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
SANT LUIS OBISPO, CALIFORNIA 93401

CLOSING ARGUMENTS - DECISION

THURSDAY, JANUARY 5, 2006
10:03 A.M.

Reported by:
Peter Petty

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
Leslie S. Bowker (Recused)
Monica S. Hunter (Recused)

BOARD ADVISORS and ASSISTANTS
Michael Thomas, Assistant Executive Director
Sheryl Schaffner, Attorney
Carol Hewitt, Executive Assistant
Burton Chadwick, UST

WATER BOARD PROSECUTION STAFF
Roger Briggs, Executive Officer
Lori Okun, Senior Staff Counsel
Matt Thompson, Project Manager
Sorrel Marks, Project Manager
Harvey Packard, Division Chief

LOS OSOS COMMUNITY SERVICES DISTRICT
John McClendon, Attorney
VanBlarcom, Leibold, McClendon and Mann

Jon Seitz, Attorney/Consultant
Shipsey & Seitz

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
LOS OSOS COMMUNITY SERVICES DISTRICT

Stephen R. Onstot, Attorney
Burke, Williams and Sorensen, LLP

Daniel M. Bleskey, Interim General Manager
Willdan

Lisa Schicker, President, Director

Bruce Buel, General Manager on administrative leave

Robert Miller, Chief Engineer

Chuck Cesena, Director

John Fouche, Director

ALSO PRESENT

Darrin Polhemus (via teleconference)
State Regional Water Quality Control Board

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

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceedings</td>
</tr>
<tr>
<td>Hearing - continued</td>
</tr>
<tr>
<td>Roll Call</td>
</tr>
<tr>
<td>Introductions</td>
</tr>
<tr>
<td>Opening Remarks</td>
</tr>
<tr>
<td>Chairperson Young</td>
</tr>
<tr>
<td>Oath Reminder</td>
</tr>
<tr>
<td>Motions, Objections, Document Issues</td>
</tr>
<tr>
<td>Subpoena</td>
</tr>
<tr>
<td>Request for Continuance</td>
</tr>
<tr>
<td>Ex Parte Contact</td>
</tr>
<tr>
<td>Due Process Objections</td>
</tr>
<tr>
<td>Document Issues</td>
</tr>
<tr>
<td>LOCSD Presentation</td>
</tr>
<tr>
<td>Witness R. Miller (recalled)</td>
</tr>
<tr>
<td>Direct Testimony</td>
</tr>
<tr>
<td>Exhibits - slides</td>
</tr>
<tr>
<td>Regional Board Prosecution Staff Presentation</td>
</tr>
<tr>
<td>Witness L. Schicker (recalled)</td>
</tr>
<tr>
<td>Further Cross-Examination by Ms. Okun</td>
</tr>
<tr>
<td>Redirect Examination by Mr. Onstot</td>
</tr>
<tr>
<td>Examination by Board</td>
</tr>
<tr>
<td>Recross-Examination by Ms. Okun</td>
</tr>
<tr>
<td>Recross-Examination by Mr. Briggs</td>
</tr>
<tr>
<td>Afternoon Session</td>
</tr>
</tbody>
</table>
# Index

| Regional Board Prosecution Staff Presentation continued | 203 |
| Witness B. Buel (recalled) | 203 |
| Further Cross-Examination by Ms. Okun | 204 |
| Examination by Board | 205, 207, 209, 212 |
| Redirect Examination by Mr. Seitz | 207, 208 |
| Rebuttal Witness S. Marks | 213 |
| Direct Examination by Ms. Okun | 213 |
| Cross-Examination by Mr. Seitz | 215 |
| Redirect Examination by Ms. Okun | 217 |
| Witness R. Briggs (recalled) | 218 |
| Direct Examination by Ms. Okun | 218 |
| LOCSD Presentation - Resumed | 222 |
| Witness D. Polhemus (recalled) | 222 |
| Direct Examination by Mr. Onstot | 223 |
| Cross-Examination by Ms. Okun | 228 |
| Examination by Board | 231 |
| Redirect Examination by Mr. Onstot | 232 |
| Witness R. Briggs (recalled) | 238 |
| Direct Examination by Mr. Seitz | 238 |
| Cross-Examination by Ms. Okun | 254 |
| Redirect Examination by Mr. Seitz | 257 |
| Recross-Examination by Ms. Okun | 258 |
| Regional Board Prosecution Document Issues | 259 |
| LOCSD Document Review | 274 |
| Public Forum | 276 |
| Alon Perlman  
Resident, Los Osos | 276 |
| Joey Racano  
Coast Ocean Outfall Group | 279 |
| Marla Bruton  
Coast Ocean Outfall Group | 282 |

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

<table>
<thead>
<tr>
<th>Public Forum - continued</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eric Greening</td>
</tr>
<tr>
<td>Resident, Atascadero</td>
</tr>
<tr>
<td>Jack Hunter</td>
</tr>
<tr>
<td>Resident, Los Osos</td>
</tr>
<tr>
<td>Al Barrow</td>
</tr>
<tr>
<td>Citizens for Affordable and Safe Environment, (CASE); Coalition for Low Income Housing</td>
</tr>
<tr>
<td>David Duggan</td>
</tr>
<tr>
<td>Resident, Los Osos</td>
</tr>
<tr>
<td>Closing Arguments</td>
</tr>
<tr>
<td>Regional Board Prosecution</td>
</tr>
<tr>
<td>Questions by Board</td>
</tr>
<tr>
<td>Los Osos Community Services District</td>
</tr>
<tr>
<td>Regional Board Prosecution Rebuttal</td>
</tr>
<tr>
<td>Closed Session</td>
</tr>
<tr>
<td>Evening Session</td>
</tr>
<tr>
<td>Decision</td>
</tr>
<tr>
<td>Questions by Board</td>
</tr>
<tr>
<td>Board Member Remarks</td>
</tr>
<tr>
<td>Vice Chairperson Jeffries</td>
</tr>
<tr>
<td>Board Member Press</td>
</tr>
<tr>
<td>Board Member Shallcross</td>
</tr>
<tr>
<td>Board Member Hayashi</td>
</tr>
<tr>
<td>Chairperson Young</td>
</tr>
<tr>
<td>Findings</td>
</tr>
</tbody>
</table>
# INDEX

<table>
<thead>
<tr>
<th>Item</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vote</td>
<td>441</td>
</tr>
<tr>
<td>Los Osos Community Services District Motion</td>
<td>441</td>
</tr>
<tr>
<td>Adjournment</td>
<td>442</td>
</tr>
<tr>
<td>Reporter's Certificate</td>
<td>443</td>
</tr>
</tbody>
</table>

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
CHAIRPERSON YOUNG: Welcome to today's continuation of our hearing from December 1st and 2nd. Ms. Hewitt, would you like to take roll call, please.

MS. HEWITT: Thank you. Daniel Press.
BOARD MEMBER PRESS: Present.
MS. HEWITT: Russell Jeffries.
VICE CHAIRPERSON JEFFRIES: Present.
MS. HEWITT: Jeffrey Young.
CHAIRPERSON YOUNG: Present.
MS. HEWITT: Gary Shallcross.
BOARD MEMBER SHALLCROSS: Here.
MS. HEWITT: John Hayashi.
BOARD MEMBER HAYASHI: Present.
MS. HEWITT: Les Bowker.
BOARD MEMBER BOWKER: Present.
MS. HEWITT: Monica Hunter.
CHAIRPERSON YOUNG: Okay. Mr. Thomas, would you like to do introductions for us?
MR. THOMAS: Good morning; my name is Michael Thomas. I'm the Assistant Executive Officer.

To the left of Mr. Young we have Sheryl PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
Schaffner, the Board's Counsel on this case.

At the prosecution table, on my left, is Harvey Packard, our Division Chief; Sorrel Marks, Project Manager; Lori Okun, Prosecution Staff Attorney; Roger Briggs, Executive Officer; Matt Thompson, also Project Manager with the Board.

And on my right we have Carol Hewitt, who is the Assistant --Executive Assistant. And in the back of the room we Burton Chadwick, who has the cards, I believe -- well, there won't be any speaking on this item, will there. So he does not have cards.

And at the prosecution table we have Mr. McClendon, Mr. Seitz, and I'm sorry, I don't remember your name.

MR. ONSTOT: Stephen Onstot; I'm Special Counsel. I was retained November 17th to represent the District.

MR. THOMAS: Okay, thank you.

CHAIRPERSON YOUNG: Okay. And perhaps we need a microphone for you, Mr. Onstot. Or are you going to be sharing that with Mr. Seitz -- maybe you can put that in between the two of you.

Great. Okay.

And we have a court reporter here today,
the gentleman down at the end of the table next to Carol Hewitt.

MS. SCHAFFNER: Did that appearance make the record? You didn't have a microphone. Did the court reporter catch that?

COURT REPORTER: I did, but he can reiterate just to be safe.

CHAIRPERSON YOUNG: Go ahead.

MR. ONSTOT: Stephen Onstot; I'm with Burke, Williams and Sorensen. Special Counsel to the Los Osos Community Services District.

CHAIRPERSON YOUNG: Thank you. Is Mr. Grimm going to be here today?

MR. SEITZ: Unfortunately the answer to that is no. He will not be here.

CHAIRPERSON YOUNG: Okay. Why don't we then have Dr. Bowker, you're up here with us but why don't you go ahead and tell the audience why you are going to --

BOARD MEMBER BOWKER: I've been advised by legal counsel, as in the past, to recuse myself of this issue. Thank you.

CHAIRPERSON YOUNG: Okay. And Monica Hunter is here. And, Dr. Hunter, do you want to put on the record again why you are not
participating in this?

BOARD MEMBER HUNTER: Yes, good morning.

I am a resident of Los Osos; I'm also going to recuse myself from this proceedings.

CHAIRPERSON YOUNG: Okay, thank you.

Well, we're going to continue with where we left off on December 2nd. I'm just briefly looking at some notes for me to read that Sheryl Schaffner put together. This is the first chance I've had to really take a look at them, introductory comments by the Chair.

I'll proceed. Okay, folks, this is the time and place for the continuation of a hearing by the Central Coast Regional Water Quality Control Board for consideration of a proposed Administrative Civil Liability for the Los Osos Community Services District.

This matter was originally noticed for, and the first two days of hearing were held, on December 1st and 2nd, 2005. As announced at that hearing, and as subsequently noticed, this is the date and place for the continuation and conclusion of that hearing.

This matter has been duly noticed and two parties have been designated for this
proceeding, the Los Osos Community Services
District and the Regional Water Quality Control
Board Prosecution Staff.

As noted previously, since this is a
prosecutorial matter, staff functions have been
separated into two teams, the prosecution team and
the Board advisory team. This is done to insure
that the Board has neutral advisors who have not
been personally involved in the prosecution of the
proposed enforcement action.

The prosecution team, consisting of
Roger Briggs, Harvey Packard, Gerhardt Hubner,
Sorrel Marks, Matt Thompson and counsel Lori Okun,
have been treated like any other party before the
Water Board throughout this proceeding, and have
not had ex parte contacts with the Board or
advisory team.

The advisory team consists of Michael
Thompson (sic), to my immediate right, and legal
counsel Sheryl Schaffner, to my immediate left,
who came down from her Santa Rosa Office today to
serve in this capacity.

BOARD MEMBER PRESS: That's Michael
Thomas, Mr. Chair.

CHAIRPERSON YOUNG: Yes. Right. Not
Matt Thompson. That's like me getting Bruce Daniels and Daniel Press confused all the time.

Okay, I would like to remind everyone that everyone that is going to testify at the last stage of this hearing, that they are still under oath, and sworn under penalty of perjury to tell the truth in this matter.

Are there any witnesses present to give testimony today that were not at the December 1st or 2nd hearing, or did not take the oath at that time? Okay, seeing no hands, I'm going to assume that everyone who is going to testify today has taken the oath.

Okay, initially we need to deal with some -- Mr. Onstot, you were here, I think, for day one, right? December 1st?

MR. ONSTOT: Correct, I was in the audience.

CHAIRPERSON YOUNG: Right, and you took the oath at that time?

MR. ONSTOT: Correct.

CHAIRPERSON YOUNG: Okay. That's what I thought.

We have a few procedural issues concerning a variety of motions, objections, and
document issues. And this is probably going to
take us a little bit of time to get through,
before we can get into any of the new evidence
that I had ordered be produced prior to this
hearing.

There's an outstanding subpoena issued
to the Community Services District; and the
Community Services District has a motion to quash
before this Panel, which is first on the list to
address.

Ms. Schaffner, do you want to describe
what this item is about?

MS. SCHAFFNER: Certainly. Let me pull
up a copy of the subpoena. At the -- is that
better --

CHAIRPERSON YOUNG: Folks, if you can't
hear us, please let us know so that we can speak
louder, --

MS. SCHAFFNER: Yeah.

CHAIRPERSON YOUNG: -- that's all right.

MS. SCHAFFNER: Can you hear me okay
now? Okay, very good. Just got to use the
microphone.

This subject arises from the conclusion
of the last day of hearing on December 2nd, at
which the Chair ruled that no further new evidence would be taken. Any evidence that had not been submitted by the prior deadline or introduced at the hearing and accepted was not going to be admitted.

The Chair later modified that ruling, as is at his discretion, to ask for any new evidence that concerns, addresses, relates to the CSD's ongoing activities as they may affect compliance with the time schedule order, or unlawful discharges in violation of the prohibition.

Those would include actions that would help or hinder or delay or accelerate any ongoing compliance.

This is a matter of routine consideration in enforcement actions. The Board frequently considers ongoing compliance activities, whether it be a renewed effort to come into compliance by a discharger who has an enforcement action pending, or whether it is ongoing violations. Either of which is fairly considered by the Board as an equitable consideration in determining how much of an enforcement action is necessary and appropriate to motivate compliance. And to give credit where
extra effort is being made to come into compliance.

So, it's not unique to the situation. And the Chair asked that the parties, through, I believe, three different communications, December 4th, 6th and 16th, I believe, that asked the parties to submit any available information that would affect this subject concerning ongoing compliance.

CHAIRPERSON YOUNG: Let me just a brief -- I want to just address that specifically. I didn't realize you had something laid out here, Sheryl, for me to describe this issue.

After the conclusion of the December 2nd hearing, and on my drive back home, of course my mind was filled with what had happened December 1st and 2nd, as I'm sure everyone's was, who was involved with this. And I began to realize that anything that might happen after December 2nd, that either brought the District into compliance or took them further away from compliance, I felt, was relevant and probative and important for this proceeding.

And based on that conclusion that I drew I then proceeded to talk with Sheryl and Michael
and we decided to issue a series of emails that
turned out to be three of them. But the purpose
was to allow for a very narrow category of
additional evidence to come in, solely dealing
with compliance issues.

And so, although I had ruled at the
conclusion of December 2nd that there would be no
further testimony in evidence, I did make that
ruling. As the Hearing Officer I do have the
ability and the authority to modify any orders
that I do issue. That order was issued by myself
and it's my own modification of that for a very
narrow category of documents to come in.

And so that's why you have the series of
e-mails that went out. And the request for those
documents.

So, I think, Mr. Onstot, after I
received and reviewed your December, I think, 16th
letter, and I realized that the District really
was not, was not at least willing to provide any
additional information, additional testimony, it
was very clear to me that you were basing that, in
part, on my December 2nd ruling. And apparently
were overlooking the fact that I was modifying my
own order, but were still not going to provide any
additional information, that I felt it important
to issue a subpoena to have these documents
brought forth.

I believe in one of those emails that we
had requested at least some of those documents,
maybe the Board resolutions or Board minutes, I'm
not quite sure. But I felt that we had provided
the District with at least some early-on heads-up
that we were looking for some of these documents.

And part of the reason for that, and I
want you to understand this, is that the
District's theory so far to the Board has been you
can't do anything to the District unless it takes
some official action. And Mr. Seitz was very
clear, and Mr. McClendon, in going through what
those were. You know, resolutions and things of
that nature, official acts.

And so I began to also contemplate the
significance of that and realized that, you know,
the District can also express its policy through
its administrative officers, and to give them
direction, like Mr. Bleskey.

And I wanted to make sure that the Board
and their record had all documents that might help
us even look at what administrative functions the
Board was giving to staff to carry out its policies. And that was really the purpose and the intent behind that, is to flesh that out.

Anyway, I asked Mr. Thomas and Ms. Schaffner to prepare the subpoena and to get it served. I did look at your motion to quash. I read through it. I did look at the code sections that you cited. I do want to go over them with you and take each of the objections that you raised one by one so we can flesh this out, maybe get this behind us.

Why don't we start, Mr. Onstot, with the argument that you put forth on page 3 of your motion, the subpoena is not timely. And my question to you is it's my understanding that the two sections that you cite in the Code of Civil Procedure, 1987, and section 2020.410, do not deal with a party who has been served a subpoena.

MR. ONSTOT: That is correct. The normal course of events in litigation is that subpoenas are served on nonparties, not parties to the action, themselves. Usually that's given by notice. The notice provisions for documents are 20 days. That's why -- and there's another notice provision for 15 days -- that's why we think that
three business days is unreasonable.

It's our view that somebody recognized
that they missed the notice period of 15 or 20
days, and the only way that they can request
documents three business days before production
today would be to issue a subpoena, which, in our
view, is improper on a party.

MS. SCHAFFNER: Actually, if I could --
MR. ONSTOT: You are correct that the --
CHAIRPERSON YOUNG: Okay.

MR. ONSTOT: -- the statute pertaining
to subpoenas to produce documents does say a
reasonable period of time.

CHAIRPERSON YOUNG: All right.

MR. ONSTOT: That it's not a set amount
of days.

CHAIRPERSON YOUNG: Okay.

MR. ONSTOT: But given the holidays and
three business days when other places in the
statutes mention 15 or 20 days, we think that
three is unreasonable. In fact, so unreasonable
those documents are not here today. There's just
not time to pull them out.

CHAIRPERSON YOUNG: Okay, well, 1987
does not apply to the subpoena, is that -- that's
your understanding, correct?

            MR. ONSTOT: Yes.

            CHAIRPERSON YOUNG: Okay. And 2020.410 does not apply to a subpoena served on a party?

            MR. ONSTOT: Correct.

            CHAIRPERSON YOUNG: Okay.

            MS. SCHAFFNER: Actually I think probably the finer point to put on 1987 is it is not required to use a subpoena to obtain this information; that a notice would be sufficient.

            However, the choice of use of 1987 is not inappropriate in this setting. The Chair and Board Counsel chose the more formal path to insure that the District was given all the process it could receive at this time. And that the reasonable time standard does come out of 1987, as well.

            And the question of whether the time provided is a reasonable period of time is a factual one for the Board to determine whether the Chair exercised his discretion appropriately in this setting.

            And the service was made on the 29th. And the question is was the period of time between the 29th and today sufficient time to produce
resolutions adopted by the Board, minutes adopted by the Board, draft resolutions and draft minutes held by the Board under consideration; and the minutes and notes taken by the Board's Secretary and the Board's General Manager at Board meetings, between the specific period set out in the subpoena, which was the end of September through this date, or through the date of service of the subpoena, as I recall.

Let's see, 9/27 through 12/29/2005. So we're talking about three months of very specific documents in the custody of the CSD, which shouldn't be that difficult to locate in their files.

The question is -- and the other relevant fact would be as Mr. Young has noted, the CSD was notified on December 4th, December 6th and December 16th that the Chairman was wanting all documents relating to ongoing actions of the CSD. So there was a general notice that these files could be specifically of interest to the Board.

They're not extensive. They're very specific. And they should be right at the fingertips of the Board of the CSD.

The question for the Board to consider
is, is that a reasonable period of time -- on this particular objection was that a reasonable period of time for the CSD to locate and provide those documents.

CHAIRPERSON YOUNG: Well, let me ask a few questions. You would agree that assuming we even look at 1987 as a corollary and for guidance on what might be a reasonable timeframe, do you agree that traveling to the place of attendance for the production we can disregard that. You were going to be coming here anyway --

MR. ONSTOT: Correct.

CHAIRPERSON YOUNG: -- and that's out?

MR. ONSTOT: Correct.

CHAIRPERSON YOUNG: Okay. So really the only question for us to resolve is what would have been a reasonable time for your staff to prepare the documents. And let me ask you that. How many resolutions were passed during that three-month time period?

MR. ONSTOT: Well, --

CHAIRPERSON YOUNG: How many pages are we talking about?

MR. ONSTOT: Well, I don't know that. But it goes beyond resolutions, which, I believe,
are also posted; it goes for drafts and it goes for notes. Notes that go back three months. Some people don't keep notes; some people don't keep drafts of resolutions that they put together. And to dig on either computer files or call up deleted items or render that search over a holiday period in the course of three business days we think is unreasonable.

With regard to resolutions there's probably a couple of them. I don't know off the top of my head. But, the scope of the subpoena is broader than that.

CHAIRPERSON YOUNG: Okay, let's address this. Are you the attorney that has been present during the CSD Board deliberations?

MR. ONSTOT: Some of them.

CHAIRPERSON YOUNG: During this time period?

MR. ONSTOT: Yes.

CHAIRPERSON YOUNG: Okay. Who else? Has Mr. McClendon? Okay. Mr. McClendon, have you been at all of the CSD closed sessions?

MR. McCLENDON: No, not all of them.

CHAIRPERSON YOUNG: Okay. Has there always been a lawyer present during the closed
sessions?

MR. McCLENDON: Well, I'm a little confused here. Are we talking about closed --
open sessions or closed sessions?

CHAIRPERSON YOUNG: Well, closed sessions during which time any documents would
have been produced that are responsive to the subpoena. In other words, closed sessions where
resolutions and minutes were discussed. Either proposed --

MR. McCLENDON: Those aren't items we're discussing in closed session.

CHAIRPERSON YOUNG: Okay, were they done in open session?

MR. McCLENDON: Yes.

CHAIRPERSON YOUNG: Okay. Do you know how many pages of documents the District has that
would be responsive to the subpoena?

MR. McCLENDON: To my best knowledge parsing out what Mr. Onstot has talked about with
drafts and preliminaries and notes, and talking about just the resolutions, themselves, it's my
understanding that we have two resolutions. One of which has an attachment to it with a deal point
memo going back to the negotiated deal with Mr. --
or Assemblyman Blakesley. And I believe those are
a part of this record; you already have those.

CHAIRPERSON YOUNG: Okay. How many
times has the Board met in closed session since
October 1st or 2nd, whenever the beginning of the
timeframe?

MR. McCLENDON: I've lost count.

CHAIRPERSON YOUNG: Okay, --

MR. McCLENDON: Probably, I'm going to
guess it's over 20.

CHAIRPERSON YOUNG: Okay. Is someone
taking notes during closed session?

MR. McCLENDON: There may be some notes
that are taken, but those would be attorney/client
confidence.

CHAIRPERSON YOUNG: Is any member of
staff taking notes other than attorneys?

MR. McCLENDON: No, not to my knowledge.

CHAIRPERSON YOUNG: So the attorney is
the only -- is essentially the scribe for whatever
goes on in closed session?

MR. McCLENDON: Correct.

CHAIRPERSON YOUNG: Are there any draft
resolutions that have been produced during the
time period mentioned in the subpoena that exist?
MR. McCLENDON: There are drafts that I have --

CHAIRPERSON YOUNG: And I don't mean drafts to the two resolutions, --

MR. McCLENDON: Oh, okay, then --

CHAIRPERSON YOUNG: -- I mean other resolutions that are in draft mode, but have not been finalized.

MR. McCLENDON: Not that I am aware of. But in terms of draft resolutions, it's usually myself, I'll take the first cut at it, and I'm typically overriding those as comments and changes come in. So I don't know that I would actually be able to tell you I've got draft version one, draft version two, draft version three. I've got a final, which is the one ultimately adopted.

Now, on the second resolution there were some interlineations actually at the open session of that resolution. That's my recollection. I suppose that would require going to the outfit that does the taping of that, and you could probably pull off of the recording of that what those specific edits were right there in open session.

CHAIRPERSON YOUNG: All right, how about
the minutes. Do you have minutes of all of your
meetings?

MR. McCLENDON: Minutes, I would not be
able to talk on those. I believe we're --

CHAIRPERSON YOUNG: Who's responsible
for generating minutes.

MR. McCLENDON: It's staff.

CHAIRPERSON YOUNG: Who specifically?

Mr. Bleskey?

MR. McCLENDON: Karen Vega.

CHAIRPERSON YOUNG: Okay. All right.
Does she attend the closed sessions also?

MR. McCLENDON: No.

CHAIRPERSON YOUNG: Okay. Who takes
minutes of closed sessions?

MR. McCLENDON: There aren't -- we don't
have closed session minutes.

CHAIRPERSON YOUNG: Does Mr. Bleskey --
he participates in closed sessions, doesn't he?

MR. McCLENDON: Yes, we generally have
the General Manager.

CHAIRPERSON YOUNG: Okay. Mr. Bleskey,
do you take notes during closed session?

MR. BLESKEY: I take some notes.

CHAIRPERSON YOUNG: Okay.
MR. BLESKEY: They're more diary entries.

(Pause.)

CHAIRPERSON YOUNG: Mr. McClendon, I'm not sure that we have the two resolutions.

MS. SCHAFFNER: Are you talking about the resolutions adopted since September 27th?

MR. McCLENDON: Yes.

MS. SCHAFFNER: And you say we have those resolutions in the record?

MR. McCLENDON: I believe we -- it's my understanding --

MS. SCHAFFNER: Are those the ones concerning your negotiations with the State Board?

MR. McCLENDON: Correct.

MS. SCHAFFNER: There have been no other resolutions adopted since that date in this three-month period?

MR. McCLENDON: Have there been?


MR. SEITZ: Mr. Chair, --

CHAIRPERSON YOUNG: Yes.

MR. SEITZ: Mr. Chair, I would just -- in order to preserve the record I would suggest that if people from the audience are going to be
testifying to responses to your questions that they do so in a microphone so that we --

MS. SCHAFFNER: Yes, thank you. Please, could you repeat that into the microphone, what you just said?

UNIDENTIFIED SPEAKER: Could you come to the podium; it would be easier for us.

MS. SCHAFFNER: Very good.

MR. BLESKEY: We have some resolutions. One resolution in particular that had to do with the project, itself, was a commitment to the project.

We also have other -- I believe we have some other resolutions related to other dealings with our other CSD functions.

MS. SCHAFFNER: And have you adopted minutes in that three-month period?

MR. BLESKEY: Yes, we have. We do not have complete minutes adopted right now due to some of the administrative changes we would like to see in our format of minutes.

CHAIRPERSON YOUNG: And how are these documents kept in the regular course of business?

MR. BLESKEY: With the resolutions we have a resolution file. With the minutes we have
a minutes file. Fairly straightforward.

CHAIRPERSON YOUNG: So they're just a

file to be picked up?

MR. BLESKEY: Yes.

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: And who is your
custodian of records?

MR. BLESKEY: That is a little unclear.

I'd have to refer to counsel on that because of
the relationship I have as Interim General
Manager, as a consultant, and also we still have
our General Manager still on the payroll.

MS. SCHAFFNER: But at this time any
official act by the CSD that is taken at a meeting
is going to be presented to the Board of Directors
by you, as the chief executive officer, correct?

MR. BLESKEY: Yes.

MS. SCHAFFNER: Okay. Well, I guess --
(Pause.)

CHAIRPERSON YOUNG: How much time would
it take, Mr. Bleskey, to retrieve those two files
and your notes?

MS. SCHAFFNER: Not from closed session,
but from open session. Notes that you would have
taken at the open session.
MR. BLESKEY: My notes?

MS. SCHAFFNER: Um-hum.

MR. BLESKEY: I take -- those are my
diary entries; those are never ever in the project
files or the official files. Those are my
personal records.

MS. SCHAFFNER: Okay. Which you take
down as part of your duties in performing your
duties for the District, correct? They're not
like about doctor's appointments or whatever,
they're notes of the meeting? That's what we're
talking about?

MR. BLESKEY: I just restate, they're
personal diaries, not a part of the official
record.

MS. SCHAFFNER: They're about the
meeting?

MR. BLESKEY: They're my personal
diaries. I mean I'm going to leave it at that
because they do contain personal notes, they
contain addresses. This is the stuff that I do
to, my personal reminders. If I make notes that
are project-specific, they go in the project file.

CHAIRPERSON YOUNG: Would you put in
these notes any directives that you were given by
the Board? Anything for you to follow up on and
carry out in terms of Board policy?

MR. BLESKEY: I would make notations
that are to refresh my memory.

MS. SCHAFFNER: Okay, and what about
draft minutes and resolutions that are pending but
not yet adopted. Those are prepared for the Board
meeting, but say the Board hasn't gotten to them,
they're not agendized, they either didn't adopt
them, discuss them, and sent them back for some
amendments, whatever. They're not adopted, but
they're draft. Would those be -- I would assume
they would go through you and therefore they would
be presented by your staff to you to present to
the Board?

MR. BLESKEY: When we're routing what we
would consider our latest version, yes.

MS. SCHAFFNER: Okay. So do you have
currently any draft resolutions or minutes that
the Board has not adopted yet?

MR. BLESKEY: The only thing that I have
right now on my desk, actually I'll have them
Friday, will be for stuff after December 29th for
our January 12th meeting.

MS. SCHAFFNER: Okay.
MR. BLESKEY: All other -- version control being a real issue, usually what I do is I fold the draft after I've made the annotations, confirm that the annotations were made to the final version or the current draft. And then I destroy all drafts.

MS. SCHAFFNER: So are you -- you're saying that your diary, as you call it, of the meeting, your notes about the meeting, I'd like to just get real clear. Are you saying those are privileged in some way?

MR. BLESKEY: That would take --

MS. SCHAFFNER: And if so --

MR. BLESKEY: That would take a legal opinion.

MS. SCHAFFNER: It would. Thank you.

MR. ONSTOT: As was mentioned earlier Mr. McClendon either took the first cut or reviewed those drafts. That's attorney work product. Or to the other extent, and I think more importantly, draft resolutions are completely irrelevant because they do not reflect what the CSD has done, what action they did or did not take as a body. Even resolutions that are proposed and not adopted are irrelevant.
So, if, in part, if the Chair is going to deny the motion to quash I want to make it very clear that the Chair is holding that unofficial actions, or actions that do not represent the CSD, are relevant in an enforcement proceeding against the CSD. I'd like that explicitly held, Mr. Chair, if that is your ruling.

MS. SCHAFFNER: I'm sorry, Mr. Onstot, --

CHAIRPERSON YOUNG: We haven't finished going through your motion --

MS. SCHAFFNER: Right.

CHAIRPERSON YOUNG: -- at this point.

But, Mr. Onstot, it appears to me, and we were given a recent San Luis Obispo Tribune article that had comments made by CSD Staff that the District was going to sell or trade the Tri-W site and the Andre site, or pardon me, and the Broderson site for another site.

And my concern is if things are going on with the District where there's direction being given, policy being formulated that are not going to appear in resolutions or drafts and minutes, and I think that that is very relevant information to compliance or noncompliance.
And it's to that in body of information that I'm trying to get a handle on.

MR. ONSTOT: If I may, Mr. Chairman, in response to that, two things, and I'll address it more in closing.

With regards to the Chair's prior direction that newspaper articles are hearsay and will not be admitted, I'll get to that more, like I said, later in closing.

Secondly, real property negotiations by public entities are privileged. So we would again assert the real property exception. Those could be discussed in closed sessions. If it relates to litigation those were properly agendized and can also be subject to privilege and discussed in closed session.

The same thing holds true with any communications regarding counsel between either the District Staff or its Board Members regarding that, as well.

CHAIRPERSON YOUNG: What privilege are you citing for discussions about real property being protected? I don't know what you're talking about.

MR. ONSTOT: Real property negotiations
can be held in closed session and not subject to
discovery in enforcement proceedings.

(Pause.)

CHAIRPERSON YOUNG: I mean it's most
likely that that privilege was waived anyway once
the CSD Directors discussed it publicly with the
newspaper. I mean I can get into eliciting that
testimony by examination and get that out. But I
would say that that privilege, if it exists, was
waived.

MR. ONSTOT: Well, we would take the
position, number one, it assumes facts not in
evidence that there was a sale considered; and
number two, we would take exception to the fact
that one director or one staff member can waive a
privilege held by an entire agency.

MS. SCHAFFNER: And that is something
that I'm sure we can all have some lengthy debate
about. And I'm not sure that it truly bears on
the outcome of this motion to quash at the moment.

But I would also like to circle back
around to your comment, Mr. Onstot, about hearsay
evidence. And just to refresh the memory of all
those present, the Government Code provides, under
section 11513 that the hearing need not be
conducted according to technical rules relating to evidence witnesses. And any evidence, relevant evidence, shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely.

If there's hearsay evidence introduced it can be admitted over objection if it fits any of the exceptions, or it can be used to supplement or explain other evidence.

And the Chair has indicated a desire to stay away from newspaper articles just because they tend to be a lot of cobbled-together information that's difficult to validate and verify. However, it can be used as a basis for questioning, and it can be used to corroborate other evidence.

And it can be used if it meets other hearsay exception rules such as statements of a party against interest, such as evidence that is otherwise supported by corroborating evidence. And under that rubric the Chair, I believe, has a reasonable basis for inquiring into the director's statement to the newspaper, considering the importance of the concept of selling the property, which is the only path to compliance at this
point.

But let's go back to what you do have, what you have stated you actually have in the possession of the CSD that you know of, that you could go lay your hands on right now. And that are all minutes and resolutions that the General Manager just noted are in two files. All those documents that have been adopted -- approved by CSD vote for the period of 9/27 through 12/29. Those sound clean and easy to go lay your hands on; they are two files.

The question of draft minutes and resolutions that are pending, but not yet adopted, they, you have argued, are privileged because your counsel has made notes on them. However, the counsel notes could be redacted, if need be, to protect the privilege, I'm sure. It sounds like some of those exist and could be located.

The notes taken by Mr. Bleskey at the CSD Board meetings that were not in closed session, I don't see a privilege that would apply. And that was my original question to you, Mr. Onstot. Do you believe a privilege applies to any of the notes taken by Mr. Bleskey at the open sessions?
MR. ONSTOT: No, other than a relevance objection.

MS. SCHAFFNER: Okay, thank you.

MR. ONSTOT: If there's an offer of proof, if you know specifically that there are notes there that are germane to this, and can either quote them or give us a date and time in his calendar, then, yes.

CHAIRPERSON YOUNG: Well, we're not going to know that. And, of course, the purpose for the subpoena, because we don't have possession of the documents we don't know what's in them, is to use it as a discovery tool. And I think you know the standard in discovery is to get your hands on any evidence that may become admissible at trial or hearing. So there may be things that are outside that scope, but may lead to admissible evidence. And that is the purpose for the subpoena, the very quest for those categories.

So, I don't know, there may be, 80 percent of it may be really irrelevant to what we're doing; and there may be some nuggets of information that may be probative one way or the other. Till we see it, we don't know.

MR. McCLENDON: Mr. Chairman, --
CHAIRPERSON YOUNG: Yes.

MR. McCLENDON: I'm sorry to interrupt you, but let me just take a throw at this. What I understand -- as I see it you're trying to get probative information on what the District is doing, or not doing, in order to help you make your decision here.

And it seems to me that what's happened here is perhaps we've gotten a little turned around a bit, spun around with this idea of draft documents and things of that sort, not understanding.

I was handed a list here of Board accomplishments that were actually done, and not necessarily in every case by a resolution or an ordinance, but simply by simple motion. They also gave me a couple of notes here on resolutions that I forgot about one, regarding the District Attorney, one regarding the U.S. Inspector General.

What, it seems to me, would be the probative evidence you're looking for would be, and I'll just throw this out, is all of the agendas for all of our meetings with the agenda staff packets on those, which would have the staff...
reports on each agenda item. And that would show you what this District has done since October 1, with all of these meetings, with all of the actions that they've considered.

It would also show you actions where, for example, maybe they've been on the agenda, they've been pushed aside, but they're in the pipeline so to speak, so you can have that over-the-horizon look at where we're going.

Perhaps that was the confusion that we had here. And what would perhaps be the most probative evidence would be, and I'm sure it's a lot of information, but it would be all of the agendas and all of the agenda packets.

CHAIRPERSON YOUNG: Mr. Shallcross.

BOARD MEMBER SHALLCROSS: Would those agendas and packets include what action the Board took?

MR. McCLENDON: That would be the minutes.

BOARD MEMBER SHALLCROSS: Okay. That's why --

MR. McCLENDON: So that would close the loop. In other words, minutes without all of that backup are really kind of meaningless. You could
look at the minutes and say, well, they hired so-
and-so to do such-and-such study. But without the
agenda packet, without the staff report, what's
that study about. You really don't have any
information there other than what was the final
action. But you'd have no context on that.

CHAIRPERSON YOUNG: Well, I think that
would be helpful. I also, though, want to see Mr.
Bleskey's notes. And the purpose for that is I
want to see what direction has been given to Mr.
Bleskey during this period of time where he is, in
fact, carrying out administrative functions and
Board policy which may not be reflected in the
minutes, themselves, or the resolutions.

MS. SCHAFFNER: I guess one final
factual point before you draw --

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: -- this to closure on
this issue of what documents we're asking for,
where are they, what's reasonable to produce.

I would like to refresh the memory of
the Chair, because he alluded to it earlier, and
for the benefit of the rest of the Board, on
December 6th, almost a month ago, on behalf of the
Chair, Michael Thomas sent a note to all the
parties saying that the Chairman wanted all available evidence, new information and not previously submitted materials, including CSD Board minutes and resolutions regarding the time period in question that could affect the ability of CSD to comply with the TSO.

So it's been almost a month, not three days, that the CSD has had to locate these documents.

And the response to that request came -- there were two responses, actually, that didn't seem to be aware of one another. One of them was from Mr. Onstot. And in that response Mr. Onstot affirmatively refused, said the CSD will not produce the documents requested.

And that led to another request on the 16th and led to -- ultimately led to the subpoena. Just to make this all tidy on the record for clarity's sake.

To wrap up this first segment of --

CHAIRPERSON YOUNG: Well, just wrap up the categories, at least, based on our examination, we know that we can at least specify in -- I wanted to finish going through his points here.
MS. SCHAFFNER: Okay, will do. The three categories of documents requested were the draft minutes and resolutions pending but not yet approved. Those have been discussed as being available but perhaps containing edits by counsel that may be privileged. So those sound like they're identifiable and locatable.

The second category was all minutes and resolutions approved by the CSD Board for the period specified. The General Manager has testified those are clearly identifiable, easily locatable, in two files.

And the third category, notes taken of the meetings by Mr. Bleskey. And Mr. Onstot has admitted that those are not privileged. He questions their relevance. The Chairman believes that they contain relevant, potentially admissible evidence. And that is the universe of documents.

CHAIRPERSON YOUNG: Well, relevancy is not a standard for discovery anyway.

