voters. And there's a difference.

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: May I ask a clarifying
question while we're on this point?

CHAIRPERSON YOUNG: Go ahead.

MS. SCHAFFNER: I believe it was
yesterday the District has a few times noted that
its individual Board Members don't take actions on
their own, but that make representations on behalf
of the CSD unless they've had a vote. And that
the CSD takes actions by motion, resolution or
ordinance.

MR. SEITZ: Yes.

MS. SCHAFFNER: And that brings the
question of who is the CSD? Is the CSD just the
Board of Directors, or is it all of the
individuals in the District who are the ultimate
authority governing the District through the
electoral process, and paying assessments?

MR. SEITZ: Okay, it's a little bit of
both. The electorate have the ability to
challenge their Board's action; same with city
council members; same with board of supervisors; either through initiative or referendum. So they are clearly a participant in the decisionmaking process.

Our residents also, under the Brown Act, are afforded public comment to our Boards when they make decisions. That is their participation. The Board's participation, on the other hand, if they are the elected body of the District they establish the policies of the District; they take specific actions on behalf of the District. But, again, subject to Brown Act, public comment and referendum and initiative.

When you --

MS. SCHAFFNER: Okay, so what you're saying when you say on behalf of, the Board acts in all of its functions on behalf of the individuals in the District. So the District is the entire group. And they derive their ultimate authority from the individual voters, as a group, in that District.

MR. SEITZ: Right, but --

MS. SCHAFFNER: Okay. That's --

MR. SEITZ: -- I just want to make sure it's clear; I'm sure it's clear with this Board.
It is that it's the Board that makes the decisions. They hear public comment. It's not a popularity poll at each meeting where they say, okay, how many people are for this, and how many people are for that. And ---

MS. SCHAFFNER: Understood. I'm not trying to --

MR. SEITZ: Okay.

MS. SCHAFFNER: -- make that point.

MR. SEITZ: But they are the deliberative body of the District. The assessment district is a little different animal.

MS. SCHAFFNER: Okay, thank you.

CHAIRPERSON YOUNG: Okay, I think we have concluded both cross-examinations of the -- no?

MS. OKUN: I just have one question for Rob Miller.

CHAIRPERSON YOUNG: Okay.

MR. SEITZ: I think Mr. Miller is on his way to vacation time.

MS. OKUN: Well, that would have been nice to know yesterday.

MR. SEITZ: I think, and I'm sorry, I apologize, I wasn't aware that he was not going to
be here today. He was not under subpoena as far as I know.

But secondly, I believe there would be an opportunity because, if I heard the Chair right yesterday, and I'm not saying I always do, is that there's going to be a continuance for document issue, relevancy and those types of things. So maybe there will be an opportunity for you to send him written questions.

CHAIRPERSON YOUNG: Well, that discussion that we had was simply to go over the list of documents that you thought were complete, and may not be because the photocopy service maybe didn't get everything in that you wanted.

And so you're right, in that respect I was going to make sure that we could get through testimony and evidence and things like that. But since you weren't going to be relying on those documents during the proceeding, I wanted to make sure that you had the opportunity that they were, you know, included in the record for any appeal. That was my thought.

MR. SEITZ: Okay, I just misunderstood, and I apologize for my prior remarks.

CHAIRPERSON YOUNG: Okay.
MS. OKUN: Well, I'll just address my question for Rob Miller to all of the District's representatives.

CROSS-EXAMINATION OF DISTRICT PANEL

MS. OKUN: To anyone's knowledge does Rob Miller dispute the need for a treatment plant?

MR. SEITZ: Well, yeah, and I don't know anybody that can answer that directly. Of course, that's completely within with Mr. Miller's mind, I suspect.

I can just tell you that I have never heard -- I'm sort of limited now in my representations -- I've never heard Mr. Miller say we don't need a wastewater treatment plant.

MS. OKUN: Thank you. I have a couple questions for Mr. McClendon on documents that he referred to yesterday.

You referred to an October 13, 2005 letter from Bert Williams. We don't have a copy of that. Do you have a copy of that for the record?

MR. McCLENDON: Yes, I do, and I can provide that.

MS. OKUN: Is there a way that we could get a copy before the proceedings are concluded in
case we have questions about it.

MR. McCLENDON: If you have Xerox capabilities I can do that right now.

MS. OKUN: Okay, we'll do that at the next break.

You also held up two resolutions saying those were the only two official acts, or the only two resolutions of the CSD Board. What were the dates of those two resolutions?

MR. McCLENDON: Allow me just a moment, please. One resolution was 2005-47, and the date on that is November 22, 2005. I'm sorry, that's the wrong resolution. Scratch that.

Sorry for that. The one is a resolution dated November 7, 2005; the second one is 2005-49, and that's November 22, 2005.

MS. OKUN: Didn't the Board also adopt a resolution on October 31, 2005, regarding the SRF loan?

MR. McCLENDON: By motion we have -- and that is attached as attachment A to the November 7, 2005 resolution. The offer presented by the State and Regional Water Quality Control Board which we accepted, and I stand corrected. That, I believe, was done by motion.
And the State Board later came back and
said we need more than a motion. We want a
resolution. And so it was superseded by the
resolution to which it was attached.

MS. OKUN: Did the State Board ask for a
resolution in a letter?

MR. McCLENDON: I have no knowledge of
that. Our President may.

MS. SCHICKER: Yes. I'd like to answer
that. The State Board, we had a lot of difficulty
getting in touch with them during those times.
They had a PIO Officer named Rukeyser. He would
communicate with the press, but he would not
communicate with us. It was very frustrating.

He told the press this wasn't good
enough, a resolution would be better. So we took
the advice of Rukeyser through the press, and we
passed a resolution.

MS. OKUN: So the October 31st action
was a motion, so it was an action of the Board?

Did you say yes?

MR. McCLENDON: Yes.

MS. SCHICKER: Yes, that was an action
of the Board.

MS. OKUN: I have a copy of the October
31st motion, and a memo attached dated October 31st to the State Board from the District. I have some copies for the Board Members and a copy that we can give to the District, if you need it. I think it would be easier if you had that in front of you to reference.

In the preamble of this motion doesn't it say that we are submitting this proposal to demonstrate that we're willing to make numerous concessions, et cetera, so that this is a proposal signed by the LOCSD to the State Board?

MS. SCHICKER: Yes, that's correct.

MS. OKUN: And could you read paragraph three of the preamble?

MS. SCHICKER: Paragraph three says:

This agreement in no way precludes any and all enforcement actions to be taken by the Central Coast Regional Water Board. Nor does any agreement with the State Water Board in any way imply that penalties should not be imposed for past or future delays in construction of a complete wastewater facility."

MS. OKUN: On page 4 of -- well, let me first ask, who wrote the memo that's attached to that resolution?
MR. McCLENDON: It was Assemblyman Blakesley, I've been told.

MS. OKUN: Who transmitted it to the State Board?

MR. McCLENDON: I have no knowledge.

MS. SCHICKER: I transmitted everything to the State Board on the afternoon of Monday -- is that October 31st? I think that's -- yeah, whatever Monday was, I faxed it over to Celeste Cantu in the afternoon. And this is a copy of that fax right here.

MS. OKUN: So the memo says that it's from the CSD. Is it your testimony that it's not really from the CSD?

MS. SCHICKER: This memo is in conjunction with working with Mr. Sam Blakesley and the State Water Resources Control Board during the negotiations. It was an outcome of those negotiations that this memo was prepared.

MS. OKUN: Did the District endorse the contents of this memo?

MS. SCHICKER: Yes, of course we did.

MS. OKUN: On page 4 of the memo -- well, strike that, I'll let the memo speak for itself.
There's some discussion in the memo about funding options the District would pursue for moving the project site. Has the District looked into funding options for a different project site?

MS. SCHICKER: Yes, we have looked into alternative funding. On the first night that the new Board Members were elected, we passed a resolution for a contract to look for alternative funding.

We immediately started looking. We've been really waylaid with the state revolving fund loan process. We've had 22 meetings now, agendized, televised, eight to ten hour meetings of the Board of Directors trying to deal with the state revolving fund loan.

MS. OKUN: What funding options has the District pursued so far?

MS. SCHICKER: Mr. Bleskey, please.

MR. BLESKEY: We looked at a wide variety, COPs, but because we've been tied up with all of this stuff we haven't been able to pursue them in depth. We've even looked at them in depth on a second proposal for bonding requirements by the VSRF fund, which interestingly enough, it was
an impossibility for that second deal, but is not
ruled out for financing a project. We're still
looking into it.

CHAIRPERSON YOUNG: I just have a
follow-up question to that and I'll stop your
clock. How are you guys going to pay for doing
anything without the state revolving loan fund?
I mean I know what you just stated about
trying to get certificates of participation. But
how are you going to get any engineering done, buy
any property? It seems like without that money
you're really going down a dark tunnel.

MS. SCHICKER: Well, I'd like to answer
that in an optimistic fashion. We're still
working, and I, you know, you may consider this
naive or not, but we still believe that we are not
in breach of contract with the state revolving
fund loan. And we want to work with the state
revolving fund loan people.

We've been trying very hard to come up
with some alternative terms with them. We want to
get back in line for that loan. And that's what
we've been focusing all our energy on besides
getting ready for this hearing, as well.

CHAIRPERSON YOUNG: All right. Other
than the loan?

MR. BLESKEY: Well, there's a couple of things. Always there's a 218 vote which, again that starts a whole discussion. We have issues with the SRF right now, both in state and federal court, and in the federal contract arena that that state SRF is not dead yet.

And so we're still negotiating that, but also we had put a claim against that to tie that funding up. So that's not an issue -- that still needs to be played out.

We also have other issues on certain contractual internal contracts that may yield funds. The other claim that we have is that the issuance of funds by the SRF on our reimbursement. We're not adequately distributed, and a large portion of the distributed portions of our reimbursements were paid to contractors.

So there's a lot of funding out there. Basically what we're saying is that our SRF balance, because we still have a claim and a nonterminated SRF, are still viable for working on this stuff.

CHAIRPERSON YOUNG: So, I think what you're saying is that your best shot at getting
some of this money is through claims and
litigation?

MR. BLESKEY: No. Right now because of
the claims it protects the funds that we're using
to protect the project.

CHAIRPERSON YOUNG: But if a claim is
rejected --

MR. BLESKEY: Yes.

CHAIRPERSON YOUNG: -- you have to file
a lawsuit --

MR. BLESKEY: That's correct.

CHAIRPERSON YOUNG: -- correct?

MR. BLESKEY: That's correct.

CHAIRPERSON YOUNG: And that's what I'm
really stating. I mean the State Water Board may
want to do something about it, but ultimately
you've got to go through the claim process,
litigation to get -- you may have to do that to
get that money.

The same with your contractors. I don't
know what's going to happen with them. But,
again, you know, you're kind of stuck, mired down
in challenges --

MR. BLESKEY: Yes.

CHAIRPERSON YOUNG: -- with them.
Outside of the certificates of participation, is there anything on the horizon?

    MR. BLESKEY: Well, the 218 vote's out there and --

    CHAIRPERSON YOUNG: 218, which would mean going to the voters.

    MR. BLESKEY: We'd have to go do an assessment district.

    CHAIRPERSON YOUNG: Boy.

    BOARD MEMBER SHALLCROSS: Mr. Chair.

    CHAIRPERSON YOUNG: Yes.

    BOARD MEMBER SHALLCROSS: I have a follow-up question on that. Is it the Board's position that if you do get the SRF loan that you claim you haven't lost, but if you do get it, if the state agrees to go along with it, do you still have to have a 218 vote on that?

    MR. McCLENDON: I'm assuming that what would happen would be at some -- and I understand this is still going on, or there's still negotiations that are ongoing with -- to try and put this all back together again, put the wheels back on, so to speak.

    And what I think would be part and parcel of any of that would be a 218 vote.
BOARD MEMBER SHALLCROSS: So even the SRF is --

MR. McCLENDON: Correct, and that --

BOARD MEMBER SHALLCROSS: -- would have to have a 218 --

MR. McCLENDON: -- was a requirement.

And --

BOARD MEMBER SHALLCROSS: Okay.

MR. McCLENDON: -- he's too modest of an individual to say this, himself, but Mr. Seitz responded to the State Board on June 15, 2005, to questions they asked concerned about the securitization of the SRF loan.

And their question was, what revenue sources does the District have to pay fines. His response was unless an assessment district or special tax district is created pursuant to the provisions of 218, the District has no ability to exact or collect rates and charges for services that are not available.

So, they were clearly put on notice that the way to really properly securitize this is a 218 vote.

BOARD MEMBER SHALLCROSS: Okay, thank you.
CHAIRPERSON YOUNG: Okay. Ms. Okun, I'm sorry that we stepped on your cross-examination, but --

MS. OKUN: That's okay.

CHAIRPERSON YOUNG: -- go ahead.

MS. OKUN: The claims and litigation that you reference against the State Board regarding the loan, is it your understanding that if you -- is what you're seeking under those claims that the State Board be forced to change the SRF loan so that it's not site-specific?

MR. BLESKEY: The answer to that is no because the SRF loan is not site-specific. If you read -- and let me read this to you out of the -- I'm going to read this out of the contract, the construction contract, which is incorporated by reference into the ISA.

Bear with me, I've marked this.

MS. SCHICKER: While he's looking for that piece, the answer is the amendment. The amendment process is part of it. The state revolving staff and Board have told us that many times, that the ISA is amendable, so --

MR. BLESKEY: The thing about the ISA is that there are so many tools in there to
compensate for Measure B it's absolutely ridiculous. And that's the first thing they teach you in a changes course is that that tool is there. Changes, clauses are in contracts because things change.

Here's what the -- this is what the main paragraph in section 01010 of the construction documents, part I general. This is paragraph 1.2, and it's called work covered by contract documents. And it's paragraph (a).

And paragraph (a) says description of the work. The Los Osos wastewater project, referred to as the project, will provide wastewater collection, conveyance, treatment and treated effluent disposal for the community of Los Osos that is currently unsewered and utilizes septic tanks.

The work consists of area construction divided into four geographic areas, area A, area B, area C and area D, and wastewater treatment facility construction. And paragraph (b), and I'll summarize those very quickly, describes what is meant by area construction.

But it's headed off by this one important sentence: The area construction
includes, but is not limited to, the following.
The key word here is that, but is not limited to.
That implies that that is not firm or that wording
would not be in there.

We have to look at the writer's intent.
And the writer's intent on this, and what was
approved by the State Board, was those words. If
they had a problem with making it specific, they
would have removed that language; they would have
removed the changes clause; they would have put
special language in, not put a boilerplate
construction contract together on the general
conditions, the special general conditions and the
special conditions. And they would not have used
a contract for the SRF loan that looks more like
we're buying a thing than we're doing
construction. That's my opinion.

CHAIRPERSON YOUNG: Can you finish
reading, though, what you started to?

MR. BLESKEY: You mean on the --

CHAIRPERSON YOUNG: Where it starts to
describe the site. I know you said it has
language that --

MR. BLESKEY: Right.

CHAIRPERSON YOUNG: -- that says not
limited to, but read the whole sentence.

MR. BLESKEY: The whole sentence. I just would like to remind you, though, that the work is what was the project.

CHAIRPERSON YOUNG: I know that's your interpretation.

MR. BLESKEY: Okay, the wastewater collection system consisting of approximately 195,000 linear feet of gravity sewer mains ranging in size from 8-inch diameter to 18-inch diameter; 790 manholes; 4,700 laterals; and 28,000 linear feet of force mains ranging in size from 2-inch diameter to 12-inch diameter.

Five duplex and two triplex submersible pump stations ranging in capacity from approximately 130 gpm to 1,900 gpm; and six standby power facilities ranging in size from 30 kilowatts to 300 kilowatts.

Twelve pocket pump stations ranging in capacity from 10 to 24 gallons per minute using submersible grinder pumps.

Four is the effluent disposal system consisting of effluent disposal sites with approximately 20,000 linear feet of subsurface, horizontal, perforated pipe; 50 vertical
disposable wells, and approximately 63,000 linear feet of disposable mains -- excuse me, disposal mains -- going too fast -- and headers ranging in size from 4-inch diameter to 12-inch diameter.

Harvest water system consisting of three harvest wells approximately 150-feet in depth with harvest well buildings and approximately 14,000 linear feet of 6-inch diameter harvest mains.

And there's a paragraph (c). Is wastewater treatment facility construction of a 1.4 million gallon tertiary treatment facility includes, but is not limited to, the following.

And then it goes on to describe the plan.

CHAIRPERSON YOUNG: Mr. Bleskey, what you just read to me had a lot of specific information in it. If the District tried to go to another site wouldn't those numbers change drastically and use a different technology?

MR. BLESKEY: Yes, they would.

CHAIRPERSON YOUNG: Okay, thank you.

MS. OKUN: You also said that the state loan contract incorporates the construction contracts. Was that your testimony?

MR. BLESKEY: Yes.
MS. OKUN: Do the construction contracts include specifications?

MR. BLESKEY: Yes.

MS. OKUN: And, Ms. Schicker, you said that the State Board has repeatedly said that they could amend the contract to change it to a different location, and that was part of the process.

Is it your understanding that the State Board is in any way required to amend the contract?

MS. SCHICKER: As Mr. Polhemus told me, himself, if all parties were willing you can amend anything.

MS. OKUN: Well, that wasn't my question. My question was whether they were required to do it.

MS. SCHICKER: I think that's a question -- well, I mean maybe you know better than me, because you work up there. But, of course, if they're willing they can amend it. Are they required to? Probably not.

MR. BLESKEY: I can answer part of that.

CHAIRPERSON YOUNG: She just answered it. She said probably not. Probably not.
MS. OKUN: Mr. Bleskey, yesterday you referred to a letter from the State Board saying that Darrin Polhemus could negotiate. Do you have a copy of that letter?

MR. BLESKEY: Just a moment.

MS. OKUN: And while you're looking for that, you also referred to a letter that said -- or you said that the State Board issued a letter with nine conditions. I'd like to see a copy of that, too.

MS. SCHICKER: I have a copy of that in my car, for sure. It was dated October 21st, addressed from Celeste Cantu to Sam Blakesley.

And the ninth condition, which is something that's very important to me, said that the Regional Board should not be included in any negotiations about the state revolving fund loan.

This is kind a concern of mine, because we're kind of mixing those two issues here again today. We've been mixing them in Sacramento. And what we were explicitly told, as part of the negotiating team, is that all of these negotiations should be left out.

Because you guys, when you make your decision, we have to go to the State Board to
appeal. And this mixing up is creating problems for them to be able to impartial when it comes to a hearing.

You guys were not invited to come to the negotiation because we had to keep the issues separate. That was one of the original nine conditions given to us by Celeste Cantu.

And now we're kind of mixing it up again here today. And I'm concerned about that, because how will we be able to go to the State Board to get a fair and impartial hearing if we're mixing it up.

We were told we weren't supposed to mix it up. We didn't mix it up. But I hear a lot of mixing it up with Ms. Okun, et cetera.

She was up there, too, on December 16th. We thought she shouldn't have been there because we weren't supposed to mix the two things. That was a big deal to Mr. Blakesley and Ms. Cantu.

But now we're mixing it up.

So, should we be doing this, I guess is what I'm asking you, Mr. Young. You know, I'm just throwing it out there for you.

MS. OKUN: Well, we're not here to negotiate the State Board -- the loan, so I think
that that's irrelevant. And in addition, the District brought up the issue of the loans. It was a big part of their defense. So I think that argument is a little disingenuous.

On November 16th I did provide comments to the State Board on the project, and the staff's position on the project at an open noticed meeting. I didn't have any ex parte contacts with the State Board.

CHAIRPERSON YOUNG: Ms. Schicker, did you make an objection that it's irrelevant testimony, is that what you were getting --

MS. SCHICKER: I can't make an objection. And what Ms. Okun said when she came on --

CHAIRPERSON YOUNG: Well, you're --

MS. SCHICKER: -- December 16th is she came up there and said, I'm speaking for Roger Briggs. And we were told specifically by Ms. Cantu and Mr. Blakesley that we could not mix it up. Yet Ms. Okun came up to Sacramento and said, I'm speaking on behalf of Roger Briggs. That tainted the process in our opinion.

CHAIRPERSON YOUNG: Up at the State Board?
MS. SCHICKER: Yes, she came up there and --

CHAIRPERSON YOUNG: Okay, when you get back up to the State Board --

MS. SCHICKER: Okay.

CHAIRPERSON YOUNG: -- you can take that issue -- this issue to them and object there.

MS. SCHICKER: Pardon me?

CHAIRPERSON YOUNG: And object at that point in time.

MS. SCHICKER: Object to that process when we --

CHAIRPERSON YOUNG: Yeah, it's not going to --

MS. SCHICKER: Okay.

CHAIRPERSON YOUNG: -- affect what's happening here.

BOARD MEMBER SHALLCROSS: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER SHALLCROSS: I'd like to ask Mr. Bleskey a question.

CHAIRPERSON YOUNG: Well, are you --

BOARD MEMBER SHALLCROSS: Never mind, --

MS. OKUN: Well, I thought they had some letters for me.
CHAIRPERSON YOUNG: I'm trying to let
staff kind of get through.

BOARD MEMBER SHALLCROSS: Okay.

MR. SPEAKER: Is their clock still
ticking?

CHAIRPERSON YOUNG: Yes, your clock is
ticking.

MR. BLESKEY: Chairman Young, I do have
that letter for you, October 21st. I have it
here. And it's one and the same.

MS. OKUN: Okay. Well, maybe I could
get a copy of that at the break. And if I have
any questions we can come back to it.

MR. BLESKEY: Certainly.

MS. OKUN: The San Luis Obispo Tribune
quoted you on November 30th as acknowledging that
Measure B could be problematic, and that your
agency will probably have to ask voters to repeal
the initiative at some point in order to pick a
new sewer plant location.

Is that an accurate quote?

MR. SEITZ: Mr. Chairman, I think we had
a very long discussion about newspaper articles at
the very beginning of this. And that they were
going to be inadmissible as far as evidence. I
object.

MS. OKUN: Because they were hearsay.

I'm asking him, the speaker, if that was an
accurate quote.

CHAIRPERSON YOUNG: Okay, yeah, Mr.

Seitz, the articles as documents and exhibits are
excluded. If there are statements that were made
in newspaper articles, it's a proper question to
ask a witness if they made that statement.

MR. SEITZ: Then I was --

MS. SCHAFFNER: Mr. Chairman, I would
also add that the hearsay evidence, at your
discretion, can be used to corroborate or validate
otherwise nonhearsay evidence, which an admission
of a party is certainly one of the exceptions to
the hearsay rule.

MR. SEITZ: Okay, then I would request
respectfully that the Chair request Ms. Okun to
place the newspaper article in front of my client.

MS. OKUN: Well, let me ask it this way.
Did you tell the newspaper that Measure B could be
problematic in picking a new site?

CHAIRPERSON YOUNG: Ms. Okun, hang on so
we can get this. And on what basis?

MR. SEITZ: On the basis that it's
hearsay from Ms. Okun to Mr. Bleskey. I mean if she wants to say is this an accurate quote, then I believe the best procedure is to have the quote in front of him so he can say yes or no, rather than having a lawyer read a paragraph out of a newspaper article and say, is that your quote. I believe it's better evidence if the --

CHAIRPERSON YOUNG: Okay, Mr. Seitz, do you think that just because he can read it that that's going to better refresh his recollection than if the quote is just read to him?

MR. SEITZ: Absolutely. And I also believe that it guarantees the accuracy of the record as to what the quote was.

MS. OKUN: We can just dispense with --

MS. SCHAFFNER: Then can you --

MS. OKUN: -- this. I don't care if the quote was accurate or not accurate. I care about whether the content was consistent with his position. So I'll just ask him that.

Mr. Bleskey, did you say that Measure B could be problematic for the District in picking a new site?

MR. BLESKEY: I don't mean to be flippant, but it already is. Yes.
MS. OKUN: And did you say that the District will probably have to ask voters to repeal the initiative at some point in order to pick a new site?

MR. BLESKEY: Depends on in what context; that was the conversations we were having during October 24th, yeah. Was it before the measure was turned over, or after it was turned over? I need to know the timing on the quote. Because there was a time when that quote was accurate, and now it is no longer accurate.

MS. OKUN: Well, the quote was from November 30th, but is your testimony that the District doesn't have to repeal Measure B in order to pick a new site?

MR. BLESKEY: The District to repeal it? No, the voters would have to overturn that. That's the provision of it.

MS. OKUN: And do the voters have to repeal Measure B in order for the District to pick a new site?

MR. BLESKEY: No.

MS. OKUN: Do you believe that Measure B could be problematic in picking a new site?

MR. BLESKEY: In its current context,
yes.

MS. OKUN: Why not try to have it repealed now, then, either through litigation or through a vote?

MR. BLESKEY: That's not my -- I'm the Engineer, and, you know, we'll get to that one, too, but it's got to go before the Board.

MS. OKUN: All right. You said yesterday that stoppage on the -- the work stoppage on the collection system was to evaluate which parts were hydraulic-ly common. I'm not sure if that's exactly what you said, but if you could clarify if it's not.

MR. BLESKEY: That's part of it. We were looking for the collection system components that were common to many alternatives to accommodate the maximum of alternatives. And then the objective was to work on those, continue work.

MS. OKUN: Was there any other reason for stopping work on the collection system?

MR. BLESKEY: No, not really.

MS. OKUN: Do you recall that you told us on October 12th in a meeting with Regional Board Staff that the work was stopped because the CSD intended to pursue STEP/STEG with the idea of
redesigning the collection system?

MR. BLESKEY: That was out there at the
time, and, yes, we did discuss that.

MS. OKUN: And do you recall that staff
told you that alternative had already been
evaluated by the District and rejected?

MR. BLESKEY: Your staff?

MS. OKUN: Yes.

MR. BLESKEY: They did, but they didn't
have anything in front of them to really go off,
and I was just here a short time. And, you know,
it was too early to tell. That's exactly why the
Board went in and commissioned the consolidation
of all information, which had not been done yet,
to evaluate the viability of that from the capital
costs all the way to the long-term environmental
impacts on it, as well as the O&M, which had not
been done before.

MS. OKUN: How is compiling all
available information and reviewing it different
than reevaluating all the alternatives that had
already been evaluated?

MR. BLESKEY: It was the intent to have
a study that took only existing information that
already had been generated, rather than generating
new information.

MS. OKUN: And reevaluate it?

MR. BLESKEY: And reevaluate it?

MS. OKUN: Yes.

MR. BLESKEY: Well, basically it was so that we could have everything in one spot and make an informed decision about what had been done before. That had not been done.

