

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

ALSO PRESENT

Ed Moore
Monterey Mechanical

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

I N D E X

	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
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

I N D E X

	Page
Agency Policy Statements	165
Darrin Polhemus	165
Direct Examination by Ms. Okun	165
Examination by Board	171
Cross-Examination by Mr. Seitz	173
Public Comment	176
Julie Biggs	
Burke, Williams & Sorensen	177
Joyce Albright	
Taxpayers Watch	179
David Duggan	
Resident, Los Osos	180
Eric Greening	
Resident	182
Scott Kimura	
Resident, Los Osos Valley	184
Al Barrow	
CASE	187
Linde Owen	
Resident, Los Osos	189
Daniela Anon	
Resident, Los Osos	191
Alon Perlman	
Resident, Los Osos	195
Questions by Board	196
Julie Tacker	
LOCSD Director/Resident, Los Osos	200
Questions by Board	205
Chris Allebe	
Resident, Los Osos	208
Questions by Board	210

I N D E X

	Page
Public Comment - continued	
Alan Martyn Resident, Los Osos	212
Bruce Payne Resident, Los Osos	214
James Tkach Resident, Los Osos	217
Questions by Board	218
Fred Delagatta (read letter for Ted Peterson) Resident, Los Osos	220
Cynthia Hawley Parker & Hawley, LLP	223
Steve Senet LOCSD Director/Resident, Los Osos	225
John Perkins Resident, Los Osos	227
John Fouche LOCSD Director/Resident, Los Osos	228
Questions by Board	230, 232
Steve Paige Resident, Los Osos	235
Gail Mc Pherson Los Osos Technical Task Force Resident, Los Osos	240
Questions by Board	241
Vivian McNeill Resident, Los Osos	243
Questions by Board	244
Marla Bruton Coast Ocean Outfall Group	245
Wade Akle Resident, Los Osos	246

I N D E X

	Page
Public Comment - continued	
Chuck Cesena	
LOCSD Director/Resident, Los Osos	247
Questions by Board	249
Jan Di Leo	
Resident, Los Osos	250
Karen Venditti	
Resident, Los Osos	252
Richard Sadowski	
Coast Ocean Outfall Group	255
Marla Bruton	
Coast Ocean Outfall Group	257
Joey Racano	
Coast Ocean Outfall Group	259
Don Bearden	
Resident, Los Osos	262
Questions by Board	263
Barbara Akle	
Resident, Los Osos	264
Bo Cooper	
Resident, Los Osos	266
Lacey Cooper	
Resident, Los Osos	268
Richard Margetson	
Resident, Los Osos	271
Michael Moore	
Resident, Los Osos	273
Frank Galicia	
Resident, Los Osos	275
Vita Miller	
Resident, Los Osos	276

I N D E X

	Page
Resolutions	282
Document Issues	282
Outstanding Motions for Continuance Due Process Issues	295
Schedule Discussions	307
Adjournment	313
Transcriber's Certificate	314

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

2 --o0o--

3 CHAIRPERSON YOUNG: Good afternoon,
4 everybody. We are going to continue the hearing
5 we started yesterday on the Los Osos
6 administrative civil liability.

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

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

16 MR. BRIGGS: Sure.

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

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

24 The perchlorate cases which includes
25 Olin Corporation, McCormick Selph Corporation,

1 Whittaker Corporation and United Defense.

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

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

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

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

16 MR. BRIGGS: Okay.

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

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

1 of agencies, we want to get through that.

2 And we will get into the public comments
3 that are going to be made. That's item number 6.

4 Ms. Okun.

5 MS. OKUN: I think where we left off was
6 staff's cross-examination.

7 CHAIRPERSON YOUNG: Okay.

8 MS. OKUN: I think they were finished
9 with their case.

10 CHAIRPERSON YOUNG: Okay. And so before
11 we start with that, Dr. Hunter and Dr. Bowker, for
12 those of you who weren't here yesterday, have both
13 recused themselves from this item. And they put
14 that on the record yesterday. Dr. Hunter lives in
15 Los Osos, so she is precluded from participating
16 in the item. And Dr. Bowker wanted to recuse
17 himself because of his wife's past involvement
18 with the CSD Board. He just felt that that would
19 be kind of cleaner if he was not involved in our
20 decision today.

21 And these are the letters. Michael, why
22 don't you tell us what these are.

23 MR. THOMAS: Yesterday Members of the
24 Board asked for letters from Monterey Mechanical,
25 as part of the Los Osos case. And we're now

1 distributing those letters to the Board Members.

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

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

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

11 Okay, thank you.

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

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

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

23 I want to assure the parties that any
24 decision I make in this matter is going to be
25 based only on the evidence appropriate before the

1 Board in this matter.

2 And I have a suggestion that the Chair
3 might want to consider. We have a uniformed
4 policeman in the back. You might want to consider
5 one behind my chair, here.

6 (Laughter.)

7 MR. SPEAKER: I would think you'd want
8 him in front of you.

9 (Laughter.)

10 CHAIRPERSON YOUNG: Well, I don't think
11 Ms. Schicker is going to do anything, and I --

12 BOARD MEMBER SHALLCROSS: No, no, that
13 was for me.

14 CHAIRPERSON YOUNG: Oh.

15 (Laughter.)

16 CHAIRPERSON YOUNG: From doing what?

17 (Laughter.)

18 CHAIRPERSON YOUNG: Okay. Anything else
19 we need to consider?

20 Let's see, Mr. Seitz and Ms. Schicker
21 had made a request, I think, for a little
22 additional time?

23 MR. SEITZ: Right, but I agree with Ms.
24 Okun. I think we did leave it at this point, and
25 I'll defer to her, as to whether she wants to

1 conduct a cross on the witnesses that have made
2 presentations, or wait until we do our last
3 witness. And I don't have a preference, so I'll
4 leave it --

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

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

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

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

16 MR. McCLENDON: Yes.

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

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

24 Okay. And are you going to speak today?

25 Okay. Yeah, I'm going to do it again. Why don't

1 you just hand it to me.

2 Whereupon,

3 ALL PROSPECTIVE WITNESSES

4 to be called as witnesses and to testify herein
5 were thereupon duly sworn, en masse:

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

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

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

15 CHAIRPERSON YOUNG: Fine, okay.

16 MR. THOMAS: Seven minutes.

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

19 All right, go ahead. Thank you.

20 MR. SEITZ: I have a document up here on
21 the board that Mr. Buel will be testifying to.
22 It's not really clear, but for the Board's
23 reference it's at the end of exhibit 15 in that
24 packet that I provided. It's the last document,
25 so if you can't read it from the board I'm just

1 trying to give you a heads-up that there's
2 actually a written one in your documents.

3 DIRECT EXAMINATION

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

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

9 MR. SEITZ: And what does that document
10 depict?

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

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

21 MR. SEITZ: Okay, thank you. And this
22 document more or less, at least for the Bay Ridge
23 Estates, the fire department, Vista del Oro and
24 the water department is consistent with those
25 exhibits that we showed the Board regarding those

1 various zones of benefits that the District
2 operates?

3 MR. BUEL: That is correct.

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

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

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

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

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

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

24 So if there was a blowout, some type of
25 a disaster, in that fund the reserve is

1 specifically earmarked to cover those costs.

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

4 MR. BUEL: That's correct.

5 MR. SEITZ: Okay. And what is the
6 reserve balance anticipated to be as of June 30,
7 2006?

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

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

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

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

25 MR. SEITZ: And what is the purpose of

1 that reserve?

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

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

12 MR. BUEL: That's correct.

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

15 MR. BUEL: \$19,720.

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

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

23 MR. SEITZ: Okay. The next one over is
24 water, 500. And in making this questioning here,
25 we realize, and I think the prosecution staff has

1 agreed, that the water department is not at issue
2 in their ACL. But I still wanted to bring this to
3 the attention of the Board, how this fund
4 operates. And when you take a look at the
5 reserves, what they are actually made of.

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

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

12 MR. SEITZ: Thank you.

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

18 (Laughter.)

19 MR. BUEL: But the last time it was
20 audited not under Gasby-34, there was around
21 \$300,000 in liquid assets available to that fund.

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

24 MR. BUEL: Yes, sir.

25 MR. SEITZ: And that shows a fund

1 balance of \$1,231,114.

2 MR. BUEL: That's actually wastewater.

3 MR. SEITZ: I'm sorry, wastewater.

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

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

11 MR. BUEL: It is absolutely a restricted
12 account.

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

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

17 MR. BUEL: Yes, sir.

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

20 MR. BUEL: Yes, sir.

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

24 MR. BUEL: I would agree with that.

25 MR. SEITZ: And is that fund restricted?

1 MR. BUEL: Yes, that is restricted both
2 by ordinance and resolution to paying for solid
3 waste costs.

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

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

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

10 MR. BUEL: Yes, sir.

11 MR. SEITZ: That shows a balance of
12 \$111,543 --

13 MR. BUEL: Um-hum.

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

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

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

24 MR. BUEL: Yes, that is a trust fund,
25 actually, that the Board has established. Those

1 funds were inherited from the County, and they're
2 in a trust fund specifically to pay for a future
3 swimming pool for the community.

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

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

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

15 MR. SEITZ: And is that money dedicated?

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

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

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

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

24 CHAIRPERSON YOUNG: Okay. Let's just
25 see, I gave you guys another two minutes as that

1 continued. Do you need any more time with this
2 witness, Mr. Seitz?

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

10 But I do want Mr. Buel to give us the
11 history of 00-131, why it was, in his opinion,
12 ended up being that time schedule order, and the
13 subsequent actions of the District related to 00-
14 131.

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

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

19 MR. BUEL: I think I can do it in two
20 minutes, Mr. Chair.

21 CHAIRPERSON YOUNG: Okay, good. All
22 right. Both sides have an additional four
23 minutes.

24 MR. SEITZ: Thank you.

25 CHAIRPERSON YOUNG: Okay. So, I will go

1 ahead and reset this for two minutes. And, go
2 ahead, Mr. Buel.

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

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

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

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

21 It also occurred at that time that the
22 State Water Resources Control Board had renewed
23 the loan that had previously been dedicated to the
24 County of San Luis Obispo. In that order renewing
25 that loan the State Board had established a

1 timeline for construction of the project. That is
2 the timeline that was ultimately written into time
3 schedule order 00-131.

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

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

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

21 CHAIRPERSON YOUNG: All right, go ahead.

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

25 MR. BUEL: Yes, sir, they did.

1 MR. SEITZ: And is and was the District
2 in compliance with that timeline?

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

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

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

16 MR. SEITZ: And what was the response?

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

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

22 MR. BUEL: Yes, I did.

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

25 MR. BUEL: Yes, I did.

1 MR. SEITZ: And what was the response?

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

4 MR. SEITZ: Thank you.

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

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

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

11 MR. SEITZ: I did.

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

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

18 MS. OKUN: Thank you. You just --

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

21 CROSS-EXAMINATION

22 MS. OKUN: You just testified regarding
23 various funds that the District has; and you
24 indicated that those funds were restricted to
25 particular uses.

1 And when you talked about the solid
2 waste fund you said it was restricted by a
3 resolution or ordinance.

4 MR. BUEL: Um-hum.

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

7 MR. BUEL: That is correct, yes.

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

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

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

19 MS. OKUN: Yes, please.

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

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

24 Go ahead.

25 MR. SEITZ: I would like to, since, in

1 my opinion, Ms. Okun asked Bruce for a legal
2 conclusion as to why the solid waste funds are
3 restricted, I would like to give the legal
4 analysis as to why they're restricted, with the
5 Chair's concurrence, of course.

6 MS. OKUN: That's fine.

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

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

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

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

25 And when we took it over I recommended

1 to the Board very strongly, and we adopted
2 resolutions to this effect and ordinances to this
3 effect, that franchise fees were limited to
4 providing solid waste services, or related solid
5 waste services to our community.

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

12 BOARD MEMBER PRESS: Mr. Chair.

13 CHAIRPERSON YOUNG: Yes, okay.

14 BOARD MEMBER PRESS: Could I follow up?

15 CHAIRPERSON YOUNG: Go ahead.

16 BOARD MEMBER PRESS: Mr. Seitz, you've
17 been taking us down a reasoning related to the
18 discharger's ability to pay a civil liability.
19 This is what this is all about here.

20 Are you saying that essentially that the
21 CSD, because it has not built a treatment plant,
22 and because they are therefore not collecting
23 fees, it cannot be fined for a violation of
24 Porter-Cologne or the Clean Water Act. Is that
25 essentially where we're headed?

1 MR. SEITZ: No.

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

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

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

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

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

24 I am hesitant, you know, with that as my
25 basic position, and I think it's legally the

1 correct position, is there another way that the
2 ACL complaint, under different causes of action,
3 under a different worksheet, under other
4 circumstances, and you had the wherewithal -- I
5 don't know how far I can go here -- if you have
6 the wherewithal to, say, bankrupt the Bay Ridge
7 Estates fund, bankrupt the individual funds that
8 are sitting up there, you're going to hear an
9 argument from me if you try it.

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

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

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

23 BOARD MEMBER PRESS: But wouldn't that
24 be true of any situation in which a treatment
25 plant has not been built?

1 MR. SEITZ: I'm just -- I don't want to
2 argue with you because there's one rule, you never
3 argue with the judge. But I sort of feel this.
4 You're predicating your actions here today on the
5 basis of fines. That's just one of you tools.

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

11 And there's this sort of presumption
12 that the way to go about seeking enforcement of
13 00-131 is to fine the District.

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

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

24 So, I think this exercise a) is helpful,
25 because I think it educates not only this Regional

1 Board, but the audience. But I don't believe that
2 you can sit back under 00-131 and have a
3 defensible cause to bankrupt the District, because
4 you're not going to clean up the groundwater
5 basin.

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

12 BOARD MEMBER PRESS: Thank you.

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

15 MR. SEITZ: Well, I would --

16 CHAIRPERSON YOUNG: Or is this totally
17 novel.

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

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

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

1 circumstances, I don't -- probably not.

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

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

11 MR. SEITZ: I am --

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

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

21 Number two. Even if that was to -- we
22 were to somehow lose that argument, my second
23 point is that under your worksheet and your
24 analysis you have to consider the financial
25 impacts of trying to enforce 00-131. And I

1 believe that the court is not going to say that
2 bankruptcy, fining a District and placing them in
3 bankruptcy is anything but arbitrary and
4 capricious on the part of this Board, as far as --
5 I'm not limiting myself here, by the way, I hope
6 everybody realizes -- trying to enforce it upon a
7 District that is financed as this District is.

8 Because you've seen the numbers up
9 there.

10 CHAIRPERSON YOUNG: Well, --

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

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

17 CHAIRPERSON YOUNG: And I --

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

19 MS. SCHAFFNER: Mr. Chairman, --

20 CHAIRPERSON YOUNG: Yes.

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

25 CHAIRPERSON YOUNG: Seitz.

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

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

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

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

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

1 argued.

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

7 CHAIRPERSON YOUNG: Okay, --

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

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

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

25 I mean if you -- and, again, I'm not

1 going to tell you how to draft the complaint,
2 but --

3 (Audience participation.)

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

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

12 MR. SEITZ: Right. And it --

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

15 MR. SEITZ: Okay.

16 CHAIRPERSON YOUNG: Let me ask you this.
17 What fine doesn't bankrupt the CSD?

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

21 CHAIRPERSON YOUNG: Well, but that's
22 your issue and your argument. My question is,
23 you're arguing we can't bankrupt the District, but
24 certainly the District is paying bills to many
25 people. It has some discretion over its funds.

1 And I'd like to know at what level a penalty, in
2 your opinion, does not bankrupt the District.

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

8 For example, if you take the Cabrillo
9 Estates. They're not in the prohibition zone.
10 Are they going to get a legal opinion from me, or
11 99.9 percent of --

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

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

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

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

22 CHAIRPERSON YOUNG: Does that go to
23 Sacramento first?

24 MR. SEITZ: Excuse me?

25 CHAIRPERSON YOUNG: Is that collected,

1 like all property taxes, by --

2 MR. SEITZ: Correct.

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

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

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

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

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

20 Go ahead, Ms. Okun.

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

25 But this action is based on section

1 13308 of the Water Code. And that section doesn't
2 require a consideration of these factors in
3 setting the amount of the penalty in the time
4 schedule order. What it requires a consideration
5 of is the amount necessary to achieve compliance.

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

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

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

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

22 The third thing is the basis for
23 assessing a penalty on 00-131 versus assessing a
24 penalty on the basin plan prohibition. No matter
25 what we base the penalty on, it's based on the

1 District's discharges at Bay Ridge Estates, Vista
2 del Oro and the fire department. It's not based
3 on a basin-wide prohibition or discharges of other
4 residents, other than the residents in these two
5 subdivisions.

6 00-131 was based on cease and desist
7 orders which, in turn, were based on the
8 District's violations of the basin plan
9 prohibition, which are the same violations that we
10 would be referring to if we were recommending a
11 penalty under 13350.

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

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

17 MS. OKUN: Well, you --

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

20 MS. OKUN: Never mind.

21 CHAIRPERSON YOUNG: I mean that --

22 BOARD MEMBER SHALLCROSS: Point of
23 clarification --

24 CHAIRPERSON YOUNG: It's not really,
25 it's not in the ACL, --

1 MS. OKUN: Okay.

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

4 MS. OKUN: Okay, that's fine.

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

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

14 CHAIRPERSON YOUNG: Mr. Shallcross.

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

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

21 Now, on the time schedule order part of
22 the complaint, that's on the time schedule order
23 violation. And what you're saying is the
24 underlying -- is this what you're saying? The
25 underlying prohibited discharges that give rise to

1 that time schedule order, are those the same
2 entities, the same four -- entities, and not on
3 the individual homeowner violations?

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

5 BOARD MEMBER SHALLCROSS: Thank you.

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

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

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

15 MR. BUEL: I did.

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

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

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

23 MR. BUEL: I can't answer --

24 MR. SEITZ: I object on the basis of
25 relevancy. Both parties have agreed that the SRF

1 loan monies in the responses to the Chair's
2 questions are not eligible for fining.

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

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

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

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

17 MR. BUEL: Effectively, yes.

18 MS. OKUN: Regarding the time schedule
19 order, did the District ever challenge the
20 specific tasks that were in the time schedule
21 order? And I'm not talking about the due dates,
22 but the appropriateness of doing an EIR, of
23 submitting construction design plans, developing a
24 wastewater system. Did the District ever
25 challenge any of those specific tasks?

1 MR. BUEL: No.

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

5 MR. BUEL: No.

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

9 MR. BUEL: No.

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

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

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

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

21 We heard some testimony -- 53.10.

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

1 is that accurate?

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

5 CHAIRPERSON YOUNG: Okay.

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

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

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

19 CHAIRPERSON YOUNG: Okay. I think we
20 heard some testimony yesterday from Ms. Schicker,
21 if I'm not mistaken, that she feels that the
22 estimates, based on maybe new information that
23 they have, that the District has, would have
24 levels being discharged about 7.5 or 7.4 parts per
25 million. Do you have any information?

1 MR. BUEL: I have no information that
2 supports that.

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

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

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

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

25 And our concept at that point was to

1 install what we call harvest wells to remove that
2 surplus groundwater as the mound hit the
3 geographic slope of the surface water at the Bay,
4 so that we would not flood those homes.

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

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

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

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

20 MR. BUEL: Primarily --

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

23 MR. BUEL: Well, it certainly is, but
24 primarily there's a distinction under the law, and
25 I hope I'm not stomping on counsel's feet here,

1 but the distinction under the law, what was
2 litigated in the CalCities v. Regional Board
3 lawsuit following the issuance of your discharge
4 order, the Superior Court determined that this was
5 primarily a discharge project and did not require
6 a separate permit from Department of Health
7 Services.

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

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

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

21 MR. BUEL: Yes.

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

25 MR. BUEL: Well, I have the

1 environmental impact report with me. Appendix D
2 to the draft environmental impact report is an
3 analysis of liquefaction. I'm not competent to
4 predict that. But Jonathan Blanchard, who is the
5 technician that prepared that, opined at that time
6 that the liquefaction risk with this project would
7 be no greater than it is currently in the District
8 with the rainfall and the discharge from the
9 septic tanks.

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

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

15 CHAIRPERSON YOUNG: Okay.

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

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

22 MR. BUEL: Well, we did do, as President
23 Schicker testified to your Board, a series of
24 additional studies in the design phase preparation
25 for the design.

1 As I've discussed those results with
2 both Mr. Blanchard and Montgomery Watson Harza,
3 the engineers doing the design, they felt that the
4 percolation tests and the analysis of discharge
5 routing the flows from the percolation supported
6 the conclusions in the original analysis.

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

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

14 MR. BUEL: Um-hum.

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

20 MR. BUEL: Um-hum.

21 CHAIRPERSON YOUNG: And, you know,
22 there's a different conclusion one could take from
23 that graph versus the conclusion that one would
24 take from the Water Board Staff's graph, which
25 shows higher levels of nitrate.

1 Have you seen both of those graphs?

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

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

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

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

22 I agree with Mr. Miller that it has been
23 rather flat. If you look back to our first
24 samples and compare all of the samples over time,
25 you will see variations in individual wells, but

1 there doesn't appear to be currently a trend of
2 increasing contamination.

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

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

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

19 MR. BUEL: Um-hum.

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

22 MR. BUEL: Yes, it did.

23 CHAIRPERSON YOUNG: Did all the
24 Directors vote to file the lawsuit to challenge
25 Measure B?

1 MR. BUEL: I believe we reported out of
2 closed session, and I'd ask District Counsel to
3 help me here, but I believe there was a report out
4 of closed session that two of the Directors
5 objected to the special counsel that was proposed
6 to assist in that lawsuit.

7 CHAIRPERSON YOUNG: And who were those
8 Directors?

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

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

16 MR. SEITZ: Mr. Chair.

17 CHAIRPERSON YOUNG: Yes.

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

22 That we have seen up here, we've argued
23 it numerous times, the Board takes action by vote.
24 And there was a vote taken. That vote is the vote
25 of the District. Impinging on individual motives

1 of various Board Members as to how they voted or
2 why they voted, to me, is irrelevant. It's the
3 vote of the District --

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

6 (End Tape 4A.)

7 CHAIRPERSON YOUNG: -- for the record --

8 MR. SEITZ: Okay.

9 CHAIRPERSON YOUNG: -- and then in
10 closing argument you can address that if you wish.

11 Okay, you can answer the question.

12 MR. BUEL: My understanding is that both
13 Director Schicker and Director Tacker objected to
14 the use of McDonough and Allen. They felt that
15 McDonough and Allen had not adequately represented
16 the District in prior situations.

17 CHAIRPERSON YOUNG: Okay.

18 MS. OKUN: Can I ask a few follow-up
19 questions?

20 CHAIRPERSON YOUNG: Sure, give me one
21 second.

22 And how about Measure B, was there
23 any -- I mean I know what Mr. Seitz' objection is,
24 but I'm interested whether you heard any
25 statements from Ms. Schicker or Ms. Tacker with

1 respect to their intent towards Measure B.

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

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

6 CROSS-EXAMINATION - Resumed

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

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

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

21 MS. OKUN: Okay.

22 EXAMINATION BY BOARD - resumed

23 CHAIRPERSON YOUNG: Okay. General
24 question. In your opinion, was the Tri-W site
25 well engineered? Did you learn anything, you

1 know, after the plans were pulled together and
2 prior to your being put on administrative leave?
3 Was there any information that came to you that
4 you know of that might suggest that the plant had
5 deficiencies or was going to be problematic?

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

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

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

16 MR. BUEL: Um-hum.

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

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

23 The District fell out of compliance with
24 time schedule order 00-131 as a result of
25 litigation. We met the requirements for the

1 environmental impact report, for the project
2 report and for the financing. Those were all 2001
3 dates.

4 Where we fell out of compliance --

5 MR. THOMAS: Those were all compliance
6 dates in the time schedule order?

7 MR. BUEL: Yes, that is correct. Where
8 we fell out of compliance was start of
9 construction. What I went to staff in regard to,
10 with President Bowker at that time, was a request
11 immediately in the litigation phase prior to
12 actually failing to satisfy that next milestone in
13 00-131, and requested a change, because of the
14 litigation.

15 That was before the State Board changed
16 our timeline in our state revolving fund loan.
17 So, that's one set of circumstances.

18 Following the adoption of a revised time
19 schedule for the state loan, I also made a
20 request. So before and after. And after, I did
21 make the request that the time schedule order 00-
22 131 be adjusted to be consistent with the time
23 schedule order -- the time schedule milestones set
24 forth in the state revolving fund.

25 MR. THOMAS: And staff refused?

1 MR. BUEL: That is correct.

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

4 MR. BUEL: Yes.

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

7 MR. BUEL: Yes.

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

11 MR. BUEL: Yes.

12 MR. THOMAS: Okay, thank you.

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

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

25 CHAIRPERSON YOUNG: Okay. Did the

1 attempt to get a coastal development permit before
2 the Coastal Commission cause any delays?

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

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

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

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

20 So that did slow down the process at
21 that point. Also in regard to the permit, itself,
22 once we finalized the amendment to the local
23 coastal program, we immediately applied to the
24 County for a coastal development permit for the
25 project.

1 We were successful in getting a coastal
2 development permit issued by the Planning
3 Commission. But that was appealed. That was in
4 May of 2003. That was appealed, and the appeal
5 was then heard by the board of supervisors, San
6 Luis Obispo County Board of Supervisors in October
7 of 2003.

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

11 The Commission, at that time, rejected
12 the County permit and took jurisdiction. So the
13 coastal development permit was not issued -- well,
14 the approval of the coastal development permit was
15 not authorized by the Commission until August of
16 2004. And we were not actually issued the permit
17 well into 2005.

18 CHAIRPERSON YOUNG: Okay, thank you.

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

21 CHAIRPERSON YOUNG: Okay.

22 CROSS-EXAMINATION - Continued

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

25 MR. BUEL: I believe there were three

1 appellants. I believe Julie Tacker, Al Barrow and
2 Prabham Butha (phonetic) were all appellants.

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

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

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

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

13 MS. OKUN: Thank you.

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

16 MR. THOMAS: Yes.

17 CHAIRPERSON YOUNG: Go ahead.

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

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

23 MR. THOMAS: Your legal argument.

24 I think that you said that when the
25 Board adopted the time schedule order it decided

1 that \$10,000 a day was the appropriate fine if
2 there was a violation of the order?

3 MS. OKUN: Well, it determined that
4 \$10,000 a day was the amount needed to obtain
5 compliance. And the only thing that would cause
6 those penalties to be due and payable would be a
7 violation.

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

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

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

20 MS. OKUN: I don't know.

21 MR. THOMAS: Okay. Mr. Seitz.

22 CHAIRPERSON YOUNG: Yeah, go ahead.

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

25 CHAIRPERSON YOUNG: Well, you don't have

1 any more time. But I --

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

3 CHAIRPERSON YOUNG: I understand that.

4 MR. SEITZ: Okay.

5 CHAIRPERSON YOUNG: The Board can ask
6 questions of any witness at any time, and I don't
7 take it off anyone's clock. But I will give you
8 two minutes --

9 MR. SEITZ: Thank you.

10 CHAIRPERSON YOUNG: -- to do that. I'm
11 just trying to --

12 MR. SEITZ: I know.

13 CHAIRPERSON YOUNG: -- contain this.

14 REDIRECT EXAMINATION

15 MR. SEITZ: Mr. Buel, you said that you
16 had the most recent nitrate monitoring program,
17 April 2005?

18 MR. BUEL: I do.

19 MR. SEITZ: Could you turn to page 10,
20 please. Are you there?

21 MR. BUEL: I am there.

22 MR. SEITZ: Under long-term trends,
23 starting with the second paragraph, could you read
24 that into the record, please, along with the
25 monitoring well data?

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

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

13 And I'm going to shorten the reference.
14 13-L5 shows an increased TDS concentration since
15 1996. 13-Q1 shows increasing nitrate and total
16 dissolved solid concentrations between '82 and
17 '98. Nitrate as nitrogen concentrations lowered
18 at the replacement well.

19 7-Q1 increasing nitrate as nitrogen
20 concentrations between '82 and '96. 8-N2
21 generally decreasing nitrate as nitrogen and total
22 dissolved concentrations since 2002. 18-N1
23 decreasing nitrate as nitrogen concentrations
24 mostly since September 2003.

25 18-R1 increasing total dissolved solid

1 concentrations mostly since 1994. And 20-B
2 decreasing nitrate as nitrogen concentrations
3 since 2002.

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

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

9 MR. SEITZ: Thank you.

10 CHAIRPERSON YOUNG: Okay, so he doesn't
11 know. Okay, thank you, Mr. Buel.

12 Is the Board done with questioning?
13 Okay, with this witness. Thank you very much.

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

16 MR. THOMAS: Mr. Seitz, --

17 MR. SEITZ: Yes.

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

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

24 But if you're talking about during my
25 term, I can recite what was in my contract.

1 MR. THOMAS: No, no. I was trying to
2 get to whether you are representing the Board of
3 Directors, as a body, or the electorate, the folks
4 sitting behind you.

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

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

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

11 MR. SEITZ: Okay.

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

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

21 MR. SEITZ: Okay.

22 (Laughter.)