MS. SCHAFFNER: No. And --

CHAIRPERSON YOUNG: Okay. It is upon --

MS. SCHAFFNER: They are likely to --

CHAIRPERSON YOUNG: -- submission for
documents and testimony at trial, but not as a
discovery bar.

MS. SCHAFFNER: However, the subject of
the universe of documents, notes taken at Board
meetings for this specified period are likely to
lead to admissible evidence. I don't think that
that is questionable.

CHAIRPERSON YOUNG: Okay, let's go
through the rest of the argument here. The
subpoena violates the Chair's order declaring
evidence closed as of December 2nd, '05. I think
I've already commented on that, that it is myself
who amended my own order of December 2nd. And so
the subpoena does not violate my modified order.

The subpoena was improperly served.

Michael Thomas has been segregated from the
prosecution staff team. Now, yes, he is a staff
member of the Regional Water Quality Control
Board. But he, for this proceeding, is not an
employee or a party of the prosecution staff team.
I think he's a perfectly legitimate person to
serve a subpoena.

MS. SCHAFFNER: Yeah, this is, I
think, --

(Audience participation.)

CHAIRPERSON YOUNG: Excuse me. I don't
want to hear any comments from the public at this point in time. Okay? I just don't like that. I want to be able to listen to what is said by the people up here at the podium.

From either people that are in favor of what you may hear, or not in favor of what you hear, if you cannot keep your comments to yourself I will ask you to leave this proceeding. And I'm not going to repeat this.

MS. SCHAFFNER: On the point that the Chairman just made about Mr. Thomas not being a party. I think that really is a critical aspect of this proceeding. In order to provide a fair hearing to the CSD the functions of staff have been separated.

And Mr. Thomas is very specifically not a party to this action. Parties have been officially designated by the Chairman. Those parties are the prosecution team staff, as named and participating, and the CSD.

This is a formal process that is created to protect the due fair hearing rights of the CSD. And it has been honored. Mr. Thomas has not participated as a party. Therefore, we believe it was appropriate for him to deliver, serve the
subpoena.

CHAIRPERSON YOUNG: But as part of that component there's an argument that the manner in which Mr. Thomas served the subpoena violated something, and I'm not quite sure what. I'd like to give the District an opportunity to tell me. I did read Mr. Bleskey's letter that was sent to Mr. Briggs complaining about the manner in which the subpoena was served.

But I guess the core question is, Mr. Onstot, what is it about that that makes the service of the subpoena defective?

MR. ONSTOT: Nothing.

CHAIRPERSON YOUNG: Okay, thank you.

MR. ONSTOT: It was just an informational item. But what the process server did, what Mr. Thomas did, does not have any bearing on the validity of the subpoena.

CHAIRPERSON YOUNG: Okay. And then the last component is the affidavit of Sheryl Schaffner is insufficient. Section 1985 states that an affidavit in support of a subpoena duces tecum specify the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the

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case. Here Ms. Schaffner testifies that the request of documents, quote, "pertains to ongoing actions of the CSD affecting compliance as equitable matters in considering the proposed ACLA." Close quote.

Such vague reason is nothing more than a fishing expedition and is far from the full detail required by the statute.

In addition, Ms. Schaffner requests draft minutes and resolutions of the District Board. However, because the District only acts by a vote of its Board, draft minutes and resolutions, by definition, have no probative value, thus they cannot be deemed to pertain to actions of the CSD affecting compliance.

Similarly, personal notes taken by Ms. Vega or Mr. Bleskey have no probative value on District compliance. The subpoena was directed to the custodian of records for the District, which means that the scope of the subpoena is for District records, not personal notes.

Well, I think the categories are -- I don't agree with your conclusion. If you read the categories I think they're fairly specific. We've already gone through the three categories that we
have requested. They have time constraints. They're not open-ended. It's about a three-month period. And the types of documents are identified as closely as one can without actually having them in their possession and having not seen them.

There's an issue with the reason or cause put into the subpoena underlying the request. And Ms. Schaffner put in here, these documents pertain to the Regional Water Quality Control Board's consideration of actions taken or directions given by the CSD Board or Staff that could help, hinder, accelerate or delay the CSD's compliance with order of the Regional Board, as provided by Water Code section 13327.

I think that that states a reasonable justification and rationale for why those categories have been demanded. They pertain to ongoing actions of the CSD affecting compliance as equitable matters in considering the proposed ACL.

I think there's enough justification; I think there's enough specificity. I do want the documents produced. I want the two files produced that Mr. Bleskey spoke about. I'd like Mr. Bleskey's notes. And I would like to have this
material to this Board before we go into closed
session for deliberation.

Now, we have, within the regulations we
have the, first of all, the authority to issue
subpoenas, ourselves, as Hearing Officers. We
have simply availed ourselves of that opportunity.
We're trying to get to all of the facts that we
may feel is important in this matter.

Ms. Okun and Mr. Briggs may feel that
they have sufficient evidence to put on their
case, and to make recommendations to the Board.
But the statutes and the regulations allow the
Board, acting on its own, to issue subpoenas, and
I have availed ourselves of that opportunity.

I did not have the subpoena issued if I
was not going to seek compliance with it, or would
not follow through with enforcement of it. We do
have powers of contempt, and I don't want to be
put into a situation where we have to go down that
path. I would prefer that we just have the
documents produced let's say by 2:00 today.

If we don't get them produced then the
Board will just have to decide, collectively,
whether it wants to go to the next step, which
would be deciding to issue a citation for
MR. ONSTOT: Mr. Chair, we don't disagree with the subpoena power that you have. The basis of most of our objections have been the fact that this is basically a moving target of evidence. And things have been requested after final determination of close of discovery, if you will. And then there's more, and then there's more and then there's more.

Now we're at a point where evidence is being requested that will not be subject to being confronted by both parties. The Chair has indicated his intent to terminate these proceedings today. But we're obviously not going to be in violation of the subpoena. I will note for the Chair that Mr. Bleskey just gave me a note that the office person is not there today and the copy machine is broken.

(Laughter.)

MR. ONSTOT: But we will do what we can to produce the documents that the Chair requested by 2:00.

CHAIRPERSON YOUNG: Okay, thank you.

MR. ONSTOT: And I'll have Mr. Bleskey testify under oath of his best efforts to do that
by 2:00. If it happens, it happens. If it
doesn't, there's --

CHAIRPERSON YOUNG: Well, if it doesn't
we'll deal with it at that point in time.

MR. ONSTOT: Okay, fair.

MS. SCHAFFNER: Mr. Chairman, if I might
make offers on behalf of Water Board Staff. Would
it be possible if Mr. Bleskey brought his
originals to avail them of the copier in our --

CHAIRPERSON YOUNG: Well, of course.

MS. SCHAFFNER: Yes.

CHAIRPERSON YOUNG: If your copier is
broken, the documents can be brought here and you
can make use of our facility to make photocopies.

MR. ONSTOT: That's fine. And I also
make to make it clear that in doing this
production it is in compliance with the Chair's
order, and we are not in any way, shape or form
waiving our objections by producing them.

CHAIRPERSON YOUNG: That's fine. Okay.

So obviously the conclusion for that first item
was that the motion to quash is denied.

The next item is a request for another
continuance from the CSD.

MS. SCHAFFNER: Since the subpoena was
an act of the Chairman, and I think it would be appropriate, given the fact that we've just had this extensive hearing presentation and dialogue of evidence in front of the entire Board, to seek the Board, as a whole's, agreement or disagreement by voice vote as to the decision whether to quash the motion -- to deny the motion to quash, if anybody is interested in making such a motion.

CHAIRPERSON YOUNG: Mr. Hayashi.

BOARD MEMBER HAYASHI: I'll make the motion that we quash.

VICE CHAIRPERSON JEFFRIES: Second.

MS. SCHAFFNER: I'm sorry, to be clear, you mean make the motion to deny -- move that you deny the motion to quash, is that what you mean?

BOARD MEMBER HAYASHI: That's correct.

MS. SCHAFFNER: Okay, thank you.

CHAIRPERSON YOUNG: You don't want to quash the subpoena, right?

BOARD MEMBER HAYASHI: No, no.

CHAIRPERSON YOUNG: Okay, we want to make that clear. All right, is there a second?

VICE CHAIRPERSON JEFFRIES: I did that, Mr. Chair.

CHAIRPERSON YOUNG: Okay. All those in
favor?

(Ayes.)

CHAIRPERSON YOUNG: Anyone opposed?

Okay. And I abstain from that vote.

Okay, next item is a request for another
continuance from the CSD. And let's see here,
there's three bases for that. One, to wait until
the CSD's petition to the State Board is resolved.
And that petition is the one that Mr. Grimm put
forth --

MR. McCLENDON: That's correct.

CHAIRPERSON YOUNG: -- challenging the
time schedule order.

MR. McCLENDON: That's correct.

CHAIRPERSON YOUNG: Okay. Two, because
of my request for documents relating to ongoing
CSD actions affecting compliance, and my allowing
both parties the opportunity to submit further
briefing on CSD objections between December 2nd
and December 28th.

And the third component of this request
was because the holidays fell in the midst of that
period.

Let me just address the first one. And
that is the petition to the State Board, I
believe, and I've read it, does not deal with the basin plan prohibition discharge alleged violations, correct. So, the petition doesn't completely even overlap the components of the ACL.

MR. SEITZ: That's correct, Mr. Chair.

I would just point out, however, I think we have some testimony, and I can locate it here in a minute, from the prosecution team that basically says that what you are seeking though is, regardless if it be the basin plan prohibition or the 00-131 order, that you are seeking penalties under the 00-131, $10,000 per day. I believe that's in the record. If you can give me a moment, I can locate it.

We believe that it would be better for this Board and for the District to have an understanding of what the State Water Resources Control Board is going to do with that petition. As a substantive matter it would certainly add some guidance to your Board and to the District on how to proceed with this enforcement hearing.

MS. SCHAFFNER: Can I clarify one thing, --

CHAIRPERSON YOUNG: Sure.

MS. SCHAFFNER: -- Mr. Chairman. The
ACLC alleges violations of both the time schedule
order, as well as the prohibitions.

MR. SEITZ: Okay.

MS. SCHAFFNER: However, the penalties,
as justified in the staff's worksheet, recommend
that the penalties only be calculated based on the
time schedule order violations.

The Board may choose to accept or reject
that recommendation. The Board may choose to
grant and assess penalties based on the
prohibition violations to the degree the evidence
supports that. Or choose to assess penalties
under the time schedule order.

So both are at issue in the ACLC; it's
just the staff's suggestion that not to calculate
on the prohibitions.

MR. SEITZ: All right, just --

MS. OKUN: And if I could just clarify
one thing about the complaint. There were
findings in the worksheet under both theories.
The conclusion was that the analysis of the
factors was the same under either 13350 or 13308.
The recommendation was to assess penalties under
13308, but the full allegations were set forth for
both theories.
MR. SEITZ: May I just offer a brief response?

CHAIRPERSON YOUNG: Sure.

MR. SEITZ: Thank you. I'm looking at page 35 of the transcript, commencing at line 22. This is from the prosecution team, and I quote: "The third thing is the basis for assessing penalties on 00-131 versus assessing penalties on the basin plan prohibition. No matter what we base the penalty on, it is based on the District's..." -- this is the wrong quote. Sorry, I got that one -- I think it's --

Well, that's not the point I was trying to make. I apologize for not being able to find the exact quote. Maybe I have it here. Yes. Page 74, I apologize, Mr. Chair, for going on to the wrong --

MR. THOMAS: 74 of which volume?

MR. SEITZ: I believe it's volume I.

MR. THOMAS: Okay.

MR. SEITZ: I think it's on page 74, Mike, if you see it there. It starts off with, on line 6, "We will talk about the basin plan prohibition...".

MR. THOMAS: Hold on.
MR. SEITZ:  Sure.

CHAIRPERSON YOUNG:  Do you want to read it for us, --

MR. SEITZ:  Sure.

CHAIRPERSON YOUNG:  Go ahead, Mr. Seitz.

MR. SEITZ:  Thank you.

CHAIRPERSON YOUNG:  Do you have it, Ms. Okun?

MS. OKUN:  Yes.

CHAIRPERSON YOUNG:  Okay.

MR. SEITZ:  Okay.  It says, "We will talk about the basin plan prohibition because it's relevant to the violations of the time schedule order. But our recommendation is that penalties be assessed based on the daily violation of the time schedule order."

That's page 74, lines 6 through 11.

So what we're trying to point out here is that because 00-131 in the time schedule order is now before the State Water Resources Control Board, it just seems that that matter should be resolved prior to moving forward with this hearing before the State Water Resources Control Board.

It just seems to me we're all going to be on much better footing with that decision.
having been made and resolved.

CHAIRPERSON YOUNG: Well, here's my

concern about that. I don't know when the State
Board is going to take up the issue. What they're
going to do with it is kind of speculative.

Sometimes they just deny these things outright.

And so because any order that we adopt
would be put in abeyance anyway pending an appeal
by your District, I think you're protected that
anything we might do today would be put on the
side burner while that issue gets resolved.

So I'm strongly in favor of getting this
hearing behind us and I think that there is also a
benefit, Mr. Seitz, to the CSD and to the public
to know what the Regional Board's position is with
respect to what's going on currently in Los Osos.

I think that's important information that goes
beyond just what's in the order, itself; simply
for planning purposes.

So I'm in favor of moving forward for
those two reasons. One is the petition really
doesn't deal with the basin plan prohibition
alleged violations. And so they don't really even
overlap completely. It overlaps somewhat.

And then the other reason is for not
really knowing what the State Board is going to do
and what it's not going to do with this and what
timeframe it's going to operate under.

So, I want to move forward so that we
can get this behind us. Let's deal with the other
two components, though, that we've identified as
the basis for the request for continuance.

And I guess the second one then is the
documents relating to the CSD's actions affecting
compliance. Do we now, Michael, have all the
documents that we need or have requested affecting
compliance?

MR. THOMAS: Well, we have the
documents, the original document list that the CSD
submitted included documents that were not
actually submitted to the Board. So there was a
list of documents, some of them were submitted,
some of them weren't.

As a follow up the CSD submitted
additional documents that they had not mailed to
us or sent to us originally. But not all of the
documents that are on their original list have
been submitted. And the latest document list that
I passed around to the parties reflects that.

So there's some documents that CSD has
on their list, but have not been submitted to us, and they're marked as such, and they're marked rejected.

CHAIRPERSON YOUNG: Okay. But part of their request for a continuance is that they were grappling with producing additional documents.

Mr. Seitz, have you had the opportunity to produce the documents that you wanted to produce? Whether they've been categorized as rejected or not, have you at least been able to produce them?

MS. SCHAFFNER: Before he answers that question I just want to clarify that we're accurately portraying the nature of the request for the continuance.

My understanding of the request for the continuance was not that the CSD's three or four opportunities to produce documents that it wished to introduce were insufficient. It was that the Chairman was asking for additional documents concerning ongoing compliance issues that it did not believe it had the time to deal with and didn't want to produce.

So, it's not -- the documents you and Michael are talking about are documents that were
due in November, that the Chair gave them extra
time through December to produce. And then extra
time within that period to produce the specific
ones that we're talking about now, which are the
ongoing compliance issues.

That was the basis of the CSD's -- one
of the three bases of the CSD's request for a
continuance, because it felt that the Chairman's
requests on December 4th, 6th and 16th for any
information concerning ongoing compliance were
burdensome and they needed more time.

Although at the same time they refused
to produce them, so -- is that correct, or am I
misreading your argument?

MR. SEITZ: No, I think it's fairly
accurate. On December 2nd the Chair issued orders
at the conclusion of the meeting. Those orders
were basically confirmed in a subsequent email
from your staff. I think it was Ms. Schaffner
sent an email out on Sunday. I was surprised to
see it came out on -- it was a workday, but it
came out basically confirming no new evidence.
And a brief outline of what this hearing was going
to be composed of.

I guess my point in making this is this:
As you recall, the Board debated several
timeframes in which to conduct this continued
hearing. This was, as far as I can remember, I
think there was some talk about a December
hearing, but most of the hearing dates were out in
February. And I felt with my own vacation
schedule, I don't mean to interpose my vacation as
a material element into this proceedings, that I
would have ample time, the District would have
ample time to review the testimony, prepare for
its substantive motions.

And I agree with Ms. Schaffner's later
observations that I had told the Chair I had no
intentions of sandbagging, even though it wasn't
in his final order, I didn't mind giving notice of
that so that everybody would be prepared to
address them.

But quite frankly I wasn't prepared to
spend time away from this case on issues that
were, to me, clearly resolved on December 2nd.
And that being testimony is closed; evidence is
closed; and what happens to us, from my
perspective, I know the Chair has a different
perspective, and I honor that, I'm not trying to
be disrespectful of the Chair's concerns.
But from my position, now I'm sitting here in my office dealing with these two fine gentlemen and other people, attempting to comply with the situation of reopening evidence, reopening this new briefing schedule, new briefs.

And it's just been my observation, but generally when these types of issues come up, which they do and I don't deny, that there's a phone call, there's a joint conference between the prosecution team, the chair and your team. And we iron this out.

We say well, how much time in order for you to do this new workload, in order to get this to the Board. How much time do you need considering this is the Christmas vacation time. And the Chair's prior orders.

And there is a discussion between the three parties as to the appropriate timing of when do we get this information out. Should the hearing be continued. I know it's much more difficult for the Board to continue hearings because there's a multiplicity of directors that are up here. It's not like a court where the court can say, okay, we'll put this over for two or three weeks.
But still, the idea of us reaching an agreement as to what your specifically looking for where we can talk about it, what documents are you specifically looking for, what types of briefs and things.

So not that maybe I can sit back and say no, but at least everybody can have a firm understanding, and whether or not a continuance would be appropriate.

You know, we've gotten these orders from the Chair through the Chair's Staff, three or four of these emails and they're very perplexing only because I would hope, had hoped to spend this time reviewing transcripts and closing, and not re-addressing opening testimony and so forth.

So that was the basis for that request for a continuance, was that I thought that it would be much more productive and much more efficient to have those discussions to try and address the Chair's concerns, and the prosecution staff's concerns, and, of course, the District's concerns in responding to these three or four emails that were clearly outside of what my understanding was on December 2nd, as to how this hearing was going to be conducted.
MS. SCHAFFNER: Mr. Chairman, I would like to clarify one factual point.

CHAIRPERSON YOUNG: Yes.

MS. SCHAFFNER: Mr. Seitz didn't accurately portray the first direction given by the Chair through me on December the 4th, which was the first direction after the hearing. That did not say no new further evidence absolute. It said the only -- it said no new evidence, but that the Chairman can foresee, an exception to that, there are new facts or information available concerning the CSD's efforts to come into compliance, or steps that will further inhibit or delay compliance with the TSO. If any new information arises on that front the Chair and the Board will want to be apprised of that.

That was the first statement that the Chairman was modifying his ruling of no new evidence. And that was two days after the last hearing.

That was followed up on December 6th with a specific request for minutes and resolutions. That was followed up on December 16th with another reiteration of that request. That was followed up with a subpoena, which we
have in this hearing this morning, figured reduced
to a determination that these are locatable in a
handful of files and can be produced in a couple
of hours.

And as for the additional burdens that
keep being cited to and the responses to these
interim communications between the last day of
hearing and this one, the briefs that were invited
were opportunities given by the Chair to the CSD
to further articulate its due process concerns or
objections on the record. Those were not new
burdens; they were opportunities given to better
articulate the legal bases and factual bases for
the objections that have been posed, so that the
Chairman could give them fair consideration before
today's hearing.

The CSD, in some ways chose to avail
itself of those briefing opportunities; in some
ways, it didn't. But I just want to make clear
those are not new mandates, they were supplemental
briefing opportunities to clarify positions.

CHAIRPERSON YOUNG: And let me add to
that, Mr. Seitz, because I want you to know that I
listened to the tapes of December 1st and 2nd.
And I wanted to make sure that we had covered all
of the objections that you had raised through the proceeding. And so that we were taking extra measures to not let anything slip through the cracks.

So that's why you began to see requests, really from me, to give you the opportunity to flesh out and to make sure that we understood exactly what these objections were, so that we would know what kind of remedy to engage to address them.

So, that was the basis for it. I know things could have been done in a different fashion with respect to my request for additional information, but I deemed it to be most efficient and expedient to lay out some very detailed emails and send them in that fashion. Because that would just both tell the prosecution team and your team, this is what I'm looking for, we don't need to debate it. If there was an issue that needed to be addressed you guys could call on the phone, try to set up a conference call and say, you know what, this is going to be a sheer impossibility.

And I don't really see the need for the continuance based on that because there was the better part of a month from December 2nd to today.
Even given the holidays. You know, with
litigation things go very quickly, and you guys
have multiple attorneys and staff to work on
things like this.

MR. SEITZ: Can I just make one --

CHAIRPERSON YOUNG: Go ahead.

MR. SEITZ: I understand, I think, what
the Chair's ruling is to deny the motion for a
continuance. But I just want to make sure how I
perceive this, just so that there's -- and how the
District, through myself, perceived this.

I viewed these emails as requests for
additional information. We're going to get to
some substantive due process motions that I've
made here.

But I want the Chair and the Board to
understand, because I raised new issues here, and
I say this in my preamble, I'm not waiving the
objections that I made at the prior evidentiary
hearing. I'll be happy to restate them on the
record here, but my take on this is to put in what
procedural and substantive due process issues I
intended to raise that I haven't raised in the
past, and that's what is in my December 22, 2005
e-mail.
CHAIRPERSON YOUNG: Okay, so unless there's an objection by my colleagues, I'm going to overrule the motion to continue the hearing so that we can proceed.

All right. The next item, there was an issue raised as to an ex parte contact that was made.

MR. SEITZ: I'm not raising -- I mean maybe my co-counsel is raising that, I'm not raising it.

CHAIRPERSON YOUNG: Well, it was in Mr. Onstot's communication. Are you renewing an objection --

MR. ONSTOT: No. So that we can move on we'll withdraw that.

CHAIRPERSON YOUNG: Okay. All right, now we can get to the due process objections that were raised. Okay. Ms. Schaffner, do you want to summarize for us what we have kind of gleaned from the record, from the correspondence from the CSD as to what their outstanding due process issues are?

MS. SCHAFFNER: Yeah, and I apologize if I'm being dense or not understanding or not fairly characterizing, I will certain expect that you
will correct me if I get any of this wrong, Mr. Seitz.

But my understanding from your latest briefing submitted on the 22nd, and this when it finally started to gel for me, what the nature of what I think your objection, procedural and substantive due process objections are.

Is that you believe that there is an -- that the ACLC is somehow holding the CSD, itself, liable for the discharges of individual dischargers that the CSD does not control the waste of within the District.

That parts of the CSD are not in the prohibition zone, parts of it are, I'm not sure if I got that right. But your basic argument is that you think the ACL holds the CSD liable for dischargers over which it has no control.

MR. SEITZ: That's correct. As you may recall, and I've had many fine discussion with your Board regarding this very issue, as I flipped up the prohibition zone and kept trying to advise the Board, that it is inappropriate to hold the Community Services District responsible for the violation of the prohibition -- and I still believe the 00-131 is based on the general
prohibition -- of the time schedule order to sewer
the prohibition zone. I don't want to mix apples
and oranges here.

But, I kept getting --

MS. SCHAFFNER: Okay.

MR. SEITZ: -- the idea that what the
ACL complaint was aimed at, and I can quote Mr.
Briggs' letter to the District transmitting the
ACL complaint, was the concept that because the
District didn't build the wastewater treatment
project for the entire prohibition zone, that
somehow the amount of penalties, when you take a
look at the original, and maybe the ongoing
because I don't know how many versions of the
worksheet are out there any more, but the whole
concept was based on these horrendous discharges
from the entire prohibition zone.

And my concern was that the prosecution
staff was attempting to say because the District
didn't build the wastewater treatment project to
sewer the whole prohibition zone, that this $11
million that we were -- was before your Board, was
aimed at that issue, the failure to build the
wastewater treatment project. Therefore, you're
going to be held responsible for all these
individual discharges -- and you'll see a
PowerPoint on this -- within the prohibition zone.

I kept trying to say, there's no nexus,
without a plant, without having a wastewater
treatment plant in process, you know, up and
serving the community, there was no way that the
District a) could be responsible, because they're
only an individual discharger; and b) they could
not pass on the fines within the prohibition zone
because there was -- the prohibition zone, itself,
was an empty shell.

Now, I have, since I raised this we've
had two correspondence back from the prosecution
team, I believe clarifying this. One is their
rebuttal brief. And I'm going to read to you.

It says that the District argues that
the complaint should be stricken because Water
Code section 13301 applies to persons who
discharge waste, and therefore the District cannot
be held accountable for discharges of waste from
individual dischargers within the prohibition zone
as alleged in the ACL complaint and the proposed
worksheet for assessment.

The prosecution team's response:
Neither the complaint nor the worksheet -- and I
disagree with this completely -- alleges any such thing. The basis for the four cease and desist orders, which I believe are not at issue here, the time schedule order and the ACL complaint are the District's own discharges. Which is basically the Bay Ridge Subdivision, Vista del Oro and the fire station.

I think this is further clarified --

CHAIRPERSON YOUNG: Well, does that then satisfy your concern?

MR. SEITZ: Well, as long as the Chair - - this is resolved this way. I hate to be sitting up here saying, putting out our position and if the Chair says you're right, you're only going to be held responsible for those three discharges, then I'll be satisfied.

The third -- now I'm reading from page 35, I think, of the first transcript, the first --

the December 1st transcript. The third thing is the basis for assessing a penalty under 00-131 versus assessing a penalty on the basin plan prohibition, no matter what we base the penalty on it is based on the District's discharges at Bay Ridge Estates, Vista del Oro and the fire department. It is not based on the basin-wide
prohibition or discharges of other residents,
other than the residents in these two
subdivisions.

Now, if that is the Chair and this
Board's position, then I believe my substantive
due process argument is resolved.

CHAIRPERSON YOUNG: Okay, well, let me
say this. The Board doesn't have a position with
that. This is staff's recommendation. I will
tell you that that was always my understanding in
reading the ACL, that they were recommending under
one of their two theories that you would be held
responsible for only the discharges from your own
facilities and not from the community at large.

So, that's always been my understanding,
and not everyone else in the community.

MS. SCHAFFNER: Perhaps we could let Ms.
Okun clarify this for the prosecution team, but my
understanding was the same as the Chairman's in
that the citation to the factual threat of water
quality and health and safety risks posed by
ongoing unsewered discharges from the rest of the
community within the District were a factual
context and implication that is a water quality
context for the failure to get the sewer built.
Not a basis for assessing a violation.

The enforcement policy adopted by the State Board, as well as the statutes require that the Board consider water quality implications as well as any other things. So it was my understanding was that was given as context for that discussion. Is that correct, Ms. Okun?

MS. OKUN: That's correct. And, in fact, the next two and a half paragraphs after the rebuttal citation that Mr. Seitz just read says exactly that. That those are factors for the Board to consider in determining the amount.

MR. SEITZ: Just so I have this clear, because this has a major impact on what I've been trying to achieve here. Maybe it's just my own misunderstanding in my discussion with the Board, is that the District is only being held responsible here today for three discharges, Bay Ridge, Vista del Oro and the fire department.

CHAIRPERSON YOUNG: Under one of two theories in the ACL.

MR. SEITZ: Right. But we're not being held responsible for the general discharge within the prohibition zone for the failure -- in violation of 8313.
CHAIRPERSON YOUNG: Well, in violation of the basin plan prohibition.

MR. SEITZ: That's -- okay, that's what I --

CHAIRPERSON YOUNG: Okay, so --

MR. SEITZ: Okay. So if that's the ruling, then I'm --

CHAIRPERSON YOUNG: Well, you know what, it's not a ruling, because I don't know what we're going to end up doing. But let me say this. Due process is notice and an opportunity to be heard.

You're getting an opportunity to be heard on all of these issues. This goes more to the notice issue, I believe, in your argument.

And so if the Board comes up with something later that maybe doesn't jibe with what your notion is of what notice should have been, then you've got an issue at that point. It may not be with this Board, it would be with some appellate review.

MR. SEITZ: I feel like if I say anything I'm going to be interpreted as concurring with you. And I don't want to sound -- as I said the other day, I don't believe in arguing with the Judge, because I don't --
CHAIRPERSON YOUNG: Mr. Seitz, I won't take it personally if you want to concur with me.

MR. SEITZ: Okay, I --

(Laughter.)

MR. SEITZ: I appreciate your humor. I don't concur with that statement. I think notice is a key due process, and it's certainly a key to the District's position to know precisely what discharges that we are being held accountable for. And I've continually made the argument that we can't be held accountable for the discharges of other residents.

The prosecution team's rebuttal seems to confirm that, and their direct testimony before this Board seems to confirm that.

CHAIRPERSON YOUNG: Okay. All right, let's go on to the second, then, --

MS. SCHAFFNER: Does that dispose of all of your due process objections, Mr. Seitz?

MR. SEITZ: No, there's one more that I listed in my --

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: Okay, and let me see if I -- I'm afraid I may have collapsed them or teased them out when they should have been...
Do I understand correctly that your second objection to due process -- motion to strike based on due process obligations, and here I'm a little less clear. Is it because the penalties might affect the budgets of the subdivisions within the CSD? Or is it based on an allegation that your equal protection rights are violated by not assessing penalties against those subdivisions within the CSD? I'm not real clear on that.

MR. SEITZ: Thank you for the opportunity. First of all I want to make sure that there's a clear understanding. We haven't waived our other procedural due process issues that we raised during the December 1st and December 2nd hearing. These are the ones that I intended to raise prior to closing. And doesn't necessarily reflect back.

This isn't an accumulative restating all my due process objections that I had during the evidentiary hearing.

First, --

MS. SCHAFFNER: To be clear, Mr. Seitz, --
MR. SEITZ: Yes.

MS. SCHAFFNER: -- that is not our understanding, at least as the Chairman and I discussed this since that hearing. There has been no citations to law or fact or argument, to flesh out any of the general prior objections you just tried to preserve.

We can't address them. The Board cannot give you a remedy when no cause of action has been stated. So, if you want to abandon those objections, you can do so. If you want to support those objections, you've had, by my count, at least three written opportunities and two days of hearing to do that. This is the third day.

So, if you really want it to be considered, I would suggest that you just lay it out there now.

MR. SEITZ: Okay, thank you. First of all, what my concern was is now that when you're enforcing the second part of this, which is the basin plan prohibition, which is the violation of 8313, the Vista del Oro Subdivision, the Bay Ridge Subdivision and the fire department, that as a matter of process that you need to follow the processes of either a cease and desist order or a
clean-up and abatement order in order to give
those subdivisions and those wastewater
treatment -- sorry, septic tank systems the
ability to provide a remedy.

In other words, you turn around and you
say to yourself, okay, we have these, and you'll
see these on the PowerPoint. You're going to see
these three operations that are run by the
District, pursuant to zones of benefit, that have
their own separate budgets, that are managed as
independent little zones to operate. That what's
going on here is that you're fining them directly
for violations -- through the District, I want to
make sure that there's a distinction there -- for
direct violations of 8313.

And the point that I wanted to make and
clear is that a) it's been the history of this
Board, it's articulated in the State Water
Resources Control Board enforcement policies that,
and the prior actions of this Board, that you've
always thought enforcement against individual
dischargers, which are these three organizations,
through cease and desist orders or clean-up and
abatement orders because they come with a specific
timeline.
If the Regional Board is concerned about those discharges, I'm not saying you shouldn't be, that the way to go about doing that is not alleging a direct violation of 8313, but in the alternative is to issue cease and desist orders that gives this Board, your staff, and the LOCSD Staff the opportunity to come up with a fix.

You're sitting here under one theory saying we're going to fine you folks those zones of benefit $11 million, and maybe now it's $32 million, looking at what got emailed to us late last night, for these discharges when the very fix is less than $11 million.

And it just seems to me that the correct way and the historical method that this Board has used, and what's recommended in the policies is to issue individual cease and desist orders or clean up and abatement orders to give the discharger, being the District, the ability to address those individual discharges and not lump them with a direct violation of 8313.

MS. OKUN: Mr. Chair, this board did that six years ago. Six years ago in 1999 the Board issues cease and desist orders for those four discharges. And those cease and desist
orders had time schedules in them. They were based on the solution that the District proposed to resolve those discharges, which was to build a treatment plant.

A year later the Board adopted the time schedule order in part because the District said that it needed to extend the schedules and the cease and desist order. And the Board included an extended schedule in the time schedule order.

The four discharges aren't separate entities. The cease and desist orders, I agree, were not alleging violations of the cease and desist orders, but those were the orders that were the basis for the time schedule order.

The discharger named in the time schedule order is the District, because it owns and operates the four facilities.

I don't know how to make that any more clearer.

CHAIRPERSON YOUNG: Mr. Seitz, I don't see this as really a due process issue, anyway. I think that you'll have opportunity to argue this further. If you feel that some other remedy is appropriate, you can argue that to the Board.

But I think what's in the ACL is going
to stand at this point and not get amended. And you can take issue with what staff is recommending, you know, as a remedy for what's going on, and what you think the Board should or should not do.

But I don't see it as germane to something that the Board, itself, can fix at this point with the pleading or the process.

MS. SCHAFFNER: Mr. Chairman, if I can just point out one other point for the record.

CHAIRPERSON YOUNG: Go ahead.

MS. SCHAFFNER: Of the four lawfirms that the CSD has engaged to advise or participate in this matter, it's gotten a little confusing. Because now I have before me a petition filed, actually a reactivation of a petition filed five years ago on the TSO by the CSD.

Mr. Grimm filed on behalf of the CSD, and I believe Mr. Seitz submitted that as an attachment to one of his recent submittals to the Chair.

The points and authorities by Mr. Grimm specifically says that the District consequently can only be held accountable for those four service areas of which it has control, and from
which it discharges wastewater.

There seems to be some tension between what you're saying. You're saying that the CSD should not be held accountable for the discharges from these facilities. And Mr. Grimm is saying that it can.

MR. SEITZ: No. I'm sorry, maybe I misstated. I think that the District, under my interpretation of the rules, is a discharger for the purposes of the 8313 for the three septic tank systems that it operates for Vista del Oro, Bay Ridge, thank you, and the fire station. I'm in complete agreement.

I just -- but those are the only discharges that we can be held responsible for. And the way that the Board has traditionally and consistent with the State Water Quality Control Board enforcement policies are that you issue against individual discharges, either cease and desist orders or clean up and abatement orders.

CHAIRPERSON YOUNG: Okay, I don't think we have a due process violation here. I think it goes more towards your argument as to what might be an appropriate remedy for what's going on. And you'll have opportunity to, you know, restate that
again during closing.

MR. SEITZ: Okay. Then, --

CHAIRPERSON YOUNG: Okay?

MR. SEITZ: Then picking up on Ms. Schaffner's other issues, we have always raised
the objection as to the timing of these hearings, if I have to restate them now, so everybody's
clear on them, on the basis of notice and
opportunity to be heard, and I quoted a section,
there's an old case law that says the amount of
due process that an agency is entitled to, or
anybody's entitled to, is directly related to the
penalties.

And we've continually been handling this
hearing on an expedited basis, and with the threat
of an $11 million fine. And I've raised that in
the past. I want to make sure if I'm supposed to
renew it now that it be renewed now. And so that
is being renewed.

I've also raised issues on the Chair's
ruling that our cross-examination of opposing
witnesses was going to be deducted from our case-
in-chief time. I've raised that on numerous
occasions. I've always been cited back to an
email that Mr. McClendon sent to Ms. Schaffner in
response to some questions which basically stated, when they asked these questions, that we somehow stipulated to two hours.

I have reviewed that email, and I can find it in my binder here. Two things: One is we gave no time for cross-examination. We only gave time, when we estimated two hours, for at least two hours for our case-in-chief.

And as far as authority goes, I want to cite to you Government Code section 11513(b):
Each party shall have these rights: To call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues, even though that matter was not covered."

And it just seems to me the continual indication that when we were cross-examining or giving our ability to cross-examine the prosecution team's witnesses, we always had the clock running on our case-in-chief.

And if I have to continue to raise these objections, I'm raising them again right now. And I'm citing you the California Government Code that addresses that section.

CHAIRPERSON YOUNG: Okay, Mr. Seitz, was
there anybody, any witnesses that you were not
able to cross-examine on the December 1st and 2nd
hearings?

MR. SEITZ: Absolutely. And the reason
why I say that is this. Is that you put
tremendous strain on myself and the other
attorneys up here to cross-examine witnesses, to
figure out what questions you can ask them and
what questions you shouldn't because the time is
ticking against your case-in-chief.

I believe, you know, that we -- I know I
would have had additional questions back then. If
I'm required now to re-raise these issues, I need
to make sure they're clear on the record, that by
me just doing substantive and procedural due
process motions that we've already went through,
that I haven't somehow waived those objections,
because --

CHAIRPERSON YOUNG: Well, you --

MR. SEITZ: -- I want it clear I
haven't.

CHAIRPERSON YOUNG: Okay, you haven't
waived those. My concern was that I had given you
all the time that you requested through December
1st and 2nd. I didn't hear anything from you
that, gee, I really need some more time because I had some more questions for Mr. Thompson or Mr. Briggs.

So, I'm asking you now, do you have any specific questions or areas of examination that you felt you were not able to cover December 1st or 2nd that you would like to revisit during this hearing today?

MR. SEITZ: I think the answer to that is yes.

CHAIRPERSON YOUNG: Okay. And can you, with some specificity, tell me who you need to examine and how much time you need for each of those witnesses?

MR. SEITZ: First of all, there's prosecution team witnesses that we would want to call. I can't give you a timeline. I would much prefer to have my notes from my meetings for the evidentiary portion of this. But I'm sure I can go back to my office and resurrect them.

Do you know how this works, and I'm sorry, being flippant here, from a lawyer's perspective a question begs another question. Every lawyer knows that. To sit back and say how much time are you going to need to cross-examine
witnesses, in itself, places a limitation on our ability to cross-examine.

I have no intentions of filibustering this hearing, so on and so forth. And I don't know, so I think that we'd also, just as a side note, we did want to have Mr. Miller come back up and make a presentation on nitrates because -- this isn't quite exactly what the Chair had in mind, I think, in the other emails to us, but we have come into subsequent information regarding nitrates in the groundwater basin due to the most recent studies.

It's a very short presentation, but we would also want the opportunity to put that on as an informational item.

CHAIRPERSON YOUNG: That's not cross-examination. That's your own witness --

MR. SEITZ: Right, I agree.

CHAIRPERSON YOUNG: -- and he was here --

MR. SEITZ: -- I agree.


BOARD MEMBER PRESS: Mr. Chair, I have to register an objection to going into more cross-
examination to entertaining this idea that due
process has been violated here. I think the
record will show that the Chair provided extra
time to the District. That when the Chair asked
if the District had any more questions for
witnesses, the District did not.