MS. OKUN: Ms. Schicker, you showed a clip of Art Baggett yesterday that was from the January 2005 State Board Meeting, is that correct?

MS. SCHICKER: Yes, that's correct.

MS. OKUN: And he said something about that if the District wanted to change its government it should do that at the local level?

MS. SCHICKER: Yes, he was a county supervisor and he believed in local control.

MS. OKUN: Did Mr. Baggett say that the State Board would keep the loan in place if the District changed its government and made changes to the project?

MS. SCHICKER: Mr. Polhemus said that to us, but Mr. Baggett was speaking for himself and not as -- just like us, he's a member of a board, he is not the board. So, what are you asking
again? Ask me again.

MS. OKUN: You answered it. Did the Board Members at the January '05 meeting say that the loan was site-specific?

MS. SCHICKER: I do remember Mr. Katz being pretty, you know, he's kind of a real vocal guy, and he kind of got excited about pounding his fist and telling us that this loan was for this project only, yes.

And then Mr. Polhemus got up later and said something different. And so, again, being a member of a board, I understand that the board member cannot speak for the board.

MS. OKUN: Is Mr. Polhemus a member of the Board?

MS. SCHICKER: Mr. Polhemus is staff with extensive experience in thousands of loans.

MS. OKUN: Did any of Mr. Katz' fellow Board members disagree with Mr. Katz' position that the loan was site-specific?

MS. SCHICKER: I don't remember if every Board member spoke about it. I remember Mr. Baggett and the lady with the black hair, Sutley, Nancy Sutley, and Mr. Katz speaking. I don't remember the other two speaking.
MS. OKUN: So they didn't disagree?

MS. SCHICKER: I don't think there was a motion, a resolution or an ordinance about it. It was just talking on the Board like you're talking and we talk on our Board.

MS. OKUN: You don't think the Board adopted a resolution at that meeting?

MS. SCHICKER: They adopted the resolution for the loan, increase of the loan -- a brand new loan, by the way, not a renewed loan, a brand new loan for 93 plus a 50 percent cap despite great protests and great controversy.

MS. OKUN: You testified yesterday about sewage spills to the Bay from the current site. If raw sewage has to be pumped out of town through a force main and there's a break or a spill in the collection system or the disposal -- the collection system, do you know where the raw sewage would spill to?

MS. SCHICKER: Well, that kind of depends on where the break in the pipe would be, and the emergency procedures that you would have. I mean that's kind of -- I'm not sure what you're asking there. It could be a break anywhere in a pipe anywhere.
I'm not sure what you're asking me.

MS. OKUN: Does the District have any idea where it would locate the collection system and the force mains to pipe the sewage out of town?

MS. SCHICKER: Well, we have to go over or under one creek. And like most plants in the coastal areas where there's coastal creeks, pipes go over and under creeks all the time. I worked for Department of Transportation; it's not uncommon.

Mr. Bleskey.

MR. BLESKEY: Mr. President, -- I'll just wait.

CHAIRPERSON YOUNG: Ms. Okun, I think Mr. Bleskey was going to augment that response. Did you --

MR. BLESKEY: How that force main would be designed is that normally you would have a wet well type situation where you have storage capacity in that wet well. Once you see a zero pressure on that pipeline, those pumps shut down. And what you'll get is a minimum spill. That force main will probably spill onto the surface, and it will be minimized.
The one thing that's the advantage of that force main is it should be fresh, nonseptic sewage rather than pumped septic sewage, that other, like STEP/STEG would present.

But the point being is the design of that plant is to minimize that spill. If you look at the Tri-W site, if you get an overflowage or a flooding at that site, it's gravity all the way through natural drainage right into the estuary.

MS. OKUN: Ms. Schicker, you also said yesterday that the project won't meet water quality goals because it puts nitrates back into the groundwater. Are you aware that that issue was raised in the CalCities litigation?

MS. SCHICKER: Yes, I read the CalCities lawsuit, and I also heard what Mr. Buel said about the five, and what Mr. Young thought I said. I didn't really say 7.5, I said 7, because that was the discharge requirements from the Regional Board order. So we could put up to 7 in.

And I've heard testimony before from our engineers that it would be more like 5, too. So anywhere between 5 and 7 we were putting back into the ground.

MS. OKUN: And are you aware that the
court already rejected that challenge in the CalCities lawsuit?

MS. SCHICKER: They rejected the challenge, it's my understanding, on the basis that the groundwater discharge at Broderson would contaminate their wells. I thought that was their issue. It wasn't the fact that there was going to be discharge into the groundwater. Maybe you might --

MS. OKUN: Thank you.

MS. SCHICKER: -- know more about that than I do.

CHAIRPERSON YOUNG: Ms. Okun, just out of curiosity, how much more time do you need for your cross-examination of witnesses? I'm just trying to gauge whether we should break for lunch at some point, or --

MS. OKUN: I just have one more question for Ms. Schicker. And we have some redirect of Ed Moore.

CHAIRPERSON YOUNG: Okay, and how long do you think that will take.

MS. OKUN: Ten minutes.

CHAIRPERSON YOUNG: Let's try to do it, go ahead.
MS. OKUN: Oh, and we heard that Rob Miller would be here at 1:30. I just have one question for him.

CHAIRPERSON YOUNG: Go ahead.

MS. OKUN: Are there any circumstances under which you would vote for construction at the Tri-W site?

MR. SEITZ: I'm going to object on the basis of relevancy and speculation.

CHAIRPERSON YOUNG: I'm sorry, can you restate the question?

MS. OKUN: Are there any circumstances under which Ms. Schicker would vote for construction at the Tri-W site.

MS. SCHAFFNER: Could you tie that to a point that you're making to support this proposed ACL? For relevancy purposes.

MS. OKUN: Well, the District has claimed that Measure B prevents construction at the Tri-W site, but there's also testimony that there are other reasons that they don't want to construct at the Tri-W site. And that their current actions aren't going to cause undue delay of the project.

And I'm just curious to see if there's
any way to salvage this project, which staff has
taken the position is the only way to get timely compliance.

MS. SCHAFFNER: Sounds to me like -- I mean certainly the different -- the prospects for which site they build on has been critical to this whole alleged violations, as well as defenses. And the actions of the Board have certainly been put at issue by both the --

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: -- prosecution and the defense --

CHAIRPERSON YOUNG: Your objection is noted, but overruled.

MR. SEITZ: Well, then I'm just going to caution my client. I'll just do it openly. That her response is predicated and subject to circumstances that occur in the future after public comment, that's when people take votes at meetings.

I've always cautioned my clients not to announce intended actions before the staff report and the public has the opportunity to respond and to provide testimony.

And you're asking her to do exactly that
in the context of this question. The Chair
obviously has overruled me, but I want to make
sure everybody's clear that what you're asking
violates some of my basic advice that I give to
all of my Board Members, all my Council Members,
throughout the ages.

CHAIRPERSON YOUNG: Well, I think the
witness can preface her response that way. She's
being asked about how she would vote, kind of in
the abstract. And there's lot of things that
could change her testimony and her answer in the
future. And I think that we understand that.

MR. SEITZ: And that's fair, as --

CHAIRPERSON YOUNG: Yeah.

MR. SEITZ: -- long as the next question
isn't what are those circumstances.

MS. OKUN: That would be the next
question.

MR. SEITZ: Yes, and that's the whole
point about why my objection is in front here,
because now you're not only asking her how she
would vote, but what it would take. She's
prejudging -- you're asking her to prejudge the
testimony that would be presented at the Board in
order to make that decision.
 MS. SCHAFFNER: I'd like to make one suggestion. In yesterday's direct presentation by the CSD -- or no, actually I believe it was in the presentation by the prosecution staff, there was a slide put up of a videotaped clip with a quote of Ms. Schicker saying, we would never consider doing this plant at this site.

It could be that rather than put her at risk of saying what -- maybe you can limit that, or explore the testimony on that basis, since it's already in the record and was not objected to except as not a statement of the entire Board.

MS. OKUN: Okay, I'll do that. Was that an accurate quote?

MS. SCHICKER: I would very much like to answer this question for the benefit of this Board.

MS. OKUN: I withdraw the question.

CHAIRPERSON YOUNG: Well, wait --

MS. OKUN: The question is was that an accurate quote.

CHAIRPERSON YOUNG: -- it's been withdrawn. I think she's asked you another question.

MS. SCHICKER: Pardon me?
CHAIRPERSON YOUNG: She's asked you a new question.

MS. SCHICKER: I guess you're going to have to repeat it because I was about to answer it, and --

CHAIRPERSON YOUNG: This is the question: Is that an accurate quote? Up on the screen.

MS. SCHICKER: I can't speak for we.

CHAIRPERSON YOUNG: No, I said, is that an accurate --

MS. SCHICKER: That's what I'm saying --

CHAIRPERSON YOUNG: -- statement of yours. Do you know if that is an accurate statement that you made? Is that a statement that you made?

MS. SCHICKER: Yes, it is. I want to --

MS. OKUN: Thank you.

MS. SCHICKER: -- be able to answer the question that's being asked, and this isn't fair that she won't let me answer it. I really wish you'd let me.

CHAIRPERSON YOUNG: It's been withdrawn.

MS. SCHICKER: I think you would --

CHAIRPERSON YOUNG: She has withdrawn
the question.

MS. SCHICKER: Okay, that's fine --

CHAIRPERSON YOUNG: It's withdrawn.

MS. SCHICKER: Okay.

CHAIRPERSON YOUNG: And your counsel
didn't want you to answer it anyway. So, don't
put you foot in it.

(Laughter.)

CHAIRPERSON YOUNG: Okay? All right.

MS. OKUN: I have no further questions
for the District.

CHAIRPERSON YOUNG: Okay. And no other
cross-examination? Okay.

MS. OKUN: Well, just Ed Moore.

CHAIRPERSON YOUNG: To Mr. Moore. And
is he here? He's not coming for ten minutes?

MS. OKUN: Yes.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: He's here.

CHAIRPERSON YOUNG: He is here? Okay.

REDIRECT EXAMINATION

MS. OKUN: Thank you for coming back
today, Mr. Moore. I just have a couple questions
and the first one is does your contract -- does
Monterey Mechanical's contract with the District
have construction specifications?

MR. MOORE: Yes, it does.

MS. OKUN: Are the specifications specific to the Tri-W site?

MR. MOORE: Yes, they are.

MS. OKUN: If the project were to be moved to a different site could you use those specifications at the other site without any modifications or revisions?

MR. MOORE: No, it would require extensive modifications.

(End Tape 4B.)

MS. OKUN: Do the specifications address in any way a pond system?

MR. MOORE: No, they don't.

MS. OKUN: Does your contract have a construction schedule?

MR. MOORE: Yes, it does. It has a requirement for a construction schedule that was twofold.

The first was a 60-day schedule that had to be submitted at a preconstruction conference, which was done before we went to work. That was to cover the first 60 days of the work. And then it also showed large blocks of time for our
overall plan for the project until completion. And that was submitted and reviewed by the construction manager. After that -- that's to allow work to start on the project. That's typical in my experience that that requirement's in a specification.

In that 60-day period we're also obligated to do a detailed schedule that breaks down those large blocks of time further. It's required 45 days after notice to proceed.

We had not reached that 45-day timeframe before the District suspended work. And therefore, we stopped producing that schedule. But there is a 60-day schedule that showed large blocks of time throughout till the end of the contract.

MS. OKUN: So, had the work not stopped, as the construction progressed the progress of the contract and the successful progress of the contract would have been determined by referring to those schedules?

MR. MOORE: That's correct. The schedule that we would have submitted would have probably been close to 1000 activities. And that
would have shown the milestones that were required by the contract.

There was an interim milestone of 550 days where the treatment plant had to reach substantial completion and be operational. If we didn't make that milestone we were in danger of $2000 a day liquidated damages.

The second milestone was completion of the work at two years, 730 days. And I believe that liquidated damage clause was $10,000 a day.

The way it was supposed to work was that we would -- that the 550 days, the other contractors had the same requirement that they be substantially complete at that time. We would have the plant operational and be ready to receive sewage at that time and start processing it.

It would ramp up until the 730 days, when it was expected that 50 percent of the anticipated flow would be there.

We were also required to come back six months after that, or basically 30 months. It was anticipated at that time that there would be 100 percent flow to the plant, and that would have been probably February of '08, I believe.

MS. OKUN: Were you here yesterday when
Mr. Bleskey testified that the work under the contract was front-loaded?

MR. MOORE: Yes.

MS. OKUN: And I think he said that that would be something that you would expect to see only in an emergency situation?

MR. MOORE: I heard that testimony, yes.

MS. OKUN: Do you think that the work under the Monterey Mechanical contract was front-loaded?

MR. MOORE: No, it wasn't. There was a contract requirement to meet that 550-day milestone. I don't understand the comment. It wouldn't be front-end loaded. It was a requirement to have an operational plant in place at the 550 days.

MS. OKUN: What impact would moving the site have on the 550-day schedule?

MR. MOORE: It would be unrealistic to ever think that that would happen.

MS. OKUN: Do you have any idea how much delay in that schedule would be caused by moving the site?

MR. MOORE: I have no idea. There's too many factors that would come into play.
MS. OKUN: Thanks.

CHAIRPERSON YOUNG: Any other question?

MS. OKUN: I have nothing further.

CHAIRPERSON YOUNG: Okay. Any Board Members have questions of Mr. Moore? Okay.

Ms. Okun, are you through with your cross-examination? Have any witnesses?

MS. OKUN: No, we have no further witnesses other than Darrin Polhemus standing by to answer questions.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: There are also some documents that I wanted to specifically incorporate into the record. They're in our files, but they weren't on our list because we received them so late.

They were the dismissal of the trial court action in Measure B and the withdrawal of the appeal of Measure B. And I just wanted to note for the record that those documents are in the record.

CHAIRPERSON YOUNG: Where are they? Do we have copies of those?

MS. OKUN: The Board doesn't. We can make copies at lunch.

CHAIRPERSON YOUNG: I'd like to see a
copy of the dismissal.

MS. SCHAFFNER: I think we should give all the Board Members a copy, and I'd like one, as well.

CHAIRPERSON YOUNG: And I believe there was some issue of the settlement agreement?

MR. SEITZ: Right. We have that here.

CHAIRPERSON YOUNG: Okay. What I'd like to know about your position with respect to that document is if there are any privileges that attach to its production.

MR. McCLENDON: Are you asking is there any confidentiality provisions?

CHAIRPERSON YOUNG: Yes.

MR. McCLENDON: No, there's not.

CHAIRPERSON YOUNG: Okay. Please produce it.

MR. SEITZ: Just -- and we're going to do it right now.

CHAIRPERSON YOUNG: Okay.

MR. SEITZ: But I have to respond to Ms. Okun's statements. She can submit them, but I think we have a huge relevancy issue here on submitting documents, quite frankly, that are post-October 6th.
The ACL complaint was -- everybody has to remember this, and I think Ms. Schicker has testified to it -- the complaint was filed and served on October 6th. And it seems to me that we're discussing a lot of evidentiary issues that occurred after that date.

And whether or not that's appropriate to be subject to this complaint, or possibly a future complaint that I've already alluded to, is an issue that you're going to have to struggle with --

CHAIRPERSON YOUNG: Okay, --

MR. SEITZ: -- because --

CHAIRPERSON YOUNG: -- Mr. Seitz, let me just share with you my thoughts on that. I mean I know frequently when lawsuits are filed they're based on allegations of past events. But I'm not aware that there's any mandatory preclusion of bringing in evidence that happened after a complaint is filed.

So, --

MS. SCHAFFNER: If I might just contribute one thought. I understand the point Mr. Seitz is making about questioning the relevance of these documents to the dates of
alleged violation.

However, the ability to comply has been put front and center as defense and as a serious issue concerning the purposes of enforcement and the objectives to be accomplished through your choice of enforcement action. So, certainly relevant.

But for what purposes you can use it is subject to some debate, as Mr. Seitz has --

CHAIRPERSON YOUNG: Seitz.

MS. SCHAFFNER: -- Seitz has outlined.

MR. SEITZ: Okay. And I have --

(Pause.)

CHAIRPERSON YOUNG: Okay, what I'd like to do -- were there any other remaining issues, Ms. Okun?

MS. OKUN: Well, what I'd like to propose is that the prosecution staff review this settlement agreement and also the letter from Celeste Cantu to Assemblyman Blakesley over the lunch break. And if we have any questions we can ask those after lunch.

CHAIRPERSON YOUNG: Well, you still have time left, so --

MS. OKUN: Right, and then we proceed
with Darrin.

CHAIRPERSON YOUNG: Okay, before we do
that I do have a card from Christine Robertson.
I'd like to have her come to the podium. Is she
here?

BOARD MEMBER SHALLCROSS: While she's
doing that, was there another document in the --
do we have the document where the District
withdrew on the Superior Court case?

MS. OKUN: Yeah, we'll have to copy
those at lunch.

CHAIRPERSON YOUNG: That's the
dismissal.

BOARD MEMBER SHALLCROSS: Oh, okay, that
also.

CHAIRPERSON YOUNG: Okay.

MS. ROBERTSON: Can I first say I was
not expecting to speak so I have not taken any
oath.

CHAIRPERSON YOUNG: You haven't. Well,
you'll have to do that.

Whereupon,

CHRISTINE ROBERTSON
was called as a witness herein, and after first
having been duly sworn, testified as follows:
CHAIRPERSON YOUNG: Thank you. How's that for ad libbing?

(Laughter.)

CHAIRPERSON YOUNG: Okay. You sent a note to the Board and I just thought that --

BOARD MEMBER PRESS: Mr. Chair, could she introduce herself?

CHAIRPERSON YOUNG: Yes, go ahead.

BOARD MEMBER PRESS: I don't know who she is.

MS. ROBERTSON: I'm sorry, I am Christine Robertson; I work for Assemblyman Sam Blakesley here in the District. And I participated in the negotiations with the CSD and State Water Board when Darrin Polhemus was down.

CHAIRPERSON YOUNG: Okay. Is this your writing?

MS. ROBERTSON: Yes, it is.

CHAIRPERSON YOUNG: Okay. What you wrote here, as a matter of clarification, the paragraph of the LOCSD's proposal to the state was not drafted by Assemblyman Blakesley as stated by Mr. McClendon.

MS. ROBERTSON: Correct.

CHAIRPERSON YOUNG: Okay. Do you know
who drafted that?

MS. ROBERTSON: I believe that was actually drafted by Darrin Polhemus.

CHAIRPERSON YOUNG: Okay. Any questions by the Board?

Okay, thank you very much.

MS. ROBERTSON: Thank you.

MR. SEITZ: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

MR. SEITZ: Mr. Miller is here. and I don't know if you're going to be around after lunch? If he's -- I just want to make sure that --

CHAIRPERSON YOUNG: Mr. Miller, are you going to be around after lunch?

MS. OKUN: I only have one question for him, unless the Board has other questions.

CHAIRPERSON YOUNG: Go ahead, Mr. Miller.

MS. SCHAFFNER: And if he just arrived we do need to administer the oath for him, as well.

MS. OKUN: I think he was here yesterday.

CHAIRPERSON YOUNG: Yeah. And, Mr.
Miller, you're still under oath.

MR. MILLER: Yes, Mr. Chairman, thank you.

CROSS-EXAMINATION

MS. OKUN: Do you dispute the need for a wastewater treatment plant in Los Osos?

MR. MILLER: No, ma'am.

MS. OKUN: Thank you.

(Laughter.)

CHAIRPERSON YOUNG: Next time bring a bigger book.

(Laughter.)

CHAIRPERSON YOUNG: Okay, folks, we are going to break for one hour. Let's meet back here at 2:30.

And we concluded -- Mr. Miller, if you could -- everyone who is under subpoena, if you would please return, I would appreciate that.

MS. OKUN: The Board will also meet in closed session to discuss the Goleta West matter on the closed session agenda.

MS. SCHAFFNER: Mr. Chair, I'd like for you to instruct the CSD to be sure that anybody who testified in their proceeding be available to answer questions of the Board, still. Because we
have some questions --

CHAIRPERSON YOUNG: Yeah, we still have questions.

Yeah, the Board has not -- what we have done at this point is we have concluded with cross-examination of CSD's witnesses by staff. And so we would next get into policy statements by representatives of agencies, and then public comment.

MR. SEITZ: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

MR. SEITZ: Then just for the record Mr. Miller should return, then?

CHAIRPERSON YOUNG: Yes, he should.

MR. SEITZ: Okay.

MS. SCHAFFNER: Mr. Chair, just to be clear --

MR. SEITZ: I was just --

MS. SCHAFFNER: -- when we come back you said we're going to go back in policy statements. But I know I have some questions for the CSD, still.

CHAIRPERSON YOUNG: And I think we have some questions.

MS. SCHAFFNER: Okay.
CHAIRPERSON YOUNG: I was just saying that we've concluded with that portion of the list of things, and the next one will be policy statements.

But some of the Board Members do have questions.

MR. SEITZ: I'm going to make an extraordinary request here. I would appreciate, Mr. Miller -- he can speak for himself. My understanding is that he's on his way to vacation time.

CHAIRPERSON YOUNG: Okay.

MR. SEITZ: And if -- Rob, do you want to come up and say what your availability is, and can you answer questions now or does staff -- Board feel comfortable --

MR. MILLER: Thank you, Mr. Chairman. I apologize for that. Yeah, I am on my way to Los Angeles. I can be available by phone --

CHAIRPERSON YOUNG: Okay.

MR. MILLER: -- if there's a speakerphone here available, I can certainly do that.

CHAIRPERSON YOUNG: Okay. When do you have to leave here?
MR. MILLER: Not until about as late as 3:00.

CHAIRPERSON YOUNG: Okay, well, we're going to let you go by then.

MR. MILLER: Okay.

CHAIRPERSON YOUNG: Okay, won't hold you beyond that.

MR. MILLER: Okay. All right.

CHAIRPERSON YOUNG: And if we could get your telephone number, so if we had to call you and somehow patch you in. I don't know how that would happen.

MR. MILLER: I'm sure we can do it.

CHAIRPERSON YOUNG: Yeah, that would be -- Mr. Briggs?

MR. BRIGGS: I was wondering if we can get a tally of where we both stand timewise.

CHAIRPERSON YOUNG: Well, they have run out of time.

MR. BRIGGS: Okay.

CHAIRPERSON YOUNG: Okay. And you have an hour and 12 minutes.

MR. BRIGGS: Thank you.

CHAIRPERSON YOUNG: Is that correct, Michael?
MR. THOMAS:  (Affirmative head nod.)

CHAIRPERSON YOUNG: Okay. But, -- they

are, okay.

(Whereupon, at 1:35 p.m., the hearing

was adjourned, to reconvene at 2:30

p.m., this same day.)
AFTERNOON SESSION

CHAIRPERSON YOUNG: Okay, folks, please take your seats. We're going to resume our hearing.

(Pause.)


MS. OKUN: Not yet.

CHAIRPERSON YOUNG: You know, folks, I know I speak softly at times, and so you can throw a piece of paper at me, if you want, or have someone remind me to speak louder. That's just kind of my nature.

Okay, Mr. Seitz, are you ready for us to resume?

MR. SEITZ: I am.

CHAIRPERSON YOUNG: Okay, good. All right, I think we're done with cross-examination, is that correct?

MS. OKUN: Actually I did have one question regarding the settlement agreement that I reviewed over --

CHAIRPERSON YOUNG: Your microphone.
MS. OKUN: I had one question regarding the settlement agreement that I reviewed over the lunch break. I have the October 21st letter from Celeste Cantu to Assemblyman Sam Blakesley. I don't have any questions about it so we'll just add it to the record.

And Harvey Packard just went to let Darrin Polhemus know we'll be calling him sometime within the next 20 minutes. And we have the phone set up.

I have just one question for the District and I don't know who should answer this question.

CROSS-EXAMINATION - resumed

MS. OKUN: The settlement agreement between the District and CASE regarding various lawsuits provides that the District will pay $125,000 to Al Barrow.

My question is what fund that money came out of?

MR. SEITZ: And the relevance?

MS. OKUN: Well, the District spent several hours explaining that it had no funds available to pay penalties. But it did have funds available to settle this litigation. So I'm
wondering how funds were available for that
purpose and not for purposes of paying penalties.

  CHAIRPERSON YOUNG: Please answer the
question.

  MR. McCLENDON: I don't know that we
have anyone here that can answer the question.
But I would correct that, it's to pay the
attorneys fees under Code of Civil Procedure,
section 1021.5 to CASE and Al Barrow in settlement
of the litigation.

  CHAIRPERSON YOUNG: Was payment made?

  MR. McCLENDON: To my knowledge it has
not been made.

  CHAIRPERSON YOUNG: Okay. Ms. Schicker,
to your knowledge has that check been issued?

  MS. SCHICKER: To my knowledge the check
has not been issued. All five of us are
signatories, though. I need to check with Mr.
Bleskey.

  MS. OKUN: I'm sorry, I didn't hear your
last statement.

  MS. SCHICKER: I need to check with Mr.
Bleskey about that, I don't know.

  CHAIRPERSON YOUNG: Okay, but have you
authorized him to go ahead and get the check
issued?

MR. McCLENDON: The settlement agreement was approved by the Board.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER SHALLCROSS: But you don't know what account that's coming out of? No one does?

MR. McCLENDON: I don't know. I think it's Ms. Schicker's testimony she doesn't, either. I don't know.

BOARD MEMBER SHALLCROSS: Who would know?

MS. SCHICKER: Because it hasn't been paid yet, we haven't had time -- I don't know, either. So I --

BOARD MEMBER SHALLCROSS: I know. My question was who would know?

MS. SCHICKER: We have to decide, as a Board.

BOARD MEMBER SHALLCROSS: So the Board has some discretion as to what account it's coming out of?

MS. SCHICKER: I think within limits of the law, as Mr. Seitz described.

BOARD MEMBER SHALLCROSS: Is Mr. Bleskey
coming back?

MS. SCHICKER: Yes, he is. He's involved in some administrative matters for the District.

BOARD MEMBER SHALLCROSS: Okay, he might know. He seemed pretty knowledgeable.

CHAIRPERSON YOUNG: Okay, go ahead, Ms. Okun.

MS. OKUN: I have nothing further. I have questions for Mr. Polhemus when he gets on the phone.

MR. SEITZ: Mr. Chair, --

CHAIRPERSON YOUNG: Yes.

MR. SEITZ: -- would this be the appropriate time to have Mr. Miller answer questions? I know he plans to leave town at 3:00. And if you want to have him live, this may be the time.

CHAIRPERSON YOUNG: Right. Do we have any questions for Mr. Miller? Board Members?

BOARD MEMBER SHALLCROSS: Why are you going to Los Angeles for a vacation?

(Laughter.)