23 MR. THOMAS: The reason I'm asking the
24 question is that the legal argument that Mr. Seitz
25 is presenting seems to me, and I'm not an

1 attorney, but it seems to me he's saying you
2 cannot assess liability against the CSD for these
3 various reasons.

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

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

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

12 CHAIRPERSON YOUNG: Right, thank you.

13 MR. SEITZ: The Board pays my bills.

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

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

24 And by the way, there's a difference
25 here. Because when you're talking about the

1 assessment district, you're talking about property
2 owners. When you're talking about voting for
3 members of the Board, you're talking about
4 registered voters. And there's a difference.

5 CHAIRPERSON YOUNG: Okay.

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

8 CHAIRPERSON YOUNG: Go ahead.

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

16 MR. SEITZ: Yes.

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

23 MR. SEITZ: Okay, it's a little bit of
24 both. The electorate have the ability to
25 challenge their Board's action; same with city

1 council members; same with board of supervisors;
2 either through initiative or referendum. So they
3 are clearly a participant in the decisionmaking
4 process.

5 Our residents also, under the Brown Act,
6 are afforded public comment to our Boards when
7 they make decisions. That is their participation.

8 The Board's participation, on the other
9 hand, if they are the elected body of the District
10 they establish the policies of the District; they
11 take specific actions on behalf of the District.
12 But, again, subject to Brown Act, public comment
13 and referendum and initiative.

14 When you --

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

22 MR. SEITZ: Right, but --

23 MS. SCHAFFNER: Okay. That's --

24 MR. SEITZ: -- I just want to make sure
25 it's clear; I'm sure it's clear with this Board.

1 It is that it's the Board that makes the
2 decisions. They hear public comment. It's not a
3 popularity poll at each meeting where they say,
4 okay, how many people are for this, and how many
5 people are for that. And ---

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

8 MR. SEITZ: Okay.

9 MS. SCHAFFNER: -- make that point.

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

13 MS. SCHAFFNER: Okay, thank you.

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

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

19 CHAIRPERSON YOUNG: Okay.

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

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

24 MR. SEITZ: I think, and I'm sorry, I
25 apologize, I wasn't aware that he was not going to

1 be here today. He was not under subpoena as far
2 as I know.

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

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

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

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

25 CHAIRPERSON YOUNG: Okay.

1 MS. OKUN: Well, I'll just address my
2 question for Rob Miller to all of the District's
3 representatives.

4 CROSS-EXAMINATION OF DISTRICT PANEL

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

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

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

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

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

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

24 MS. OKUN: Is there a way that we could
25 get a copy before the proceedings are concluded in

1 case we have questions about it.

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

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

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

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

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

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

20 MR. McCLENDON: By motion we have -- and
21 that is attached as attachment A to the November
22 7, 2005 resolution. The offer presented by the
23 State and Regional Water Quality Control Board
24 which we accepted, and I stand corrected. That, I
25 believe, was done by motion.

1 And the State Board later came back and
2 said we need more than a motion. We want a
3 resolution. And so it was superseded by the
4 resolution to which it was attached.

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

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

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

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

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

21 Did you say yes?

22 MR. McCLENDON: Yes.

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

25 MS. OKUN: I have a copy of the October

1 31st motion, and a memo attached dated October
2 31st to the State Board from the District. I have
3 some copies for the Board Members and a copy that
4 we can give to the District, if you need it. I
5 think it would be easier if you had that in front
6 of you to reference.

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

12 MS. SCHICKER: Yes, that's correct.

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

15 MS. SCHICKER: Paragraph three says:
16 This agreement in no way precludes any and all
17 enforcement actions to be taken by the Central
18 Coast Regional Water Board. Nor does any
19 agreement with the State Water Board in any way
20 imply that penalties should not be imposed for
21 past or future delays in construction of a
22 complete wastewater facility."

23 MS. OKUN: On page 4 of -- well, let me
24 first ask, who wrote the memo that's attached to
25 that resolution?

1 MR. McCLENDON: It was Assemblyman
2 Blakesley, I've been told.

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

5 MR. McCLENDON: I have no knowledge.

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

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

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

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

22 MS. SCHICKER: Yes, of course we did.

23 MS. OKUN: On page 4 of the memo --
24 well, strike that, I'll let the memo speak for
25 itself.

1 There's some discussion in the memo
2 about funding options the District would pursue
3 for moving the project site. Has the District
4 looked into funding options for a different
5 project site?

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

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

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

19 MS. SCHICKER: Mr. Bleskey, please.

20 MR. BLESKEY: We looked at a wide
21 variety, COPs, but because we've been tied up with
22 all of this stuff we haven't been able to pursue
23 them in depth. We've even looked at them in depth
24 on a second proposal for bonding requirements by
25 the VSRF fund, which interestingly enough, it was

1 an impossibility for that second deal, but is not
2 ruled out for financing a project. We're still
3 looking into it.

4 CHAIRPERSON YOUNG: I just have a
5 follow-up question to that and I'll stop your
6 clock. How are you guys going to pay for doing
7 anything without the state revolving loan fund?

8 I mean I know what you just stated about
9 trying to get certificates of participation. But
10 how are you going to get any engineering done, buy
11 any property? It seems like without that money
12 you're really going down a dark tunnel.

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

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

25 CHAIRPERSON YOUNG: All right. Other

1 than the loan?

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

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

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

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

24 CHAIRPERSON YOUNG: So, I think what
25 you're saying is that your best shot at getting

1 some of this money is through claims and
2 litigation?

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

6 CHAIRPERSON YOUNG: But if a claim is
7 rejected --

8 MR. BLESKEY: Yes.

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

11 MR. BLESKEY: That's correct.

12 CHAIRPERSON YOUNG: -- correct?

13 MR. BLESKEY: That's correct.

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

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

24 MR. BLESKEY: Yes.

25 CHAIRPERSON YOUNG: -- with them.

1 Outside of the certificates of participation, is
2 there anything on the horizon?

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

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

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

9 CHAIRPERSON YOUNG: Boy.

10 BOARD MEMBER SHALLCROSS: Mr. Chair.

11 CHAIRPERSON YOUNG: Yes.

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

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

24 And what I think would be part and
25 parcel of any of that would be a 218 vote.

1 BOARD MEMBER SHALLCROSS: So even the
2 SRF is --

3 MR. McCLENDON: Correct, and that --

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

6 MR. McCLENDON: -- was a requirement.

7 And --

8 BOARD MEMBER SHALLCROSS: Okay.

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

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

21 So, they were clearly put on notice that
22 the way to really properly securitize this is a
23 218 vote.

24 BOARD MEMBER SHALLCROSS: Okay, thank
25 you.

1 CHAIRPERSON YOUNG: Okay. Ms. Okun, I'm
2 sorry that we stepped on your cross-examination,
3 but --

4 MS. OKUN: That's okay.

5 CHAIRPERSON YOUNG: -- go ahead.

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

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

18 Bear with me, I've marked this.

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

24 MR. BLESKEY: The thing about the ISA is
25 that there are so many tools in there to

1 compensate for Measure B it's absolutely
2 ridiculous. And that's the first thing they teach
3 you in a changes course is that that tool is
4 there. Changes, clauses are in contracts because
5 things change.

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

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

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

24 But it's headed off by this one
25 important sentence: The area construction

1 includes, but is not limited to, the following.
2 The key word here is that, but is not limited to.
3 That implies that that is not firm or that wording
4 would not be in there.

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

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

20 MR. BLESKEY: You mean on the --

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

24 MR. BLESKEY: Right.

25 CHAIRPERSON YOUNG: -- that says not

1 limited to, but read the whole sentence.

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

5 CHAIRPERSON YOUNG: I know that's your
6 interpretation.

7 MR. BLESKEY: Okay, the wastewater
8 collection system consisting of approximately
9 195,000 linear feet of gravity sewer mains ranging
10 in size from 8-inch diameter to 18-inch diameter;
11 790 manholes; 4700 laterals; and 28,000 linear
12 feet of force mains ranging in size from 2-inch
13 diameter to 12-inch diameter.

14 Five duplex and two triplex submersible
15 pump stations ranging in capacity from
16 approximately 130 gpm to 1900 gpm; and six standby
17 power facilities ranging in size from 30 kilowatts
18 to 300 kilowatts.

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

22 Four is the effluent disposal system
23 consisting of effluent disposal sites with
24 approximately 20,000 linear feet of subsurface,
25 horizontal, perforated pipe; 50 vertical

1 disposable wells, and approximately 63,000 linear
2 feet of disposable mains -- excuse me, disposal
3 mains -- going too fast -- and headers ranging in
4 size from 4-inch diameter to 12-inch diameter.

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

9 And there's a paragraph (c). Is
10 wastewater treatment facility construction of a
11 1.4 million gallon tertiary treatment facility
12 includes, but is not limited to, the following.

13 And then it goes on to describe the
14 plan.

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

20 MR. BLESKEY: Yes, they would.

21 CHAIRPERSON YOUNG: Okay, thank you.

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

25 MR. BLESKEY: Yes.

1 MS. OKUN: Do the construction contracts
2 include specifications?

3 MR. BLESKEY: Yes.

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

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

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

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

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

23 MR. BLESKEY: I can answer part of that.

24 CHAIRPERSON YOUNG: She just answered
25 it. She said probably not. Probably not.

1 MS. OKUN: Mr. Bleskey, yesterday you
2 referred to a letter from the State Board saying
3 that Darrin Polhemus could negotiate. Do you have
4 a copy of that letter?

5 MR. BLESKEY: Just a moment.

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

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

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

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

24 Because you guys, when you make your
25 decision, we have to go to the State Board to

1 appeal. And this mixing up is creating problems
2 for them to be able to impartial when it comes to
3 a hearing.

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

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

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

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

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

24 MS. OKUN: Well, we're not here to
25 negotiate the State Board -- the loan, so I think

1 that that's irrelevant. And in addition, the
2 District brought up the issue of the loans. It
3 was a big part of their defense. So I think that
4 that argument is a little disingenuous.

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

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

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

16 CHAIRPERSON YOUNG: Well, you're --

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

24 CHAIRPERSON YOUNG: Up at the State
25 Board?

1 MS. SCHICKER: Yes, she came up there

2 and --

3 CHAIRPERSON YOUNG: Okay, when you get

4 back up to the State Board --

5 MS. SCHICKER: Okay.

6 CHAIRPERSON YOUNG: -- you can take that

7 issue -- this issue to them and object there.

8 MS. SCHICKER: Pardon me?

9 CHAIRPERSON YOUNG: And object at that
10 point in time.

11 MS. SCHICKER: Object to that process

12 when we --

13 CHAIRPERSON YOUNG: Yeah, it's not going

14 to --

15 MS. SCHICKER: Okay.

16 CHAIRPERSON YOUNG: -- affect what's

17 happening here.

18 BOARD MEMBER SHALLCROSS: Mr. Chair.

19 CHAIRPERSON YOUNG: Yes.

20 BOARD MEMBER SHALLCROSS: I'd like to

21 ask Mr. Bleskey a question.

22 CHAIRPERSON YOUNG: Well, are you --

23 BOARD MEMBER SHALLCROSS: Never mind, --

24 MS. OKUN: Well, I thought they had some

25 letters for me.

1 CHAIRPERSON YOUNG: I'm trying to let
2 staff kind of get through.

3 BOARD MEMBER SHALLCROSS: Okay.

4 MR. SPEAKER: Is their clock still
5 ticking?

6 CHAIRPERSON YOUNG: Yes, your clock is
7 ticking.

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

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

14 MR. BLESKEY: Certainly.

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

21 Is that an accurate quote?

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

1 object.

2 MS. OKUN: Because they were hearsay.
3 I'm asking him, the speaker, if that was an
4 accurate quote.

5 CHAIRPERSON YOUNG: Okay, yeah, Mr.
6 Seitz, the articles as documents and exhibits are
7 excluded. If there are statements that were made
8 in newspaper articles, it's a proper question to
9 ask a witness if they made that statement.

10 MR. SEITZ: Then I was --

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

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

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

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

25 MR. SEITZ: On the basis that it's

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

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

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

15 MS. OKUN: We can just dispense with --

16 MS. SCHAFFNER: Then can you --

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

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

24 MR. BLESKEY: I don't mean to be
25 flippanant, but it already is. Yes.

1 MS. OKUN: And did you say that the
2 District will probably have to ask voters to
3 repeal the initiative at some point in order to
4 pick a new site?

5 MR. BLESKEY: Depends on in what
6 context; that was the conversations we were having
7 during October 24th, yeah. Was it before the
8 measure was turned over, or after it was turned
9 over? I need to know the timing on the quote.

10 Because there was a time when that quote
11 was accurate, and now it is no longer accurate.

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

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

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

22 MR. BLESKEY: No.

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

25 MR. BLESKEY: In its current context,

1 yes.

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

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

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

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

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

21 MR. BLESKEY: No, not really.

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

1 redesigning the collection system?

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

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

7 MR. BLESKEY: Your staff?

8 MS. OKUN: Yes.

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

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

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

1 new information.

2 MS. OKUN: And reevaluate it?

3 MR. BLESKEY: And reevaluate it?

4 MS. OKUN: Yes.

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

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

12 MS. SCHICKER: Yes, that's correct.

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

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

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

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

1 again? Ask me again.

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

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

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

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

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

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

21 MS. SCHICKER: I don't remember if every
22 Board member spoke about it. I remember Mr.
23 Baggett and the lady with the black hair, Sutley,
24 Nancy Sutley, and Mr. Katz speaking. I don't
25 remember the other two speaking.

1 MS. OKUN: So they didn't disagree?

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

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

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

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

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

1 I'm not sure what you're asking me.

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

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

12 Mr. Bleskey.

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

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

18 MR. BLESKEY: How that force main would
19 be designed is that normally you would have a wet
20 well type situation where you have storage
21 capacity in that wet well. Once you see a zero
22 pressure on that pipeline, those pumps shut down.
23 And what you'll get is a minimum spill. That
24 force main will probably spill onto the surface,
25 and it will be minimized.

1 The one thing that's the advantage of
2 that force main is it should be fresh, nonseptic
3 sewage rather than pumped septic sewage, that
4 other, like STEP/STEG would present.

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

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

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

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

25 MS. OKUN: And are you aware that the

1 court already rejected that challenge in the
2 CalCities lawsuit?

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

10 MS. OKUN: Thank you.

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

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

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

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

23 MS. OKUN: Ten minutes.

24 CHAIRPERSON YOUNG: Let's try to do it,
25 go ahead.

1 MS. OKUN: Oh, and we heard that Rob
2 Miller would be here at 1:30. I just have one
3 question for him.

4 CHAIRPERSON YOUNG: Go ahead.

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

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

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

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

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

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

25 And I'm just curious to see if there's

1 any way to salvage this project, which staff has
2 taken the position is the only way to get timely
3 compliance.

4 MS. SCHAFFNER: Sounds to me like -- I
5 mean certainly the different -- the prospects for
6 which site they build on has been critical to this
7 whole alleged violations, as well as defenses.

8 And the actions of the Board have
9 certainly been put at issue by both the --

10 CHAIRPERSON YOUNG: Okay.

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

13 CHAIRPERSON YOUNG: Your objection is
14 noted, but overruled.

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

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

25 And you're asking her to do exactly that

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

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

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

14 CHAIRPERSON YOUNG: Yeah.

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

17 MS. OKUN: That would be the next
18 question.

19 MR. SEITZ: Yes, and that's the whole
20 point about why my objection is in front here,
21 because now you're not only asking her how she
22 would vote, but what it would take. She's
23 prejudging -- you're asking her to prejudge the
24 testimony that would be presented at the Board in
25 order to make that decision.

1 MS. SCHAFFNER: I'd like to make one
2 suggestion. In yesterday's direct presentation by
3 the CSD -- or no, actually I believe it was in the
4 presentation by the prosecution staff, there was a
5 slide put up of a videotaped clip with a quote of
6 Ms. Schicker saying, we would never consider doing
7 this plant at this site.

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

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

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

18 MS. OKUN: I withdraw the question.

19 CHAIRPERSON YOUNG: Well, wait --

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

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

25 MS. SCHICKER: Pardon me?

1 CHAIRPERSON YOUNG: She's asked you a
2 new question.

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

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

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

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

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

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

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

18 MS. OKUN: Thank you.

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

23 CHAIRPERSON YOUNG: It's been withdrawn.

24 MS. SCHICKER: I think you would --

25 CHAIRPERSON YOUNG: She has withdrawn

1 the question.

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

3 CHAIRPERSON YOUNG: It's withdrawn.

4 MS. SCHICKER: Okay.

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

8 (Laughter.)

9 CHAIRPERSON YOUNG: Okay? All right.

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

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

14 MS. OKUN: Well, just Ed Moore.

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

17 MS. OKUN: Yes.

18 CHAIRPERSON YOUNG: Okay.

19 MS. OKUN: He's here.

20 CHAIRPERSON YOUNG: He is here? Okay.

21 REDIRECT EXAMINATION

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

1 have construction specifications?

2 MR. MOORE: Yes, it does.

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

5 MR. MOORE: Yes, they are.

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

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

12 (End Tape 4B.)

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

15 MR. MOORE: No, they don't.

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

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

21 The first was a 60-day schedule that had
22 to be submitted at a preconstruction conference,
23 which was done before we went to work. That was
24 to cover the first 60 days of the work. And then
25 it also showed large blocks of time for our

1 overall plan for the project until completion.

2 And that was submitted and reviewed by the
3 construction manager.

4 After that -- that's to allow work to
5 start on the project. That's typical in my
6 experience that that requirement's in a
7 specification.

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

12 We had not reached that 45-day timeframe
13 before the District suspended work. And
14 therefore, we stopped producing that schedule.

15 But there is a 60-day schedule that
16 showed large blocks of time throughout till the
17 end of the contract.

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

23 MR. MOORE: That's correct. The
24 schedule that we would have submitted would have
25 probably been close to 1000 activities. And that

1 would have shown the milestones that were required
2 by the contract.

3 There was an interim milestone of 550
4 days where the treatment plant had to reach
5 substantial completion and be operational. If we
6 didn't make that milestone we were in danger of
7 \$2000 a day liquidated damages.

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

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

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

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

25 MS. OKUN: Were you here yesterday when

1 Mr. Bleskey testified that the work under the
2 contract was front-loaded?

3 MR. MOORE: Yes.

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

7 MR. MOORE: I heard that testimony, yes.

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

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

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

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

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

24 MR. MOORE: I have no idea. There's too
25 many factors that would come into play.

1 MS. OKUN: Thanks.

2 CHAIRPERSON YOUNG: Any other question?

3 MS. OKUN: I have nothing further.

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

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

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

11 CHAIRPERSON YOUNG: Okay.

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

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

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

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

25 CHAIRPERSON YOUNG: I'd like to see a

1 copy of the dismissal.

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

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

7 MR. SEITZ: Right. We have that here.

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

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

14 CHAIRPERSON YOUNG: Yes.

15 MR. McCLENDON: No, there's not.

16 CHAIRPERSON YOUNG: Okay. Please
17 produce it.

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

20 CHAIRPERSON YOUNG: Okay.

21 MR. SEITZ: But I have to respond to Ms.
22 Okun's statements. She can submit them, but I
23 think we have a huge relevancy issue here on
24 submitting documents, quite frankly, that are
25 post-October 6th.

1 The ACL complaint was -- everybody has
2 to remember this, and I think Ms. Schicker has
3 testified to it -- the complaint was filed and
4 served on October 6th. And it seems to me that
5 we're discussing a lot of evidentiary issues that
6 occurred after that date.

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

12 CHAIRPERSON YOUNG: Okay, --

13 MR. SEITZ: -- because --

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

21 So, --

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

1 alleged violation.

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

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

10 CHAIRPERSON YOUNG: Seitz.

11 MS. SCHAFFNER: -- Seitz has outlined.

12 MR. SEITZ: Okay. And I have --

13 (Pause.)

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

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

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

25 MS. OKUN: Right, and then we proceed

1 with Darrin.

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

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

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

12 CHAIRPERSON YOUNG: That's the
13 dismissal.

14 BOARD MEMBER SHALLCROSS: Oh, okay, that
15 also.

16 CHAIRPERSON YOUNG: Okay.

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

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

23 CHRISTINE ROBERTSON
24 was called as a witness herein, and after first
25 having been duly sworn, testified as follows:

1 CHAIRPERSON YOUNG: Thank you. How's
2 that for ad libbing?

3 (Laughter.)

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

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

8 CHAIRPERSON YOUNG: Yes, go ahead.

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

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

16 CHAIRPERSON YOUNG: Okay. Is this your
17 writing?

18 MS. ROBERTSON: Yes, it is.

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

24 MS. ROBERTSON: Correct.

25 CHAIRPERSON YOUNG: Okay. Do you know

1 who drafted that?

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

4 CHAIRPERSON YOUNG: Okay. Any questions
5 by the Board?

6 Okay, thank you very much.

7 MS. ROBERTSON: Thank you.

8 MR. SEITZ: Mr. Chair.

9 CHAIRPERSON YOUNG: Yes.

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

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

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

18 CHAIRPERSON YOUNG: Go ahead, Mr.
19 Miller.

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

23 MS. OKUN: I think he was here
24 yesterday.

25 CHAIRPERSON YOUNG: Yeah. And, Mr.

1 Miller, you're still under oath.

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

4 CROSS-EXAMINATION

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

7 MR. MILLER: No, ma'am.

8 MS. OKUN: Thank you.

9 (Laughter.)

10 CHAIRPERSON YOUNG: Next time bring a
11 bigger book.

12 (Laughter.)

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

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

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

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

1 have some questions --

2 CHAIRPERSON YOUNG: Yeah, we still have
3 questions.

4 Yeah, the Board has not -- what we have
5 done at this point is we have concluded with
6 cross-examination of CSD's witnesses by staff.

7 And so we would next get into policy
8 statements by representatives of agencies, and
9 then public comment.

10 MR. SEITZ: Mr. Chair.

11 CHAIRPERSON YOUNG: Yes.

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

14 CHAIRPERSON YOUNG: Yes, he should.

15 MR. SEITZ: Okay.

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

18 MR. SEITZ: I was just --

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

23 CHAIRPERSON YOUNG: And I think we have
24 some questions.

25 MS. SCHAFFNER: Okay.

1 CHAIRPERSON YOUNG: I was just saying
2 that we've concluded with that portion of the list
3 of things, and the next one will be policy
4 statements.

5 But some of the Board Members do have
6 questions.

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

12 CHAIRPERSON YOUNG: Okay.

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

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

20 CHAIRPERSON YOUNG: Okay.

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

24 CHAIRPERSON YOUNG: Okay. When do you
25 have to leave here?

1 MR. MILLER: Not until about as late as
2 3:00.

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

5 MR. MILLER: Okay.

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

8 MR. MILLER: Okay. All right.

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

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

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

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

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

20 MR. BRIGGS: Okay.

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

23 MR. BRIGGS: Thank you.

24 CHAIRPERSON YOUNG: Is that correct,
25 Michael?

1 MR. THOMAS: (Affirmative head nod.)

2 CHAIRPERSON YOUNG: Okay. But, -- they
3 are, okay.

4 (Whereupon, at 1:35 p.m., the hearing
5 was adjourned, to reconvene at 2:30
6 p.m., this same day.)

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1 AFTERNOON SESSION

2 --o0o--

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

6 (Pause.)

7 CHAIRPERSON YOUNG: Okay, is everybody
8 ready? Let's -- okay, Ms. Okun, are you ready?
9 Ms. Okun? Ms. Okun.

10 MS. OKUN: Not yet.

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

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

18 MR. SEITZ: I am.

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

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

25 CHAIRPERSON YOUNG: Your microphone.

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

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

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

14 CROSS-EXAMINATION - resumed

15 MS. OKUN: The settlement agreement
16 between the District and CASE regarding various
17 lawsuits provides that the District will pay
18 \$125,000 to Al Barrow.

19 My question is what fund that money came
20 out of?

21 MR. SEITZ: And the relevance?

22 MS. OKUN: Well, the District spent
23 several hours explaining that it had no funds
24 available to pay penalties. But it did have funds
25 available to settle this litigation. So I'm

1 wondering how funds were available for that
2 purpose and not for purposes of paying penalties.

3 CHAIRPERSON YOUNG: Please answer the
4 question.

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

11 CHAIRPERSON YOUNG: Was payment made?

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

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

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

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

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

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

1 issued?

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

4 CHAIRPERSON YOUNG: Okay.

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

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

11 BOARD MEMBER SHALLCROSS: Who would
12 know?

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

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

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

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

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

25 BOARD MEMBER SHALLCROSS: Is Mr. Bleskey

1 coming back?

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

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

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

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

12 MR. SEITZ: Mr. Chair, --

13 CHAIRPERSON YOUNG: Yes.

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

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

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

23 (Laughter.)

24 CHAIRPERSON YOUNG: I guess not. Go
25 ahead, you can -- you can leave. If you don't

1 mind staying here till 3:00 and then leaving, that
2 would be great, just walk right out. In case
3 something does pop up.

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

6 MR. BLESKEY: Yes, sir.

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

9 CROSS-EXAMINATION

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

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

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

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

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

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

25 MS. OKUN: My question was whether

1 you're using SRF loan proceeds to pay the
2 settlement.

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

7 MS. OKUN: Okay.

8 MR. BLESKEY: Specifically the design
9 reimbursements.

10 BOARD MEMBER SHALLCROSS: Mr. Chair.

11 CHAIRPERSON YOUNG: Yes, Mr. Shallcross.

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

15 MR. BLESKEY: Yes, sir.

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

19 MR. BLESKEY: Yes.

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

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

24 BOARD MEMBER SHALLCROSS: For the sewer
25 project.

1 MR. BLESKEY: Yes, sir.

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

5 MR. BLESKEY: Yes, sir.

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

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

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

20 BOARD MEMBER PRESS: Mr. Chair, --

21 CHAIRPERSON YOUNG: Yes.

22 BOARD MEMBER PRESS: -- I don't think
23 the question's been answered, at least not to my
24 satisfaction. I'd like to know where those monies
25 came from, what restrictions they have on them.

1 Are they monies that you have to reimburse the
2 State Board? Are they a part of the loan? How is
3 it, please explain to the Board and the public how
4 is it that you can pay one settlement out of that,
5 but you couldn't pay another settlement out of
6 that fund, if that's what, indeed, you are
7 claiming.

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

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

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

25 The original money was bond money. Now

1 the remainder of the bond money is intermingled
2 with the money that came from the wastewater SRF
3 loan. And because it's in question and in
4 contention, that's why it's a little bit difficult
5 for us to answer the question completely.

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

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

17 BOARD MEMBER PRESS: Thank you.

18 MS. OKUN: Just so I can clarify, my
19 understanding of what the District is saying is
20 that basically money is fungible. So the District
21 had an initial disbursement from the State Board
22 loan. Some of it went to pay contractors' costs,
23 and the rest of it went to pay money that the
24 District had basically pre-expended from other
25 sources and paid back the District.

1 So those monies in fund 6000 are no
2 longer State Board fund proceeds; they're the
3 moneys that were paid back to the District and is
4 now the District's money. Is that the District's
5 position?

6 MS. SCHICKER: Just a moment.

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

11 By the way, I've moved these documents
12 into the record. "The SRF installment sales
13 agreement loan contract defines reimbursable
14 project costs as allowable costs under the
15 statute. Undefined, but presumably, 33 USCA
16 sections 1381-1387 and Water Code section 13475
17 through 13485, in the policies for implementing
18 the state revolving fund for construction of
19 wastewater facilities, adopted on February 16,
20 1995, as amended."

21 "The September 2005 policy and the
22 February 1999 policy exclude all other items not
23 included in the construction contract except
24 allowances. The construction contracts do not
25 provide for payment of administrative civil

1 liability, nor do any provisions in the cited
2 statutes."

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

7 That's the District's response.

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

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

20 MS. OKUN: Okay, well --

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

23 MR. SEITZ: It's the opinion of Ann
24 Hartridge, but it's also the opinion of the
25 prosecution team.

1 MS. OKUN: Right, and that's still my
2 opinion, that the District can't turn in the ACL
3 to the State Board and ask the loan to reimburse
4 any penalties that this Board advises -- or
5 imposes.

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

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

16 BOARD MEMBER SHALLCROSS: Can I just
17 offer some --

18 CHAIRPERSON YOUNG: Yes.

19 BOARD MEMBER SHALLCROSS: So, according
20 to what you're saying if let's say the entire
21 wastewater plant cost \$50 million and the state
22 said, well, we'll -- you have to pay for it, but
23 we'll reimburse you with this SRF loan. And
24 instead of just coming up with a little bit of
25 money you have to come up with the \$50 million.

1 You pay the \$50 million and build the
2 plant. And then the state gave you the SRF loan.
3 Are you saying that that money, the \$50 million
4 the state gave you would still be subject to SRF
5 requirements to build another plant?

6 MR. SEITZ: I believe --

7 BOARD MEMBER SHALLCROSS: This is sort
8 of confusing.

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

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

23 And, I --

24 CHAIRPERSON YOUNG: You know, Mr. Seitz,
25 those were my questions, as I was preparing for

1 the hearing. I developed them to kind of help me
2 with fleshing out, you know, what was what.