That part of the hearing was closed, and
I think it should stay closed.

MS. SCHAFFNER: As a refresher, Mr.
Chairman, --

CHAIRPERSON YOUNG: Is that the sense of
the Board? Mr. Hayashi? Mr. Shallcross?

MS. SCHAFFNER: Could Mr. Thomas --

CHAIRPERSON YOUNG: Mr. Jeffries.

MS. SCHAFFNER: Could Mr. Thomas maybe
refresh our memory on how much time you actually
gave last time, just so we're all current?

MR. THOMAS: Extra time?

MS. SCHAFFNER: Yeah, initially the
Chairman said two hours for the total case.

MR. THOMAS: Two hours for both parties.

MS. SCHAFFNER: But there were numerous
additional times presented as Dr. Press just --

MR. THOMAS: Approximately 30 minutes
was added.
MS. SCHAFFNER: Okay.

MR. SEITZ: Mr. Chair, I don't argue with the generosity of the Chair to extend time. I want everybody to understand that. But the fact of the matter is these generosities were welcome, but they came after the witnesses were sent down, and they had more to do with our case-in-chief.

You may recall that the limitations on cross-examining Mr. Polhemus directly, based on the extended timelines.

I guess the bottomline is I don't argue with the notion that the Chair extended my time to put the case-in-chief on. I don't -- want to make sure that everybody's clear on that.

CHAIRPERSON YOUNG: Okay. And I know that there was an argument, Mr. Seitz, that you had wanted Mr. Grimm to be available to participate in this. And I guess you're waiving that specific objection because I don't see him here?

MR. SEITZ: Right, --

CHAIRPERSON YOUNG: And he was your expert lawyer on --

MR. SEITZ: Right, and I appreciate, and that was part of the time, as you may recall, for
extending this out. And I appreciate that from
the Chair.

We've had extensive time to review the
pleadings and our response and our closing
argument with Mr. Grimm, and I appreciate the
opportunity that the Chair gave in extending the
meeting for that purposes.

CHAIRPERSON YOUNG: Let me say this.
I'm sensitive to what my colleagues want me to do,
and want done with this issue. I'm also sensitive
to your concerns about having sufficient time to
examine, you know, witnesses or cross-examine
witnesses.

I'm also very aware that judges and
hearing officers can and do limit the amount of
time that a party has to put on a case and to go
through witnesses.

I would like to know if you can be
specific with a timeframe and specific witnesses
that you feel you really needed to cover, and this
is really an important part of your case that you
felt was really set aside because of the time
constraint. I would like to hear what the request
is if there was some specific witnesses, and I
don't just mean the prosecution team, but specific
witnesses and a specific amount of time as possible.

Because, I can't give you an unlimited amount of time for cross-examination. That I'm not going to do.

MR. SEITZ: Mr. Chair, could I suggest maybe a five-minute break so I can consult with the other two attorneys on my side so I can come back and give you that information?

CHAIRPERSON YOUNG: Okay. We can do that. Let me finish with this category we're calling due process right here, so we can cover that.

Ms. Schaffner, is there anything else left.

Well, there was another issue, I think, about the budgeting and funding sources and you felt that I think there was a due process issue that you might be assessed a penalty that would create a problem because it would be pulling on subdistricts or something of that nature.

MR. SEITZ: I don't know if that was more argument or substantive or procedural due process. The issue that I wanted to make, and I'm going to continue to make, is that the District
operates zones of benefit.

You can't sit back and hold these zones of benefit responsible or fine them to the tune that -- or do otherwise than through a cease and desist order, or a clean up and abatement order, hold these subdivisions responsible for the entire violation of the prohibition zone, or the entire alleged violation of 00-131.

BOARD MEMBER PRESS: Mr. Chair, why is that a due process issue?

CHAIRPERSON YOUNG: Well, I would agree with that. And I think Mr. Seitz has kind of tendered that as more maybe of an argument than a true due process issue. And that's the way I'll receive it. So you'll have opportunity to address the Board on that during closing.

Okay. I think that kind of covers those due process issues.

MS. SCHAFFNER: I didn't have any others in my notes unless the CSD had something. Okay.

CHAIRPERSON YOUNG: Okay, why don't we take a quick break, and you said five minutes is enough?

MR. SEITZ: No, I think I just need to step out in the hallway and --
CHAIRPERSON YOUNG: Okay, so I'm going to try to get us back here right at ten after the hour, so we can move forward.

(Brief recess.)

CHAIRPERSON YOUNG: Would everyone please take their seats.

MS. OKUN: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

MS. OKUN: Mr. Seitz indicated to us during the break that the reason they want to put Rob Miller back on is to present the most recent sampling data which shows that nitrate levels have actually gone up. And that that testimony will only take about five to ten minutes.

And if that's the case and that's all he's going to testify about, then the prosecution staff joins his request to present that evidence.

CHAIRPERSON YOUNG: Okay. If there's no objection, then --

MR. SEITZ: No objections.

CHAIRPERSON YOUNG: -- that's fine.

MR. SEITZ: Thank you.

CHAIRPERSON YOUNG: Okay. Before we get to the issue that you guys just deliberated about and over, let me just mention this to the public.
There's going to be no public comment period today. This was a continued hearing. Public comment was had, I believe, on December 2nd. And we had sufficient public comment at that point in time.

There's only a little bit of additional new testimony today dealing with the issue of compliance/noncompliance subsequent to December 2nd. And so in order that we keep things moving along and not open this up to another couple of hours of public comment, we will have no public comment today.

VICE CHAIRPERSON JEFFRIES: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

VICE CHAIRPERSON JEFFRIES: Maybe you better clarify between public comment and public forums, because public forum is on the agenda.

CHAIRPERSON YOUNG: Thank you, Mr. Jeffries. I do have a copy of the agenda. And we have public forum, which would be that any member of the public can address the Board on anything other than this agenda item.

(Laughter.)

CHAIRPERSON YOUNG: And that will be some time after 2:00 p.m. today. All right, that
is public forum, not public comment on this item.

Okay, so, Mr. Seitz and Mr. Onstot,

would you like to --

MR. SEITZ: Yes.

CHAIRPERSON YOUNG: -- tell us what you came up with?

MR. SEITZ: Yes, first of all we were both very hungry. But secondly of all --

(Laughter.)

MR. SEITZ: -- I'm sorry for the humor, but it's just part of me.

CHAIRPERSON YOUNG: Do you notice how it really keeps you focused?

(Laughter.)

MR. SEITZ: It does.

CHAIRPERSON YOUNG: I mean it's true, you really only need a little bit of water and some crackers, and you'll be able --

(Laughter.)

CHAIRPERSON YOUNG: -- to go the whole day.

MR. SEITZ: Your constitution is much different than mine then, Mr. Chair.

We would like to call back Darrin Polhemus, both Mr. Onstot and Mr. McClendon
believe that that would be somewhere between 15 to 20 minutes.

I would like to call back Mr. Briggs. Myself and Mr. Onstot would like to call back Mr. Briggs. And we estimate that to be 20 minutes.

Additionally, if we're going to break for lunch I do think that Mr. Miller's testimony is going to be very short, but I think somewhat relevant. And basically, as Ms. Okun pointed out, it's the latest nitrate samplings.

I think it's what, two charts? Three slides that are going to be very quick. But they do, to some extent, contradict his testimony that he presented to the -- I can represent to you, I've seen the slides, they somewhat contradict his testimony that he gave.

The District is in no position, nor do they want to be in any position where they would lead this Board or your staff to conclude that we had new information and we withheld it from the Board without giving an opportunity to present it.

CHAIRPERSON YOUNG: Okay, let's look at the request for essentially 20 minutes for these two categories. Normally the examination of a witness is done by one lawyer. Was your
suggestion that you were going to split that up
between lawyers?

MR. SEITZ: It would be 20 minutes
combined. My issues are somewhat different than
Mr. Onstot's and Mr. McClendon's. And so I have
no interest in -- for myself, that's why Mr.
McClendon and Mr. Onstot would be in charge of Mr.
Polhemus. And myself and Mr. Onstot would be the
cross-examination -- obviously, each of us have a
little different expertise and a little bit
greater knowledge of the precise areas that we
want to cross-examine.

I don't want to find myself cross-
examining into an area that I know very little
about.

CHAIRPERSON YOUNG: Okay, let's look at
this, then. Starting with how much time do we
have coming into today, Michael?

MR. THOMAS: Forty minutes.

CHAIRPERSON YOUNG: Okay, it's --

MR. THOMAS: Forty minutes for the CSD.

CHAIRPERSON YOUNG: Okay, so the CSD has
already 40 minutes, and the prosecution team has,
I think, an abundance of time. And it just keeps
on growing.
So, what you're asking for essentially is an additional about 40 minutes to add on top of the 40 minutes that you have.

MR. SEITZ: That's correct.

CHAIRPERSON YOUNG: Okay, and then some time for the three slides like ten minutes?

MR. SEITZ: We're hoping. I'll let Rob -- Rob, how much time do you think you'll need for those three slides? Ten would be great.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: Mr. Chair, could we have an --

MR. ONSTOT: Mr. Chairman, --

MS. OKUN: -- could we have an offer of proof on the cross-examination of Mr. Briggs and Mr. Polhemus?

CHAIRPERSON YOUNG: Okay. Mr. Seitz, Mr. Onstot, do you want to --

MR. ONSTOT: Well, why there is an offer of proof requested, I don't know. By definition the offer of proof is that the scope of cross-examination is the same scope as that on direct.

So, if what they're asking for is do we want to lay the questions out so the prosecution can prepare the witness, we decline to do that.
We will commit, however, to keeping our cross-examination questions within the scope. For example, Mr. Polhemus, in his position with the State Board, in administering the SRF, and Mr. Briggs' function as the XO of the Board.

CHAIRPERSON YOUNG: Well, but is the scope going to be solely with areas that you did not cover before? Okay. If that is so, then I think that would be okay if there's areas that you didn't get to cover. I just don't want you to be going over prior testimony and rehashing that.

MR. ONSTOT: I agree, Mr. Chair. One other point of clarification. You mentioned that we had 40 minutes. That is exclusive of closing, correct?

CHAIRPERSON YOUNG: No, that was the closing that was given to you before.

MR. ONSTOT: So it is still the Chair's view that each side will be given a total of 40 minutes closing?

CHAIRPERSON YOUNG: No. What we have coming into this is 40 minutes is what the CSD had coming into this. And how much time --

MR. THOMAS: About two hours and 15 minutes, I think.
CHAIRPERSON YOUNG: Two hours and 15 minutes is what they had accumulated based on additional time being given to both parties. So prosecution team has two and a half -- was it two and a half?

MR. THOMAS: Two hours and 15 minutes, I believe.

CHAIRPERSON YOUNG: Okay, two hours, 15 minutes, --

MS. OKUN: I think it was -- was it 153 minutes? Two hours and 33 minutes.

CHAIRPERSON YOUNG: Okay. However, I believe Ms. Okun had told us that she didn't think she was going to use half that.

MR. ONSTOT: Right. No, that I understand.

CHAIRPERSON YOUNG: Yeah.

MR. ONSTOT: I just want to be clear how much time, because the agendas that each side had had 40 minutes for closing. I just want to be sure that in the tally that you're doing, Mr. Chair, if that's inclusive, that number that you just gave is inclusive or exclusive of closing.

CHAIRPERSON YOUNG: Here's what I will do with this. And we'll see whether my colleagues
want to go along with this at this point. But I would give you the -- essentially you're looking for 50 additional minutes, plus the 40 you had before; that would be 90 minutes, an hour and a half.

I'll let you divide it up any way you want, okay? If you decide you want to shift that around, take from your closing, to the examination, I'll leave that up to you. I won't interfere with that.

But I'm going to be pretty hard and fast this time that that number is going to stick. And I'm not going to be adding any time to it unless there is something absolutely extraordinary that develops that nobody could anticipate.

Now, is Mr. Polhemus available? Is he on the --

MS. OKUN: After I got the request from Ms. Schaffner to insure that the witnesses would be available, I did confirm that he'd be in his office today. And he asked that I follow up with him when we had more information about what time or whether he'd actually be needed. And I didn't have any further information, so we had overlapping vacations, I think. He said he would
be in all day. He's maybe at lunch right now.

CHAIRPERSON YOUNG: Well, it sounds like we need to get -- let me first deal with this.

How does the Board feel about allowing the District the additional time it's requested?

BOARD MEMBER PRESS: Well, another 50 minutes, I don't really see the need for that.

But I'll defer to you, Mr. Chair, if you want to call it 90 minutes total. But be firm about that, because I think we do need to get to the point where we do deliberate and we do need to close this hearing. So if that's your recommendation I'll go along with it, but as long as it's really firm.

CHAIRPERSON YOUNG: All right. Mr. Jeffries?

VICE CHAIRPERSON JEFFRIES: Well, Mr. Chair, I agree with Dr. Press, but I have a different caveat to this. The attorneys say they're not trying to filibuster, but they continue to ask for more and more time.

You've been extremely liberal on the time that you have given them to extend them the extra time that they have asked for. And I think there has to be a time and a place that we say
enough is enough.

It's the Chair's prerogative if you want to allow the additional time. I'll go along with the Chair's prerogative. But I will say I'm not interested in going beyond that time. I think that's more than sufficient.

They basically used a lot of their time just reiterating points of their presentation several times, and they could have curtailed some of that information and been more direct in what they were really trying to point to us.

CHAIRPERSON YOUNG: Mr. Shallcross.

BOARD MEMBER SHALLCROSS: Yeah, I agree with Dr. Press and Mr. Jeffries.

CHAIRPERSON YOUNG: And Mr. Hayashi?

BOARD MEMBER HAYASHI: I will agree, also.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER HAYASHI: Let's just hold it at the 90.

CHAIRPERSON YOUNG: Okay. All right.

So, you've got a total of 90 minutes. Use it any way you wish. And somehow we should let Mr. Polhemus know that he's going to be needed. And is there someone that can -- can you send him an
email?

MS. OKUN: Actually I can.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: Do we have a time estimate for him?

MR. SEITZ: We'll put Rob on now, or do you want to --

CHAIRPERSON YOUNG: Well, let's -- we have some other issues --

MR. SEITZ: Okay.

CHAIRPERSON YOUNG: -- that unfortunately, we haven't completed yet that are preliminary in matter.

MR. SEITZ: Okay.

CHAIRPERSON YOUNG: And, you know what, I think we can go right into that extra time that you've been granted if you want to then put him on, and we'll get Mr. Polhemus on. And that might be a half hour from now. Oh, he's right here, okay, wonderful.

All right.

MS. SCHAFFNER: And just because there's been some confusion in the past I want to make sure we're clear that the 90 minutes, when you say use as you see fit, that means allocate as they
see fit between the additional cross-examination,
the additional direct testimony by Mr. Miller, and
rebuttal and closing, correct?

CHAIRPERSON YOUNG: It's everything.

MS. SCHAFFNER: Okay, just --

CHAIRPERSON YOUNG: It's everything.

MS. SCHAFFNER: -- wanted to --

CHAIRPERSON YOUNG: Rebuttal.

MR. SEITZ: And we understand that, but
we would -- the testimony that Mr. Miller puts on
right now, I've just said two minutes. But I
would hope that if the -- if you have questions of
Mr. Miller that we're not sitting here having
these things deducted from our time.

CHAIRPERSON YOUNG: No, I have not done
that; I have stopped the clock. And he's got up
to ten minutes. You can give him the time. If he
does it faster, you've made out, okay?

MR. SEITZ: Thank you.

CHAIRPERSON YOUNG: All right.

MS. OKUN: Excuse me, before we move on,

I'm --

CHAIRPERSON YOUNG: Yes.

MS. OKUN: -- sending an email to Mr.

Polhemus. What time do you want me to tell him?
CHAIRPERSON YOUNG: Well, I would --

MS. OKUN: Will it be after lunch or --

CHAIRPERSON YOUNG: -- say in maybe 45 minutes he should be available, if possible.

Okay, this next category to --

VICE CHAIRPERSON JEFFRIES: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

VICE CHAIRPERSON JEFFRIES: Can you give us and the audience some time when you plan on breaking for lunch?

CHAIRPERSON YOUNG: Well, I don't know right now. My sense is that I was hoping to utilize the lunch period so the Board could go into closed session and deliberate, so that we're doing two things at once.

In order to do that we have to have our closing arguments completed. So, --

VICE CHAIRPERSON JEFFRIES: Well, Mr. Chair, then give me some approximate time when that's going to be.

BOARD MEMBER PRESS: Yeah, that would put us out at 4:00.

VICE CHAIRPERSON JEFFRIES: Yeah, that's, if you're allowing 90 minutes --

CHAIRPERSON YOUNG: Well, obviously
we're not going to be able to do what I wanted to do, which was to go into closed session during lunch. So, you know, I would like to --

VICE CHAIRPERSON JEFFRIES: What brought that --

CHAIRPERSON YOUNG: Let's look at this again, Mr. Jeffries, when we've gone through the rest of these objections --

VICE CHAIRPERSON JEFFRIES: Okay.

CHAIRPERSON YOUNG: -- that we've got, and issues, and see how far we can get into their additional time with some of the witnesses. That might be when we break at that point, and I don't know when that is. But, before 1:30. In other words, by 1:30 we'll have lunch, we'll break for lunch.

VICE CHAIRPERSON JEFFRIES: Well, what brought that question to mind is because if you're asking Mr. Polhemus to be available at 1:15, I was wondering at what period of time thereafter is this going to happen.

MS. OKUN: I got an email from Mr. Polhemus. He's actually listening to this, and he says he's standing by.

CHAIRPERSON YOUNG: Okay, good. Good
for him.

MS. OKUN: So, Darrin, send me another

email if you need to.

CHAIRPERSON YOUNG: Okay, good. All

right. Let's continue. Ms. Schaffner, let's see.

Page 5 of -- all right.

MS. SCHAFFNER: And I'm sorry to belabor

the time point, but there's been much testimony on

the due process point and how much time is

appropriate. But I want to make clear for the

record, triggering off of Mr. Seitz' just recent

statement about not deducting Board questions from

the CSD's time.

In addition to the two hours and 40

minutes granted to the CSD and to staff at the

last meeting for their direct examination and

cross-examination time, there were hours of

questions by the Board which were not deducted

from anybody's time.

And in response -- and there were hours

of testimony elicited from both sides, mostly the

CSD, giving them the opportunity to address

substantive issues in response to Board questions.

So I don't want the record to make it

look like there were only, you know, a limited
number, that the specified minutes were the only testimony allowed. There was something like 13 hours of hearing.

CHAIRPERSON YOUNG: I think we've allowed a lot of time for a lot of argument, you know, to come in, even at this point, through the proceedings so far. So I feel comfortable with where we're headed.

Okay. I'd like to get to the document issues now. Let's see, updated exhibit summary and ruling document. Ms. Schaffner, do you want to describe for us the updated document prepared by Michael Thomas for us?

MS. SCHAFFNER: Yes. I believe everybody had a copy of the updated exhibit list. It's entitled master document list 1 and master document list 2, I believe. As well as the prosecution team's index.

What that document does is an updated version of what was handed out at the December 1st and 2nd hearing, which it has been updated to reflect the documents that were subsequently provided by the CSD that they inadvertently didn't provide on their first proffer in November.

And the documents that were -- the Chair
gave the CSD an additional period of time to
provide the documents they thought they had.

Those documents that were provided by the
additional extended deadline have been admitted.

There are also some documents that the
Chair is recommending not be admitted, including
approximately 33 hours of DVD videos of hearings,
which were presented to the Board on December the
12th, I believe.

The Chair felt that that was submitted
too late for any reasonable period of time to
review those, and asked for a summary of what was
on those videos in order to admit them. No
summary was forthcoming.

And based on the fact that any probative
value of those DVDs, not having any summary to
know what they might be, is outweighed by the risk
of an undue consumption of time. The Chair is
exercising his authority under Government Code
section 11513(f) to exclude the DVDs.

There are also a number of documents in
that list that were listed but -- or not listed,
which were added, which were documents produced in
a Public Records Act request from The Tribune.
And I believe those were not in the index, but
they were provided on the extended deadline.

And the Chair has been considering whether to admit those. And the question for CSD is whether they -- the documents, were they intended to be submitted in November, or these new documents within the scope of ongoing compliance efforts? Because if it doesn't fit into one of those categories there's so far no basis for admitting them.

And that also ties into the outstanding allegation by the CSD that the Board has failed to comply with Public Records Act requests. So maybe we could deal with both those issues now.

First, I guess, I would ask has the Public Records Act issue been resolved? Do you feel that you have received the documents that were requested by the CSD?

MS. OKUN: I'm not sure what Public Records Act request you're talking about.

MS. SCHAFFNER: That was in, let me find the --

CHAIRPERSON YOUNG: Was that the one from Ms. Tacker?

MS. SCHAFFNER: Yeah, I believe --

CHAIRPERSON YOUNG: It came in as really
a CSD Board --

MS. SCHAFFNER: It was --

CHAIRPERSON YOUNG: -- Member using a Public Records Act request.

MS. SCHAFFNER: That's correct. That's correct. I believe Mr. Onstot's letter cites to this. It's dated December 12th, and Mr. Onstot says that the CSD is awaiting full response from the Regional Board Staff; and asks that these documents be added to the record. And references the Chair to The Tribune's website for these documents.

After much research and comparing of documents and comparing of documents provided by the CSD to the previously provided index, Mr. Thomas determined that these were -- that about 200 documents were provided on the 12th that weren't on the index appeared to be the ones that were referenced on The Tribune website.

And I infer those are the ones that you were talking about for the Public Records Act request. This is your objection, your proffer. I would ask that you clarify.

MR. ONSTOT: I think we're mixing up two --
MS. OKUN: Actually, I think I -- yeah, I think we are mixing up two things. The first thing is that Julie Tacker, who is a Director of the CSD, made a Public Records Act request and said that she was acting in her capacity as a private citizen, even though the request was made very shortly before this hearing started.

Our response was that she is not a member of the public, which is defined to include public representatives, but in the interests of good government we agreed to produce all the documents that she requested as if it were a valid Public Records Act request. And we did that.

At one point there was some question about whether we had -- it was a request for emails -- and at one point there was a question about whether we had additional emails that we hadn't already produced on our backup tapes.

And Mr. Packard researched that and it was determined that we didn't have any additional emails.

In addition to the emails that we had electronically, we advised Ms. Tacker to come in and look at our paper files, which she did, in case there were emails that we no longer had...
electronically that had been printed and filed. And she did that before the December 1 hearing. So there are no further documents.

The other issue is --

CHAIRPERSON YOUNG: Can I just check in with Mr. Onstot to make sure that that request has been resolved? Do you concur with --

MR. ONSTOT: Well, I --

CHAIRPERSON YOUNG: -- what Ms. Okun has represented? That he received --

MR. ONSTOT: Yes and no. That some documents were produced, but I'm not going to represent that the Public Records Act request was honored by either the State or the Regional Board, because it was denied. And saying that we deny your request because you're working for a public entity, we take issue with. And that issue will be decided in a different forum.

So, the validity of the denial, I agree with Ms. Okun, that we're kind of mixing apples and oranges here.

I'm not here to say that the Public Records Act requests have been complied with, because our position is that they have not. I will say that some documents have been produced...
voluntarily by both the State and the Regional
Board.

CHAIRPERSON YOUNG: Wait a minute. I
don't want to mix things up here. Did you get the
documents that were requested in the Public
Records Act request? Did you get those?

MR. ONSTOT: No.

CHAIRPERSON YOUNG: Okay. Do you know
which ones were withheld?

MR. ONSTOT: I have yet to receive one.

MS. OKUN: We gave him all the emails we
had -- not him, I'm sorry, we gave -- there were
two Public Records Act requests.

One was to the Regional Board from Ms.
Tacker. We provided Ms. Tacker with all the
responsive documents in our possession other than
documents that were privileged or not otherwise
subject to disclosure.

There was a second Public Records Act
request, and the response to that request was what
I think those 200 pages of documents were.

Now, I know that the District submitted
a Public Records Act request to the State Board,
and The Tribune submitted a Public Records Act
request to the State Board.
I think those documents were in response to The Tribune's Public Records Act request, but I could be wrong about that. The District can clarify that.

And as I recall, I submitted a relevance objection to those documents because they included a lot of public comments on the state revolving fund loan.

MR. THOMAS: I agree with that. There were two Public Records Act requests that I'm aware of. One was from Ms. Tacker to the prosecution team. One was from The Telegram Tribune to the State Board.

The State Board responded; provided documents to The Telegram Tribune. Those documents were put on The Telegram Tribune's website. And those documents were submitted to us by the CSD.

And I have listed those documents at the end of master document list 1. So they're included here.

CHAIRPERSON YOUNG: So, what documents haven't been produced, Mr. Onstot? I want to make sure I understand --

MR. ONSTOT: Well, there were two Public
Records Act requests that I made, myself; and got back denial letters. And in that denial letter it says will produce them voluntarily and give you the costs some time around the end of January.

MS. OKUN: I can't speak for the State Board. There's two different entities here. If there was a Public Records Act request to the State Board that's at issue, we can't resolve it here.

But we didn't charge for --

CHAIRPERSON YOUNG: Well, let's see --

MS. OKUN: -- providing documents.

CHAIRPERSON YOUNG: -- was that a request that came to this Regional Board? Or to the State Board?

MR. ONSTOT: Like I said, there were two of them. One came to the Regional Board, one went to the State Board.

CHAIRPERSON YOUNG: Okay. Well, the one to the State Board, that's a separate agency.

MR. ONSTOT: Okay.

CHAIRPERSON YOUNG: Okay? I mean we don't control --

MR. ONSTOT: I understand.

CHAIRPERSON YOUNG: -- their files of
documents.

MR. ONSTOT: I understand.

CHAIRPERSON YOUNG: Okay. And is the first one Ms. Tacker's request, is that correct?

MR. ONSTOT: Correct.

CHAIRPERSON YOUNG: Okay. Has Ms. Tacker received the documents that were spelled out in her specific request?

MR. ONSTOT: She received some documents, yes. There's no way of telling if all that were responsive were received.

CHAIRPERSON YOUNG: Okay. Did the prosecution team make a representation that they had reviewed the records and this is all that they could produce in response to the request?

MR. ONSTOT: May have been, but I'm not aware of that. I don't know.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: We did.

CHAIRPERSON YOUNG: Okay. Well, if they made that representation I don't where else we could go with this at this point in time. That's their representation, okay.

MS. SCHAFFNER: And for the record question, I think what is being proffered by the
CSD for admission to the record are The Tribune documents, not the documents produced by staff in response to Ms. Schicker's request, correct?

UNIDENTIFIED SPEAKER: Tacker.

MS. SCHAFFNER: Sorry, --

CHAIRPERSON YOUNG: Mr. Shallcross.

BOARD MEMBER SHALLCROSS: Yeah, I have a question. If the original request was from Ms. Schicker, as a --

UNIDENTIFIED SPEAKER: Ms. Tacker.

CHAIRPERSON YOUNG: Ms. Tacker.

BOARD MEMBER SHALLCROSS: I'm sorry, Ms. Tacker -- as a member of the public, then why is the CSD attorney answering --

CHAIRPERSON YOUNG: Because --

BOARD MEMBER SHALLCROSS: I'm sort of confused.

CHAIRPERSON YOUNG: Well, Ms. Okun has accepted and deemed that request, and is responding to it on the basis of accommodation.

BOARD MEMBER SHALLCROSS: Right.

CHAIRPERSON YOUNG: So that the documents are produced and not withheld.

BOARD MEMBER SHALLCROSS: I understand that, --
CHAIRPERSON YOUNG: Based on potentially a valid objection that it's not a proper request.

BOARD MEMBER SHALLCROSS: But if the person requesting is a member of the public and not a member of the CSD, why is it even before us in this hearing?

CHAIRPERSON YOUNG: Well, that's a good question.

MR. ONSTOT: Because the request was taken by Regional Board's counsel that Ms. Tacker was acting in her capacity as a member of the CSD Board Member.

MS. SCHAFFNER: And I'm sorry to confuse the issues by getting the two Public Records Act requests confused. What really all that is being proffered for introduction into this hearing record are The Tribune documents. That's my understanding.

And those documents were not in the original index. So the question for the CSD is for what purpose are those documents being offered into evidence.

MR. McCLENDON: You gave two, the former and the latter. It's the latter. For ongoing issues of compliance.
MS. SCHAFFNER: Okay.

MR. MCCLENDON: They show the whole process which was made relevant in this hearing on what was going on in relation to the SRF loan, the funding with the state, our negotiations with the state. All of that's been a part of this record. And those showed the behind-the-scenes of what was happening the whole time we were negotiating.

MS. SCHAFFNER: Very good. And with that as foundation, I believe it was contemplated by the Chair to go ahead and admit those documents as part of the final index.

CHAIRPERSON YOUNG: That's right.

MS. SCHAFFNER: We just needed to clarify the basis. And since there was no cover, no explaining why, what the relevance was, we wanted to clarify that. Thank you.

Does the index reflect that determination, Michael?

MR. THOMAS: Yes. Yes.

MS. SCHAFFNER: Okay.

MR. THOMAS: But I have a comment on this list.

CHAIRPERSON YOUNG: Go ahead.

MR. THOMAS: The documents that we're
talking about now that have been admitted from The
Telegram Tribune website submitted by the CSD,
we've dealt with that now.

There is an outstanding objection from
the CSD regarding the Public Records Act request
to the prosecution staff. It's separate from The
Telegram Tribune documents. That's resolved now.

There is an objection, I think it was
Mr. Onstot, in one of his emails, that made the
objection saying you have not received all of the
documents that you asked for from prosecution
staff.

MR. ONSTOT: Okay, maybe I -- do you
have that? I don't have the Public Records Act
request that you're referring to in front of me.

MS. SCHAFFNER: It sounds like you
anticipate resolving -- as you stated just a few
minutes ago you're going to resolve any remaining
concerns about the Public Records Act response in
a forum outside this one, is that correct?

MR. ONSTOT: No, no, no, you're putting
words in my mouth again. What I'm saying is we
made requests. Whether it's myself or through
Director Tacker or through Julie Tacker, as an
individual, that issue is not relevant.
The fact is that requests were made for some documents to be part of these proceedings. And I think that they are and have been. What I'm also saying is that because you can't mix whether they come into these proceedings with the legality or illegality of the denial of those requests, and either the State or the Regional Boards' desire to produce them voluntarily. Those will be dealt with in a different forum.

MS. SCHAFFNER: Okay, so all we have before us for the Chair and the Board to resolve today is the admission of the records that have been produced to date, and that was just dealt with, correct?

MR. ONSTOT: Correct.

MS. SCHAFFNER: Okay, thank you.

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: And one other thing that was in that same paragraph of the December 12th letter was a request by Mr. Onstot, and I quote, "that the Chair reconsider its exclusion of records showing prosecutorial bias."

We need to deal with that, as well. Exactly what records are you referring to, Mr.
Onstot?

MR. ONSTOT: Well, there were a number of records that the Chair excluded. A couple in particular are emails, and I think on, in fact, was put up on the overhead. The cartoon drawing by a Regional Board Member. Everybody knew it was a Regional Board Member, distributed at CSD proceedings.

As our view is that the Regional Board Staff, including the prosecution team, is biased, and that excluding evidence allowing us to show that is an abuse of discretion. We should be allowed to produce evidence that either Members of the Board Staff, itself, and/or the prosecution team had a bias in moving forward toward the CSD and did not act objectively.

MS. SCHAFFNER: Mr. Onstot, I wasn't asking about the argument as to why it does or does not meet the standard for a prosecutorial bias argument. That's a legal argument that has not been briefed or had, in any way; there were no citations to law, there were no citations to fact in your objection.

All I am asking is specifically what documents are you asking the Chair to reconsider.
I have the cartoon. Are there other specific
documents that you're asking the Chair to
reconsider --

MR. ONSTOT: Yes, all the emails
regarding the ACL complaint which Mr. Briggs was
either the author, the recipient or cc'd on.

MS. SCHAFFNER: Were those produced?

MS. OKUN: Are those late comments, or
other --

MS. SCHAFFNER: Yes.

MS. OKUN: -- emails back and forth?

Because I don't recall that there were any emails
back and forth that were offered that were
rejected.

MS. SCHAFFNER: Yeah, I don't recall
seeing any specific emails being offered being
rejected, either. I do recall the cartoon --

(Parties speaking simultaneously.)

MR. ONSTOT: Okay, then that's fine. If
they weren't rejected there's no objection;
they're in. Thanks.

MR. THOMAS: Is there a number --

MS. OKUN: Well, I think we need to
clarify whether there were documents that were
rejected or not. It's not clear to me which
documents Mr. Onstot is talking about.

MS. SCHAFFNER: It is not clear to me, either. Michael, do you have any idea.

MR. THOMAS: I don't know. Is there a number -- can you say what number it is, what exhibit number?

MR. ONSTOT: Well, I don't have those in front of me, but those specifically that were prior to the issuance of the ACL complaint. And if my notes are wrong that they weren't excluded, then I will withdraw my objection.

MR. THOMAS: I can't say whether they were excluded or not excluded if they're not referenced to a number on this list.

CHAIRPERSON YOUNG: Okay, well --

MS. SCHAFFNER: Yeah.

CHAIRPERSON YOUNG: -- I remember the cartoon I excluded because it's a newspaper article. And when you say Regional Board Member, you don't mean one of us, but you mean an employee of the Regional Water Board. And do you know if that was a prosecution team member who wrote the cartoon? Or is this some other employee of the Board?

MR. ONSTOT: Employee of the Board. It
was not a Board Member.

CHAIRPERSON YOUNG: Okay, well, I had
excluded that. And newspaper articles are not
coming in. I'm not going to change that ruling.

But if there are emails that went back
and forth, you know, where Mr. Briggs was involved
in emails regarding the ACL, I think those should
come in. I mean I don't know why they wouldn't.
I remember seeing some in that package of 126
letters that I read.

So, maybe at the lunch break if you can
identify any specific documents, Mr. Onstot, that
you think you want to make sure are in and that go
to this point, you know, we can deal with that
later.

MR. ONSTOT: Okay.

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: And just in order to
make clear, to enable the Chair to address the
request for reconsidering the admission of the
cartoon, I think it would be useful to have some
questions directed at the prosecution team staff
concerning the circumstances of the cartoon's
creation. Who created it, what kind of employee
were they, are they part of this prosecution team,
did they have anything to do with the ACL?

If you don't mind, just a couple?

CHAIRPERSON YOUNG: Go ahead.

MS. SCHAFFNER: I believe it would probably be appropriate for Mr. Briggs. Mr. Briggs, who was the artist who created that cartoon?

MR. BRIGGS: Scott Phillips, a member of the Regional Board Staff, and a resident of Los Osos.

MS. SCHAFFNER: And when did that happen?

MR. BRIGGS: I should say a former member of the Regional Board Staff, former resident of Los Osos.

MS. SCHAFFNER: When was the cartoon created, roughly?

MR. BRIGGS: I don't know the date; it might have been a year or so ago.

MS. SCHAFFNER: Okay, and does that person work for the Board anymore?

MR. BRIGGS: No.

MS. SCHAFFNER: How long ago did this person leave the employ of the Board?

MR. BRIGGS: Probably six months ago.
MS. SCHAFFNER: And did -- I'm sorry, refresh my memory on the name?

MR. BRIGGS: Scott Phillips.

MS. SCHAFFNER: Did Mr. Phillips have anything to do with preparing the draft ACL or presenting this referral to the Board for enforcement action?

MR. BRIGGS: No.

MS. SCHAFFNER: Has he participated in the preparation of this enforcement case in any manner?

MR. BRIGGS: No.

MS. SCHAFFNER: Has he made any recommendations to the Board regarding enforcement in Los Osos outside the context of the ACL?

MR. BRIGGS: No, not that I'm aware of.

MS. SCHAFFNER: Okay.

CHAIRPERSON YOUNG: Did he identify himself as the artist -- as an artist who was a Regional Board staff employee? Did it say Scott Phillips, --

MR. BRIGGS: On the cartoon?

CHAIRPERSON YOUNG: Yeah.

MR. BRIGGS: I don't know.

CHAIRPERSON YOUNG: -- Engineer,
Regional Water Quality Control Board?

MR. BRIGGS: Oh, no.

CHAIRPERSON YOUNG: No.

MR. BRIGGS: He might have had his name on it.

CHAIRPERSON YOUNG: Okay.

MR. BRIGGS: I don't recall.

CHAIRPERSON YOUNG: All right.

MS. SCHAFFNER: That is up to you, Mr. Chairman, whether you want to reconsider admitting that or not.

CHAIRPERSON YOUNG: I want to keep to not having newspaper articles come in. I'm not going to change my ruling on that.

MR. ONSTOT: Mr. Chair, point of clarification. That cartoon, to my knowledge, was not a newspaper article.

CHAIRPERSON YOUNG: Well, not an article, but something printed in -- I mean it's an artist's rendition, it's a cartoon. Okay? You're right, it's not an article in the strict sense of an article.

If the CSD wants to argue in closing that the prosecution team staff is biased. If you want to refer to anything else like that, cartoons...
and things, that's fine. We'll go ahead and
listen to that argument.

All right, what is next, Ms. Schaffner?

MS. SCHAFFNER: I believe those were all
of the document objections raised. Oh, I'm sorry,
there was one more objection raised, according to
my notes, by the CSD, that must be dealt with, and
that was the blanket objection to everything
submitted by the prosecution staff on December
12th.

And I believe those were the documents
concerning the various settlements of the various
lawsuits concerning the funding of the Tri-W site,
and the Measure B. And the prosecution team had
introduced those into the record in response to
the Chair's request for information on current and
ongoing activities that may affect compliance.

Is that objection still outstanding?

MR. SEITZ: It is.

MS. SCHAFFNER: And that would be for
the Chair --

CHAIRPERSON YOUNG: And is it based on
the fact that it seeks documents that essentially
go beyond the scope of my ruling on December 2nd?

MR. SEITZ: In part, but we also object
on the basis of relevance.

CHAIRPERSON YOUNG: Okay. All right.
Well, the objection is noted and I'm going to
overrule that request.

MS. OKUN: Overrule the request to admit
the documents or overrule the objection --
CHAIRPERSON YOUNG: Overrule the
objection.

MS. OKUN: Thank you.
CHAIRPERSON YOUNG: In other words, I do
feel, and of course it was my intent and desire
after December 2nd, that the District be given
every opportunity to put into the record anything
related to efforts they've made that would bring
them into compliance with the Board's orders, or
anything on the flip side that would bring them
further away from compliance.

And I think that those are relevant
documents to that issue.

MR. SEITZ: Mr. Chair.
CHAIRPERSON YOUNG: Yes.

MR. SEITZ: If I might, just so I can
have a clear record here. First of all, I believe
those settlement agreements, and I quite frankly
haven't looked at all of them, I believe they are
pre-December 2nd.