CHAIRPERSON YOUNG: I guess not. Go ahead, you can -- you can leave. If you don't
mind staying here till 3:00 and then leaving, that
would be great, just walk right out. In case
something does pop up.

Okay, Mr. Bleskey, there you are. We've
got some questions for you.

MR. BLESKEY: Yes, sir.

CHAIRPERSON YOUNG: I guess Ms. Okun
actually has the questions.

CROSS-EXAMINATION

MS. OKUN: My question is whether you
know what fund the $125,000 payment to CASE is
going to come from pursuant to the settlement
agreement.

MR. BLESKEY: That's more than likely
going to be coming out of our sewer fund.

CHAIRPERSON YOUNG: Okay. And how much
money is in that fund right now?

MR. BLESKEY: I think it's between $3.6
and $3.9 million.

MS. OKUN: Are you paying that with the
state fund money?

MR. BLESKEY: That's the reimbursements
for the expenditures we have sunk into the project
already.

MS. OKUN: My question was whether
you're using SRF loan proceeds to pay the
settlement.

MR. BLESKEY: I don't know, because
that's the reimbursement we received from the
state for monies that were applicable to the
project.

MS. OKUN: Okay.

MR. BLESKEY: Specifically the design
reimbursements.

BOARD MEMBER SHALLCROSS: Mr. Chair.

CHAIRPERSON YOUNG: Yes, Mr. Shallcross.

BOARD MEMBER SHALLCROSS: So this is
money that the Service District has spent and has
been reimbursed?

MR. BLESKEY: Yes, sir.

BOARD MEMBER SHALLCROSS: And so that's
money that the Service District has available to
itself?

MR. BLESKEY: Yes.

BOARD MEMBER SHALLCROSS: And are these
in a restricted account of some kind?

MR. BLESKEY: Yes, that's our 600
account, and that's for the sewer project.

BOARD MEMBER SHALLCROSS: For the sewer
project.
MR. BLESKEY: Yes, sir.

BOARD MEMBER SHALLCROSS: But apparently then also you can pay judgment settlements and things out of that, too, right?

MR. BLESKEY: Yes, sir.

MR. SEITZ: I just want to interject, I hate to cut you off. But, we have answered questions from the Chair and the question that the Chair asked, and I moved those two documents, the questions and the prosecution team's response and our response into the record.

It is clear, I believe it's question number 7, it could be question number 8, that those SRF monies are agreed to, are not subject to levy on fines from this Board. And I believe you have a very detailed explanation as to why from the prosecution team.

MS. OKUN: I have a follow-up question, then, because --

BOARD MEMBER PRESS: Mr. Chair, --

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER PRESS: -- I don't think the question's been answered, at least not to my satisfaction. I'd like to know where those monies came from, what restrictions they have on them.
Are they monies that you have to reimburse the
State Board? Are they a part of the loan? How is
it, please explain to the Board and the public how
is it that you can pay one settlement out of that,
but you couldn't pay another settlement out of
that fund, if that's what, indeed, you are
claiming.

MR. BLESKEY: I can't answer the
technicalities on how to pay that off, part of
your question. But what happens is that the
initial -- we had an assessment district. That
assessment district was for the design and the
planning of the project that we still have
ongoing. The state reimbursed that after we spent
those monies from the SRF reimbursements.

MS. SCHICKER: Dr. Press, I would also
like to just add something just so -- this is my
knowledge of our District's funding.

The District's 600 fund is for all
wastewater-related expenses. Legal costs have
been paid out of that fund on numerous occasions
over the years from any legal challenge. All the
legal challenges to the wastewater project have
been paid out of that fund.

The original money was bond money. Now
the remainder of the bond money is intermingled with the money that came from the wastewater SRF loan. And because it's in question and in contention, that's why it's a little bit difficult for us to answer the question completely.

BOARD MEMBER PRESS: So is it your position that although prior claims, legal claims, have been paid with this money, future ones could not?

MS. SCHICKER: That's a question I don't know the answer to yet. I just know that the money is intermingled. We have bond money. And then the money from the SRF fund, the first disbursement was completely for reimbursement of the District for expected contingencies for the project.

BOARD MEMBER PRESS: Thank you.

MS. OKUN: Just so I can clarify, my understanding of what the District is saying is that basically money is fungible. So the District had an initial disbursement from the State Board loan. Some of it went to pay contractors' costs, and the rest of it went to pay money that the District had basically pre-expended from other sources and paid back the District.
So those monies in fund 6000 are no longer State Board fund proceeds; they're the moneys that were paid back to the District and is now the District's money. Is that the District's position?

MS. SCHICKER: Just a moment.

MR. SEITZ: I'm going to incorporate Ms. Okun's response to that question. "If the Board agrees to impose fines against the CSD, could the CSD use SRF money to pay it?" Answer, "No."

By the way, I've moved these documents into the record. "The SRF installment sales agreement loan contract defines reimbursable project costs as allowable costs under the statute. Undefined, but presumably, 33 USCA sections 1381-1387 and Water Code section 13475 through 13485, in the policies for implementing the state revolving fund for construction of wastewater facilities, adopted on February 16, 1995, as amended."

"The September 2005 policy and the February 1999 policy exclude all other items not included in the construction contract except allowances. The construction contracts do not provide for payment of administrative civil
liability, nor do any provisions in the cited statutes."

"Ann Hartridge, counsel for the State Water Board on the SRF loan program issues, confirmed on November 17, 2005, that the State Water Board would not allow the use of SRF funds."

That's the District's response.

MS. OKUN: Well, it seems to me that either that $3.9 million that the District still has is the District's money now because it used it to reimburse itself for reimbursable costs under the SRF loan. Or the District has to pay it to the contractors.

MR. SEITZ: First and foremost, we don't -- and believe me, I'm not in this loop, but I am quoting to you from the response not only from the prosecution team, but also confirmed by Ann Hartridge of the State Water Resources Control Board.

MS. OKUN: Okay, well --

CHAIRPERSON YOUNG: I understand that, Mr. Seitz, but those are their opinions, right?

MR. SEITZ: It's the opinion of Ann Hartridge, but it's also the opinion of the prosecution team.
MS. OKUN: Right, and that's still my opinion, that the District can't turn in the ACL to the State Board and ask the loan to reimburse any penalties that this Board advises -- or imposes.

What I'm saying is the money that the District has is no longer SRF money. It already was used for the purpose for which it was disbursed, which was to pay back the District for money that was in the pot before. Now it's in the pot again, and apparently it can be used to pay settlement proceeds.

CHAIRPERSON YOUNG: Because it's been used to pay the attorney fees is your point. Okay.

BOARD MEMBER SHALLCROSS: Can I just offer some --

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER SHALLCROSS: So, according to what you're saying if let's say the entire wastewater plant cost $50 million and the state said, well, we'll -- you have to pay for it, but we'll reimburse you with this SRF loan. And instead of just coming up with a little bit of money you have to come up with the $50 million.
You pay the $50 million and build the
plant. And then the state gave you the SRF loan.
Are you saying that that money, the $50 million
the state gave you would still be subject to SRF
requirements to build another plant?

MR. SEITZ: I believe --

BOARD MEMBER SHALLCROSS: This is sort
of confusing.

MR. SEITZ: I believe the practicality
is the answer. And that is that we -- and I can't
really speak for the entire District, but it's my
opinion that that SRF money is going to be in
contention not only from the contractors, but from
the SRF, itself.

Now, -- and believe me, I'm objecting to
this. We come here prepared to address issues,
and we believe when we get these responses and
there's absolute agreement between the prosecution
team and the defense team as to a particular
issue, and now, all of a sudden, the issue is
being raised by the very prosecution team that has
advised your Board that the answer is no.

And, I --

CHAIRPERSON YOUNG: You know, Mr. Seitz,
those were my questions, as I was preparing for
the hearing. I developed them to kind of help me
with fleshing out, you know, what was what.

MR. SEITZ: I still believe that they're
a part of the administrative record in these
proceedings --

CHAIRPERSON YOUNG: They are. I don't
disagree with you.

MR. SEITZ: Okay.

CHAIRPERSON YOUNG: They are part of the
record.

MR. SEITZ: And they represent
stipulated facts before this Board. And if the
Board is really going to put these SRF monies at
issue as far as fines, then again, I'm going to
renew right here and right now my motion for a
continuance.

This is documents that we get in
preparation for this hearing where there's
stipulations between both the prosecution team and
the defense team. And now, all of a sudden, we're
being advised that these stipulations are no
longer on the table.

CHAIRPERSON YOUNG: Mr. Seitz, --

MR. SEITZ: Again, I make a motion for a
continuance.
CHAIRPERSON YOUNG: Okay, denied. And let me just say one thing. There was no stipulation made between your team and the prosecution team. You may be in agreement on certain facts based on these two sets of documents.

But it appears that testimony that we have received during the hearing has cast some different perceptions on maybe what the answer might be as to how those funds could be used. So I think it's very relevant. But your objection is noted for the record, thank you.

MS. OKUN: And if I could just clarify. I still stand by the answer that I provided in writing, which had to do with the use of State Board proceeds. My position is that based on the District's testimony these monies are no longer properly characterized as state loan proceeds.

CHAIRPERSON YOUNG: Okay. All right. Do we have any witnesses that we want to call, Members of the Board?

MR. McCLENDON: Mr. Chairman.

CHAIRPERSON YOUNG: Yes.

MR. McCLENDON: John McClendon.

CHAIRPERSON YOUNG: Yes.
MR. McCLENDON: I recall yesterday when the request was made to provide this at the 11th hour that I objected to it; however, I said as long as I could have some time to make some responses that I would not object.

May I make those responses to this settlement agreement?

CHAIRPERSON YOUNG: Sheryl, --

MS. SCHAFFNER: I don't think -- I don't recall exactly. Could you refresh our memory as to the nature of your objection?

MR. McCLENDON: I believe I initially -- my recollection was I cited your title 23 about the policy of the State and Regional Boards --

MS. SCHAFFNER: Okay, I recall now, as far as a policy against --

MR. McCLENDON: Against surprise testimony and exhibits.

MS. SCHAFFNER: -- surprise testimony.

MR. McCLENDON: Yes.

MS. SCHAFFNER: Okay, now I recall.

MR. McCLENDON: Yes.

MS. SCHAFFNER: And I think this is a question for the Chair to consider. And I suppose the question would be does the CSD's documents
before us now, documenting their abandonment of
the challenge to Measure B, which inhibits their
ability to comply with the time schedule order, is
that information that was not previously available
to the Board properly admitted at this late date.
Is it prejudicial; is it relevant.

Some of the factors you might consider
in making that determination as far as relevance
goes, that I can think of, is much of the defense
is based on a) an argument of not being reasonably
able to comply in the past or presently; and the
ability to build on the site versus another site
has been discussed at great length by both sides.

So perhaps you could show some
relevance; that's a determination for you to make.

Another question is would there be
prejudice against either party to admit it at this
late date. I find that's a factual determination
for you to make, about maybe perhaps the CSD could
explain why it would be prejudicial to them to
have their document admitted to the -- considered
in this proceeding today.

MS. OKUN: And if I could just add, I
think -- I don't have the regulation in front of
me, but I think it refers to --
MS. SCHAFFNER: I do.

MS. OKUN: -- surprise testimony. And
the only testimony on this issue has been from the
District.

MS. SCHAFFNER: Let me pull up the reg.

MR. McCLENDON: I have it right here, if
this will help. 648.4, (a), quote, "It is the
policy of the State and Regional Boards to
discourage the introduction of surprise testimony
and exhibits." Period.

MS. SCHAFFNER: Yeah.

CHAIRPERSON YOUNG: But how would it be
surprised if it's your own exhibit? It can't
surprise you.

MR. McCLENDON: Well, Mr. Chairman, I
don't know --

CHAIRPERSON YOUNG: Right?

MR. McCLENDON: -- I don't know that
this is -- the conversation we're having is really
relevant here, because yesterday I'd said as long
as I could have some time to respond to this, I
would --

CHAIRPERSON YOUNG: And you're going to
have that.

MR. McCLENDON: Okay, thank you.
CHAIRPERSON YOUNG: You did ask for it and I want you to have that opportunity to go ahead and put on the record whatever you'd like about this document. So, go ahead. Is it just that you're objecting because you think it's surprise testimony?

MR. McCLENDON: Well, I do not have a qualm with it being admitted, as --

CHAIRPERSON YOUNG: Okay.

MR. McCLENDON: -- long as I can just answer some questions about it. There's a logic behind this that's important to understand. This dovetails with our negotiations with the state.

CHAIRPERSON YOUNG: Now, which document are you referring to?

MR. McCLENDON: I'm talking about the settlement agreement.

CHAIRPERSON YOUNG: Okay, go ahead.

MR. McCLENDON: Thank you. Okay, if you have it in front of you I'd ask you to look at number 1 under agreement.

CHAIRPERSON YOUNG: And what page are you on?

MR. McCLENDON: I'm sorry, page 2.

CHAIRPERSON YOUNG: On page 2 under the
heading agreement. And somehow this dovetails into what happened at the State Water Board?

MR. McCLENDON: Absolutely. Okay, at the time we were in negotiations with -- initially what had been discussed was the initiative is valid, procedurally and substantively, period. And then it went to 2, okay.

With our negotiations with the State Board, the State Board, and you've seen that in the terms sheet that we now know Darrin Polhemus prepared, there was a requirement for us to conduct a election to rescind Measure B.

The key on that was we wanted to move quickly on that. We wanted to avoid problems with CASE and Al Barrow in the future. Initially we had talked with the County and County Counsel on stipulating to a judgment hopefully to get this in as a stipulated judgment.

The importance here was number 2 saying, quote: The District can, itself, conduct any elections that may be required in order to comply with the voting requirements set forth in the initiative." Unquote.

Measure B says that it cannot be modified, rescinded, whatever, except by a vote of
the people. If we were to have the vote of the
people being conducted through the County and the
usual process, for example the way Measure B was
initially done, that period, I believe, was
between 88 and 100-and-something days, 115 or '20.

What we're talking about there is three
to four months. What we wanted as a concession
here to expedite things with the State Board in
our negotiations was we wanted a concession from
the opponents that we could conduct it by mail
ballot.

There's a case on point on this out of
San Diego that would allow us to do this thing.
It's not violative of the requirement of secret
ballot. So that was one of the considerations
here.

The second one was, as you know, one of
the problems of Measure B that is hugely
problematic is Measure B talks about this voting
on siting. And the voting on siting it says that
the site has to be selected by a majority vote.
Doesn't say plurality. That's hugely problematic
if you have multiple sites.

What we got was a concession of CASE
was, under 1, under that -- the 1 in parentheses,
quote, the phrase, quote, "All alternative proposals for siting of a wastewater treatment facility" unquote in section 2.08.04(c) of the initiative does not include sites that are either (i) excluded by the initiative, itself, or (ii) determined by the District's Board of Directors not to be feasible, as that word is defined in California Code of Regulations Title 14, 15364."

Unquote.

The point on that being that we got a concession from them that the Board could make a preliminary screening of the EIR alternatives, and based upon 15364, select the two that were feasible and put those on to enable us to obtain a majority vote.

So there was a logic here that was going on. One, if we had to have the Measure B on a siting thing, that we could do that and not run into a morass of having a plurality rather than a majority.

Secondly, the number two under there, to do it by mail ballot, that was to facilitate a fast resolution under what we thought was going to be a negotiated settlement with the state revolving fund.
MS. SCHAFFNER: May I ask a follow-up question on that?

CHAIRPERSON YOUNG: Of course.

MS. SCHAFFNER: So that's the benefits - - the key benefits you derived was to streamline and improve and shorten the vote approval process, as best -- is that what you're saying?

MR. McCLENDON: Yes, there was a logic here.

MS. SCHAFFNER: Yeah, I'm following you. And what you gave up in exchange for that was an appeal before the Court of Appeal or/and an interlocutory ruling before the Superior Court which found that the Measure B was invalid?

MR. McCLENDON: No, I would correct that somewhat. What we gave up was we gave up having to appear before the Court of Appeal to answer and respond to the writ that they issued against Judge Hilton. The Court of Appeal ordered Judge Hilton to appear before the Court of Appeal and answer as to why his ruling should be allowed to stand.

It was issued in what's called an order to show cause. In all the years I've done appellate work I've seen stays issued regularly by the Court of Appeal. I've never seen one where
it's combined with what's the equivalent of an alternative writ issued ordering the Judge, an order to show cause against the Judge, himself.

CHAIRPERSON YOUNG: So maybe the Appellate Court just wanted to hear from the Judge?

MR. McCLENDON: It could.

CHAIRPERSON YOUNG: I mean how can you read into that --

MR. McCLENDON: Well, --

CHAIRPERSON YOUNG: -- any more beyond that?

MR. McCLENDON: Well, we can't. But we also have other case law, and if you'll give me a moment I can hopefully find it --

MS. SCHAFFNER: Perhaps in the meantime, Mr. Seitz could -- Seitz, I keep messing that up, my apologies -- Mr. Seitz could -- do you have experience with initiative law? It doesn't seem that uncommon for the Court of Appeal to presume in favor of allowing a vote to happen before it's determined whether the measure was valid because of the strong presumption in favor of letting votes continue. Rather than cancel the right to vote on something while they're trying to figure
out if it's valid or not. That seems pretty standard.

MR. SEITZ: You know, let me do this. I would just as soon defer those questions to District Legal Counsel. And I say this in all sincerity.

As the Board's well aware, my signature is on a lot of documents opposing Measure B. I'm the one that recommended to the Board the opposition to Measure B. Lawyers can differ, as we all know.

I believe that in my heart of hearts the more relevant testimony is going to come from the District's Legal Counsel than their former counsel on that particular issue.

MS. OKUN: If I could just state what the District's position was in the litigation at the time, and what the trial court found.

MS. SCHAFFNER: That could be helpful.

MS. OKUN: It was an issue in the trial court whether a pre-election challenge was appropriate in this case. The District's position at the time was that it was appropriate because Measure B was so clearly facially invalid. The trial court agreed, and the appellate court
issued, I'm not sure, an interlocutory stay or extraordinary stay, I'm not sure of the exact name of the stay. But because the time periods were so short, the election was held while that stay was in effect.

                MS. SCHAFFNER: That was my understanding.

                MR. McCLENDON: May I respond?

                CHAIRPERSON YOUNG: Go ahead.

                MR. McCLENDON: I found the case law on this. One case is Assembly v. Deukmejian, 10Cal.3d.638. It's a 1982 case where the court said, quote: It has long been our judicial philosophy to apply a liberal construction to the power of initiative and referendum wherever it is challenged in order for the right to be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power courts will preserve it." Unquote.

                Similarly, last summer in a case that I was prevailing party on that was published in September of 2005, Walmart Real Estate Business Trust v. City Council of the City of San Marcos, 132CalAp.4th, 614. Here the court, Walmart sued to a pre-ballot challenge. I represented the
sponsors of the initiative. It's a similar exact posture, except it was a referendum instead of an initiative.

It went to the trial court. The trial court taking the Debutary Standard, as Sheryl has mentioned, court said we don't like to have pre-ballot challenges. It went on the ballot; it succeeded.

And here the appeal was about attorneys fees, awarding attorneys fees to a successful real party defendant in one of these. I was denied attorneys fees at the trial court level. At the appellate court level, the appellate court set aside the trial court ruling and said these folks that were the sponsors that were sued to keep it on the ballot are entitled to their attorneys fees under 1021.5.

And if I could read from this, it says, quote: The state constitutional right of initiative or referendum is one of the most precious rights of our democratic process. These powers are reserved to the people, not granted to them. Thus, it is our duty to jealously guard these powers and construe the relevant constitutional provisions liberally in favor of
the people's right to exercise the powers of
initiative and referendum." Unquote.

MS. SCHAFFNER: If I could just try and
save all of us a little bit of time. The only
point I was trying to derive here is that what you
gave up was any possibility of continuing on what
appeared to be a potentially successful path, at
least once after the vote was done. The interim
ruling was the vote should happen. But they did
not address the merits. The lower court had so
far said on the merits that it looked like it was
invalid. And what you gave up in exchange for a
streamlined process is the ability to continue on
the path to challenge the measure.

And it's debatable whether you would
have succeeded or not. I'm sure the former CSD's
counsel thought you could. Now maybe you feel
like you couldn't. It's not up to us to resolve
whether you would have won or not, today. It's
just a matter of what came out of it.

I'm more interested, though, in what is
the effect of the -- what is the current effect on
Measure B. Is it -- according to your
understanding by this settlement and dismissal.

MR. McCLENDON: Well, first off, I want
to just say I agree with Chairman Young here that
I don't have a crystal ball to know how the Court
of Appeal would have ruled on that. I mean,
frankly, you know, as a lawyer, I had some
heartburn just because I had never seen an OSC
issued in conjunction with a stay.

    I talked around to a lot of appellate
lawyers. I'm trying to read the tea leaves,
trying to find the crystal ball. I don't have it.
My concern here was the Hippocratic oath for
lawyers, do thy client no harm.

    And I'm looking at the prospect here of
if this client were not to prevail, knowing that
the bias here in the court is to try and bend over
backwards to uphold initiatives and referenda, and
knowing also that Measure B had a severance clause
in it. And courts typically would rather prune an
offensive initiative or referendum rather than
outright set it aside in its entirety.

    So knowing that that option was open,
and knowing the exposure of this client to
potentially significant attorneys fees, to try
and, one, minimize that exposure; and two, try and
get something out of it that could potentially
significantly benefit vis-a-vis our attempt to
deal with the state SRF loan.

MS. SCHAFFNER: Did I just understand that -- and maybe I'm over-simplifying, but you were concerned that you might have to pay attorneys fees, so you agreed to pay attorneys fees to cut that risk off?

MR. MCCLENDON: Well, okay, I should explain how this works. 1021.5, there's a whole procedure for this. And first off, you set a lodestar, and the lodestar is not at public agency rates. It's at prevailing rates of private practice.

Then secondly there's what's called a multiplier, it's a bounty, it's a bonus that can be applied on top of that.

MS. SCHAFFNER: Can --

MR. MCCLENDON: Okay, so you can get these rates up. I've had it where the rates go $400-plus an hour to the equivalent rate.

What we were able to do here is -- I'll just be blunt here -- we were able to grind them down and say, look, we know you represent public agencies, we're not going to take the lodestar. We've got the language in here saying you're not going to get a multiplier, you're going to get
about the same here as if you'd done this for one
of your city clients.

MS. SCHAFFNER: One last question on
this point that I have is when this was signed on
November 16th, it seems to me that that very same
day, and this is a question for Mr. McClendon.
Mr. McClendon, I believe, stated to the State
Board in its hearing that the CSD had not, when
asked whether the CSD had decided what it was
going to do about Measure B, whether it was going
to oppose it, Mr. McClendon told the Board it had
not been decided. The Board was going to meet
that evening or the next evening to decide what
its position would be.

Yet, this settlement agreement
dismissing the case was signed and filed the same
day. And correct me if any of those facts are
wrong. It doesn't --

MR. MCCLENDON: I don't recall my --

MS. SCHAFFNER: Okay.

MR. MCCLENDON: -- what I -- I know it
was very heated with Mr. Katz. He yelled at me a
lot. And I don't know what I said --

MS. SCHAFFNER: But they more --

MR. MCCLENDON: I probably got reactive
and defensive after he --

MS. SCHAFFNER: I understand. Perhaps

more important to us, to this proceeding, is the
CSD has been putting at issue in several points in
this proceeding what the positions are of the
Board and how they're taken. Was that taken --

when was that authorization given for the
settlement by the CSD Board? In what form?

MR. McCLENDON: Well, there was an offer

of settlement that was made -- by the way, it

would be easier, I think, just to put a -- I think

we have a press release on this that we could just
give you that states -- do we have that?

MS. SCHAFFNER: If you could just recall

when it was authorized and how, that's probably

all I really need to know.

MR. McCLENDON: I probably need to

refresh my memory, looking at this. We've had so

many meetings they all run together, trust me.

MS. SCHAFFNER: I know, I understand

that.

MS. SCHICKER: I have some partial

response to that, too, that I'd like to offer

while he's looking, if you don't mind.

I was also under testimony that morning
on December 16th. And one of the requirements of
the State Water Board to our Board was to file an
amicus brief.

Both Mr. McClendon and myself, both
asked the State Water Board, and this was a big
part of our negotiations, how could we meet that
request. We want to preserve the loan. We want
to keep the loan. We'll do whatever they say so
we can get the loan, we'll try.

File an amicus brief. We could not file
an amicus brief if we were the party that was
suing. We were trying to think of some creative
way that we could file an amicus brief quickly.
Well, you can't do it if you're filing the suit.

So, that's why we went into December
16th with that testimony right in to them. Why
are you asking us to file an amicus, because we
are the party.

So, that's important, too. Believe me
when Mr. McClendon is saying we were trying to
look at every angle, that is the truth. We were
trying to work with the state in any way possible.

MS. SCHAFFNER: Ms. Schicker, do you
remember when the CSD gave the direction --

MR. McCLENDON: Can I --
MR. McCLENDON: Can I answer generally?

MS. SCHAFFNER: -- to dismiss --

MR. McCLENDON: I know it was in -- I

know it was in October we initially looked at it.

There was an offer made. There was a lot of back-

and-forth as you might expect in settlement

discussions. There was some talk with the County

and Dougan at County Counsel's Office. There was

some delay on waiting for the County to agendize

it for their closed session, and whether or not

they were going to be in on a stipulated judgment

of not.

And then there was a fight over the

amount of the attorneys fees --

MS. SCHICKER: That's all I --

CHAIRPERSON YOUNG: When you speak of

the stipulated judgment, do you mean with respect

to Judge Hilton's order becoming a stipulated

judgment?

MR. McCLENDON: No, it was that the

parties to the litigation would have entered into

a stipulated judgment for Judge Hilton to enter.

Because understand, please, Judge Hilton did not

issue this essay yet as a final judgment. I
believe this was interlocutory, and under the law
you cannot appeal from an interlocutory judgment.

CHAIRPERSON YOUNG: Does it say
interlocutory on the caption page?

MR. McCLENDON: It does.

MS. OKUN: Yes, it does.

MS. SCHICKER: It does.

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: That's all I have.

CHAIRPERSON YOUNG: Okay. Mr. Barrows,
I'd like you to come to the witness stand, sir;
I'd like to ask you a few questions, if you would.
You, yes. Thank you. Barrow. Hi, Mr. Barrow.

MR. BARROW: My name is Al Barrow; I
live in Los Osos.

CHAIRPERSON YOUNG: Okay, and --

MR. BARROW: And I assume that I'm
sworn, is that correct?

CHAIRPERSON YOUNG: Yeah, did you take
the oath?