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

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

8 MR. SEITZ: Okay.

9 CHAIRPERSON YOUNG: They are part of the
10 record.

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

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

23 CHAIRPERSON YOUNG: Mr. Seitz, --

24 MR. SEITZ: Again, I make a motion for a
25 continuance.

1 CHAIRPERSON YOUNG: Okay, denied. And
2 let me just say one thing. There was no
3 stipulation made between your team and the
4 prosecution team. You may be in agreement on
5 certain facts based on these two sets of
6 documents.

7 But it appears that testimony that we
8 have received during the hearing has cast some
9 different perceptions on maybe what the answer
10 might be as to how those funds could be used.

11 So I think it's very relevant. But your
12 objection is noted for the record, thank you.

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

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

22 MR. McCLENDON: Mr. Chairman.

23 CHAIRPERSON YOUNG: Yes.

24 MR. McCLENDON: John McClendon.

25 CHAIRPERSON YOUNG: Yes.

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

6 May I make those responses to this
7 settlement agreement?

8 CHAIRPERSON YOUNG: Sheryl, --

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

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

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

17 MR. McCLENDON: Against surprise
18 testimony and exhibits.

19 MS. SCHAFFNER: -- surprise testimony.

20 MR. McCLENDON: Yes.

21 MS. SCHAFFNER: Okay, now I recall.

22 MR. McCLENDON: Yes.

23 MS. SCHAFFNER: And I think this is a
24 question for the Chair to consider. And I suppose
25 the question would be does the CSD's documents

1 before us now, documenting their abandonment of
2 the challenge to Measure B, which inhibits their
3 ability to comply with the time schedule order, is
4 that information that was not previously available
5 to the Board properly admitted at this late date.
6 Is it prejudicial; is it relevant.

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

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

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

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

1 MS. SCHAFFNER: I do.

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

5 MS. SCHAFFNER: Let me pull up the reg.

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

11 MS. SCHAFFNER: Yeah.

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

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

17 CHAIRPERSON YOUNG: Right?

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

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

25 MR. McCLENDON: Okay, thank you.

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

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

9 CHAIRPERSON YOUNG: Okay.

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

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

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

18 CHAIRPERSON YOUNG: Okay, go ahead.

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

22 CHAIRPERSON YOUNG: And what page are
23 you on?

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

25 CHAIRPERSON YOUNG: On page 2 under the

1 heading agreement. And somehow this dovetails
2 into what happened at the State Water Board?

3 MR. McCLENDON: Absolutely. Okay, at
4 the time we were in negotiations with -- initially
5 what had been discussed was the initiative is
6 valid, procedurally and substantively, period.
7 And then it went to 2, okay.

8 With our negotiations with the State
9 Board, the State Board, and you've seen that in
10 the terms sheet that we now know Darrin Polhemus
11 prepared, there was a requirement for us to
12 conduct a election to rescind Measure B.

13 The key on that was we wanted to move
14 quickly on that. We wanted to avoid problems with
15 CASE and Al Barrow in the future. Initially we
16 had talked with the County and County Counsel on
17 stipulating to a judgment hopefully to get this in
18 as a stipulated judgment.

19 The importance here was number 2 saying,
20 quote: The District can, itself, conduct any
21 elections that may be required in order to comply
22 with the voting requirements set forth in the
23 initiative." Unquote.

24 Measure B says that it cannot be
25 modified, rescinded, whatever, except by a vote of

1 the people. If we were to have the vote of the
2 people being conducted through the County and the
3 usual process, for example the way Measure B was
4 initially done, that period, I believe, was
5 between 88 and 100-and-something days, 115 or '20.

6 What we're talking about there is three
7 to four months. What we wanted as a concession
8 here to expedite things with the State Board in
9 our negotiations was we wanted a concession from
10 the opponents that we could conduct it by mail
11 ballot.

12 There's a case on point on this out of
13 San Diego that would allow us to do this thing.
14 It's not violative of the requirement of secret
15 ballot. So that was one of the considerations
16 here.

17 The second one was, as you know, one of
18 the problems of Measure B that is hugely
19 problematic is Measure B talks about this voting
20 on siting. And the voting on siting it says that
21 the site has to be selected by a majority vote.
22 Doesn't say plurality. That's hugely problematic
23 if you have multiple sites.

24 What we got was a concession of CASE
25 was, under 1, under that -- the 1 in parentheses,

1 quote, the phrase, quote, "All alternative
2 proposals for siting of a wastewater treatment
3 facility" unquote in section 2.08.04(c) of the
4 initiative does not include sites that are either
5 (i) excluded by the initiative, itself, or (ii)
6 determined by the District's Board of Directors
7 not to be feasible, as that word is defined in
8 California Code of Regulations Title 14, 15364."
9 Unquote.

10 The point on that being that we got a
11 concession from them that the Board could make a
12 preliminary screening of the EIR alternatives, and
13 based upon 15364, select the two that were
14 feasible and put those on to enable us to obtain a
15 majority vote.

16 So there was a logic here that was going
17 on. One, if we had to have the Measure B on a
18 siting thing, that we could do that and not run
19 into a morass of having a plurality rather than a
20 majority.

21 Secondly, the number two under there, to
22 do it by mail ballot, that was to facilitate a
23 fast resolution under what we thought was going to
24 be a negotiated settlement with the state
25 revolving fund.

1 MS. SCHAFFNER: May I ask a follow-up
2 question on that?

3 CHAIRPERSON YOUNG: Of course.

4 MS. SCHAFFNER: So that's the benefits -
5 - the key benefits you derived was to streamline
6 and improve and shorten the vote approval process,
7 as best -- is that what you're saying?

8 MR. McCLENDON: Yes, there was a logic
9 here.

10 MS. SCHAFFNER: Yeah, I'm following you.
11 And what you gave up in exchange for that was an
12 appeal before the Court of Appeal or/and an
13 interlocutory ruling before the Superior Court
14 which found that the Measure B was invalid?

15 MR. McCLENDON: No, I would correct that
16 somewhat. What we gave up was we gave up having
17 to appear before the Court of Appeal to answer and
18 respond to the writ that they issued against Judge
19 Hilton. The Court of Appeal ordered Judge Hilton
20 to appear before the Court of Appeal and answer as
21 to why his ruling should be allowed to stand.

22 It was issued in what's called an order
23 to show cause. In all the years I've done
24 appellate work I've seen stays issued regularly by
25 the Court of Appeal. I've never seen one where

1 it's combined with what's the equivalent of an
2 alternative writ issued ordering the Judge, an
3 order to show cause against the Judge, himself.

4 CHAIRPERSON YOUNG: So maybe the
5 Appellate Court just wanted to hear from the
6 Judge?

7 MR. McCLENDON: It could.

8 CHAIRPERSON YOUNG: I mean how can you
9 read into that --

10 MR. McCLENDON: Well, --

11 CHAIRPERSON YOUNG: -- any more beyond
12 that?

13 MR. McCLENDON: Well, we can't. But we
14 also have other case law, and if you'll give me a
15 moment I can hopefully find it --

16 MS. SCHAFFNER: Perhaps in the meantime,
17 Mr. Seitz could -- Seitz, I keep messing that up,
18 my apologies -- Mr. Seitz could -- do you have
19 experience with initiative law? It doesn't seem
20 that uncommon for the Court of Appeal to presume
21 in favor of allowing a vote to happen before it's
22 determined whether the measure was valid because
23 of the strong presumption in favor of letting
24 votes continue. Rather than cancel the right to
25 vote on something while they're trying to figure

1 out if it's valid or not. That seems pretty
2 standard.

3 MR. SEITZ: You know, let me do this. I
4 would just as soon defer those questions to
5 District Legal Counsel. And I say this in all
6 sincerity.

7 As the Board's well aware, my signature
8 is on a lot of documents opposing Measure B. I'm
9 the one that recommended to the Board the
10 opposition to Measure B. Lawyers can differ, as
11 we all know.

12 I believe that in my heart of hearts the
13 more relevant testimony is going to come from the
14 District's Legal Counsel than their former counsel
15 on that particular issue.

16 MS. OKUN: If I could just state what
17 the District's position was in the litigation at
18 the time, and what the trial court found.

19 MS. SCHAFFNER: That could be helpful.

20 MS. OKUN: It was an issue in the trial
21 court whether a pre-election challenge was
22 appropriate in this case. The District's position
23 at the time was that it was appropriate because
24 Measure B was so clearly facially invalid. The
25 trial court agreed, and the appellate court

1 issued, I'm not sure, an interlocutory stay or
2 extraordinary stay, I'm not sure of the exact name
3 of the stay. But because the time periods were so
4 short, the election was held while that stay was
5 in effect.

6 MS. SCHAFFNER: That was my
7 understanding.

8 MR. McCLENDON: May I respond?

9 CHAIRPERSON YOUNG: Go ahead.

10 MR. McCLENDON: I found the case law on
11 this. One case is Assembly v. Deukmejian,
12 10Cal.3d.638. It's a 1982 case where the court
13 said, quote: It has long been our judicial
14 philosophy to apply a liberal construction to the
15 power of initiative and referendum wherever it is
16 challenged in order for the right to be not
17 improperly annulled. If doubts can reasonably be
18 resolved in favor of the use of this reserve power
19 courts will preserve it." Unquote.

20 Similarly, last summer in a case that I
21 was prevailing party on that was published in
22 September of 2005, Walmart Real Estate Business
23 Trust v. City Council of the City of San Marcos,
24 132CalAp.4th, 614. Here the court, Walmart sued
25 to a pre-ballot challenge. I represented the

1 sponsors of the initiative. It's a similar exact
2 posture, except it was a referendum instead of an
3 initiative.

4 It went to the trial court. The trial
5 court taking the Debutary Standard, as Sheryl has
6 mentioned, court said we don't like to have pre-
7 ballot challenges. It went on the ballot; it
8 succeeded.

9 And here the appeal was about attorneys
10 fees, awarding attorneys fees to a successful real
11 party defendant in one of these. I was denied
12 attorneys fees at the trial court level. At the
13 appellate court level, the appellate court set
14 aside the trial court ruling and said these folks
15 that were the sponsors that were sued to keep it
16 on the ballot are entitled to their attorneys fees
17 under 1021.5.

18 And if I could read from this, it says,
19 quote: The state constitutional right of
20 initiative or referendum is one of the most
21 precious rights of our democratic process. These
22 powers are reserved to the people, not granted to
23 them. Thus, it is our duty to jealously guard
24 these powers and construe the relevant
25 constitutional provisions liberally in favor of

1 the people's right to exercise the powers of
2 initiative and referendum." Unquote.

3 MS. SCHAFFNER: If I could just try and
4 save all of us a little bit of time. The only
5 point I was trying to derive here is that what you
6 gave up was any possibility of continuing on what
7 appeared to be a potentially successful path, at
8 least once after the vote was done. The interim
9 ruling was the vote should happen. But they did
10 not address the merits. The lower court had so
11 far said on the merits that it looked like it was
12 invalid. And what you gave up in exchange for a
13 streamlined process is the ability to continue on
14 the path to challenge the measure.

15 And it's debatable whether you would
16 have succeeded or not. I'm sure the former CSD's
17 counsel thought you could. Now maybe you feel
18 like you couldn't. It's not up to us to resolve
19 whether you would have won or not, today. It's
20 just a matter of what came out of it.

21 I'm more interested, though, in what is
22 the effect of the -- what is the current effect on
23 Measure B. Is it -- according to your
24 understanding by this settlement and dismissal.

25 MR. McCLENDON: Well, first off, I want

1 to just say I agree with Chairman Young here that
2 I don't have a crystal ball to know how the Court
3 of Appeal would have ruled on that. I mean,
4 frankly, you know, as a lawyer, I had some
5 heartburn just because I had never seen an OSC
6 issued in conjunction with a stay.

7 I talked around to a lot of appellate
8 lawyers. I'm trying to read the tea leaves,
9 trying to find the crystal ball. I don't have it.
10 My concern here was the Hippocratic oath for
11 lawyers, do thy client no harm.

12 And I'm looking at the prospect here of
13 if this client were not to prevail, knowing that
14 the bias here in the court is to try and bend over
15 backwards to uphold initiatives and referenda, and
16 knowing also that Measure B had a severance clause
17 in it. And courts typically would rather prune an
18 offensive initiative or referendum rather than
19 outright set it aside in its entirety.

20 So knowing that that option was open,
21 and knowing the exposure of this client to
22 potentially significant attorneys fees, to try
23 and, one, minimize that exposure; and two, try and
24 get something out of it that could potentially
25 significantly benefit vis-a-vis our attempt to

1 deal with the state SRF loan.

2 MS. SCHAFFNER: Did I just understand
3 that -- and maybe I'm over-simplifying, but you
4 were concerned that you might have to pay
5 attorneys fees, so you agreed to pay attorneys
6 fees to cut that risk off?

7 MR. McCLENDON: Well, okay, I should
8 explain how this works. 1021.5, there's a whole
9 procedure for this. And first off, you set a
10 lodestar, and the lodestar is not at public agency
11 rates. It's at prevailing rates of private
12 practice.

13 Then secondly there's what's called a
14 multiplier, it's a bounty, it's a bonus that can
15 be applied on top of that.

16 MS. SCHAFFNER: Can --

17 MR. McCLENDON: Okay, so you can get
18 these rates up. I've had it where the rates go
19 \$400-plus an hour to the equivalent rate.

20 What we were able to do here is -- I'll
21 just be blunt here -- we were able to grind them
22 down and say, look, we know you represent public
23 agencies, we're not going to take the lodestar.
24 We've got the language in here saying you're not
25 going to get a multiplier, you're going to get

1 about the same here as if you'd done this for one
2 of your city clients.

3 MS. SCHAFFNER: One last question on
4 this point that I have is when this was signed on
5 November 16th, it seems to me that that very same
6 day, and this is a question for Mr. McClendon.
7 Mr. McClendon, I believe, stated to the State
8 Board in its hearing that the CSD had not, when
9 asked whether the CSD had decided what it was
10 going to do about Measure B, whether it was going
11 to oppose it, Mr. McClendon told the Board it had
12 not been decided. The Board was going to meet
13 that evening or the next evening to decide what
14 its position would be.

15 Yet, this settlement agreement
16 dismissing the case was signed and filed the same
17 day. And correct me if any of those facts are
18 wrong. It doesn't --

19 MR. McCLENDON: I don't recall my --

20 MS. SCHAFFNER: Okay.

21 MR. McCLENDON: -- what I -- I know it
22 was very heated with Mr. Katz. He yelled at me a
23 lot. And I don't know what I said --

24 MS. SCHAFFNER: But they more --

25 MR. McCLENDON: I probably got reactive

1 and defensive after he --

2 MS. SCHAFFNER: I understand. Perhaps
3 more important to us, to this proceeding, is the
4 CSD has been putting at issue in several points in
5 this proceeding what the positions are of the
6 Board and how they're taken. Was that taken --
7 when was that authorization given for the
8 settlement by the CSD Board? In what form?

9 MR. McCLENDON: Well, there was an offer
10 of settlement that was made -- by the way, it
11 would be easier, I think, just to put a -- I think
12 we have a press release on this that we could just
13 give you that states -- do we have that?

14 MS. SCHAFFNER: if you could just recall
15 when it was authorized and how, that's probably
16 all I really need to know.

17 MR. McCLENDON: I probably need to
18 refresh my memory, looking at this. We've had so
19 many meetings they all run together, trust me.

20 MS. SCHAFFNER: I know, I understand
21 that.

22 MS. SCHICKER: I have some partial
23 response to that, too, that I'd like to offer
24 while he's looking, if you don't mind.

25 I was also under testimony that morning

1 on December 16th. And one of the requirements of
2 the State Water Board to our Board was to file an
3 amicus brief.

4 Both Mr. McClendon and myself, both
5 asked the State Water Board, and this was a big
6 part of our negotiations, how could we meet that
7 request. We want to preserve the loan. We want
8 to keep the loan. We'll do whatever they say so
9 we can get the loan, we'll try.

10 File an amicus brief. We could not file
11 an amicus brief if we were the party that was
12 suing. We were trying to think of some creative
13 way that we could file an amicus brief quickly.
14 Well, you can't do it if you're filing the suit.

15 So, that's why we went into December
16 16th with that testimony right in to them. Why
17 are you asking us to file an amicus, because we
18 are the party.

19 So, that's important, too. Believe me
20 when Mr. McClendon is saying we were trying to
21 look at every angle, that is the truth. We were
22 trying to work with the state in any way possible.

23 MS. SCHAFFNER: Ms. Schicker, do you
24 remember when the CSD gave the direction --

25 MR. McCLENDON: Can I --

1 MS. SCHAFFNER: -- to its counsel --

2 MR. McCLENDON: Can I answer generally?

3 MS. SCHAFFNER: -- to dismiss --

4 MR. McCLENDON: I know it was in -- I
5 know it was in October we initially looked at it.
6 There was an offer made. There was a lot of back-
7 and-forth as you might expect in settlement
8 discussions. There was some talk with the County
9 and Dougan at County Counsel's Office. There was
10 some delay on waiting for the County to agendaize
11 it for their closed session, and whether or not
12 they were going to be in on a stipulated judgment
13 of not.

14 And then there was a fight over the
15 amount of the attorneys fees --

16 MS. SCHICKER: That's all I --

17 CHAIRPERSON YOUNG: When you speak of
18 the stipulated judgment, do you mean with respect
19 to Judge Hilton's order becoming a stipulated
20 judgment?

21 MR. McCLENDON: No, it was that the
22 parties to the litigation would have entered into
23 a stipulated judgment for Judge Hilton to enter.
24 Because understand, please, Judge Hilton did not
25 issue this essay yet as a final judgment. I

1 believe this was interlocutory, and under the law
2 you cannot appeal from an interlocutory judgment.

3 CHAIRPERSON YOUNG: Does it say
4 interlocutory on the caption page?

5 MR. McCLENDON: It does.

6 MS. OKUN: Yes, it does.

7 MS. SCHICKER: It does.

8 CHAIRPERSON YOUNG: Okay.

9 MS. SCHAFFNER: That's all I have.

10 CHAIRPERSON YOUNG: Okay. Mr. Barrows,
11 I'd like you to come to the witness stand, sir;
12 I'd like to ask you a few questions, if you would.
13 You, yes. Thank you. Barrow. Hi, Mr. Barrow.

14 MR. BARROW: My name is Al Barrow; I
15 live in Los Osos.

16 CHAIRPERSON YOUNG: Okay, and --

17 MR. BARROW: And I assume that I'm
18 sworn, is that correct?

19 CHAIRPERSON YOUNG: Yeah, did you take
20 the oath?

21 MR. BARROW: No, I did not.

22 CHAIRPERSON YOUNG: Okay.

23 Whereupon,

24 AL BARROW

25 was called as a witness herein, and after first

1 having been duly sworn, was examined and testified
2 as follows:

3 MR. BARROW: I do.

4 CHAIRPERSON YOUNG: Okay, thank you.

5 MR. BARROW: So help me, God.

6 CHAIRPERSON YOUNG: Okay.

7 EXAMINATION BY BOARD

8 CHAIRPERSON YOUNG: Have you been
9 listening to the discussion we've been having with
10 respect to the settlement?

11 MR. BARROW: I cannot guarantee because
12 I don't hear well, and they didn't have headphones
13 today.

14 CHAIRPERSON YOUNG: Okay.

15 MR. BARROW: As much as possible.

16 CHAIRPERSON YOUNG: Okay. Can you tell
17 us when you made your offer to the CSD Board to
18 settle their complaint?

19 MR. BARROW: I have some documents here
20 but I don't see that particular one. I pretty
21 much relied on Burke, Williams and Sorensen to do
22 the legal paperwork. They were the attorneys that
23 represented CASE, Citizens for Affordable and a
24 Safe Environment, which is a citizens group.

25 CHAIRPERSON YOUNG: Do you remember when

1 you gave them instructions to begin settlement
2 negotiations? Approximately. I'm not trying to
3 test your memory.

4 MR. BARROW: On Measure B?

5 CHAIRPERSON YOUNG: Yes.

6 MR. BARROW: Okay. This had to be after
7 the vote had passed, and it had to be, you know, -
8 - of course, there was the appeal right before the
9 election --

10 CHAIRPERSON YOUNG: Correct.

11 MR. BARROW: -- of Judge Hilton
12 decision. And then there was a ruling in the
13 Appeals Court that the election would be allowed.
14 It was validated. I'm just trying to give you the
15 history.

16 And the next thing that happened, at
17 that time at the Appeals Court there was a date
18 set for a hearing on this after the election. I
19 think it was the 27th of October. And then our
20 attorneys asked for a continuance until I think
21 December 14th.

22 However, in the meantime a great deal
23 has happened, the withdrawal of funds and so
24 forth. And the District was put in a position
25 where they could no longer go forward with the

1 project because they didn't have the funds.

2 So, at that time, somewhere in that
3 time, and I would have to defer to Mrs. Julie
4 Biggs, who is president and is my representative,
5 as to the exact date that I did give permission
6 for that.

7 CHAIRPERSON YOUNG: Okay, --

8 MR. BARROW: I was not the designer of
9 these legal actions. I'm not an attorney. So
10 what I did is I -- whatever they suggested, if I
11 looked it over and I thought it was for the best
12 interests of the citizens of the community, I
13 approved it. And I did that by faxing documents
14 back to them. Is that not correct?

15 That's all I can say about that.

16 CHAIRPERSON YOUNG: Okay, but it's your
17 recollection that the settlement discussions
18 didn't begin until after the election?

19 MR. BARROW: Way after the election.

20 CHAIRPERSON YOUNG: Okay. All right,
21 thank you.

22 MR. BARROW: You're welcome, thank you.

23 MS. SCHICKER: May I just say one more
24 thing about it, it's pretty important. It's just,
25 because of the negotiations with Mr. Blakesley and

1 that we had a chance to save the loan, we waited
2 till the last possible minute when there was no
3 more hope. There was no intent to settle this
4 until we -- that's why we went to Sacramento;
5 that's why we talked to them again; that's why we
6 asked them about the amicus.

7 All of those things entered into our
8 decision of when and how to do this. That's why
9 we came up in testimony to save the thing. It was
10 pretty important for us to try to work with the
11 state and Mr. Blakesley at all costs.

12 CHAIRPERSON YOUNG: Okay, --

13 MS. OKUN: If I could just make a few
14 points about the settlement agreement. Mr.
15 McClendon said that they got the concession about
16 what Measure B meant. That was the concession
17 only from the parties to the settlement agreement,
18 CASE and Mr. Barrow. It wasn't a concession by
19 anyone else who might want to challenge the
20 methodology that the District decided to use to
21 repeal Measure B, if, in fact, that's what it
22 decides to do.

23 And it also doesn't eliminate any other
24 challenges regarding Measure B, either what it
25 means or how to repeal it by anyone other than

1 CASE or Mr. Barrow.

2 Also, regarding the State Board
3 resolution, it was based on a proposal that
4 Assemblyman Blakesley originally drafted. And the
5 State Board adopted it and issued that to the
6 District as a proposal.

7 And the original terms, as prepared by
8 Assemblyman Blakesley, did say something about
9 filing an amicus brief with the court. And at the
10 November 16th hearing I pointed out, and I believe
11 Mr. McClendon pointed out that they were parties
12 and it was fully briefed, and they didn't need to
13 file an amicus brief.

14 So in the language of the resolution,
15 itself, the State Board changed that to say that
16 the District will file immediately opposition to
17 Measure B with the appellate court. It doesn't
18 say whether it's going to be an amicus brief, or
19 appearing on December 14th and voicing their
20 opposition, or what it would be.

21 So I think it would have been pretty
22 easy to comply with that condition had the
23 District wanted to.

24 CHAIRPERSON YOUNG: Okay, let's move on
25 to testimony from other agencies.

1 MS. OKUN: Darrin Polhemus, were we
2 going to -- do you still have questions for him?

3 CHAIRPERSON YOUNG: Do we? Does the
4 Board have any questions for Mr. Polhemus?

5 (Pause.)

6 CHAIRPERSON YOUNG: Do we have to call
7 him?

8 MS. OKUN: We actually -- yeah, we have
9 to telephone him.

10 CHAIRPERSON YOUNG: Okay.

11 MS. OKUN: We actually do have a couple
12 of questions that we've been putting off.

13 CHAIRPERSON YOUNG: You do?

14 MS. OKUN: Yeah.

15 CHAIRPERSON YOUNG: Well, then, better
16 get him on the line. And I take it then there's
17 no one else from any other agencies, so we will
18 start then with public comment when we're done
19 with Mr. Polhemus. We have about 43 cards.

20 MR. PACKARD: Darrin?

21 MR. POLHEMUS: Yeah.

22 MR. PACKARD: Okay, you're on
23 speakerphone.

24 MR. POLHEMUS: Okay.

25

1 MS. OKUN: Hi, Darrin; it's Lori Okun.

2 MR. POLHEMUS: Hi, Lori.

3 MS. OKUN: We're going to have the Chair
4 swear you before I ask you just a couple of
5 questions about the SRF loan.

6 MR. POLHEMUS: Okay.

7 Whereupon,

8 DARRIN POLHEMUS

9 was called as a witness herein, and after first
10 having been duly sworn, was examined and testified
11 as follows:

12 DIRECT EXAMINATION

13 MS. OKUN: Darrin, Mr. Bleskey testified
14 yesterday that the loan contract -- may have been
15 today -- the loan contract isn't site specific to
16 the Tri-W site because it incorporates the
17 construction contracts which aren't necessarily
18 site specific. Is that your understanding of the
19 State Board loan, that it was not site specific?

20 MR. POLHEMUS: No, that would be
21 incorrect. In the loan contract as exhibits that
22 are attached, the plan and specs approval
23 document; the facilities plan approval; and the
24 approval for the award document. All
25 administratively issued by staff and the State

1 Board that are incorporated as part of the
2 installment sales agreement, and are specific to
3 the project and location.

4 MS. OKUN: I have a couple of questions
5 about the January 2005 Board meeting when the
6 State Board agreed to extend the loan and increase
7 the amount.

8 There was some discussion at that
9 meeting that if the District wanted to change the
10 project that was a matter of local control. But
11 did the State Board ever say that if the District
12 decided to do that it would amend the loan to
13 conform to whatever the new government decided to
14 do?

15 MR. POLHEMUS: Not to my knowledge.

16 (End Tape 5A.)

17 MS. OKUN: Do you recall what the
18 purpose was of adding the requirement in the State
19 Board resolution that the District had to issue a
20 notice to proceed by September 20th?

21 MR. POLHEMUS: It's standard procedure
22 on all of our preliminary loan commitments adopted
23 by the Board to include a sunset date so that at
24 some point that resolution would automatically
25 expire.

1 MS. OKUN: Lisa Schicker testified that
2 during the discussions with Assemblyman
3 Blakesley's office and the District you did some
4 cost calculations that showed that the District
5 could realize substantial cost savings by moving
6 the project. Is that true?

7 MR. POLHEMUS: I guess I would caveat
8 that. We did make discussions that were basically
9 very rough estimates, not backed up by any
10 material other than our personal experiences
11 regarding what the costs associated would be with
12 moving the treatment plant.

13 Now, I did make statements and say that
14 under certain conditions there would be cost
15 savings to move a treatment plant, but there would
16 also be offsetting increased costs in other areas.

17 My contention that I thought I left
18 everybody with at the end is that at the best they
19 could expect cost-wise they would break even. But
20 that in a more likely scenario, especially
21 considering the possibility of increased
22 construction inflation, it would likely cost them
23 more due to the time delays associated with moving
24 the treatment plant.

25 CHAIRPERSON YOUNG: Did you tell that to

1 Ms. Schicker?

2 MR. POLHEMUS: Did I tell that to Ms.
3 Schicker?

4 CHAIRPERSON YOUNG: Yes.

5 MR. POLHEMUS: I believe I made that
6 statement in the group, as a whole, and Ms.
7 Schicker would have been present.

8 MS. OKUN: At anytime during those
9 discussions or negotiations or whatever you want
10 to call them, did you make an offer to the
11 District on behalf of the State board?

12 MR. POLHEMUS: No. I was never
13 authorized to make any offer for the State Board.
14 I've worked in the State Board for over 13 years,
15 and I know that as a staff person I merely
16 recommend to my public body decisions and make
17 recommendations at a staff level.

18 So, I tried numerous times to make it
19 clear that anything I did or said was merely staff
20 presenting an opinion. That it would have to be
21 vetted by management above me and my Board.

22 MS. OKUN: At anytime prior to adopting
23 a resolution on November 16th, did the State Board
24 ever make any offer to the District about amending
25 the loan or any sort of offer to facilitate moving

1 the project location?

2 MR. POLHEMUS: No. I mean I was in
3 discussions with them and gave them advice. But
4 it was to be their proposal submitted in writing
5 back to us for consideration. The State Board
6 made no offers or proposals.

7 MS. OKUN: Is your understanding of your
8 role in that negotiation or discussion process
9 that you were there to assist the District to
10 develop a proposal that you thought would have the
11 best chance of being approved by the State Board?

12 MR. POLHEMUS: Correct. My Director
13 asked me to go down there and spend some time with
14 them to make sure that they understood and have my
15 knowledge available in making their proposal.