Secondly, our basis for our relevance objection is based on it's a clear attempt by the prosecution team to make a run at the SRF loan monies, to satisfy any fines that the District may be subjected to at the end of this hearing.

We believe that there's a letter -- first of all, we have the questions and answers from the Board; but secondly, we believe that to the extent that those funds are around anymore, they're subject to the litigation between the District and the State Water Quality Control Board.

So, why put them in if the only idea here is to say you have money to pay these guys, therefore you have money to pay us, when the fact of the matter is any money the District has, outside of those budgets that Mr. Buel put up there, is money that is subject to litigation between the District and the State Water Quality Control Board?

CHAIRPERSON YOUNG: All right, both sides are going to have their opportunity to argue anything they want from those documents. So you'll have additional time to get into that. And
it is argument that you're presenting to us.

MS. SCHAFFNER: So, Mr. Chairman, is there a ruling that those documents will be admitted?

CHAIRPERSON YOUNG: Yes.

MS. SCHAFFNER: Okay.

CHAIRPERSON YOUNG: They are admitted.

MS. SCHAFFNER: And then the last, more general comment that I have is just to make sure we don't miss any loose ends, the indices that have been prepared by Mr. Thomas, which basically collect together the index of documents submitted by the CSD and the index of documents submitted by the prosecution team, to be clear, are the record; in addition to the documents submitted at this hearing and admitted by the Chair.

There is nothing else except what's on the indices, as noted.

And I believe we addressed all objections. And if there are -- I just want to make sure there weren't any that were overlooked on relevance, on hearsay, on anything. So now is the time to make sure we've hit them all.

MR. SEITZ: Just for the sake of clarity, and I'm not trying to be argumentative
here, the CalCities administrative record,
consisting of these three boxes right here, from
the prosecution team, are in the administrative
record?

MS. SCHAFFNER: I believe those were
included in the prosecution team's index of
administrative records that they offered, and
therefore they're there.

MR. SEITZ: Yes. The answer to that
question is yes.

MS. SCHAFFNER: Yes.

CHAIRPERSON YOUNG: Is that correct, Ms.
Okun?

MS. OKUN: Yes.

CHAIRPERSON YOUNG: The answer is yes.

MR. SEITZ: Okay. And then as I
understand it, that the Regional Board could have
in their files documents in addition to what's in
the administrative record, and are those -- sorry,
in addition to what's in the CalCities' record
that are in addition to the documents that the
prosecution team has specially offered, --

MS. SCHAFFNER: The answer is no.

MR. SEITZ: -- are those documents in
the administrative record?
MS. SCHAFFNER: No. If they're not on the index, if they're not on either of the indexes or they weren't otherwise admitted specifically by the Chair, they're not in the record.

MR. SEITZ: Thank you.

MS. OKUN: Actually, the first item of the index refers to all Central Coast Water Board files, exhibits and agenda material pertaining to this matter, including our general files. And at the last hearing it was ruled that those were admitted.

MS. SCHAFFNER: Yeah, and since that time we asked that the prosecution staff provide an updated comprehensive list of all documents it wanted to have in the record. And that was intended to expand upon that.

Are there documents not in your index that you had otherwise thought would be incorporated by that? Just to be clear.

MS. OKUN: Probably.

MS. SCHAFFNER: Well, perhaps at the break you could check that and make sure. Because we are going to try and keep this definitive, given the formal nature of this hearing, and not open-ended.
Given the many many years of action on this site, that could be problematic in preparing the inevitable Superior Court administrative record. So if you could just narrow that down, that would be great.

MR. THOMAS: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

MR. THOMAS: On the master document list 2, which is the list of documents from the prosecution team, items 150 through 182, the final column, will have to be updated now that the Chair has made his decision about whether these are accepted or not. You said they are accepted. I'll have to update that column. So, just so you know there'll be another printing of this.

MS. OKUN: There is one other document that we admitted, I know there's been some -- or that we submitted, and there's been some discussion about newspaper articles. But specifically there was a newspaper article that we submitted two days ago as being a -- or including statements against interest that you discussed, regarding the sale of Broderson and the Tri-W site.

And so I asked for a ruling on that.
And also I asked for the opportunity to cross-

examine the District regarding the statements.

And that cross-examination might eliminate the 

need for the documents.

CHAIRPERSON YOUNG: Okay, you know what 

I will do to be consistent, the article doesn't 

come in, okay? But however, you have time anyway, 

and you can cross-examine their witnesses or 

anyone who made those statements, and check into 

the veracity of the statements. So why don't we 

deal with it that way.

But I want to be consistent with 

newspaper articles and cartoons not coming in.

Okay, --

MR. ONSTOT: Mr. Chair, then I have a 

question. We've identified two witnesses, Mr. 

Polhemus and Mr. Briggs. How many do the 

prosecution still intend to call to present new 

evidence at 1:00 today?

MS. OKUN: Well, the only topic of our 
cross-examination, other than any cross-
examination that results from their additional 

examination, would be regarding the issues -- the 

sole issue of the sale of those two properties.

And so at this point I anticipate
examining Ms. Schicker and Mr. Bleskey. And depending on what their answers are, there may be additional witnesses if they say they don't know the answer, but the person sitting next to them does.

CHAIRPERSON YOUNG: Okay, their cross-examination is more limited than yours. Okay. I'm allowing you to go into areas that you didn't cover before with these witnesses. Their cross-examination is limited to issues that I ruled on would be opened up after December 2nd. So you've got more leeway in your cross-examination than they do.

So I don't know how much time they're going to need for that, but Ms. Okun has just told us kind of the substance of what that is going to be.

MR. ONSTOT: Okay. I understand the Chair's ruling, and again for the record, we would object on new testimony at this late date. It's not cross-examination, it's direct examination of an adverse witness. Cross-examination, by definition, is limited to the scope of the witness' testimony at the first instance. And we would ask the Chair to reconsider the 90-minute
time limit, since we now have at least three more
witnesses the prosecution are going to call. And
We should have an opportunity to ask them
questions, as well.

BOARD MEMBER PRESS: Mr. Chair, you
can't have it both ways it seems to me. You've
already ruled that the District is going to be
examining its witnesses on issues that it did not
cover before.

So, if you're going to apply one
standard, you should apply it to both.

CHAIRPERSON YOUNG: And I think you're
right. And so I will give the prosecution team
that leeway with their remaining time. That will
make it more even-handed. Thank you, Dr. Press.

Okay, are we through the document issue,
Mr. Thomas and Ms. Schaffner?

MR. THOMAS: Yes.

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: I have nothing further,
thank you.

CHAIRPERSON YOUNG: Good. All right.

Now we can get to the order of presentation, and
it will be as follows. And I think we've already
kind of modified this, because yeah, the first
thing we're going to do is allow the District
time, to use whatever time you wanted to, to
examine any additional witnesses with respect to
those other items that you felt were not covered
before.

MR. SEITZ: Yeah, with the Chair's
indulgence, and, of course, the Board's, too, Mr.
Miller's presentation is short and rather than
have him --

CHAIRPERSON YOUNG: Put him on first.

MR. SEITZ: -- come back and --

CHAIRPERSON YOUNG: Put him on.

MR. SEITZ: Okay, thank you.

CHAIRPERSON YOUNG: Go ahead, put him
on, and then if you want to get in to Mr.
Polhemus, we can deal with him.

MR. SEITZ: I'm way too hungry for that.
I just want to get Mr. Miller excused so that he's
not coming back. He's a busy person.

CHAIRPERSON YOUNG: All right. Mr.
Miller, would you come up here? Come up to the
podium, and you are still under oath.

Okay, hang on one second. Michael, 90
minutes. Okay, 90 minutes, and the clock is
ticking. Go ahead.
Whereupon,

ROBERT MILLER

was recalled as a witness herein, and having been previously duly sworn, testified further as follows:

DIRECT TESTIMONY

MR. MILLER: Thank you, Mr. Chairman.

As was indicated earlier, there's more recent information that came after the information that was submitted in my last testimony.

And what that is is the latest sampling event for nitrates in the groundwater basin. And that information is produced in a report by Cleath and Associates in December. And it's based on sampling that took place in October.

So this data was not available at the last hearing. We thought that it would be appropriate to present at this hearing.

The slide that you see before you presents the same data as we presented before. However, there has been some increases in nitrate, some decreases, and we'll show that on the next slide.

This is a slide representing the nitrate concentrations in the October sampling event,
again reflected in a December report. And I will show you first, in green, there are two monitoring well locations that had substantive decreases in nitrate concentrations. That in yellow there are monitoring wells that have substantive increases in nitrate concentrations since the last sampling event.

In reviewing the testimony of Mr. Thompson he did note that nitrate concentrations do fluctuate seasonally. Although there are two of these wells, specifically 7L3 near the top, again, has a yellow band around it, and 13H, that had nitrate concentrations that were higher than previous seasonal amounts.

So we recalculated some of the average nitrogen concentrations, nitrate concentrations basin-wide, and I've overlaid those on a slide that was presented by the prosecutorial staff at the previous hearing. And those are shown here.

Again, this is the slide presented by the prosecution team. It denotes in red the drinking water standard for nitrate, and I've given you the conversion there because the District normally reports their nitrate results as nitrogen as opposed to as nitrate. So those have
been converted for purposes of this slide.

In blue it will show the average nitrate concentration from the April results. And in green you see the average nitrate concentration from the recent October results.

We are re-testing one of those wells which came up with a nitrate concentration of 52 as N, which is a very high reading. And so that's in the process of being re-sampled. And we'll, of course, provide that to your staff once we have those results.

If you look at an extension of the timeframe there on out to 2005, you can see that we believe that our opinion that those results show a more stable nitrate concentration pattern over time, since the implementation of the prohibition, which is shown by the extension of that line.

We do still believe that it does hold true that since the 1988 moratorium took effect, that nitrate levels have been fairly stable over that period of time.

We wanted to be clear with this Board that the recent sampling event was higher than the April results. And, of course, we'll be
continuing to test those over time. But we wanted
to present the latest information.

MR. SEITZ: Just real quickly, can you
flip back to the prior slide, please. Right
there. You got those areas in green, going from
the lower right-hand corner moving to your left,
what does that lower area depicted in green
represent?

MR. MILLER: The areas that are cross-
hatched in green depict the zones of special
benefit, specifically Vista del Oro and Bay Ridge
Estates. And also the fire station. The lower
left-hand depicts Vista del Oro; the lower right-
hand depicts Bay Ridge Estates.

So you can see how those service areas
overlay on the nitrate concentrations.

MR. SEITZ: Thank you.

MR. MILLER: I have nothing further. Be
happy to answer questions.

CHAIRPERSON YOUNG: Okay. I guess,
let's see, let me just stop the clock here. How
do we want to proceed with this? Do you want to
ask any questions of this witness? No questions?

MS. OKUN: We have no questions.

CHAIRPERSON YOUNG: Okay. Go ahead, Mr.
Seitz, Mr. Onstot, you can -- any other witnesses?

MR. SEITZ: I would love to break before we -- we don't have any -- Mr. Miller was the only witness I had in mind.

CHAIRPERSON YOUNG: Okay. Well, what I was going to allow you to do was to, you know, proceed with any additional examination that you felt you didn't cover, you know, December 1st or 2nd.

MR. SEITZ: I was hoping that we would get -- since I didn't come prepared to do that, I was hoping we'd get the lunch break to give me a chance to review my notes so that I could conduct --

CHAIRPERSON YOUNG: All right. I'd like to not break yet. Ms. Okun, are you prepared to proceed with any presentation of evidence post-December 2nd?

MS. OKUN: I'm ready to cross-examine the District.

CHAIRPERSON YOUNG: On?

MS. OKUN: Regarding the Broderson and Tri-W issues.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: -- on the other presentation
of evidence.

CHAIRPERSON YOUNG: Okay. All right, why don't we -- did you want to deal with Mr. Polhemus, or do you want to wait, also until--

MS. OKUN: Yeah.

CHAIRPERSON YOUNG: -- you've prepared some notes?

MR. SEITZ: Please.

CHAIRPERSON YOUNG: Okay.

MR. SEITZ: I just wanted to make one just quick thing. I assume that those slides that are up there are moved into the record?

CHAIRPERSON YOUNG: Sure.

MR. SEITZ: Okay.

CHAIRPERSON YOUNG: They're in the record.

MR. SEITZ: Okay.

MS. OKUN: And can we have copies of them?

CHAIRPERSON YOUNG: Can you produce copies of them?

MR. SEITZ: I think you have the CD right there.

MS. OKUN: Okay.

MR. SEITZ: Rob, do you have any
problems leaving it with them?

CHAIRPERSON YOUNG: Okay, thank you.

All right, Michael, 85:23 timewise. Where are we with the prosecution? Give them the time, both sides got the same amount of time. Four hours, okay. Let's do this in 60-minute increments. So I'll set this for 60.

Okay, Ms. Okun, go ahead.

MS. OKUN: I'd like to call Lisa Schicker.

CHAIRPERSON YOUNG: Okay. Ms. Schicker, you're still under oath. Please come to the podium.

Whereupon,

LISA SCHICKER was called as a witness herein, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MS. OKUN: Good afternoon, Ms. Schicker.

MS. SCHICKER: Good afternoon.

MS. OKUN: What was the date that the

District purchased the Tri-W property?

MS. SCHICKER: I don't know.

CHAIRPERSON YOUNG: And could you speak,
Ms. Schicker, into the microphone so that everybody could hear you?

MS. SCHICKER: Yes.

CHAIRPERSON YOUNG: Thank you.

MS. SCHICKER: I know negotiations began in September of 1999.

MS. OKUN: September of 1999?


MS. OKUN: Do you have any idea how long the negotiations took place before the purchase was consummated?

MS. SCHICKER: No, I do not know.

MS. OKUN: Is there anyone who represents the District who would know that?

MS. SCHICKER: I think Mr. Buel would know.

MS. OKUN: Do you know what the purchase price was?

MS. SCHICKER: Approximately 3.3 million; 3.3 million, or just 3 million, excuse me.

MS. OKUN: Has the District had an appraisal done of the Tri-W site since the purchase?
MS. SCHICKER: No.

MS. OKUN: Has the District done any investigation at all as to what the current value of the Tri-W property is?

MS. SCHICKER: No.

MS. OKUN: Have you talked to any brokers about the potential value? You personally, or any of the District's representatives.

MS. SCHICKER: No. I can just speak for myself.

MS. OKUN: To your knowledge, have any District representatives discussed this issue with brokers?

MS. SCHICKER: No.

MS. OKUN: Has the District or any District representative entered into any discussions with any person regarding a potential sale of the Tri-W property?

MR. ONSTOT: Objection, vague. Object to the extent that it calls for attorney/client privilege communications, or discussions held in closed session.

MS. OKUN: Have there been any discussions that were not in closed session
between a District representative and any person
regarding a potential sale of the Tri-W property?

MR. ONSTOT: Objection to the extent it
would violate attorney/client privilege.

CHAIRPERSON YOUNG: Well, the question
was towards anything in open session, so that
would then waive any attorney/client privilege.

MS. SCHAFFNER: Or outside the meeting
at all. I think the objection can be sustained
probably to the extent that it would call for
conversations specifically with counsel. But with
anyone else, the privilege would not apply.

CHAIRPERSON YOUNG: Yeah. Ms. Schicker,
any conversations you had with your attorneys,
okay, where there have not been third parties
present, you know, non-party people, those
conversations are protected, okay?

MS. SCHICKER: Okay.

CHAIRPERSON YOUNG: But if there have
been discussions regarding the scope of this
question, and even if your lawyers were present,
if there were other people present like a real
estate broker, sales agent, somebody that is not a
member of the CSD, that privilege would be waived,
in my opinion. And then we would be entitled to
know the answer to that question.

MS. SCHICKER: Okay, Ms. Okun, could you please repeat?

MS. OKUN: Has the District or any of its representatives had any discussions with any person, other than your attorneys, with no one else present, regarding the potential sale of the Tri-W property?

MS. SCHICKER: Yes.

MS. OKUN: Who were involved in those discussions?

MS. SCHICKER: That would be me with the reporter from The Telegram Tribune. And also at public meetings in general discussions with the public.

MS. OKUN: What did you tell the reporter from the Tribune?

MR. ONSTOT: Objection, calls for a narrative. And vague as to time.

MS. OKUN: Well, as to the time objection Ms. Schicker just testified that she had a conversation with The Tribune. And whatever time that conversation occurred is the time I'm referring to.

Narrative isn't a proper objection in an
administrative proceeding.

CHAIRPERSON YOUNG: Well, I'm going to overrule the objection. Go ahead, you can answer the question. If it's the discussion that you've already told us about that you had with that reporter, that's fair game. So you can answer the question as to what you discussed with that reporter.

MS. SCHICKER: Okay, as one Director with no authority --

CHAIRPERSON YOUNG: We understand that. But you are the President of the CSD, correct?

MS. SCHICKER: That's correct.

CHAIRPERSON YOUNG: Okay, and I know this issue has come up before and I've been thinking about it repeatedly in the last month. Aren't you authorized to talk on behalf of the Board, at least to articulate what the Board's policy is with many issues?

MS. SCHICKER: Only if it's been adopted. I'm not -- I don't have any authority as -- I don't have any authority other than through the three things that have already been discussed, you know. I can speak to the press, I can speak to you, I can speak about what the Board
might or might not do. But ordinance, motion --
CHASEIRPERSON YOUNG: Okay, why don't you
answer the question in terms of you as an
individual Board Member.
  MS. SCHICKER: Okay.
  MS. OKUN: Well, before you answer it as
you as an individual Board Member, you just said
that you had authority as a Board Member and as
the President of the Board to speak to the press,
correct?
  MS. SCHICKER: That's correct.
  MS. OKUN: And we're talking about a
conversation with the press?
  MS. SCHICKER: Yes.
  MS. OKUN: Okay.
  MR. ONSTOT: Objection, lack of
foundation. There's been no establishment of the
authority of President Schicker to speak on behalf
of the CSD regarding any real property issues.
Until that foundation is laid, my objection will
be continuing.
  CHAIRPERSON YOUNG: The objection is
noted. You can go ahead and answer the question.
  MS. SCHICKER: I'm sorry, could you
repeat, please?
MS. OKUN: What did you tell The Tribune reporter regarding the potential sale of the Tri-W property?

MS. SCHICKER: I spoke to the reporter about Tri-W in a general sense with many options that the CSD was considering at this time of how to deal with the current situation.

MS. OKUN: So your testimony was -- strike that.

You told the reporter that the CSD was considering the sale of the Tri-W property?

MS. SCHICKER: I told the reporter that all options were on the table, and I made a list of options of things that we could possibly do to address water quality quickly, and address our situation.

MS. OKUN: Without disclosing the contents of any closed session discussions, has the District had any closed session meetings regarding the sale of the Tri-W property?

MS. SCHICKER: Yes.

MS. OKUN: Has the District entered into any negotiations regarding the sale?

MS. SCHICKER: No.

MS. OKUN: Did the District ever enter
into an escrow regarding the sale of the Tri-W property?

MS. SCHICKER: The sale of. No.

MS. OKUN: Has the --

CHAIRPERSON YOUNG: Well, excuse me, how about the transfer of?

MS. SCHICKER: I was just thinking of the past like in 2000 before I wasn't there, you know, when we bought it. That's why I hesitated. So, no.

MS. OKUN: Okay, and you can assume that all my questions have to do with events --

MS. SCHICKER: Today.

MS. OKUN: -- that occurred after the September 27th election.

MS. SCHICKER: Okay.

MS. OKUN: So there has not been an escrow opened that would, in any way, involve sale or transfer of the Tri-W property since September 27th?

MS. SCHICKER: There has been no escrow opened.

MS. OKUN: Has the District received any offers to purchase the property?

MS. SCHICKER: No.
Regarding the Broderson property, what was the purchase date of that property?

Mr. Buel would know. I'm not sure.

Do you know what the purchase price was?

Approximately 4.4 --

-- 4.65 million.

I'm sorry, what was that figure again?

4.65.

4.65, thank you.

Is the District considering selling that property?

Objection, lack of foundation. Also objection to the extent it calls for attorney/client privilege or closed session communication. Vague as to the term considering.

Overruled.

I'm sorry, again, --

Is the District considering selling the Broderson property?

That was something I
mentioned to the reporter as an option, yes.

MS. OKUN: So your answer is yes?

MS. SCHICKER: Yes.

MS. OKUN: Without disclosing the content of the discussions, has the District discussed this in closed session?

MS. SCHICKER: Yes.

MS. OKUN: Has the District had an appraisal done of the current value of that property?

MS. SCHICKER: No.

MS. OKUN: Has the District taken any steps toward investigating the current value of that property?

MS. SCHICKER: Yes.

MS. OKUN: What were those actions?

MS. SCHICKER: I think that's closed session, again. I can't -- I'm not allowed to discuss closed session.

MR. ONSTOT: Based upon that response I will instruct the witness not to answer.

MS. OKUN: So your testimony is that the District, in closed session, investigated the current value of the Broderson property?

MR. ONSTOT: Objection, mischaracterizes
the testimony. Objection to the extent it calls
for closed session communication. And I will
instruct the witness not to answer.

MS. OKUN: Well, if that misstates your
testimony, could you clarify your testimony?

MS. SCHICKER: I think I want you to ask
the question again because I may have answered
improperly.

MS. OKUN: Did the District do anything
in closed session to investigate the current value
of the Broderson property?

MR. ONSTOT: Same objection. To the
extent it calls for closed session communications.
And I will instruct the witness not to answer.

MS. SCHAFFNER: Whenever it's
appropriate I have a question for the witness, as
well.

CHAIRPERSON YOUNG: Well, I think the
objection may be sustained. You can ask a
different question.

MS. OKUN: Did the District or any of
its representatives do anything outside of closed
session to investigate the current value of the
Broderson property?

MS. SCHICKER: No.
MS. OKUN: You said that you discussed
with The Tribune the potential sale of the Tri-W
and Broderson properties as one of a list of
options. What are the other options on that list?

MS. SCHICKER: I wish I had my notes
here today because there's many things we
discussed of how to address this current
situation. And I don't have them here, so it may
not be a complete list if I give it to you now.

MS. OKUN: Are those notes subject to
the Chair's subpoena and the request to provide
documents after lunch?

MS. SCHICKER: Ms. Okun, probably the
best way would be to listen to some of the tapes
of the meetings where we discussed this openly in
public with everybody.

CHAIRPERSON YOUNG: That's kind of the
problem, that there are hours and hours of tapes
and things of that nature. And we don't have the
time to delve through. That's why we asked for a
summary of the DVDs that you wanted to put into
evidence.

MS. OKUN: Is there anything you can
recall off the top of your head that the District
is considering as an option?
MS. SCHICKER: We have many things in motion right now that are trying to address the current situation to get to water quality as quickly as possible.

MS. OKUN: And could you tell me what those are?

MS. SCHICKER: We're trying to resolve the issues about the contractors and the state revolving fund loan. We've agendized items to address water quality immediately that will be heard in public, both pumping the upper aquifer, adopting septic management plan, water conservation.

We've gone to the County to request an RMS reading of level three severity for salt water intrusion and groundwater recharge. We've asked for presentations by consultants to get a better handle on our current water quality issues.

We've filed claims to recoup money from possibly illegal contracts. So, many things in motion right now. Twenty-five meetings in less than three months.

MS. OKUN: Has the District given any direction to any of its employees to take any actions to further investigate the sale of the
Broderson or Tri-W property?

MS. SCHICKER: No.

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

MS. SCHICKER: Okay, thank you.

MR. ONSTOT: Mr. Chair, if I may?

CHAIRPERSON YOUNG: Yes. Hold on one second.

(Pause.)

CHAIRPERSON YOUNG: Go ahead, Mr. Onstot.

MR. ONSTOT: Thank you, Mr. Chair.

REDIRECT EXAMINATION

MR. ONSTOT: Ms. Schicker, at any time were you authorized by the CSD Board to talk to the press about real estate transactions?

MS. SCHICKER: No.

MR. ONSTOT: Or the Tri-W site in particular?

MS. SCHICKER: No.

MR. ONSTOT: Ms. Okun asked you a few questions regarding, I think her words were consideration of a sale of Tri-W and Broderson. Do you recall those questions?

MS. SCHICKER: Yes.

MR. ONSTOT: And you can answer mine yes
or no. Were those discussions in closed session held pursuant to agendized items for pending and actual litigation?

MS. SCHICKER: Yes.

MR. ONSTOT: Thank you. Nothing further.

MS. SCHAFFNER: Mr. Chair, may I ask a question of the witness, as well?

CHAIRPERSON YOUNG: Sure.

MS. SCHAFFNER: Thank you.

MS. SCHICKER: You did mention you had one.

MS. SCHAFFNER: Didn't let you get quite as far this time, sorry. Could you -- this is in follow up on some of the questions that Ms. Okun asked. I was hoping for a little more specificity.

What exactly is the Board doing? What actions is the Board currently taking to regain compliance with the time schedule order specifically?

MS. SCHICKER: We've been, like I said, 25 meetings in three months, mostly trying to deal with the leftover mess of starting construction the summer before the vote.
And I would ask for the same respect from the audience that Mr. Young --

CHAIRPERSON YOUNG: Yeah, I --

please, --

MS. SCHICKER: -- asked for, please.

CHAIRPERSON YOUNG: -- no comments from the audience, no snickering, anything. I've already warned everybody once. It's unbecoming of this proceeding. Please stop it. And I'm referring to your friend that just stepped out of the door. Thank you.

MS. SCHAFFNER: I'm sorry, would you like me to restate the question?

MS. SCHICKER: Yes, please. Thank you.

MS. SCHAFFNER: What specific steps is the CSD taking to regain the compliance path, to come back into compliance with the time schedule order and proceed to meet the schedules -- meet the milestones set out in the time schedule order?

MR. SEITZ: I'm just going to raise this quick objection that the District is out of compliance, I think, from your perspective.

There's no way that they can regain compliance with 00-131 because they would have had to,

according to your own staff report, we've been out

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
of compliance since 2002.

I don't mind the question what are you
doing to rehabilitate the groundwater basin and
comply with 8313, but to me it's just a loose
question to say what are you doing to comply with
an order that we allege you've been out of
compliance with since 2002. Unless there's a time
machine, there's no way you can do it.

MS. SCHAFFNER: Well, I absolutely
appreciate and respect Mr. Seitz' frankness in
stating that the CSD is not in compliance with the
TSO. And it is impossible to go back in time to
say you can meet a deadline that's not been met --

MR. SEITZ: What I said is that you are
alleging that we've been out of compliance since
2002.

MS. SCHAFFNER: What I am asking is what
is the CSD doing to achieve the milestones on any
schedule currently?

MS. SCHICKER: Well, we traveled to
testify in Sacramento at the State Water Board
twice, to please ask for ability to revise and
amend the state revolving fund loan so we could
continue work on the project for the parts that
did comply with the measures that were voted on by
the public.

We also filed a petition that has been held in abeyance that protests the time schedule order because of its shortened length. We think that the time was unreasonable, and it was thought unreasonable then and we maintain that position. We think four years was too short to do a project. We think that's why we're in the mess we're in today.

We've agendized these issues, that I've already discussed. I won't repeat them, to bore -- you know, about the salt water intrusion, the studies, the septic tank maintenance, the water conservation. All of those things have been agendized.

We're appointing committees this month to develop plans of action with full public input about how to keep moving forward with a project that complies and is better. And address all the water quality basin needs that were not addressed with the original project. And we will be discussing those in meetings.

We've scheduled three meetings a month versus the one meeting a month that was held prior to our things so that we can address issues.
quicker. We're going to have weekly committee meetings with members of the public.

And we're trying to dialogue with all agencies and establish connections with environmental groups, as well, to make sure that everybody's on board this time. We're very interested in dialogue-ing with you and working with you on getting this project done as quickly as possible.

CHAIRPERSON YOUNG: Ms. Schicker, is it fair to say that really what your Board intends to do in terms of compliance with the time schedule order has nothing to do with the Tri-W site? In other words, you guys have made a determination, whether there's been a resolution or not, to essentially jettison Tri-W, get rid of it, and to focus your efforts at some other location, even if that location is not yet identified?

MR. ONSTOT: Objection, calls for speculation as to what the Board will do in the future. You can answer if you know.

MS. SCHICKER: Well, I would subject to you that the voters decided. The voters are the ones who decided that they didn't want a sewer plant next to their library uphill from the Bay.
They don't want it there. That's it. It's that simple.

And the Measure B, that initiative, which was the final last resort of the people asking for a voice, states, and was voted and approved. And we must comply.

CHAIRPERSON YOUNG: Okay, that begs another question that I had asked Mr. McClendon before. And I realize when I listened to the tape I didn't get an answer to it.

And that was in your deliberations after the election was completed and you then had Measure B, how did you weigh and balance the effect of the Regional Board's time schedule order and basin plan prohibition potential violations in the equation of what you were going to do?

MR. ONSTOT: Objection to the extent --

CHAIRPERSON YOUNG: -- a little more specific with this. You've got a local measure that has passed, Measure B. On the other hand you've got a state agency with an order that had already been issued to your specific agency with specific milestones in it. And an agency enforcing both federal and state water pollution laws.
I want to know what went on in terms of balancing, what your Board decided to do. We know ultimately you issued a stop-work notice. That happened October 4th, 5th or 6th.

I want to know what consideration you gave to the Regional Board's order, the time schedule order.

MR. ONSTOT: Objection to the extent that it calls for closed session discussions, or attorney/client communications. And I do believe that the question was framed, Ms. Schicker, as to you, personally, as opposed to the Board.

CHAIRPERSON YOUNG: So you can answer it.

MS. SCHICKER: Pardon me?

CHAIRPERSON YOUNG: You can answer the question.

MS. SCHICKER: As far as me, personally?

CHAIRPERSON YOUNG: I mean I think it's an important question. I think your community also deserves to know how you made the decision to follow one course of action and not another, and not try to get something reconciled before going down a certain path.

MS. SCHICKER: I think --
CHAIRPERSON YOUNG: Clearly the path that was chosen has resulted in all kinds of consequences to this District, whether they were foreseen or not.

MS. SCHICKER: I would like to answer.

CHAIRPERSON YOUNG: Okay, go ahead, I'd like to hear the answer.

MS. SCHICKER: I can tell you three things. The first thing that we did -- well, first, I want to clarify. We suspended work, we did not stop work.

CHAIRPERSON YOUNG: Right.

MS. SCHICKER: Because we wanted to get our grasp on the situation.

Second, we knew the TSO had been filed and was in abeyance. And we agreed with the TSO petition, and that the time schedule was always unreasonable.

And thirdly, never -- four things -- never in a million years would I have guessed, personally, as a Director, and being involved in this case, that both the State and the Regional Boards would not be willing to work with a duly elected body. And work towards the goals of water quality.
Because we've been -- that's all we've been talking about, is we have salt water intrusion, we have basin issues that are not addressed by this project. We have a potential serious pollution problem by putting a sewer plant on the back Bay.

And never in a million years would I have thought that everyone would not be willing to work with us. That may be naive.

Fourth point. We appointed a Regional Board negotiation team the first meeting that we had to get working with you in cooperation, and immediately.

So, yes, I do believe we were ready to hit the ground and keep going. And we thought you would be as concerned as we are about the other water quality issues and basin management issues that were not addressed by this project, and that were ignored. And that you would be interested in working with us on achieving all those goals with a project now that we're finally in agreement that we need a project.

CHAIRPERSON YOUNG: Well, you say maybe you were naive or you were making some assumptions. Clearly, Mr. Briggs had sent a
series of letters to the District over, I don't know what period of time, 18 months or two years. And I think that they were pretty clear as to what at least Mr. Briggs' position was with respect to the time schedule order and potential violations.

Did you think that because of the election and a changeover that Mr. Briggs would just forget about all that? And then --

MR. ONSTOT: Objection, calls for speculation. And I assume that the Chair's use of the term you, y-o-u, refers to her personally, not in speaking for the District?

CHAIRPERSON YOUNG: That's correct.

MS. SCHICKER: Mr. Briggs and I are both state employees. I'm used to dealing with agencies in my profession. I'm used to cooperation and collaboration.

And I completely expected Mr. Briggs and the Water Board Staff to work with us when they actually heard about the other water quality issues that were not being addressed by this project. Absolutely I believed that. You can call me naive if you want, but as a fellow state employee, with the best interests of the state and
my community at heart, as a volunteer citizen
community person, you bet I believed that that's
what would happen.

In light of what we discovered with the
studies, the technical studies that came after the
design of a flawed project, that would be fined
just like that newspaper article over there, all
other places that spilled this year, we're seeing
ourself up for a problem.

I'm trying my darndest to alert you to
those problems at this stage before it's too late.
You bet I thought that we would be negotiating
right now and working towards a common goal, a
better project.

CHAIRPERSON YOUNG: Do you, Ms. Schicker, do you know how many spills occurred in
the Central Coast Region in the past two years
from sewage plants?

MS. SCHICKER: I do not know that
number.

CHAIRPERSON YOUNG: Well, do you have
any information to back up your claims to the
community that this plant would have spilled and
contaminated the Bay? What is that based on?

MS. SCHICKER: It's based on every
Central Coast's sewer plant spilling that's a gravity sewer. And this one's on the back Bay.

CHAIRPERSON YOUNG: Okay. Do you know how close this particular one is to a surface body of water compared to other ones in the region? I mean, is this closer, farther away? Is this unusually sited? I mean, do you know?

MS. SCHICKER: Yes, I do know. I mean I could get out a map and a GPS and I could measure it for you. Yes, I know the distances, I know the plants that are on the Central Coast. Yes, I do.

CHAIRPERSON YOUNG: I'm getting into this with you really because it has -- it's a statement that I've seen repeated. And it has, you know, concerned me because I don't think it's based on accurate information. And I think it misleads your public.

A well run plant does not spill. Okay. It's the exception, not the rule. We have lots of plants in this region that never spill. And most of the spills, if they occur, are cleaned up. The distance from Tri-W to the Bay is no different, and even of greater distance than many other plants in this region.

I think the prospect that all of a
sudden this was going to be a source of continual spills into the Bay, I think is very over-stated and really not based on accurate information. And I don't think it serves the public well to be repeating things like that.

If you can show me evidence and facts that would support that up, I'd like to see it. But I question it. And I can tell you that our Board is the one agency that's responsible for enforcing things like that. And I would think that our staff would know about that, if this site was going to be a problem.

And this Board sits in judgment all the time for imposing fines on spills. We know what comes up. We get an enforcement report with every Board meeting. I just don't think it's a fair thing to say to the public. I think it's really very misleading on that fact.

But, I digressed into something that was just kind of bugging me, and I apologize for that.

Where are we?

MS. SCHAFFNER: I believe --

CHAIRPERSON YOUNG: Ms. Okun, are you examining witnesses?

MS. OKUN: I do have a couple follow-up
questions for this witness.

CHAIRPERSON YOUNG: Okay.

FURTHER RECROSS-EXAMINATION

MS. OKUN: Just to clarify your testimony you testified that you completely expected the Board to work with the District. When you say you completely expected the Board to work with the District, do you mean that you completely expected that the Board would not assess any fines?

MS. SCHICKER: Well, because the petition was still in abeyance and it was still an unsettled issue I really didn't know. I mean I am not a lawyer, so I assumed that that was going to carry through, and that would be decided. And then we could have time to keep working and I didn't think it was a necessity to fine, personally. Because we've expressed our complete commitment to water quality and getting a project built. We've not changed that.

MS. OKUN: Okay. And my last question is I do want to read you the quote that The Tribune attributed to you and ask you if it's an accurate quote.

And the quote is that the site is a dead
issue. We're not going to build there. And that's referring to the Tri-W site. Is that what you said?

MS. SCHICKER: It might be paraphrased, but that's probably close.

MS. OKUN: And that's your position?

MS. SCHICKER: That's the voters' position. The voters.

MS. OKUN: Thank you.

MR. BRIGGS: Question?

CHAIRPERSON YOUNG: Mr. Briggs.

MR. BRIGGS: Thank you.

RECROSS-EXAMINATION

MR. BRIGGS: Director Schicker, --

MS. SCHICKER: Yes.

MR. BRIGGS: Can you hear okay? It says it's on. Can you hear me now?

CHAIRPERSON YOUNG: Yes.

MR. BRIGGS: Okay. You just mentioned that the problem that you saw with the approved project was the use of gravity sewers. You said it's a gravity sewer right above the Bay.

You also said that part of what you did in terms of compliance, in answer to Ms. Schaffner's question, was to try to convince the
State Board to fund the components of the system that you wanted to proceed with.

MS. SCHICKER: Yes, sir.

MR. BRIGGS: I took that to mean you were talking about the collection system?

MS. SCHICKER: Yes.

MR. BRIGGS: Weren't you asking the State Board to fund a gravity collection system?

MS. SCHICKER: Yes, but not at that location. We were willing to compromise, even though we had agreed with the community that we would have all options on the table, we were willing, in the light of the current situation, to go with gravity and get the sewer treatment plant away from the Bay.

MR. BRIGGS: The collection system covers the entire prohibition area, correct?

MS. SCHICKER: Yes, sir.

MR. BRIGGS: So you were trying to get funding from the State Board for gravity sewage collection system for the entire prohibition area?

MS. SCHICKER: Yes.

MR. BRIGGS: Okay, thanks.

MS. SCHAFFNER: I'm sorry, I hate to prolong this, but one thing I want to clarify for
the record. And I'm not sure if Ms. Schicker would be the one to answer that, or whether counsel would.

There have been numerous objections to questions posed to the witness based on an assertion that they were the subject of closed session proceedings.

When you return with the documents that you're going to return with this afternoon, could -- I'm going to assume that those closed session items will be properly noticed on agendas, and you could bring those with you to show to establish the foundation for these objections, showing the subject of this examination being properly noticed as a closed session item.

MR. ONSTOT: Well, what the District Staff is doing now is complying with the subpoena. The subpoena did not ask for agendas.

MS. SCHAFFNER: I'm asking you for substantiation of your objection to closed session information. You are implicitly asserting that the information was the subject of closed session discussions.

What I'm asking for is documentation that would be reflected in the minutes if it was
done in compliance with -- I mean in the agenda if it was done in compliance with the law, and noticed as a closed session item.

MR. ONSTOT: I'm not sure I understand the question. I think that what you want is proof that what Ms. Schicker said is true? In other words, I asked her if the discussions of Tri-W and Broderson were done via agendized items, agendized for closed session under actual or potential litigation matters. She answered yes.

MS. SCHAFFNER: That and the real estate privileged -- the privilege that you described for negotiations regarding real property. That would have been agendized, as well, correct?

MR. ONSTOT: Yeah, but there were none. If you were listening to Ms. Schicker she said in response to my question they were under one of two categories. Anticipated litigation, actual litigation. No real estate transaction were agendized, none were discussed.

MS. SCHAFFNER: Okay, so then you withdraw any objections regarding real estate transaction discussions because there were none in closed session?