MR. BARROW: No, I did not.

CHAIRPERSON YOUNG: Okay.

Whereupon,

AL BARROW

was called as a witness herein, and after first
having been duly sworn, was examined and testified
as follows:

MR. BARROW: I do.

CHAIRPERSON YOUNG: Okay, thank you.

MR. BARROW: So help me, God.

CHAIRPERSON YOUNG: Okay.

EXAMINATION BY BOARD

CHAIRPERSON YOUNG: Have you been
listening to the discussion we've been having with
respect to the settlement?

MR. BARROW: I cannot guarantee because
I don't hear well, and they didn't have headphones
today.

CHAIRPERSON YOUNG: Okay.

MR. BARROW: As much as possible.

CHAIRPERSON YOUNG: Okay. Can you tell
us when you made your offer to the CSD Board to
settle their complaint?

MR. BARROW: I have some documents here
but I don't see that particular one. I pretty
much relied on Burke, Williams and Sorensen to do
the legal paperwork. They were the attorneys that
represented CASE, Citizens for Affordable and a
Safe Environment, which is a citizens group.

CHAIRPERSON YOUNG: Do you remember when
you gave them instructions to begin settlement
negotiations? Approximately. I'm not trying to
test your memory.

MR. BARROW: On Measure B?
CHAIRPERSON YOUNG: Yes.

MR. BARROW: Okay. This had to be after
the vote had passed, and it had to be, you know, -
- of course, there was the appeal right before the
election --

CHAIRPERSON YOUNG: Correct.

MR. BARROW: -- of Judge Hilton
decision. And then there was a ruling in the
Appeals Court that the election would be allowed.
It was validated. I'm just trying to give you the
history.

And the next thing that happened, at
that time at the Appeals Court there was a date
set for a hearing on this after the election. I
think it was the 27th of October. And then our
attorneys asked for a continuance until I think
December 14th.

However, in the meantime a great deal
has happened, the withdrawal of funds and so
forth. And the District was put in a position
where they could no longer go forward with the
project because they didn't have the funds.

So, at that time, somewhere in that
time, and I would have to defer to Mrs. Julie
Biggs, who is president and is my representative,
as to the exact date that I did give permission
for that.

CHAIRPERSON YOUNG: Okay, --

MR. BARROW: I was not the designer of
these legal actions. I'm not an attorney. So
what I did is I -- whatever they suggested, if I
looked it over and I thought it was for the best
interests of the citizens of the community, I
approved it. And I did that by faxing documents
back to them. Is that not correct?

That's all I can say about that.

CHAIRPERSON YOUNG: Okay, but it's your
recolletion that the settlement discussions
didn't begin until after the election?

MR. BARROW: Way after the election.

CHAIRPERSON YOUNG: Okay. All right,
thank you.

MR. BARROW: You're welcome, thank you.

MS. SCHICKER: May I just say one more
thing about it, it's pretty important. It's just,
because of the negotiations with Mr. Blakesley and

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
that we had a chance to save the loan, we waited
till the last possible minute when there was no
more hope. There was no intent to settle this
until we -- that's why we went to Sacramento;
that's why we talked to them again; that's why we
asked them about the amicus.

All of those things entered into our
decision of when and how to do this. That's why
we came up in testimony to save the thing. It was
pretty important for us to try to work with the
state and Mr. Blakesley at all costs.

CHAIRPERSON YOUNG: Okay, --

MS. OKUN: If I could just make a few
points about the settlement agreement. Mr.
McClendon said that they got the concession about
what Measure B meant. That was the concession
only from the parties to the settlement agreement,
CASE and Mr. Barrow. It wasn't a concession by
anyone else who might want to challenge the
methodology that the District decided to use to
repeal Measure B, if, in fact, that's what it
decides to do.

And it also doesn't eliminate any other
challenges regarding Measure B, either what it
means or how to repeal it by anyone other than
Also, regarding the State Board resolution, it was based on a proposal that Assemblyman Blakesley originally drafted. And the State Board adopted it and issued that to the District as a proposal.

And the original terms, as prepared by Assemblyman Blakesley, did say something about filing an amicus brief with the court. And at the November 16th hearing I pointed out, and I believe Mr. McClendon pointed out that they were parties and it was fully briefed, and they didn't need to file an amicus brief.

So in the language of the resolution, itself, the State Board changed that to say that the District will file immediately opposition to Measure B with the appellate court. It doesn't say whether it's going to be an amicus brief, or appearing on December 14th and voicing their opposition, or what it would be.

So I think it would have been pretty easy to comply with that condition had the District wanted to.

CHAIRPERSON YOUNG: Okay, let's move on to testimony from other agencies.
MS. OKUN: Darrin Polhemus, were we going to -- do you still have questions for him?

CHAIRPERSON YOUNG: Do we? Does the Board have any questions for Mr. Polhemus?

(Pause.)

CHAIRPERSON YOUNG: Do we have to call him?

MS. OKUN: We actually -- yeah, we have to telephone him.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: We actually do have a couple of questions that we've been putting off.

CHAIRPERSON YOUNG: You do?

MS. OKUN: Yeah.

CHAIRPERSON YOUNG: Well, then, better get him on the line. And I take it then there's no one else from any other agencies, so we will start then with public comment when we're done with Mr. Polhemus. We have about 43 cards.

MR. PACKARD: Darrin?

MR. POLHEMUS: Yeah.

MR. PACKARD: Okay, you're on speakerphone.

MR. POLHEMUS: Okay.
MS. OKUN: Hi, Darrin; it's Lori Okun.

MR. POLHEMUS: Hi, Lori.

MS. OKUN: We're going to have the Chair swear you before I ask you just a couple of questions about the SRF loan.

MR. POLHEMUS: Okay.

Whereupon,

DARRIN POLHEMUS

was called as a witness herein, and after first having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MS. OKUN: Darrin, Mr. Bleskey testified yesterday that the loan contract -- may have been today -- the loan contract isn't site specific to the Tri-W site because it incorporates the construction contracts which aren't necessarily site specific. Is that your understanding of the State Board loan, that it was not site specific?

MR. POLHEMUS: No, that would be incorrect. In the loan contract as exhibits that are attached, the plan and specs approval document; the facilities plan approval; and the approval for the award document. All administratively issued by staff and the State
Board that are incorporated as part of the installment sales agreement, and are specific to the project and location.

MS. OKUN: I have a couple of questions about the January 2005 Board meeting when the State Board agreed to extend the loan and increase the amount.

There was some discussion at that meeting that if the District wanted to change the project that was a matter of local control. But did the State Board ever say that if the District decided to do that it would amend the loan to conform to whatever the new government decided to do?

MR. POLHEMUS: Not to my knowledge.

(End Tape 5A.)

MS. OKUN: Do you recall what the purpose was of adding the requirement in the State Board resolution that the District had to issue a notice to proceed by September 20th?

MR. POLHEMUS: It's standard procedure on all of our preliminary loan commitments adopted by the Board to include a sunset date so that at some point that resolution would automatically expire.
MS. OKUN: Lisa Schicker testified that during the discussions with Assemblyman Blakesley's office and the District you did some cost calculations that showed that the District could realize substantial cost savings by moving the project. Is that true?

MR. POLHEMUS: I guess I would caveat that. We did make discussions that were basically very rough estimates, not backed up by any material other than our personal experiences regarding what the costs associated would be with moving the treatment plant.

Now, I did make statements and say that under certain conditions there would be cost savings to move a treatment plant, but there would also be offsetting increased costs in other areas.

My contention that I thought I left everybody with at the end is that at the best they could expect cost-wise they would break even. But that in a more likely scenario, especially considering the possibility of increased construction inflation, it would likely cost them more due to the time delays associated with moving the treatment plant.

CHAIRPERSON YOUNG: Did you tell that to
Ms. Schicker?

MR. POLHEMUS: Did I tell that to Ms. Schicker?

CHAIRPERSON YOUNG: Yes.

MR. POLHEMUS: I believe I made that statement in the group, as a whole, and Ms. Schicker would have been present.

MS. OKUN: At anytime during those discussions or negotiations or whatever you want to call them, did you make an offer to the District on behalf of the State board?

MR. POLHEMUS: No. I was never authorized to make any offer for the State Board. I've worked in the State Board for over 13 years, and I know that as a staff person I merely recommend to my public body decisions and make recommendations at a staff level.

So, I tried numerous times to make it clear that anything I did or said was merely staff presenting an opinion. That it would have to be vetted by management above me and my Board.

MS. OKUN: At anytime prior to adopting a resolution on November 16th, did the State Board ever make any offer to the District about amending the loan or any sort of offer to facilitate moving
the project location?

MR. POLHEMUS: No. I mean I was in discussions with them and gave them advice. But it was to be their proposal submitted in writing back to us for consideration. The State Board made no offers or proposals.

MS. OKUN: Is your understanding of your role in that negotiation or discussion process that you were there to assist the District to develop a proposal that you thought would have the best chance of being approved by the State Board?

MR. POLHEMUS: Correct. My Director asked me to go down there and spend some time with them to make sure that they understood and have my knowledge available in making their proposal.

MS. OKUN: When you were doing the back-of-the-envelope cost calculations that you talked about earlier, did you look at any comparable facilities in San Luis Obispo County or any recent projects in this area?

MR. POLHEMUS: We did not spend any time doing specific research. Rob Miller, District Engineer for Los Osos, was present and had some off-the-top-of-his-head knowledge of some other plants and a locale. And for argument sake we
accepted those as rough estimates and approximates at that time. But they should not be considered hard and fast numbers.

MS. OKUN: Do you know if those facilities were upgrades or whether they were completely new facilities with no existing collection systems?

MR. POLHEMUS: I personally know that the Pismo system is an upgrade, as we're also providing financing for that. I believe Mr. Miller made the representation that the CNC upgrade was a new plant in a sense that it was a completely new site. But that's my recollection.

MS. OKUN: Are you involved at all in the Lompoc upgrade?

MR. POLHEMUS: Could you repeat that?

MS. OKUN: I'm sorry, I didn't hear your answer.

MR. POLHEMUS: Could you repeat the question.

MS. OKUN: Are you involved at all in the upgrade that's currently in process at the Lompoc treatment facility?

MR. POLHEMUS: Yesterday I signed a facilities plan approval, so I'm involved mainly
at the level of managerial approval of the budget.

MS. OKUN: Do you know how much they're planning to spend on that upgrade?

MR. POLHEMUS: My recollection is the document I signed yesterday approving the loan was for approximately $48 million.

MS. OKUN: And that's just for an upgrade?

MR. POLHEMUS: Correct.

MR. SEITZ: I'm going to object to this line of questioning. First of all, I would like to know what the relevance is. And second of all, we're comparing apples to oranges if we're talking about upgrades --

MS. OKUN: That's exactly my point.

MR. SEITZ: -- in Lompoc. Thank you, Darrin, I have nothing further. But the Board may have some questions for you.

CHAIRPERSON YOUNG: Any questions?

BOARD MEMBER SHALLCROSS: I have one.

CHAIRPERSON YOUNG: Go ahead, Mr. Shallcross.

EXAMINATION BY BOARD

BOARD MEMBER SHALLCROSS: When you took the Board's proposal, or the District's proposal
back to the Board, the Water Board, I understand
that the Board never actually got around to voting
on that, whether to accept it or not. Why is
that?

MR. POLHEMUS: Well, actually it would
be probably better to characterize is that on, I
believe October 31st, the Los Osos Community
Services District sent to us a proposal that was
considered.

The first step of that consideration was
review by management. And management determined
that the risks associated with accepting that
proposal were too large for the program to accept.
And I believe that was indicated in a
letter back to them shortly after that.

BOARD MEMBER SHALLCROSS: Is that the
usual way that you proceed in these cases?
Management makes that decision?

MR. POLHEMUS: Well, obviously this is
an unusual case, and it does not really have
precedent.

Typically the Board, in managing this
program, does the loan approval. And then within
that there are certain discretions that the
administrative staff do.
For instance, it's completely an administrative step to terminate the loan contract if it's violated. However, the Board has requested to, at a certain point, to intercede and provide us staff direction. So we've honored that request.

BOARD MEMBER SHALLCROSS: Did you have any indication from any of the Board Members how they felt about the proposal?

MR. POLHEMUS: Yes. Two of the Board Members, I believe, had seen the materials and had spoken with our Director as to their opinion.

BOARD MEMBER SHALLCROSS: And did they give an indication whether they liked it, didn't like it?

MR. POLHEMUS: I was not involved in that communication.

BOARD MEMBER SHALLCROSS: Okay, thank you. That's all.

CHAIRPERSON YOUNG: Mr. Seitz.

MR. SEITZ: Thank you.

CROSS-EXAMINATION

MR. SEITZ: Darrin, John Seitz.

CHAIRPERSON YOUNG: Yeah, but you don't have any time.
(Laughter.)

MR. SEITZ: Well, sorry, but again I just wanted to say something here. You're bringing on Mr. Polhemus out of order, which is -- we agreed to. I just have like about three questions to ask him. If you're saying I can't ask Mr. Polhemus questions, cross-examining the prosecution's witness, I think that's a tough call.

MS. OKUN: Well, I've been saying for two days we were going to be putting Mr. Polhemus on the phone and we kept putting it off till an appropriate place in the proceedings.

CHAIRPERSON YOUNG: Mr. Seitz, I've already given the District much more time. I mean I gave, you know, --

MR. SEITZ: Two questions.

CHAIRPERSON YOUNG: No, 30 minutes, 36 minutes. I want to give you time for closing, because you currently don't have that. And I want to make sure you get that in.

MR. SEITZ: Can I ask the Chair to ask him a question?

CHAIRPERSON YOUNG: Go ahead and ask the one question, okay.
MR. SEITZ: Thank you.

CHAIRPERSON YOUNG: Because I do want to get on to public comment, and we have a bunch of cards.

MR. SEITZ: Thank you.

CHAIRPERSON YOUNG: Okay.

MR. SEITZ: Mr. Polhemus, John Seitz. Are you currently involved in any negotiations between Mr. Blakesley's office regarding the wastewater treatment project?

MR. POLHEMUS: No, I've been specifically asked to not participate in anything.

MR. SEITZ: To your knowledge are negotiations going on?

MR. POLHEMUS: Not to my knowledge.

MR. SEITZ: Okay.

CHAIRPERSON YOUNG: That's two questions. Thank you.

(Laughter.)

CHAIRPERSON YOUNG: Okay, are we ready for public comment? Okay, Ms. Okun, and then, Mr. McClendon, we're going to move to public comment.

Oh, yeah, Darrin, thank you very much for being available.

MR. POLHEMUS: No problem.
CHAIRPERSON YOUNG: Okay. All right, folks, we've got now about 45 cards. I just want to say something to Patricia Johnson and George Little. We're not going to be donating time to anybody. Okay. That's just what I'm going to do.

I want to streamline this; it's going to be getting late by the time we get done with this. I would like to wrap it up today, that's our goal.

Everyone is going to have two minutes. And we have our colored clock up there. When it hits yellow I think you've got -- is it one minute left or 30 seconds? Thirty seconds.

Let's please try to keep to the clock so we can get everybody to say what they want to say. And two more, okay. All right, so as it stands, we've got, you know, probably about 100 minutes if we went straight through without questions, which we may have. So we're going to be here for a couple of hours just doing this.

All right. Bruce Buel. There's a card here, I don't know if you wanted to speak or not?

MR. BUEL: No, sir, that was in regard to my testimony. Thank you.

CHAIRPERSON YOUNG: Okay, all right, thank you. One down.
(Laughter.)

CHAIRPERSON YOUNG: All right. Julie Biggs. Yeah, and then, let's see, Joyce Albright; and then David Duggan; and then Eric Greening.

MS. BIGGS: There didn't seem to be a very easy way to get here.

CHAIRPERSON YOUNG: Okay.

MS. BIGGS: Thank you. I appreciate the opportunity to speak to the Board as public comment.

I'm the culprit who helped put together Measure B, and I wanted to talk to you a little bit about that. Because it's clear to me from the proceedings that everything that is going on here is because the voters enacted Measure B.

And those voters, almost half of them for reasons of fear or concern or because they're committed to the current project, did not vote for Measure B. And they will be affected by the fines that you are likely to impose regardless of that.

There's been some discussion, I think, about the difference between the Board and the District. And it's been interesting -- I'm a city attorney by nature, and we're always asked that question. Who is our client, who do we represent,
is it the Board, is it the District, is it the people. And it's all of that.

And it's all of that when it comes down to whether or not this is an avoidable issue. You have held in the past that litigation initiated by individual members of the District created unavoidable circumstances causing delay in the project.

An initiative measure is a similar action. It is the people expressing, through the ballot box, their frustration with a government that does not respond to them. That is unavoidable in terms of the CSD Board. And it is the CSD Board that you're attempting to compel to do something contrary to law.

Now, in addition to that, you have asked, and this has come up repeated, the question of why haven't they participated, spent taxpayer money to defeat the taxpayers' decision on Measure B. And the reason is because that would be illegal. It would be a breach of their duty, as elected officials, elected to represent the public, to actively oppose a measure enacted by the public legally and validly.

CHAIRPERSON YOUNG: Thank you. Joyce
Albright.

MS. ALBRIGHT: Joyce Albright, Los Osos.

I wish I could thank Madam Biggs for writing Measure B, but I'm afraid I can't.

Measure B, which they're going to pay the originators $125,000 to stop, that subject was never brought before the Los Osos community. They apparently discussed it in secret, and then came out of the discussions and said no decision had been reached.

So we heard about the cancellation of this whole thing through the media. It was never announced, unless it was announced at last night's meeting. It was never told. We didn't even know that negotiations were going on.

Los Osos has been in shock since the last election, as we've watch the current Board systematically dismantle the wastewater project and funding. It is our believe that the strategy of this fight is to enmesh our community in such delay, debt and litigation that it will be unable to resolve our water pollution issues.

A group of citizens, Taxpayers Watch, is in the process of dissolution of the Los Osos Community Services District so the County can take
over the wastewater program.

I wish we had a clean, immediate
solution to our dilemma, but want to accentuate
that the majority of the community is definitely
not behind the current Board. Nor do we support
the big-bucks lawfirms that are further bleeding
Los Osos.

Please consider that the majority of --
as the majority of you move forward -- please
consider, as you move forward with your decision,
that the majority do not support these people.
We, too, want the approved project at the approved
site.

Please accept the apology of our
citizens for the offense that has been heaped on
you and the State Water Board. This does not
reflect the feelings of the majority; this does
not reflect the feeling of the majority of Los
Osos --

CHAIRPERSON YOUNG: Okay, Ms. Albright.

MS. ALBRIGHT: Um-hum.

CHAIRPERSON YOUNG: Thank you very much.

MR. DUGGAN: Dave Duggan, water warrior,
vigilante, meaning watcher. I have watched a
considered effort by people in the community of

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
Los Osos, and authorities, specifically staff of
certain boards, to go after this Board to
basically run them out of power because they won
an election.

It's a vendetta. I think actions were
taken way beyond any action that should have been
taken. I believe staff probably stated the
process for these fines long before, even before
they were sworn in, this new Board.

Measure B. It's a fact, it's an
ordinance. As far as I'm concerned, as of March
1st, all contracts are void, including the SRF
loan, including everything involved with the
contractors.

There has been such a dogged fight to
end this CSD's reign, which has not been in here
very long. We probably will be well into what
Measure B had been required us to do. And we
probably know within a month or so whether or not
there was going to be a sewer system in or outside
of town.

Because I know there's been a no vote of
confidence. This Board would probably have to
resign if there was a no vote of confidence;
basically how Measure B would work.
I've been warning the supervisors that this whole thing is going to last a long time. It's going to be lasting about a year probably. There's going to be a lot of fortunes lost. A lot of people are going to lose homes. Homes are falling out of escrow right now I'm being told. This is affecting more than just a few people.

And that's all I have to say, thank you.

CHAIRPERSON YOUNG: Thank you, sir.

Eric Greening. Scott Kimura and then Mr. Barrow.

MR. GREENING: I'm Eric Greening from Atascadero, a member of our County's Water Resources Advisory Committee. I'm speaking as an individual, but the vantage point of being on the WRAC, as we call it, has allowed me to observe the dedication and determination with which CSD Directors and Staff have been working with the County to be sure that our integrated regional water master plan, IRWM for short, includes an accurate and timely application for a grant, not loan, for over $19 million, to help move forward with the wastewater treatment plant.

Approval and submittal of the IRWM is on our supervisors' agenda next Tuesday. If adopted, it should be part of your record, along with the
staff report, for next Tuesday, the 6th of December, item E-1, which describes its purpose.

This raises two points. One, I am witnessing the District's diligence in trying to move forward within the constraints mandated by the voters.

Two, if they should be successful with this grant the prosecution would have you try to attach more than half of it, which would clearly be an obstacle to timely project delivery. If the grant does not arrive, the consequence of the fine could be District bankruptcy, which could lead to dissolution, which could kick the wastewater treatment plant back to the County.

While I have great respect for the many dedicated County employees, they are not ready to catch this ball and run with it. More like catching an asteroid. Thanks to the Byzantine LAFCO process, it would be a slow asteroid, but oh, so heavy.

The fine is clearly counter-productive. It would slow the project.

The only other possible justification for a punitive fine would be to serve as an example to others. In this case, the question is,
example to whom. What other community is in an
even remotely comparable situation.

Please do not impose the fine, but work
constructively with the District to solve the
problem we all acknowledge. Thank you.

CHAIRPERSON YOUNG: Thank you, Mr.
Greening. Scott Kimura. Then after Al Barrow
will be Ted Peterson. Is there a letter -- please
let my letter be heard. I wonder what that means?
Is Ted Peterson here? Okay. All right, then
Linde Owen after Al Barrow. Okay, Mr. Kimura.

MR. KIMURA: Chairman Young, Board
Members, Staff, CSD Board Members, Staff and
audience, my name is Scott Kimura and I live in
Los Osos Valley.

I am part of a growing constituency on
the outskirts of Los Osos along east side of town
in what is known as County service area 9-I.

For background, we are not in the Los
Osos CSD and not part of the sewer. We became
involved because of Measure B, which was a vote by
the people in Los Osos to move their sewer out of
town.

However, we who would be affected were
excluded from voting. So its passage by a 19-vote
majority does not reflect our input. We now have over 60 signatures and phone validations from people in the CSA 9-I area who oppose the sewer moving out of town. And our list continues to grow.

I'm fully confident that if we were allowed to vote on Measure B, Measure B would have swung the other way and none of us would be here today.

I heard comments on how fines do not clean up water. Well, I have some five ideas, over-simplified, on how fines can be leveraged to clean up the water and in a timely manner.

One, perhaps the fines from the Regional Board that would bankrupt the CSD could be waived if the CSD Board is given a second chance with SRF funding to resume the Tri-W project immediately.

Another option would be to impart the fines. The CSD may, indeed, go bankrupt, in which case another agency could take over the Tri-W project because it is ready to go.

Thirdly, waive the fines on the condition that the CSD Board relieves its duty to build a sewer and another agency could take over the Tri-W project.
Fourth option, forget the fines, but require the Los Osos CSD to pay to pump all septic tanks once a month forever. This would take all the leach lines offline.

Number five, waive the fines but make the CSD pay for a doubling in cost of water. The money would go towards building the Tri-W sewer, since it's ready to go.

So, in closing, regardless of what enforcement action is taken, we ask that your enforcement action be thought through thoroughly so that it does not inadvertently start the project and timeclock all over again with an out-of-town possibility.

We favor the Tri-W project because it appears to still be the most feasible means to get a sewer online in the timeliest manner fashionable.

CHAIRPERSON YOUNG: Thank you, Mr. Kimura.

MR. KIMURA: Thank you.

CHAIRPERSON YOUNG: Okay. I'd like to give people me time, but it's just not going to be possible with this matter.

Okay, Al Barrow.
MR. BARROW: I've been donated time --

CHAIRPERSON YOUNG: But I am not allowing anybody to donate time.

MR. BARROW: This is very difficult.

First of all, I'd like to enter into the record some documents that your -- Todd placed on the laptop computer. I have two CDs --

CHAIRPERSON YOUNG: You're not -- you were not designated as an interested party.

MR. BARROW: I am an interested party.

I live in Los Osos at --

CHAIRPERSON YOUNG: Well, but --

MR. BARROW: -- 700 El Moro Avenue.

CHAIRPERSON YOUNG: But there is a legal definition for interested party and you're not one of them. You are an interested party in terms of being interested, --

MR. BARROW: Um-hum.

CHAIRPERSON YOUNG: -- like we all are, even us up here, in this matter. Mr. Barrow, you have two minutes. I'm going to start the clock.

MR. BARROW: Did you say two?

CHAIRPERSON YOUNG: Two.

MR. BARROW: Oh.

CHAIRPERSON YOUNG: Right now.
MR. BARROW: Number one, I want to address the issue of the history of Los Osos and how, since before 1985 there has been $31 million spent on design efforts. The County spent money. We have spent money at the District. We have the Brown & Caldwell plan at (inaudible) Road; we have the Metcalf and Eddy plan near the Los Osos Middle School. And we have the present projects. Somebody has been working on this problem continuously since before the prohibition was put in place. So you're in error if you think that nobody's been trying to solve this problem. We've been working on it and it's cost us a lot of taxpayers' dollars, first of all.

Number two, I have to tell you that it would be illegal for you, in my opinion, to impose ACL fines on the community through no fault of their own the project was delayed by the pulling of the funding, by Measure B, by lawsuits. All of these things are outside the control of the District.

And one of the rules of fining is it must be in the control of the District in order for you to place those fines.

So I would like to say thank you very
much. I wish you all a very happy holiday.

CHAIRPERSON YOUNG: Thank you, Mr. Barrow.

MR. BARROW: You're welcome.

CHAIRPERSON YOUNG: Okay. Go ahead, Ms. Owen.

MS. OWEN: Good afternoon. Linde Owen, Los Osos interested party because I am a resident and homeowner; have been there 17 years.

Please, first please acknowledge that our newly elected CSD inherited an entirely flawed and exorbitantly priced project that meets none of the original goals or criteria for sustainable design and affordability.

Through a legal action process we did what you told us to do if we were unhappy with the project. We changed the CSD.

At the July 9, 2004 meeting in Watsonville your staff admitted that to fine Los Osos would result in bankrupting our CSD, sending the project back to the County and causing much longer delays.

I believe that we need the opportunity to let our new Board -- I would ask for six months to actually put all of this mess into a
perspective that could be evaluated.

In the original EIR the location outside
of town was cheaper, and you've heard this over
and over again, the plant outside of town is
cheaper. You'll hear that over. That is true
because there's no wave wall, there's no major
odor control, there's no parks, there's no tot-
lot.