16 MS. OKUN: When you were doing the back-
17 of-the-envelope cost calculations that you talked
18 about earlier, did you look at any comparable
19 facilities in San Luis Obispo County or any recent
20 projects in this area?

21 MR. POLHEMUS: We did not spend any time
22 doing specific research. Rob Miller, District
23 Engineer for Los Osos, was present and had some
24 off-the-top-of-his-head knowledge of some other
25 plants and a locale. And for argument sake we

1 accepted those as rough estimates and approximates
2 at that time. But they should not be considered
3 hard and fast numbers.

4 MS. OKUN: Do you know if those
5 facilities were upgrades or whether they were
6 completely new facilities with no existing
7 collection systems?

8 MR. POLHEMUS: I personally know that
9 the Pismo system is an upgrade, as we're also
10 providing financing for that. I believe Mr.
11 Miller made the representation that the CNC
12 upgrade was a new plant in a sense that it was a
13 completely new site. But that's my recollection.

14 MS. OKUN: Are you involved at all in
15 the Lompoc upgrade?

16 MR. POLHEMUS: Could you repeat that?

17 MS. OKUN: I'm sorry, I didn't hear your
18 answer.

19 MR. POLHEMUS: Could you repeat the
20 question.

21 MS. OKUN: Are you involved at all in
22 the upgrade that's currently in process at the
23 Lompoc treatment facility?

24 MR. POLHEMUS: Yesterday I signed a
25 facilities plan approval, so I'm involved mainly

1 at the level of managerial approval of the budget.

2 MS. OKUN: Do you know how much they're
3 planning to spend on that upgrade?

4 MR. POLHEMUS: My recollection is the
5 document I signed yesterday approving the loan was
6 for approximately \$48 million.

7 MS. OKUN: And that's just for an
8 upgrade?

9 MR. POLHEMUS: Correct.

10 MR. SEITZ: I'm going to object to this
11 line of questioning. First of all, I would like
12 to know what the relevance is. And second of all,
13 we're comparing apples to oranges if we're talking
14 about upgrades --

15 MS. OKUN: That's exactly my point.

16 MR. SEITZ: -- in Lompoc. Thank you,
17 Darrin, I have nothing further. But the Board may
18 have some questions for you.

19 CHAIRPERSON YOUNG: Any questions?

20 BOARD MEMBER SHALLCROSS: I have one.

21 CHAIRPERSON YOUNG: Go ahead, Mr.
22 Shallcross.

23 EXAMINATION BY BOARD

24 BOARD MEMBER SHALLCROSS: When you took
25 the Board's proposal, or the District's proposal

1 back to the Board, the Water Board, I understand
2 that the Board never actually got around to voting
3 on that, whether to accept it or not. Why is
4 that?

5 MR. POLHEMUS: Well, actually it would
6 be probably better to characterize is that on, I
7 believe October 31st, the Los Osos Community
8 Services District sent to us a proposal that was
9 considered.

10 The first step of that consideration was
11 review by management. And management determined
12 that the risks associated with accepting that
13 proposal were too large for the program to accept.

14 And I believe that was indicated in a
15 letter back to them shortly after that.

16 BOARD MEMBER SHALLCROSS: Is that the
17 usual way that you proceed in these cases?
18 Management makes that decision?

19 MR. POLHEMUS: Well, obviously this is
20 an unusual case, and it does not really have
21 precedent.

22 Typically the Board, in managing this
23 program, does the loan approval. And then within
24 that there are certain discretions that the
25 administrative staff do.

1 For instance, it's completely an
2 administrative step to terminate the loan contract
3 if it's violated. However, the Board has
4 requested to, at a certain point, to intercede and
5 provide us staff direction. So we've honored that
6 request.

7 BOARD MEMBER SHALLCROSS: Did you have
8 any indication from any of the Board Members how
9 they felt about the proposal?

10 MR. POLHEMUS: Yes. Two of the Board
11 Members, I believe, had seen the materials and had
12 spoken with our Director as to their opinion.

13 BOARD MEMBER SHALLCROSS: And did they
14 give an indication whether they liked it, didn't
15 like it?

16 MR. POLHEMUS: I was not involved in
17 that communication.

18 BOARD MEMBER SHALLCROSS: Okay, thank
19 you. That's all.

20 CHAIRPERSON YOUNG: Mr. Seitz.

21 MR. SEITZ: Thank you.

22 CROSS-EXAMINATION

23 MR. SEITZ: Darrin, John Seitz.

24 CHAIRPERSON YOUNG: Yeah, but you don't
25 have any time.

1 (Laughter.)

2 MR. SEITZ: Well, sorry, but again I
3 just wanted to say something here. You're
4 bringing on Mr. Polhemus out of order, which is --
5 we agreed to. I just have like about three
6 questions to ask him. If you're saying I can't
7 ask Mr. Polhemus questions, cross-examining the
8 prosecution's witness, I think that's a tough
9 call.

10 MS. OKUN: Well, I've been saying for
11 two days we were going to be putting Mr. Polhemus
12 on the phone and we kept putting it off till an
13 appropriate place in the proceedings.

14 CHAIRPERSON YOUNG: Mr. Seitz, I've
15 already given the District much more time. I mean
16 I gave, you know, --

17 MR. SEITZ: Two questions.

18 CHAIRPERSON YOUNG: No, 30 minutes, 36
19 minutes. I want to give you time for closing,
20 because you currently don't have that. And I want
21 to make sure you get that in.

22 MR. SEITZ: Can I ask the Chair to ask
23 him a question?

24 CHAIRPERSON YOUNG: Go ahead and ask the
25 one question, okay.

1 MR. SEITZ: Thank you.

2 CHAIRPERSON YOUNG: Because I do want to
3 get on to public comment, and we have a bunch of
4 cards.

5 MR. SEITZ: Thank you.

6 CHAIRPERSON YOUNG: Okay.

7 MR. SEITZ: Mr. Polhemus, John Seitz.
8 Are you currently involved in any negotiations
9 between Mr. Blakesley's office regarding the
10 wastewater treatment project?

11 MR. POLHEMUS: No, I've been
12 specifically asked to not participate in anything.

13 MR. SEITZ: To your knowledge are
14 negotiations going on?

15 MR. POLHEMUS: Not to my knowledge.

16 MR. SEITZ: Okay.

17 CHAIRPERSON YOUNG: That's two
18 questions. Thank you.

19 (Laughter.)

20 CHAIRPERSON YOUNG: Okay, are we ready
21 for public comment? Okay, Ms. Okun, and then, Mr.
22 McClendon, we're going to move to public comment.

23 Oh, yeah, Darrin, thank you very much
24 for being available.

25 MR. POLHEMUS: No problem.

1 CHAIRPERSON YOUNG: Okay. All right,
2 folks, we've got now about 45 cards. I just want
3 to say something to Patricia Johnson and George
4 Little. We're not going to be donating time to
5 anybody. Okay. That's just what I'm going to do.

6 I want to streamline this; it's going to
7 be getting late by the time we get done with this.
8 I would like to wrap it up today, that's our goal.

9 Everyone is going to have two minutes.
10 And we have our colored clock up there. When it
11 hits yellow I think you've got -- is it one minute
12 left or 30 seconds? Thirty seconds.

13 Let's please try to keep to the clock so
14 we can get everybody to say what they want to say.
15 And two more, okay. All right, so as it stands,
16 we've got, you know, probably about 100 minutes if
17 we went straight through without questions, which
18 we may have. So we're going to be here for a
19 couple of hours just doing this.

20 All right. Bruce Buel. There's a card
21 here, I don't know if you wanted to speak or not?

22 MR. BUEL: No, sir, that was in regard
23 to my testimony. Thank you.

24 CHAIRPERSON YOUNG: Okay, all right,
25 thank you. One down.

1 (Laughter.)

2 CHAIRPERSON YOUNG: All right. Julie
3 Biggs. Yeah, and then, let's see, Joyce Albright;
4 and then David Duggan; and then Eric Greening.

5 MS. BIGGS: There didn't seem to be a
6 very easy way to get here.

7 CHAIRPERSON YOUNG: Okay.

8 MS. BIGGS: Thank you. I appreciate the
9 opportunity to speak to the Board as public
10 comment.

11 I'm the culprit who helped put together
12 Measure B, and I wanted to talk to you a little
13 bit about that. Because it's clear to me from the
14 proceedings that everything that is going on here
15 is because the voters enacted Measure B.

16 And those voters, almost half of them
17 for reasons of fear or concern or because they're
18 committed to the current project, did not vote for
19 Measure B. And they will be affected by the fines
20 that you are likely to impose regardless of that.

21 There's been some discussion, I think,
22 about the difference between the Board and the
23 District. And it's been interesting -- I'm a city
24 attorney by nature, and we're always asked that
25 question. Who is our client, who do we represent,

1 is it the Board, is it the District, is it the
2 people. And it's all of that.

3 And it's all of that when it comes down
4 to whether or not this is an avoidable issue. You
5 have held in the past that litigation initiated by
6 individual members of the District created
7 unavoidable circumstances causing delay in the
8 project.

9 An initiative measure is a similar
10 action. It is the people expressing, through the
11 ballot box, their frustration with a government
12 that does not respond to them. That is
13 unavoidable in terms of the CSD Board. And it is
14 the CSD Board that you're attempting to compel to
15 do something contrary to law.

16 Now, in addition to that, you have
17 asked, and this has come up repeated, the question
18 of why haven't they participated, spent taxpayer
19 money to defeat the taxpayers' decision on Measure
20 B. And the reason is because that would be
21 illegal. It would be a breach of their duty, as
22 elected officials, elected to represent the
23 public, to actively oppose a measure enacted by
24 the public legally and validly.

25 CHAIRPERSON YOUNG: Thank you. Joyce

1 Albright.

2 MS. ALBRIGHT: Joyce Albright, Los Osos.
3 I wish I could thank Madam Biggs for writing
4 Measure B, but I'm afraid I can't.

5 Measure B, which they're going to pay
6 the originators \$125,000 to stop, that subject was
7 never brought before the Los Osos community. They
8 apparently discussed it in secret, and then came
9 out of the discussions and said no decision had
10 been reached.

11 So we heard about the cancellation of
12 this whole thing through the media. It was never
13 announced, unless it was announced at last night's
14 meeting. It was never told. We didn't even know
15 that negotiations were going on.

16 Los Osos has been in shock since the
17 last election, as we've watch the current Board
18 systematically dismantle the wastewater project
19 and funding. It is our believe that the strategy
20 of this fight is to enmesh our community in such
21 delay, debt and litigation that it will be unable
22 to resolve our water pollution issues.

23 A group of citizens, Taxpayers Watch, is
24 in the process of dissolution of the Los Osos
25 Community Services District so the County can take

1 over the wastewater program.

2 I wish we had a clean, immediate
3 solution to our dilemma, but want to accentuate
4 that the majority of the community is definitely
5 not behind the current Board. Nor do we support
6 the big-bucks lawfirms that are further bleeding
7 Los Osos.

8 Please consider that the majority of --
9 as the majority of you move forward -- please
10 consider, as you move forward with your decision,
11 that the majority do not support these people.
12 We, too, want the approved project at the approved
13 site.

14 Please accept the apology of our
15 citizens for the offense that has been heaped on
16 you and the State Water Board. This does not
17 reflect the feelings of the majority; this does
18 not reflect the feeling of the majority of Los
19 Osos --

20 CHAIRPERSON YOUNG: Okay, Ms. Albright.

21 MS. ALBRIGHT: Um-hum.

22 CHAIRPERSON YOUNG: Thank you very much.

23 MR. DUGGAN: Dave Duggan, water warrior,
24 vigilante, meaning watcher. I have watched a
25 considered effort by people in the community of

1 Los Osos, and authorities, specifically staff of
2 certain boards, to go after this Board to
3 basically run them out of power because they won
4 an election.

5 It's a vendetta. I think actions were
6 taken way beyond any action that should have been
7 taken. I believe staff probably stated the
8 process for these fines long before, even before
9 they were sworn in, this new Board.

10 Measure B. It's a fact, it's an
11 ordinance. As far as I'm concerned, as of March
12 1st, all contracts are void, including the SRF
13 loan, including everything involved with the
14 contractors.

15 There has been such a dogged fight to
16 end this CSD's reign, which has not been in here
17 very long. We probably will be well into what
18 Measure B had been required us to do. And we
19 probably know within a month or so whether or not
20 there was going to be a sewer system in or outside
21 of town.

22 Because I know there's been a no vote of
23 confidence. This Board would probably have to
24 resign if there was a no vote of confidence;
25 basically how Measure B would work.

1 I've been warning the supervisors that
2 this whole thing is going to last a long time.
3 It's going to be lasting about a year probably.
4 There's going to be a lot of fortunes lost. A lot
5 of people are going to lose homes. Homes are
6 falling out of escrow right now I'm being told.
7 This is affecting more than just a few people.

8 And that's all I have to say, thank you.

9 CHAIRPERSON YOUNG: Thank you, sir.

10 Eric Greening. Scott Kimura and then Mr. Barrow.

11 MR. GREENING: I'm Eric Greening from
12 Atascadero, a member of our County's Water
13 Resources Advisory Committee. I'm speaking as an
14 individual, but the vantage point of being on the
15 WRAC, as we call it, has allowed me to observe the
16 dedication and determination with which CSD
17 Directors and Staff have been working with the
18 County to be sure that our integrated regional
19 water master plan, IRWM for short, includes an
20 accurate and timely application for a grant, not
21 loan, for over \$19 million, to help move forward
22 with the wastewater treatment plant.

23 Approval and submittal of the IRWM is on
24 our supervisors' agenda next Tuesday. If adopted,
25 it should be part of your record, along with the

1 staff report, for next Tuesday, the 6th of
2 December, item E-1, which describes its purpose.

3 This raises two points. One, I am
4 witnessing the District's diligence in trying to
5 move forward within the constraints mandated by
6 the voters.

7 Two, if they should be successful with
8 this grant the prosecution would have you try to
9 attach more than half of it, which would clearly
10 be an obstacle to timely project delivery. If the
11 grant does not arrive, the consequence of the fine
12 could be District bankruptcy, which could lead to
13 dissolution, which could kick the wastewater
14 treatment plant back to the County.

15 While I have great respect for the many
16 dedicated County employees, they are not ready to
17 catch this ball and run with it. More like
18 catching an asteroid. Thanks to the Byzantine
19 LAFCO process, it would be a slow asteroid, but
20 oh, so heavy.

21 The fine is clearly counter-productive.
22 It would slow the project.

23 The only other possible justification
24 for a punitive fine would be to serve as an
25 example to others. In this case, the question is,

1 example to whom. What other community is in an
2 even remotely comparable situation.

3 Please do not impose the fine, but work
4 constructively with the District to solve the
5 problem we all acknowledge. Thank you.

6 CHAIRPERSON YOUNG: Thank you, Mr.
7 Greening. Scott Kimura. Then after Al Barrow
8 will be Ted Peterson. Is there a letter -- please
9 let my letter be heard. I wonder what that means?
10 Is Ted Peterson here? Okay. All right, then
11 Linde Owen after Al Barrow. Okay, Mr. Kimura.

12 MR. KIMURA: Chairman Young, Board
13 Members, Staff, CSD Board Members, Staff and
14 audience, my name is Scott Kimura and I live in
15 Los Osos Valley.

16 I am part of a growing constituency on
17 the outskirts of Los Osos along east side of town
18 in what is known as County service area 9-I.

19 For background, we are not in the Los
20 Osos CSD and not part of the sewer. We became
21 involved because of Measure B, which was a vote by
22 the people in Los Osos to move their sewer out of
23 town.

24 However, we who would be affected were
25 excluded from voting. So its passage by a 19-vote

1 majority does not reflect our input. We now have
2 over 60 signatures and phone validations from
3 people in the CSA 9-I area who oppose the sewer
4 moving out of town. And our list continues to
5 grow.

6 I'm fully confident that if we were
7 allowed to vote on Measure B, Measure B would have
8 swung the other way and none of us would be here
9 today.

10 I heard comments on how fines do not
11 clean up water. Well, I have some five ideas,
12 over-simplified, on how fines can be leveraged to
13 clean up the water and in a timely manner.

14 One, perhaps the fines from the Regional
15 Board that would bankrupt the CSD could be waived
16 if the CSD Board is given a second chance with SRF
17 funding to resume the Tri-W project immediately.

18 Another option would be to impart the
19 fines. The CSD may, indeed, go bankrupt, in which
20 case another agency could take over the Tri-W
21 project because it is ready to go.

22 Thirdly, waive the fines on the
23 condition that the CSD Board relieves its duty to
24 build a sewer and another agency could take over
25 the Tri-W project.

1 Fourth option, forget the fines, but
2 require the Los Osos CSD to pay to pump all septic
3 tanks once a month forever. This would take all
4 the leach lines offline.

5 Number five, waive the fines but make
6 the CSD pay for a doubling in cost of water. The
7 money would go towards building the Tri-W sewer,
8 since it's ready to go.

9 So, in closing, regardless of what
10 enforcement action is taken, we ask that your
11 enforcement action be thought through thoroughly
12 so that it does not inadvertently start the
13 project and timeclock all over again with an out-
14 of-town possibility.

15 We favor the Tri-W project because it
16 appears to still be the most feasible means to get
17 a sewer online in the timeliest manner
18 fashionable.

19 CHAIRPERSON YOUNG: Thank you, Mr.
20 Kimura.

21 MR. KIMURA: Thank you.

22 CHAIRPERSON YOUNG: Okay. I'd like to
23 give people me time, but it's just not going to be
24 possible with this matter.

25 Okay, Al Barrow.

1 MR. BARROW: I've been donated time --

2 CHAIRPERSON YOUNG: But I am not
3 allowing anybody to donate time.

4 MR. BARROW: This is very difficult.
5 First of all, I'd like to enter into the record
6 some documents that your -- Todd placed on the
7 laptop computer. I have two CDs --

8 CHAIRPERSON YOUNG: You're not -- you
9 were not designated as an interested party.

10 MR. BARROW: I am an interested party.
11 I live in Los Osos at --

12 CHAIRPERSON YOUNG: Well, but --

13 MR. BARROW: -- 700 El Moro Avenue.

14 CHAIRPERSON YOUNG: But there is a legal
15 definition for interested party and you're not one
16 of them. You are an interested party in terms of
17 being interested, --

18 MR. BARROW: Um-hum.

19 CHAIRPERSON YOUNG: -- like we all are,
20 even us up here, in this matter. Mr. Barrow, you
21 have two minutes. I'm going to start the clock.

22 MR. BARROW: Did you say two?

23 CHAIRPERSON YOUNG: Two.

24 MR. BARROW: Oh.

25 CHAIRPERSON YOUNG: Right now.

1 MR. BARROW: Number one, I want to
2 address the issue of the history of Los Osos and
3 how, since before 1985 there has been \$31 million
4 spent on design efforts. The County spent money.
5 We have spent money at the District. We have the
6 Brown & Caldwell plan at (inaudible) Road; we have
7 the Metcalf and Eddy plan near the Los Osos Middle
8 School. And we have the present projects.

9 Somebody has been working on this
10 problem continuously since before the prohibition
11 was put in place. So you're in error if you think
12 that nobody's been trying to solve this problem.
13 We've been working on it and it's cost us a lot of
14 taxpayers' dollars, first of all.

15 Number two, I have to tell you that it
16 would be illegal for you, in my opinion, to impose
17 ACL fines on the community through no fault of
18 their own the project was delayed by the pulling
19 of the funding, by Measure B, by lawsuits. All of
20 these things are outside the control of the
21 District.

22 And one of the rules of fining is it
23 must be in the control of the District in order
24 for you to place those fines.

25 So I would like to say thank you very

1 much. I wish you all a very happy holiday.

2 CHAIRPERSON YOUNG: Thank you, Mr.
3 Barrow.

4 MR. BARROW: You're welcome.

5 CHAIRPERSON YOUNG: Okay. Go ahead, Ms.
6 Owen.

7 MS. OWEN: Good afternoon. Linde Owen,
8 Los Osos interested party because I am a resident
9 and homeowner; have been there 17 years.

10 Please, first please acknowledge that
11 our newly elected CSD inherited an entirely flawed
12 and exorbitantly priced project that meets none of
13 the original goals or criteria for sustainable
14 design and affordability.

15 Through a legal action process we did
16 what you told us to do if we were unhappy with the
17 project. We changed the CSD.

18 At the July 9, 2004 meeting in
19 Watsonville your staff admitted that to fine Los
20 Osos would result in bankrupting our CSD, sending
21 the project back to the County and causing much
22 longer delays.

23 I believe that we need the opportunity
24 to let our new Board -- I would ask for six months
25 to actually put all of this mess into a

1 perspective that could be evaluated.

2 In the original EIR the location outside
3 of town was cheaper, and you've heard this over
4 and over again, the plant outside of town is
5 cheaper. You'll hear that over. That is true
6 because there's no wave wall, there's no major
7 odor control, there's no parks, there's no tot-
8 lot.

9 We need a chance to build a sewer, not a
10 park, and that's what we are asking of you.
11 Fining us will do absolutely no good.

12 When you did 8313 the same day 8312 was
13 signed. And that requested that this Regional
14 Board, your Regional Board, put in septic
15 maintenance programs; and if necessary, pump down
16 the upper aquifer.

17 Since 1988 I would say that you have
18 also been part of the problem in Los Osos by not
19 mandating that very action which would make a huge
20 difference today.

21 And in light of the shellfish study that
22 Mr. Kidds did, which showed that one-tenth of 1
23 percent of the E.coli that came from his study,
24 and showing the septic tank addition to Morro Bay,
25 it shows that we are not polluting Morro Bay.

1 And in light of the nitrate studies I
2 ask that you give us the time to do this right.
3 Thank you.

4 CHAIRPERSON YOUNG: Thank you. Let's
5 see, I don't want to butcher this name. Looks
6 like Daniela Anon or Awar?

7 MS. ANON: Perfect.

8 CHAIRPERSON YOUNG: Okay. I'll stop
9 there. And then Elaine Wampsun, Dan Berman, then
10 Alon Perlman.

11 MS. ANON: I'm Daniela Anon of Los Osos.
12 Would I be considered an interested party since
13 I'm a resident of Los Osos?

14 CHAIRPERSON YOUNG: No -- Mr. Barrow was
15 trying to get documents put into the record. And
16 we had a little discussion about him not being an
17 interested party in the legal sense where he would
18 have status like the District and the prosecution
19 team. So, you're an interested party. Do you
20 live in Los Osos?

21 MS. ANON: I do.

22 CHAIRPERSON YOUNG: Okay, so you're
23 interested.

24 MS. ANON: Okay, yes, I am.

25 CHAIRPERSON YOUNG: Go ahead. And you

1 have two minutes.

2 MS. ANON: Thank you. Daniela Anon, Los
3 Osos. I have to say that I believe it was very
4 unethical for the project at the Tri-W site to be
5 started less than a month before a recall election
6 and a move-the-sewer ballot initiative. And I
7 think that was a very bad thing.

8 And some people voted differently
9 because they were like, oh, well, it's too late,
10 they already started. And it is a miserable
11 project, and we should all be thankful that it's
12 almost gone.

13 There seems to be a lot of
14 misunderstanding; The Tribune didn't help; and
15 there was a lot of propoganda and spin during the
16 election, in my view. So hopefully we set the
17 record straight yesterday and today.

18 And unfortunately, neither the County
19 nor the former LOCSD did anything to take care of
20 our watershed. For example, water conservation,
21 ag exchange, low-flow toilet installation. These
22 things should have been put in place a long time
23 ago and it would have helped our pristine water in
24 our lower aquifer to being overdrawn to some
25 degree, and would have potentially -- would have

1 prevented at least some of the salt water
2 intrusion that's occurring now. And helped draw
3 down the over-filled upper aquifer.

4 The former project at the Tri-W site was
5 the most expensive sewer per capita ever in the
6 history of the United States, about \$150 million
7 for 15,000 people. That sounds outrageous to me.
8 And not only that, it's a very poorly designed
9 project, an energy-guzzling, toxic-waste producing
10 dinosaur technology, disastrous to the
11 environment, including the Bay, the people, the
12 economy and the future of Los Osos' watershed
13 project.

14 We need to look at the whole watershed.
15 We want a Toyota model, not a Hummer.

16 CHAIRPERSON YOUNG: Thank you.

17 MS. ANON: Okay.

18 CHAIRPERSON YOUNG: Elaine Watson.

19 MS. ANON: Thank you.

20 MS. MILLER: She couldn't be here. Can
21 I read it for her?

22 CHAIRPERSON YOUNG: Yes, you can do
23 that. As long as it takes two minutes. And your
24 name, please.

25 MS. MILLER: My name is Vita Miller. I

1 also have a statement to read when my turn comes.

2 CHAIRPERSON YOUNG: Yeah, you know what,
3 we're just going to have to skip the statement.

4 MS. MILLER: You don't want it in
5 writing?

6 CHAIRPERSON YOUNG: I'm sorry. It's too
7 late. You know, either you're here to speak or
8 you're not. And I don't want to get into start
9 splitting everything up, and having time shared
10 between people.

11 MS. MILLER: She did put her card in
12 yesterday. She just couldn't be here today.

13 CHAIRPERSON YOUNG: Yeah, and it's too
14 late for letters, also. I'm sorry.

15 Dan Beerman. Pardon me, Dan Beerman.
16 Dan Beerman from -- is he here? Berman.

17 (Audience participation.)

18 CHAIRPERSON YOUNG: He was here
19 yesterday. He's not here, okay.

20 You know what, I was mis-using a term.
21 It's not interested party, it's designated party.
22 That's what I was thinking about. So designated
23 parties have not been designated. Everyone else
24 is interested. God, better take my foot out of
25 it.

1 Okay, Alon Perlman, Alon Perlman. Peter
2 Brewer? Pete Brewer. And then Julie Tacker.

3 MR. PERLMAN: Hi. My name is Alon
4 Perlman and thank you for hearing my testimony.
5 I'm surprised that I got to the top of the pile
6 that quickly, because I only just showed up.

7 This is California and the World Ocean
8 '97. It is the same publication that published
9 the Dr. Kidd study. Has some very interesting
10 elements with it, and I would like to be able to
11 turn the chapter -- a chapter in it for inclusion
12 in the record. That chapter is "When the Turn
13 Meets the Tide: Public Participation in Bay Water
14 Quality Issues for Morro Bay."

15 And this entire volume talks about the
16 levels of participation between government and
17 local government. I think it's a very good model.
18 Unfortunately, I don't know to what extent it has
19 been used; maybe the lessons are forgotten.

20 One thing I will pull out of here is
21 that it does state that the Morro Bay Estuary is
22 the cleanest estuary on the west coast.

23 And the oysters are the accepted
24 indicator organism for the health of that estuary,
25 and also record, as was mentioned earlier, the Dr.

1 Kidd specifically identified that had the Tri-W
2 site, this was in a CSD meeting I believe sometime
3 this year, Stan Gustafson presiding. And he did
4 state that had the Tri-W site sewer been built two
5 years prior to his study he would have expected
6 the maximum improvement in reduction in coliform
7 bacteria to have been 0.1 percent.

8 And I bring that up because there are
9 many statements about polluting the Bay. I
10 believe these are political statements that are
11 intended to turn, since it is a national estuary,
12 I believe these are political statements.

13 How much time do I have?

14 CHAIRPERSON YOUNG: You have none. But
15 you made a statement and I just want to ask you a
16 question.

17 In terms of shellfish harvesting, do you
18 know about the rainfall closure that affects the
19 grower in Morro Bay?

20 MR. PERLMAN: Yes.

21 CHAIRPERSON YOUNG: Okay. Do you know
22 that that is the most stringent rainfall closure
23 in the State of California?

24 MR. PERLMAN: Well, I don't know --
25 shellfish grow in --

1 CHAIRPERSON YOUNG: Okay, I was the
2 lawyer that represented that shellfish grower, and
3 I used to be involved in that industry. I mean
4 you mentioned shellfish and I just want you to
5 know that just because the shellfish are there and
6 living, and they may be harvested at times, does
7 not mean that they're always safe to eat.

8 MR. PERLMAN: Well, shellfish --

9 CHAIRPERSON YOUNG: In terms of
10 spreading myths and things of this nature, please
11 check facts carefully. And that's for everybody.

12 MR. PERLMAN: Number one, I did not
13 state that the --

14 CHAIRPERSON YOUNG: The impression was
15 because there are shellfish in there and they are
16 like the canaries in the coal mine, so to speak.

17 MR. PERLMAN: Yes, that is correct,
18 thank you.

19 CHAIRPERSON YOUNG: And it's the
20 cleanest estuary around.

21 MR. PERLMAN: Um-hum.

22 CHAIRPERSON YOUNG: That everything must
23 be very good. And I'm just telling you that
24 there's other facts --

25 MR. PERLMAN: Well, I have to have the

1 full three minutes, I would note to you that his
2 four to five people are the only people who can,
3 within the next five years, put a sewer system
4 that will work into this town.