MR. ONSTOT: If I made those in the
context, yes. Because that's why I asked Ms. Schicker the clarifying question as to the agenda items that were in closed session in which it was discussed.

MS. SCHAFFNER: Okay, well, I guess what would help, it's just there were a number of objections that seemed to assume that these items were discussed in closed session. And just to keep the record nice and clear and sound, it would be good to have the agenda, related agendas that show that those were, indeed, closed session items, so that we can say, you know, it's a valid privilege and properly not a question to be answered.

MR. ONSTOT: I understand. Mr. Chair, can I ask a few follow-up questions?

CHAIRPERSON YOUNG: Sure. Are you done with Ms. --

MS. OKUN: Yes, I am, thank you.

CHAIRPERSON YOUNG: -- Schicker? Mr. Briggs, you're finished?

MR. BRIGGS: Yes.

CHAIRPERSON YOUNG: Okay. Hold on one second. Let me get your --

MR. ONSTOT: Start my clock again?
CHAIRPERSON YOUNG: We have to go back and forth with this. Okay, go ahead.

REDIRECT EXAMINATION

MR. ONSTOT: Ms. Schicker, Ms. Schaffner brought up the subject of the time schedule order, and you've reviewed that order, correct?

MS. SCHICKER: Yes.

MR. ONSTOT: And you've also reviewed the ACL complaint that's before the Board today, is that correct?

MS. SCHICKER: Yes, I have.

MR. ONSTOT: Now you used the term we, w-e, in response to some of Ms. Schaffner's questions. We meaning the Board. And I want to be clear that you were referring to what I'll call the new Board, which is the Board that was elected on September 22nd, as opposed to the old Board that was in power prior to September 22nd, is that correct?

MS. SCHICKER: It's September 27th, but, yes.

MR. ONSTOT: The 27th, I'm sorry, thank you. Now, have you recently took a look at the ACL complaint?

MS. SCHICKER: I have not reviewed it...
since December 1st and 2nd.

MR. ONSTOT: Okay. And it's your
understanding that what the prosecution team is
asking for or recommending are fines based on per-
day of alleged noncompliance, is that your
understanding?

MS. SCHICKER: Yes.

MR. ONSTOT: And that the amount is
$11,190,000?

MS. SCHICKER: Eleven million.

MR. ONSTOT: Eleven million, I'm sorry.

MS. SCHICKER: Yes.

MR. ONSTOT: I talk too fast. In your
review of the ACL complaint and the time schedule
order is it your understanding that if the Board
assesses that $11 million-plus penalty that those
penalties were incurred during the watch of the
old Board, as opposed to the new Board?

MS. SCHICKER: Yes, it went back to

MR. ONSTOT: Thank you. Nothing
further.

VICE CHAIRPERSON JEFFRIES: Mr. Chair.

CHAIRPERSON YOUNG: Yes. Questions by
Board?
VICE CHAIRPERSON JEFFRIES: May I ask her a couple questions?

CHAIRPERSON YOUNG: You may go ahead, Mr. Jeffries.

VICE CHAIRPERSON JEFFRIES: Thank you.

In your official capacity as Chair of the Board, are you not the official spokesperson for that Board?

MS. SCHICKER: I can be a spokesperson, yes. I am usually the one that's the point of contact for the press and the public.

VICE CHAIRPERSON JEFFRIES: When you talk to the press and giving statements do you qualify or disqualify yourself as the Chair of the Board when you're making those presentations?

MS. SCHICKER: I qualify myself with my expressed authorities, saying I'm the Chair, but I can only speak for myself unless actions are taken properly in agendized Board meetings.

VICE CHAIRPERSON JEFFRIES: Is there anyone else in your District that speaks for the Board or the District, itself?

MS. SCHICKER: All Directors can. We've kind of been --

VICE CHAIRPERSON JEFFRIES: No, the
official spokesperson.

MS. SCHICKER: We don't have an
officially designated person. We --

VICE CHAIRPERSON JEFFRIES: So you are
the official, as Chair of the Board?

MR. ONSTOT: Objection, mischaracterizes
her testimony.

MS. SCHICKER: Yeah. I don't know that
I'm the officially designated by a Board action
point of contact. It's informal.

VICE CHAIRPERSON JEFFRIES: Thank you.

CHAIRPERSON YOUNG: Any other? Mr.

Hayashi?

BOARD MEMBER HAYASHI: I have just a
simple question. The Tri-W site was purchased for
$3 million. And the Bonderson site was 4.65. So
the total would be 7.65 million, which is a lot of
money.

If you look at that -- I'm not saying
you're looking at it, but if you look at that as a
bailout position to sell, is that property still
worth that money today without a use for the
property? I mean without a sewer system you can't
develop that property.

So was that purchased at a higher price
based on what it would be worth in the future
after the sewer plant was already there, on the
property?

MR. ONSTOT: Objection to the extent it
calls for speculation.

BOARD MEMBER HAYASHI: That's just the
point I wanted to get.

CHAIRPERSON YOUNG: Well, she can answer
the question if she has some estimate or if she's
taken that into consideration.

MS. SCHICKER: Yes, Mr. Hayashi, I
apologize, I can't answer. I really just don't
know. I just don't know.

CHAIRPERSON YOUNG: Okay. Mr.
Shallcross.

BOARD MEMBER SHALLCROSS: Yeah, at any
point prior to the election did you contact the
Regional Board to find out what staff's position
might be if Measure B passed and if the recall was
successful, whether or not the Regional Board
would, you know, go to enforcement or not?

MS. SCHICKER: Mr. Buel was more in
contact with the Regional Board Staff, and we were
receiving letters. And Mr. Briggs and staff did
appear at one of our meetings, too.
BOARD MEMBER SHALLCROSS: Okay. Did you ever contact the State Board prior to the --

MS. SCHICKER: Oh, yes.

BOARD MEMBER SHALLCROSS: -- prior to the election to find --

MS. SCHICKER: Yes, sir.

BOARD MEMBER SHALLCROSS: -- out what their position would be on the SRF --

MS. SCHICKER: Yes, sir.

BOARD MEMBER SHALLCROSS: -- if Measure B passed?

MS. SCHICKER: Yes, sir.

BOARD MEMBER SHALLCROSS: And what happened at that meeting?

MS. SCHICKER: Numerous correspondences back and forth, both between myself and other Directors, and Mr. Buel, as well.

BOARD MEMBER SHALLCROSS: Did they indicate that the SRF loan was not at risk?

MS. SCHICKER: I think Mr. Polhemus said something to the extent, in our negotiations he said something to the extent of we all looked at this Measure B in the office. We all knew it was coming.

BOARD MEMBER SHALLCROSS: I'm talking
about prior to the election.

MS. SCHICKER: Yeah, that's what he was saying. He'd been looking at it since we'd been up there in January 2005; Measure B was April 2005.

BOARD MEMBER SHALLCROSS: When did he say this?

MS. SCHICKER: He said that in October when we were --

BOARD MEMBER SHALLCROSS: I'm only talking about contacts you had prior to the election.

MS. SCHICKER: Yes. We contacted him by fax, mails, email, everything.

BOARD MEMBER SHALLCROSS: And did he indicate that the SRF loan would not be in jeopardy?

MS. SCHICKER: What Mr. Polhemus told me was, is that anything's amenable if both parties are willing. And he also told me that we had till December 20th to amend the project and to not lose the loan.

BOARD MEMBER SHALLCROSS: So you didn't have any assurances that you would keep the loan?

MS. SCHICKER: He pretty much said we
had till December 20th, and that we could amend
the loan. That's what he told me on the phone
several times.

BOARD MEMBER SHALLCROSS: Okay. And did
you get any assurances from the Regional Board
that they wouldn't take any sort of enforcement
action?

MS. SCHICKER: I didn't personally get
any.

BOARD MEMBER SHALLCROSS: Okay, thanks.

CHAIRPERSON YOUNG: Do you know if any
other of your Board Members received any
assurances from Regional Board Staff that as a
result of the election they would not take an
enforcement action?

MS. SCHICKER: I don't know that.

CHAIRPERSON YOUNG: Okay. All right.

MS. OKUN: I actually have a follow-up
to one of the answers to Mr. Shallcross' question.

CHAIRPERSON YOUNG: You have to wait so
that I can -- now you can ask a question.

MS. OKUN: Thank you.

RECROSS-EXAMINATION

MS. OKUN: You said that Darrin Polhemus
told you that you had until December -- or the
District had until December 20th to amend the
loan. To amend the loan to say what?

    MS. SCHICKER: We posed the question to
Mr. Polhemus that if the election and/or if an
initiative would pass, and the people just wanted
to move the darn plant, could we do it. And he
said yes, you could. You'd have to amend the
loan.

    And the reason we were so concerned
about them giving any money in the summer was it
made it tons -- a lot more difficult to do it
after the money had been let. So we were begging
everybody to just wait for the election to see
what the people wanted.

    MS. OKUN: It make it more difficult to
do what? To amend the loan?

    MS. SCHICKER: To amend the loan, um-
hum, yes.

    MS. OKUN: Did he tell you he had
authority to amend the loan, to change the site of
the project?

    MS. SCHICKER: He said that it happens
all the time. And, of course, it would be a Board
action. You know, we understand that, yes.

    MS. OKUN: Thank you.
CHAIRPERSON YOUNG: Okay. Do we have any other questions of this witness at this point in time? Mr. Onstot?

MR. ONSTOT: We're fine.

CHAIRPERSON YOUNG: Okay. Ms. Okun?

MS. OKUN: I'd like to call Bruce Buel.

CHAIRPERSON YOUNG: Okay.

MR. ONSTOT: Mr. Chair, can I move that we break for lunch, or at least a short break?

CHAIRPERSON YOUNG: Okay, we are past 1:30, and we do have Mr. Polhemus kind of dangling somewhere. How long would your examination be of Mr. Buel?

MS. OKUN: Well, I think only a few questions, but I thought it was only going to take a few minutes with Ms. Schicker.

CHAIRPERSON YOUNG: Okay. Shall we break for lunch? I'm the boss, okay.

All right. We will break for lunch. We'll break for, let's shoot for 2:30. Make every effort.

An objection. Well, wait, you guys need more time, is that it?

MR. SEITZ: Yeah.

CHAIRPERSON YOUNG: Okay.
MR. SEITZ: I was hoping I'd get back to
my office and get my notes.

CHAIRPERSON YOUNG: Okay. How much time
would you need?

MR. SEITZ: About 45 minutes I can
probably do it.

CHAIRPERSON YOUNG: Okay. Let's do that
and --

MR. SEITZ: I'm not trying to be an
obstructionist, I just --

CHAIRPERSON YOUNG: I know. And then
we'll wait for you anyway. But, 45 minutes then.
Ms. Okun, 45 minutes, so that Mr. Seitz can get to
his office.

(Whereupon, at 1:53 p.m., the hearing
was adjourned, to reconvene at 2:38
p.m., this same day.)

--000--
AFTERNOON SESSION

2:45 p.m.

CHAIRPERSON YOUNG: Here's what I want to do with the documents that the CSD has produced. I know that Mr. Onstot has shown me a box with file folders in it. Do those have the minutes in with each of the Board meeting dates? I know that the file folders have dates on the tops of them.

MR. ONSTOT: I don't know. I have not had a chance, obviously, to review them. They were pulled right out of the file cabinets at the CSD office. So they're presented as they're kept in the normal course of business.

CHAIRPERSON YOUNG: Okay.

MR. ONSTOT: I don't know if they contain that.

CHAIRPERSON YOUNG: Who would know the answer to that question? Ms. Schicker, are the minutes for each of those Board meetings within each of those file folders?

MS. SCHICKER: Mr. Young, I'm just looking at these quickly. They're dated for the meeting dates, and they look like they're agenda packets. So if we had past minutes that still
needed to be approved they would be part of a packet that would not be the meeting of the minutes. Does that make sense? Like it would be two weeks ahead. We'd have the minutes from the meetings two weeks prior in that packet.

So they're arranged by agenda meeting. The minutes were not thrown into that same pile.

CHAIRPERSON YOUNG: So are you saying that the minutes would not be in that file, but the minutes of the previous meeting might be in there, because that would have been approved?

MS. SCHICKER: Right. That's what it looks like is what they did.

MR. ONSTOT: Mr. Chair, we just found a file that contains both approved and unapproved minutes.

CHAIRPERSON YOUNG: Okay, good. So that we don't slow down the meeting, what I'm going to ask Michael Thomas to do, since he is part of our staff on this issue, and is most familiar with what I was looking for with the subpoena, is I'm going to excuse him with the box.

MR. THOMAS: Awesome.

CHAIRPERSON YOUNG: Awesome, right. And to go through and really look for, you know, the
documents, the records that are kind of responsive
to the subpoena. And maybe you can get Post-Its
to put onto those, and don't disrupt their
sequencing in the files. But just to flag them.
And then at a break or when you're done we could
kind of discuss what you came up with.

MR. THOMAS: Okay.

CHAIRPERSON YOUNG: Now, before you go I
need the clock, the timing of where we're at.

MS. SCHAFFNER: While they're figuring
that out, does that box of documents contain the
notes that Mr. Bleskey took at the meetings?

MR. BLESKEY: Ma'am, what it contains is
my Board packages with my notes on the Board
package documents which were in the file. And I'm
just looking at things like, you know, old
girlfriends' phone numbers and stuff like that
that I want to remove.

(Laughter.)

MS. SCHAFFNER: Well, you can black
those out.

MR. BLESKEY: Okay. So I just have one
last stack to do that to and we'll be done with
it, can have that to you.

MS. SCHAFFNER: Okay.
MR. BLESKEY: Okay.

CHAIRPERSON YOUNG: So does it include the new girlfriends' phone numbers, but not the old girlfriends?

(Laughter.)

MR. BLESKEY: Those are going, too.

CHAIRPERSON YOUNG: Okay. I don't know. I'm glad my wife isn't watching this.

MR. BRIGGS: Mr. Chairman.

CHAIRPERSON YOUNG: Yes.

MR. BRIGGS: All kidding aside, I think the answer to the question was no, he did not bring the notes that he referred to earlier.

CHAIRPERSON YOUNG: Right.

MS. SCHAFFNER: Could you clarify that answer for us, Mr. Bleskey. Are these the journal/diary type notes you mentioned earlier? Or are those something different?

MR. BLESKEY: These are the -- what I have is my marked-up notes that I take down when I'm at the meeting. And then I place those in my file, and they basically reflect the action or items that we, you know, just my thoughts regarding the agenda.

MS. SCHAFFNER: In your earlier
testimony when you said that's my diary, as it were, were you talking about these notes?

MR. BLESKEY: No.

MS. SCHAFFNER: You have other notes?

MR. BLESKEY: That's my personal diary.

MS. SCHAFFNER: Which is a log of your notes taken during the meetings?

MR. BLESKEY: Those are -- they're my personal diary, which the actions that I had, if I got the gist of it correctly, that my notes for action in my official capacity, as the Interim General Manager, are reflected on these documents that I'm about to give you.

MS. SCHAFFNER: So what's the distinction between the notes you --

MR. BLESKEY: Those are --

MS. SCHAFFNER: -- the diary and the --

MR. BLESKEY: Those are --

MS. SCHAFFNER: So you're saying they have nothing to do with the business at hand when you said diary?

MR. BLESKEY: No. They may or may not, but they're my personal documents. They're not part of my capacity as the Interim General Manager.
MS. SCHAFNER: That makes no sense to me --

CHAIRPERSON YOUNG: I mean, are you planning on writing a book?

MR. BLESKEY: I was thinking about it.

(Laughter.)

MS. SCHAFNER: I will defer to the Chair whether he considers that compliance sufficient to avoid sanctions.

CHAIRPERSON YOUNG: I don't think it's sufficient. I did want to see your notes. The personal ones, also. Are those here?

MR. BLESKEY: Only a portion of them are here. But I'd have to refer to my counsel on that, in all respect, Mr. Chair.

CHAIRPERSON YOUNG: I understand that, but I mean I didn't hear previously that there was any privilege or protection that would pertain to them.

MR. BLESKEY: I need to talk to counsel on that.

MR. ONSTOT: Well, there is personal notes and diaries, so there's an expectation of privacy that he has with those with regards to doctor's appointments, dentist's appointments,
whatever else would be in there.

So, he's already testified that they
don't pertain to his duties as General Manager;
that those notes are being produced. And if you
want to ask him for doctor appointments and stuff
like that, he's got an expectation of privacy that
our position is is that you're not entitled to
those personal things.

CHAIRPERSON YOUNG: Well, I would agree
with you that we're not entitled to know about his
doctor visits and things of that nature. We're
not interested in that information.

But I want to make sure that if he's
taking notes down that have to do with the
business of the Board, the CSD Board, that that's
an entirely appropriate topic for us to get into
and to look at.

Why are there two different sets of
notes? Why is there a personal diary and then why
are you making notes on agendas? They're not one
and the same.

MR. BLESKEY: That's correct.

CHAIRPERSON YOUNG: What's the purpose
of the personal diary?

MR. BLESKEY: Just like any personal
journal or diary, it's to reflect my thoughts from
my personal life that have nothing to do. They
may contain my opinions of anything that goes on
in my personal life. And it may reflect actions
that I've experienced. And those, you know, I'd
have to refer back to counsel for further
discussion.

MS. SCHAFFNER: Mr. Chairman, from what
I've heard I don't hear a legal basis for
privilege here at all. If anything, there may be
some question as to some portions of those entries
that may have an interest in privacy, personal
nature. That kind of material could be redacted.

But if there are notes taken in the
ordinary course of performing his job, even if
they are only for his own personal review, they
sound like a double set of books. And I don't
understand.

MR. BLESKEY: That's not what they are.
What they are is my thoughts and all those things
that I reflect personally as part of how I live my
life. And what you're asking for is reflected on
these documents I'm about to give you, if I
understood the nature of your request. And,
again, I'd have to refer back to legal counsel on
where we want to go with this.

CHAIRPERSON YOUNG: Well, I understand what the objection is about. And I will honor the objection as to personal medical records and things of that nature. We're not interested in that.

I would like to see the journal, and I would like to be able to determine whether we can just redact out portions that are privileged. We're not interested in that. But, I am interested if you are keeping a separate set of notes that may have your thoughts as to how you are going to carry out your function as the General Manager. I think that's appropriate, and until I see it I don't know what's in there.

So, somehow we're going to have to take a look at them. I understand the objection. And I don't know when we're going to get to that.

MR. ONSTOT: Well, there's also the point that the notes that are taken on the agenda packets are contemporaneous with what happens at the meetings. Where the diary entries are at some point later.

And I can't see how they're possibly relevant if he is reflecting upon anything of that
matter, because it's not binding or an action of
the CSD.

So, I would advise him now not to
produce that diary. And if it goes to a different
level, the judicial level with an in camera review
by a court, then so be it. But I will advise him
not to produce the private diary.

Everything else we have responded to the
subpoena for.

BOARD MEMBER PRESS: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER PRESS: Is the -- getting
to Mr. Onstot's point, are the diary entries
contemporaneous with the meetings? In other
words, when you go to the meetings are you writing
on the documents that you have with you and the
diary? Or are you just writing on the documents
and then later making diary entries?

MR. BLESKEY: What I'm doing is that I'm
making my official notes here in my Board package.
And then I make notes to myself, and later on I
assemble those notes for my own personal use.

BOARD MEMBER PRESS: Okay. So there's a
legal pad and a printed agenda at a meeting.

MR. BLESKEY: That's correct.
BOARD MEMBER PRESS: And you're making entries on those two? Or you're making --

MR. BLESKEY: My primary notes are in my -- that have to do with the --

UNIDENTIFIED SPEAKER: I guess, I got the red light. It's okay, I'm sorry.

CHAIRPERSON YOUNG: I'm trying to figure out how to work this.

(Laughter.)

CHAIRPERSON YOUNG: Go ahead.

BOARD MEMBER PRESS: What are you writing in when you're at the meetings?

MR. BLESKEY: Primarily, in my official role, I write into my Board packet. And the main reason why is because when we come out for our Board report or my General Manager's report, that we use that as the basis of what actions we followed.

I would be more than happy to answer any questions you would have that may be of a nature of the information you're looking for from those documents. But a lot of that is going to be reflected here and you may be able to perfect those questions as you read some of the documents we're going to give you.
CHAIRPERSON YOUNG: Okay, let's do this so we can move this along. Why don't we just have Michael take the documents that are here; we'll kind of reserve this issue for later to be determined with respect to whether we want to do anything about your personal journal or not.

MR. BLESKEY: Yes, sir.

CHAIRPERSON YOUNG: So why don't you go ahead and take the box; go through it with respect to looking for the compliance/noncompliance issues. And then Post-Its or tags on those pages so we can talk about it later.

MR. THOMAS: Okay.

CHAIRPERSON YOUNG: All right, Mr. Bleskey.

MR. BLESKEY: Thank you, Mr. Chair.

CHAIRPERSON YOUNG: All right. Let's see where we're at.

(Pause.)

CHAIRPERSON YOUNG: Okay, let's figure out where we had left off.

MS. OKUN: Well, we still have questions for Mr. Buel, the prosecution team does.

MS. SCHAFFNER: Right.

CHAIRPERSON YOUNG: Okay. That's right.
MS. OKUN: We also were discussing whether there were any documents that were in our files that weren't on our list.

CHAIRPERSON YOUNG: Correct.

MS. OKUN: And I have a response to that. There was also something that we wanted to correct in the record.

Mr. Chair, you made a statement that well-run plants don't spill. And I think that statement is a little too absolutist. And we wanted to provide some additional information to the Board on that just for purposes of having a clear and accurate record. So Regional Board Staff can provide some brief testimony on what happens at well-run plants in terms of spills and cleanups.

CHAIRPERSON YOUNG: Okay. You can do that. But it will be on your time. But you have plenty of it, so it's not going to matter.

Do you want to proceed with Mr. Buel, or do you want to just address those comments about spills? What would you like to do?

MS. OKUN: Why don't we go to Mr. Buel. I only have two questions.

CHAIRPERSON YOUNG: Okay, go ahead. Let
me figure out something here. Now I don't have
Michael so I'm really at a loss. I don't want
this to beep, but I do want the clock to go up.
That's how I want to use it, Roger, instead of it
going down because it's going to facilitate my --

MR. BRIGGS: You want it to go up
instead of down?

CHAIRPERSON YOUNG: Yeah, I want it to
go up, I want it to count up, but I don't want the
beep going.

BOARD MEMBER HAYASHI: Mr. Buel, is
there any significance to today's date?

MR. BUEL: Today is my birthday.

BOARD MEMBER HAYASHI: Happy birthday.

MR. BUEL: Thank you, sir.

(Applause.)

MS. SCHAFFNER: So sorry you have to be
here.

MR. BUEL: It's been interesting.

CHAIRPERSON YOUNG: Great, we got it
figured out. Okay, Ms. Okun, go ahead. Thank
you, Mr. Briggs.

Whereupon,

BRUCE BUEL

was recalled as a witness herein, and having been
previously duly sworn, was examined and testified

further as follows:

FURTHER CROSS-EXAMINATION

MS. OKUN: Thank, Mr. Buel. I wish I

had a few more exciting questions for you on your

birthday, but the only thing I wanted to ask you

was what were the purchase dates of the Broderson

and Tri-W properties?

MR. BUEL: What I'm going to give you is

the escrow, close of escrow. The Tri-W property

closed on March 12, 2003. The Broderson site

escrow closed on November 26, 2002.

MS. OKUN: You said the Tri-W site

closed on 3/12/03?

MR. BUEL: I did.

MS. OKUN: And when was the escrow

opened?

MR. BUEL: That was opened in May of


MS. OKUN: And when was the Broderson

site opened?

MR. BUEL: Also May 2001.

MS. OKUN: Regarding Tri-W, when did the

seller accept your offer of purchase?

MS. OKUN: Okay, thank you.

MR. BUÉL: Um-hum.

CHAIRPERSON YOUNG: Any other questions for Mr. Buel?

MS. OKUN: No.

CHAIRPERSON YOUNG: Mr. Onstot? No. I do have a couple questions while you're up here, Mr. Buel.

The three facilities, three or four facilities that staff has alleged have been discharging in violation of the basin plan prohibition, have those facilities been discharging wastewater during this period of time?

MR. BUÉL: Yes. The Bay Ridge Estates is a community septic system that provides service to about 140 homes. That's been discharging continuously during this time period.

South Bay Fire Department has a septic system for its own internal use. That has been discharging consistently.

And Vista del Oro is a community septic system for 60-some-odd households in its neighborhood. And it's been discharging continuously.

CHAIRPERSON YOUNG: Okay, thank you.
VICE CHAIRPERSON JEFFRIES: Mr. Buel,
when those two sites were purchased was there an
official appraisal done on each one of those
sites?

MR. BUEL: Yes. We did appraisals in
late 2000 as part of our due diligence in
preparing the project report in anticipation of
the assessment vote.

VICE CHAIRPERSON JEFFRIES: And were
those properties purchased at the appraised value?
above? or below?

MR. BUEL: No. At. In both cases we
were able to negotiate a sales agreement at the
appraised value.

VICE CHAIRPERSON JEFFRIES: And that was
done by a bona fide appraiser?

MR. BUEL: Yes. District counsel was
adamant that we not only have a certified
appraiser, but one that could testify in court in
regard to the values.

VICE CHAIRPERSON JEFFRIES: Thank you.

CHAIRPERSON YOUNG: Okay. Mr. Seitz,
did you have some questions?

MR. SEITZ: Just one question.
MR. SEITZ: Mr. Buel, did the District ever submit a plan to the Regional Water Quality Control Board that would have provided sewer service to Bay Ridge, Vista del Oro and the South Bay Fire Department?

MR. BUEL: We submitted two plans. First in January 2000, that was the Oswald project report. And then again in March of 2001, and that was the Montgomery, Watson, Harza project report.

Both projects, both plans would have serviced each of the three locations referenced.

CHAIRPERSON YOUNG: Okay. Mr. Shallcross.

BOARD MEMBER SHALLCROSS: On the appraised value, did that take into consideration that -- and I'm assuming, I looked on the map; it looked to me like both properties were within the prohibition zone, is that right?

MR. BUEL: Well, partially correct. Tri-W is entirely within the prohibition zone. And a portion of Broderson was within the prohibition zone.

Understand that Broderson, the 81 acres is comprised of a 40-acre parcel and a 41-acre
And when we did the appraisal, the appraiser's opinion was that because they were in common ownership that the differential for buying 40 versus 80 was nominal. And he recommended we buy the entire 80.

But 40 of the 81 acres is literally outside of the prohibition zone.

BOARD MEMBER SHALLCROSS: So the fact that the properties were within the prohibition zone was taken into account in the appraisal?

MR. BUEL: Yes. The appraiser used the standard accepted principals in appraisal; looked at the zoning, the general plan designation and the potential to be served; and the potential for the lots, the usage of the two lots at Broderson in particular, to be shifted between the lots.

BOARD MEMBER SHALLCROSS: Okay, thanks.

CHAIRPERSON YOUNG: Okay. Mr. Seitz.

MR. SEITZ: Yes.

REDIRECT EXAMINATION - resumed

MR. SEITZ: What type of funds were used to purchase Broderson?

MR. BUEL: Those were assessment bonds. And that's the reason that there was such a long period in escrow is that we were unable to issue
the bonds until October of 2002.

MR. SEITZ: Was any of those properties, those two properties, purchased with grant funds?

MR. BUEL: Yes, thank you, counselor.

Broderson was partially purchased with grant funds. The District was successful in getting a $2 million proposition 50 grant. That was used to offset 2 million of the 4.65 million cost of the Broderson property.

CHAIRPERSON YOUNG: Any additional questions? Ms. Okun?

MS. OKUN: No, I don't have any questions.

CHAIRPERSON YOUNG: Okay. Any Board Members for Mr. Buel? Okay.

MS. SCHAFFNER: I have one question, Mr. Chairman.

CHAIRPERSON YOUNG: Go ahead.

MS. SCHAFFNER: I'm trying to recall your testimony in December. I think it was the 2nd, perhaps. And this relates to this testimony of this afternoon by Ms. Schicker. Shicker, sorry. I keep messing up those pronunciations. Anyway, were you present during the EIR when the EIR was conducted for the Tri-W site?
That was under your watch, correct?

MR. BUEL: It was. But I want to make sure everybody understands the environmental impact report covered the entire system, not just Tri-W.

MS. SCHAFFNER: Understood. At the time the EIR evaluated many of the issues with which she has taken issue over time, as an activist and a panel member, as well as a Board Member, and she recited some of those today.

Is it your opinion that those concerns about the appropriateness of this site, did you share those concerns when the EIR was adopted by the CSD?

MR. BUEL: Well, yes. Many of those concerns, and if I could take the liberty of just walking through them, there is always the potential of a spill. That is always a concern.

There's a tradeoff between when you build the project and when you stop receiving the septic effluent from the tanks versus the risk of a spill. So that's always going to be a tradeoff.

Clearly, the closer you are to the Bay the more risk there is to upset to the Bay. That was evaluated. That was discussed in the
environmental impact report.

Salt water intrusion was known, and one of the purported benefits of the project was to cleanse the upper basin so that that basin could be used more heavily. Currently, we're using very little water from the upper basin. We're drawing the majority of our supply from the lower basin. And that's where we're experiencing the salt water intrusion.

So the project did not solve salt water intrusion, but it started in the right direction towards solving salt water intrusion.

MS. SCHAFFNER: At the Tri-W site?

MR. BUEL: Well, again, if you can shut off the septic tanks and remove the nitrate contamination from the septic effluent, and if you can recharge -- and specifically at Broderson where our hydrogeologists believe you get the best opportunity for recharge, not only in the upper basin, but some leakage into the lower basin, you're going to get the most benefit from your cleanup effort. And the most benefit in terms of reversing or at least slowing salt water intrusion.

MS. SCHAFFNER: Okay. I think I
remember you talking about that. Thank you.

CHAIRPERSON YOUNG: Mr. Jeffries.

VICE CHAIRPERSON JEFFRIES: Mr. Buel, I didn't realize that you had received grant funds to purchase some of the property.

MR. BUEL: Um-hum.

VICE CHAIRPERSON JEFFRIES: Was there any strings attached to that? If you didn't perform on the property did you have to return the grant money?

MR. BUEL: I think that is a legitimate question. I cannot answer that. I know that when the Board accepted the grant, the Board adopted a resolution that specified the conditions that the state had imposed. And I'd have to go back and review that resolution.

But I believe there is a reversion clause, and I believe that if the property is sold, that the state will at least want to review that issue.

VICE CHAIRPERSON JEFFRIES: And that's just on the Broderson site, only?

MR. BUEL: Yes, sir. We used the --

VICE CHAIRPERSON JEFFRIES: Was there --

MR. BUEL: -- assessment proceeds, the
bonds, to pay for Tri-W.

VICE CHAIRPERSON JEFFRIES: Only?

MR. BUEL: Only.

VICE CHAIRPERSON JEFFRIES: Okay, thank you.

CHAIRPERSON YOUNG: Okay, any other questions for Mr. Buel? All right, why don't we move on. Thank you, Mr. Buel. Don't go, though.

MR. BUEL: Okay.

CHAIRPERSON YOUNG: Ms. Okun.

MS. OKUN: I'd actually like to call Ms. Sorrel Marks as a rebuttal witness to some of the testimony that Mr. Buel just gave.

CHAIRPERSON YOUNG: Go ahead.

Whereupon,

SORREL MARKS was called as a witness herein, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MS. OKUN: Ms. Marks, have you been sworn?

MS. MARKS: Yes, I have.

MS. OKUN: Could you state your name and position for the record, please.
MS. MARKS: Sorrel Marks, Sanitary Engineering Associate for the Water Quality Control Board.

MS. OKUN: How long have you been working on the Los Osos project?

MS. MARKS: About 16 years.

MS. OKUN: Mr. Buel just referred to a January 2000 Oswald project report. Are you familiar with that report?

MS. MARKS: Yes, I am.

MS. OKUN: What was it a report of?

MS. MARKS: It was an early proposal for a community sewer system in Los Osos.

MS. OKUN: Was that a pond system?

MS. MARKS: Yes.

MS. OKUN: Why wasn't that pond system built?

MS. MARKS: The Community Services District modified their proposal, abandoned that project.

MS. OKUN: So it wasn't rejected because the Regional Board rejected the project?

MS. MARKS: The Regional Board didn't reject the project.

MS. OKUN: And Mr. Buel also talked
about a March 2001 Montgomery, Watson Harza project report. Are you familiar with that report?

MS. MARKS: Yes.

MS. OKUN: What was the subject of that report?

MS. MARKS: That was the revised community sewer system.

MS. OKUN: Is that the Tri-W project?

MS. MARKS: Yes.

MS. OKUN: Thank you.

CHAIRPERSON YOUNG: Okay, hold on one second. Go ahead.

CROSS-EXAMINATION

MR. SEITZ: The Oswald report would have, the Oswald 2000 report would have sewered Vista del Oro, Bay Ridge Estates and the fire department, is that correct?

MS. MARKS: Correct, as I recall.

MR. SEITZ: Secondly, did staff bring that report to the Regional Water Quality Control Board?

MS. MARKS: Regional Board Staff?

MR. SEITZ: Yes. This Board, that report, that project plan.
1               MS. MARKS:  No.
2               MR. SEITZ:  Why not?
3               MS. MARKS:  Because the Community
4       Services District revised the proposal.
5               MR. SEITZ:  And why did they revise the
6       proposal?
7               MS. MARKS:  I can offer an opinion on
8       that, but it really --
9               MR. SEITZ:  Wasn't the Regional Water
10       Quality Control Board Staff critical of that
11       proposal?
12               MS. MARKS:  Yes.
13               MR. SEITZ:  And the criticism, if I
14       recall this correctly, of that proposal was
15       because it sewered these three projects and only
16       sewered those dischargers that were in the low-
17       lying area; that is, where the groundwater basin
18       was at its highest level to the residential uses.
19       And the Regional Water Quality Control Board Staff
20       demanded that the District sewer the entire
21       prohibition zone?
22               MS. MARKS:  I wouldn't say that's an
23       entirely accurate portrayal. Certainly the
24       partial sewering of the prohibition zone was one
25       of a number of questions raised in our response to
that particular proposal. Questions for the CSD
to respond how they were going to address the rest
of the community.

MR. SEITZ: Thank you.

REDIRECT EXAMINATION

MS. OKUN: Did the Regional Board Staff
have any other problems with that ponding
proposal?

MS. MARKS: Yes. There were several
pages worth of comments and questions regarding
that particular proposal.

MS. OKUN: And just so the record's
clear that wasn't a proposal just to sewer these
three facilities?

MS. MARKS: No.

MS. OKUN: Thank you.

CHAIRPERSON YOUNG: Any Board questions
for Ms. Marks? Okay. Any follow-up questions,
Mr. Seitz? Okay. Thank you.

Mr. Seitz?

Ms. Okun.

MS. OKUN: Our last witness is Matt
Thompson to talk about the issue of how a well-run
plant runs.

CHAIRPERSON YOUNG: Okay.

MR. BRIGGS: Matt or me?
MS. OKUN: I'm sorry, Roger Briggs.

CHAIRPERSON YOUNG: Go ahead.

Whereupon,

ROGER BRIGGS

was recalled as a witness herein, and having been
previously duly sworn, was examined and testified
further as follows:

DIRECT EXAMINATION

MS. OKUN: Do well-run plants ever spill?

MR. BRIGGS: Yes.

MS. OKUN: And could you explain to the Board the percentage of the total volume of treated water that tends to spill, either by giving examples, or a general description of how plants run and what causes spills?

MR. BRIGGS: Well, I sure don't have a percentage in my head other than it's, in terms of spill volume compared to volumes of water that are treated in our Region, successfully and that meet waste discharge requirements, the spill volume is infinitesimally small.

An example would be the City of San Luis Obispo recently had a 20,000-gallon spill, I believe. And I think a 10,000-gallon spill.
Which is not good. But they treat on the order
of, I think it's 4 million gallons a day, 3.5
million gallons a day, depending on the weather.
And that's every day throughout the year.

So, those are hundreds of millions of
gallons that are treated to essentially be
drinking water quality, compared to that
infinitesimally small volume of spill.

Now, we have some treatment plants that
have an even better record than that in terms of
essentially having no spills. And, of course,
they're treating their water, and so the
percentage is infinite compared to the spills, if
they don't have any spills.

MS. OKUN: Do all spills reach surface
water?

MR. BRIGGS: No. Many of the spills, as
the Chair was pointing out, are cleaned up
essentially immediately. Many, and in fact
probably the vast majority of spills, do not reach
surface waters.

MS. OKUN: Are there other treatment
plants in the Region that are as close or closer
to the coast than the Tri-W location is?

MR. BRIGGS: There are many. Many,
many.

MS. OKUN: Thank you.

CHAIRPERSON YOUNG: Okay. Mr. Seitz.

BOARD MEMBER PRESS: Put the paper down.

UNIDENTIFIED SPEAKER: -- keeps moving the paper up and down all the time.

CHAIRPERSON YOUNG: Who?

UNIDENTIFIED SPEAKER: Please ask him to remove it, or remove himself.

BOARD MEMBER SHALLCROSS: It's very distracting.

CHAIRPERSON YOUNG: Okay, please keep that down, Mr. Racano. I would appreciate that.

Okay. Mr. Seitz, did you have any follow-up questions?

MR. SEITZ: No.

CHAIRPERSON YOUNG: Or Mr. Onstot, for Mr. Briggs? Okay.

All right, does the Board have any questions for Mr. Briggs on this issue? No?

Okay.

Ms. Okun, is that your final witness?

MS. OKUN: It is.

CHAIRPERSON YOUNG: Okay, question for you. I know that you submitted into the record
copies of some documents responsive to my request
for compliance/noncompliance issues. I know those
are in the record. Were you going to address them
in any way with oral testimony? Or just --

    MS. OKUN: No, we weren't planning to.

    CHAIRPERSON YOUNG: Or just refer to
them in your closing or what?

    MS. OKUN: We'll just refer to them in
our closing.

    CHAIRPERSON YOUNG: Okay.

    MS. SCHAFFNER: Who is Mr. Polhemus a
witness for?

    CHAIRPERSON YOUNG: Yeah, Mr. Polhemus
is a witness, I believe, for the CSD. Because
they had specifically follow-up questions for him.

    Okay, so you have rested your case-in-
chief at this point?

    MS. OKUN: Yes.

    CHAIRPERSON YOUNG: All right. And we
can now go back to the CSD, and do you want Mr.
Polhemus? What would you like to do?

    MR. ONSTOT: Mr. Chair, just two
witnesses, as we mentioned previously, Mr. Briggs
and Mr. Polhemus. We can start with Mr. Polhemus,
it will just be a minute or two.
CHAIRPERSON YOUNG: Great. Okay. Is Mr. Polhemus on the phone? He will be. Okay. And while we're doing this, just so everybody knows, Mr. Seitz, you have about eight minutes left. And, Ms. Okun, you have over three hours left.