We need a chance to build a sewer, not a
park, and that's what we are asking of you.
Fining us will do absolutely no good.

When you did 8313 the same day 8312 was
signed. And that requested that this Regional
Board, your Regional Board, put in septic
maintenance programs; and if necessary, pump down
the upper aquifer.

Since 1988 I would say that you have
also been part of the problem in Los Osos by not
mandating that very action which would make a huge
difference today.

And in light of the shellfish study that
Mr. Kidds did, which showed that one-tenth of 1
percent of the E.coli that came from his study,
and showing the septic tank addition to Morro Bay,
it shows that we are not polluting Morro Bay.
And in light of the nitrate studies I ask that you give us the time to do this right.

Thank you.

CHAIRPERSON YOUNG: Thank you. Let's see, I don't want to butcher this name. Looks like Daniela Anon or Awar?

MS. ANON: Perfect.

CHAIRPERSON YOUNG: Okay. I'll stop there. And then Elaine Wampsun, Dan Berman, then Alon Perlman.

MS. ANON: I'm Daniela Anon of Los Osos. Would I be considered an interested party since I'm a resident of Los Osos?

CHAIRPERSON YOUNG: No -- Mr. Barrow was trying to get documents put into the record. And we had a little discussion about him not being an interested party in the legal sense where he would have status like the District and the prosecution team. So, you're an interested party. Do you live in Los Osos?

MS. ANON: I do.

CHAIRPERSON YOUNG: Okay, so you're interested.

MS. ANON: Okay, yes, I am.

CHAIRPERSON YOUNG: Go ahead. And you
have two minutes.

MS. ANON: Thank you. Daniela Anon, Los Osos. I have to say that I believe it was very unethical for the project at the Tri-W site to be started less than a month before a recall election and a move-the-sewer ballot initiative. And I think that was a very bad thing.

And some people voted differently because they were like, oh, well, it's too late, they already started. And it is a miserable project, and we should all be thankful that it's almost gone.

There seems to be a lot of misunderstanding; The Tribune didn't help; and there was a lot of propaganda and spin during the election, in my view. So hopefully we set the record straight yesterday and today.

And unfortunately, neither the County nor the former LOCSD did anything to take care of our watershed. For example, water conservation, ag exchange, low-flow toilet installation. These things should have been put in place a long time ago and it would have helped our pristine water in our lower aquifer to being overdrawn to some degree, and would have potentially -- would have
prevented at least some of the salt water
intrusion that's occurring now. And helped draw
down the over-filled upper aquifer.

The former project at the Tri-W site was
the most expensive sewer per capita ever in the
history of the United States, about $150 million
for 15,000 people. That sounds outrageous to me.
And not only that, it's a very poorly designed
project, an energy-guzzling, toxic-waste producing
dinosaur technology, disastrous to the
environment, including the Bay, the people, the
economy and the future of Los Osos' watershed
project.

We need to look at the whole watershed.
We want a Toyota model, not a Hummer.

CHAIRPERSON YOUNG: Thank you.
MS. ANON: Okay.
CHAIRPERSON YOUNG: Elaine Watson.
MS. ANON: Thank you.
MS. MILLER: She couldn't be here. Can
I read it for her?
CHAIRPERSON YOUNG: Yes, you can do
that. As long as it takes two minutes. And your
name, please.

MS. MILLER: My name is Vita Miller. I
also have a statement to read when my turn comes.

CHAIRPERSON YOUNG: Yeah, you know what, we're just going to have to skip the statement.

MS. MILLER: You don't want it in writing?

CHAIRPERSON YOUNG: I'm sorry. It's too late. You know, either you're here to speak or you're not. And I don't want to get into start splitting everything up, and having time shared between people.

MS. MILLER: She did put her card in yesterday. She just couldn't be here today.

CHAIRPERSON YOUNG: Yeah, and it's too late for letters, also. I'm sorry.

Dan Beerman. Pardon me, Dan Beerman.

Dan Beerman from -- is he here? Berman.

(Audience participation.)

CHAIRPERSON YOUNG: He was here yesterday. He's not here, okay.

You know what, I was mis-using a term. It's not interested party, it's designated party. That's what I was thinking about. So designated parties have not been designated. Everyone else is interested. God, better take my foot out of it.
Okay, Alon Perlman, Alon Perlman. Peter Brewer? Pete Brewer. And then Julie Tacker.

MR. PERLMAN: Hi. My name is Alon Perlman and thank you for hearing my testimony. I'm surprised that I got to the top of the pile that quickly, because I only just showed up.

This is California and the World Ocean '97. It is the same publication that published the Dr. Kidd study. Has some very interesting elements with it, and I would like to be able to turn the chapter -- a chapter in it for inclusion in the record. That chapter is "When the Turn Meets the Tide: Public Participation in Bay Water Quality Issues for Morro Bay."

And this entire volume talks about the levels of participation between government and local government. I think it's a very good model. Unfortunately, I don't know to what extent it has been used; maybe the lessons are forgotten.

One thing I will pull out of here is that it does state that the Morro Bay Estuary is the cleanest estuary on the west coast.

And the oysters are the accepted indicator organism for the health of that estuary, and also record, as was mentioned earlier, the Dr.
Kidd specifically identified that had the Tri-W site, this was in a CSD meeting I believe sometime this year, Stan Gustafson presiding. And he did state that had the Tri-W site sewer been built two years prior to his study he would have expected the maximum improvement in reduction in coliform bacteria to have been 0.1 percent.

And I bring that up because there are many statements about polluting the Bay. I believe these are political statements that are intended to turn, since it is a national estuary, I believe these are political statements.

How much time do I have?

CHAIRPERSON YOUNG: You have none. But you made a statement and I just want to ask you a question.

In terms of shellfish harvesting, do you know about the rainfall closure that affects the grower in Morro Bay?

MR. PERLMAN: Yes.

CHAIRPERSON YOUNG: Okay. Do you know that that is the most stringent rainfall closure in the State of California?

MR. PERLMAN: Well, I don't know --

shellfish grow in --
CHAIRPERSON YOUNG: Okay, I was the lawyer that represented that shellfish grower, and I used to be involved in that industry. I mean you mentioned shellfish and I just want you to know that just because the shellfish are there and living, and they may be harvested at times, does not mean that they're always safe to eat.

MR. PERLMAN: Well, shellfish --

CHAIRPERSON YOUNG: In terms of spreading myths and things of this nature, please check facts carefully. And that's for everybody.

MR. PERLMAN: Number one, I did not state that the --

CHAIRPERSON YOUNG: The impression was because there are shellfish in there and they are like the canaries in the coal mine, so to speak.

MR. PERLMAN: Yes, that is correct, thank you.

CHAIRPERSON YOUNG: And it's the cleanest estuary around.

MR. PERLMAN: Um-hum.

CHAIRPERSON YOUNG: That everything must be very good. And I'm just telling you that there's other facts --

MR. PERLMAN: Well, I have to have the
full three minutes, I would note to you that his
four to five people are the only people who can,
within the next five years, put a sewer system
that will work into this town.

CHAIRPERSON YOUNG: Okay.

MR. PERLMAN: So I would like you to
consider that when you go back to Sacramento.

CHAIRPERSON YOUNG: Okay.

MR. PERLMAN: Or, I know you're local, I
know, --

CHAIRPERSON YOUNG: Yeah, that's --

MR. PERLMAN: When you take the
information --

CHAIRPERSON YOUNG: -- that's another
Board. But thank you very much for you comments.

MR. PERLMAN: Yes. Where do I turn my
information in?

CHAIRPERSON YOUNG: Pardon me?

MR. PERLMAN: For the record.

CHAIRPERSON YOUNG: No. No, we're not
taking -- folks, we can't take any more letters,
any documents, exhibits. It's too late. And we
want to be --

MR. BARROW: Mr. Chair, with my hearing
loss I didn't hear you say that (inaudible) --
CHAIRPERSON YOUNG: Okay, I apologize,
but I would not want to shout in anybody's ear.
But there are no more letters, exhibits, documents
being put into the record. It's just too late.
We want to focus on what people are going to tell
us as they stand up here.

MR. PERLMAN: That's fair.

CHAIRPERSON YOUNG: If people missed it,
if people --

MR. PERLMAN: After reading this --

CHAIRPERSON YOUNG: Excuse me.

MR. PERLMAN: -- this is in the Water
Board library.

CHAIRPERSON YOUNG: Okay, if people --

MR. PERLMAN: Thank you very much.

CHAIRPERSON YOUNG: If people had wanted
to submit letters they will just have to tell us
orally and come to the podium and tell us what
would be in that letter. That's how you'll get
that information in.

BOARD MEMBER SHALLCROSS: And what was
the date that written documents were due in this
case?

MS. SCHAFFNER: November 17th.

CHAIRPERSON YOUNG: November 17th.
BOARD MEMBER SHALLCROSS: Thank you, November 17th.

CHAIRPERSON YOUNG: Okay. All right, Peter, is it Brewer, I'm not sure what this is. 1801 Ferrel Avenue. Is that gentleman here? That was yesterday? Okay.

All right, Julie Tacker.

MS. TACKER: Forgive me, Chairman Young. Before you start my time, if you don't mind, on the matter of documents yesterday we went over what the District submitted and then your notations and rejections, et cetera.

And I wanted to refer in my public comment to some documents that you have appeared to reject. And so what I did this morning was bring them so that you know that the District's intention was that they be in the record.

MS. OKUN: Mr. Chair, I object to the District appearing in public comment to try to extend their time, which has already run out. Ms. Tacker is clearly testifying on behalf of the District. We can resolve the document issues later.

CHAIRPERSON YOUNG: I think that's a very good point. I mean, Mr. Seitz, you know we
have plenty of time for us to, you know, get into
documents and that, because I did continue that
part of the hearing to get that resolved.

But, what's this about?

MR. SEITZ: What I understand -- first
of all, I'm as interested in finding out what this
is about as you are, so --

CHAIRPERSON YOUNG: Oh, okay.

MR. SEITZ: So, number two, if it was
the intent of the Chair that we're going to discus
those documents are part of this hearing process,
as you had previously indicated, Julie, I would
suggest that you just go on to your public comment
and not to the documents.

MS. TACKER: Well, I wanted to make sure
that they were, indeed, included when we did refer
to them in our -- the District referred to them in
their submission of the --

CHAIRPERSON YOUNG: But I have not ruled
on those documents.

MS. TACKER: Right.

CHAIRPERSON YOUNG: That is not in front
of us right now.

MS. TACKER: Right.

CHAIRPERSON YOUNG: So, you know, you've
got a minute and 54 seconds. If you want to --
tell us whatever you'd like to tell us. If it
refers to some of the documents on this list, go
ahead.

MS. TACKER: Okay.

CHAIRPERSON YOUNG: You can talk about
the documents if you want.

MS. SCHAFFNER: Mr. Chairman, before you
start the clock I would also note just for the
record that the public comment are really, as was
noticed, in a formal proceeding like this, the
public comments are simply comments. They're not
evidence.

So, while the commenters' opinions,
observations may be, by reference to some document
that she has read or believes should be in the
record, that does not put them in the record. And
they don't have to be in the record for her to
offer an opinion on them.

CHAIRPERSON YOUNG: Okay. Fine. Go
ahead.

MS. TACKER: Okay, well, I've brought
them in. I'll leave them for your staff to deal
with, but now you do have them.

CHAIRPERSON YOUNG: Well, leave them

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
with Mr. Seitz.

MS. TACKER: Okay.

CHAIRPERSON YOUNG: And Mr. Seitz and Ms. Okun --

MS. TACKER: You'll iron that out.

CHAIRPERSON YOUNG: -- and myself are going to deal with the documents.

MS. TACKER: Okay.

CHAIRPERSON YOUNG: You don't have to leave them with us.

MS. TACKER: Okay.

CHAIRPERSON YOUNG: Go ahead.

MS. TACKER: What I wanted to point to, and when you do look at documents, they would be under items 117 and 119 from the District. And they refer to a public records request that I made, as a public citizen, on October 2nd. It happened to be at 7:30 in the morning.

Asking the Regional Water Quality Control Board Staff for all email from and to citizens and District Staff and former Board Members, et al. Everybody in Los Osos. From March 1 through that date.

I've been in a bit of a back-and-forth with the staff with regard to email. And getting
our hands on it because some of it is on a backup
tape. And Mr. -- Harvey -- I forgot your last
name -- Harvey Packard, was going to try to get
that to me.

One email in particular that was
disturbing to me, and this is my public comment.
It was sent by Roger Briggs to Pandora Nash Carner
on Wednesday, September 28th, at 5:44 p.m.
Pandora, we are just wrapping up the October
agenda right now and legally required to leave
times for a hearing may not be reasonably -- may
not reasonably allow it. But I've already
received and reviewed a draft ACL complaint, so
we're rolling. I'm shooting for getting an ACL to
the District next week even before the new Board
can meet. I want them to understand what they
will be stepping into before they vote on any
motion to delay.

And I just wanted to point that out that
it was less than 24 hours after the election. The
election had not been certified. Our Board had
made no -- we didn't even have an agenda to make
any kind of movement on delaying or -- what we did
do is suspend our project.

CHAIRPERSON YOUNG: Okay, but that email
did take place after the election? And the
election was certified?

MS. TACKER: No, it had not been
certified.

CHAIRPERSON YOUNG: No, I said the
election had taken place?

MS. TACKER: The election had taken
place, but the --

CHAIRPERSON YOUNG: Right, okay. Thank
you very much.

MS. TACKER: Thank you.

CHAIRPERSON YOUNG: And if there was
a --

MS. OKUN: Mr. Chair, --

CHAIRPERSON YOUNG: If there was an
issue about documents not being produced or
something like that, you know, Mr. Seitz and Mr.
McClendon would have taken care of that if they
felt that something was, you know, kept from them.

I don't know if this was like -- what
kind of an issue this is.

MS. OKUN: It's not an issue.

MS. TACKER: It's not an issue.

CHAIRPERSON YOUNG: Okay.

MS. TACKER: It's in your record.
CHAIRPERSON YOUNG: I mean was it a public records request of you, as an individual?

MS. TACKER: Um-hum.

CHAIRPERSON YOUNG: Okay.

MR. SEITZ: Mr. Chair, I think the issue here is to the hurried events that brought us here on such short notice and such short timeframes. I think the statute says you have up to 90 days to set the hearing on an ACL complaint, and this one was really beyond that, --

CHAIRPERSON YOUNG: Okay.

MR. SEITZ: -- much shorter than that.

CHAIRPERSON YOUNG: Great, thank you very much.

MS. TACKER: You're welcome.

MS. OKUN: Mr Chair, --

CHAIRPERSON YOUNG: Yes.

MS. OKUN: The District did cite that email in one of its written submissions. But I think that Ms. Tacker reading it in the public forum out of context is pretty inflammatory. And I would ask that Mr. Briggs be able to respond to that now rather than waiting till later. And we'd be happy to use up our time for him to do that.

CHAIRPERSON YOUNG: Yeah, go ahead.
Let's set the clock for that.

MR. BRIGGS: Yeah, I just wanted to point out that I was receiving a lot of email, a lot of phone calls, inquiries from people about the Regional Board following through with what we said we would do in terms of enforcement action if the District chose to delay the project.

And I was saying essentially the same thing that you heard from that email to everybody who asked me, including reporters. So it was certainly public information that we were following through with what we said we would do. Told the District we were going to be pursuing enforcement action if they chose to delay.

We did not start drafting the administrative civil liability before the election.

CHAIRPERSON YOUNG: Okay.

MR. BRIGGS: Oh, thank you. And we issued the administrative civil liability on October 6th. And the District had stopped work on the project on October 3rd.

CHAIRPERSON YOUNG: Okay. All right, next speaker, Betty Winholtz. Then Chris Allebe and Frank Galicia and Alan Martyn.
Is Ms. Winholtz here?

AUDIENCE SPEAKER: She's not here today.

CHAIRPERSON YOUNG: Okay. All right.

Mr. Allebe.

MR. ALLEBE: Close enough, sir.

CHAIRPERSON YOUNG: Okay, you can go ahead and correct me, I apologize.

MR. ALLEBE: Okay, Chris Allebe, interested party, live in Los Osos. Now I have to go fast here.

We fast forward to the present. We've been talking a lot about the past here the last two days.

Our former CSD Board accepted a 46 percent over-bid on the project against all staff advice. They condoned three CSD employees physically barred two Board Members from attending contractors meetings at a local hotel. And started work on our collection system a month before the Board election, which would have stopped construction if a new Board was elected.

We've been told repeatedly to elect a new Board, they didn't like the old one. And we did so.

The contractors took their chances and
lost. We owe them nothing.

Then the Montgomery Watson Harza
business office at Sunnyside School was recently
and conveniently burglarized of all computer and
office files just before an audit was scheduled.
And many other key files were found missing from
CSD records.

Our new CSD needs time to hash this mess
out, and the community certainly should not be
fined for the sins of the previous administration.
It is not merely a matter of not wanting to pay
for a sewer. It is about losing our quality of
life and loss of our homes for a wastewater system
that at least provides a terrible cost/benefit
ratio and threatens the well being of Los Osos.

The Los Osos wastewater project has
always been about cost affordability in relation
to the system benefit to the community. The
former CSD Board was created and voted into office
on the promise of much more affordable and cleaner
ponding system.

When they learned that funding was not
forthcoming for such a system at the Tri-W site,
they panicked and adopted the same over-priced,
sludge-producing system they had previously
condemned as a bad choice for our community.

CHAIRPERSON YOUNG: Thank you, sir.

MR. ALLEBE: My time's up.

CHAIRPERSON YOUNG: Yes.

MR. ALLEBE: Can I --

CHAIRPERSON YOUNG: I think you said that against staff's recommendation?

MR. ALLEBE: Yes.

CHAIRPERSON YOUNG: And I thought I heard Mr. Buel say he still recommended approval of the contract.

MR. ALLEBE: Oh, I was referring to our legal person, yeah, counsel, our engineer --

CHAIRPERSON YOUNG: Okay, but you are aware that Mr. Buel testified that he went ahead and said he still agreed to the increase, to accept those bids?

MR. ALLEBE: Oh, well, I guess what I -- as I say, I was reading this very fast --

CHAIRPERSON YOUNG: I know, well, but those are your --

MR. ALLEBE: -- and I --

CHAIRPERSON YOUNG: -- words.

MR. ALLEBE: No, Mr. Buel is all for the increase in construction estimates.
MR. SEITZ: Mr. Chairman, I'd like to, since my name's being brought up, I'd like to clarify if I might, because I was at that --

CHAIRPERSON YOUNG: I didn't hear your name.

MR. SEITZ: John Seitz.

CHAIRPERSON YOUNG: No, I didn't hear him mention your name.

(Laughter.)

MR. SEITZ: He mentioned legal counsel.

CHAIRPERSON YOUNG: Yeah, but I don't know who he's talking about.

MR. SEITZ: Okay.

CHAIRPERSON YOUNG: Don't worry, I'm not looking at you or anyone else. Okay. When he said staff I thought he was referring to the manager. Okay, thank you very much.

MR. ALLEBE: Okay. I'm sorry for the misunderstanding.

CHAIRPERSON YOUNG: Okay.

MR. ALLEBE: Can we turn in letters?

CHAIRPERSON YOUNG: No. No letters.

MR. ALLEBE: Okay, thank you.

CHAIRPERSON YOUNG: No letters. Okay, Frank Galicia, Alan Martyn, Marlis --
MR. THOMPSON: Excuse me, Chair. Frank Galicia told me yesterday he's a middle school principal and he's going to do his best to be here, so you might want to reserve his testimony card till later.

CHAIRPERSON YOUNG: Okay.

MR. THOMPSON: He's not here now but --

CHAIRPERSON YOUNG: We'll put it to the bottom of the stack, but when I get to it, kaput. Okay. And then Marlis and I can't pronounce this last name. Looks like D-a-e-r-r? And then Bruce Payne. He must be a real Payne.

Okay, I say that because I know that other people have affectionately said that to him. And I mean no disrespect to Mr. Payne.

AUDIENCE SPEAKER: (inaudible).

CHAIRPERSON YOUNG: What was that?

AUDIENCE SPEAKER: (inaudible).

CHAIRPERSON YOUNG: I haven't heard him ask for any time, so don't -- okay. All right,

Mr. Martyn.

MR. MARTYN: Mr. Chairman, fellow Members of the Board. I have been a resident of Los Osos for close to 40 years. I have been a proponent on two occasions for putting in a sewer
in Los Osos. And I preface that because of the fact that what I see happening to our community, I have been an interested party. I've raised my family there; put my children through college. And as an individual that has been precluded from building our retirement home there for over 14 years.

Myself and my family have been harmed financially and emotionally to the tune of over 400,000; we extrapolated the cost of, you know, what we could have done with our property.

The evidence provided here that has been brought to you, as Members of this Board, I believe is faulty and I believe is wrong, in that a lot of the conclusions that have been placed before you.

I'd like to start off by stipulating that Mr. Briggs wrote in January 29th of the year 2001 in a letter to Mr. Buel, the Manager of the Los Osos Community Services District, a response to correspondence. He goes on to say, suggest that decay of natural vegetation rather than septic systems is the source of nitrate contamination of groundwater. This is from Mr. Briggs.
The statement should be deleted, he goes on to say, these statements lead a reader to question the need for a project, in parentheses, sewer, and intentionally reduce public confidence and support.

Now, further augmenting that is the fact that the source of the alleged nitrate contamination at Los Osos has been a question for more than 30 years.

CHAIRPERSON YOUNG: Okay, thank you very much for your comments.

MR. MARTYN: Thank you.

CHAIRPERSON YOUNG: Okay, what about the lady with the first name of Marlis or man, for that matter. Is that individual here? Yesterday? Okay. Coming back today? Okay. All right.

Mr. Payne. Then James Tkach, with a T before the k, and then Fred Dellagatta.

MR. PAYNE: Thank you, sir. Did you read the note on the back of my card there? A question.

CHAIRPERSON YOUNG: I don't see it.

MR. PAYNE: It says over on the -- you may have a different card for later public comment. There was one for comment on --
CHAIRPERSON YOUNG: Oh.

MR. PAYNE: -- this number.

CHAIRPERSON YOUNG: Okay, hold on one second.

MR. PAYNE: Thank you.

CHAIRPERSON YOUNG: Was this is?

MR. PAYNE: Does it say something about a meeting that was held here on February the 11th, 2005?

CHAIRPERSON YOUNG: No, it doesn't.

MR. PAYNE: Well, basically I just want to know why and how inappropriate it could be to keep two of our elected Board Members out of a meeting held in this very building on February the 11th of this year with the contractors. It's called a precontract meeting with contractors.

Anyway, forget that. We can go over that some other time.

Basically there's two things that the public cannot tolerate, and these happen to be unacceptable problems with the design, the location and the technology MBR. It's too expensive, and, of course, the location is dangerous to the environment.

I have odor problems; were addressed by
Mr. Briggs before the plant was totally designed. Actually we have now gotten unclassified sludge which requires the same handling as hazardous waste.

And a permit to take this 80 percent moisture human waste and contaminate a 40-acre field owned by the City of Santa Maria and leased to Engle and Grey. I don't know if they know their lessee is planning to contaminate their 40-acre field with hazardous waste or not.

I've been told that this is not hazardous waste, and the simplest description I can say to that is if it quacks like a duck and walks like a duck, it's probably a duck. If it smells like human waste, it probably is. Eighty percent moisture is partially processed human waste.

I'm out of time. I could spend 20 minutes telling you the number of things that are wrong with that design. It's an experiment.

CHAIRPERSON YOUNG: Thank you very much for your comments.

MR. PAYNE: The lawsuits were last-ditch efforts to try to stop it, but anyway.

CHAIRPERSON YOUNG: Okay, Mr. Tkach.
MR. TKACH: Close, Tkach.

CHAIRPERSON YOUNG: Tkach, okay.

MR. TKACH: Thank you. I come before your Board today to ask you not to impose fines against the community of Los Osos. Imposing fines against the community or the CSD will do nothing to solve the water quality problems or water quality supply issues in Los Osos.

In fact, it will only serve to further impede progress towards reaching solutions to those issues, something everyone here wants. Los Osos does not deserve to be fined, as the community has done everything this Board has asked it to do. And in the sake of time I'll skip a lot of that.

I know and work with many of the new Members of the CSD Board, and I can assure you and the community they're very dedicated in getting a project for Los Osos. This isn't about delaying or stalling a project, as I've heard. I take offense at that.

One of the things that this Board is interested in is sustainability and that's one of the things this project doesn't address, is that very little of the water that's discharged, when
there really should be a recharge project, is not
recharging. Much of the water will be lost to the
Bay or end up in the dumping pumps cycle of the
harvest wells back through the plant, up to
Broderson and back down the hill.

CHAIRPERSON YOUNG: That's not
recycling?

MR. TKACH: Well, it's cycling, but I
don't know if it's recycling. Recycling is for
reuse.

CHAIRPERSON YOUNG: But isn't that going
back into groundwater?

MR. TKACH: No, most of it will be lost
to the Bay. Only about 10 percent of the water
that's dumped at Broderson will end up in the
upper aquifer. And very little will end up in the
lower aquifer.

CHAIRPERSON YOUNG: Okay, keep going.

MR. TKACH: And that's the purpose of
the harvest wells, is day -- keep it from
daylighting in the backyards.

Just about a minute here to wrap up.

I'll just read my last paragraph here. Today your
Board has the opportunity to take the lead in
shaping the future of the sewer project in Los
Osos.

You can proceed with implementing the fines, which your own July 2004 staff report said will most likely ultimately delay getting a project for Los Osos. Or you can do something different.

You can move to take the posturing and the politics out of the situation and do what's right to meet your Board's and the community's goals for a sustainable water supply, and to meet water quality objectives.

I ask today that your Board pass a resolution asking that your staff, the State Water Resources Control Board Staff and the Los Osos CSD continue negotiating until a negotiated solution is reached that all parties can support. A resolution from your Board would carry a lot of weight with the State Board.

The contractors are here ready to work. Much of the piping for the collection system is here; the equipment is here. The CSD has already agreed by resolution to continue working on the collection and disposal system.

We are closer than we have ever been to having a project for Los Osos. Do not let this
opportunity pass by. Do what you can to help save
as much of this project as possible. Thank you.

CHAIRPERSON YOUNG: Thank you for your
comments.

Fred Dellagatta, John Fergus, Cynthia
Hawley.

MR. DELLAGATTA: Fred Dellagatta, 671
Woodland Drive, Los Osos. While you were
organizing the public comment earlier, do you
remember you were asking about a letter from Ted
Peterson?

CHAIRPERSON YOUNG: Yes.

MR. DELLAGATTA: I have it right here.
Use my minutes to read it, is that okay?