5 CHAIRPERSON YOUNG: Okay.

6 MR. PERLMAN: So I would like you to
7 consider that when you go back to Sacramento.

8 CHAIRPERSON YOUNG: Okay.

9 MR. PERLMAN: Or, I know you're local, I
10 know, --

11 CHAIRPERSON YOUNG: Yeah, that's --

12 MR. PERLMAN: When you take the
13 information --

14 CHAIRPERSON YOUNG: -- that's another
15 Board. But thank you very much for you comments.

16 MR. PERLMAN: Yes. Where do I turn my
17 information in?

18 CHAIRPERSON YOUNG: Pardon me?

19 MR. PERLMAN: For the record.

20 CHAIRPERSON YOUNG: No. No, we're not
21 taking -- folks, we can't take any more letters,
22 any documents, exhibits. It's too late. And we
23 want to be --

24 MR. BARROW: Mr. Chair, with my hearing
25 loss I didn't hear you say that (inaudible) --

1 CHAIRPERSON YOUNG: Okay, I apologize,
2 but I would not want to shout in anybody's ear.
3 But there are no more letters, exhibits, documents
4 being put into the record. It's just too late.
5 We want to focus on what people are going to tell
6 us as they stand up here.

7 MR. PERLMAN: That's fair.

8 CHAIRPERSON YOUNG: If people missed it,
9 if people --

10 MR. PERLMAN: After reading this --

11 CHAIRPERSON YOUNG: Excuse me.

12 MR. PERLMAN: -- this is in the Water
13 Board library.

14 CHAIRPERSON YOUNG: Okay, if people --

15 MR. PERLMAN: Thank you very much.

16 CHAIRPERSON YOUNG: If people had wanted
17 to submit letters they will just have to tell us
18 orally and come to the podium and tell us what
19 would be in that letter. That's how you'll get
20 that information in.

21 BOARD MEMBER SHALLCROSS: And what was
22 the date that written documents were due in this
23 case?

24 MS. SCHAFFNER: November 17th.

25 CHAIRPERSON YOUNG: November 17th.

1 BOARD MEMBER SHALLCROSS: Thank you,
2 November 17th.

3 CHAIRPERSON YOUNG: Okay. All right,
4 Peter, is it Brewer, I'm not sure what this is.
5 1801 Ferrel Avenue. Is that gentleman here? That
6 was yesterday? Okay.

7 All right, Julie Tacker.

8 MS. TACKER: Forgive me, Chairman Young.
9 Before you start my time, if you don't mind, on
10 the matter of documents yesterday we went over
11 what the District submitted and then your
12 notations and rejections, et cetera.

13 And I wanted to refer in my public
14 comment to some documents that you have appeared
15 to reject. And so what I did this morning was
16 bring them so that you know that the District's
17 intention was that they be in the record.

18 MS. OKUN: Mr. Chair, I object to the
19 District appearing in public comment to try to
20 extend their time, which has already run out. Ms.
21 Tacker is clearly testifying on behalf of the
22 District. We can resolve the document issues
23 later.

24 CHAIRPERSON YOUNG: I think that's a
25 very good point. I mean, Mr. Seitz, you know we

1 have plenty of time for us to, you know, get into
2 documents and that, because I did continue that
3 part of the hearing to get that resolved.

4 But, what's this about?

5 MR. SEITZ: What I understand -- first
6 of all, I'm as interested in finding out what this
7 is about as you are, so --

8 CHAIRPERSON YOUNG: Oh, okay.

9 MR. SEITZ: So, number two, if it was
10 the intent of the Chair that we're going to discuss
11 those documents are part of this hearing process,
12 as you had previously indicated, Julie, I would
13 suggest that you just go on to your public comment
14 and not to the documents.

15 MS. TACKER: Well, I wanted to make sure
16 that they were, indeed, included when we did refer
17 to them in our -- the District referred to them in
18 their submission of the --

19 CHAIRPERSON YOUNG: But I have not ruled
20 on those documents.

21 MS. TACKER: Right.

22 CHAIRPERSON YOUNG: That is not in front
23 of us right now.

24 MS. TACKER: Right.

25 CHAIRPERSON YOUNG: So, you know, you've

1 got a minute and 54 seconds. If you want to --
2 tell us whatever you'd like to tell us. If it
3 refers to some of the documents on this list, go
4 ahead.

5 MS. TACKER: Okay.

6 CHAIRPERSON YOUNG: You can talk about
7 the documents if you want.

8 MS. SCHAFFNER: Mr. Chairman, before you
9 start the clock I would also note just for the
10 record that the public comment are really, as was
11 noticed, in a formal proceeding like this, the
12 public comments are simply comments. They're not
13 evidence.

14 So, while the commenters' opinions,
15 observations may be, by reference to some document
16 that she has read or believes should be in the
17 record, that does not put them in the record. And
18 they don't have to be in the record for her to
19 offer an opinion on them.

20 CHAIRPERSON YOUNG: Okay. Fine. Go
21 ahead.

22 MS. TACKER: Okay, well, I've brought
23 them in. I'll leave them for your staff to deal
24 with, but now you do have them.

25 CHAIRPERSON YOUNG: Well, leave them

1 with Mr. Seitz.

2 MS. TACKER: Okay.

3 CHAIRPERSON YOUNG: And Mr. Seitz and
4 Ms. Okun --

5 MS. TACKER: You'll iron that out.

6 CHAIRPERSON YOUNG: -- and myself are
7 going to deal with the documents.

8 MS. TACKER: Okay.

9 CHAIRPERSON YOUNG: You don't have to
10 leave them with us.

11 MS. TACKER: Okay.

12 CHAIRPERSON YOUNG: Go ahead.

13 MS. TACKER: What I wanted to point to,
14 and when you do look at documents, they would be
15 under items 117 and 119 from the District. And
16 they refer to a public records request that I
17 made, as a public citizen, on October 2nd. It
18 happened to be at 7:30 in the morning.

19 Asking the Regional Water Quality
20 Control Board Staff for all email from and to
21 citizens and District Staff and former Board
22 Members, et al. Everybody in Los Osos. From
23 March 1 through that date.

24 I've been in a bit of a back-and-forth
25 with the staff with regard to email. And getting

1 our hands on it because some of it is on a backup
2 tape. And Mr. -- Harvey -- I forgot your last
3 name -- Harvey Packard, was going to try to get
4 that to me.

5 One email in particular that was
6 disturbing to me, and this is my public comment.
7 It was sent by Roger Briggs to Pandora Nash Carner
8 on Wednesday, September 28th, at 5:44 p.m.
9 Pandora, we are just wrapping up the October
10 agenda right now and legally required to leave
11 times for a hearing may not be reasonably -- may
12 not reasonably allow it. But I've already
13 received and reviewed a draft ACL complaint, so
14 we're rolling. I'm shooting for getting an ACL to
15 the District next week even before the new Board
16 can meet. I want them to understand what they
17 will be stepping into before they vote on any
18 motion to delay.

19 And I just wanted to point that out that
20 it was less than 24 hours after the election. The
21 election had not been certified. Our Board had
22 made no -- we didn't even have an agenda to make
23 any kind of movement on delaying or -- what we did
24 do is suspend our project.

25 CHAIRPERSON YOUNG: Okay, but that email

1 did take place after the election? And the
2 election was certified?

3 MS. TACKER: No, it had not been
4 certified.

5 CHAIRPERSON YOUNG: No, I said the
6 election had taken place?

7 MS. TACKER: The election had taken
8 place, but the --

9 CHAIRPERSON YOUNG: Right, okay. Thank
10 you very much.

11 MS. TACKER: Thank you.

12 CHAIRPERSON YOUNG: And if there was
13 a --

14 MS. OKUN: Mr. Chair, --

15 CHAIRPERSON YOUNG: If there was an
16 issue about documents not being produced or
17 something like that, you know, Mr. Seitz and Mr.
18 McClendon would have taken care of that if they
19 felt that something was, you know, kept from them.

20 I don't know if this was like -- what
21 kind of an issue this is.

22 MS. OKUN: It's not an issue.

23 MS. TACKER: It's not an issue.

24 CHAIRPERSON YOUNG: Okay.

25 MS. TACKER: It's in your record.

1 CHAIRPERSON YOUNG: I mean was it a
2 public records request of you, as an individual?

3 MS. TACKER: Um-hum.

4 CHAIRPERSON YOUNG: Okay.

5 MR. SEITZ: Mr. Chair, I think the issue
6 here is to the hurried events that brought us here
7 on such short notice and such short timeframes. I
8 think the statute says you have up to 90 days to
9 set the hearing on an ACL complaint, and this one
10 was really beyond that, --

11 CHAIRPERSON YOUNG: Okay.

12 MR. SEITZ: -- much shorter than that.

13 CHAIRPERSON YOUNG: Great, thank you
14 very much.

15 MS. TACKER: You're welcome.

16 MS. OKUN: Mr Chair, --

17 CHAIRPERSON YOUNG: Yes.

18 MS. OKUN: The District did cite that
19 email in one of its written submissions. But I
20 think that Ms. Tacker reading it in the public
21 forum out of context is pretty inflammatory. And
22 I would ask that Mr. Briggs be able to respond to
23 that now rather than waiting till later. And we'd
24 be happy to use up our time for him to do that.

25 CHAIRPERSON YOUNG: Yeah, go ahead.

1 Let's set the clock for that.

2 MR. BRIGGS: Yeah, I just wanted to
3 point out that I was receiving a lot of email, a
4 lot of phone calls, inquiries from people about
5 the Regional Board following through with what we
6 said we would do in terms of enforcement action if
7 the District chose to delay the project.

8 And I was saying essentially the same
9 thing that you heard from that email to everybody
10 who asked me, including reporters. So it was
11 certainly public information that we were
12 following through with what we said we would do.
13 Told the District we were going to be pursuing
14 enforcement action if they chose to delay.

15 We did not start drafting the
16 administrative civil liability before the
17 election.

18 CHAIRPERSON YOUNG: Okay.

19 MR. BRIGGS: Oh, thank you. And we
20 issued the administrative civil liability on
21 October 6th. And the District had stopped work on
22 the project on October 3rd.

23 CHAIRPERSON YOUNG: Okay. All right,
24 next speaker, Betty Winholtz. Then Chris Allebe
25 and Frank Galicia and Alan Martyn.

1 Is Ms. Winholtz here?

2 AUDIENCE SPEAKER: She's not here today.

3 CHAIRPERSON YOUNG: Okay. All right.

4 Mr. Allebe.

5 MR. ALLEBE: Close enough, sir.

6 CHAIRPERSON YOUNG: Okay, you can go
7 ahead and correct me, I apologize.

8 MR. ALLEBE: Okay, Chris Allebe,
9 interested party, live in Los Osos. Now I have to
10 go fast here.

11 We fast forward to the present. We've
12 been talking a lot about the past here the last
13 two days.

14 Our former CSD Board accepted a 46
15 percent over-bid on the project against all staff
16 advice. They condoned three CSD employees
17 physically barred two Board Members from attending
18 contractors meetings at a local hotel. And
19 started work on our collection system a month
20 before the Board election, which would have
21 stopped construction if a new Board was elected.

22 We've been told repeatedly to elect a
23 new Board, they didn't like the old one. And we
24 did so.

25 The contractors took their chances and

1 lost. We owe them nothing.

2 Then the Montgomery Watson Harza
3 business office at Sunnyside School was recently
4 and conveniently burglarized of all computer and
5 office files just before an audit was scheduled.
6 And many other key files were found missing from
7 CSD records.

8 Our new CSD needs time to hash this mess
9 out, and the community certainly should not be
10 fined for the sins of the previous administration.
11 It is not merely a matter of not wanting to pay
12 for a sewer. It is about losing our quality of
13 life and loss of our homes for a wastewater system
14 that at least provides a terrible cost/benefit
15 ratio and threatens the well being of Los Osos.

16 The Los Osos wastewater project has
17 always been about cost affordability in relation
18 to the system benefit to the community. The
19 former CSD Board was created and voted into office
20 on the promise of much more affordable and cleaner
21 ponding system.

22 When they learned that funding was not
23 forthcoming for such a system at the Tri-W site,
24 they panicked and adopted the same over-priced,
25 sludge-producing system they had previously

1 condemned as a bad choice for our community.

2 CHAIRPERSON YOUNG: Thank you, sir.

3 MR. ALLEBE: My time's up.

4 CHAIRPERSON YOUNG: Yes.

5 MR. ALLEBE: Can I --

6 CHAIRPERSON YOUNG: I think you said
7 that against staff's recommendation?

8 MR. ALLEBE: Yes.

9 CHAIRPERSON YOUNG: And I thought I
10 heard Mr. Buel say he still recommended approval
11 of the contract.

12 MR. ALLEBE: Oh, I was referring to our
13 legal person, yeah, counsel, our engineer --

14 CHAIRPERSON YOUNG: Okay, but you are
15 aware that Mr. Buel testified that he went ahead
16 and said he still agreed to the increase, to
17 accept those bids?

18 MR. ALLEBE: Oh, well, I guess what I --
19 as I say, I was reading this very fast --

20 CHAIRPERSON YOUNG: I know, well, but
21 those are your --

22 MR. ALLEBE: -- and I --

23 CHAIRPERSON YOUNG: -- words.

24 MR. ALLEBE: No, Mr. Buel is all for the
25 increase in construction estimates.

1 MR. SEITZ: Mr. Chairman, I'd like to,
2 since my name's being brought up, I'd like to
3 clarify if I might, because I was at that --

4 CHAIRPERSON YOUNG: I didn't hear your
5 name.

6 MR. SEITZ: John Seitz.

7 CHAIRPERSON YOUNG: No, I didn't hear
8 him mention your name.

9 (Laughter.)

10 MR. SEITZ: He mentioned legal counsel.

11 CHAIRPERSON YOUNG: Yeah, but I don't
12 know who he's talking about.

13 MR. SEITZ: Okay.

14 CHAIRPERSON YOUNG: Don't worry, I'm not
15 looking at you or anyone else. Okay. When he
16 said staff I thought he was referring to the
17 manager. Okay, thank you very much.

18 MR. ALLEBE: Okay. I'm sorry for the
19 misunderstanding.

20 CHAIRPERSON YOUNG: Okay.

21 MR. ALLEBE: Can we turn in letters?

22 CHAIRPERSON YOUNG: No. No letters.

23 MR. ALLEBE: Okay, thank you.

24 CHAIRPERSON YOUNG: No letters. Okay,
25 Frank Galicia, Alan Martyn, Marlis --

1 MR. THOMPSON: Excuse me, Chair. Frank
2 Galicia told me yesterday he's a middle school
3 principal and he's going to do his best to be
4 here, so you might want to reserve his testimony
5 card till later.

6 CHAIRPERSON YOUNG: Okay.

7 MR. THOMPSON: He's not here now but --

8 CHAIRPERSON YOUNG: We'll put it to the
9 bottom of the stack, but when I get to it, kaput.
10 Okay. And then Marlis and I can't pronounce this
11 last name. Looks like D-a-e-r-r? And then Bruce
12 Payne. He must be a real Payne.

13 Okay, I say that because I know that
14 other people have affectionately said that to him.
15 And I mean no disrespect to Mr. Payne.

16 AUDIENCE SPEAKER: (inaudible).

17 CHAIRPERSON YOUNG: What was that?

18 AUDIENCE SPEAKER: (inaudible).

19 CHAIRPERSON YOUNG: I haven't heard him
20 ask for any time, so don't -- okay. All right,
21 Mr. Martyn.

22 MR. MARTYN: Mr. Chairman, fellow
23 Members of the Board. I have been a resident of
24 Los Osos for close to 40 years. I have been a
25 proponent on two occasions for putting in a sewer

1 in Los Osos. And I preface that because of the
2 fact that what I see happening to our community, I
3 have been an interested party. I've raised my
4 family there; put my children through college.
5 And as an individual that has been precluded from
6 building our retirement home there for over 14
7 years.

8 Myself and my family have been harmed
9 financially and emotionally to the tune of over
10 400,000; we extrapolated the cost of, you know,
11 what we could have done with our property.

12 The evidence provided here that has been
13 brought to you, as Members of this Board, I
14 believe is faulty and I believe is wrong, in that
15 a lot of the conclusions that have been placed
16 before you.

17 I'd like to start off by stipulating
18 that Mr. Briggs wrote in January 29th of the year
19 2001 in a letter to Mr. Buel, the Manager of the
20 Los Osos Community Services District, a response
21 to correspondence. He goes on to say, suggest
22 that decay of natural vegetation rather than
23 septic systems is the source of nitrate
24 contamination of groundwater. This is from Mr.
25 Briggs.

1 The statement should be deleted, he goes
2 on to say, these statements lead a reader to
3 question the need for a project, in parentheses,
4 sewer, and intentionally reduce public confidence
5 and support.

6 Now, further augmenting that is the fact
7 that the source of the alleged nitrate
8 contamination at Los Osos has been a question for
9 more than 30 years.

10 CHAIRPERSON YOUNG: Okay, thank you very
11 much for your comments.

12 MR. MARTYN: Thank you.

13 CHAIRPERSON YOUNG: Okay, what about the
14 lady with the first name of Marlis or man, for
15 that matter. Is that individual here? Yesterday?
16 Okay. Coming back today? Okay. All right.

17 Mr. Payne. Then James Tkach, with a T
18 before the k, and then Fred Dellagatta.

19 MR. PAYNE: Thank you, sir. Did you
20 read the note on the back of my card there? A
21 question.

22 CHAIRPERSON YOUNG: I don't see it.

23 MR. PAYNE: It says over on the -- you
24 may have a different card for later public
25 comment. There was one for comment on --

1 CHAIRPERSON YOUNG: Oh.

2 MR. PAYNE: -- this number.

3 CHAIRPERSON YOUNG: Okay, hold on one
4 second.

5 MR. PAYNE: Thank you.

6 CHAIRPERSON YOUNG: Was this is?

7 MR. PAYNE: Does it say something about
8 a meeting that was held here on February the 11th,
9 2005?

10 CHAIRPERSON YOUNG: No, it doesn't.

11 MR. PAYNE: Well, basically I just want
12 to know why and how inappropriate it could be to
13 keep two of our elected Board Members out of a
14 meeting held in this very building on February the
15 11th of this year with the contractors. It's
16 called a precontract meeting with contractors.

17 Anyway, forget that. We can go over
18 that some other time.

19 Basically there's two things that the
20 public cannot tolerate, and these happen to be
21 unacceptable problems with the design, the
22 location and the technology MBR. It's too
23 expensive, and, of course, the location is
24 dangerous to the environment.

25 I have odor problems; were addressed by

1 Mr. Briggs before the plant was totally designed.
2 Actually we have now gotten unclassified sludge
3 which requires the same handling as hazardous
4 waste.

5 And a permit to take this 80 percent
6 moisture human waste and contaminate a 40-acre
7 field owned by the City of Santa Maria and leased
8 to Engle and Grey. I don't know if they know
9 their lessee is planning to contaminate their 40-
10 acre field with hazardous waste or not.

11 I've been told that this is not
12 hazardous waste, and the simplest description I
13 can say to that is if it quacks like a duck and
14 walks like a duck, it's probably a duck. If it
15 smells like human waste, it probably is. Eighty
16 percent moisture is partially processed human
17 waste.

18 I'm out of time. I could spend 20
19 minutes telling you the number of things that are
20 wrong with that design. It's an experiment.

21 CHAIRPERSON YOUNG: Thank you very much
22 for your comments.

23 MR. PAYNE: The lawsuits were last-ditch
24 efforts to try to stop it, but anyway.

25 CHAIRPERSON YOUNG: Okay, Mr. Tkach.

1 MR. TKACH: Close, Tkach.

2 CHAIRPERSON YOUNG: Tkach, okay.

3 MR. TKACH: Thank you. I come before
4 your Board today to ask you not to impose fines
5 against the community of Los Osos. Imposing fines
6 against the community or the CSD will do nothing
7 to solve the water quality problems or water
8 quality supply issues in Los Osos.

9 In fact, it will only serve to further
10 impede progress towards reaching solutions to
11 those issues, something everyone here wants.

12 Los Osos does not deserve to be fined,
13 as the community has done everything this Board
14 has asked it to do. And in the sake of time I'll
15 skip a lot of that.

16 I know and work with many of the new
17 Members of the CSD Board, and I can assure you and
18 the community they're very dedicated in getting a
19 project for Los Osos. This isn't about delaying
20 or stalling a project, as I've heard. I take
21 offense at that.

22 One of the things that this Board is
23 interested in is sustainability and that's one of
24 the things this project doesn't address, is that
25 very little of the water that's discharged, when

1 there really should be a recharge project, is not
2 recharging. Much of the water will be lost to the
3 Bay or end up in the dumping pumps cycle of the
4 harvest wells back through the plant, up to
5 Broderson and back down the hill.

6 CHAIRPERSON YOUNG: That's not
7 recycling?

8 MR. TKACH: Well, it's cycling, but I
9 don't know if it's recycling. Recycling is for
10 reuse.

11 CHAIRPERSON YOUNG: But isn't that going
12 back into groundwater?

13 MR. TKACH: No, most of it will be lost
14 to the Bay. Only about 10 percent of the water
15 that's dumped at Broderson will end up in the
16 upper aquifer. And very little will end up in the
17 lower aquifer.

18 CHAIRPERSON YOUNG: Okay, keep going.

19 MR. TKACH: And that's the purpose of
20 the harvest wells, is day -- keep it from
21 daylighting in the backyards.

22 Just about a minute here to wrap up.
23 I'll just read my last paragraph here. Today your
24 Board has the opportunity to take the lead in
25 shaping the future of the sewer project in Los

1 Osos.

2 You can proceed with implementing the
3 fines, which your own July 2004 staff report said
4 will most likely ultimately delay getting a
5 project for Los Osos. Or you can do something
6 different.

7 You can move to take the posturing and
8 the politics out of the situation and do what's
9 right to meet your Board's and the community's
10 goals for a sustainable water supply, and to meet
11 water quality objectives.

12 I ask today that your Board pass a
13 resolution asking that your staff, the State Water
14 Resources Control Board Staff and the Los Osos CSD
15 continue negotiating until a negotiated solution
16 is reached that all parties can support. A
17 resolution from your Board would carry a lot of
18 weight with the State Board.

19 The contractors are here ready to work.
20 Much of the piping for the collection system is
21 here; the equipment is here. The CSD has already
22 agreed by resolution to continue working on the
23 collection and disposal system.

24 We are closer than we have ever been to
25 having a project for Los Osos. Do not let this

1 opportunity pass by. Do what you can to help save
2 as much of this project as possible. Thank you.

3 CHAIRPERSON YOUNG: Thank you for your
4 comments.

5 Fred Dellagatta, John Fergus, Cynthia
6 Hawley.

7 MR. DELLAGATTA: Fred Dellagatta, 671
8 Woodland Drive, Los Osos. While you were
9 organizing the public comment earlier, do you
10 remember you were asking about a letter from Ted
11 Peterson?

12 CHAIRPERSON YOUNG: Yes.

13 MR. DELLAGATTA: I have it right here.
14 Use my minutes to read it, is that okay?

15 CHAIRPERSON YOUNG: If you want to use
16 your time to read his letter --

17 MR. DELLAGATTA: That's fine, he's a
18 very --

19 CHAIRPERSON YOUNG: -- that's okay --

20 MR. DELLAGATTA: -- important member of
21 our community.

22 CHAIRPERSON YOUNG: It's your time.

23 MR. DELLAGATTA: Okay. This is a letter
24 from Ted Peterson of 535 Rosina Drive.

25 Honorable Board Members. My name is Ted

1 Peterson; I've been a resident of Los Osos since
2 1993. Upon locating here from Los Angeles I
3 immediately got involved in local politics partly
4 to insure that my new hometown would not turn into
5 another L.A. suburb.

6 I urge the Regional Board to partner
7 with the State Board in funding a demonstration
8 project that will use STEP collection to gather
9 effluent in Los Osos in general; to locate a pond-
10 based treatment plant on the outskirts of town;
11 and to help with a freshwater dam project to help
12 protect Los Osos drinking water from salt water
13 intrusion.

14 I realize that an MBR-based treatment
15 system and gravity collection system has been
16 approved for Los Osos. I believe this combination
17 is not correct for this community because:

18 One, the plant is not environmentally
19 sound. It is designed to be built in an area that
20 will sustain maximum destruction in case of a
21 spill or malfunction.

22 Two, it is the least sustainable
23 technology. MBR is a high-energy user and high-
24 maintenance system. The number of operators
25 required is greater than the number for activated

1 sludge treatment and pond treatment.

2 Three, the increased traffic required to
3 move the supernet out to Santa Maria in another
4 county could be impacted by proposed regulations
5 covering how sewage is moved on highways in
6 California.

7 Four, the proposed collection system and
8 treatment plant would be a financial hardship on
9 everyone in this community. Any system that will
10 have rates that will impact a few, but the system
11 at this cost along with the long-term expenses
12 will have a dramatic impact on every existing
13 household in Los Osos.

14 I urge you to start working with the Los
15 Osos Community Services District to implement and
16 build a system that will be the least
17 environmentally damaged and the most sustainable
18 over a long period of time.

19 I think that the STEPs collection and
20 pond treatment to be the most economically and
21 environmentally sound system. There are arguments
22 that STEP -- thank you very much.

23 CHAIRPERSON YOUNG: Thank you. Okay,
24 Mr. Fergus. John Fergus, is he here?

25 AUDIENCE SPEAKER: (inaudible).

1 CHAIRPERSON YOUNG: Right, and I see
2 your card further down in here, but this is a John
3 Fergus --

4 AUDIENCE SPEAKER: John Fergus is not
5 here.

6 CHAIRPERSON YOUNG: Okay, that's 1456 -
7 14th Street?

8 AUDIENCE SPEAKER: Yes.

9 CHAIRPERSON YOUNG: Okay. He's not
10 here. Cynthia Hawley. And then Steve Senet and
11 then -- wait, Scott Kimura. Didn't we already
12 hear from Scott Kimura?

13 MR. KIMURA: Yeah, you did.

14 CHAIRPERSON YOUNG: Okay.

15 MR. KIMURA: I signed one yesterday, a
16 card yesterday, but --

17 CHAIRPERSON YOUNG: Okay. All right.
18 You were just testing me, right?

19 (Laughter.)

20 (End Tape 5B.)

21 CHAIRPERSON YOUNG: Okay. All right,
22 I've got the clock. Thank you.

23 MS. HAWLEY: Good afternoon. I'm
24 Cynthia Hawley with the lawfirm of Parker and
25 Hawley. And our firm represents the Los Osos

1 Taxpayers association in a current lawsuit which,
2 in part, is against the State Water Resources
3 Control Board for violating the federal Clean
4 Water Act and the State Water Code when it
5 illegally loaned federal and state SRF loan funds
6 to the District.

7 The prosecution is alleging that the
8 District's delay of the project is willful. We
9 disagree. In fact, we contend that the State
10 Water Board and the Regional Board have been
11 instrumental in forcing the District to delay the
12 project.

13 In order to proceed the District must
14 first extract itself from the illegalities created
15 by the former District Board, State Water
16 Resources Control Board and this Board. The
17 reason the District cannot move forward on the
18 project at this time is because the State Water
19 Resources Control Board issued the SRF loan in
20 violation of the federal Clean Water Act, and the
21 state water code, both of which, unambiguously
22 authorize the State Water Board to loan SRF funds
23 only when the borrower has a dedicated source of
24 revenue to repay the loan; when the borrower has
25 security.

1 Here the State Water Board loaned \$134
2 million of federal funds to the former District
3 Board, knowing that the District had no legal
4 source of money to repay the loan, knowing that
5 the District did not have the required security,
6 and knowing that the citizens of Los Osos had been
7 deprived of their constitutional proposition 218
8 right to consent or reject being taxed to repay
9 the loan.

10 And the Regional Board has played a
11 critical role here. It was the Regional Board's
12 threats of fines and cease and desist orders
13 against the property owners that made it possible
14 for the District to evade proposition 218
15 requirements and rely on mandatory charges --

16 CHAIRPERSON YOUNG: Finish the sentence,
17 go ahead.

18 MS. HAWLEY: -- mandatory charges to
19 repay the loan after the forced sewer hookups
20 leveraged at the Regional Board.

21 CHAIRPERSON YOUNG: Thank you very much.

22 Okay, Mr. Senet, you're a Director,
23 aren't you?

24 MR. SENET: Yes, I am. Is there a
25 problem with that? I'd like to address the Board.

1 If it is, it --

2 CHAIRPERSON YOUNG: Go ahead, it'll take
3 two minutes to figure this out. Go ahead, you got
4 two minutes. Go ahead.

5 MR. SENET: Okay. Thank you for letting
6 me speak, Chairman and Board. There's widespread
7 anticipation and fear that the State Water Board's
8 recent decisions refusing continuance of the loan
9 agreement and your Board's consideration of
10 record-breaking fines served on the Los Osos
11 Community Services District would have severe
12 impacts on the community.

13 It would stymie growth, economic health,
14 threaten delivery of public services and delay
15 solving the contamination problem of Los Osos for
16 years to come.

17 If the Regional Board is the state's
18 hammer, then the State Board is the anvil upon
19 which this project would be smashed. Instead I
20 urge you to use all of your power, influence and
21 creativity to forge a new understanding between
22 the community, the CSD and the state to develop a
23 workable plan and minimize delays rather than to
24 extend this impasse.

25 I urge you to amend the time schedule

1 order or defeat it, to accommodate the latest
2 demand handed to the CSD by the State Board, to
3 negotiate a deal, those provisions which we can
4 deal with, or work out.