MR. THOMPSON: Darrin?

MR. POLHEMUS: I'm here. Can you hear me?

CHAIRPERSON YOUNG: We can hear you, Darrin. Why don't you go ahead and identify yourself now that you've come onto the speakerphone. And then I'm going to turn this over to Mr. Onstot or Mr. Seitz for their examination of you.

MR. POLHEMUS: I'm Darrin Polhemus, Assistant Division Chief of the Division of Financial Assistance, and I guess I have been sworn in previously.

CHAIRPERSON YOUNG: Okay, you have been sworn in previously. You're still under oath.

MR. POLHEMUS: Okay.

CHAIRPERSON YOUNG: Okay. Mr. Seitz. Whereupon,

DARRIN POLHEMUS
was recalled as a witness herein, and having been
previously duly sworn, was examined and testified
further as follows:

MR. ONSTOT: I'll take Mr. Seitz' place.

CHAIRPERSON YOUNG: Okay.

DIRECT EXAMINATION

MR. ONSTOT: Mr. Polhemus, this is Steve
Onstot. Can you hear me okay?

MR. POLHEMUS: Yes, I can. Can you hear
me?

MR. ONSTOT: I can, thank you very much.
Are you in your Sacramento Office now?

MR. POLHEMUS: Yes, I am.

MR. ONSTOT: Anybody else with you?

MR. POLHEMUS: Ms. Anne Hartridge of our
Office of Chief Counsel of the State Board and my
attorney in regards to state revolving plan --

MR. ONSTOT: And have you had any
discussions with anybody other than the attorney
who's sitting next to you now, and Ms. Okun, in
the last three hours?

MR. POLHEMUS: No, I haven't -- well,
not in reference to Los Osos.

MR. ONSTOT: But --

MR. POLHEMUS: I've been performing my
normal duties as Assistant Division Chief during
the day.

MR. ONSTOT: Okay, but with regards to
today you haven't discussed the Los Osos matters
with anybody other than counsel?

MR. POLHEMUS: Correct.

MR. ONSTOT: Mr. Polhemus, do you recall
back in the spring, basically when we first met,
you and I?

MR. POLHEMUS: No, I don't.

MR. ONSTOT: Well, do you recall that we
had a number of phone calls, email exchanges and
letters?

MR. POLHEMUS: I do recall a series
(inaudible).

MR. ONSTOT: Okay. And do you recall
the -- let's start with phone conversations. Do
you recall any phone conversations you and I had?

MR. POLHEMUS: Be more specific if
you're asking me, I mean I do recall I spoke with
you on the phone.

MR. ONSTOT: Okay, and do you know the
general substance matter of those conversations?

MR. POLHEMUS: They were all regarding
Los Osos.
MR. ONSTOT: And did I express any concerns that I had on behalf of my client, which was CASE at the time, regarding the state revolving fund?

MR. POLHEMUS: You did. I remember an occasion you tried to call our attention to what you believed were discrepancies, or deficiencies on the project on regard to your client, yes. And I believe we also have a written communication to that effect.

MR. ONSTOT: And is it your recollection that basically I put the state on notice with regards to the riskiness of the SRF fund in the event that the September 22, 2005 election went a certain way?

MR. POLHEMUS: I do believe you made that contention, yes.

MR. ONSTOT: Um-hum. And that was prior to September 27, 2005 election, is that correct?

MR. POLHEMUS: It was prior to that.

MR. ONSTOT: I think you mentioned earlier that the state made one disbursement from the SRF loan sometime in 2005, do you recall that?

MR. POLHEMUS: Yes.

MR. ONSTOT: When did that occur?
MR. POLHEMUS: It occurred approximately
the beginning of September of 2005.

MR. ONSTOT: And prior to September 2005
is when you and I had at least some discussions as
to at least CASE's view that the state should not
disburse any of that SRF money, do you recall
that?

MR. POLHEMUS: I do, being voiced along
that same line.

MR. ONSTOT: Okay. What consideration
did you give with CASE's concerns?

Let me strike that and I'll say it a
different way. Given CASE's concerns why did you
go ahead anyway and make the first disbursement of
about $6 million of the SRF loan?

MR. POLHEMUS: We had legitimate
(inaudible) authorized District to introduce that
contract, so I was fulfilling an obligation of
that contract under the statutes of California,
the policies of the SRF and policies of the State
Water Board.

MR. ONSTOT: So it was your view that
you were compelled, despite being advised of the
risky nature of that disbursement, that you were
compelled by law and Board policy to issue that $6
million to start construction, is that your
testimony?

MR. POLHEMUS: Well, your (inaudible)
required speculation on a possible (inaudible)
outcome of which no one could have known. And we
took that under consideration but proceeded
through to follow our policies and state statute.

MR. ONSTOT: And what statute would that
be that compelled you to issue that amount of
money at that time with the election pending?

MR. POLHEMUS: There's no specific
statute citing that decision. There is statutes
regarding the operation of the SRF program.

MR. ONSTOT: Okay. Then what statute
regarding the SRF program compelled you to make
that first disbursement at that time?

MR. POLHEMUS: (inaudible) had with the
District obligated us to make that disbursement.

MR. ONSTOT: I'm sorry, did you say the
contract with the District obligated you to make
that payment at that time?

MR. POLHEMUS: (inaudible).

MR. ONSTOT: There was a second
disbursement requested by the District as well.

Do you recall that?
MR. POLHEMUS: Please repeat the
question.

MR. ONSTOT: There was a second request
for a disbursement from the SRF fund by the
District. Do you recall that?

MR. POLHEMUS: Yes, I do.

MR. ONSTOT: And the state did not make
that disbursement, did it?

MR. POLHEMUS: Correct. We withheld
that.

MR. ONSTOT: And is it you view -- well,
strike that.

When the state chose not to make that
disbursement it was operating under the same
contract that you just testified to that the state
was obligated to make the first disbursement at
that particular time, right?

MR. POLHEMUS: Right.

MR. ONSTOT: Thank you. Nothing

further.


CROSS-EXAMINATION

MS. OKUN: Mr. Polhemus, were you
listening earlier when Lisa Schicker testified
that you told her before the election that the
District had until December 20th to amend the loan for a new project?

MR. POLHEMUS: Yes.

MS. OKUN: Do you agree with her testimony?

MR. POLHEMUS: No. I do not recall such a conversation or giving such advice.

MS. OKUN: Do you recall a letter that you signed dated December 23, 2005, to the District?

MR. POLHEMUS: Yes, I do, --

MS. OKUN: I'm sorry, --

MR. POLHEMUS: -- I have a copy before me.


MR. POLHEMUS: Yes.

MS. OKUN: Could you look at question 4 which says will the LOCSD be able to use the current state revolving fund commitment to build a different project. And could you read the response in that letter?

MR. POLHEMUS: Yes. My response was as follows: No. As discussed in more detail in our letter of June 22, 2005, the SRF loan commitment is for the current project only. If the current
project is stopped and a different project proposed, the SRF commitment would be withdrawn and the loan agreement terminated. The Los Osos Community Services District would have to repay all the funds disbursed to date on the current project."

MS. OKUN: Did you ever tell Ms. Schicker anything that was contrary to that statement after the January 2005 Board Meeting where the State Board approved the loan commitment?

MR. POLHEMUS: Not that I can recall, no.

MS. OKUN: Regarding the prop 13 grant for Broderson, actually I think the testimony was that it was a prop 50 grant. And I'm not sure whether it was prop 13 or prop 50. Could you clarify that?

MR. POLHEMUS: It's a prop 13.

MS. OKUN: Were there any strings attached to that grant that would kick in if the District sold that property?

MR. POLHEMUS: We're looking this up, so I'm not prepared to answer at the moment.

MS. OKUN: Would that be addressed by
looking at the terms of the grant?

MR. POLHEMUS: Yes.

MS. OKUN: Thank you, I have nothing further.

CHAIRPERSON YOUNG: Mr. Jeffries, go ahead.

VICE CHAIRPERSON JEFFRIES: Yes. There was a question by the CSD attorney that you made one disbursement on the loan, but the second one was denied, is that correct?

MR. POLHEMUS: That's correct.

VICE CHAIRPERSON JEFFRIES: And why was the second one denied? And what was the date of denial?

MR. POLHEMUS: The District suspended work with their construction contractors, and under the clause of the contract if I fear or believe that the District may suspend said contract, I'm able to withhold payment at that time, and so I initiated that clause of the contract.

VICE CHAIRPERSON JEFFRIES: What was the date of that denial? Was there a letter sent out?

MR. POLHEMUS: Yes. In one second I will be able to tell you. It was in October,
October 18th, addressed to Mr. Dan Bleskey, Interim General Manager, notice of withholding of loan payment.

VICE CHAIRPERSON JEFFRIES: Thank you.

MR. ONSTOT: Mr. Chair, if I can have a couple of clarification questions?

CHAIRPERSON YOUNG: Go ahead.

REDIRECT EXAMINATION

MR. ONSTOT: Can you hear me, Darrin?

MR. POLHEMUS: I can.

MR. ONSTOT: Okay. This is Steve Onstot, again. Obviously you have your file in front of you. As a follow-up to Mr. Jeffries' question, when was the request made by the CSD for the second disbursement?

MR. POLHEMUS: I'd have to scan for the date. I do recall off the top of my head that it came in in late September. It was in the process of going through our administrative processing during the time of the election, and during the time that the District then issued a suspension of the contractors. And shortly after that I (inaudible). Those are the general timeframes. I can try to find the exact timeframe if you'd like to wait a second.
MR. ONSTOT: No, that's okay. My next question, and I think my last one, is you mentioned the requirements of the contract between the District and the State for the SRF money.

That contract called for the State to make disbursements within a certain period of time after requests are made, is that correct?

MR. POLHEMUS: Yes, it does.

MR. ONSTOT: And what is that time period?

MR. POLHEMUS: Well, actually, hang on a second, my legal counsel is questioning whether it does or not. I believe that is in section 2.52; however, those are considering the normal processing and assuming that the District is meeting its obligations towards the contract, as well.

MR. ONSTOT: No, I'm sorry, Mr. Polhemus, that wasn't my question. Under the contract, the same one that you claimed that the state was obligated to make the first disbursement under, what does that contract say with regards to the state's obligation to make a disbursement payment within certain days, how many days of the request being made?
MR. POLHEMUS: Under section 2.5 of the contract it says that upon execution and delivery of this agreement the agency (inaudible) disbursement of any incurred (inaudible) as to the final exhibit A.

It then goes on to say that additional project funds will be promptly disbursed to the agency upon receipt of disbursement request form 260.

MR. ONSTOT: Is that your full answer?

MR. POLHEMUS: Yes.

MR. ONSTOT: So it's your view that no specified -- no dates are specified in the contract by which you have to make the disbursements after request is made?

MR. POLHEMUS: We make the -- after the first disbursement we made the additional project under the disbursement process.

MR. ONSTOT: Thank you, nothing further.

CHAIRPERSON YOUNG: Okay. Any further questions for Mr. Polhemus? Okay, Ms. Okun says no. Any Board Members want to question him?

Okay. Darrin, thank you very much.

MR. POLHEMUS: You're welcome.

CHAIRPERSON YOUNG: Oh, Mr. Seitz.
MR. SEITZ: This isn't a question for Darrin.

CHAIRPERSON YOUNG: Okay.

MR. SEITZ: Well, maybe it is, but I think Darrin should hang on. Mr. Polhemus testified to a number of documents. I just want to make sure those documents are in the administrative record. I know he's testifying from Sacramento, but I do believe that if we're going to have a complete administrative record of all the documents that have been testified to here, that somehow we accommodate those documents being in the administrative record.

MS. OKUN: Both the September 23, '05 letter and the loan agreement are in the record. They're on our list. I don't think he referred to any other documents.

MR. SEITZ: Could I just suggest that Mr. Polhemus -- Polhemus, I'm sorry, it's almost like my name -- that he said he was testifying from a file.

Darrin, how large is that file?

MR. POLHEMUS: Well, the Los Osos file runs into thousands of pages.

MR. SEITZ: No, but the file that you
have in front of you right -- is that the
thousands of pages?

MR. POLHEMUS: Well, it's our
correspondence file, so it's certainly not a
thousand, but probably on the order of several
hundred.

MR. SEITZ: Okay, I think we don't need
it. Thank you.

CHAIRPERSON YOUNG: Okay, thank you.

All right, do we want to have Mr. Polhemus just
listen to this on the internet and await a phone
call so he's not online? Is that how we should
proceed? Mr. Onstot?

MR. ONSTOT: He can go home as far as
we're concerned.

CHAIRPERSON YOUNG: All right, great.

Thank you, Darrin.

MR. POLHEMUS: You're welcome.

CHAIRPERSON YOUNG: All right. Okay,

Mr. Seitz.

MR. SEITZ: Before we move forward I'm
curious, how much time do we have left?

CHAIRPERSON YOUNG: Okay, 71 minutes.

MR. SEITZ: Can I just kibitz with

my --
MR. SEITZ: Yes, we would want to call Mr. Briggs.

MR. BRIGGS: Present.

MR. SEITZ: Let me just say this. Before we start my time, I hope, we had this issue about the prosecution team responding to questions. I don't know if you recall how that went the first day?

CHAIRPERSON YOUNG: I do.

MR. SEITZ: So I really can't say that -- I think Mr. Briggs can testify to all the questions I'm going to answer, but it could be possible that another member of the prosecution team will be responding. I just want to bring it to the Chair's attention.

CHAIRPERSON YOUNG: That's fine, I don't have a problem with that.

MR. SEITZ: So it may not be important that Mr. Briggs go up to the podium, because I don't want to waste my time --

CHAIRPERSON YOUNG: Fine.
MR. SEITZ: -- watching people switch.

CHAIRPERSON YOUNG: Okay. You got it, go.

Whereupon, ROGER BRIGGS was recalled as a witness herein, and having been previously duly sworn, was examined and testified further as follows:

MR. ONSTOT: Push the button. We'll start.

MR. BRIGGS: Okay, good.

DIRECT EXAMINATION

MR. ONSTOT: Mr. Briggs, at what point did you first consider drafting an ACL complaint against the CSD?

MR. BRIGGS: Probably several years ago.

MR. ONSTOT: Can you be more specific?

MR. BRIGGS: Well, we've prepared reports for the Board on the status of the Los Osos project on several occasions. There were a couple of reports that specifically focused on potential enforcement actions.

And so in developing those reports we considered administrative civil liabilities as one of the options.
MR. ONSTOT: And, again, the question was when. Can you at least narrow it down to a year?

MR. BRIGGS: Well, we had a July 2004 report, and I believe we had one a couple years prior to that. So, maybe we're talking about four years ago.

MR. ONSTOT: 2002?

MR. BRIGGS: Yeah, and perhaps earlier than that. That's my recollection.

MR. ONSTOT: Well, this ACL complaint basically starts the days of violation, clock ticking in 2002, right?

MR. BRIGGS: I believe that's correct as far as the first date of missed milestone.

MR. ONSTOT: So did you consider an ACL complaint against the CSD prior to that date?

MR. BRIGGS: Well, I might have if we prepared, as I said, prepared enforcement action possibilities for the Board specially. I don't recall the earlier dates specifically prior to the July 2004 report.

MR. ONSTOT: Okay, so sometime between 2000-something and now you or your staff drafted an ACL complaint, is that correct?
MR. BRIGGS: That's true.

MR. ONSTOT: When did you -- strike that. Did you actually put the pen to paper in drafting the ACL complaint that's at issue here?

MR. BRIGGS: Did I actually draft it?

MR. ONSTOT: Yes.

MR. BRIGGS: No.

MR. ONSTOT: Who did?

MR. BRIGGS: Sorrel Marks.

MR. ONSTOT: At your direction?

MR. BRIGGS: Yes.

MR. ONSTOT: And when was that?

MR. BRIGGS: I believe that was the Monday, might have been Tuesday, that the District noticed the agenda item for terminating the contract, for stopping work on the construction I should say.

MR. ONSTOT: So you directed Ms. Marks to prepare the ACL complaint supposedly for your review when the notice of termination, or the Board decided to terminate the work for the sewer project?

MR. BRIGGS: Yeah, they indicated by way of their agenda notice that that was apparently their intention.
MR. ONSTOT: So was it when you saw the agenda notice that you directed Ms. Marks to prepare the ACL complaint?

MR. BRIGGS: When I saw the agenda notice; I believe that's correct.

MR. ONSTOT: Do you recall the date?

MR. BRIGGS: I think I just gave it.

MR. ONSTOT: Well, you said the Monday or Tuesday, but -- if you don't recall that date, that's fine, but you don't remember the date?

MR. BRIGGS: Might have been October 1st of 2005, whatever that -- I think it was a Monday.

MR. ONSTOT: Okay. And why did you ask Ms. Marks to draft the ACL complaint?

MR. BRIGGS: Because we had told the District numerous times that that's what we would do if they decided to delay the project. And it looks like that was what they decided to do. So, we're following through with what we told the District we would do.

MR. ONSTOT: And why was an ACL complaint not drafted prior to the September 27, 2005 election, even though according to your allegations the CSD was in severe multi-million-dollar civil penalty liability posture?
MR. BRIGGS: Right. And that was exactly the kind of discussion we had in that July 2005 report to the Board. And we concluded that the District was, as far as we were concerned, the District was proceeding as quickly as they could proceed with the approved project. And we were glad to see that. That was an effort towards complying.

And we didn't see at that time that issuing penalties would further that solution.

MR. ONSTOT: And during that timeframe I believe you testified either on December 1st or December 2nd, that there was requests made to modify the time schedule order, is that correct?

MR. BRIGGS: Correct.

MR. ONSTOT: To make it more realistic?

MR. BRIGGS: That was part of the reason for request.

MR. ONSTOT: And --

MR. BRIGGS: Well, I should say, in the eyes of the requestor.

MR. ONSTOT: Which was the District, right?

MR. BRIGGS: There were other parties who requested it, as well.
MR. ONSTOT: Well, the District was one of them, correct?

MR. BRIGGS: Right.

MR. ONSTOT: And you didn't want to propose to this Board a modified time schedule order that would be more realistic, did you?

MR. BRIGGS: That would be more realistic?

MR. ONSTOT: Correct.

MS. OKUN: That misstates his testimony.

MR. ONSTOT: Okay, I'll back up. Mr. Briggs, you just said that the CSD proposed to amend the time schedule order, is that correct?

MR. BRIGGS: Right.

MR. ONSTOT: And the purpose for that requested amendment was to make it more realistic, correct?

MR. BRIGGS: I said the requestor, in the requestor's view, that was one of the reasons.

MR. ONSTOT: Okay. And you were against that amendment, or an amendment to the time schedule order, is that true?

MR. BRIGGS: Correct.

MR. ONSTOT: And the reason that you were against it is because if there was an
election that would change the direction of the
sewer project you would have ample grounds to
recommend the Board assess increased penalties
based on a per-day violation, is that correct?

MR. BRIGGS: There were a couple reasons
for not recommending a change in the time schedule
order. One is that there was an ongoing liability
under the time schedule order. And I had
indicated to the District on numerous occasions
that we would recommend enforcement and basically
calling in those liabilities if there were delays
that were within the control of the District.

Another reason is -- that was one
reason. Another reason was that, as I said, there
was more than one rationale for the requests that
we were receiving. One of the reasons was that
some folks wanted to go out and evaluate
alternatives some more, and take more time to do
that.

And it was my feeling, and I believe I
stated this to the District Board directly at the
January 2005 District Board meeting, that that
would -- if I were to agree to that, that would
seem to me to be a form of encouraging additional
alternatives evaluation. And that was definitely
not appropriate.

MR. ONSTOT: Do you know anybody named Pandora Nash-Karner?

MR. BRIGGS: Yes.

MR. ONSTOT: Have you had communications with -- strike that. Who is Pandora Nash-Karner?

MR. BRIGGS: She's an original District Board Member, I believe.

MR. ONSTOT: Have you had discussions with her either in person or correspondence within the last six months --

MR. BRIGGS: Yes.

MR. ONSTOT: -- regarding enforcement action that you would recommend to this Board with Ms. Nash-Karner?

MR. BRIGGS: Yes.

MR. ONSTOT: Do you know anybody named Director LeGros, previous Director of the CSD?

MR. BRIGGS: Yes.

MR. ONSTOT: Did you have any discussions or correspondence with him regarding enforcement action that you would propose to this Board?

MR. BRIGGS: Regarding enforcement action I would propose? Yes.
MR. ONSTOT: Yes. Did you make any
statements to Director LeGros that your
recommendation would be to fine the District into
bankruptcy?

MR. BRIGGS: No.

MR. ONSTOT: At any time, in particular
July of -- excuse me, July of 2005?

MR. BRIGGS: No, not that I recall. I
don't --

MR. ONSTOT: At any time --

MR. BRIGGS: -- think I said that to
anybody.

MR. ONSTOT: At any time did you make
any statements to Pandora Nash-Karner that you
were preparing an ACL complaint so that the
District would know what they're stepping into if
they choose the wrong direction with regards to
Tri-W?

MR. BRIGGS: Yes, I told perhaps
hundreds of people that I was receiving hundreds
of emails, phone calls, including from reporters.
And I said essentially the same thing to all of
them. I wanted the District to know that, in
fact, I said in my transmittal letter of the ACL,
that we hoped the District would see that they
needed to proceed with the approved project, and this would be incentive to do so.

MR. ONSTOT: Well, what prompted the drafting of the ACL was basically the voters exercising their rights in an election, is that correct?

MR. BRIGGS: No. It was the District's proposed action.

MR. ONSTOT: What proposed action?

MR. BRIGGS: In their agenda they agendized termination of the project -- pardon me, cessation of work on the construction contracts.

MR. ONSTOT: At anytime, Mr. Briggs, did you make the statement to anybody that the reason you wanted to bring this enforcement action at this time, namely after the election, was to pressure the current Board into backing off and building at the Tri-W site?

MR. BRIGGS: I think part of the reason for the enforcement action is incentive for the District to proceed to comply with the discharge prohibition. And I think we've been extremely clear that we think the way to do that is with the approved project.

MR. ONSTOT: Okay. Now, you have
submitted declarations, and in fact, been deposed by one of my partners with regards to your view that the Board is mandating that Tri-W be built. Do you recall that?

MR. BRIGGS: We're not mandating that the Tri-W project be built. It was up to the District to decide what project was necessary to solve the water quality problems. And so it's the District's proposed project.

MR. ONSTOT: So is it your testimony now that you did not say in a deposition or in a declaration that was submitted to a court in San Luis Obispo that the Water Board was mandating construction of the sewage treatment plant at Tri-W?

MR. BRIGGS: I think I just answered that.

MR. ONSTOT: Oh, I'm sorry, then I missed it. Can you answer it again, please?

MR. BRIGGS: Right. We don't mandate the method of compliance. The time schedule order ordered the District to complete the milestones for the project that it proposed --

MR. ONSTOT: No, I understand --

MR. BRIGGS: -- as the solution.
MR. ONSTOT:  I'm sorry, Mr. Briggs, I understand that. My question was is it your testimony here today that you did not say either in a deposition or in a sworn declaration, both that were before the Superior Court in San Luis Obispo, that the Water Board was mandating construction of a sewage treatment plant at Tri-W?

MR. BRIGGS:  I think my testimony was along the lines of the way I just answered the question twice.

MR. ONSTOT:  So your answer is no?

MR. BRIGGS:  I'll stand by the answers that I just gave.

MR. ONSTOT:  Is it your understanding that Ms. Okun was also deposed and gave a declaration regarding the Water Board's interest in having a sewage treatment plant built at Tri-W?

MS. OKUN:  Objection, that's hearsay. And the deposition transcript is in the record.

MR. BRIGGS:  Would it help to refer to the specific statement that you're referencing?

CHAIRPERSON YOUNG:  I think it would be helpful. Mr. Onstot, let me stop the clock. If you have some specific testimony that you want to examine them on and --
MR. ONSTOT: No, Your Honor. Your
Honor, I'm not seeking to introduce the deposition
testimony or the declaration testimony now. The
court records of that case are in.

I can ask Mr. Briggs without referencing
the deposition transcript what his testimony was,
or what Ms. Okun's was. So I'm not referring to
anything. If he doesn't know, he can say he
doesn't know.

CHAIRPERSON YOUNG: Okay. I'm just
suggesting it would facilitate things that if you
do have testimony that they made outside this
hearing that you would like to hold their feet to
the fire on, --

MR. ONSTOT: I understand that.

CHAIRPERSON YOUNG: -- it would be much
simpler just to pull it out. And then you can get
them to either, you know, agree to it or not.

But I'll let you go --

MR. ONSTOT: I understand.

CHAIRPERSON YOUNG: -- the way you want.

I'm just trying to expedite you getting to where I
think you want to do with this.

I understand. But an objection was
raised, and that's why I interjected this. So,
MR. ONSTOT: Mr. Briggs, did you review Ms. Okun's deposition testimony?

MR. BRIGGS: Her deposition testimony in which instance?

MR. ONSTOT: In the District v. Rodawald (phonetic) suit, the one that you were deposed in; the one that you gave a declaration on Tri-W, and the one that Ms. Okun was deposed in, and the one that Ms. Okun gave a declaration in. That lawsuit.

Did you review the transcript of Ms. Okun's (sic) deposition testimony?

MR. BRIGGS: It's Okun, and --

MR. ONSTOT: I'm sorry.

MR. BRIGGS: -- I believe I did.

MR. ONSTOT: And did you review the declaration that Ms. Okun submitted in that case?

MR. BRIGGS: I believe I did.

MR. ONSTOT: And did you, when you reviewed it did you agree with what Ms. Okun said in both of those documents?

MR. BRIGGS: As I recall, I did.

MR. ONSTOT: Mr. Briggs, I'm going to show you an email that you had sent to Pandora

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Nash-Karner. It's part of the record but I don't have a document number.

If you have it in front of you, it's 119.

MS. OKUN: He doesn't have that in front of him.

MR. ONSTOT: As you look at that, Mr. Briggs, the date of that email is September 28th, the day after the election of 2005, is that correct?

MR. BRIGGS: That's what it says here.

MR. ONSTOT: And it's a short email.

Can you go ahead and read it into the record, please?

MR. BRIGGS: We're just wrapping up the October agenda right now, and legally required lead times for hearing may not reasonably allow it. But I've already received and reviewed a draft ACL complaint, so we're rolling. I'm shooting for getting an ACL to the District next week even before the new Board can meet. I want them to understand what they will be stepping into before they vote on the motion to delay.

MR. ONSTOT: Now, a few minutes ago you testified that you only instructed Ms. Sorrel to
draft that ACL complaint after the agenda item
came out for termination of the work regarding the
sewer treatment plant. And this email contradicts
that testimony, would you agree with that?

MR. BRIGGS: I don't know if it does or
not because I wasn't sure of the dates, as I said
earlier.

MR. ONSTOT: Well, --

MR. BRIGGS: This is 9/28, if that date
is accurate.

MR. ONSTOT: Which is the day after the
election. And according to that email you had a
draft ACL complaint on your desk, is that correct?

MR. BRIGGS: According to this it says
that we do have a draft ACL.

MR. ONSTOT: And do you recall the date
that the election was certified and the new Board
Members sworn in?

MR. BRIGGS: No, I don't.

MR. ONSTOT: Would it refresh your
recollection if I told you that it was September
29th or 30th?

MR. BRIGGS: Not necessarily.

MR. ONSTOT: Okay. Nothing further.

CHAIRPERSON YOUNG: Okay. Hold on.
Okay, Ms. Okun, follow-up questions?

CROSS-EXAMINATION

MS. OKUN: Mr. Onstot asked you a question that the clock started in 2002, and I think you agreed with that. That clock was for the violations of the time schedule order, correct?

MR. BRIGGS: That's right.

MS. OKUN: When did the clock start for the violations of the basin plan prohibition?

MR. BRIGGS: Well, the basin plan prohibition was in 1983 and was effective in 1988. So, the violations, I suppose it would be accurate to say that the clock started ticking on those violations in 1988.

MS. OKUN: But as to the District, did the clock start ticking only after the District was formed?

MR. BRIGGS: Right, because if it didn't exist then it couldn't have applied. And that was '98 or '99.

MS. OKUN: Regardless of the date that the complaint was drafted, had the project continued, the Tri-W project, would you have issued the complaint?
MR. BRIGGS: No.

MS. OKUN: Prior to the election were you concerned that if either Measure B passed or the recall passed that the District would stop construction of the Tri-W project?

MR. BRIGGS: Yes, they had essentially promised that. I say they, being the two sitting Board Members who were not subject to recall, and then the three Board Members who were running to replace the recalled Board Members.

MS. OKUN: Did the recalled Board Members also express any concerns to you that if the recall passed the new Board would try to stop the project?

MR. BRIGGS: Well, I believe they did. I'm not sure I could give you any instance of that.

MS. OKUN: So as soon as the election occurred were you already concerned that, based on what you already knew, the project was going to stop?

MR. BRIGGS: Yes.

MS. OKUN: Regarding mandating building at Tri-W, who selected the Tri-W site?

MR. BRIGGS: The Community Services
District.

MS. OKUN: And the time schedule order included milestones for completing the project based on the District having selected the Tri-W site, correct?

MR. BRIGGS: That's correct.

MS. OKUN: At the time that your deposition was taken in July 2005 of this year, was there any other project on the table or any other alternative that could have allowed the District to even come close to not catching up with the time schedule, which was impossible, but in any way achieving any kind of compliance with the time schedule to complete a treatment plant?

MR. BRIGGS: No.

MS. OKUN: So although the Regional Board never told the District, you must build Tri-W, was there any other way to comply with Regional Board orders other than building Tri-W?

MR. BRIGGS: That was the only practical solution that we saw.

MS. OKUN: Is that what you testified to?

MR. BRIGGS: I believe --

MS. OKUN: And if you don't recall just
say you don't recall.

MR. BRIGGS: Right. I think the main issue I was having is that we didn't say to the District that originally you have to build at Tri-W. Once the District selected the Tri-W site, then that became the only practical solution.

MS. OKUN: Thank you, I have nothing further.

CHAIRPERSON YOUNG: Any follow-up questions for Mr. Briggs?

MR. SEITZ: Just two quick ones.

REDIRECT EXAMINATION

MR. SEITZ: What event in 2002 are you predicing the District being in default of 00-131? What specific failure?

MS. OKUN: I have a copy of the complaint if it would help you to look at that.

MR. BRIGGS: Yeah, I think it would help. I think it was design completion, but I'm not sure about that.

(Pause.)

MR. BRIGGS: I guess I was right. After design completion it was commence construction was the milestone that we had for September 6, 2002.

MR. SEITZ: December?
MR. BRIGGS: September 6.

MR. SEITZ: Mr. Briggs, could the District construct the wastewater treatment project without a waste discharge permit?

MR. BRIGGS: Yes.

MR. SEITZ: They could construct a project without the District having a waste discharge permit from the Regional Water Quality Control Board?

MR. BRIGGS: They would not be able to discharge from the facility without the -- well, I mean they could, but they would be in violation if they discharged with requirements.

MR. SEITZ: And could the District receive an SRF loan without a waste discharge permit?

MR. BRIGGS: I don't know.

MR. SEITZ: Thank you.

MR. ONSTOT: Nothing further.

CHAIRPERSON YOUNG: Okay.

RECROSS-EXAMINATION

MS. OKUN: Mr. Briggs, do you know when the District applied for the waste discharge requirements?

MR. BRIGGS: No.
MS. OKUN: I have nothing further.

CHAIRPERSON YOUNG: That was it, okay.

Any other witnesses? Let's see, Ms. Okun, you've already rested your presentation of evidence.

Mr. Onstot, Mr. Seitz, Mr. McClendon?

MR. ONSTOT: Nothing further.

CHAIRPERSON YOUNG: Okay. So I think where we are at is the close now of testimony.

And we can proceed to closing arguments.

MS. OKUN: Actually I think we still have some document issues, both the documents that Mr. Thomas is looking at, and the additional documents that are on our list.

CHAIRPERSON YOUNG: True. Okay. Well, the diary we've kind of put aside, at least for the moment. I think maybe pending our review of what Mr. Thomas comes up with, we can see whether we need to get into the diary or not.

MS. SCHAFFNER: Perhaps we could, while we wait for Mr. Thomas to finish with the box of documents he's with, we could hear back from the prosecution team on their review of the index during the break.

CHAIRPERSON YOUNG: Okay. Why don't we do that.
MS. OKUN: I do have a list of documents that are not on the list. Some of them were provided at the last hearing, and some of them weren't.

There are some documents that the District submitted regarding requests for reconsideration to the Coastal Commission of the coastal development permit. And in our revised list I included a few responses from the District. And I believe I referenced one Coastal Commission Staff report. There may have been other Coastal Commission Staff reports or decision documents that are in our record that aren't on the list. I didn't have time to go through the record, but if there are any other Coastal Commission documents that fit that description I would add those to the list.

The court's decision in the CalCities case, we have the CalCities record, but not the court's decision, which wouldn't be part of the administrative record.

There is a letter or a memorandum from the CSD to the State Water Board dated 10/31/05. I questioned Ms. Schicker about that at the last hearing. Attached to that was an October 30, '05
motion that I think was signed on October 31, '05. I don't think that that's on our list. But it was discussed and I think we may have passed out copies of it.

There were various letters from the District to the contractors regarding stopping work and resuming work. Some of those are on our list but I don't think all of them are. I did question Mr. Moore about those, and those are referenced in his testimony and my questions by date.

There are also three letters from Monterey Mechanical to Montgomery, Watson Harza that were part of his testimony that were distributed to the Board that aren't on our list.

There's a video of the November 16, 2005 State Board meeting. The District actually included on their list of documents a video and transcript of that meeting. And we didn't have a transcript, so I objected to the reference to the transcript. But the video we do have. I don't know if we have a copy or it was accessed electronically, but that should be in the record.

And it's kind of unclear from the document list because the description of video and
transcript video isn't red, but everything else is. So the video actually is in the record, but not the transcript because it doesn't exist. That's on the District's list.

And then while I have the floor I also have a statement to make. It doesn't relate to documents, but I do have something I'd like to tell the Board.

On about December 21, 2005, the Attorney General filed a lawsuit on behalf of the Regional Board against the District, contesting Measure B, seeking to invalidate Measure B.

MS. SCHAFFNER: I'm sorry, when you say Board, you mean the CSD Board?

MS. OKUN: No, the Regional Board.

MS. SCHAFFNER: Oh, okay, the Attorney General --

MS. OKUN: The Central Coast Regional Board.

Mr. Briggs has delegated authority from this Board under Water Code section 13223 and a 1990 resolution to exercise all of the powers of the Regional Board. So pursuant to that delegated authority he directed me to work with the AG's Office to file that lawsuit.
I just want to state for the record that the Board, itself, the Board Members, did not direct the filing of that lawsuit. And unless you found out about it some other way, until right now, the Board didn't know about it.

So, for the benefit of the public, I don't think that the validity or invalidity of Measure B needs to be a part of this proceeding, or the Board needs to consider that. But I was concerned that there would be an allegation that this board was biased because it was suing the District while it was considering this action.

But I would like to make it clear to the District and to the public that the Board Members, themselves, who are hearing this action did not direct the filing of that lawsuit. There was no closed session directing the filing of that lawsuit. And there won't be any discussions with me about it until after a final order is issued in this matter.

CHAIRPERSON YOUNG: When was that done?

MS. OKUN: When was it filed?

CHAIRPERSON YOUNG: Yeah.

MS. OKUN: It was dated December 20th; I think it was probably filed the 21st. And the
District is aware of it.

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: Just to --

MS. OKUN: There was a notice of -- I

heard someone saying, no, we're not. There was a

notice of related case -- or a related case notice

that was filed by the AG because the Taxpayer

Watch litigation challenging Measure B had a

hearing on December 30th. And I believe before

that hearing the AG filed the related case notice

and served a copy of the related case notice on

Mr. Onstot on behalf of the District.

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: Just to clarify from the

Board's perspective, that was the testimony of the

prosecution staff, and certainly news to me as

counsel. I didn't -- have no prior knowledge of

this lawsuit until just now, myself.

Could you speak to this for the record,
as well, Mr. Young. Did you participate in the --

CHAIRPERSON YOUNG: No, I did not

participate at all in the discussions or

preparation of any litigation against the

District. This is the first time I've learned

about it.
MS. SCHAFFNER: Just wanted to confirm that.

CHAIRPERSON YOUNG: And, in fact, I have not had discussions really with anyone other than yourself or Mr. Thomas regarding Los Osos at all, anything related to Los Osos.

MS. OKUN: And I do have a copy of the complaint and the related case notice, but I would prefer not to give it to the Board until this matter is concluded.

MS. SCHAFFNER: I would appreciate that if you would not. Keep the record clean.

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: Oh, and --

CHAIRPERSON YOUNG: Back to the documents.

MS. SCHAFFNER: Yeah.

CHAIRPERSON YOUNG: So these documents that you just have gone through, Ms. Okun, these are documents that were not part of the record? That the District had asked --

MS. OKUN: They are part of the record, they weren't part of the list.

CHAIRPERSON YOUNG: I see.

MS. OKUN: Some of them may be on the
list, but I didn't see them when I was looking at
the list.

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: I think the concept
here, Mr. Chairman, is to take the general
reference in the prior index to all the files of
the staff, which seemed an awfully broad referent
for such a formal proceeding, we're trying to
narrow that to the specific documents that are
truly germane to this ACL, instead of the entire
20-year history of this matter, which could
probably fill up at least one bookshelf, if not --
I mean one entire wall of bookshelves, if not a
room.

So if the District is comfortable with
that, we could go either way. Either the entire
file, or we could go with the more narrow list if
everybody's amenable with that.

MR. SEITZ: It was my understanding from
right before we left for lunch that the CalCities
administrative record --

MS. SCHAFFNER: Yes.

MR. SEITZ: -- was going to be in; the
District's documents that weren't rejected --

MS. SCHAFFNER: Right.
MR. SEITZ: -- on the list were going to be in. And then just those documents that Ms. Okun has just testified to were going to be in the -- I don't want to summarize because I know I'll miss, it's like, you know, listing all your friends, you're going to miss some, the documents that the District produced that are being tagged by Mr. Thomas right now.

I don't know if there's any other ones, but that's sort of a summation of my understanding.

CHAIRPERSON YOUNG: And, Ms. Okun, those documents that you just enumerated, you don't have an objection to those being included --

MS. SCHAFFNER: Those are her records.

CHAIRPERSON YOUNG: -- for the record --

MS. OKUN: Yeah, those are -- I'm sorry, I think I missed Mr. Seitz' point.

MR. SEITZ: Well, what I was trying to ferret out is that the entire Board's file on this matter isn't going to be part of the administrative record.