CHAIRPERSON YOUNG: If you want to use
your time to read his letter --

MR. DELLAGATTA: That's fine, he's a
very --

CHAIRPERSON YOUNG: -- that's okay --

MR. DELLAGATTA: -- important member of
our community.

CHAIRPERSON YOUNG: It's your time.

MR. DELLAGATTA: Okay. This is a letter
from Ted Peterson of 535 Rosina Drive.

Honorable Board Members. My name is Ted
Peterson; I've been a resident of Los Osos since 1993. Upon locating here from Los Angeles I immediately got involved in local politics partly to insure that my new hometown would not turn into another L.A. suburb.

I urge the Regional Board to partner with the State Board in funding a demonstration project that will use STEP collection to gather effluent in Los Osos in general; to locate a pond-based treatment plant on the outskirts of town; and to help with a freshwater dam project to help protect Los Osos drinking water from salt water intrusion.

I realize that an MBR-based treatment system and gravity collection system has been approved for Los Osos. I believe this combination is not correct for this community because:

One, the plant is not environmentally sound. It is designed to be built in an area that will sustain maximum destruction in case of a spill or malfunction.

Two, it is the least sustainable technology. MBR is a high-energy user and high-maintenance system. The number of operators required is greater than the number for activated
sludge treatment and pond treatment.

Three, the increased traffic required to move the supernet out to Santa Maria in another county could be impacted by proposed regulations covering how sewage is moved on highways in California.

Four, the proposed collection system and treatment plant would be a financial hardship on everyone in this community. Any system that will have rates that will impact a few, but the system at this cost along with the long-term expenses will have a dramatic impact on every existing household in Los Osos.

I urge you to start working with the Los Osos Community Services District to implement and build a system that will be the least environmentally damaged and the most sustainable over a long period of time.

I think that the STEPs collection and pond treatment to be the most economically and environmentally sound system. There are arguments that STEP -- thank you very much.

CHAIRPERSON YOUNG: Thank you. Okay, Mr. Fergus. John Fergus, is he here?

AUDIENCE SPEAKER: (inaudible).
CHAIRPERSON YOUNG: Right, and I see your card further down in here, but this is a John Fergus --

AUDIENCE SPEAKER: John Fergus is not here.

CHAIRPERSON YOUNG: Okay, that's 1456 - 14th Street?

AUDIENCE SPEAKER: Yes.

CHAIRPERSON YOUNG: Okay. He's not here. Cynthia Hawley. And then Steve Senet and then -- wait, Scott Kimura. Didn't we already hear from Scott Kimura?

MR. KIMURA: Yeah, you did.

CHAIRPERSON YOUNG: Okay.

MR. KIMURA: I signed one yesterday, a card yesterday, but --

CHAIRPERSON YOUNG: Okay. All right. You were just testing me, right?

(Laughter.)

(End Tape 5B.)

CHAIRPERSON YOUNG: Okay. All right, I've got the clock. Thank you.

MS. HAWLEY: Good afternoon. I'm Cynthia Hawley with the lawfirm of Parker and Hawley. And our firm represents the Los Osos
Taxpayers association in a current lawsuit which, in part, is against the State Water Resources Control Board for violating the federal Clean Water Act and the State Water Code when it illegally loaned federal and state SRF loan funds to the District.

The prosecution is alleging that the District's delay of the project is willful. We disagree. In fact, we contend that the State Water Board and the Regional Board have been instrumental in forcing the District to delay the project.

In order to proceed the District must first extract itself from the illegalities created by the former District Board, State Water Resources Control Board and this Board. The reason the District cannot move forward on the project at this time is because the State Water Resources Control Board issued the SRF loan in violation of the federal Clean Water Act, and the state water code, both of which, unambiguously authorize the State Water Board to loan SRF funds only when the borrower has a dedicated source of revenue to repay the loan; when the borrower has security.
Here the State Water Board loaned $134 million of federal funds to the former District Board, knowing that the District had no legal source of money to repay the loan, knowing that the District did not have the required security, and knowing that the citizens of Los Osos had been deprived of their constitutional proposition 218 right to consent or reject being taxed to repay the loan.

And the Regional Board has played a critical role here. It was the Regional Board's threats of fines and cease and desist orders against the property owners that made it possible for the District to evade proposition 218 requirements and rely on mandatory charges --

CHAIRPERSON YOUNG: Finish the sentence, go ahead.

MS. HAWLEY: -- mandatory charges to repay the loan after the forced sewer hookups leveraged at the Regional Board.

CHAIRPERSON YOUNG: Thank you very much.

Okay, Mr. Senet, you're a Director, aren't you?

MR. SENET: Yes, I am. Is there a problem with that? I'd like to address the Board.
If it is, it --

CHAIRPERSON YOUNG: Go ahead, it'll take
two minutes to figure this out. Go ahead, you got
two minutes. Go ahead.

MR. SENET: Okay. Thank you for letting
me speak, Chairman and Board. There's widespread
anticipation and fear that the State Water Board's
recent decisions refusing continuance of the loan
agreement and your Board's consideration of
record-breaking fines served on the Los Osos
Community Services District would have severe
impacts on the community.

It would stymie growth, economic health,
threaten delivery of public services and delay
solving the contamination problem of Los Osos for
years to come.

If the Regional Board is the state's
hammer, then the State Board is the anvil upon
which this project would be smashed. Instead I
urge you to use all of your power, influence and
creativity to forge a new understanding between
the community, the CSD and the state to develop a
workable plan and minimize delays rather than to
extend this impasse.

I urge you to amend the time schedule
order or defeat it, to accommodate the latest
demand handed to the CSD by the State Board, to
negotiate a deal, those provisions which we can
deal with, or work out.

In doing so you would keep the doors
open to resolving the issues. By instituting
fines alone you'll be acting to wield the hammer
for demolition rather than as a tool to strike at
the problem we want to fix.

Thank you.

CHAIRPERSON YOUNG: Thank you. Okay,
Mr. Perkins, your card came up. John Perkins.
Then John Fouche; I take it this is the other
Director. And then Steve Paige.

MR. PERKINS: Mr. Chairman, Board
Members, John Perkins, Los Osos. I have been
identified as a member of a pro-sewer group called
Save the Dream; commonly called by the opposition
Dreamers. However, I would rather be identified
as a person that wants to clean up the groundwater
in Morro Bay.

I understand the dilemma that you face
today. I was going to say until this afternoon
I'm not in favor of fines because I, eventually,
as a taxpayer, would have to pay my share.
After what I heard this afternoon concerning this lawsuit settlement, I'm going to urge you to take whatever action you deem necessary because my share will then go to help clean up the environment in an unrelated means, not going to some -- I won't say anything.

CHAIRPERSON YOUNG: Lawyer?

MR. PERKINS: I urge you to -- yeah, something like that.

(Laughter.)

MR. PERKINS: You said it. Having said that, I urge you to take any action you deem necessary to insure that the pollution of our groundwater and Morro Bay, that we, the citizens of Los Osos, are causing is stopped as soon as possible.

Thank you very much.

CHAIRPERSON YOUNG: Was it Shakespeare that said, "let's kill all the lawyers or something like that?" I am a lawyer, myself, so I'm part of that group.

Okay, thank you, Mr. Perkins. Mr.

FOUCHE.

MR. FOUCHE: Mr. Young, Board --

CHAIRPERSON YOUNG: And after Mr.
MR. FOUCHE: -- thank you for letting me speak --

CHAIRPERSON YOUNG: -- Mr. Paige, and then it looks Tim Nichols. Go ahead.

MR. FOUCHE: I just wanted to come up here as a citizen of Los Osos, and also as a Director. I would ask that we go back to the negotiated deal that we had with the state.

When we went in and negotiated with Darrin and he came down, he prefaced and stated that he was the principal negotiator and he could take back a deal to the Board.

We negotiated in good faith for two days, Monday and Tuesday, and came up with a deal that we thought was a viable and practical solution for our problems in Los Osos.

We agreed on a few things. We agreed that we could save the community about $15 million, depending on what treatment type of facility that we were to implement outside of town.

We also agreed that we could do it with about a two-year delay beyond the construction window that we have today; construction's ending
in '07, December of '07, I believe it is. We're hoping to get it in '09.

CHAIRPERSON YOUNG: Mr. Fouche, I'm going to stop your clock while I ask you a question.

MR. FOUCHE: Okay.

CHAIRPERSON YOUNG: Does that include the litigation that we heard about from these people out near the Andre site?

MR. FOUCHE: No, it doesn't.

CHAIRPERSON YOUNG: Okay, so --

MR. FOUCHE: No, it doesn't. And absolutely I don't deny that litigation would be a factor.

CHAIRPERSON YOUNG: Right, okay.

MR. FOUCHE: But these are the things that we discussed in the meeting. The County participated in that meeting. Also they came out for a morning and talked to us about zoning.

We also discussed with the Coastal Commission that we could get an amended CDP. And we thought we could get through the process fairly quickly since I, myself, I'm a Registered Civil Engineer in California; Steve Senet is also. And we have two environmental professionals on the
Board now.

We felt that this was a win/win solution for everybody. And when we presented it to the community at our next public meeting, that was the one time that I've seen the community, I felt, actually start coming together on agreement with this solution to our issues.

We had people on both sides of the aisle say, well, we're giving up some things but we can live with the rest of it, I think we can do this. That's the only time I've seen that happen that I can recall in the last four or five years since I've been living in Los Osos.

I'm asking you to help us to maintain our SRF loan. I'm asking for some help in that, and to maintain our negotiated deal that we had originally. And I'm asking if we could finish our collection system, our disposal system with the current loan. Get through those contracts. Let's get that done.

And in the meantime we'll go to work just as hard as we possibly can to site a new facility at a different location.

CHAIRPERSON YOUNG: Okay.

MR. FOUCHE: Thank you.
CHAIRPERSON YOUNG: Thank you. Question I have, are you a practicing engineer?

MR. FOUCHE: Yes, I am.

CHAIRPERSON YOUNG: Okay. And I want to ask you a few questions about, you know, going out to bid in the last year, two years on projects. Do you work for Caltrans?

MR. FOUCHE: I do, I'm a Senior Design Engineer for Caltrans.

CHAIRPERSON YOUNG: Are you somewhat familiar with what's going on in the construction industry generally?

MR. FOUCHE: Absolutely.

CHAIRPERSON YOUNG: And haven't there been cost overruns routinely on projects all over the state?

MR. FOUCHE: Yes. Yes, sir, there has been.

CHAIRPERSON YOUNG: I mean in Santa Barbara the paper yesterday had something out at UCSB where there was a 42 percent, you know, cost overrun just going out to bid. I was just curious what your experience is that, you know, that the bid came in at 46 percent for this project, it was over. That sounds like pretty standard with
what's going on generally in California today.

MR. FOUCHE: Well, as a general statement you could say that, but it really depends on what the projects are. It's really materials costs, the price of concrete, cement and steel --

CHAIRPERSON YOUNG: Right, steel, cement, things of --

MR. FOUCHE: And for us it's asphalt.

CHAIRPERSON YOUNG: Right.

MR. FOUCHE: Fuel costs have gone up, but now they're coming back down. We're in a spike, there's absolutely no question of that. But the spike could come down and in two years costs could be less.

We've had some projects come in at 30 percent over bid. We've had some projects come in under. Depends on what type of work that's being done.

Our proposal with the ponds, which is where we thought -- we concurred that we could save about $15 million going out of town. And this is within our deal with Darrin. He was with us on this; he thought it was a practical solution to do.
But you're digging holes in the ground, you're not building concrete facilities. And that's where a lot of the savings are with the ponding system.

There's also aesthetic issues that you don't have. You've got one facility for pumps and maintenance. The rest of it is ponding, it's under the ground; you don't have tall buildings.

CHAIRPERSON YOUNG: I thought what I heard Darrin say was that there were some pluses and minuses.

MR. FOUCHE: Depending on what treatment type facility that you're going to --

CHAIRPERSON YOUNG: Right, what was discussed with him and his opinion in the end, due to the time delay in getting anything in the ground at another location that there would be no cost savings over the current plant.

MR. FOUCHE: We could say that for the MBR plan, but for a ponding system with oxidation --

CHAIRPERSON YOUNG: He was referring to what had been discussed and what Ms. Schicker had been discussing with him in terms of another location.
Remember he said, --

MR. FOUCHE: I do, I do. And I would argue the point was that we talked about three types of treatment facilities. One was a ponding system; one was an oxidation ditch; and one was the current system that's being proposed, which is a little more than what we really need for what's necessary in Los Osos, as an MBR process. And Darrin concurred with that. He thought ponding would be a very practical solution for Los Osos. And that's the cheapest.

There's a range of costs between those three facilities.

CHAIRPERSON YOUNG: Okay, thank you very much.

MR. FOUCHE: You bet. Thank you.

CHAIRPERSON YOUNG: Okay, Steve Paige. Followed by Tim Nichols and then Gail McPherson.

MR. PAIGE: Respectfully, Mr. Young, I sent a letter to the Board that was seven pages long. And I, in that letter, specifically requested to be notified of this meeting; and also that I'd be given time.

I have what I think is a very pertinent letter to the Board that is circulating in the
community right now. And I would like to be given
maybe, oh, I think, maybe 45 seconds extra time so
that I can read the letter in its entirety.

CHAIRPERSON YOUNG: I'd rule that --
you're not trying to get a letter in?

MR. PAIGE: No, I'm not trying to put
the letter in. I'm actually just trying to read -
- I'm trying to take the time that I originally
requested in my letter to you that you stamped and
was posted as a pds on your website.

This letter was written -- it was
submitted before the close of submissions. And in
that letter I requested to have time to present at
this Board. And I just can't read this letter in
two minutes. It's probably about three minutes
long.

CHAIRPERSON YOUNG: Okay. So, I'll give
you that extra time, --

MR. PAIGE: Okay.

CHAIRPERSON YOUNG: -- based on your
representation that you requested it in a letter
that was timely filed.

MR. PAIGE: Yes, it is, that's --

CHAIRPERSON YOUNG: Okay. And on the
website.
MR. PAIGE: -- that's true, sir.

CHAIRPERSON YOUNG: Okay.

MR. PAIGE: Okay, this letter is circulating in the Los Osos community now.

"Dear Miss Maureen Marche (phonetic), Administrative Assistant of the Board of the State Water Resources Control Board. As a citizens of the Los Osos prohibition zone, we wish to make a formal complaint about the irregularities in the State Water Resources Control Board's duties to adhere to state constitutional law. The State Water Resources Control Board is responsible for all provisions in Article 13(c) and (d) of the state constitution. They're responsible to be adhered to."

"We deem your office guilty of proximate negligence under civil law with respect to oversight of assessments on our properties. We are giving you the opportunity to address these inconsistencies before we take further action."

"The SWRCB was vicariously liable to oversee that Los Osos Community Services District complied with state law. The requirement is specifically stated in policy documents and loan application documents. Your office has the sworn
duty to insure application of Proposition 218.

Please address all conflicts with the state constitution in your loan administration immediately. They are creating running liabilities that must be remedied. Here is a partial list of the errors and omissions.

There are 13; I will only read -- I will read number 13; it references the other 12, to shorten my time here.

"Because of the above, the loan attached to the equities of our properties was funded before compliance with state law provision was met. Hence, it was void at signing, and all funds disbursed were made outside contract provisions announced by state constitutional law conformance."

"Then you, the CWRCB, attempted by contract of adhesion in negotiations with the Los Osos Community Services District, to correct the revenue stream voids and emissions under Proposition 218 for assessments after the fact of approval of the loan. This is, in fact, a direct admission of your continuing negligence, starting with the date of the incomplete loan application."

"Any damages or expenses resulting from
extension of time necessary to remedy our rights
is your responsibility entirely. Those rights
should have been overseen throughout the whole
loan process. They were not. We formally request
by this certified letter you release any and all
monies for direct and indirect costs related to
protecting ourselves from the assessment expenses
for the wastewater project loan inconsistencies
with state constitutional law. Your legal staff
can determine your liability and act immediately."

"We further request that all contractors
be paid for work rendered while you readminister
our state constitutional rights to prevent further
illegal attachments to our collective property
equities. If not, you will not" --

CHAIRPERSON YOUNG: Thank you, sir.
MR. PAIGE: -- "you will be held liable
for them." Thank you.
CHAIRPERSON YOUNG: Okay. Mr. Payne, I
just want you to know that I did find your card;
it was in my stack. Your question was in here.
Okay.

MR. PAYNE: (inaudible).
CHAIRPERSON YOUNG: I'm sure everybody
would like to spend a lot of time talking about

Gail McPherson.

MS. McPHERSON: Good afternoon. I don't want to spend a bunch of time talking about this. I'd like to go back to retirement here.

I was surprised to see that Lori Okun was in Sacramento. I testified in Sacramento, and I was surprised to see her there saying that it would take five to ten years to start again on a project.

In 2000 we were given four years to start again on a new project. So that was interesting to me. And I recognize that it does take five to ten years, and most time schedule orders are that, five to ten years.

And so if you go back through it would be nice to find out what, you know, what is the average time schedule order.

And second, the bid, as I recall Mr. Seitz gave advice on not rebidding. However, out of the committees and out of the Board and out of the engineers, many of them agreed that we needed to rebid. We only had, in some cases, one
contractor bidding on these. It was not competitive.

And so my third point -- I'm sorry, did you want to ask me a question?

CHAIRPERSON YOUNG: I'm going to stop the clock. Do you know about an email that was circulated in the community by, I think, a Mr. Swanson, if I have his name correct? It went to a bunch of contractors and scared them off from bidding. I'm not surprised there was a couple of bids.

MS. McPHERSON: Actually there was a list that was prequalified and it wasn't updated from 2004. And I think they would have had better -- there was a lot of reasons besides --

AUDIENCE SPEAKER: Sanford.

CHAIRPERSON YOUNG: Okay.

MS. McPHERSON: Yeah. But, you know, I've read contracts and there were always community activists that decided they didn't want something done. It never stopped contractors from following the money. I'm serious. That's not that unusual.

CHAIRPERSON YOUNG: Okay, go ahead.

MS. McPHERSON: Okay.
CHAIRPERSON YOUNG: You have a minute.

MS. McPHERSON: I will put the other email in context that Ms. Tacker, because she just jogged my memory. Here's the context of that email. "I hope the CSD gets fined out of existence fast enough to save the contractors and low-interest loan. Pandora." I'm just adding that kind of out of sequence here because I'm rushing through minutes.

I felt like the question to Lisa about what would make you build this plant at Tri-W could easily be understood to mean is $11 million in fines enough to make you build this plant at Tri-W. And it's clear that the state and the Regional Board are not to mandate the site, the location, the technology or the cost.

That site increased the costs, because when they compared it with Darrin Polhemus, the same exact plant out of town, they saved $10- to $15 million. And so that's significant, and it's important to the community to be able to seek that solution.

CHAIRPERSON YOUNG: Thank you, Ms. McPherson.

MS. McPHERSON: Thank you very much.
CHAIRPERSON YOUNG: Vivian McNeill.

Wade -- how do you pronounce it?

MR. AKLE: Akle.

CHAIRPERSON YOUNG: Okay. And then

Chuck Cesena.

MS. McNEILL: Vivian McNeill. I live in Los Osos and I'm a property owner. I'm also a former member of the Los Osos Community Services District Wastewater Committee.

I believe that the current Los Osos CSD Board has deliberately misled the community of Los Osos on the costs and feasibility of moving the sewer out of town. They never had any intention of building that facility at the Tri-W site.

The three new members of the Board openly supported and endorsed the passage of Measure B. And I believe, if I recall correctly, the two prior Board Members, Directors Schicker and Tacker, also endorsed Measure B.

And as a Board they have consistently attempted to hide behind Measure B as a shield. This is typical of their delaying, delay, delay, stall as long as we can tactics.

And as an aside, to date, since the new CSD Board was seated, no one who has submitted a
A public records request has received any of those requests. Not one. I was told today that no one had.

And the gentleman that you were referring, they were referring to is Bud Sanford who sent the letters to the contractors. Bud Sanford.

CHAIRPERSON YOUNG: Bud Sanford.

MS. McNEILL: Thank you.

CHAIRPERSON YOUNG: Was I correct, Ms. McNeill, in my recollection of that email, or that letter that he sent out?

MS. McNEILL: Yes. Yes, I have a copy of that at home. He was threatening the contractors with all sorts of accidents that could happen and --

(Audience participation.)

CHAIRPERSON YOUNG: Excuse me, please. Go ahead.

MS. McNEILL: Well, I've lost my train of thought now, but --

CHAIRPERSON YOUNG: That he was threatening the contractors with all sorts of --

MS. McNEILL: That they would be making a grave mistake by bidding on or attempting to
build a facility or do any construction work in
the community of Los Osos.

       CHAIRPERSON YOUNG: Okay.

       MS. McNEILL: And that was not the only
missive that was sent to them.

       CHAIRPERSON YOUNG: Thank you very much.

       MS. McNEILL: Thank you.

       CHAIRPERSON YOUNG: Yeah, I would
appreciate it if you would keep your comments to
yourself. Okay? And you can make them in public
comment unless you've already done so. And then
please just keep them to yourself.

       MS. BRUTON: Mr. Young, I have a point
of order to bring up here. I believe this is
public forum, and it's time for the public to give
their input here. And you seem to be
systematically choosing some people to get into
discussions with.

       And as far as Bud Sanford, whether I
agree or don't agree with that, this woman has no
direct information to give you. And if you're
looking to her and saying that she is the
authority for that, then I think that you are
overstepping your jurisdiction.

       CHAIRPERSON YOUNG: I don't know who
that was.

(Laughter.)

AUDIENCE SPEAKER: Marla Bruton.

CHAIRPERSON YOUNG: Okay, Wade --

AUDIENCE SPEAKER: Hurricane Marla.

CHAIRPERSON YOUNG: Okay. Sir, could

you pronounce your --

MR. AKLE: Akle.

CHAIRPERSON YOUNG: Akle, thank you.

MR. AKLE: 1586 Third Street in Baywood.

I learned a lot today and yesterday. Number one, I

was concerned about the safety of the Tri-W

site. Earthquake, slides, whatever it is. I

think, Mr. Young, your questions clarified in my

mind that it is safe.

In addition, Rob Miller and his company

signed off on it. And I can't imagine that they

would sign off on a flawed project.

So the next question I have is the

concern of this community. How are we going to

pay and how much. So, the costs.

We claim that we can save 15 million of

the plant. The other 90 million -- 90 million is

not contested by the present Board. That's the

collection and the disposal. So if they save 15
million on 135 million, then reduce the cost from $200 to $180 per month for each of us. It's not a panacea. That's not going to solve the cost problems.

And then their slide is totally wrong. They have a line which has escalation over two years. And they applied the escalation to the Tri-W at the rate of $5 million in that slide. There is no escalation for Tri-W. It's starting today. The escalation on the Andre site should be five to ten years.

And they're selling the Tri-W, they're environmentally concerned. They're selling the Tri-W to make a profit and end up with the recall mall at Tri-W.

CHAIRPERSON YOUNG: Thank you for your comments.

MR. AKLE: Thank you.

CHAIRPERSON YOUNG: Chuck Cesena; Barbara, is this your wife?

MS. AKLE: Yes.

CHAIRPERSON YOUNG: Okay. Akle, and then Jan DiLeo.

MR. CESENA: Chairman Young, Board Members, my name is Chuck Cesena. And I'm here to
reiterate that Board Members --

    CHAIRPERSON YOUNG: Are you speaking as

    a Board Member?

    MR. CESENA: As a citizen.

    CHAIRPERSON YOUNG: Okay.

    MR. CESENA: And a Board Member. I just

    want to reiterate that everybody I know in Los

    Osos wants clean water; we want a project. We

    want our lives back. We've dedicated way too much

    of them to this project.

    So why are we still trying to move this

    off the Tri-W site? One reason is the way it was

    foisted upon us. You saw a slide up there

    yesterday that showed a chart from the facility's

    report, which was furnished to your Board, but not

    released for public review, that showed that the

    out-of-town site was the cheapest in terms of

    lifecycle cost.

    But what was in the environmental impact

    report that was released to the public? An

    overriding consideration that said we've got to

    put it in the middle of town because of the lower

    cost of a centralized collection system. That's

    like cherry-picking the one aspect that's cheaper

    and ignoring the big picture.
The other reason is it's just a bad project. And I won't go too deeply into that.

CHAIRPERSON YOUNG: Mr. Cesena, isn't this water under the bridge? Maybe, even given that that might be true, okay, --

MR. CESENA: Okay, we'll ignore that then --

CHAIRPERSON YOUNG: I'm just saying we're not really here -- and I'm doing this with you because you're a Board Member, but aren't we really here to look at what was alleged in the complaint?

MR. CESENA: That was my second --

CHAIRPERSON YOUNG: And the violations of the time schedule order?

MR. CESENA: Okay, the --

CHAIRPERSON YOUNG: Okay.

MR. CESENA: -- the technical aspects of the project have been brought before you. It doesn't solve our long-term water supply needs. It's an energy hog, and it's just upstream from the estuary.

Regarding the time schedule order, in 25 years of a career as a planner for large public works projects, we allow five to seven years
anytime we scope a project with the complexity of
an EIR. We were handed a time schedule order of
four years. An impossibility.

Ms. Okun even testified in Sacramento it
would take five to ten in her opinion to move a
plant. Why were we only given four years? I
don't think it would take five to ten; we've got a
lot of work that's been done in the past few
years. It only took the previous Board six year,
not five to ten. And that was trying to put a
plant in the middle of town.

CHAIRPERSON YOUNG: Thank you for your
comments.

MR. CESENA: The time schedule order was
way off base.

CHAIRPERSON YOUNG: Okay. Jan Di Leo;
Karen Venditti; Rich Sadowski.

MS. DI LEO: Mr. Chairman, Board, I'm a
resident of Los Osos for roughly 12 years. I
reside in the prohibition zone.

It would appear the current Los Osos CSD
Board engages in what Orwell termed double-speak.
they ran on a campaign for a more public, open
process. Now when you request information from
the LOCSD, including minutes from the previous
meeting, you get a letter from their attorney indicating they will consider your request and get back to you.

They ran on a campaign the current project is too expensive; they had a cheaper project that could be located out of town. Yet, their actions, consisting of appeals, delays, lawsuits and recalls have been the major component making the project more expensive.

Once elected they admitted they had no project, I would add, let alone a cheaper project, but they would work on it.

They indicated the current project could be moved out of town and the community would not lose its low-interest loan. The reality the State Water Resources Board clearly indicated to these Board Members the loan was project-specific. That any attempt to change the project at this late day would result in perilous consequences for the community of Los Osos.