5 In doing so you would keep the doors
6 open to resolving the issues. By instituting
7 fines alone you'll be acting to wield the hammer
8 for demolition rather than as a tool to strike at
9 the problem we want to fix.

10 Thank you.

11 CHAIRPERSON YOUNG: Thank you. Okay,
12 Mr. Perkins, your card came up. John Perkins.
13 Then John Fouche; I take it this is the other
14 Director. And then Steve Paige.

15 MR. PERKINS: Mr. Chairman, Board
16 Members, John Perkins, Los Osos. I have been
17 identified as a member of a pro-sewer group called
18 Save the Dream; commonly called by the opposition
19 Dreamers. However, I would rather be identified
20 as a person that wants to clean up the groundwater
21 in Morro Bay.

22 I understand the dilemma that you face
23 today. I was going to say until this afternoon
24 I'm not in favor of fines because I, eventually,
25 as a taxpayer, would have to pay my share.

1 After what I heard this afternoon
2 concerning this lawsuit settlement, I'm going to
3 urge you to take whatever action you deem
4 necessary because my share will then go to help
5 clean up the environment in an unrelated means,
6 not going to some -- I won't say anything.

7 CHAIRPERSON YOUNG: Lawyer?

8 MR. PERKINS: I urge you to -- yeah,
9 something like that.

10 (Laughter.)

11 MR. PERKINS: You said it. Having said
12 that, I urge you to take any action you deem
13 necessary to insure that the pollution of our
14 groundwater and Morro Bay, that we, the citizens
15 of Los Osos, are causing is stopped as soon as
16 possible.

17 Thank you very much.

18 CHAIRPERSON YOUNG: Was it Shakespeare
19 that said, "let's kill all the lawyers or
20 something like that?" I am a lawyer, myself, so
21 I'm part of that group.

22 Okay, thank you, Mr. Perkins. Mr.
23 Fouche.

24 MR. FOCHE: Mr. Young, Board --

25 CHAIRPERSON YOUNG: And after Mr.

1 Fouche, --

2 MR. FOUCHE: -- thank you for letting me
3 speak --

4 CHAIRPERSON YOUNG: -- Mr. Paige, and
5 then it looks Tim Nichols. Go ahead.

6 MR. FOUCHE: I just wanted to come up
7 here as a citizen of Los Osos, and also as a
8 Director. I would ask that we go back to the
9 negotiated deal that we had with the state.

10 When we went in and negotiated with
11 Darrin and he came down, he prefaced and stated
12 that he was the principal negotiator and he could
13 take back a deal to the Board.

14 We negotiated in good faith for two
15 days, Monday and Tuesday, and came up with a deal
16 that we thought was a viable and practical
17 solution for our problems in Los Osos.

18 We agreed on a few things. We agreed
19 that we could save the community about \$15
20 million, depending on what treatment type of
21 facility that we were to implement outside of
22 town.

23 We also agreed that we could do it with
24 about a two-year delay beyond the construction
25 window that we have today; construction's ending

1 in '07, December of '07, I believe it is. We're
2 hoping to get it in '09.

3 CHAIRPERSON YOUNG: Mr. Fouche, I'm
4 going to stop your clock while I ask you a
5 question.

6 MR. FOUCHE: Okay.

7 CHAIRPERSON YOUNG: Does that include
8 the litigation that we heard about from these
9 people out near the Andre site?

10 MR. FOUCHE: No, it doesn't.

11 CHAIRPERSON YOUNG: Okay, so --

12 MR. FOUCHE: No, it doesn't. And
13 absolutely I don't deny that litigation would be a
14 factor.

15 CHAIRPERSON YOUNG: Right, okay.

16 MR. FOUCHE: But these are the things
17 that we discussed in the meeting. The County
18 participated in that meeting. Also they came out
19 for a morning and talked to us about zoning.

20 We also discussed with the Coastal
21 Commission that we could get an amended CDP. And
22 we thought we could get through the process fairly
23 quickly since I, myself, I'm a Registered Civil
24 Engineer in California; Steve Senet is also. And
25 we have two environmental professionals on the

1 Board now.

2 We felt that this was a win/win solution
3 for everybody. And when we presented it to the
4 community at our next public meeting, that was the
5 one time that I've seen the community, I felt,
6 actually start coming together on agreement with
7 this solution to our issues.

8 We had people on both sides of the aisle
9 say, well, we're giving up some things but we can
10 live with the rest of it, I think we can do this.
11 That's the only time I've seen that happen that I
12 can recall in the last four or five years since
13 I've been living in Los Osos.

14 I'm asking you to help us to maintain
15 our SRF loan. I'm asking for some help in that,
16 and to maintain our negotiated deal that we had
17 originally. And I'm asking if we could finish our
18 collection system, our disposal system with the
19 current loan. Get through those contracts. Let's
20 get that done.

21 And in the meantime we'll go to work
22 just as hard as we possibly can to site a new
23 facility at a different location.

24 CHAIRPERSON YOUNG: Okay.

25 MR. FOUICHE: Thank you.

1 CHAIRPERSON YOUNG: Thank you. Question
2 I have, are you a practicing engineer?

3 MR. FOUCHE: Yes, I am.

4 CHAIRPERSON YOUNG: Okay. And I want to
5 ask you a few questions about, you know, going out
6 to bid in the last year, two years on projects.
7 Do you work for Caltrans?

8 MR. FOUCHE: I do, I'm a Senior Design
9 Engineer for Caltrans.

10 CHAIRPERSON YOUNG: Are you somewhat
11 familiar with what's going on in the construction
12 industry generally?

13 MR. FOUCHE: Absolutely.

14 CHAIRPERSON YOUNG: And haven't there
15 been cost overruns routinely on projects all over
16 the state?

17 MR. FOUCHE: Yes. Yes, sir, there has
18 been.

19 CHAIRPERSON YOUNG: I mean in Santa
20 Barbara the paper yesterday had something out at
21 UCSB where there was a 42 percent, you know, cost
22 overrun just going out to bid. I was just curious
23 what your experience is that, you know, that the
24 bid came in at 46 percent for this project, it was
25 over. That sounds like pretty standard with

1 what's going on generally in California today.

2 MR. FOUCHE: Well, as a general
3 statement you could say that, but it really
4 depends on what the projects are. It's really
5 materials costs, the price of concrete, cement and
6 steel --

7 CHAIRPERSON YOUNG: Right, steel,
8 cement, things of --

9 MR. FOUCHE: And for us it's asphalt.

10 CHAIRPERSON YOUNG: Right.

11 MR. FOUCHE: Fuel costs have gone up,
12 but now they're coming back down. We're in a
13 spike, there's absolutely no question of that.
14 But the spike could come down and in two years
15 costs could be less.

16 We've had some projects come in at 30
17 percent over bid. We've had some projects come in
18 under. Depends on what type of work that's being
19 done.

20 Our proposal with the ponds, which is
21 where we thought -- we concurred that we could
22 save about \$15 million going out of town. And
23 this is within our deal with Darrin. He was with
24 us on this; he thought it was a practical solution
25 to do.

1 But you're digging holes in the ground,
2 you're not building concrete facilities. And
3 that's where a lot of the savings are with the
4 ponding system.

5 There's also aesthetic issues that you
6 don't have. You've got one facility for pumps and
7 maintenance. The rest of it is ponding, it's
8 under the ground; you don't have tall buildings.

9 CHAIRPERSON YOUNG: I thought what I
10 heard Darrin say was that there were some pluses
11 and minuses.

12 MR. FOUCHE: Depending on what treatment
13 type facility that you're going to --

14 CHAIRPERSON YOUNG: Right, what was
15 discussed with him and his opinion in the end, due
16 to the time delay in getting anything in the
17 ground at another location that there would be no
18 cost savings over the current plant.

19 MR. FOUCHE: We could say that for the
20 MBR plan, but for a ponding system with
21 oxidation --

22 CHAIRPERSON YOUNG: He was referring to
23 what had been discussed and what Ms. Schicker had
24 been discussing with him in terms of another
25 location.

1 Remember he said, --

2 MR. FOUCHE: I do, I do. And I would
3 argue the point was that we talked about three
4 types of treatment facilities. One was a ponding
5 system; one was an oxidation ditch; and one was
6 the current system that's being proposed, which is
7 a little more than what we really need for what's
8 necessary in Los Osos, as an MBR process. And
9 Darrin concurred with that. He thought ponding
10 would be a very practical solution for Los Osos.
11 And that's the cheapest.

12 There's a range of costs between those
13 three facilities.

14 CHAIRPERSON YOUNG: Okay, thank you very
15 much.

16 MR. FOUCHE: You bet. Thank you.

17 CHAIRPERSON YOUNG: Okay, Steve Paige.
18 Followed by Tim Nichols and then Gail McPherson.

19 MR. PAIGE: Respectfully, Mr. Young, I
20 sent a letter to the Board that was seven pages
21 long. And I, in that letter, specifically
22 requested to be notified of this meeting; and also
23 that I'd be given time.

24 I have what I think is a very pertinent
25 letter to the Board that is circulating in the

1 community right now. And I would like to be given
2 maybe, oh, I think, maybe 45 seconds extra time so
3 that I can read the letter in its entirety.

4 CHAIRPERSON YOUNG: I'd rule that --
5 you're not trying to get a letter in?

6 MR. PAIGE: No, I'm not trying to put
7 the letter in. I'm actually just trying to read -
8 - I'm trying to take the time that I originally
9 requested in my letter to you that you stamped and
10 was posted as a pds on your website.

11 This letter was written -- it was
12 submitted before the close of submissions. And in
13 that letter I requested to have time to present at
14 this Board. And I just can't read this letter in
15 two minutes. It's probably about three minutes
16 long.

17 CHAIRPERSON YOUNG: Okay. So, I'll give
18 you that extra time, --

19 MR. PAIGE: Okay.

20 CHAIRPERSON YOUNG: -- based on your
21 representation that you requested it in a letter
22 that was timely filed.

23 MR. PAIGE: Yes, it is, that's --

24 CHAIRPERSON YOUNG: Okay. And on the
25 website.

1 MR. PAIGE: -- that's true, sir.

2 CHAIRPERSON YOUNG: Okay.

3 MR. PAIGE: Okay, this letter is
4 circulating in the Los Osos community now.

5 "Dear Miss Maureen Marche (phonetic),
6 Administrative Assistant of the Board of the State
7 Water Resources Control Board. As a citizens of
8 the Los Osos prohibition zone, we wish to make a
9 formal complaint about the irregularities in the
10 State Water Resources Control Board's duties to
11 adhere to state constitutional law. The State
12 Water Resources Control Board is responsible for
13 all provisions in Article 13(c) and (d) of the
14 state constitution. They're responsible to be
15 adhered to."

16 "We deem your office guilty of proximate
17 negligence under civil law with respect to
18 oversight of assessments on our properties. We
19 are giving you the opportunity to address these
20 inconsistencies before we take further action."

21 "The SWRCB was vicariously liable to
22 oversee that Los Osos Community Services District
23 complied with state law. The requirement is
24 specifically stated in policy documents and loan
25 application documents. Your office has the sworn

1 duty to insure application of Proposition 218.
2 Please address all conflicts with the state
3 constitution in your loan administration
4 immediately. They are creating running
5 liabilities that must be remedied. Here is a
6 partial list of the errors and omissions."

7 There are 13; I will only read -- I will
8 read number 13; it references the other 12, to
9 shorten my time here.

10 "Because of the above, the loan attached
11 to the equities of our properties was funded
12 before compliance with state law provision was
13 met. Hence, it was void at signing, and all funds
14 disbursed were made outside contract provisions
15 announced by state constitutional law
16 conformance."

17 "Then you, the CWRCB, attempted by
18 contract of adhesion in negotiations with the Los
19 Osos Community Services District, to correct the
20 revenue stream voids and emissions under
21 Proposition 218 for assessments after the fact of
22 approval of the loan. This is, in fact, a direct
23 admission of your continuing negligence, starting
24 with the date of the incomplete loan application."

25 "Any damages or expenses resulting from

1 extension of time necessary to remedy our rights
2 is your responsibility entirely. Those rights
3 should have been overseen throughout the whole
4 loan process. They were not. We formally request
5 by this certified letter you release any and all
6 monies for direct and indirect costs related to
7 protecting ourselves from the assessment expenses
8 for the wastewater project loan inconsistencies
9 with state constitutional law. Your legal staff
10 can determine your liability and act immediately."

11 "We further request that all contractors
12 be paid for work rendered while you readminister
13 our state constitutional rights to prevent further
14 illegal attachments to our collective property
15 equities. If not, you will not" --

16 CHAIRPERSON YOUNG: Thank you, sir.

17 MR. PAIGE: -- "you will be held liable
18 for them." Thank you.

19 CHAIRPERSON YOUNG: Okay. Mr. Payne, I
20 just want you to know that I did find your card;
21 it was in my stack. Your question was in here.
22 Okay.

23 MR. PAYNE: (inaudible).

24 CHAIRPERSON YOUNG: I'm sure everybody
25 would like to spend a lot of time talking about

1 this. Okay, Mr. Nichols, Gail McPherson, Vivian
2 McNeill. Is Tim Nichols here? No? 1671 15th
3 Street? Okay.

4 Gail McPherson.

5 MS. McPHERSON: Good afternoon. I don't
6 want to spend a bunch of time talking about this.
7 I'd like to go back to retirement here.

8 I was surprised to see that Lori Okun
9 was in Sacramento. I testified in Sacramento, and
10 I was surprised to see her there saying that it
11 would take five to ten years to start again on a
12 project.

13 In 2000 we were given four years to
14 start again on a new project. So that was
15 interesting to me. And I recognize that it does
16 take five to ten years, and most time schedule
17 orders are that, five to ten years.

18 And so if you go back through it would
19 be nice to find out what, you know, what is the
20 average time schedule order.

21 And second, the bid, as I recall Mr.
22 Seitz gave advice on not rebidding. However, out
23 of the committees and out of the Board and out of
24 the engineers, many of them agreed that we needed
25 to rebid. We only had, in some cases, one

1 contractor bidding on these. It was not
2 competitive.

3 And so my third point -- I'm sorry, did
4 you want to ask me a question?

5 CHAIRPERSON YOUNG: I'm going to stop
6 the clock. Do you know about an email that was
7 circulated in the community by, I think, a Mr.
8 Swanson, if I have his name correct? It went to a
9 bunch of contractors and scared them off from
10 bidding. I'm not surprised there was a couple of
11 bids.

12 MS. McPHERSON: Actually there was a
13 list that was prequalified and it wasn't updated
14 from 2004. And I think they would have had better
15 -- there was a lot of reasons besides --

16 AUDIENCE SPEAKER: Sanford.

17 CHAIRPERSON YOUNG: Okay.

18 MS. McPHERSON: Yeah. But, you know,
19 I've read contracts and there were always
20 community activists that decided they didn't want
21 something done. It never stopped contractors from
22 following the money. I'm serious. That's not
23 that unusual.

24 CHAIRPERSON YOUNG: Okay, go ahead.

25 MS. McPHERSON: Okay.

1 CHAIRPERSON YOUNG: You have a minute.

2 MS. McPHERSON: I will put the other
3 email in context that Ms. Tacker, because she just
4 jogged my memory. Here's the context of that
5 email. "I hope the CSD gets fined out of
6 existence fast enough to save the contractors and
7 low-interest loan. Pandora." I'm just adding
8 that kind of out of sequence here because I'm
9 rushing through minutes.

10 I felt like the question to Lisa about
11 what would make you build this plant at Tri-W
12 could easily be understood to mean is \$11 million
13 in fines enough to make you build this plant at
14 Tri-W. And it's clear that the state and the
15 Regional Board are not to mandate the site, the
16 location, the technology or the cost.

17 That site increased the costs, because
18 when they compared it with Darrin Polhemus, the
19 same exact plant out of town, they saved \$10- to
20 \$15 million. And so that's significant, and it's
21 important to the community to be able to seek that
22 solution.

23 CHAIRPERSON YOUNG: Thank you, Ms.
24 McPherson.

25 MS. McPHERSON: Thank you very much.

1 CHAIRPERSON YOUNG: Vivian McNeill.

2 Wade -- how do you pronounce it?

3 MR. AKLE: Akle.

4 CHAIRPERSON YOUNG: Okay. And then
5 Chuck Cesena.

6 MS. MCNEILL: Vivian McNeill. I live in
7 Los Osos and I'm a property owner. I'm also a
8 former member of the Los Osos Community Services
9 District Wastewater Committee.

10 I believe that the current Los Osos CSD
11 Board has deliberately misled the community of Los
12 Osos on the costs and feasibility of moving the
13 sewer out of town. They never had any intention
14 of building that facility at the Tri-W site.

15 The three new members of the Board
16 openly supported and endorsed the passage of
17 Measure B. And I believe, if I recall correctly,
18 the two prior Board Members, Directors Schicker
19 and Tacker, also endorsed Measure B.

20 And as a Board they have consistently
21 attempted to hide behind Measure B as a shield.
22 This is typical of their delaying, delay, delay,
23 stall as long as we can tactics.

24 And as an aside, to date, since the new
25 CSD Board was seated, no one who has submitted a

1 public records request has received any of those
2 requests. Not one. I was told today that no one
3 had.

4 And the gentleman that you were
5 referring, they were referring to is Bud Sanford
6 who sent the letters to the contractors. Bud
7 Sanford.

8 CHAIRPERSON YOUNG: Bud Sanford.

9 MS. McNEILL: Thank you.

10 CHAIRPERSON YOUNG: Was I correct, Ms.
11 McNeill, in my recollection of that email, or that
12 letter that he sent out?

13 MS. McNEILL: Yes. Yes, I have a copy
14 of that at home. He was threatening the
15 contractors with all sorts of accidents that could
16 happen and --

17 (Audience participation.)

18 CHAIRPERSON YOUNG: Excuse me, please.
19 Go ahead.

20 MS. McNEILL: Well, I've lost my train
21 of thought now, but --

22 CHAIRPERSON YOUNG: That he was
23 threatening the contractors with all sorts of --

24 MS. McNEILL: That they would be making
25 a grave mistake by bidding on or attempting to

1 build a facility or do any construction work in
2 the community of Los Osos.

3 CHAIRPERSON YOUNG: Okay.

4 MS. McNEILL: And that was not the only
5 missive that was sent to them.

6 CHAIRPERSON YOUNG: Thank you very much.

7 MS. McNEILL: Thank you.

8 CHAIRPERSON YOUNG: Yeah, I would
9 appreciate it if you would keep your comments to
10 yourself. Okay? And you can make them in public
11 comment unless you've already done so. And then
12 please just keep them to yourself.

13 MS. BRUTON: Mr. Young, I have a point
14 of order to bring up here. I believe this is
15 public forum, and it's time for the public to give
16 their input here. And you seem to be
17 systematically choosing some people to get into
18 discussions with.

19 And as far as Bud Sanford, whether I
20 agree or don't agree with that, this woman has no
21 direct information to give you. And if you're
22 looking to her and saying that she is the
23 authority for that, then I think that you are
24 overstepping your jurisdiction.

25 CHAIRPERSON YOUNG: I don't know who

1 that was.

2 (Laughter.)

3 AUDIENCE SPEAKER: Marla Bruton.

4 CHAIRPERSON YOUNG: Okay, Wade --

5 AUDIENCE SPEAKER: Hurricane Marla.

6 CHAIRPERSON YOUNG: Okay. Sir, could
7 you pronounce your --

8 MR. AKLE: Akle.

9 CHAIRPERSON YOUNG: Akle, thank you.

10 MR. AKLE: 1586 Third Street in Baywood.

11 I learned a lot today and yesterday. Number one,
12 I was concerned about the safety of the Tri-W
13 site. Earthquake, slides, whatever it is. I
14 think, Mr. Young, your questions clarified in my
15 mind that it is safe.

16 In addition, Rob Miller and his company
17 signed off on it. And I can't imagine that they
18 would sign off on a flawed project.

19 So the next question I have is the
20 concern of this community. How are we going to
21 pay and how much. So, the costs.

22 We claim that we can save 15 million of
23 the plant. The other 90 million -- 90 million is
24 not contested by the present Board. That's the
25 collection and the disposal. So if they save 15

1 million on 135 million, then reduce the cost from
2 \$200 to \$180 per month for each of us. It's not a
3 panacea. That's not going to solve the cost
4 problems.

5 And then their slide is totally wrong.
6 They have a line which has escalation over two
7 years. And they applied the escalation to the
8 Tri-W at the rate of \$5 million in that slide.
9 There is no escalation for Tri-W. It's starting
10 today. The escalation on the Andre site should be
11 five to ten years.

12 And they're selling the Tri-W, they're
13 environmentally concerned. They're selling the
14 Tri-W to make a profit and end up with the recall
15 mall at Tri-W.

16 CHAIRPERSON YOUNG: Thank you for your
17 comments.

18 MR. AKLE: Thank you.

19 CHAIRPERSON YOUNG: Chuck Cesena;
20 Barbara, is this your wife?

21 MS. AKLE: Yes.

22 CHAIRPERSON YOUNG: Okay. Akle, and
23 then Jan DiLeo.

24 MR. CESENA: Chairman Young, Board
25 Members, my name is Chuck Cesena. And I'm here to

1 reiterate that Board Members --

2 CHAIRPERSON YOUNG: Are you speaking as
3 a Board Member?

4 MR. CESENA: As a citizen.

5 CHAIRPERSON YOUNG: Okay.

6 MR. CESENA: And a Board Member. I just
7 want to reiterate that everybody I know in Los
8 Osos wants clean water; we want a project. We
9 want our lives back. We've dedicated way too much
10 of them to this project.

11 So why are we still trying to move this
12 off the Tri-W site? One reason is the way it was
13 foisted upon us. You saw a slide up there
14 yesterday that showed a chart from the facility's
15 report, which was furnished to your Board, but not
16 released for public review, that showed that the
17 out-of-town site was the cheapest in terms of
18 lifecycle cost.

19 But what was in the environmental impact
20 report that was released to the public? An
21 overriding consideration that said we've got to
22 put it in the middle of town because of the lower
23 cost of a centralized collection system. That's
24 like cherry-picking the one aspect that's cheaper
25 and ignoring the big picture.

1 The other reason is it's just a bad
2 project. And I won't go too deeply into that.

3 CHAIRPERSON YOUNG: Mr. Cesena, isn't
4 this water under the bridge? Maybe, even given
5 that that might be true, okay, --

6 MR. CESENA: Okay, we'll ignore that
7 then --

8 CHAIRPERSON YOUNG: I'm just saying
9 we're not really here -- and I'm doing this with
10 you because you're a Board Member, but aren't we
11 really here to look at what was alleged in the
12 complaint?

13 MR. CESENA: That was my second --

14 CHAIRPERSON YOUNG: And the violations
15 of the time schedule order?

16 MR. CESENA: Okay, the --

17 CHAIRPERSON YOUNG: Okay.

18 MR. CESENA: -- the technical aspects of
19 the project have been brought before you. It
20 doesn't solve our long-term water supply needs.
21 It's an energy hog, and it's just upstream from
22 the estuary.

23 Regarding the time schedule order, in 25
24 years of a career as a planner for large public
25 works projects, we allow five to seven years

1 anytime we scope a project with the complexity of
2 an EIR. We were handed a time schedule order of
3 four years. An impossibility.

4 Ms. Okun even testified in Sacramento it
5 would take five to ten in her opinion to move a
6 plant. Why were we only given four years? I
7 don't think it would take five to ten; we've got a
8 lot of work that's been done in the past few
9 years. It only took the previous Board six year,
10 not five to ten. And that was trying to put a
11 plant in the middle of town.

12 CHAIRPERSON YOUNG: Thank you for your
13 comments.

14 MR. CESENA: The time schedule order was
15 way off base.

16 CHAIRPERSON YOUNG: Okay. Jan Di Leo;
17 Karen Venditti; Rich Sadowski.

18 MS. DI LEO: Mr. Chairman, Board, I'm a
19 resident of Los Osos for roughly 12 years. I
20 reside in the prohibition zone.

21 It would appear the current Los Osos CSD
22 Board engages in what Orwell termed double-speak.
23 they ran on a campaign for a more public, open
24 process. Now when you request information from
25 the LOCSD, including minutes from the previous

1 meeting, you get a letter from their attorney
2 indicating they will consider your request and get
3 back to you.

4 They ran on a campaign the current
5 project is too expensive; they had a cheaper
6 project that could be located out of town. Yet,
7 their actions, consisting of appeals, delays,
8 lawsuits and recalls have been the major component
9 making the project more expensive.

10 Once elected they admitted they had no
11 project, I would add, let alone a cheaper project,
12 but they would work on it.

13 They indicated the current project could
14 be moved out of town and the community would not
15 lose its low-interest loan. The reality the State
16 Water Resources Board clearly indicated to these
17 Board Members the loan was project-specific. That
18 any attempt to change the project at this late day
19 would result in perilous consequences for the
20 community of Los Osos.

21 They ran on a campaign that the previous
22 LOCSD Board Members and staff lacked integrity.
23 They did this while they contacted granting
24 agencies and told them not to fund us, while
25 clearly misleading the public during the recall

1 campaign, and vilifying anyone that disagrees with
2 them.

3 They indicated an out-of-town location
4 will solve our pollution problem, even though
5 historically speaking, Los Osos has had two out-
6 of-town locations, one on Turry Road and one on
7 South Bay Boulevard. These locations were
8 controversial; lawsuits were filed; and the
9 projects did not get built.

10 They indicated the pollution of our
11 groundwater is a major concern, while Ms.
12 Schicker, during her campaign and during LOCSD
13 meetings, indicated we can delay the project, we
14 have plenty of time, trust her, she's a scientist.
15 She doesn't seem to understand that scientists
16 produce data, not opinions.

17 CHAIRPERSON YOUNG: Thank you for your
18 comments.

19 MS. DI LEO: Thank you.

20 CHAIRPERSON YOUNG: Karen Venditti.

21 MS. VENDITTI: Karen Venditti, a
22 resident and taxpayer, property owner in Los Osos.

23 CHAIRPERSON YOUNG: My apologies.

24 (Laughter.)

25 BOARD MEMBER SHALLCROSS: This is an

1 interested party.

2 (Laughter.)

3 MS. VENDITTI: My apologies, too. Dear
4 Mr. Young and All of the Directors and everyone
5 here who is interested in this. I'm sincerely
6 grateful for this opportunity to testify before
7 this hearing.

8 As a resident and property owner in the
9 prohibition zone I have been carefully following
10 events and efforts relating to our wastewater
11 treatment plans. And, yes, I voted for Measure B
12 and the recall of three of the previous CSD
13 Directors, which directly impacted Los Osos'
14 efforts to comply with the state's water
15 regulations. And you deserve to understand why.

16 My testimony is not unique, for I
17 believe that many Los Osos residents share my
18 experience and perception of our situation. But
19 it is relevant to this hearing.

20 Admittedly, I remained uninvolved
21 personally in sewer issues until last year. By
22 then it became apparent to me that the existing
23 CSD Directors were acting without regard to the
24 concerns and needs of many of our citizens. They
25 were making decisions that would affect our

1 community -- excuse me -- community's financial
2 obligations, social makeup and environmental
3 impact. And I began to question their wisdom.

4 It was then that I began to educate
5 myself and get involved.

6 I'm going to skip down before I lose
7 time here. I think it's important to understand
8 that the Tri-W plan is not only unaffordable, that
9 was not my primary reason for voting for Measure
10 B.

11 It is a bad plan. It's not going to
12 meet our water needs. It's not only a bad plan
13 from the standpoint of the technology, the risk of
14 spills and odors and things like that, even the
15 expensiveness of the operations and maintenance.
16 That's a big deal

17 But even if you look at the whole
18 monetary thing, that was not my most important
19 reason. I wanted to look at the big picture of
20 water plan overall.

21 And so I would just close with that
22 line, this is not about a wastewater treatment
23 plan, this is about water quality, conservation of
24 our water resources. We need a plan that's going
25 to do the job.

1 Thank you.

2 CHAIRPERSON YOUNG: Thank you. Rich
3 Sadowski; Marla Bruton; and then Joey Racano.

4 MR. SADOWSKI: My name is Richard
5 Sadowski. I'm a citizen of Morro Bay, and my
6 vitae includes I have a grade IV wastewater
7 collection certificate from the California Water
8 Environmental Association; I have a bachelor of
9 science degree in mechanical engineering with a
10 masters pending; and 25 years of building and
11 field engineering experience.

12 I'm currently volunteering my time and
13 expertise to the Ocean Outfall Group on clean
14 water issues as they pertain to the Bay watershed.

15 To answer your question to Director Lisa
16 Schicker about the potential of sewer spill
17 locations in an out-of-town collection system, the
18 answer is simply yes. In a gravity system
19 dictated by topography the upstream manhole would
20 start to bubble and maintenance personnel would be
21 called out just like everywhere else in this City
22 and the County, to address the blockage.

23 I'm sure that the competent staff of the
24 Los Osos maintenance staff will be implementing a
25 backflow device program similar to the Cities of

1 San Luis.

2 With regards to the lift stations,
3 redundant alarm systems are used. And as far as
4 the force mains are concerned, which will be the
5 main arteries to the sewer out of town, sleeved
6 forced mains with foolproof leak detection systems
7 such as the one I designed for Cayucas could be
8 used.