MS. SCHAFFNER: We're trying to narrow that down --

MR. SEITZ: Right.
MS. SCHAFFNER: -- for everybody's sake.

It had been up to this point. And we're wondering
if you are amenable to narrowing it to the
specified documents that Ms. Okun just listed, or
you'd rather have the whole file.

MS. OKUN: And the ones that are already
on the list.

MS. SCHAFFNER: And the ones that are
already on the list. That's fine.

MR. SEITZ: I think we're fine with
that.

MS. SCHAFFNER: With which?

CHAIRPERSON YOUNG: With what?

(Laughter.)

MR. SEITZ: With your statement, that it
be the CalCities administrative record, the
documents that have been summarized. I would also
interject that I know that I have a PowerPoint for
closing. I think Ms. Okun --

MS. SCHAFFNER: Of course.

MR. SEITZ: -- if I read tea leaves
correctly, has a PowerPoint --

MS. SCHAFFNER: Of course.

MR. SEITZ: -- for closing. That those
documents be in the administrative record. And I
understand from Ms. Okun's testimony that those
documents and Mr. Polhemus testified to, are
already in the administrative record.

MS. OKUN: Right.

MS. SCHAFFNER: Okay, so --

MS. OKUN: And, again, for the record,
I'm not providing testimony, I'm not a witness in
this matter.

In addition, there are various briefs
that the parties have filed. There's the staff
report, the agenda notice, the emails back and
forth among all the parties. I've been sending
those to staff to print and put in the files, and
those are all part of the record. They're not
listed anywhere.

MS. SCHAFFNER: Right. I think those
were mentioned earlier in the day when I noted all
the submittals in connection with the hearing were
also part of the record.

So it sounds like we're all in agreement
and there are no outstanding, unaddressed
objections.

CHAIRPERSON YOUNG: Okay. Now that we
have resolved that, everything is crystal clear.

MS. SCHAFFNER: Except, of course, the
diary.

CHAIRPERSON YOUNG: What's that?

MS. SCHAFFNER: Except, of course, the diary. And the --

CHAIRPERSON YOUNG: Well, I --

MS. SCHAFFNER: We'll come back to that later.

CHAIRPERSON YOUNG: -- think where we're at, at this point, is to see where Michael is with his review of those documents. And then we would go into closing arguments, okay.

And so I would like to break for a few minutes just to give the lawyers time to kind of collect things and put their notes together.

MS. OKUN: And your initial order of hearing on the first day was that the District would give the first closing argument. Is that still the case?

MR. SEITZ: No. We defer. We want to hear -- your prosecution team has the burden here. We would love to hear their closing argument first.

(Pause.)

MS. SCHAFFNER: I would point out that the one with the burden does normally go first.
And normally, they also get the last word in customary settings.

So you could let them do their closing statement first, and then do the rebuttal last, or vice versa. It's totally up to the Chair, though. It is a procedural matter within his discretion.

CHAIRPERSON YOUNG: I would prefer that the staff goes first. I just think that's kind of appropriate because, you know, you are the one bringing the complaint and prosecuting it. And you do have the burden to convince the Board of the validity of your recommendations.

Let the District go second, which is, I think, more customary in defending something. And then you would be given some rebuttal time.

MS. OKUN: Okay.

CHAIRPERSON YOUNG: That's usually the way these things go, so why don't we stick to that normal course.

MR. ONSTOT: Mr. Chair, I have no problem with that as long as what, again, is the normal course of procedure is that the rebuttal is not a sandbag opportunity to put forth anything further.

CHAIRPERSON YOUNG: Well, the rebuttal
is going to be limited --

MR. ONSTOT: To rebutting --

CHAIRPERSON YOUNG: -- rebuttal of --

MR. ONSTOT: -- as to what we put on.

CHAIRPERSON YOUNG: Exactly.

MR. ONSTOT: Okay. That's fine.

CHAIRPERSON YOUNG: That's right. And if I miss something, you just bring it to my attention, so we can address it at that point in time.

MR. ONSTOT: Can I ask what our time balance is?

CHAIRPERSON YOUNG: Yeah, your time is 52.5 minutes. The prosecution staff has three and a half hours, something like that. So, I think that's kind of not too important at this point. So, we're going to break. Let's say, you know, optimistically ten minutes. I mean, Mr. Seitz, Mr. Onstot, how much time do you want for collecting yourselves for closing? And I'd ask Ms. Okun the same question.

MR. SEITZ: I'm about as collected as I'm going to get.

CHAIRPERSON YOUNG: Okay.

MR. ONSTOT: Ten minutes is fine.
CHAIRPERSON YOUNG: Okay.

MS. OKUN: Ditto.

CHAIRPERSON YOUNG: So you guys are ready. All right, then let's maybe make it ten minutes, and let's just find Michael Thomas.

(Brief recess.)

CHAIRPERSON YOUNG: While we're waiting we can resume. I think Mr. Thomas is going to come back in. Sheryl, is Michael coming in?

MS. SCHAFFNER: Yes.

CHAIRPERSON YOUNG: Yeah, okay. And while we're waiting for Mr. Thomas, right after we deal with the issue of the documents and Mr. Thomas' review of them, we'll go to public forum just to dispense with that.

I have three speaker cards; and if there's anyone else in the public that wants to address the Board on any item not involving this Los Osos ACL, you can get a speaker card and speak to us for three minutes.

I noticed here that Mr. Racano -- are you still here?

UNIDENTIFIED SPEAKER: He was outside a minute ago.

CHAIRPERSON YOUNG: Okay. And Marla Jo
Bruton had put on here Los Osos fines. That was
going to be their topic. And then when they were
told that they are not going to be able to address
this in public forum about this, they then
scratched out Los Osos fines. I'd like to know
what they want to address us on. So.

Okay, we're all here. All right, so,
Mr. Thomas, I did review or speak with Mr. Thomas
about his document review. And he told me that he
went through a representative sample. He could
not go through everything that was in that box.
But he went through a representative sample
looking for those documents responsive to the
subpoena.

And based on what he has shared with me
there's really nothing in there in terms of new
evidence that is not also in the record elsewhere,
either in other documents or in testimony by
witnesses. Is that correct, Michael?

MR. THOMAS: That's correct, yes.

CHAIRPERSON YOUNG: Okay, so based on
that, I'm not going to have him review any more
documents. And for the sake of brevity, we will
dispose of our issue with Mr. Bleskey's personal
journal diary, although I'm sure, Mr. Bleskey,
there are some things in there that would be very
interesting to us. We'll just leave that for
another point in time. And so that'll dispense
with that.

Okay, so there will be no documents put
into the record that came from the box Mr. Onstot
gave me. We did flag a few to discuss, but there
was nothing new about that. And we're going to
leave those out of the record. Okay?

All right.

MR. SEITZ: And, Mr. Chair, --

CHAIRPERSON YOUNG: Yes.

MR. SEITZ: -- I assume at the end of
this hearing we'll get the box back?

CHAIRPERSON YOUNG: Yes, in fact, --

MR. THOMAS: The box is in the file
review area where I was --

CHAIRPERSON YOUNG: And you'll get it
back.

MS. SCHAFFNER: Yeah, one thing I wanted
to note was I noted that they were all copies, not
originals. And that they were still warm, fresh
off the copier. I just wanted to thank you folks
for jumping on that so fast and making the
duplication happen. And they're all just as you
brought them, still in the same file folders.

CHAIRPERSON YOUNG: Okay. All right, let's do this. We'll go to public forum. Mr. Perlman. Yeah, Mr. Jeffries?

(Pause.)

CHAIRPERSON YOUNG: Okay. Mr. Perlman, you're going to talk to us about something other than the Los Osos Administrative Civil Liability, right?

MR. PERLMAN: I hoped to.

CHAIRPERSON YOUNG: Okay, go ahead.

You've got three minutes.

MR. PERLMAN: Yeah. One of my first questions, assuming that I was the first one, was can I say California, can I say Los Osos, can I say Baywood?

I asked for no interruptions and I ask for questions directed to me after I finish, that if you wish to ask me questions after my time has elapsed, please allow me to give a complete answer, as opposed to a yes or no question. Because I've had that experience previously, and I think it's a misuse of public time to have a member of the public challenged on something that is said without them being allowed to rebut.
I notice that Cambria recently has elected to maintain its CSD, to remain unincorporated. And that's something that happened after the last meeting in this building. Is someone who lives in San Luis Obispo came up and expressed how interested he was in what we were doing with the sewer and how the CSD is really the last bastion of democracy. It's of direct democracy that's accessible to the people.

And I think that was a very valuable comment. It gave me some perspective as to the value. I really hope that, without going into what might possibly happen to this CSD, I really hope that nothing bad happens. This is a CSD elected by the people and for purposes that are obviously good.

Obviously one thing that I should be able to talk about is the CSD is committed to clean water and sufficient sustainable water in this area.

And I do appreciate this time. To some extent, I would like to bring up Lori Okun's comments, which took place at the State Water Board. She did mention that engineers -- this is to do with the State Water Board testimony and not
with the Regional Board -- but she did state that the engineers, and I don't know where those engineers -- which one of the boards they represented, she stated those engineers stated that it would take five to ten years to restart the sewer. And she said that one of the engineers said they would never be done in their opinion.

I wanted to comment that I believe while five and ten years are acceptable timeframes, possibly, and that's debatable, never, I don't believe, is a timeframe that's taught in any engineering school. That would have had to have been a political statement.

CHAIRPERSON YOUNG: Okay, can you wrap it up? It's three minutes. And I didn't reverse the clock, because I wanted to keep it going from zero to three, and that's why you're not seeing the lights flash.

MR. PERLMAN: Oh, I appreciate it.

CHAIRPERSON YOUNG: So you had three minutes, but I'll give you another few seconds just to wrap it up.

MR. PERLMAN: All right. It's just simply to say then that the physical realities of the CSD boundaries, one other thing Lori
mentioned, that the CSD cannot attempt to enlarge
its area of influence.

However, molecules of salt water, ions
of salt water or nitrate molecules do not respect
these artificial boundaries. They do migrate from
areas such as Cabrillo Estates. And I hope that
scientific and real measurements are used in
future deliberations.

Thank you.

CHAIRPERSON YOUNG: Thank you for your
comments.

BOARD MEMBER PRESS: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER PRESS: The public comment
period on this item was closed after the last
hearing. Maybe you would like to remind the
public that you are serious about that, and that
you would appreciate it if they don't go around
your proscription of that point, so that we can
get through this, and listen to closing arguments.

CHAIRPERSON YOUNG: Thank you. I agree
with Dr. Press. Please keep your comments to not
the agenda item before us with Los Osos.

Joey Racano.

MR. RACANO: Honorable Board Members,
Staff, Friends, friends at home, Joey Racano, the Ocean Outfall Group.

I thank you for all your effort here today on all sides of this issue. I think we all have one thing in common and that is the pursuit of a clean healthy water environment for our coast.

I'd like to take a moment to thank Ellen Stern-Harris for a lifetime of giving and the coast is better for it. I think we all feel that way.

As you may know, recently at the State Board level there was a precedent set. I spoke about it before. It's the WWWDR, the watershed-wide waste discharge requirement. And what it means is we are now required and expected to take entire watersheds into consideration when we formulate our plans for our water cycle.

In this particular case I've come to the central coast and taken a look, and there are fundamental problems, but there's a lot of possibility here.

Los Osos, Morro Bay and Cayucas all need the same thing at the same time. To me it is the height of lunacy to pursue these projects
separately. And it seems to me that the only thing that's keeping it from happening is that there is a climate of uncertainty. I think it's time for us to put the uncertainty behind us. I think that the best interests of water quality are served when we work together. I think it's pretty obvious that President Schicker and her Board want the best thing. I think you guys want the best thing, and ladies. I know I want the best thing.

Now, I'm hoping that what we can do is we can come together in a spirit of cooperation --

CHAIRPERSON YOUNG: Mr. Racano, you're getting into the ACL merits and what we're here today to vote on.

MR. RACANO: Yes, sir.

CHAIRPERSON YOUNG: So, keep --

MR. RACANO: Okay, let me get away from that, then.

CHAIRPERSON YOUNG: -- Ms. Shicker out of it and --

MR. RACANO: Yes, yes, Mr. Young.

CHAIRPERSON YOUNG: -- Ms. Tacker out of it, the CSD.

MR. RACANO: Yes, sir, let me continue
on a different tangent. I have -- I'm in the
process of creating what I call an ensemble. My
ensemble is a group of progressive elected
officials from the central coast, you'd recognize
their names, and environmental activists from the
central coast.

And what we're going to do is we're

going to be getting together and discussing

progressive issues as pertain to the water cycle

of the Morro Bay Estuary watershed.

I hope that you will pay attention to
the ideas behind these things, such as not
building wastewater treatment plants upstream,
uphill from waterways. Because what happens is we
wind up polluting that which we were trying to
protect.

And so I hope that we can keep the
WWWDR, the watershed-wide waste discharge
requirement in mind when we make our decisions.

And I thank you for this opportunity to
address the Board today.

CHAIRPERSON YOUNG: Thank you. Okay,

Marla Jo Bruton.

MS. BRUTON: Good afternoon, Board. My
name is Marla Bruton and I am from Morro Bay,
California. I'm here today to speak to you about the 301H waiver at the Morro Bay treatment plant and Cayucas treatment plant.

I believe that in February, yeah, well, I know that you've already written settlement agreements with the Morro Bay and Cayucas plant for a 9.5 year timeline to update that plant to secondary.

The plant has been operating under four 301H waivers for a total of 20 years, with less than the mandated required treatment of a plant. All of this water goes into the same Bay, the same esha and the same bight.

I'm asking you to look at the issue holistically; to look at giving these people four years and Morro Bay nine and a half years --

CHAIRPERSON YOUNG: I've asked people not to address the issue before us --

MS. BRUTON: I'm asking to do this holistically, sir.

CHAIRPERSON YOUNG: If you -- come on.

MS. BRUTON: You come on.

CHAIRPERSON YOUNG: Listen, --

MS. BRUTON: Are you in a tower, the white tower, or what?
CHAIRPERSON YOUNG: No, but I'm trying to move the process along. We have public forum for things not on the agenda.

MS. BRUTON: Okay, well, I want --

CHAIRPERSON YOUNG: You've --

MS. BRUTON: -- to re --

CHAIRPERSON YOUNG: Excuse me, excuse me. You testified --

MS. BRUTON: This is my minutes, do you mind?

CHAIRPERSON YOUNG: I'll stop the clock. You have a minute and a half.

MS. BRUTON: Thank you.

CHAIRPERSON YOUNG: You essentially addressed some of these things before when you spoke. If you want to address us on things not involving Los Osos and this ACL, you're welcome to do so.

But I'm not inviting the public to speak now --

MS. BRUTON: All right, this is --

CHAIRPERSON YOUNG: -- on Los Osos.

MS. BRUTON: Okay.

CHAIRPERSON YOUNG: You have a minute and a half.
MS. BRUTON: I have a minute and a half, and I believe that the nine-and-a-half-year timeline for Morro Bay and Cayucas to come to secondary treatment is preposterous, preposterous. And I don't know who is running this. If anybody up there has like minds that can look at real issues and deal with real issues, but that's ridiculous.

Nine and a half years. The NRDC, Natural Resources Defense Council, says that it's ridiculous. Sierra Club says it's ridiculous. SurfRider says it's ridiculous. Morro Bay residents say it's ridiculous.

And I just ask you to please, I know that I'm grating on your nerves up here, but it's a little grating to the citizens, as well. And I ask you to look at this holistically and not selectively, you know, giving extra time to some people, and I won't mention what else to the other people. But it's not fair.

CHAIRPERSON YOUNG: Eric Greening.

MR. GREENING: Hello, I'm Eric Greening.

BOARD MEMBER SHALLCROSS: Just a second.

So far we've had three out of three talk about Los Osos. Just a little warning there.
CHAIRPERSON YOUNG: Wait a minute. Are there more cards coming up here? No. That's it. No more public comment after the cards I have. Environmentally preferred site? Are you going to tell me that's not related to what we're dealing with? Okay. Mr. Greening.

MR. GREENING: I am Eric Greening. I live -

CHAIRPERSON YOUNG: Okay, hang on. Jack Hunter; Al Barrow; David Duggan. No more public comment. I want to close the public forum after that card.

Go ahead, Mr. Greening.

MR. GREENING: All right, now I am Eric Greening. I live in Atascadero. And the issue I'm addressing is north of Los Osos, in the Estero Bay and some of the interior areas. And it's my concern, I know normally you act reactively because that's essentially the mandate you're given. A problem develops, you figure out how to address it.

I'm just kind of giving you a heads-up to find if there's any way you can act proactively before our area faces a real disaster.

The Bureau of Reclamation still is
considering a viable option for dealing with the selenium-tainted tailwater in the western central valley, they are still considering as a viable option the so-called ocean disposal alternative, which would mean a pipeline carrying this tainted water across 104 blue-line streams and dumping it in the ocean somewhere near Cayucas.

The final EIS is likely to be issued within the next 30 to 60 days. We don't know when. We don't know what their choice will be. We do know that there are fewer voters here than there are in the central valley and in the Bay Area, and so they may try something that is physically absurd and preposterous simply because there are fewer people to object to it.

However, the EIS will not be certifiable and it needs to be challenged because it insufficiently characterized the project they intend to do. There was nothing showing the actual location of the pipeline, the precautions that would be taken at the streams. Nothing showing the food chain in the ocean. Nothing actually characterizing or limiting the substance or substances that could be placed in this pipeline.
There will be no revenue stream for ongoing maintenance of this pipeline, for oversight of the construction. It's not like a water pipeline where you have paying customers who are going to continue paying for what comes through it. This is stuff nobody wants.

Essentially this whole central coast area needs to be prepared to do everything possible to combat any choice that might be made to dump the central valley's problem in our area, in our ocean, and cross our watersheds with a pipeline that hasn't even been described, its route hasn't been described.

And so I would just ask first of all that your staff stay abreast of this. Second, that perhaps you have some kind of an information item on it at a future meeting. And third, that you simply investigate all your options to help the others of us in the central coast that are trying to keep our watersheds free of sedimentation and poison.

Thank you.

CHAIRPERSON YOUNG: Thank you.

MR. BRIGGS: Mr. Chairman.

CHAIRPERSON YOUNG: Yes.
MR. BRIGGS: I'd point out that we did send a comment letter on the draft EIR, maybe it was an EIS --

MR. GREENING: EIS.

MR. BRIGGS: And we commented on many of the issues that Mr. Greening just brought up in his very thoughtful and appropriate comments.

CHAIRPERSON YOUNG: Does he have a copy of your letter?

MR. BRIGGS: We can provide that --

CHAIRPERSON YOUNG: Please provide it to him.

MR. BRIGGS: -- and we can provide it for the Board, as well.

CHAIRPERSON YOUNG: Okay. All right.

Mr. Hunter.

MR. HUNTER: Thank you. I'm Jack Hunter, a resident of Los Osos. I'd just like to --

CHAIRPERSON YOUNG: Mr. Hunter, you are Monica's spouse?

MR. HUNTER: I am.

CHAIRPERSON YOUNG: Okay. It just is appropriate, you know, for spouses to identify themselves.
MR. HUNTER: To acknowledge that?

CHAIRPERSON YOUNG: Yeah, we had Bruce Daniels' wife, when she would like to speak she would always forewarn us who she was, and that she hadn't spoken to her spouse Board Member about an issue, but I think that would be helpful --

MR. HUNTER: That seems fair.

CHAIRPERSON YOUNG: -- that the Board knows who you are.

MR. HUNTER: Then I am so admitting now that Monica Hunter, sitting recused in the audience, is my wife.

CHAIRPERSON YOUNG: Okay.

MR. HUNTER: And thank you for introducing that dynamic to our relationship. When she has something I don't want to hear, I recuse her.

(Laughter.)

MR. HUNTER: She doesn't always go along with it.

I'm going to try to talk above and beyond the local issue here that we're not supposed to talk about.

CHAIRPERSON YOUNG: Okay.

MR. HUNTER: Many communities along the
California coast and other places find three great threats to their continued existence. And that is seawater intrusion, groundwater recharge, and potentially nitrate and other types of pollution in their aquifers.

Any community that does not address all three at the same time has a very high possibility of tying up all their capital in the near and far future against operating on all three of them. And that seems to be what's happening in some communities. I need not name who that is.

And that is a fear of many of our citizens, that if the disposal income in our community is wrapped up in a project that does not solve all three issues, we are doomed.

Thank you.

CHAIRPERSON YOUNG: Thank you. And you weren't referring to the admonition, were you?

Okay. Mr. Barrow.

MR. BARROW: Thank you, august Board Members, public and fan club for affordable housing. My name is Al Barrow and I'm the founder of Citizens for Affordable and Safe -- excuse me, Affordable --

(Laughter.)
MR. BARROW: -- jeez, I forgot this.

Let me tell you about the other one. It's Coalition for Low Income Housing, which is why I got involved in the first place. And you can see the information on the website. We are concerned about housing for workforce and other individuals as housing costs get more and more up and up.

There's a lot of other things that affect their costs. Some of them could be sewer fees, if they're out of line with state guidelines.

CASE is Citizens for Affordable and Safe Environment. And you can see all the different technologies that we've suggested regarding Los Osos, which is another subject. But that's all on that website.

What I want to talk about today is the state laws, how they play together. How the Coastal Commission, how the Water Board, how the Department of Health Services, Department of Water Resources all working hopefully in concert to advance the state's best interests.

You all have your own mission statements. And it seems sometimes there's a conflict where your mission is more important than
the other guy's missions. Where the Coastal
Commission thinks that well, maybe they should
tread lightly because you guys are the big
gorilla, you know, these kinds of things seem to
affect the way business is conducted for our
state.

And if you look at the state website on
affordable housing, it says housing is of the
utmost concern for all the citizens of the state.
And when things come before you that affect
housing issues for people, I would appreciate it,
even though it may not be your direct mission,
it's still state law. And if you would consider
that I would greatly appreciate that.

Thank you. And I know I'm a little
late, please don't fine me, but happy new year.

CHAIRPERSON YOUNG: Thank you.
MR. BARROW: You're welcome.

CHAIRPERSON YOUNG: Okay. David Duggan,
and that's our last speaker.

MR. DUGGAN: Dave Duggan, Los Osos. I
want to speak towards water. Los Osos just got a
severity 3 level rating for their water. And
totally ignored by our local press. They talked
about Nipomo and other places. I didn't find
anything in any of the press the fact that we just
got granted the level 3 severity rating.

Not to talk about what we were talking
about before, but seems to me there seems to be
some kind of information blackout on things that
concern Los Osos unless it's derogatory.

This is very important. I would advise
the news agencies to get on this one. They are
missing the facts, as they stand on the ground
now, no spin. Thank you.

CHAIRPERSON YOUNG: Okay, thank you.

All right, that concludes public forum. And we
can now move to closing arguments. And, Ms. Okun,
you were going to go first.

MS. OKUN: Yes. I'm going to start off
by addressing some of the legal arguments that the
District has raised in this proceeding. And then
Mr. Briggs will give a summary and present the
staff recommendation following the evidence.

Before I start talking about the legal
arguments, though, I did want to briefly discuss
the additional documents that the prosecution
staff submitted on December 12th.

I submitted a memorandum discussing some
of those documents, but I'm not sure if the
Board's read that, so I'll just quickly go through what the documents were.

First, there were four additional settlements in addition to the Measure B settlement that was introduced at the December 2 hearing. There were four other pending lawsuits related to the wastewater treatment plant that the District also settled. And the total amount of those settlement payments, they were all attorneys fees similar to the structure of the $125,000 Measure B settlement. The total amount under those settlements was $488,000, which was paid in attorneys fees. And that's relevant to the District's ability to pay, and we'll be discussing that more later.

I also submitted some court documents, some of the complaints and some dismissals, actually, related to those settlements. A few of the cases involved matters that had already been resolved in the District's favor.

I submitted a letter from the Chief Counsel of the State Water Board, Michael Laufer (phonetic). I don't have the date, but it was a letter to the District in response to a claim that it submitted regarding the state revolving fund.
loan, and gave a long discussion of the State Board's position about why the District was in breach of the SRF loan agreement.

The District, on December 7th, filed a breach of contract complaint against the State Board. So I included that in the record, as well. They sought a temporary restraining order from the court as part of that action right after they filed it. And in rejecting the temporary restraining order the court found that it was highly unlikely that the District would prevail on its breach of contract claim.

And keep in mind that that was a temporary restraining order, which is a different legal standard than proving their case. So it was a preliminary ruling with a very high burden of proof for the District. But normally in a TRO hearing a court doesn't say it's highly unlikely that the plaintiff will win its case.

The next document is a claim that the District filed against Montgomery, Watson Harza, who's been working on this project since 1999. You've heard a lot of testimony about them, and some of the role that they've played in this project.
As far as I can tell, some procedural irregularities on the dates that documents were signed. The District is claiming that all of the invoices that Montgomery, Watson Harza has ever submitted to the District are false claims.

Basically, if I understand their argument, the contract with Montgomery Watson was signed in about September of 1999 by Bruce Buel. And the District approved the contract shortly after that, and signed an employment contract with Mr. Buel shortly after that.

And so since the Montgomery, Watson Harza agreement was signed by Mr. Buel before it was authorized, even though for five years the District has been treating that contract as being in effect, basically they're claiming that all of the invoices that Montgomery, Watson Harza submitted and that the District paid were improper. And they're seeking, in reimbursement payments and damages, a total of $6.5 million from Montgomery, Watson Harza.

Finally, we submitted a copy of the State Board Staff report and the State Board resolution from December 9th that basically defunded the District's loan. We talked about at
the last hearing that the State Board intended to
do that. And that is, in fact, what they did.

When Mr. McClendon started the
District's presentation on December 1st, he said
that before we talk about damages, the prosecution
staff has to prove culpability. Proving
culpability in this case is very easy. There's a
time schedule order with some dates in it, and
those dates have not been complied with.

There's a basin plan prohibition saying
that the District is prohibited from discharging
from these septic systems, and it violated that
prohibition.

The only issue left before the Board is
the amount of the -- an appropriate and fair
amount of administrative civil liability, and
that's really all we've been talking about for the
past three days.

Front and center in this case has been
Measure B. The District argues that Measure B
prevents them from building the Tri-W project and
requires them to develop a new project.

Measure B enacted an ordinance. As the
District has said, the District can act by
ordinance, resolution or motion of its Board. But
the District can also act by an ordinance adopted
by an initiative of the voters. That's how
Measure B was enacted. It is an ordinance adopted
by the voters, and that's an act of the District.

The District Board agreed in the
settlement that Measure B was valid. The District
and the State Board both agree that Measure B
prevents the District from moving forward with the
Tri-W portion of the project.

But Measure B is not an act of an
unrelated third party. In this context there's no
difference between the voters and the Board. So
the District can't claim that complying with the
time schedule order or coming as close as they can
to comply with the time schedule order is beyond
their reasonable control because of some unrelated
act.

The District also argues that the
District Board has a fiduciary obligation to
uphold Measure B. Even if that's the case,
Measure B still isn't an unrelated act of a third
party because the District, via the voters,
enacted it in the first place.

The District also hasn't cited any
authority for their fiduciary obligation to
support Measure B. The Lockyer case that they
cited just prohibits the District from refusing to
enforce a statute until a court invalidates the
statute. It doesn't prevent the District or
another local entity from seeking to invalidate
the statute in the first place. It just means
that until the statute is invalidated the local
government has to comply with it.

It's also not even clear that the
Lockyer case applies here, because it discussed a
law that was a state law that a local entity was
refusing to adopt. Here we're not dealing with a
state law. We're dealing with a local ordinance.

There is case law regarding a general
fiduciary duty to the public owed by a public
entity. And that the oath of office that the
public officials take when they're sworn in
requires them to uphold the law.

But the basic idea here is that it's the
province of the court to declare a law
unconstitutional or invalid. And so until that's
done, the District can't declare the law invalid,

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allow the District to hide behind Measure B. For the voters to think that they can just vote to violate state orders and avoid ACLs because now their elected representatives are stuck justifies logic.

Imagine the implications of this if any electorate could vote, for example, not to upgrade a failing treatment plant or to strip city officials of authority to implement a stormwater management plan to comply with Clean Water Act stormwater requirements. And then say that this Board has no authority to sanction the discharger because the voters have spoken.

The District Board can't divorce itself from the District, the voters. But even if it could, the Board representatives have said that they don't intend to build the project, with or without Measure B, and not even if the property owners agree to pay assessments to repay an SRF loan or build the project. Therefore, Measure B, for that reason in addition, does not relieve the District from culpability.

Again, Measure B is not something beyond the District's reasonable control. Nor is the decision to move the project.
The consequences of these actions, such as the loss of the state funding, therefore, can't be said to be outside the District's control, either.

The current posture of Measure B and the District's Board not allowing the project to move forward also makes the reasonableness of past delays irrelevant. In the past the Executive Officer has said that he won't recommend enforcement action if delays are beyond the reasonable control of the District.

But at this point the delays aren't because there was a Coastal Commission challenge or a lawsuit challenging the DWRs or other challenges of the Tri-W project, because that project's off the table. It's not different than if they hadn't spent the last five years working on that project.

Basically the District's argument is that the Tri-W project was a bad project and they have to start over. Well, whether or not it was a bad project, if it was a bad project, it was the District's bad project, and the District spent the last five years working on that project. And that was what the delay was attributable to for the
last five years.

Regarding the SRF loan. The State Board was clear in January of '05 that the loan was site-specific. The District showed a clip of Art Baggett saying that if the District didn't like the location of the project they should complain to their local government. But the District didn't show the extensive discussion at that meeting that the loan was site-specific.

Mr. Baggett did not imply any intent to amend the loan to fund whatever this new government wanted, wherever they wanted to build it.

Both the Chief Counsel and Darrin Polhemus, who's been in charge of this project for the SRF program for years, have said that the loan was site-specific. Ed Moore testified that the contract specifications that Monterey Mechanical had were site-specific. And the SRF contract incorporates those specifications.

But most importantly, the contract, itself, is very clear that it's site-specific. You can see some of the provisions on the screen that are in the contract. The District agrees to expeditiously proceed with and complete
construction of the project in substantial
accordance with approved plans and specifications,
which are the Monterey Mechanical specifications
for a project at Tri-W.

The District agreed to make all
reasonable efforts to complete construction by
October 15, 2007. And the District was required
to obtain State Board Staff approval of any
substantial change in the scope of the project.

There was also some citations to section
13(a)(2) and (3) of the contract, which was just a
requirement that if work stopped on the project,
or if it appeared that the District wasn't going
to be able to meet the 2007 completion date, it
had to notify the State Board.

The fact that the District has to notify
the State Board doesn't mean that the State Board
will accept those delays. It just means that they
have to provide notice. And conceivably the
reason that they have to provide notice is that so
the State Board is aware that they're in violation
of the provisions of the contract.

The SRF contract incorporates the
construction specs, as I said, and it also
incorporates your waste discharge requirements,
which are site-specific. And not only are they site-specific, but they're project-specific.


Mr. Bleskey read a detailed description of the collection system, citing section 01010 of the construction document, paragraph 1.2. He recited a long description of the collection system, and then stopped at the description of the plant, itself, saying, and then it goes on to describe the plant.

I have a copy of the agreement between the District and Monterey Mechanical. And it describes the treatment building. And I'll read that to you. I'll try to skip through some of this. It's a treatment building with buried pre-anoxic basins with submersible mixers, buried aeration basin with fine bubble diffusers, post-anoxic basins with submersible mixers, and mixed liquor recirculation pumps. A membrane bioreactor tanks with submerged membrane cassettes, UV disinfection unit, et cetera.

That's about half of it describing the project that's proposed for Tri-W, not a theoretical ponding project at a theoretical location.
Clearly, the SRF contract is site-specific, as are the construction contracts, or at least the Tri-W contract. And any decision to move or change or delay without State Board consent is a breach of the SRF agreement. It's not the State Board's fault.

The District next argues that ACLs are punitive or retroactive, or that the complaint represents a moving target. The District misconstrues the concept of punitive for purposes of section 13308 of the Water Code.

That section provides that the amount of the civil penalty shall be based upon the amount reasonably necessary to achieve compliance, and may not include any amount intended to punish or redress previous violations.

In order to interpret that you have to consider the legislative history of section 13308. It was enacted in response to a U.S. Supreme Court decision holding that states can't penalize the federal government for violations of environmental statutes by imposing punitive sanctions. But they can impose coercive sanctions.

Basically a punitive sanction is a penalty that's assessed for past violations.
Whereas, a coercive sanction is an order like the
time schedule order saying you have to do this
based on this schedule. And if you violate it,
we'll issue sanctions. It's like a court issuing
contempt citations. And that's exactly what the
time schedule order did.

So when section 13308 talks about not
punishing prior violations, it's talking about
violations before the issuance of the time
schedule order. And the complaint only alleges
violations that occurred obviously after the time
schedule order was issued.

The complaint isn't retroactive; we're
not penalizing the District for any, not only
violations before the District was formed, but
before September of 2002 under the time schedule
order. And the violations of the basin plan
prohibition are alleged back to when the District
was formed.

As Mr. Shallcross noted at the last
hearing, we're not starting from scratch here.
The past history of the project even before the
District was formed is relevant to the seriousness
of the delay in determining whether another around
of reconsidering alternatives and redesigning the
project is acceptable or reasonable.

And this isn't even the first time that
this District has started over. When the District
was formed there was already a County project that
had been designed. The CSD elected to design this
new project, the Tri-W project, rather than
continuing with the pending County project.

When the time schedule order was issued,
the District did agree to the negotiated schedule.
And sure, they didn't want a time schedule order,
but nobody wants an enforcement action. And as
the District's own testimony showed, the time
schedule order was an alternative for this Board
considering administrative civil liability.

Also the District suggested in their
testimony that they petition -- their 2000
petition challenged the time schedule as being too
short. They did file a petition challenging the
time schedule order, but that was not one of the
bases for the petition.

The argument about the moving target is
somewhat difficult to understand. Mr. Onstot
suggested this morning that there was a moving
target because new evidence was being introduced.
This is an evidentiary hearing and that's the
purpose of the hearing in the first place, to
introduce evidence.

The complaint is clear and hasn't
changed throughout these proceedings. It alleges
breaches of the time schedule order and the basin
plan prohibition, and included a worksheet
describing the statutory factors for each.

The worksheet actually changed from the
one attached to the complaint to the revised
version in the staff report, but the change was to
reduce the maximum civil liability under section
13308(f).

Also, the proposed order that the
prosecution staff submitted was based on
violations of the time schedule order, which
provides for a maximum liability that's
approximately only a third of the maximum for
prohibition violations, or 2 percent if you use
the higher per-gallon calculation.

Another basis for the moving target
claim, as I can understand it, is that we've
talked about events that occurred after October
1st. As we've said, these events are relevant to
factors that the Board can consider for all of the
violations. It's relevant to culpability, the
District's ability to pay, the lack of voluntary cleanup efforts, and economic savings. And it's also relevant to the District's own defense that it's done nothing to delay the project.

The proposed action is consistent with prior assurances of the executive order, that no enforcement would result only if all delays were beyond the reasonable control of the District. Once the project was stopped, the Executive Officer has always said that enforcement will be recommended.

And he never promised to not enforce all violations, including those that occurred before the project was stopped. This was one of the reasons for not amending the time schedule after repeated requests from the discharger. If there was no intent to enforce all of the violations, then there would be no reason -- well, there would be one less reason not to amend the time schedule order.

The last thing I want to address is the ability to pay. Mr. Briggs is going to discuss the 13327 factors in more detail, but I wanted to mention two points.

The first is the complexity that the
District claims that's involved with their budgeting. I don't think that the District's budget is any more complex than the budget of any other municipality.

The District says that cities are better equipped to pay fines because they have general funds. But the CSD gets property taxes and it allocates them freely, just like cities. The CSD has reserves and property tax revenue that it can transfer and has transferred among funds, just like cities.

Like the CSD, a city would be subject to restrictions under proposition 13 and prop 218 regarding the amount of taxes that it can raise for its general fund, or for anything else, to pay fines.

When asked why all of the District funds were restricted Mr. Seitz could only cite proposition 218, which requires voter approval for taxes and assessments, and also makes a distinction between special taxes, which are taxes for a specific purpose, and general taxes. And he also referred to the fact that he advised the District to impose franchise fees in a manner that restricted he District's ability to use them.
The District could have established a reserve for contingencies. Or it could transfer additional reserves or property taxes to fund 600, which is their sewer fund.

So, again, without doing a detailed analysis of the special district accounting, it does appear that this complexity, again, is a consequence of the District's own actions.

Finally, I wanted to cite a few provisions of the enforcement policy regarding ability to pay. The enforcement policy consistent with case law places the burden of proving an inability to pay on the District.

Evidence that's presented to this Board can be used to reduce the Administrative Civil Liability amount to an amount that the discharger can reasonably pay and still bring operations into compliance.

This is basically what the District's been arguing, and they're right. This is one of the things that the Board can consider, but it's not mandatory. It's one of the factors that the Board considers in its discretion.

Finally, the enforcement policy says that the downward adjustment for the ability to
pay should be made only in cases where the
discharger is cooperative and has the ability and
the intention to bring operations into compliance
within a reasonable amount of time.

And I actually do think that the
District does have this intention. I think that
they do want to come into compliance with the
prohibition. But unfortunately, their recent
actions seem to make this a pretty unrealistic
possibility.

I have nothing further. If there are
any questions, I can answer them. Otherwise, I'll
turn it over to Mr. Briggs.

CHAIRPERSON YOUNG: Let me see, any
Members of the Board want to ask Ms. Okun
questions?

BOARD MEMBER SHALLCROSS: I have one.

CHAIRPERSON YOUNG: Go ahead, Mr.

Shallcross.

BOARD MEMBER SHALLCROSS: Just one point
of clarification. At the beginning of your
statement you said there were four other
settlements that they've paid, that the District
paid on.

And did you say that two of them were
settlements that were settled in favor of the
District? What did you say? Something --

MS. OKUN: Let me move over to my
laptop, it's where I have the list of the cases.

The first case was a case filed by
Concerned Citizens of Los Osos against the Coastal
Commission. And I believe the State Board was
originally a defendant in that case, and was
dismissed on demur.

The first two causes of action in that
case were dismissed on demur without leave to
amend.

There was a remaining cause of action
alleging illegal discharges of pumped shallow
groundwater and filter backwash into surface
waters without a coastal development permit.
Basically to lower the water table so that there's
not a problem with ponding septage. The District
pumps that water and discharges it into the Bay.

The District paid $48,848 to settle that
remaining claim. And that still was an
outstanding claim, even though the first two had
been dismissed.

The next case was Concerned Citizens of
Los Osos v. LOCSD. The District won that case in
the trial court. The court sustained a demur
without leave to amend and dismissed the entire
case. The petitioners appealed and the District
won the appeal.