They ran on a campaign that the previous LOCSD Board Members and staff lacked integrity. They did this while they contacted granting agencies and told them not to fund us, while clearly misleading the public during the recall
campaign, and vilifying anyone that disagrees with them.

They indicated an out-of-town location will solve our pollution problem, even though historically speaking, Los Osos has had two out-of-town locations, one on Turry Road and one on South Bay Boulevard. These locations were controversial; lawsuits were filed; and the projects did not get built.

They indicated the pollution of our groundwater is a major concern, while Ms. Schicker, during her campaign and during LOCSD meetings, indicated we can delay the project, we have plenty of time, trust her, she's a scientist. She doesn't seem to understand that scientists produce data, not opinions.

CHAIRPERSON YOUNG: Thank you for your comments.

MS. DI LEO: Thank you.

CHAIRPERSON YOUNG: Karen Venditti.

MS. VENDITTI: Karen Venditti, a resident and taxpayer, property owner in Los Osos.

CHAIRPERSON YOUNG: My apologies.

(Laughter.)

BOARD MEMBER SHALLCROSS: This is an
interested party.

(Laughter.)

MS. VENDITTI: My apologies, too. Dear Mr. Young and All of the Directors and everyone here who is interested in this. I'm sincerely grateful for this opportunity to testify before this hearing.

As a resident and property owner in the prohibition zone I have been carefully following events and efforts relating to our wastewater treatment plans. And, yes, I voted for Measure B and the recall of three of the previous CSD Directors, which directly impacted Los Osos' efforts to comply with the state's water regulations. And you deserve to understand why.

My testimony is not unique, for I believe that many Los Osos residents share my experience and perception of our situation. But it is relevant to this hearing.

Admittedly, I remained uninvolved personally in sewer issues until last year. By then it became apparent to me that the existing CSD Directors were acting without regard to the concerns and needs of many of our citizens. They were making decisions that would affect our
community -- excuse me -- community's financial
obligations, social makeup and environmental
impact. And I began to question their wisdom.

It was then that I began to educate
myself and get involved.

I'm going to skip down before I lose
time here. I think it's important to understand
that the Tri-W plan is not only unaffordable, that
was not my primary reason for voting for Measure
B.

It is a bad plan. It's not going to
meet our water needs. It's not only a bad plan
from the standpoint of the technology, the risk of
spills and odors and things like that, even the
expensiveness of the operations and maintenance.
That's a big deal

But even if you look at the whole
monetary thing, that was not my most important
reason. I wanted to look at the big picture of
water plan overall.

And so I would just close with that
line, this is not about a wastewater treatment
plan, this is about water quality, conservation of
our water resources. We need a plan that's going
to do the job.
Thank you.

CHAIRPERSON YOUNG: Thank you. Rich Sadowski; Marla Bruton; and then Joey Racano.

MR. SADOWSKI: My name is Richard Sadowski. I'm a citizen of Morro Bay, and my vitae includes I have a grade IV wastewater collection certificate from the California Water Environmental Association; I have a bachelor of science degree in mechanical engineering with a masters pending; and 25 years of building and field engineering experience.

I'm currently volunteering my time and expertise to the Ocean Outfall Group on clean water issues as they pertain to the Bay watershed.

To answer your question to Director Lisa Schicker about the potential of sewer spill locations in an out-of-town collection system, the answer is simply yes. In a gravity system dictated by topography the upstream manhole would start to bubble and maintenance personnel would be called out just like everywhere else in this City and the County, to address the blockage.

I'm sure that the competent staff of the Los Osos maintenance staff will be implementing a backflow device program similar to the Cities of
San Luis.

With regards to the lift stations, redundant alarm systems are used. And as far as the force mains are concerned, which will be the main arteries to the sewer out of town, sleeved forced mains with foolproof leak detection systems such as the one I designed for Cayucas could be used.

May I add that Mr. Bruce Daniels and his wife became privy to these issues when Mr. Racano presented his ABC regional plan to the Democratic Environmental Caucus.

Now the reason why I came here, that was the answer to your question --

CHAIRPERSON YOUNG: You have 18 seconds.

MR. SADOWSKI: No, I don't. I came here, that's your answer. I've given my -- I volunteer my time just like you do. You're a public servant, you serve the public.

Now I'm here to speak on a separate issue. The Board is giving the appearance of selective enforcement. Earlier this year under the supervision of Gerhardt Hubner, regional staff was informed with documented data of a reportable spill, sewer spill that occurred on the beaches of
Cayucas.

CHAIRPERSON YOUNG: Thank you for your testimony.

MR. SADOWSKI: No fines were levied --

CHAIRPERSON YOUNG: Thank you for your testimony, Mr. Sadowski. It's two minutes.

MR. SADOWSKI: I understand that, but I answered your question. That time was for the question that you had to Ms. Lisa Schicker.

I'm presenting a different issue.

CHAIRPERSON YOUNG: I didn't ask you to answer the question I posed to her.

MR. SADOWSKI: I volunteered that information to you as a courtesy of my knowledge.

CHAIRPERSON YOUNG: I didn't ask you --

MR. SADOWSKI: When was the last time you volunteered anything?

CHAIRPERSON YOUNG: Please sit down.

MR. SADOWSKI: I want to -- I want to --

CHAIRPERSON YOUNG: Excuse me. Marla Bruton. Then Joey Racano. And then Don Bearden.

What is that?

MS. BRUTON: It's your agenda, it's definitely in the record.

CHAIRPERSON YOUNG: Okay. You have -- I
didn't realize, you came up earlier, so you've got
about a minute and 40 seconds.

MS. BRUTON: Okay, this is your agenda.
And the reason I'm bringing this up here is I'd
just like to point out to the public that the
Central Coast Water Board Members, there are nine
appointed categories that are supposed to be on
this Board.

There are five members today sitting on
this board. They represent irrigated agriculture,
industrial water use, water quality, recreation,
fish and wildlife and municipal government.

Those missing are the county government,
water quality, public and water supply. The
public person on this panel stepped down, recused
herself because coincidentally she lives in the
prohibition zone. I might add that's an
appointment by the Governor. It's quite timely, I
would say.

The other Director who recused himself
was Mr. Bowker, and he recused himself because he
said he didn't want to give the appearance of a
conflict of interest. His conflict of interest
appearance has been ongoing and insidious.

And the County, this County right here,
he's also the County -- he represents the County of San Luis Obispo on this Board. This County, the last time I was at the Board of Supervisors meeting, the word corruption, nepotism, favoritism, cronyism -- these are the things that have oppressed the citizens of this County. And frankly, we're not going to take it sitting down anymore.

Am I up, or do you want me to keep going? I'll keep going if you want.

CHAIRPERSON YOUNG: It's a yellow light. You've got 15 seconds.

MS. BRUTON: Okay. In your staff report it says that there's no question that further project delays will result in cost increases and continued water quality impacts.

Today you've heard there is a viable answer. All you have to do is listen to the CSD proposals. And that statement becomes --

CHAIRPERSON YOUNG: Thank you for your comments. Joey Racano. And Don Bearden, and then it looks like Bo Cooper.

MR. RACANO: Honorable Board, Staff and friends. In order to address the important business before us today I'd like to direct your
attention to the various threats faced by our Bay and Estuary.

Central Valley agricultural interests are threatening to dump billions of gallons of selenium-tainted ag water off Point Estero. Morro Bay is dumping and disinfecting less than fully secondarily treated sewage off the coast, resulting in chemical reactions shown to change the sex of fish in Orange County and Los Angeles. Morro Bay is also dragging its feet on Clean Water Act compliance, and now expects to take ten years to reach the sewage treatment standards of 33 years ago. Cayucas sends raw treatment to Morro Bay, raw sewage to Morro Bay. Is this thing on? Check, it sounds like it just went off.

Now, in the meantime they're taking $4.8 million in illegal reserves and stashing it away in San Luis Obispo. That money is earmarked specifically for sewage treatment. That's a violation of the arbitrage rule that doesn't allow joint powers agencies to act like financial institutions.

Duke Power Plant is using single-pass cooling on the estuary, and now armed with a 50-
year lease, will continue on with this dangerous
and destructive process.

   Now, with this virtual Armageddon being
waged on the waters of Estero Bay and the National
Estuary, it's the opinion of the Ocean Outfall
Group that this Board should refrain from waging a
war of their own on the vulnerable citizens of Los
Osos.

   Now, with Morro Bay and Los Osos both
needing additional treatment at the same time,
only a regional plan makes sense. Now, a
regional, full tertiary plan would qualify us for
moneys not available to myopic systems like the
one at Los Osos on the Tri-W site.

   Now it would also increase the
likelihood of protective legislation. It would
assure compliance with AB-885, as well as with the
State Water Board's own watershed-wide waste
discharge requirement.

   Instead of fining Los Osos, please, I
invite you to join with us in the spirit of
cooperation because rather than allow problems to
divide us, the time has come for solutions to
unite us.

   Thank you for this opportunity, Mr.
Young.

CHAIRPERSON YOUNG: Thank you. Don Bearden, then Bo Cooper and Lacey Cooper.

MS. AKLE: (inaudible).

CHAIRPERSON YOUNG: Oh, okay.

MS. AKLE: But go ahead with, you know, I just wanted to --

CHAIRPERSON YOUNG: What's your name?

MS. AKLE: Barbara Akle.

CHAIRPERSON YOUNG: Oh, what happened?

MS. AKLE: Well, you called --

CHAIRPERSON YOUNG: Someone must have just -- so eager to get up here, they muscled in front of you.

(Laughter.)

CHAIRPERSON YOUNG: This is an eager group we've got tonight.

MR. BEARDEN: Do you want her to go now?

CHAIRPERSON YOUNG: No, that's fine.

That's fine.

MR. BEARDEN: My name is Don Bearden. I live at 1411 7th Street in Los Osos, in the prohibition zone.

The present Los Osos CSD has seen fit to stop progress on a technically sound and viable
project. And by doing so, has violated the Regional Water Control Board's basin plan.

Fining the Los Osos CSD or the citizens of Los Osos won't get the pollution cleaned up in a reasonable manner. If you're going to fine us, I ask that you consider holding those fines in abeyance conditional on the Los Osos CSD voting to get the Los Osos wastewater treatment project back to the County of San Luis Obispo to complete. A December 9th deadline would be appropriate.

The present CSD has its hands tied with Measure B and cannot legally proceed on the project, themselves. But they can vote to give it back to the County.

I believe that this path is the quickest way to get a wastewater treatment project completed for Los Osos. Thank you.

CHAIRPERSON YOUNG: Mr. Bearden, do you think they're going to do that willingly?

MR. BEARDEN: You can give them one more chance.

(Laughter.)

MR. BEARDEN: One more chance.

CHAIRPERSON YOUNG: How many chances should we give them? How many bites of the apple
should we give them?

MR. BEARDEN: One more, they got a choice between fines and the doggone --

CHAIRPERSON YOUNG: Okay. Thank you for your comments. Bo Cooper -- oh, pardon me, pardon me, pardon me. Akle.

MS. AKLE: Barbara Akle.

CHAIRPERSON YOUNG: You know, I understand what's going on, yeah.

BOARD MEMBER SHALLCROSS: Well, I was just --

CHAIRPERSON YOUNG: Thanks, Gary.

MS. AKLE: These are my thoughts on fines. And, please, if I say something inaccurate, correct me.

CHAIRPERSON YOUNG: And your name, please.

MS. AKLE: Barbara Akle.

CHAIRPERSON YOUNG: Thank you.

MS. AKLE: Prohibition zone homeowner, Los Osos. My thoughts on fines. After listening to the proceedings for past two days and living in Los Osos for nine years, it appears there's been a lot of factors contributing to the situation we have today.
Our CSD was formed in 1999, six years ago. I keep hearing references to 30 years of noncompliance. That means the County had full control and responsibility for 24 of those 30 years. Sounds a little bit like maybe some benign neglect going on. Anyway, that's my thoughts. Surely there was something more forceful they could have done to take control.

Once the CSD was formed our Board took the sewer obligation seriously and did their best to see it through. Lawsuits or pressures against the Board were not generated by someone representing the people in Los Osos as a whole, but by special interest groups who wanted something different.

It is only since the recall that questions arose about noncompliance. If fines occur, I think it should reflect that very short period only.

In addition, most Los Osos prohibition zone homeowners supported going ahead with the sewer at the Tri-W site. Measure B and the new Board were put in place by a slim majority, including renters and non-prohibition-zone voters, who had no real stake in the cost of the sewer or
in fines against those of us who must pay for this sewer.

Prohibition zone homeowners have already been punished, and in a way, fined by our own Board's refusal to accept the SRF -- is that what it's called -- the state low-interest loan.

I would ask that the Regional Water Quality Board consider this, and please not add to our misery index by fining individual prohibition zone homeowners.

Thank you.

CHAIRPERSON YOUNG: Thank you for your comments. Now we have Bo Cooper, right? And then Lacey Cooper. Let me read the rest of these off because we're hitting the bottom of the list. Richard Margetson, Michael Moore, Frank Galicia and Vita Miller. Okay. Let me set the clock for you.

MR. COOPER: Bo Cooper, Los Osos. The issue is 00-131, number 13 says the civil penalty established in the sewer are $10,000 a day is established in an amount necessary to achieve compliance. It does not include any amount intended to punish or address previous violations. It's not clear to me how any fine will

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
induce compliance to a Board that has indicated that we really want to do it. When Mr. Seitz asked Mr. Briggs how will a fine help us get a sewer, which is what everybody wants, a water project, according to the telegrams reviewed this morning, according to Mr. Briggs, it said the penalty, itself, does not clean the basin, but consequences from penalties do force dischargers to clean up their actions.

This is a very weak answer. The right answer is the Board wants to do it. They cannot do it.

Also, 13 continues, says that you can extend time for compliance for delays beyond reasonable control of the CSD. Measure B is such a thing. The withdrawal of SRF funds is such a thing. The Board has indicated, yes, we're willing to do it, and are not able to do that.

So, that's that.

Also, Ms. Okun alluded to Water Code section 13327. It says, in determining the amount of civil liability the Regional Board shall take into consideration, with respect to the violator, the ability to pay, the effect on the ability to continue business.
It's not a matter of choosing between
them, which was the implication that I got when I
heard it before I read it. It's all of those
matter. And so if the ability to pay does matter,
it's not one of the factors, it's one of the
factors that have to be included, what it has to
do with business, which is how the CSD can affect
the governmental business matters.

So you can't say, well, other things are
okay, but this we can put aside. It's not the
case. When it says shall take into consideration,
it includes all of them. There's several
categories here, and those categories need to be
included.

Thank you.

CHAIRPERSON YOUNG: Thank you. Lacey
Cooper.

MS. COOPER: Yes, we're related through
marriage. I'm Lacey Cooper of Los Osos. I've
been a homeowner in the prohibition zone for 20
years. And I've been attending meetings over the
last several years.

And I just wanted to make -- go back to
the idea of, you know, are these people
responsible for the delays that are occurring to
the project. There's been a lot of different
topics discussed, but weren't they --

CHAIRPERSON YOUNG: You mean the
Directors?

MS. COOPER: Excuse me?

CHAIRPERSON YOUNG: When you say these
people, who are you referring to?

MS. COOPER: I lost my train of thought,
I'm --

CHAIRPERSON YOUNG: I'm sorry.

MS. COOPER: -- having a senior moment
here.

CHAIRPERSON YOUNG: I'll stop the clock.

MS. COOPER: Okay. I don't know, can I
just move on to -- these --

CHAIRPERSON YOUNG: Okay, I apologize.

MS. COOPER: That's okay, I'm a little
nervous. Let's see, oh, okay, these people, yeah,
Directors. Okay.

Let's see, these people, well, actually
I'm talking about two different sets of people.
I'm talking about your prosecution team and the
Board of Directors.

Because your prosecution team put up
these, you know, pictures of Lisa Schicker, our
President, saying that, you know, when she was on
the Board, it said get this project out of town
and the center of town. That is just non-
negotiable. You know, that was like her thing to
do. And some quote from John Fouche saying, you
know, we want out of town.

But I think actions in this case do
speak louder than words, you know, words that are
just discussed at a Board meeting. Because these
two people, you know, Lisa Schicker took her
vacation time and went over this whole week with
good faith negotiations with the state. And they
really thought they were negotiating.

And they came to really hard
compromises. They accepted the collection system,
as-is, as per the gravity collection system. And
they were starting work again on it when the funds
were pulled.

And they also, the Tri-W, that's not
really -- can I just finish my sentence?

CHAIRPERSON YOUNG: Yes.

MS. COOPER: It's not really been
discussed, that the Tri-W site is in that
negotiated agreement. If these people could not
meet that two-year -- they took a lot of risks.
If they couldn't meet that two-year, you know, thing to get their alternative site together, they would go back to the Tri-W site.

So, they are ready -- they were flexible, they were fluid, they were trying to represent the whole community. And the community really was behind that, even though some people are saying no now, they want to dissolve the Board and things like that. They really showed their intentions, I think.

Thank you.


MR. MARGETSON: Richard Margetson.

Since we only have two minutes, I'm going to address a couple of issues, hope I get through them.

Something I think you need to consider when determining the fine, if that's the way you go, is the calculation was based on a starting time of September 2002 for the 1080 days.

I think you need to consider whether commencement of a project was possible back then, even if there hadn't been any lawsuits.

The second thing I'd like to address,
Ms. Okun seemed like she was making an attempt to qualify the funds that the District currently has as funds that aren't tied to the SRF loan anymore. And I believe that's absolutely false, because the District wasn't reimbursed for the design, purchase of the property, those type of things, with the allowance.

The allowance is the ability of the District to re-borrow what they've put out. And the difference between a District that's just gotten started and doesn't have a reserve account to draw off of, is that they need to have that allowance. Some districts don't take the allowance. But it gives the District the opportunity to re-borrow those funds at the 2.3 percent interest rate.

So, saying that those are restricted -- unrestricted funds of the District I think is false. Because those funds were needed to be re-borrowed by the District. It wasn't a reimbursement, they're re-borrowing, in order for the District then to pay for construction and meet its contingency requirement of the SRF loan, which is, at a minimum, 5 percent.

I think you have a problem there of if
you're going to try to attach that amount of money. Because the District, when the project got its first draw, the resources of the wastewater fund were under $100,000.

CHAIRPERSON YOUNG: Okay, thank you for your comments. Michael Moore, followed by Frank Galicia. And the last card I have is Vita Miller. And if there's anyone else in the audience that has not spoken and wishes to do so, please fill out a card, because I will close public comment after this last card.

MR. MOORE: Good afternoon; my name is Michael Moore. I'm not the crazy one, though, that appears on television.

I do live in Los Osos, actually for 47 years. And I'm not in the prohibition zone. I do have a vacant lot in the prohibition zone.

I would like to just talk briefly about Measure B. I think I have learned a lot from this two-day proceeding. And I've come to the understanding that when the voters of Los Osos enacted Measure B they basically voted to give themselves the power to either frustrate or totally ignore various government mandates.

I am not an attorney, but there seems to
be something wrong with that. And i'm sure that
that will be addressed soon. There's another
lawsuit been filed to repeal Measure B.

Now, since Measure B, the new Board of
the Los Osos CSD campaigned on promises involving
moving the sewer and so forth. So they liked
Measure B. It gave them a push in the direction
of being able to move the sewer.

As I have circulated around Los Osos for
the last six or eight months, being involved in
this, trying to learn about this project and
understanding how we got to where we are, I became
aware that there seems to be a fraction of the
community that really would prefer not to have a
project at all.

In fact, I recall seeing a letter to the
editor in one of the papers about the opponents of
the current project having saved the community a
lot of money over a period of years by not having
to pay for a sewer project. I found that
incredible, that that was actually written by
someone opposed to the current project.

I see that I'm out of time. Thank you
for your consideration.

CHAIRPERSON YOUNG: Thank you. Okay.

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
Frank Galicia.

MR. GALICIA: Good evening. My name is Frank Galicia. I do not live in Los Osos; I used to live in Los Osos, and now I live outside of Los Osos where the community has decided to place their sewer.

I did not have a vote on the Los Osos CSD or Measure B, and yet they decided to put their sewer, or they want to put their sewer in my backyard. Just like them, I don't want their feces in my backyard, either. Just like them, I don't want to smell their poop. Just like them, I don't want to have my well polluted. Just like them, I don't want to have to deal with this.

I would encourage you to fine the Los Osos CSD out of existence so that we don't have to deal with this anymore. I moved out of Los Osos so I didn't have to deal with this. I would encourage you to fine them out of existence. We don't have to -- we shouldn't have to deal with this anymore.

This entity is a rogue organization. They have gone too far. They have scared me out of town, and now here we are again. I'm having to deal with this. We have a group of people who
have signed up, about 60 people, in the area
outside of Los Osos who have signed a petition,
out of 200 families who don't want the sewer
there, either.

The percolation in that area is so low
the 800,000 gallons a day will not go through the
ground. The farmers won't put their tractors
after two inches of rain. What's going to happen
after 800,000 gallons of water going into that
area. It won't percolate.

Our septic tanks need forced pump in the
effluent side of our septic tanks in order to get
into our ground. I don't understand how they're
going to put water out there. In the rainy
season, look at the ponds that sit for days and
weeks, if not months, for the water to percolate
through the ground.

Thank you.

CHAIRPERSON YOUNG: Thank you for your
comments. Last speaker is Vita Miller.

MS. MILLER: Hello, Board. I'm Vita
Miller. I guess I've got all the time I want.
I'm an interested party. I've been a
resident since 1971, homeowner since 1978.

My major concern with the prior CSD's
approved project was always affordability. The
prior Board did not approve an affordability study
on this project, even after determining that fully
30 percent of Los Osos residents would be forced
out of the community.

In addition to that, my other major
care concerns are the location and the fact that
residents who are the lowest on the socioeconomic
scale of Los Osos, living within the prohibition
zone, will pay for the project in its entirety,
while those living in the most upscale areas, such
as Cabrillo Estates, are, at this time, free from
any project costs.

If this project is truly about restoring
our Bay and making the drinking water safe for all residents, then it is unconscionable that these
Los Osos residents are not accountable for a
portion of the costs.

In addition, the location of the project
is totally unsustainable. It fails on all levels.
It does not solve the problem of salt water
intrusion; does not restore our groundwater; and
sits over our Bay just a spill away from major
contamination.

It is remarkable that this RWQCB Board
would be supportive of a project with so many deleterious effects on our community.

Our current CSD Board has been completely transparent. They have had at least 20 meetings since they were sworn into office. They have asked the public to participate on all levels, and they have even worked to re-establish the advisory committees that were abruptly dismantled by the prior Board just before they voted to raise the cost of the project by approving it's $36 million over their estimated cost.

The current CSD Board has not taken action to dismantle the timeline ordered by the RWQCB. Rather, it is the State Water Resources Board that has put a stop to this project.

Therefore, fines at this time are indefensible, particularly when in the past, on numerous occasions, the timeline was violated by both the County and prior CSD Board without ever any fines assessed.

Thank you.

CHAIRPERSON YOUNG: Thank you.

That is the last speaker. And next would be summation.
MS. SCHICKER: Mr. Young, I need a
break. I've got to have a break --

CHAIRPERSON YOUNG: I do, too.

(Laughter.)

CHAIRPERSON YOUNG: And, Mr. Seitz, how much do you -- would 15 minutes be sufficient for you? They don't have any time, but I want to --

MR. SEITZ: I don't believe so.

CHAIRPERSON YOUNG: Okay.

MR. SEITZ: I believe that with the latest testimony that we haven't had a chance to respond to, I would say that if we had 25, it would probably be ample.

CHAIRPERSON YOUNG: That's fine.

MR. SEITZ: Thank you.

CHAIRPERSON YOUNG: Is that okay, Ms. Okun? I mean you could object and I'd have to make an issue about it, but --

MS. OKUN: No, I think it's okay.

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: How much time is the prosecution team going to use --

(End Tape 6A.)

MS. SCHAFFNER: -- of their remaining time, do they think?
MR. BRIGGS: I think we'll use less than
the District is asking for.

CHAIRPERSON YOUNG: Really. Okay. Yes?

MR. SEITZ: There has been a
considerable amount of testimony, at least I'm
taking, about myself and, in addition to that
time, I'd like to have two minutes to respond to
the public comment. I'll tell you just about my
role in all this.

There's been several things that have
been put in the record that one is that I
recommened against the issuing the contracts.
And then there's been testimony that I recommended
issuing those contracts way back when.

I can represent to the Board and to the
community that I did neither. I do recall being
at a Wastewater Treatment Committee meeting where
someone asked me if we had followed the correct
procedures in awarding the bids, and I answered
affirmative.

I can represent to the Board I have no
recollection of recommending that they execute
those contracts and bids, or that they don't. I
do recall that there was a discussion between Mr.
Miller and Mr. Highland where there was some
differences regarding very identified bids. Not
the entire bid schedule, but specific bids, as to
whether or not they should be re-bid or not.

And that's my testimony on that issue.

CHAIRPERSON YOUNG: Okay. All right.

So we're going to take a break, is that --

MS. OKUN: Can I ask a couple questions
about the record before we take a break?

CHAIRPERSON YOUNG: Yes.

MS. OKUN: One is that we need a copy of
the District's -- it's not a question -- we need a
copy of the District's PowerPoint presentations
for the record. And we need electronic copies
because of the video clips.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: And in terms of the
District's documents that they say didn't get
properly photocopied, I don't understand when
we're going to resolve that, because I would
object to the Board taking any action and closing
the hearing, and then augmenting the record.

So, I'm not sure how you want to deal
with that.

CHAIRPERSON YOUNG: How many documents
are there? Apparently -- do we know --
MS. OKUN: I haven't seen their list.

MS. SCHAFFNER: Yeah, and actually, Mr. Chair, that's actually one comment I was going to suggest. The order I envisioned the proceeding to continue to conclusion from here on out would be resolution of the document issues; resolution of the outstanding continuance motion, the various arguments there.

The other somewhat unclear due process issues that were left open. And then closing arguments. Because --

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: -- that just seems like an appropriate order of discussion. Because that way, when they make their closing arguments, they know what the record looks like.

And then we close the hearing at that point for closed session, if you wish, and whatnot, assuming --

CHAIRPERSON YOUNG: Well, are we able to, Mr. Seitz, are we able to resolve the document issue?

MR. SEITZ: I suspect that it just depends how much time -- I mean the way I understood it, that we were going to sit down with
the prosecution staff and go through the documents
and make a determination as to which documents
were relevant.

And then if there was a dispute as to
the relevancy, the Chair was going to rule on
them. That was my firm understanding from the
Chair's decision of yesterday.

CHAIRPERSON YOUNG: Well, these were
documents that were supposedly on that CD and are
not there, for some reason.