9 May I add that Mr. Bruce Daniels and his
10 wife became privy to these issues when Mr. Racano
11 presented his ABC regional plan to the Democratic
12 Environmental Caucus.

13 Now the reason why I came here, that was
14 the answer to your question --

15 CHAIRPERSON YOUNG: You have 18 seconds.

16 MR. SADOWSKI: No, I don't. I came
17 here, that's your answer. I've given my -- I
18 volunteer my time just like you do. You're a
19 public servant, you serve the public.

20 Now I'm here to speak on a separate
21 issue. The Board is giving the appearance of
22 selective enforcement. Earlier this year under
23 the supervision of Gerhard Hubner, regional staff
24 was informed with documented data of a reportable
25 spill, sewer spill that occurred on the beaches of

1 Cayucas.

2 CHAIRPERSON YOUNG: Thank you for your
3 testimony.

4 MR. SADOWSKI: No fines were levied --

5 CHAIRPERSON YOUNG: Thank you for your
6 testimony, Mr. Sadowski. It's two minutes.

7 MR. SADOWSKI: I understand that, but I
8 answered your question. That time was for the
9 question that you had to Ms. Lisa Schicker.

10 I'm presenting a different issue.

11 CHAIRPERSON YOUNG: I didn't ask you to
12 answer the question I posed to her.

13 MR. SADOWSKI: I volunteered that
14 information to you as a courtesy of my knowledge.

15 CHAIRPERSON YOUNG: I didn't ask you --

16 MR. SADOWSKI: When was the last time
17 you volunteered anything?

18 CHAIRPERSON YOUNG: Please sit down.

19 MR. SADOWSKI: I want to -- I want to --

20 CHAIRPERSON YOUNG: Excuse me. Marla
21 Bruton. Then Joey Racano. And then Don Bearden.

22 What is that?

23 MS. BRUTON: It's your agenda, it's
24 definitely in the record.

25 CHAIRPERSON YOUNG: Okay. You have -- I

1 didn't realize, you came up earlier, so you've got
2 about a minute and 40 seconds.

3 MS. BRUTON: Okay, this is your agenda.
4 And the reason I'm bringing this up here is I'd
5 just like to point out to the public that the
6 Central Coast Water Board Members, there are nine
7 appointed categories that are supposed to be on
8 this Board.

9 There are five members today sitting on
10 this board. They represent irrigated agriculture,
11 industrial water use, water quality, recreation,
12 fish and wildlife and municipal government.

13 Those missing are the county government,
14 water quality, public and water supply. The
15 public person on this panel stepped down, recused
16 herself because coincidentally she lives in the
17 prohibition zone. I might add that's an
18 appointment by the Governor. It's quite timely, I
19 would say.

20 The other Director who recused himself
21 was Mr. Bowker, and he recused himself because he
22 said he didn't want to give the appearance of a
23 conflict of interest. His conflict of interest
24 appearance has been ongoing and insidious.

25 And the County, this County right here,

1 he's also the County -- he represents the County
2 of San Luis Obispo on this Board. This County,
3 the last time I was at the Board of Supervisors
4 meeting, the word corruption, nepotism,
5 favoritism, cronyism -- these are the things that
6 have oppressed the citizens of this County. And
7 frankly, we're not going to take it sitting down
8 anymore.

9 Am I up, or do you want me to keep
10 going? I'll keep going if you want.

11 CHAIRPERSON YOUNG: It's a yellow light.
12 You've got 15 seconds.

13 MS. BRUTON: Okay. In your staff report
14 it says that there's no question that further
15 project delays will result in cost increases and
16 continued water quality impacts.

17 Today you've heard there is a viable
18 answer. All you have to do is listen to the CSD
19 proposals. And that statement becomes --

20 CHAIRPERSON YOUNG: Thank you for your
21 comments. Joey Racano. And Don Bearden, and then
22 it looks like Bo Cooper.

23 MR. RACANO: Honorable Board, Staff and
24 friends. In order to address the important
25 business before us today I'd like to direct your

1 attention to the various threats faced by our Bay
2 and Estuary.

3 Central Valley agricultural interests
4 are threatening to dump billions of gallons of
5 selenium-tainted ag water off Point Estero. Morro
6 Bay is dumping and disinfecting less than fully
7 secondarily treated sewage off the coast,
8 resulting in chemical reactions shown to change
9 the sex of fish in Orange County and Los Angeles.

10 Morro Bay is also dragging its feet on
11 Clean Water Act compliance, and now expects to
12 take ten years to reach the sewage treatment
13 standards of 33 years ago. Cayucas sends raw
14 treatment to Morro Bay, raw sewage to Morro Bay.

15 Is this thing on? Check, it sounds like
16 it just went off.

17 Now, in the meantime they're taking \$4.8
18 million in illegal reserves and stashing it away
19 in San Luis Obispo. That money is earmarked
20 specifically for sewage treatment. That's a
21 violation of the arbitrage rule that doesn't allow
22 joint powers agencies to act like financial
23 institutions.

24 Duke Power Plant is using single-pass
25 cooling on the estuary, and now armed with a 50-

1 year lease, will continue on with this dangerous
2 and destructive process.

3 Now, with this virtual Armageddon being
4 waged on the waters of Estero Bay and the National
5 Estuary, it's the opinion of the Ocean Outfall
6 Group that this Board should refrain from waging a
7 war of their own on the vulnerable citizens of Los
8 Osos.

9 Now, with Morro Bay and Los Osos both
10 needing additional treatment at the same time,
11 only a regional plan makes sense. Now, a
12 regional, full tertiary plan would qualify us for
13 moneys not available to myopic systems like the
14 one at Los Osos on the Tri-W site.

15 Now it would also increase the
16 likelihood of protective legislation. It would
17 assure compliance with AB-885, as well as with the
18 State Water Board's own watershed-wide waste
19 discharge requirement.

20 Instead of fining Los Osos, please, I
21 invite you to join with us in the spirit of
22 cooperation because rather than allow problems to
23 divide us, the time has come for solutions to
24 unite us.

25 Thank you for this opportunity, Mr.

1 Young.

2 CHAIRPERSON YOUNG: Thank you. Don
3 Bearden, then Bo Cooper and Lacey Cooper.

4 MS. AKLE: (inaudible).

5 CHAIRPERSON YOUNG: Oh, okay.

6 MS. AKLE: But go ahead with, you know,
7 I just wanted to --

8 CHAIRPERSON YOUNG: What's your name?

9 MS. AKLE: Barbara Akle.

10 CHAIRPERSON YOUNG: Oh, what happened?

11 MS. AKLE: Well, you called --

12 CHAIRPERSON YOUNG: Someone must have
13 just -- so eager to get up here, they muscled in
14 front of you.

15 (Laughter.)

16 CHAIRPERSON YOUNG: This is an eager
17 group we've got tonight.

18 MR. BEARDEN: Do you want her to go now?

19 CHAIRPERSON YOUNG: No, that's fine.

20 That's fine.

21 MR. BEARDEN: My name is Don Bearden. I
22 live at 1411 7th Street in Los Osos, in the
23 prohibition zone.

24 The present Los Osos CSD has seen fit to
25 stop progress on a technically sound and viable

1 project. And by doing so, has violated the
2 Regional Water Control Board's basin plan.

3 Fining the Los Osos CSD or the citizens
4 of Los Osos won't get the pollution cleaned up in
5 a reasonable manner. If you're going to fine us,
6 I ask that you consider holding those fines in
7 abeyance conditional on the Los Osos CSD voting to
8 get the Los Osos wastewater treatment project back
9 to the County of San Luis Obispo to complete. A
10 December 9th deadline would be appropriate.

11 The present CSD has its hands tied with
12 Measure B and cannot legally proceed on the
13 project, themselves. But they can vote to give it
14 back to the County.

15 I believe that this path is the quickest
16 way to get a wastewater treatment project
17 completed for Los Osos. Thank you.

18 CHAIRPERSON YOUNG: Mr. Bearden, do you
19 think they're going to do that willingly?

20 MR. BEARDEN: You can give them one more
21 chance.

22 (Laughter.)

23 MR. BEARDEN: One more chance.

24 CHAIRPERSON YOUNG: How many chances
25 should we give them? How many bites of the apple

1 should we give them?

2 MR. BEARDEN: One more, they got a
3 choice between fines and the doggone --

4 CHAIRPERSON YOUNG: Okay. Thank you for
5 your comments. Bo Cooper -- oh, pardon me, pardon
6 me, pardon me. Akle.

7 MS. AKLE: Barbara Akle.

8 CHAIRPERSON YOUNG: You know, I
9 understand what's going on, yeah.

10 BOARD MEMBER SHALLCROSS: Well, I was
11 just --

12 CHAIRPERSON YOUNG: Thanks, Gary.

13 MS. AKLE: These are my thoughts on
14 fines. And, please, if I say something
15 inaccurate, correct me.

16 CHAIRPERSON YOUNG: And your name,
17 please.

18 MS. AKLE: Barbara Akle.

19 CHAIRPERSON YOUNG: Thank you.

20 MS. AKLE: Prohibition zone homeowner,
21 Los Osos. My thoughts on fines. After listening
22 to the proceedings for past two days and living in
23 Los Osos for nine years, it appears there's been a
24 lot of factors contributing to the situation we
25 have today.

1 Our CSD was formed in 1999, six years
2 ago. I keep hearing references to 30 years of
3 noncompliance. That means the County had full
4 control and responsibility for 24 of those 30
5 years. Sounds a little bit like maybe some benign
6 neglect going on. Anyway, that's my thoughts.
7 Surely there was something more forceful they
8 could have done to take control.

9 Once the CSD was formed our Board took
10 the sewer obligation seriously and did their best
11 to see it through. Lawsuits or pressures against
12 the Board were not generated by someone
13 representing the people in Los Osos as a whole,
14 but by special interest groups who wanted
15 something different.

16 It is only since the recall that
17 questions arose about noncompliance. If fines
18 occur, I think it should reflect that very short
19 period only.

20 In addition, most Los Osos prohibition
21 zone homeowners supported going ahead with the
22 sewer at the Tri-W site. Measure B and the new
23 Board were put in place by a slim majority,
24 including renters and non-prohibition-zone voters,
25 who had no real stake in the cost of the sewer or

1 in fines against those of us who must pay for this
2 sewer.

3 Prohibition zone homeowners have already
4 been punished, and in a way, fined by our own
5 Board's refusal to accept the SRF -- is that what
6 it's called -- the state low-interest loan.

7 I would ask that the Regional Water
8 Quality Board consider this, and please not add to
9 our misery index by fining individual prohibition
10 zone homeowners.

11 Thank you.

12 CHAIRPERSON YOUNG: Thank you for your
13 comments. Now we have Bo Cooper, right? And then
14 Lacey Cooper. Let me read the rest of these off
15 because we're hitting the bottom of the list.
16 Richard Margetson, Michael Moore, Frank Galicia
17 and Vita Miller. Okay. Let me set the clock for
18 you.

19 MR. COOPER: Bo Cooper, Los Osos. The
20 issue is 00-131, number 13 says the civil penalty
21 established in the sewer are \$10,000 a day is
22 established in an amount necessary to achieve
23 compliance. It does not include any amount
24 intended to punish or address previous violations.

25 It's not clear to me how any fine will

1 induce compliance to a Board that has indicated
2 that we really want to do it. When Mr. Seitz
3 asked Mr. Briggs how will a fine help us get a
4 sewer, which is what everybody wants, a water
5 project, according to the telegrams reviewed this
6 morning, according to Mr. Briggs, it said the
7 penalty, itself, does not clean the basin, but
8 consequences from penalties do force dischargers
9 to clean up their actions.

10 This is a very weak answer. The right
11 answer is the Board wants to do it. They cannot
12 do it.

13 Also, 13 continues, says that you can
14 extend time for compliance for delays beyond
15 reasonable control of the CSD. Measure B is such
16 a thing. The withdrawal of SRF funds is such a
17 thing. The Board has indicated, yes, we're
18 willing to do it, and are not able to do that.

19 So, that's that.

20 Also, Ms. Okun alluded to Water Code
21 section 13327. It says, in determining the amount
22 of civil liability the Regional Board shall take
23 into consideration, with respect to the violator,
24 the ability to pay, the effect on the ability to
25 continue business.

1 It's not a matter of choosing between
2 them, which was the implication that I got when I
3 heard it before I read it. It's all of those
4 matter. And so if the ability to pay does matter,
5 it's not one of the factors, it's one of the
6 factors that have to be included, what it has to
7 do with business, which is how the CSD can affect
8 the governmental business matters.

9 So you can't say, well, other things are
10 okay, but this we can put aside. It's not the
11 case. When it says shall take into consideration,
12 it includes all of them. There's several
13 categories here, and those categories need to be
14 included.

15 Thank you.

16 CHAIRPERSON YOUNG: Thank you. Lacey
17 Cooper.

18 MS. COOPER: Yes, we're related through
19 marriage. I'm Lacey Cooper of Los Osos. I've
20 been a homeowner in the prohibition zone for 20
21 years. And I've been attending meetings over the
22 last several years.

23 And I just wanted to make -- go back to
24 the idea of, you know, are these people
25 responsible for the delays that are occurring to

1 the project. There's been a lot of different
2 topics discussed, but weren't they --

3 CHAIRPERSON YOUNG: You mean the
4 Directors?

5 MS. COOPER: Excuse me?

6 CHAIRPERSON YOUNG: When you say these
7 people, who are you referring to?

8 MS. COOPER: I lost my train of thought,
9 I'm --

10 CHAIRPERSON YOUNG: I'm sorry.

11 MS. COOPER: -- having a senior moment
12 here.

13 CHAIRPERSON YOUNG: I'll stop the clock.

14 MS. COOPER: Okay. I don't know, can I
15 just move on to -- these --

16 CHAIRPERSON YOUNG: Okay, I apologize.

17 MS. COOPER: That's okay, I'm a little
18 nervous. Let's see, oh, okay, these people, yeah,
19 Directors. Okay.

20 Let's see, these people, well, actually
21 I'm talking about two different sets of people.
22 I'm talking about your prosecution team and the
23 Board of Directors.

24 Because your prosecution team put up
25 these, you know, pictures of Lisa Schicker, our

1 President, saying that, you know, when she was on
2 the Board, it said get this project out of town
3 and the center of town. That is just non-
4 negotiable. You know, that was like her thing to
5 do. And some quote from John Fouche saying, you
6 know, we want out of town.

7 But I think actions in this case do
8 speak louder than words, you know, words that are
9 just discussed at a Board meeting. Because these
10 two people, you know, Lisa Schicker took her
11 vacation time and went over this whole week with
12 good faith negotiations with the state. And they
13 really thought they were negotiating.

14 And they came to really hard
15 compromises. They accepted the collection system,
16 as-is, as per the gravity collection system. And
17 they were starting work again on it when the funds
18 were pulled.

19 And they also, the Tri-W, that's not
20 really -- can I just finish my sentence?

21 CHAIRPERSON YOUNG: Yes.

22 MS. COOPER: It's not really been
23 discussed, that the Tri-W site is in that
24 negotiated agreement. If these people could not
25 meet that two-year -- they took a lot of risks.

1 If they couldn't meet that two-year, you know,
2 thing to get their alternative site together, they
3 would go back to the Tri-W site.

4 So, they are ready -- they were
5 flexible, they were fluid, they were trying to
6 represent the whole community. And the community
7 really was behind that, even though some people
8 are saying no now, they want to dissolve the Board
9 and things like that. They really showed their
10 intentions, I think.

11 Thank you.

12 CHAIRPERSON YOUNG: Okay, thank you.
13 Richard Margetson, followed by Michael Moore.

14 MR. MARGETSON: Richard Margetson.
15 Since we only have two minutes, I'm going to
16 address a couple of issues, hope I get through
17 them.

18 Something I think you need to consider
19 when determining the fine, if that's the way you
20 go, is the calculation was based on a starting
21 time of September 2002 for the 1080 days.

22 I think you need to consider whether
23 commencement of a project was possible back then,
24 even if there hadn't been any lawsuits.

25 The second thing I'd like to address,

1 Ms. Okun seemed like she was making an attempt to
2 qualify the funds that the District currently has
3 as funds that aren't tied to the SRF loan anymore.
4 And I believe that's absolutely false, because the
5 District wasn't reimbursed for the design,
6 purchase of the property, those type of things,
7 with the allowance.

8 The allowance is the ability of the
9 District to re-borrow what they've put out. And
10 the difference between a District that's just
11 gotten started and doesn't have a reserve account
12 to draw off of, is that they need to have that
13 allowance. Some districts don't take the
14 allowance. But it gives the District the
15 opportunity to re-borrow those funds at the 2.3
16 percent interest rate.

17 So, saying that those are restricted --
18 unrestricted funds of the District I think is
19 false. Because those funds were needed to be re-
20 borrowed by the District. It wasn't a
21 reimbursement, they're re-borrowing, in order for
22 the District then to pay for construction and meet
23 its contingency requirement of the SRF loan, which
24 is, at a minimum, 5 percent.

25 I think you have a problem there of if

1 you're going to try to attach that amount of
2 money. Because the District, when the project got
3 its first draw, the resources of the wastewater
4 fund were under \$100,000.

5 CHAIRPERSON YOUNG: Okay, thank you for
6 your comments. Michael Moore, followed by Frank
7 Galicia. And the last card I have is Vita Miller.
8 And if there's anyone else in the audience that
9 has not spoken and wishes to do so, please fill
10 out a card, because I will close public comment
11 after this last card.

12 MR. MOORE: Good afternoon; my name is
13 Michael Moore. I'm not the crazy one, though,
14 that appears on television.

15 I do live in Los Osos, actually for 47
16 years. And I'm not in the prohibition zone. I do
17 have a vacant lot in the prohibition zone.

18 I would like to just talk briefly about
19 Measure B. I think I have learned a lot from this
20 two-day proceeding. And I've come to the
21 understanding that when the voters of Los Osos
22 enacted Measure B they basically voted to give
23 themselves the power to either frustrate or
24 totally ignore various government mandates.

25 I am not an attorney, but there seems to

1 be something wrong with that. And i'm sure that
2 that will be addressed soon. There's another
3 lawsuit been filed to repeal Measure B.

4 Now, since Measure B, the new Board of
5 the Los Osos CSD campaigned on promises involving
6 moving the sewer and so forth. So they liked
7 Measure B. It gave them a push in the direction
8 of being able to move the sewer.

9 As I have circulated around Los Osos for
10 the last six or eight months, being involved in
11 this, trying to learn about this project and
12 understanding how we got to where we are, I became
13 aware that there seems to be a fraction of the
14 community that really would prefer not to have a
15 project at all.

16 In fact, I recall seeing a letter to the
17 editor in one of the papers about the opponents of
18 the current project having saved the community a
19 lot of money over a period of years by not having
20 to pay for a sewer project. I found that
21 incredible, that that was actually written by
22 someone opposed to the current project.

23 I see that I'm out of time. Thank you
24 for your consideration.

25 CHAIRPERSON YOUNG: Thank you. Okay.

1 Frank Galicia.

2 MR. GALICIA: Good evening. My name is
3 Frank Galicia. I do not live in Los Osos; I used
4 to live in Los Osos, and now I live outside of Los
5 Osos where the community has decided to place
6 their sewer.

7 I did not have a vote on the Los Osos
8 CSD or Measure B, and yet they decided to put
9 their sewer, or they want to put their sewer in my
10 backyard. Just like them, I don't want their
11 feces in my backyard, either. Just like them, I
12 don't want to smell their poop. Just like them, I
13 don't want to have my well polluted. Just like
14 them, I don't want to have to deal with this.

15 I would encourage you to fine the Los
16 Osos CSD out of existence so that we don't have to
17 deal with this anymore. I moved out of Los Osos
18 so I didn't have to deal with this. I would
19 encourage you to fine them out of existence. We
20 don't have to -- we shouldn't have to deal with
21 this anymore.

22 This entity is a rogue organization.
23 They have gone too far. They have scared me out
24 of town, and now here we are again. I'm having to
25 deal with this. We have a group of people who

1 have signed up, about 60 people, in the area
2 outside of Los Osos who have signed a petition,
3 out of 200 families who don't want the sewer
4 there, either.

5 The percolation in that area is so low
6 the 800,000 gallons a day will not go through the
7 ground. The farmers won't put their tractors
8 after two inches of rain. What's going to happen
9 after 800,000 gallons of water going into that
10 area. It won't percolate.

11 Our septic tanks need forced pump in the
12 effluent side of our septic tanks in order to get
13 into our ground. I don't understand how they're
14 going to put water out there. In the rainy
15 season, look at the ponds that sit for days and
16 weeks, if not months, for the water to percolate
17 through the ground.

18 Thank you.

19 CHAIRPERSON YOUNG: Thank you for your
20 comments. Last speaker is Vita Miller.

21 MS. MILLER: Hello, Board. I'm Vita
22 Miller. I guess I've got all the time I want.

23 I'm an interested party. I've been a
24 resident since 1971, homeowner since 1978.

25 My major concern with the prior CSD's

1 approved project was always affordability. The
2 prior Board did not approve an affordability study
3 on this project, even after determining that fully
4 30 percent of Los Osos residents would be forced
5 out of the community.

6 In addition to that, my other major
7 concerns are the location and the fact that
8 residents who are the lowest on the socioeconomic
9 scale of Los Osos, living within the prohibition
10 zone, will pay for the project in its entirety,
11 while those living in the most upscale areas, such
12 as Cabrillo Estates, are, at this time, free from
13 any project costs.

14 If this project is truly about restoring
15 our Bay and making the drinking water safe for all
16 residents, then it is unconscionable that these
17 Los Osos residents are not accountable for a
18 portion of the costs.

19 In addition, the location of the project
20 is totally unsustainable. It fails on all levels.
21 It does not solve the problem of salt water
22 intrusion; does not restore our groundwater; and
23 sits over our Bay just a spill away from major
24 contamination.

25 It is remarkable that this RWQCB Board

1 would be supportive of a project with so many
2 deleterious effects on our community.

3 Our current CSD Board has been
4 completely transparent. They have had at least 20
5 meetings since they were sworn into office. They
6 have asked the public to participate on all
7 levels, and they have even worked to re-establish
8 the advisory committees that were abruptly
9 dismantled by the prior Board just before they
10 voted to raise the cost of the project by
11 approving it's \$36 million over their estimated
12 cost.

13 The current CSD Board has not taken
14 action to dismantle the timeline ordered by the
15 RWQCB. Rather, it is the State Water Resources
16 Board that has put a stop to this project.

17 Therefore, fines at this time are
18 indefensible, particularly when in the past, on
19 numerous occasions, the timeline was violated by
20 both the County and prior CSD Board without ever
21 any fines assessed.

22 Thank you.

23 CHAIRPERSON YOUNG: Thank you.

24 That is the last speaker. And next
25 would be summation.

1 MS. SCHICKER: Mr. Young, I need a
2 break. I've got to have a break --

3 CHAIRPERSON YOUNG: I do, too.

4 (Laughter.)

5 CHAIRPERSON YOUNG: And, Mr. Seitz, how
6 much do you -- would 15 minutes be sufficient for
7 you? They don't have any time, but I want to --

8 MR. SEITZ: I don't believe so.

9 CHAIRPERSON YOUNG: Okay.

10 MR. SEITZ: I believe that with the
11 latest testimony that we haven't had a chance to
12 respond to, I would say that if we had 25, it
13 would probably be ample.

14 CHAIRPERSON YOUNG: That's fine.

15 MR. SEITZ: Thank you.

16 CHAIRPERSON YOUNG: Is that okay, Ms.
17 Okun? I mean you could object and I'd have to
18 make an issue about it, but --

19 MS. OKUN: No, I think it's okay.

20 CHAIRPERSON YOUNG: Okay.

21 MS. SCHAFFNER: How much time is the
22 prosecution team going to use --

23 (End Tape 6A.)

24 MS. SCHAFFNER: -- of their remaining
25 time, do they think?

1 MR. BRIGGS: I think we'll use less than
2 the District is asking for.

3 CHAIRPERSON YOUNG: Really. Okay. Yes?

4 MR. SEITZ: There has been a
5 considerable amount of testimony, at least I'm
6 taking, about myself and, in addition to that
7 time, I'd like to have two minutes to respond to
8 the public comment. I'll tell you just about my
9 role in all this.

10 There's been several things that have
11 been put in the record that one is that I
12 recommended against the issuing the contracts.
13 And then there's been testimony that I recommended
14 issuing those contracts way back when.

15 I can represent to the Board and to the
16 community that I did neither. I do recall being
17 at a Wastewater Treatment Committee meeting where
18 someone asked me if we had followed the correct
19 procedures in awarding the bids, and I answered
20 affirmative.

21 I can represent to the Board I have no
22 recollection of recommending that they execute
23 those contracts and bids, or that they don't. I
24 do recall that there was a discussion between Mr.
25 Miller and Mr. Highland where there was some

1 differences regarding very identified bids. Not
2 the entire bid schedule, but specific bids, as to
3 whether or not they should be re-bid or not.

4 And that's my testimony on that issue.

5 CHAIRPERSON YOUNG: Okay. All right.

6 So we're going to take a break, is that --

7 MS. OKUN: Can I ask a couple questions
8 about the record before we take a break?

9 CHAIRPERSON YOUNG: Yes.

10 MS. OKUN: One is that we need a copy of
11 the District's -- it's not a question -- we need a
12 copy of the District's PowerPoint presentations
13 for the record. And we need electronic copies
14 because of the video clips.

15 CHAIRPERSON YOUNG: Okay.

16 MS. OKUN: And in terms of the
17 District's documents that they say didn't get
18 properly photocopied, I don't understand when
19 we're going to resolve that, because I would
20 object to the Board taking any action and closing
21 the hearing, and then augmenting the record.

22 So, I'm not sure how you want to deal
23 with that.

24 CHAIRPERSON YOUNG: How many documents
25 are there? Apparently -- do we know --

1 MS. OKUN: I haven't seen their list.

2 MS. SCHAFFNER: Yeah, and actually, Mr.
3 Chair, that's actually one comment I was going to
4 suggest. The order I envisioned the proceeding to
5 continue to conclusion from here on out would be
6 resolution of the document issues; resolution of
7 the outstanding continuance motion, the various
8 arguments there.

9 The other somewhat unclear due process
10 issues that were left open. And then closing
11 arguments. Because --

12 CHAIRPERSON YOUNG: Okay.

13 MS. SCHAFFNER: -- that just seems like
14 an appropriate order of discussion. Because that
15 way, when they make their closing arguments, they
16 know what the record looks like.

17 And then we close the hearing at that
18 point for closed session, if you wish, and
19 whatnot, assuming --

20 CHAIRPERSON YOUNG: Well, are we able
21 to, Mr. Seitz, are we able to resolve the document
22 issue?

23 MR. SEITZ: I suspect that it just
24 depends how much time -- I mean the way I
25 understood it, that we were going to sit down with

1 the prosecution staff and go through the documents
2 and make a determination as to which documents
3 were relevant.

4 And then if there was a dispute as to
5 the relevancy, the Chair was going to rule on
6 them. That was my firm understanding from the
7 Chair's decision of yesterday.

8 CHAIRPERSON YOUNG: Well, these were
9 documents that were supposedly on that CD and are
10 not there, for some reason.

11 MR. SEITZ: I'll just give you --

12 CHAIRPERSON YOUNG: So, those are the
13 documents I'm talking about.

14 MR. SEITZ: I'm just giving you my best
15 recollection.

16 CHAIRPERSON YOUNG: Okay.

17 MR. SEITZ: We went through a long
18 discussion about the volumes of documents that
19 were produced by the District, and the volumes of
20 documents that were identified by the prosecution
21 team.

22 And the issue -- and that's the
23 administrative record from CalCities.

24 My understanding from yesterday's ruling
25 was that the parties were to get together and

1 designate those documents that they considered
2 relevant, and then if there was going to be a
3 discussion or a dispute as to whether or not the
4 documents were relevant, that the Chair would
5 resolve that dispute.

6 MS. OKUN: Can I --

7 MS. SCHAFFNER: Mr. Chairman, I don't
8 quite recall it exactly that way. I think that
9 was a sub-element. As I recall, the Chairman
10 first wanted the parties to address the question
11 of whether the documents were actually -- what was
12 actually provided and what was not, because there
13 was some question about what was on the disk. And
14 the CSD was going to look into whether they
15 actually submitted the documents that they thought
16 they did.

17 And look at the disk that Matt had, to
18 see if they could clear any of that up, as to what
19 they thought was missing.

20 And then come forth and present any
21 evidence they have, documents that staff have
22 found are not in the record, actually are. That's
23 the first step, are they here. And if they are
24 here, then get to the issue of relevance, to the
25 degree you folks can get together on that.

1 MS. OKUN: Right.

2 MS. SCHAFFNER: That was my
3 understanding.

4 MS. OKUN: And in addition to that, if
5 the District had any documents that were not
6 already admitted into the record that it discussed
7 or relied on during its presentation, they could
8 request admission of those documents, as they
9 went.