MR. SEITZ: I'll just give you --

CHAIRPERSON YOUNG: So, those are the
documents I'm talking about.

MR. SEITZ: I'm just giving you my best
recollection.

CHAIRPERSON YOUNG: Okay.

MR. SEITZ: We went through a long
discussion about the volumes of documents that
were produced by the District, and the volumes of
documents that were identified by the prosecution
team.

And the issue -- and that's the
administrative record from CalCities.

My understanding from yesterday's ruling
was that the parties were to get together and
designate those documents that they considered relevant, and then if there was going to be a discussion or a dispute as to whether or not the documents were relevant, that the Chair would resolve that dispute.

MS. OKUN: Can I --

MS. SCHAFFNER: Mr. Chairman, I don't quite recall it exactly that way. I think that was a sub-element. As I recall, the Chairman first wanted the parties to address the question of whether the documents were actually -- what was actually provided and what was not, because there was some question about what was on the disk. And the CSD was going to look into whether they actually submitted the documents that they thought they did.

And look at the disk that Matt had, to see if they could clear any of that up, as to what they thought was missing.

And then come forth and present any evidence they have, documents that staff have found are not in the record, actually are. That's the first step, are they here. And if they are here, then get to the issue of relevance, to the degree you folks can get together on that.
MS. OKUN: Right.

MS. SCHAFFNER: That was my understanding.

MS. OKUN: And in addition to that, if the District had any documents that were not already admitted into the record that it discussed or relied on during its presentation, they could request admission of those documents, as they went.

MS. SCHAFFNER: If they were present.

MS. OKUN: Yeah.

MS. SCHAFFNER: If the documents were in the --

MS. OKUN: Right.

MS. SCHAFFNER: -- present.

MR. SEITZ: I think we're confusing two things here. One is the documents that were presented to you folks during this hearing by both sides. Obviously the prosecution team has presented you with no documents, because they relied on the concept of the administrative record in order to designate -- I mean the only party that's presented documents, put them on the board and had you look at them, was our defense.

If the only documents that you're going
to consider are those documents that were up
there, we'll stipulate, right here, right now.

If, on the other hand, we're going to
sit around and we're going to argue about what
documents are going to be in the administrative
record for potential appellate review, then I'm
relying back to what I perceived to be the ruling
of the Chair yesterday. Because we went through
this at length that there was a request from the
Chair either Tuesday or Wednesday last week, to
designate on one party to make a statement of
relevancy of each document.

And what we argued yesterday was that
burden was unfair placed on only the defense team
when you considered the proportion of burden on
the prosecution team that didn't have that burden
at all.

CHAIRPERSON YOUNG: Mr. Seitz, I'm just
not able to resolve this issue right now. Because
I've got to think about it and -- okay?

MR. SEITZ: That's fine.

CHAIRPERSON YOUNG: That's why I was
hoping we could just do this at a later point in
time.

MR. SEITZ: What --
MS. OKUN: Well, I thought that we spent quite a bit of time discussing this yesterday and the Chair did rule on various documents. And the only ones that weren't admitted were the ones that weren't physically provided. And those are the only ones that are still in dispute.

We do have a record. The prosecution staff has provided documents. It's the administrative record, our listed documents --

CHAIRPERSON YOUNG: Well, I know. The statutes do allow the agency to designate the record that way.

MS. OKUN: Right.

CHAIRPERSON YOUNG: I understand that.

MS. SCHAFFNER: Mr. Chairman, might I --

CHAIRPERSON YOUNG: My concern was that there were documents that Mr. Seitz did not find --

MS. OKUN: Right, and that's what this discussion is limited to, those documents that aren't found.

CHAIRPERSON YOUNG: That was my understanding.

MS. OKUN: Okay. Thank you.

CHAIRPERSON YOUNG: Right.
MS. SCHAFFNER: Perhaps a short break might help everybody refresh their memory as to what this discussion is supposed to be about. We can talk about this when we come back.

MR. SEITZ: I suggest that channel 21, or channel 20, I don't know who's back there, the tape is there.

MS. SCHAFFNER: It was a long discussion. I don't think we want to take that long of a break.

CHAIRPERSON YOUNG: Yeah. Let's take the break, okay. Five minutes.

(Brief recess.)

CHAIRPERSON YOUNG: Okay. What we're thinking of doing --

MS. OKUN: Can we wait for Mr. Briggs?

CHAIRPERSON YOUNG: Sure.

(Pause.)

CHAIRPERSON YOUNG: Okay, he's not here.

(Pause.)

BOARD MEMBER SHALLCROSS: Paging Roger Briggs; paging Roger Briggs.

(Pause.)

BOARD MEMBER SHALLCROSS: The eagle has landed.
1  CHAIRPERSON YOUNG: Okay. What -- all
2       right, Michael.
3  
4  MR. THOMAS: There he is.
5  
6  MR. BRIGGS: Where have you been?
7  
8  (Laughter.)
9  
10  CHAIRPERSON YOUNG: Okay, folks, what we
11     are going to do is continue the hearing. And the
12     reason is we probably have about three hours to
13     go, okay? And, you know, if we're lucky.
14     
15     We do have the document issue to get
16     resolved, and our attorney has advised us that we
17     really need to get that resolved before we do
18     summations and close the case.
19     
20     And so -- and I think that's good
21     advice. And I do recall in our conversations
22     yesterday with Mr. Seitz that we would go over the
23     document issue.
24     
25     But I want to go over exactly what we
26     are going to do. And with the documents, the
27     concern, as I recall, was there were some
28     documents on the disk that you prepared, or had
29     prepared at the photocopy place. And some
30     documents did not show up on that disk.
31     
32     MR. SEITZ: And I believe those are the
33     documents that are red, if I --
CHAIRPERSON YOUNG: Correct, that's right. And so we're going to get that resolved by taking a look at those documents. You're going to have to produce them. And we will deal with that -- I will deal with that with Ms. Okun and yourself or Mr. McClendon and Ms. Schaffner. And I did say I would look at those documents as to relevancy. Okay.

MR. SEITZ: Then is the -- just so we can sort of get a handle on this, I'm assuming that all the documents that have no colors on them, that all of the documents that have no colors on them are agreed to as being admitted and relevant.

MS. OKUN: I think there's a column in the -- oh, do you want to --

MS. SCHAFFNER: No.

CHAIRPERSON YOUNG: Yeah.

MS. SCHAFFNER: The document is structured such that there is a column which says, date admitted. And -- date accepted. If there's not a date in the date-accepted column, I think it is not admitted. It says --

MR. SEITZ: Okay, I see, the ones on the right-hand side.
MS. SCHAFFNER: That's right.

MR. SEITZ: Right.

MS. SCHAFFNER: Some of those dates need to be corrected, as Ms. Okun pointed out yesterday, the date is incorrect. But if it has a date in that column it means it was accepted. Otherwise it says rejected.

MR. SEITZ: Okay. Because all I want to do is make -- and thank you for that.

MS. SCHAFFNER: Certainly.

MR. SEITZ: Because I was looking at colors as opposed to column, right.

MS. SCHAFFNER: Yeah, and as I recall, the remaining issues were, were they submitted, in fact, are they present in the record. Or were they, the determination that they were not submitted incorrect. That was the first question. And then the other question was if they are present, are they relevant, and does their probative value warrant inclusion in the record as the Chair asked initially. So that maybe some --

CHAIRPERSON YOUNG: Well, that was a question I asked as to all the documents, --

MS. SCHAFFNER: That's right.

CHAIRPERSON YOUNG: -- but that is the
standard I'm going to apply to these. Okay.

MR. SEITZ: I think this -- I know I'm being picky, but I think also the Chair said that if there was a rejected document, but it was also doubled because it was in the CalCities -- I mean if we have a rejected document and we could do all our search and it ends up being in the CalCities administrative record, then I assume that --

MS. SCHAFFNER: Yes.

CHAIRPERSON YOUNG: Yes, that's correct.

And I believe Ms. Okun did say that yesterday.

MR. SEITZ: Yeah.

CHAIRPERSON YOUNG: Yeah.

MS. OKUN: That's right.

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: So I just want to make sure that the Chair is clear on the point that this is not an opportunity to submit new additional documents from anybody for any purpose. It is simply to resolve the questions we just outlined in the already -- the exhibits already attempted to be submitted.

MR. SEITZ: And then I would assume, I think we just handed the prosecution team our PowerPoint. I'm assuming at some point in time
we'll get the PowerPoint from the -- good. I just

got the thumbs-up on that, so that's great.

MS. SCHAFFNER: Yeah.

MR. SEITZ: And I'm also assuming that

all of the correspondence between your office

and -- they were joint, the ones about answer the

questions, those things have all already been

accepted into the administrative record, so that's

not going to be an issue to be resolved?

MS. SCHAFFNER: If they're in the site

file, the file for this ACL, I mean for this TSO,

for the site, they're in the record.

MR. SEITZ: Okay. And those emails are

in the site, I assume?

MS. OKUN: Well, I think that you're

referring to the staff report, the rebuttal, the

District's written response, the written answers

to Mr. Young's questions, the emailed evidence,

objections, all that's in the record.

MR. SEITZ: Okay, very good. That's

what I --

MS. SCHAFFNER: Very good.

MR. SEITZ: -- that's what -- I want to

make sure about that. And then I guess lastly

before we all say goodbye, is the Chair had
reserved some time here for us to renew our motions for a continuance. But I assume that first of all, I think a fair amount of them are going to go away as a result of this. But we still may have one or two, especially based on Mr. Grimm. But we'll have an opportunity, I assume, now to consult with him. So that may well go away, too.

CHAIRPERSON YOUNG: Yeah, if you want him to split up the closing with you, that's fine with me.

MR. SEITZ: Okay.

CHAIRPERSON YOUNG: I don't have a problem with that --

MR. SEITZ: Good, thank you.

CHAIRPERSON YOUNG: -- at all. Okay.

MR. SEITZ: Thank you.

CHAIRPERSON YOUNG: But Mr. Thomas did want to mention something about the documents because he has been involved with us in the preparation of that.

MR. SEITZ: Sure.

MR. THOMAS: Just a minor point of clarification. A couple of us have said on both sides that the documents that are missing from the
CD, I just wanted to point out that it's not just
that documents were missing from the CD.

MR. SEITZ: The hard copies, too.

MR. THOMAS: The hard copies and the
emails. If I could not find a document I listed
it as not there and recommended --

MR. SEITZ: You understand, I accept
Matt's testimony that he went through and
correlated those documents. I have no grounds,
nor do I even want to try to find grounds to
challenge that. I take that as fact.

MR. THOMAS: Okay, I didn't want anyone
to have the impression that they were submitted
either by email or in hard copy. They're just not
on the CD. We just don't -- don't have them,
couldn't find them --

MR. SEITZ: Right.

MR. THOMAS: So that's why we listed
them the way we did.

MR. SEITZ: Okay. And I think that the
resolution here, what the Chair is suggesting,
what you're suggesting, is fair.

CHAIRPERSON YOUNG: Okay. Now, the next
issue, Sheryl, we have then is I guess the motion
for continuance.
MS. SCHAFFNER: Yes.

CHAIRPERSON YOUNG: And Mr. Seitz' was based on the various due process concerns. And I know we're going to continue this, but there's going to be no more evidence or testimony by either side. That's closed.

MR. SEITZ: That, we understand that.

CHAIRPERSON YOUNG: Yeah.

MS. SCHAFFNER: Now, you had mentioned at one point, made some brief mention of wishing to call expert witnesses. And so you've presented all the witnesses you had in mind, and you no longer have a problem with that?

MR. SEITZ: If I recollect, my testimony was we wanted to have our expert attorney here.

MS. SCHAFFNER: I understand. Okay, thank you.

MR. SEITZ: Yeah. Ms. Schicker.

MS. SCHICKER: May I please state just one thing? There were some things that I was going to present in my last summation that I would like entered into the testimony today. Is that possible or not? It's not really a summation. It's things that need to be done. It's not -- I mean they were part of questions that we still
have remaining.

MS. SCHAFFNER: That's up to the Chairman.

MS. OKUN: I don't think I understand. I don't know if they want to put in more oral testimony or more documents, but either way I object. They're out of time. The time for putting in new documents is over.

MR. McCLENDON: I'm sorry, I think we can just withdraw that. I think just to understand it, what will be presented in the summation will be part of this record, the summation statements are part of the record.

CHAIRPERSON YOUNG: Oh, yeah, we are not closing --

MR. McCLENDON: Yeah.

CHAIRPERSON YOUNG: -- the hearing.

MS. SCHICKER: Well, you already have them on your disk, too, and so that's my concern, just wanted to make sure.

CHAIRPERSON YOUNG: Yeah, what we're doing, so that everybody understands, is just -- is continuing this hearing, however, there will be no new testimony by anybody, the public, the prosecution team, the CSD team.
We're going to go into summation. That is what we will start with when we can all agree on a date to do that. And from then we will have Board deliberation. And then the Board's going to decide what to do at that point.

So, --

MS. SCHAFFNER: Yeah, we should double check. There were other due process objections raised by the District's counsel. I wasn't sure, well, I'm quite sure neither the Chairman nor I fully understood what they were, and you were going -- but the Chairman left them open to the end of the hearing to revisit, perhaps thinking they'd get more clear throughout the hearing.

There was something about objecting to the scope of the ACL and its effect on the fire and water district. Do you believe, Mr. Seitz --

CHAIRPERSON YOUNG: Seitz.

MS. SCHAFFNER: Did I do it again?

Seitz, that that --

MR. SEITZ: -- what I was called in the military, what you're calling me is a compliment.

(Laughter.)

MS. SCHAFFNER: That's okay, Schaffner gets butchered a lot, too, so I sympathize.
Do you feel that your issues there have been resolved, or do you have outstanding objections on that front?

MR. SEITZ: I'm sorry, I think I lost the question.

(Laughter.)

MS. SCHAFFNER: Do you have any remaining objections that have not been addressed?

MR. SEITZ: Well, I think the one objection that we have I started off with in the hearing, was how the complaint was alleged and what was really at issue based on the responsive pleadings from the prosecution team and the complaint.

Now, I still intend to make those when we come back. And the Chair -- the way I understand it works, the Chair rules on them. And --

MS. SCHAFFNER: Well, I'm not sure I agree or understand clearly. It sounds like what you're saying --

MR. SEITZ: Well, you know --

MS. SCHAFFNER: — is that you believe that the ACL is drafted based on the evidence and argument presented by the prosecution team is not
legally found for assessing the proposed ACL.

And, no doubt, that would be a basis of the inevitable challenge that will arise from any ACL that comes out of this, I'm sure.

But is it really an objection? What are you -- are you objecting to the admission of --

MR. SEITZ: Well, just --

MS. SCHAFFNER: Let me finish my question.

MR. SEITZ: Sure.

MS. SCHAFFNER: I want to know what are you objecting to. Are you objecting to the admission of the draft ACL? Are you objecting to the admission of the draft, of the work staff's -- staff reports, or what's the objection?

MR. SEITZ: Okay. I pretty much reframed it during some exchange between myself and the Board regarding the issue of 00-131 and the -- I forget, I said it much more eloquently, I remember, during when I was talking about this. But the shell of the prohibition zone. That it was really a zone of benefit that was, in effect, a shell.

That as between the District and the prohibition zone there was no nexus for us to draw
off fines to pay fines. I'm still going to raise
that under 00-131. I know Lori's writing down
notes right now like crazy. But, that is still --
I can see the pen --

CHAIRPERSON YOUNG: She's not, actually.

MR. SEITZ: -- way over here. We're
still going to make a run that --

MS. SCHAFFNER: I'm sorry, Mr. Seitz,
this sounds like argument, not an objection. Are
you objecting to evidence? Are you objecting to a
process? Are you objecting to -- I don't
understand what you're objection to.

MR. SEITZ: Okay, well, --

MS. SCHAFFNER: Those are arguments.

You can present --

MR. SEITZ: -- let me just phrase it,
let me just phrase it this way. I'm going to have
till January to think about this, right? If you
want to send me a set of questions, on both sides,
or something like that, that you've done in the
past, I'm happy to respond.

But I'm happy to get it worked out, what
I plan to do on those objections with you before I
make them, so that you can give the heads --
whatever it takes to --
MS. SCHAFFNER: I think what we're trying to do is narrow the issues that are left for the continued hearing to be simply closing arguments and resolution of the document issues. If you don't pursue your objection in some concrete way we will have to presume it's dropped I guess is the way we'll have to leave it. And just take it as argument. Or at least that would be my advice to the Board.

MR. SEITZ: Let me just -- I was hoping that we would have the opportunity during the break to filter our arguments and see which ones that were no longer available, that we felt were taken care of by this continuance. And I'm trying to let you know that I believe that notice in an ACL complaint is a due process issue. And that's what I believe that the Chair -- what I've been trying to argue the entire time about this.

Mr. McClendon has discussed the moving target. And those things, and maybe once we go back to the documents and we watch the tapes, maybe you're right. Maybe they end up from a perspective of reflection as being argument and
not so much an issue of due process.

But I'm not sitting here today saying, okay, we're going to defer motions, and then have me tell you, without the time to reflect, which is the whole purpose of this time, what those motions are and get a ruling.

I can tell you that what we're going to do here is going to be a good faith effort. We have no interest in actually even being here, much less --

(Laughter.)

MR. SEITZ: -- much less prolonging issues that once Mr. McClendon and I, and especially with Mr. Grimm now the opportunity to weigh in on this. And the whole idea here was now Mr. Grimm gets the opportunity.

I can't sit back and tell you Mr. Grimm isn't going to say, wow, they blew this. Now I got to go to them and say, oh, it's too late. I'm mean, you can't bring it up on oral argument or on a motion. That was the whole sort of deal.

But I --

CHAIRPERSON YOUNG: Okay, but --

MR. SEITZ: But what I will tell you is that we will send you notice if you're going to do
it. So that you -- we're not here to sandbag the Board. That's why I want -- you say no surprises. I agree with that policy.

And I'm telling you that if you say, whatever day we pick, five days beforehand we have to send you written notice if we're going to raise any of these types of motions, I'm happy to send it to you, and send it to each Board Member, send it to the prosecution team, so that they're not sandbagged.

MS. OKUN: Yeah, I'd like to suggest that if we're going to do this that it be more than five days in advance, --

MR. SEITZ: That's fine.

MS. OKUN: -- and that the Board set a deadline and provide a deadline for us to respond.

MR. SEITZ: Sure. And I just, I put the five days out as a suggestion. I'm not --

BOARD MEMBER SHALLCROSS: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER SHALLCROSS: I'm a little concerned that this is going to open up the whole thing again, do all kinds --

CHAIRPERSON YOUNG: Yeah.

BOARD MEMBER SHALLCROSS: -- of motions
and objections.

CHAIRPERSON YOUNG: Yeah.

MR. SEITZ: I was --

BOARD MEMBER SHALLCROSS: Just a second.

And I think what we were trying to do was get

everything done tonight except for two items, the

summation and the Board deliberation. And it

sounds to me like now we're opening it to, you

know, possibly we're going to get another attorney

in here who's going to have his own ideas, and,

you know, rightly so. And I'm a little

concerned --

CHAIRPERSON YOUNG: All right, but --

BOARD MEMBER SHALLCROSS: - about that,

that's all. Do what you want, but --

CHAIRPERSON YOUNG: Here's the way I

looked at this. You know, he can bring a motion

anytime. He can make a request. It can be done

orally. He can state an objection. I can rule on

it at that time. Okay.

What we're trying to do is nail down

right now what is actually left from what we

started with that is a concern on the table. It

sounds like there may not be anything, and then

there may be something that you want to raise.
And then I'll deal with it at that point in time. And it may be something you'll deal with with argument. And if you think there's a defect in the pleadings, we'll take it up with a higher authority.

MR. SEITZ: And what the idea is with notice. I mean I --

MS. OKUN: Yeah, I agree. I think that there should be a cutoff date because I think we can resolve a lot of this before the hearing, particularly -- well, if it's based on something that happened today or yesterday then obviously we could and should resolve it before a continued hearing.

If something new comes up at the continued hearing then we'll have to address it at the time. But I would --

MR. SEITZ: We understand --

MS. OKUN: -- prefer to do it before.

MR. SEITZ: -- there's to be nothing new at the continued hearing. That the -- what we understand is all evidence is cut off.

CHAIRPERSON YOUNG: Right.

MS. OKUN: Right.

CHAIRPERSON YOUNG: Right, --
MR. SEITZ: On both sides.

CHAIRPERSON YOUNG: -- that's correct.

Okay, let's do this. I had mentioned to you, Mr. Seitz, January. But let me check with the Board and see, and then I didn't check -- didn't tell the prosecution team we were thinking of doing this.

MR. SEITZ: Sure.

CHAIRPERSON YOUNG: So I've just got to weigh in because this involves Board time --

MR. SEITZ: I understand.

CHAIRPERSON YOUNG: -- staff time.

Could this be done in December? It cannot be done in December, okay.

Ms. Okun, when would be the earliest we could continue this?

MS. OKUN: I'm waiting for my calendar to come up.

CHAIRPERSON YOUNG: Okay. And this is based on your schedule?

MS. OKUN: -- the holidays.

CHAIRPERSON YOUNG: I will be unavailable, myself, for part of this month, so.

(Pause.)

CHAIRPERSON YOUNG: We have no Board
meeting in January.

BOARD MEMBER PRESS: Mr. Chair, I want to remind you that you need a quorum, and so you need all five of us --

CHAIRPERSON YOUNG: Correct.

BOARD MEMBER PRESS: -- to make it.

CHAIRPERSON YOUNG: Correct.

BOARD MEMBER PRESS: And that's going to be a little tricky. I'm not sure you're going to get that figured out here, but I'm just warning you.

CHAIRPERSON YOUNG: Okay. Does everyone else on this Board have their calendars in front of them, or do -- do you have it there? Okay. How about you, Gary?

BOARD MEMBER SHALLCROSS: Just say the day, I don't care. I mean, --

CHAIRPERSON YOUNG: You don't have yours.

BOARD MEMBER SHALLCROSS: Can we do this --

CHAIRPERSON YOUNG: I'd like to -- Mr. Seitz, do you have your calendar? I mean, are you going to be involved in the closing?

MR. SEITZ: Well, --
CHAIRPERSON YOUNG: Because I'm not sure from the statements you made --

MR. SEITZ: -- probably a mystery to me as it is to you, but the -- it's late and I'm sorry, I'm probably injecting way too much humor into the situation.

But my calendar, surprisingly, is generally pretty flexible, because I'm sort of an office geek. So, I think if you pick a date or you circulate an email, I think I'm going to be the most easily accommodated. I don't have my laptop with me to --

CHAIRPERSON YOUNG: Okay.

MR. SEITZ: -- to check that.

CHAIRPERSON YOUNG: You think so?

MR. THOMAS: January 5th.

CHAIRPERSON YOUNG: January 5th?

MR. THOMAS: At 8:30 in the morning.

CHAIRPERSON YOUNG: Okay, Thursday.

MS. OKUN: And apparently the schools are out of session that week, and a lot of people that are parents aren't going to be available.

CHAIRPERSON YOUNG: Okay. Could we go to the next week, then, on the 12th? Is Thursdays a -- no?
BOARD MEMBER PRESS: This is why I said that week.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER PRESS: It gets very bad after that.

CHAIRPERSON YOUNG: For you?

BOARD MEMBER PRESS: Yeah.

UNIDENTIFIED SPEAKER: The 13th is a Friday.

BOARD MEMBER PRESS: No, I -- no, Monday, Wednesday, Friday.

CHAIRPERSON YOUNG: Are you saying just that first week of January?

BOARD MEMBER PRESS: And not that Friday.

CHAIRPERSON YOUNG: And not that Friday.

BOARD MEMBER PRESS: Um-hum.

CHAIRPERSON YOUNG: So the whole month of January --

BOARD MEMBER PRESS: It's going to get very bad.

CHAIRPERSON YOUNG: Very bad.

BOARD MEMBER PRESS: So, I mean, we can do this on email and all that, but I'm just saying, --
CHAIRPERSON YOUNG: Okay.

BOARD MEMBER PRESS: -- that's why I said that date. Unless you put it on to the February meeting. But, you know, that's --

BOARD MEMBER HAYASHI: It was suggested that we bring Les back.

CHAIRPERSON YOUNG: What's that?

BOARD MEMBER HAYASHI: I said it was commented that we should bring Les back.

(Laughter.)

CHAIRPERSON YOUNG: And then I guess Monica, too?

MS. OKUN: What about doing it at the February Board meeting? February 9th and 10th.

CHAIRPERSON YOUNG: Well, Daniel, are you available for the February Board --

BOARD MEMBER PRESS: I already blocked out the 10th because, you know, I knew that there was a Board meeting then. So, you know, if it has to be then, --

MS. OKUN: Yeah, we can do something else on Thursday afternoon, depending on the needs of the quorum.

CHAIRPERSON YOUNG: Well, does school affect you?
MS. OKUN: No.

CHAIRPERSON YOUNG: Who does it affect?

MS. OKUN: Part of our team. So far it's just the 10th, but I always reserve two days. I think we have the Monterey stormwater plan.

BOARD MEMBER HAYASHI: I'll be in Sacramento on the 9th.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: We could do it on the 10th.

BOARD MEMBER HAYASHI: On the 10th is no problem.

CHAIRPERSON YOUNG: Ms. Okun, I would like to do it January 5th, and I'm just wondering who on the staff team? Is it Ms. Marks? You have kids that'll be -- are you going to be on vacation? You won't be here?

(Pause.)

CHAIRPERSON YOUNG: All right. How is the 5th? I know that we might lose Ms. Marks. And I know you haven't been involved in this that long anyway, so you're not going to --

(Laughter.)

CHAIRPERSON YOUNG: -- there's not going to be any attachment to what happens. But I think we can all do it on the 5th. What's that?
MS. OKUN: What time --

CHAIRPERSON YOUNG: Well, I would -- how

about 11:00 on the 5th. And the reason is then we
could get through the summations. And then we
would break for lunch. We're going to go into
closed session anyway with this item. And then we
would come back out.

And then go into open deliberation with
what we want to do. So, that is what the plan is.
All right.

January 5th at 11:00 here. And the only
thing them remaining would be the documents,
right? And we've already dealt with that.

Okay, this hearing is continued, it's
not closed, it's continued. And thank everybody,
thank you for participating. And we will get this
resolved on the 5th. Thank you.

(End Tape 6B.)

(Whereupon, the hearing was adjourned,
to reconvene at 11:00 a.m., Thursday,
January 5, 2006, at this same location.)

--o0o--
CERTIFICATE OF TRANSCRIBER

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

Margo D. Hewitt
Official Transcriber

Date

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345