10 MS. SCHAFFNER: If they were present.

11 MS. OKUN: Yeah.

12 MS. SCHAFFNER: If the documents were in
13 the --

14 MS. OKUN: Right.

15 MS. SCHAFFNER: -- present.

16 MR. SEITZ: I think we're confusing two
17 things here. One is the documents that were
18 presented to you folks during this hearing by both
19 sides. Obviously the prosecution team has
20 presented you with no documents, because they
21 relied on the concept of the administrative record
22 in order to designate -- I mean the only party
23 that's presented documents, put them on the board
24 and had you look at them, was our defense.

25 If the only documents that you're going

1 to consider are those documents that were up
2 there, we'll stipulate, right here, right now.

3 If, on the other hand, we're going to
4 sit around and we're going to argue about what
5 documents are going to be in the administrative
6 record for potential appellate review, then I'm
7 relying back to what I perceived to be the ruling
8 of the Chair yesterday. Because we went through
9 this at length that there was a request from the
10 Chair either Tuesday or Wednesday last week, to
11 designate on one party to make a statement of
12 relevancy of each document.

13 And what we argued yesterday was that
14 burden was unfair placed on only the defense team
15 when you considered the proportion of burden on
16 the prosecution team that didn't have that burden
17 at all.

18 CHAIRPERSON YOUNG: Mr. Seitz, I'm just
19 not able to resolve this issue right now. Because
20 I've got to think about it and -- okay?

21 MR. SEITZ: That's fine.

22 CHAIRPERSON YOUNG: That's why I was
23 hoping we could just do this at a later point in
24 time.

25 MR. SEITZ: What --

1 MS. OKUN: Well, I thought that we spent
2 quite a bit of time discussing this yesterday and
3 the Chair did rule on various documents. And the
4 only ones that weren't admitted were the ones that
5 weren't physically provided. And those are the
6 only ones that are still in dispute.

7 We do have a record. The prosecution
8 staff has provided documents. It's the
9 administrative record, our listed documents --

10 CHAIRPERSON YOUNG: Well, I know. The
11 statutes do allow the agency to designate the
12 record that way.

13 MS. OKUN: Right.

14 CHAIRPERSON YOUNG: I understand that.

15 MS. SCHAFFNER: Mr. Chairman, might I --

16 CHAIRPERSON YOUNG: My concern was that
17 there were documents that Mr. Seitz did not
18 find --

19 MS. OKUN: Right, and that's what this
20 discussion is limited to, those documents that
21 aren't found.

22 CHAIRPERSON YOUNG: That was my
23 understanding.

24 MS. OKUN: Okay. Thank you.

25 CHAIRPERSON YOUNG: Right.

1 MS. SCHAFFNER: Perhaps a short break
2 might help everybody refresh their memory as to
3 what this discussion is supposed to be about. We
4 can talk about this when we come back.

5 MR. SEITZ: I suggest that channel 21,
6 or channel 20, I don't know who's back there, the
7 tape is there.

8 MS. SCHAFFNER: It was a long
9 discussion. I don't think we want to take that
10 long of a break.

11 CHAIRPERSON YOUNG: Yeah. Let's take
12 the break, okay. Five minutes.

13 (Brief recess.)

14 CHAIRPERSON YOUNG: Okay. What we're
15 thinking of doing --

16 MS. OKUN: Can we wait for Mr. Briggs?

17 CHAIRPERSON YOUNG: Sure.

18 (Pause.)

19 CHAIRPERSON YOUNG: Okay, he's not here.

20 (Pause.)

21 BOARD MEMBER SHALLCROSS: Paging Roger
22 Briggs; paging Roger Briggs.

23 (Pause.)

24 BOARD MEMBER SHALLCROSS: The eagle has
25 landed.

1 CHAIRPERSON YOUNG: Okay. What -- all
2 right, Michael.

3 MR. THOMAS: There he is.

4 MR. BRIGGS: Where have you been?

5 (Laughter.)

6 CHAIRPERSON YOUNG: Okay, folks, what we
7 are going to do is continue the hearing. And the
8 reason is we probably have about three hours to
9 go, okay? And, you know, if we're lucky.

10 We do have the document issue to get
11 resolved, and our attorney has advised us that we
12 really need to get that resolved before we do
13 summations and close the case.

14 And so -- and I think that's good
15 advice. And I do recall in our conversations
16 yesterday with Mr. Seitz that we would go over the
17 document issue.

18 But I want to go over exactly what we
19 are going to do. And with the documents, the
20 concern, as I recall, was there were some
21 documents on the disk that you prepared, or had
22 prepared at the photocopy place. And some
23 documents did not show up on that disk.

24 MR. SEITZ: And I believe those are the
25 documents that are red, if I --

1 CHAIRPERSON YOUNG: Correct, that's
2 right. And so we're going to get that resolved by
3 taking a look at those documents. You're going to
4 have to produce them. And we will deal with
5 that -- I will deal with that with Ms. Okun and
6 yourself or Mr. McClendon and Ms. Schaffner. And
7 I did say I would look at those documents as to
8 relevancy. Okay.

9 MR. SEITZ: Then is the -- just so we
10 can sort of get a handle on this, I'm assuming
11 that all the documents that have no colors on
12 them, that all of the documents that have no
13 colors on them are agreed to as being admitted and
14 relevant.

15 MS. OKUN: I think there's a column in
16 the -- oh, do you want to --

17 MS. SCHAFFNER: No.

18 CHAIRPERSON YOUNG: Yeah.

19 MS. SCHAFFNER: The document is
20 structured such that there is a column which says,
21 date admitted. And -- date accepted. If there's
22 not a date in the date-accepted column, I think it
23 is not admitted. It says --

24 MR. SEITZ: Okay, I see, the ones on the
25 right-hand side.

1 MS. SCHAFFNER: That's right.

2 MR. SEITZ: Right.

3 MS. SCHAFFNER: Some of those dates need
4 to be corrected, as Ms. Okun pointed out
5 yesterday, the date is incorrect. But if it has a
6 date in that column it means it was accepted.
7 Otherwise it says rejected.

8 MR. SEITZ: Okay. Because all I want to
9 do is make -- and thank you for that.

10 MS. SCHAFFNER: Certainly.

11 MR. SEITZ: Because I was looking at
12 colors as opposed to column, right.

13 MS. SCHAFFNER: Yeah, and as I recall,
14 the remaining issues were, were they submitted, in
15 fact, are they present in the record. Or were
16 they, the determination that they were not
17 submitted incorrect. That was the first question.

18 And then the other question was if they
19 are present, are they relevant, and does their
20 probative value warrant inclusion in the record as
21 the Chair asked initially. So that maybe some --

22 CHAIRPERSON YOUNG: Well, that was a
23 question I asked as to all the documents, --

24 MS. SCHAFFNER: That's right.

25 CHAIRPERSON YOUNG: -- but that is the

1 standard I'm going to apply to these. Okay.

2 MR. SEITZ: I think this -- I know I'm
3 being picky, but I think also the Chair said that
4 if there was a rejected document, but it was also
5 doubled because it was in the CalCities -- I mean
6 if we have a rejected document and we could do all
7 our search and it ends up being in the CalCities
8 administrative record, then I assume that --

9 MS. SCHAFFNER: Yes.

10 CHAIRPERSON YOUNG: Yes, that's correct.
11 And I believe Ms. Okun did say that yesterday.

12 MR. SEITZ: Yeah.

13 CHAIRPERSON YOUNG: Yeah.

14 MS. OKUN: That's right.

15 CHAIRPERSON YOUNG: Okay.

16 MS. SCHAFFNER: So I just want to make
17 sure that the Chair is clear on the point that
18 this is not an opportunity to submit new
19 additional documents from anybody for any purpose.
20 It is simply to resolve the questions we just
21 outlined in the already -- the exhibits already
22 attempted to be submitted.

23 MR. SEITZ: And then I would assume, I
24 think we just handed the prosecution team our
25 PowerPoint. I'm assuming at some point in time

1 we'll get the PowerPoint from the -- good. I just
2 got the thumbs-up on that, so that's great.

3 MS. SCHAFFNER: Yeah.

4 MR. SEITZ: And I'm also assuming that
5 all of the correspondence between your office
6 and -- they were joint, the ones about answer the
7 questions, those things have all already been
8 accepted into the administrative record, so that's
9 not going to be an issue to be resolved?

10 MS. SCHAFFNER: If they're in the site
11 file, the file for this ACL, I mean for this TSO,
12 for the site, they're in the record.

13 MR. SEITZ: Okay. And those emails are
14 in the site, I assume?

15 MS. OKUN: Well, I think that you're
16 referring to the staff report, the rebuttal, the
17 District's written response, the written answers
18 to Mr. Young's questions, the emailed evidence,
19 objections, all that's in the record.

20 MR. SEITZ: Okay, very good. That's
21 what I --

22 MS. SCHAFFNER: Very good.

23 MR. SEITZ: -- that's what -- I want to
24 make sure about that. And then I guess lastly
25 before we all say goodbye, is the Chair had

1 reserved some time here for us to renew our
2 motions for a continuance. But I assume that
3 first of all, I think a fair amount of them are
4 going to go away as a result of this.

5 But we still may have one or two,
6 especially based on Mr. Grimm. But we'll have an
7 opportunity, I assume, now to consult with him.
8 So that may well go away, too.

9 CHAIRPERSON YOUNG: Yeah, if you want
10 him to split up the closing with you, that's fine
11 with me.

12 MR. SEITZ: Okay.

13 CHAIRPERSON YOUNG: I don't have a
14 problem with that --

15 MR. SEITZ: Good, thank you.

16 CHAIRPERSON YOUNG: -- at all. Okay.

17 MR. SEITZ: Thank you.

18 CHAIRPERSON YOUNG: But Mr. Thomas did
19 want to mention something about the documents
20 because he has been involved with us in the
21 preparation of that.

22 MR. SEITZ: Sure.

23 MR. THOMAS: Just a minor point of
24 clarification. A couple of us have said on both
25 sides that the documents that are missing from the

1 CD, I just wanted to point out that it's not just
2 that documents were missing from the CD.

3 MR. SEITZ: The hard copies, too.

4 MR. THOMAS: The hard copies and the
5 emails. If I could not find a document I listed
6 it as not there and recommended --

7 MR. SEITZ: You understand, I accept
8 Matt's testimony that he went through and
9 correlated those documents. I have no grounds,
10 nor do I even want to try to find grounds to
11 challenge that. I take that as fact.

12 MR. THOMAS: Okay, I didn't want anyone
13 to have the impression that they were submitted
14 either by email or in hard copy. They're just not
15 on the CD. We just don't -- don't have them,
16 couldn't find them --

17 MR. SEITZ: Right.

18 MR. THOMAS: So that's why we listed
19 them the way we did.

20 MR. SEITZ: Okay. And I think that the
21 resolution here, what the Chair is suggesting,
22 what you're suggesting, is fair.

23 CHAIRPERSON YOUNG: Okay. Now, the next
24 issue, Sheryl, we have then is I guess the motion
25 for continuance.

1 MS. SCHAFFNER: Yes.

2 CHAIRPERSON YOUNG: And Mr. Seitz' was
3 based on the various due process concerns. And I
4 know we're going to continue this, but there's
5 going to be no more evidence or testimony by
6 either side. That's closed.

7 MR. SEITZ: That, we understand that.

8 CHAIRPERSON YOUNG: Yeah.

9 MS. SCHAFFNER: Now, you had mentioned
10 at one point, made some brief mention of wishing
11 to call expert witnesses. And so you've presented
12 all the witnesses you had in mind, and you no
13 longer have a problem with that?

14 MR. SEITZ: If I recollect, my testimony
15 was we wanted to have our expert attorney here.

16 MS. SCHAFFNER: I understand. Okay,
17 thank you.

18 MR. SEITZ: Yeah. Ms. Schicker.

19 MS. SCHICKER: May I please state just
20 one thing? There were some things that I was
21 going to present in my last summation that I would
22 like entered into the testimony today. Is that
23 possible or not? It's not really a summation.
24 It's things that need to be done. It's not -- I
25 mean they were part of questions that we still

1 have remaining.

2 MS. SCHAFFNER: That's up to the
3 Chairman.

4 MS. OKUN: I don't think I understand.
5 I don't know if they want to put in more oral
6 testimony or more documents, but either way I
7 object. They're out of time. The time for
8 putting in new documents is over.

9 MR. McCLENDON: I'm sorry, I think we
10 can just withdraw that. I think just to
11 understand it, what will be presented in the
12 summation will be part of this record, the
13 summation statements are part of the record.

14 CHAIRPERSON YOUNG: Oh, yeah, we are not
15 closing --

16 MR. McCLENDON: Yeah.

17 CHAIRPERSON YOUNG: -- the hearing.

18 MS. SCHICKER: Well, you already have
19 them on your disk, too, and so that's my concern,
20 just wanted to make sure.

21 CHAIRPERSON YOUNG: Yeah, what we're
22 doing, so that everybody understands, is just --
23 is continuing this hearing, however, there will be
24 no new testimony by anybody, the public, the
25 prosecution team, the CSD team.

1 We're going to go into summation. That
2 is what we will start with when we can all agree
3 on a date to do that. And from then we will have
4 Board deliberation. And then the Board's going to
5 decide what to do at that point.

6 So, --

7 MS. SCHAFFNER: Yeah, we should double
8 check. There were other due process objections
9 raised by the District's counsel. I wasn't sure,
10 well, I'm quite sure neither the Chairman nor I
11 fully understood what they were, and you were
12 going -- but the Chairman left them open to the
13 end of the hearing to revisit, perhaps thinking
14 they'd get more clear throughout the hearing.

15 There was something about objecting to
16 the scope of the ACL and its effect on the fire
17 and water district. Do you believe, Mr. Seitz --

18 CHAIRPERSON YOUNG: Seitz.

19 MS. SCHAFFNER: Did I do it again?

20 Seitz, that that --

21 MR. SEITZ: -- what I was called in the
22 military, what you're calling me is a compliment.

23 (Laughter.)

24 MS. SCHAFFNER: That's okay, Schaffner
25 gets butchered a lot, too, so I sympathize.

1 Do you feel that your issues there have
2 been resolved, or do you have outstanding
3 objections on that front?

4 MR. SEITZ: I'm sorry, I think I lost
5 the question.

6 (Laughter.)

7 MS. SCHAFFNER: Do you have any
8 remaining objections that have not been addressed?

9 MR. SEITZ: Well, I think the one
10 objection that we have I started off with in the
11 hearing, was how the complaint was alleged and
12 what was really at issue based on the responsive
13 pleadings from the prosecution team and the
14 complaint.

15 Now, I still intend to make those when
16 we come back. And the Chair -- the way I
17 understand it works, the Chair rules on them.

18 And --

19 MS. SCHAFFNER: Well, I'm not sure I
20 agree or understand clearly. It sounds like what
21 you're saying --

22 MR. SEITZ: Well, you know --

23 MS. SCHAFFNER: -- is that you believe
24 that the ACL is drafted based on the evidence and
25 argument presented by the prosecution team is not

1 legally found for assessing the proposed ACL.
2 And, no doubt, that would be a basis of the
3 inevitable challenge that will arise from any ACL
4 that comes out of this, I'm sure.

5 But is it really an objection? What are
6 you -- are you objecting to the admission of --

7 MR. SEITZ: Well, just --

8 MS. SCHAFFNER: Let me finish my
9 question.

10 MR. SEITZ: Sure.

11 MS. SCHAFFNER: I want to know what are
12 you objecting to. Are you objecting to the
13 admission of the draft ACL? Are you objecting to
14 the admission of the draft, of the work staff's --
15 staff reports, or what's the objection?

16 MR. SEITZ: Okay. I pretty much
17 reframed it during some exchange between myself
18 and the Board regarding the issue of 00-131 and
19 the -- I forget, I said it much more eloquently, I
20 remember, during when I was talking about this.
21 But the shell of the prohibition zone. That it
22 was really a zone of benefit that was, in effect,
23 a shell.

24 That as between the District and the
25 prohibition zone there was no nexus for us to draw

1 off fines to pay fines. I'm still going to raise
2 that under 00-131. I know Lori's writing down
3 notes right now like crazy. But, that is still --
4 I can see the pen --

5 CHAIRPERSON YOUNG: She's not, actually.

6 MR. SEITZ: -- way over here. We're
7 still going to make a run that --

8 MS. SCHAFFNER: I'm sorry, Mr. Seitz,
9 this sounds like argument, not an objection. Are
10 you objecting to evidence? Are you objecting to a
11 process? Are you objecting to -- I don't
12 understand what you're objecting to.

13 MR. SEITZ: Okay, well, --

14 MS. SCHAFFNER: Those are arguments.
15 You can present --

16 MR. SEITZ: -- let me just phrase it,
17 let me just phrase it this way. I'm going to have
18 till January to think about this, right? If you
19 want to send me a set of questions, on both sides,
20 or something like that, that you've done in the
21 past, I'm happy to respond.

22 But I'm happy to get it worked out, what
23 I plan to do on those objections with you before I
24 make them, so that you can give the heads --
25 whatever it takes to --

1 MS. SCHAFFNER: I think what we're
2 trying to do is narrow the issues that are left
3 for the continued hearing to be simply closing
4 arguments and resolution of the document issues.

5 If you don't pursue your objection in
6 some concrete way we will have to presume it's
7 dropped I guess is the way we'll have to leave it.
8 And just take it as argument.

9 Or at least that would be my advice to
10 the Board.

11 MR. SEITZ: Let me just -- I was hoping
12 that we would have the opportunity during the
13 break to filter our arguments and see which ones
14 that were no longer available, that we felt were
15 taken care of by this continuance.

16 And I'm trying to let you know that I
17 believe that notice in an ACL complaint is a due
18 process issue. And that's what I believe that the
19 Chair -- what I've been trying to argue the entire
20 time about this.

21 Mr. McClendon has discussed the moving
22 target. And those things, and maybe once we go
23 back to the documents and we watch the tapes,
24 maybe you're right. Maybe they end up from a
25 perspective of reflection as being argument and

1 not so much an issue of due process.

2 But I'm not sitting here today saying,
3 okay, we're going to defer motions, and then have
4 me tell you, without the time to reflect, which is
5 the whole purpose of this time, what those motions
6 are and get a ruling.

7 I can tell you that what we're going to
8 do here is going to be a good faith effort. We
9 have no interest in actually even being here, much
10 less --

11 (Laughter.)

12 MR. SEITZ: -- much less prolonging
13 issues that once Mr. McClendon and I, and
14 especially with Mr. Grimm now the opportunity to
15 weigh in on this. And the whole idea here was now
16 Mr. Grimm gets the opportunity.

17 I can't sit back and tell you Mr. Grimm
18 isn't going to say, wow, they blew this. Now I
19 got to go to them and say, oh, it's too late. I'm
20 mean, you can't bring it up on oral argument or on
21 a motion. That was the whole sort of deal.

22 But I --

23 CHAIRPERSON YOUNG: Okay, but --

24 MR. SEITZ: But what I will tell you is
25 that we will send you notice if you're going to do

1 it. So that you -- we're not here to sandbag the
2 Board. That's why I want -- you say no surprises.
3 I agree with that policy.

4 And I'm telling you that if you say,
5 whatever day we pick, five days beforehand we have
6 to send you written notice if we're going to raise
7 any of these types of motions, I'm happy to send
8 it to you, and send it to each Board Member, send
9 it to the prosecution team, so that they're not
10 sandbagged.

11 MS. OKUN: Yeah, I'd like to suggest
12 that if we're going to do this that it be more
13 than five days in advance, --

14 MR. SEITZ: That's fine.

15 MS. OKUN: -- and that the Board set a
16 deadline and provide a deadline for us to respond.

17 MR. SEITZ: Sure. And I just, I put the
18 five days out as a suggestion. I'm not --

19 BOARD MEMBER SHALLCROSS: Mr. Chair.

20 CHAIRPERSON YOUNG: Yes.

21 BOARD MEMBER SHALLCROSS: I'm a little
22 concerned that this is going to open up the whole
23 thing again, do all kinds --

24 CHAIRPERSON YOUNG: Yeah.

25 BOARD MEMBER SHALLCROSS: -- of motions

1 and objections.

2 CHAIRPERSON YOUNG: Yeah.

3 MR. SEITZ: I was --

4 BOARD MEMBER SHALLCROSS: Just a second.

5 And I think what we were trying to do was get
6 everything done tonight except for two items, the
7 summation and the Board deliberation. And it
8 sounds to me like now we're opening it to, you
9 know, possibly we're going to get another attorney
10 in here who's going to have his own ideas, and,
11 you know, rightly so. And I'm a little
12 concerned --

13 CHAIRPERSON YOUNG: All right, but --

14 BOARD MEMBER SHALLCROSS: - about that,
15 that's all. Do what you want, but --

16 CHAIRPERSON YOUNG: Here's the way I
17 looked at this. You know, he can bring a motion
18 anytime. He can make a request. It can be done
19 orally. He can state an objection. I can rule on
20 it at that time. Okay.

21 What we're trying to do is nail down
22 right now what is actually left from what we
23 started with that is a concern on the table. It
24 sounds like there may not be anything, and then
25 there may be something that you want to raise.

1 And then I'll deal with it at that point in time.

2 And it may be something you'll deal with
3 with argument. And if you think there's a defect
4 in the pleadings, we'll take it up with a higher
5 authority.

6 MR. SEITZ: And what the idea is with
7 notice. I mean I --

8 MS. OKUN: Yeah, I agree. I think that
9 there should be a cutoff date because I think we
10 can resolve a lot of this before the hearing,
11 particularly -- well, if it's based on something
12 that happened today or yesterday then obviously we
13 could and should resolve it before a continued
14 hearing.

15 If something new comes up at the
16 continued hearing then we'll have to address it at
17 the time. But I would --

18 MR. SEITZ: We understand --

19 MS. OKUN: -- prefer to do it before.

20 MR. SEITZ: -- there's to be nothing new
21 at the continued hearing. That the -- what we
22 understand is all evidence is cut off.

23 CHAIRPERSON YOUNG: Right.

24 MS. OKUN: Right.

25 CHAIRPERSON YOUNG: Right, --

1 MR. SEITZ: On both sides.

2 CHAIRPERSON YOUNG: -- that's correct.
3 Okay, let's do this. I had mentioned to you, Mr.
4 Seitz, January. But let me check with the Board
5 and see, and then I didn't check -- didn't tell
6 the prosecution team we were thinking of doing
7 this.

8 MR. SEITZ: Sure.

9 CHAIRPERSON YOUNG: So I've just got to
10 weigh in because this involves Board time --

11 MR. SEITZ: I understand.

12 CHAIRPERSON YOUNG: -- staff time.
13 Could this be done in December? It cannot be done
14 in December, okay.

15 Ms. Okun, when would be the earliest we
16 could continue this?

17 MS. OKUN: I'm waiting for my calendar
18 to come up.

19 CHAIRPERSON YOUNG: Okay. And this is
20 based on your schedule?

21 MS. OKUN: -- the holidays.

22 CHAIRPERSON YOUNG: I will be
23 unavailable, myself, for part of this month, so.

24 (Pause.)

25 CHAIRPERSON YOUNG: We have no Board

1 meeting in January.

2 BOARD MEMBER PRESS: Mr. Chair, I want
3 to remind you that you need a quorum, and so you
4 need all five of us --

5 CHAIRPERSON YOUNG: Correct.

6 BOARD MEMBER PRESS: -- to make it.

7 CHAIRPERSON YOUNG: Correct.

8 BOARD MEMBER PRESS: And that's going to
9 be a little tricky. I'm not sure you're going to
10 get that figured out here, but I'm just warning
11 you.

12 CHAIRPERSON YOUNG: Okay. Does everyone
13 else on this Board have their calendars in front
14 of them, or do -- do you have it there? Okay.
15 How about you, Gary?

16 BOARD MEMBER SHALLCROSS: Just say the
17 day, I don't care. I mean, --

18 CHAIRPERSON YOUNG: You don't have
19 yours.

20 BOARD MEMBER SHALLCROSS: Can we do
21 this --

22 CHAIRPERSON YOUNG: I'd like to -- Mr.
23 Seitz, do you have your calendar? I mean, are you
24 going to be involved in the closing?

25 MR. SEITZ: Well, --

1 CHAIRPERSON YOUNG: Because I'm not sure
2 from the statements you made --

3 MR. SEITZ: -- probably a mystery to me
4 as it is to you, but the -- it's late and I'm
5 sorry, I'm probably injecting way too much humor
6 into the situation.

7 But my calendar, surprisingly, is
8 generally pretty flexible, because I'm sort of an
9 office geek. So, I think if you pick a date or
10 you circulate an email, I think I'm going to be
11 the most easily accommodated. I don't have my
12 laptop with me to --

13 CHAIRPERSON YOUNG: Okay.

14 MR. SEITZ: -- to check that.

15 CHAIRPERSON YOUNG: You think so?

16 MR. THOMAS: January 5th.

17 CHAIRPERSON YOUNG: January 5th?

18 MR. THOMAS: At 8:30 in the morning.

19 CHAIRPERSON YOUNG: Okay, Thursday.

20 MS. OKUN: And apparently the schools
21 are out of session that week, and a lot of people
22 that are parents aren't going to be available.

23 CHAIRPERSON YOUNG: Okay. Could we go
24 to the next week, then, on the 12th? Is Thursdays
25 a -- no?

1 BOARD MEMBER PRESS: This is why I said
2 that week.

3 CHAIRPERSON YOUNG: Okay.

4 BOARD MEMBER PRESS: It gets very bad
5 after that.

6 CHAIRPERSON YOUNG: For you?

7 BOARD MEMBER PRESS: Yeah.

8 UNIDENTIFIED SPEAKER: The 13th is a
9 Friday.

10 BOARD MEMBER PRESS: No, I -- no,
11 Monday, Wednesday, Friday.

12 CHAIRPERSON YOUNG: Are you saying just
13 that first week of January?

14 BOARD MEMBER PRESS: And not that
15 Friday.

16 CHAIRPERSON YOUNG: And not that Friday.

17 BOARD MEMBER PRESS: Um-hum.

18 CHAIRPERSON YOUNG: So the whole month
19 of January --

20 BOARD MEMBER PRESS: It's going to get
21 very bad.

22 CHAIRPERSON YOUNG: Very bad.

23 BOARD MEMBER PRESS: So, I mean, we can
24 do this on email and all that, but I'm just
25 saying, --

1 CHAIRPERSON YOUNG: Okay.

2 BOARD MEMBER PRESS: -- that's why I
3 said that date. Unless you put it on to the
4 February meeting. But, you know, that's --

5 BOARD MEMBER HAYASHI: It was suggested
6 that we bring Les back.

7 CHAIRPERSON YOUNG: What's that?

8 BOARD MEMBER HAYASHI: I said it was
9 commented that we should bring Les back.

10 (Laughter.)

11 CHAIRPERSON YOUNG: And then I guess
12 Monica, too?

13 MS. OKUN: What about doing it at the
14 February Board meeting? February 9th and 10th.

15 CHAIRPERSON YOUNG: Well, Daniel, are
16 you available for the February Board --

17 BOARD MEMBER PRESS: I already blocked
18 out the 10th because, you know, I knew that there
19 was a Board meeting then. So, you know, if it has
20 to be then, --

21 MS. OKUN: Yeah, we can do something
22 else on Thursday afternoon, depending on the needs
23 of the quorum.

24 CHAIRPERSON YOUNG: Well, does school
25 affect you?

1 MS. OKUN: No.

2 CHAIRPERSON YOUNG: Who does it affect?

3 MS. OKUN: Part of our team. So far
4 it's just the 10th, but I always reserve two days.
5 I think we have the Monterey stormwater plan.

6 BOARD MEMBER HAYASHI: I'll be in
7 Sacramento on the 9th.

8 CHAIRPERSON YOUNG: Okay.

9 MS. OKUN: We could do it on the 10th.

10 BOARD MEMBER HAYASHI: On the 10th is no
11 problem.

12 CHAIRPERSON YOUNG: Ms. Okun, I would
13 like to do it January 5th, and I'm just wondering
14 who on the staff team? Is it Ms. Marks? You have
15 kids that'll be -- are you going to be on
16 vacation? You won't be here?

17 (Pause.)

18 CHAIRPERSON YOUNG: All right. How is
19 the 5th? I know that we might lose Ms. Marks.
20 And I know you haven't been involved in this that
21 long anyway, so you're not going to --

22 (Laughter.)

23 CHAIRPERSON YOUNG: -- there's not going
24 to be any attachment to what happens. But I think
25 we can all do it on the 5th. What's that?

1 MS. OKUN: What time --

2 CHAIRPERSON YOUNG: Well, I would -- how
3 about 11:00 on the 5th. And the reason is then we
4 could get through the summations. And then we
5 would break for lunch. We're going to go into
6 closed session anyway with this item. And then we
7 would come back out.

8 And then go into open deliberation with
9 what we want to do. So, that is what the plan is.
10 All right.

11 January 5th at 11:00 here. And the only
12 thing them remaining would be the documents,
13 right? And we've already dealt with that.

14 Okay, this hearing is continued, it's
15 not closed, it's continued. And thank everybody,
16 thank you for participating. And we will get this
17 resolved on the 5th. Thank you.

18 (End Tape 6B.)

19 (Whereupon, the hearing was adjourned,
20 to reconvene at 11:00 a.m., Thursday,
21 January 5, 2006, at this same location.)

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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□