The trial court didn't enter a judgment,
so technically the case was still pending,
although the District had won on all levels. The
settlement payment in that case for the attorneys
fees was $193,620.

BOARD MEMBER SHALLCROSS: So they paid
$193,000 on a case that they won?
MS. OKUN: Yes.
BOARD MEMBER SHALLCROSS: To the losing
side?
MS. OKUN: Yes.
BOARD MEMBER SHALLCROSS: Okay, thanks.
MS. OKUN: Al Barrow, CASE and CCLO v.
The State Water Board and Darrin Polhemus with Los
Osos Community Services District, as real party in
interest, sought an injunction to prevent the
State Water Board from disbursing any funds under
the SRF loan.

On July 14, 2005, the court refused to
grant a TRO, in part because the petitioners
failed to demonstrate a reasonable likelihood of
success on the merits. And because and almost --
not almost identical -- similar case was pending
in San Luis Obispo County seeking the same relief.

And there were different entities, but
the person verifying the petition was the same in
both cases. That claim was settled for $41,000
and attorneys fees. Even though the District has
control over -- and the issue was repayment of the
loan proceeds. The District has control over
whether it repays the loan disbursement. And at
the time of the settlement agreement, which was
November 23, 2005, any further payments under the
State Water Board loan appeared highly unlikely.

Basically that was seeking an injunction
against the State Board to prevent them from
disbursing loan funds when the State Board had
already decided that they weren't going to.

The last case, CCLO v. The Los Osos
Community Services District, alleged violations of
CEQA. The District certified the EIR in March of
2001. And as you know, the CEQA statute of
limitations is 30 days. The case was filed on
August 24, 2005. And basically alleged minor
changes in the project that the petitioners claim
required a new EIR.
Similar issues were raised before the Coastal Commission before it issued its permit to the project, and the Coastal Commission process is a certified substitute environmental process like our basin planning process. So the staff report and the Coastal Commission's issuance of the permit was a CEQA document.

So, to the extent there were any defects in the CEQA document, for those reasons they were cured when the Coastal Commission issued its permit. Even if those deficiencies in the EIR did exist, the statute of limitations had long since run. And I can check on the amount of settlement in that case. But it's part of the $488,000.

CHAIRPERSON YOUNG: Normally attorney fees are paid in cases either by contractual agreement or by some statute. And in these situations, from those settlements, it looks like they were using the private attorney general statute.

MS. OKUN: That's my understanding.

CHAIRPERSON YOUNG: Okay. And I thought normally you have a judicial determination first that attorney fees would be appropriate and in what amount.
MS. OKUN: Well, under the private attorneys fees statute, just like anything else, you can settle a case. So if the District thought that it was at risk of losing those cases, then it could agree to settle. And Mr. McClendon testified that the reason it settled the Measure B case was that the District was afraid it would lose and have to pay a lot more than 125,000.

So you can settle an attorneys fees claim under that statute. But generally that's only done if there's a risk of losing.

CHAIRPERSON YOUNG: Mr. McClendon said he thought that they would lose? On appeal? The Measure B case?

MS. OKUN: I think he's better able to address that, but my recollection of his testimony, and I can look it up, was that they settled that case for two reasons. One was to protect the District from having to pay attorneys fees that were much higher than 125,000 because he was concerned that there would be a multiplier. And because he felt that the District obtained a valuable concession from Mr. Barrow and CASE in how Measure B should be interpreted.

CHAIRPERSON YOUNG: Okay. All right,
Mr. Shallcross, that, I think, answered the questions you had.

BOARD MEMBER SHALLCROSS: -- answered the question. I'm just as perplexed as you on why they --

(Parties speaking simultaneously.)

BOARD MEMBER SHALLCROSS: -- paying attorneys fees.

CHAIRPERSON YOUNG: Yeah, I think why -- is it -- I think the fact is that they paid them, and they paid them. And they paid them out of funds that, you know, may not have been dedicated, and they may have some flexibility over. I mean I don't know what else we can take from that at this point.

Okay, Ms. Okun, you were going to move to Mr. Briggs' portion of the closing? Okay.

MR. BRIGGS: Roger Briggs, Regional Board Staff. The Los Osos Community Services District has discharged waste in violation of a prohibition contained in the basin plan. In doing so the CSD is liable for up to $15,000 per day since October 1st of '99 for discharges from three onsite disposal systems. And that's $5000 per day for each one of the systems.
If the penalty is calculated on a per-gallon basis the maximum daily liability is $380,000 just for the two subdivisions, so two of the facilities.

In addition, the Los Osos Community Services District has failed to comply with the dates specified in the time schedule order 00-131. The District does not contest that they violated the dates or that their systems discharge in violation of the discharge prohibition. Rather the District argues, incredibly, that because it refuses to continue with its approved project, the District just needs more time; and the District argues it has done nothing to delay the project. Because others are to blame, including the Board District, itself, that is the old Board.

The period of violations in the complaint ends on October 1, 2005. However, the recent events are relevant to explain why the staff does not believe -- our staff does not believe the District is on a path to stopping the violations, as it had been until the end of September.

The District argues that considering the limited amount of contribution of its septic tank
effluent to the groundwater basin and the impact
the fines would have on the continued operation of
the facilities, the Board must reduce or avoid
fines under Water Code section 13327 regarding the
ability to stay in business and the ability to
pay.

However, the District's discharges are
about 4 percent of total flow from the community,
and have discharged over 83 million gallons in
violation of the prohibition. The proposed
penalty is only 2 percent of the maximum liability
if the highest daily maximum is used.

If this District argument were accepted
by the Board all of their discharges in the Los
Osos prohibition zone could argue the same thing.
The end result would be that no one would have a
significant discharge; no one is responsible.
Each individual homeowner discharges about 1/5000
of the total, while the CSD discharges about
1/25th. That is the CSD's discharge is 200 times
the discharge of individuals.

The District presented testimony on
nitrate tests from its Bay Ridge Estates
discharge. The District's engineer said some soil
column denitrification occurs before the effluent
reaches the groundwater.

The District's purpose in providing this information isn't clear, but as the District, old and new, has maintained, the community needs a sewer system. And so this information is irrelevant since the prohibition of discharge is not a question in these proceedings.

However, the District's engineer displayed a map of groundwater nitrate concentrations. The District's map showed that the two monitoring wells most directly down gradient from the two CSD facilities, the Bay Ridge and Vista del Oro discharges, are 150 percent and 280 percent respectively of the maximum contaminant level for nitrate. Under cross-examination the District's witness indicated a sewer is definitely needed.

The CSD claims that since the new CSD Board took office it has done nothing to contravene the time schedule order. The CSD's claims contrast with its own actions to stop the approved project. That stoppage has the effect of causing years of additional violations, as the District wanders into areas outside the prohibition zone, outside the District, in the
neighborhoods of those who are not discharging illegally, looking for some place to put a treatment plant that the CSD thought could be cheaper by not having mitigation for visual and odor aesthetics.

That is, the District argues that the mitigated treatment plant is not acceptable within its boundaries within the area of waste generation, but their visual and odor unmitigated design is okay in someone else's backyard.

This lack of concern for aesthetics for people living outside the District is somewhat ironic in that the competing interests in this case are basically this:

On the one hand, on the left side here we have a concern by some fraction of the community that the approved project might be an aesthetic problem. Versus on the other hand continued years of violation of prohibition that was enacted over 20 years ago, continued pollution of the groundwater basin, continued public health threats from surfacing septic effluent in wet weather cycles, with runoff of contaminated water to the Bay, and continued oozing of fecal coliform bacteria to the Morro Bay National Estuary.
These competing interests are so out of bounds they're not even on the same scale.

Now, on the left side we heard, just today we heard some additional arguments regarding the problems, perceived problems with the Tri-W site about spills. But spills are a red herring issue. And as we talked about, with a properly run treatment plant you have an infinitesimal percentage of spills. And in some cases a zero percentage of spills from a properly run plant versus the, in our Region, billions of gallons that are treated and are in accord with the waste discharge requirements. They're discharging legally, and they're protecting the beneficial uses; versus on the right side, for this community, 365 million gallons per year roughly of discharge that is in violation and is continually destroying beneficial uses of the groundwater.

Again, it's a balancing act where there's no question. They're not on the same scale.

Another thing I'd mention is on the left side, as I said, there are some people who think there might be an aesthetic problem. It's not that it's an aesthetic problem to balance. It's
in the perception of some people that there might
be an aesthetic problem in the future versus the
very real consequences that we're dealing with
today because of improper disposal of wastewater.

Although the penalties we're proposing
are for the District's violations and not the
violations of the whole community, the Board may
consider this ongoing pollution in the interests
of justice. By stopping a project, the District
will not only continue its violations, but those
of the entire community that relied on the
District to provide a way for everyone to stop
violating the prohibition.

The remaining alternatives the community
has for timely compliance are less feasible than
hooking up to a treatment plant that was to have
been completed by October of next year.

The District is now saying the project
is too expensive. But the District proposes to
spend its money studying alternatives the County
already studied for doing work that's already been
done.

The CSD is offering to do mitigations
like a septic tank management plan and water
conservation that it should be doing anyway. The
management plan is required by the waste discharge requirements. And these are programs that were already underway by the, quote, "old District."

But really that's all irrelevant. Even if not the best or the perfect project, the approved project is the one the District chose. The project meets all applicable legal requirements as evidenced by the fact that it won all permit challenges. And if the District wants, once again, to start over again, it cannot avoid penalties by saying years later it realized it doesn't want that project after all.

The CSD's decision to abandon the approved project and cause years of additional violations must exact a penalty.

Also the time schedule order's validity is not the point of this hearing. That issue is the subject of a State Water Board petition that the District activated just a few weeks ago. The question is what's an appropriate enforcement action for the District's violation of that time schedule order.

Nevertheless, we'll respond briefly to the CSD's testimony regarding the reasonableness of the schedule in the time schedule order. The
CSD argued on the one hand that the schedule was imposed on them, instead of the CSD ever believing it was do-able. On the other hand, Mr. Seitz testified it was negotiated, implying the CSD ended up with something acceptable.

On the third hand, if you will, their own witness, Mr. Buel, said the CSD did concur with the timelines and the CSD Board concurred by Board motion. Also, the District met the first three dates. So those dates were definitely do-able.

In this hearing Mr. Seitz questioned the reasonableness of the schedule as it required the District to proceed to construction within about two years; and to finish the project within about four years.

At the time of the time schedule order adoption the CSD had completed analysis of many alternatives, had the benefit of many years of analysis the County had done. The CSD was already just about to release the draft environmental impact report which included the Tri-W site.

The Regional Board adopted the time schedule order on October 27, 2000. And the District issued the draft EIR the very next month,
November of 2000. And they purchased the Tri-W site about the same time. We learned today that they actually completed those negotiations within a few months, by May of 2001.

And as Lori Okun pointed out, the CSD could have continued with the already-approved project that the County was going to build. The CSD therefore had a huge head start on the project when the Board adopted the time schedule.

Now, if this schedule was unreasonable, as the District claims, why did the current CSD Board and representatives claim to us in October 2005 that the CSD could start from scratch, searching for a site, completing facilities planning and alternative evaluations, going through environmental review, acquiring land, going through permitting, designing a different treatment plant, preparing requests for bids, getting bids, selecting a contractor and claim they could do all that with no delay in the project startup.

The District said it could change the treatment plant site within the float time and the collection system timeline with no delay whatsoever in total project completion.
After meeting with State Board Staff the District representatives extended that estimate from what would have been about six months to two years. And that's still much faster than what was required by the time schedule order.

The time schedule order allowed the District, from its inception in 1998 to September of 2002, that's a period of just under four years, to start construction. The CSD cannot argue that the time schedule's allowance of four years was unreasonably short while telling us they can now move to another site and it will only take two years.

This is all smokescreen evidence, and it doesn't help the District's case. It is smokescreen that simply highlights the churning by the District and diversions about new ideas that don't change the fact of the District's violations.

The District's practice, unfortunately, is to blame others for problems when it's the District's own actions that are the cause of the delays.

We even heard from the community and the District that they should be conserving water, and
somehow it's the Regional Board's fault that
they're using too much water.

The District blames the State Board for
its current predicament, although the State Board
offered to let the District resolve the legal and
the funding issues, and hold the loan funds for
the District. In the meantime, the District
refused.

The refusal letter stated that the
District would only consider solutions that
assured construction away from the Tri-W site.
Mr. Bleskey said that some unspecified state
agencies failed to provide proper oversight before
the election. Again, blaming others, the state.

Lisa Schicker, Board President, said
that it's this Board's fault for pushing too fast
to build a project. But as I already explained,
the District was not starting from scratch.

A result of this blaming of others is
litigation or investigations whenever someone
doesn't get their way. In other communities in
the region with wastewater issues, such as Nipomo,
which was also on septic tanks and converted to a
sewer system, communities have gone through their
established CEQA processes, made their decisions,
settled any disputes as allowed by the CEQA determination reviews, and moved on.

That doesn't mean everybody is in agreement or is happy, but they move on with their projects and they abide by the law. They stop their pollution.

Instead of simply proceeding with their approved and funded project, the District's halt of construction, as testified in this hearing, that they are asking for investigations of past District Board Member, State Board loan staff and others.

The District has reverted to studying alternatives, including some that have been studied, analyzed and rejected numerous times; frequently rationalized this approach by using mis-information even after the inaccuracies have been brought to their attention.

District Director Cesena provided more information in this hearing by discussing our initial meeting with the District Board negotiating team. Mr. Cesena testified that, quote, "Staff reluctant to meet" and, quote, "Exchange discourteous." End quote.

We were not reluctant to meet. In fact,
we agreed to meet October 12, 2005, two weeks
after they were sworn in, and immediately upon
their request for a meeting. And we were civil in
that meeting and a subsequent meeting. In fact,
Chairman Young was in on the first part of that
meeting dealing with procedural issues with
Messrs. McClendon and Bleskey, as a demonstration
of civility, and contrary to Mr. Cesena's
characterizations of our relationship being too
far gone to communicate with the District.

In the October 12th meeting I said I
thought Mr. Fouche's idea about water trading had
some merit and something they should explore with
treated effluent from the approved project.

If the District kills this project we
will work with them in a civil manner to insure
they develop another project and obtain new waste
discharge requirements as quickly as legally
possible so that the illegal discharges can
finally stop. But that doesn't mean that this
Board should idly stand by while the District
kills the project or that its violations should be
excused.

They're in violation of the time
schedule order, their discharging in violation of
the prohibition and their actions have insured
these violations will continue for an unknown
period of time.

Recent examples of District actions that
have contributed to the delay include the first
dash there, reevaluation of pond technology when
the CSD already investigated ponds and found them
incapable of reliably meeting their specific
requirements.

STEP-STEY, that's a small diameter
collection system that continues use of existing
septic tanks. The District's General Manager
testified to you in these proceedings that the
District halted collection system construction to
take a timeout in order to evaluate elements that
would be common to many alternatives.

However, it is now beyond dispute that
the District will not continue with the Tri-W
project. The reason for the temporary stop-work
orders is now irrelevant since it's clear they've
now become permanent, at least for the Tri-W site,
and indefinite for the collection and disposal
system, which could be resumed if funding is
secured. But ultimate completion depends on
having a treatment plant.
Also contradicting the District's testimony about the reason for stopping collection system work was the additional example of going back and studying what was already been studied and rejected. The District informed us at the October 12th meeting that they intended to evaluate STEP, septic tank effluent pumping systems. This change would require -- let me back up. Mr. Bleskey admitted that during cross-examination.

This change would require redesigning the entire collection system, scrapping what had already been installed, and rebidding with huge delays.

At the October 12th meeting Regional Board Staff informed the District representatives that the District and the County, before it, had already evaluated STEP systems and rejected them. However, in spite of that, ten days later Mr. Bleskey reported to us their, quote, "progress" in having rejected STEP.

Another action by the District as far as delays, that is assuming that they can realize large cost savings in part by cost comparisons with projects that are modifications of existing
facilities on existing sites, versus starting from
scratch, not only with treatment works, but with
property acquisition and cost.

The current CSD was surprised to learn
this fact from the Regional Board at our October
12th meeting. The District should never have made
this mistake in the first place, as all it
required to avoid was the easiest of inquiries. A
reasonable person would correct their erroneous
assumptions based on the corrected information.
Incredibly, the CSD continued relying on the
erroneous information.

In their pleading submitted weeks after
what should have been a revelation on this point
of mis-information, the District stuck with the
invalid cost comparisons with the Pismo and the
California Mens Colony projects. The District
continues to use this inappropriate unequal
comparison in this proceeding as justification for
delay, even though, as Mr. Seitz summed it up
perfectly during cross-examination, it's apples
and oranges.

Another example of using misinformation
to justify delaying the project is that the
current District has taken a position that the
State Board loan was for any site, and the District could simply transfer the loan to its virtual site, it's yet to be found or evaluated or acquired site, without an agreement by the State Board to amend the loan contract or approve a new loan application.

The State Board was clear in January of '05 that the loan is project specific; the loan contract is clear; but the District continues to take a contrary position. The District's response to the State Board's consistent position on this issue is to be indignant that the State Board meant what it said.

The District's response, rather than proceeding with the approved project, is to accuse the State Board of bad faith and breach of contract.

The District's representatives stated publicly, including at their own Board meetings, that either the Regional Board won't issue penalties so don't worry about violations or more delays, or they're just defiant about the penalties, or they assume the penalties actually coming due would be delayed for a long time via petitions and more court action.
An enforcement program that allows a violator to disregard the Board's orders in this manner is no enforcement program at all.

We've heard about the new District Board versus the old Board, and that we should give them some time. Twenty-five years isn't quite enough. The Regional Board isn't patient enough.

Regardless of the change in makeup of the District Board, our action is against the District, and the elections do not absolve the District's actions or past actions. We warned the District frequently, including two currently sitting members, and the three new members who have a history of active involvement in this project should have known, too, the District delays would result in enforcement action.

In spite of being warned of these consequences, the District stopped the treatment plant project with a stated goal of never resuming the approved project. The District stopped the collection system work. Measure B was an ordinance of the District, even though it was enacted by the voters. So the District enacted Measure B. Then delayed resolution of Measure B. And then agreed to validate Measure B. All the
while claiming that Measure B required the
District to stop the project.

We have the unprecedented situation of a
discharger stating its goal of violation, asking
if there would be penalties, being told yes there
would be penalties, and the discharger still
proceeding with deliberately violating orders of
the Board. These facts make it difficult to argue
a lesser penalty.

We normally end with our final
recommendation. However, in this case I'll give
you our recommendation, and then I want to follow
that with my concluding concluding statement.

Our recommendation is modified in
response to a couple of the Water Code section
13327 factors. One of those factors is ability to
pay. The District made much of the language in
the 2004 staff report that penalties would
bankrupt the District. We don't know what amount
of fines will bankrupt the District because we
have incomplete information about their assets and
their liabilities.

We said in response to the Chair's
questions that this Board can't bankrupt the
District; only the District can declare
bankruptcy. And all that does is allow the District to reorganize, that is avoid some debts.

We don't know what amount of fines would bankrupt the District. What we do know is the Tri-W site was purchased in 2000 for 3.3 million, I believe that was the figure we had, 3.0 -- 3.something million. And Broderson was purchased for 4.4 million, I believe is the figure -- 4.65, thank you.

That there is roughly $4 million remaining from the state revolving fund loan. That can't be used to pay fines from our understanding, but can be used to pay other debts to free up money. District claims no obligation to repay. And even further, that the state is obligated to disburse additional funds. Again, that frees up other assets if the District is to be believed.

District claims that the Montgomery, Watson Harza Company owes them over $6 million because its September 1, '99 contract was never authorized. And Ms. Okun went over that.

The District has reserve funds that its representatives testified the District freely transferred between projects. The District
collected 1.4 million in property taxes in 2004.

The District decided to lower taxes for the fire
district by $140,000 for the current fiscal year.

The water division has assets that can be used for water supply programs. Assets that can be used for protecting and improving drinking water supply, which a treatment plant would clearly do.

In the event of a collection action, I mean a monetary collection action, installment payments of ACLs could avoid bankruptcy, and would certainly increase the District's ability to pay.

On the other side of the balance sheet there's money owed to contractors; we don't know how much. And I don't think the contractors or the District know.

On the factor of economic benefit of savings, Director Schicker said the pond system out of town would save $25 million in capital costs; that's $21 million versus the $46 million for the Tri-W site. That's an economic savings of $25 million.

She also said electricity costs of the MBR system are 50 to 80 percent higher at the Tri-W site. She also said the cost of replacing the
MBR filters possibly as often as every seven years would equal 40 percent of the capital costs and O&M costs of the pond system are about half. So those are all claimed economic benefits by the District delaying compliance.

Two points regarding that, from our perspective. We disagree with cost savings argument. But accepting the District's own admissions for the sake of argument, if they're right its economic savings for the new project are well in excess of the proposed penalty. If we're right, then this reason to stop the project is not a valid reason at all.

However, in recognition that the District has provided some evidence of inability to pay or reduced ability to pay, we are recommending the penalty amount be lowered to $6 million.

Keep in mind the Board can impose additional penalties necessary. Just since I issued the complaint the District has incurred an additional $950,000 in potential penalties under the time schedule order, and $36,100,000 under section 13350 per-gallon basis.

This changed recommendation does not
suggest that the time schedule order was improper in the first place, because the time schedule order always allowed the Board to consider these factors in assessing penalties based on facts at the time of the penalty assessment.

While the statute for setting the time schedule penalty only allowed the Board to consider the amount necessary to prevent violations, considered as of October 2000, not as of today.

Clearly, $10,000 per day was not enough since the District has deliberately stopped compliance. However, because we do want the District to be able to eventually build some project, we do recommend this reduction from the complaint amount.

We recommend you consider the proposed order with a suspended portion based on a schedule of actions by the District. We have not prepared a specific schedule because the District has thus far made it clear it's not going to build this project. But if the Board is inclined to go in that direction, the Board should ask the District if it wants to pursue the suspended penalty option.
If it does, we could work out a schedule during a break. Basically giving the District one last chance at this hearing.

A schedule should include at least a few milestones that I'll show in a minute. I'll go to those milestones. And, as I said, these are not to be all-inclusive, but I said that they should -- a suspension should at least include these milestones.

One, a statement of intent to complete the approved project. And evidence the contractors are willing to proceed if funding is assured by date certain.

Two, evidence of joining in litigation to uphold the Superior Court's decision on Measure B, or taking action to have the voters rescind it.

And third, which I guess I don't have there, proof of ability to obtain funding.

In lieu of submitting the above items the District must submit the entire penalty amount of $5 million by February 5, 2006.

So to be clear, I'm not suggesting we pursue this unless the District indicates its interest to you in pursuing these terms as a term of suspension.
The District argues incredibly that it has done nothing to delay the project. However, if you wanted to draw up a plan for how to torpedo the solution to the District's long-standing sewage problems, your best bet would be to incorporate nearly every action the CSD has taken since September 27th, including the adoption of Measure B.

You can blank the screen. What matters is compliance to solve the problems. Regardless of their motives, their actions have stopped progress towards compliance. The effect of the CSD's actions is worse than just delay; it's much worse than simple delay, as they may have eliminated the only viable solution, at least for the foreseeable future.

Think of where we would be had this District not stopped everything October 3rd of last year. Construction started in August and would now be nearly a half year along. Much of the treatment plant would be done and large sections of the town would now have completed collection trunk lines.

The District would be far along toward a solution to the ongoing damage to groundwater and
surface waters and public health threats from its
discharges. And the residents would have the same
benefit. The project would have been finished by
October of next year.

Instead, the District said initially
they could be into construction at a new site in
six months. We're into the fourth month of those
six months. The District said they would have
planning done, property selected, environmental
review done, property purchased, design drawings
done, permitting done in six months. How far
along is the District toward compliance?

The Regional Board Chair asked for new
evidence to answer that very question. The
District's evidence of progress towards compliance
consists of nothing. Zero. What you heard is
that they've met a lot. And that they've gone
after conservation plans that the District was
already doing. Other peripheral items. No
concrete tangible progress towards compliance.
Not one single piece of evidence of any progress
towards compliance.

The District's actions since I issued
the complaint indicate nothing but a continued
trend of noncompliance. What's worse in this case
than any other case the Regional Board's ever
considered is that the District's actions to
violate the time schedule order were not caused by
some equipment failure or lack of maintenance, or
from simple lack of attention.

The District's actions to violate were
intentional. The District had a chance to hear us
say in advance, that's wrong, and if you stop the
project we will enforce. The District,
nevertheless, acted to stop the project. The
District acted to cause years and years of
additional violations by the District facilities,
and make it more difficult for the rest of the
community to stop pollution and damage to
receiving waters and continued threats to public
health.

Thank you very much for your attention.

CHAIRPERSON YOUNG: Okay. Let's see,
any Board questions of Mr. Briggs at this point?
Does that conclude your -- okay.

One question I do have, and I would like
you to address, either Ms. Okun or Mr. Briggs,
something that's kind of been on my mind. And I'd
like to hear your rationale for it.

And that is the District has raised the
issue that in the past Mr. Briggs has made comments and statements in staff reports and letters that it was not going to recommend an enforcement item for previous delays in completing the project.

And so I'd like you to address how you think the Board should look at that same time period, and then decide that we should go ahead and take a different position and fine the District based on that same time period.

MS. OKUN: I don't think he ever said that he wouldn't recommend enforcement for previous violations. I think what he said was as long as the District kept moving forward, except to the extent, and there were factors beyond the District's reasonable control, he wouldn't recommend any enforcement action.

But if the project were stopped, he would recommend enforcement action. He did refuse all requests to amend the schedule, suggesting that the enforcement action he would recommend in that event would include all violations.

And in addition, the things that were beyond the District's reasonable control were various challenges to the Tri-W project. Where we
are now is that they're not building the Tri-W
project for various reasons, Measure B, various
members of the community and the Board have
decided it's a bad project.

So the reason the project is stopped now
isn't because of any of those factors beyond the
District's control. And they could have sat there
for five years and done nothing, because they're
not going to build that project.

So, why there's a delay now is because
the current District says the project was a bad
project. That's not beyond the District's
control. It was the District's project.

CHAIRPERSON YOUNG: Right, but I think,
you know, my question goes to how much of this
prior timeframe should the District be held for
violations for acts that they were not generating.
I mean, you know, the previous CSD Board, in
defending litigation and doing things that Mr.
Briggs had decided, at least he felt were not
within their control.

We're kind of -- I mean there's a
timeframe historically that has been bootstrapped
into the current violations on the time schedule
order. So I want to get that fleshed out as to
why we should now seek a penalty for time periods
that had delay possibly not because of what the
District, itself, was doing.

MS. OKUN: Our position is that the
Board should assess penalties for that entire
period of time.

MR. BRIGGS: Can I add to that?

CHAIRPERSON YOUNG: Yeah.

MR. BRIGGS: One of the ways I look at
it is that when the District violated the first
milestone they were in jeopardy. They had
potential liabilities for violations.

We started saying we would not recommend
that we bring those penalties to you as long as
they were proceeding as expeditiously as possible.

The longer the District violated the
time schedule order the higher the stakes,
essentially. The greater the potential liability.

And so when you asked the District what
were you thinking about in terms of balancing, and
they should have been balancing the fact that they
had waited so long in the process, incredibly
waiting until they they're into construction to
change their minds about the project, I mean that
in itself is a huge liability.
They also had this huge liability from being so far down the line in terms of being out of compliance with the time schedule order. So, that's part of the idea of enforcement, is to have consequences, and in this case, we'd hoped the District would weigh those consequences and make the right decision.

CHAIRPERSON YOUNG: Okay. Ms. Schaffner.

MS. SCHAFFNER: One quick clarifying question, if I could. Mr. Briggs, I believe, testified as to, summarized some prior testimony, which was both in December and this hearing, about surfacing effluent and seeping bacterial discharges to Morro Bay, and a variety of basically public health and safety issues related to the discharges in violation of the prohibition.

And I heard all that and that's all in the record, which leads me to my question which is Ms. Okun had suggested a suggested attachment A with some revisions to it for supplemental findings for this item.

And one of them involves the striking of some of the references to surfacing effluent and
related water quality and public health and safety issues.

And I just wanted to be clear, you are not backing off from those factual positions or findings. It was simply just to -- what was the purpose of the striking of this from the proposed findings?

Perhaps Ms. Okun can address that.

MR. SEITZ: Just before Ms. Okun, we object to that document, that was emailed to us at 4:15 last night, being considered by this Board in closed session. We have not had an opportunity to respond to it. I think you have Mr. Briggs' testimony and so forth. And to put that document into question, Ms. Okun, on a document that we received at 4:15 the eve of this hearing. And then take that document in closed session to discuss it, we want to register our objection strong and clear.

MS. SCHAFFNER: Would the prosecution staff like to respond to that objection?

MS. OKUN: Yes. The Board needs to make findings to support whatever order it issues. And typically the Board's attorney, which would be you, helps the Board to draft the findings.
And as a party I was just suggesting proposed findings for the Board to use. The Board can throw this document away and go into closed session and draft new findings completely from scratch, and that would be perfectly appropriate.

MS. SCHAFFNER: These are the findings that you had foreshadowed in an email a couple of weeks ago, I imagine, that you suggested the CSD could propose its own findings if it wishes. I don't think we got any proposed findings from the CSD.

But it's up to the Chairman whether he would like to sustain or overrule the objection as to considering these proposed findings.

MR. SEITZ: And I object to Ms. Schaffner's characterization of what was offered to both sides. And the Chair didn't offer that to both sides. We've been operating under Chair orders, that's my assumption, not orders from the prosecution team.

MS. SCHAFFNER: It wasn't an order. It certainly isn't -- it's Ms. Okun's suggestion that she would like to offer some proposed findings, was certainly not an order of the Chair.

CHAIRPERSON YOUNG: I guess what can be
done, Mr. Seitz, is that you can both make
suggestions as to what changes can be put into a
proposed order, you know, based on what you hear
the Board deliberate on and come to a conclusion
on.

I don't think it's inappropriate for
either side to propose what should go into an
order.

MR. ONSTOT: Mr. Chairman, I don't --
what Mr. Seitz' objection is and our objection is,
as a matter of fact, is that this was presented at
a late hour and it's not the customary rule that
these findings or competing findings go into
closed session with the Board.

The standard rule is that once a
decision is made, the prevailing party, if asked,
will draft findings or orders, or in this case,
Board counsel, for review and comment by the
parties and other Board Members, after a decision
is made.

But a roadmap to get where they want you
to do and do that in closed session is, in our
view, completely inappropriate.

CHAIRPERSON YOUNG: Gary.

BOARD MEMBER SHALLCROSS: Well, I mean I
think that's true in most court cases. It's a little different here. However, I don't know what the document is, and I don't know why do we need --

CHAIRPERSON YOUNG: Well, okay, so --

BOARD MEMBER SHALLCROSS: -- drafting. We've drafted findings before.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER SHALLCROSS: You know, we don't need it.

CHAIRPERSON YOUNG: Okay. Well, we'll keep it out of closed session.

MR. SEITZ: Thank you.

VICE CHAIRPERSON JEFFRIES: I'll back him up.

CHAIRPERSON YOUNG: Okay. All right.

VICE CHAIRPERSON JEFFRIES: Mr. Chair, before you go, --

CHAIRPERSON YOUNG: Yes.

VICE CHAIRPERSON JEFFRIES: -- I think you should point out to the public we have not seen -- I have not seen that document. So you're the only one that has seen that --

CHAIRPERSON YOUNG: Well, I have seen it and I've read a few pages of it, but frankly I
don't know what it has in it that is that much
different. And I think that's why Ms. Schaffner
was asking Ms. Okun questions like that.

VICE CHAIRPERSON JEFFRIES: But the
point is I just want the public to know that we
have, us Board Members --

CHAIRPERSON YOUNG: Okay.

VICE CHAIRPERSON JEFFRIES: -- have not.

As the Chair, you're the only one who's seen that
document.

CHAIRPERSON YOUNG: Okay.

VICE CHAIRPERSON JEFFRIES: I just
wanted to point that out.

CHAIRPERSON YOUNG: That's fine. All
right. Mr Thomas.

MR. THOMAS: The prosecution team, Mr.
Thompson, can you put that slide up that has the
balancing scale on it?

Ms. Okun stated that, she said the
statement something like this: If it was a bad
project it was the CSD's bad project. And that's
related to this.

And one could interpret that statement
as if it's a bad project, we really don't care,
it's your problem. And I wonder, if it is a bad
project, if the project was poorly designed, if it
presented greater threats than it would solve, so
to speak, do we care about that? Do we have a
position on that?

MS. OKUN: If those were the facts. I
think that that's something that the Board could
and should consider in deciding what's a fair
penalty.

But that's not what the prosecution
staff's testimony has been. Their testimony has
been that this is a good project; that it meets
all legal requirements; and that it will solve the
problems with the septic systems.

MR. BRIGGS: Also, the District's own
witness said that it's a good project. Mr. Buel.

MR. THOMAS: Okay, so the information
that you have on this slide is on one side there's
the perception of a problem, that there might be a
aesthetic problem.

But what the CSD listed in their
testimony was actually a long list of problems.
And your position is that those are not -- that
those, themselves, are perceptions. That there's
no evidence to support that?

MR. BRIGGS: That's right. I think from
our standpoint the evidence is that those issues were resolved. Again, the District's own witness, Mr. Buel, testified that those issues came up during the District's deliberations. They considered those issues. And either considered the risks as acceptable, or had mitigation measures. And the project is a good project that does address those issues.

MR. THOMAS: So the prosecution staff is concerned with the concerns that are out there as far as that project goes? You have considered those?

MR. BRIGGS: Well, another part of our testimony was that we did provide comments on an earlier CSD proposal that was referred to as the Oswald proposal. We didn't say they couldn't do it, but we provided comments we thought the District should seriously consider.

So that's how we interact with the District in terms of giving them our perspective on the project that they ultimately choose.

MR. THOMAS: Thank you.

CHAIRPERSON YOUNG: Okay, any other Board questions before we allow the District its 53 minutes for closing?
MR. ONSTOT: Mr. Chairman, Mr. Seitz and I have decided to split closing like --

CHAIRPERSON YOUNG: That's fine.

MR. ONSTOT: -- the prosecution team did. And given the late hour, we don't want to have to ask for more time and think we can do it in the 52 minutes. But could I ask the Chair, when there's 15 minutes left to go, to give us a heads-up so we --

CHAIRPERSON YOUNG: Yes.

MR. ONSTOT: Actually, that's for Mr. Seitz' benefit more than mine, but we want to make sure that we don't go over and have to ask for more time.

CHAIRPERSON YOUNG: Right.

MR. ONSTOT: Thank you.

CHAIRPERSON YOUNG: And you can have anyone else, also, participate in your closing. I mean they had Mr. Briggs speak. If you want Ms. Schicker or someone else from the District to participate, I mean that's fine with me. But I'll leave that up to you.

MR. SEITZ: We're just going to need a minute.

CHAIRPERSON YOUNG: Okay.
MR. SEITZ: We're going to see if --

CHAIRPERSON YOUNG: Okay. Okay, we'll take a five-minute break.

(Brief recess.)

CHAIRPERSON YOUNG: Okay, we will now turn to the CSD's closing arguments. Mr. Seitz.

MR. SEITZ: Right, and before you start, I just -- I'm not going to be arguing here. I've passed out to, I think, every Board Member our closing -- our exhibits on our PowerPoint. And I think the prosecution team also --

CHAIRPERSON YOUNG: Do you have a copy, Ms. Okun? Okay.

MR. SEITZ: -- also has our exhibits. By the way, they're the same exhibits that are going to be up here on the show -- on the PowerPoint, sorry, except that there's one document that's going to be out of order. I think 7 is actually going to be 3. Just to give you a heads-up if you're going to follow along.

And now I'm ready to begin.

CHAIRPERSON YOUNG: Okay.

MS. SCHAFFNER: I'm sorry, just to be clear, did you state that all of these documents were already elsewhere in the record? None of
them are new, right?

MR. SEITZ: There is, 7 is a new
document, which is just a picture of the County.
So I want to make sure there's no --

MS. SCHAFFNER: But aside from that the
rest of them are in the record? Okay?

MR. SEITZ: Yes.

MS. SCHAFFNER: That'd be yes? Okay,
thank you.

CHAIRPERSON YOUNG: I'm starting the
clock, go ahead.

MR. SEITZ: Thank you, Mr. Chair,
Members of the Board, prosecution staff and the
audience. First of all, I want you to be assured
that we are not going to be using a PowerPoint to
overstate testimony. We're going to show you
actual documents.

Second, it's disingenuous for the
prosecution team to stipulate that the Bay Ridge
and Vista Del Oro and the fire department are the
only dischargers that you can be held accountable
for, and then go right through the entire litany
of their closing argument based on a violation --
a basin-wide violation of 00-131.

The settlement that they proposed, I
like the format, but if it was applied to Vista
del Oro, clean up Vista del Oro, clean up Bay
Ridge and clean up the fire department with a time
schedule, because that's what everybody has
stipulated to is that we're responsible for. Now
we're off on these million-dollar fines based on
failure to do a project that treats the entire
town.

As to the issue on points and
authorities that I haven't given you any. In my
responsive pleadings, in the answer to the
complaint, I cited article XIII of the California
Constitution and Government Code section 50076 for
the proposition that you can't willy-nilly switch
funds from the fire department to the sewer
department, from the water department to the sewer
department. I want you to know, that is the law.

Our challenge is based on the
application of TSO-00-131 and the application of
8313. We are not stipulating that it's the
application of those that we are contesting. The
idea that these are valid orders, maybe, maybe
not. We're going to find that out.

But what we're contesting here is how
they are applied to this particular situation.
And secondly, we have put the assets in mind, or at issue.

With those opening comments, I want to go to -- this is 8413. All I can tell you, this is the State Water Resources Control Board resolution that actually amended the basin plan.

The prohibition enunciated by that is found in here as the second column, last phrase; I'll just read it into the record: Discharges of waste from individual and community sewer disposal systems are prohibited effective November 1, 1988, in the Los Osos Baywood area, and more particularly described as -- and that's slide number 2. The prohibition zone.

That is what we would call, as lawyers, an in rem action. It is prohibiting property from being used in a particular way, and that is to discharge waste into the aquifers.

It is also predicated on a public nuisance because the discharges from these septic systems tend to migrate off of the property. That's the predication. If you take a look at the findings of both 8313 and 8413 you can't come to a different conclusion, that this is an in rem issue.
And therefore the District can only be responsible for its discharges. How it operates its properties on behalf of its citizens. It cannot be held responsible as the prosecution team would allege.

More importantly, if I can have slide number 7, when 8313 was formed it was basically the paradigm on 8313 or 8413, depending whether you go with the State Water, was based on a paradigm of the residents within the prohibition zone, the property owners in the prohibition zone that were violating 8313 and the County of San Luis Obispo and this Regional Water Quality Control Board.

That looks off, but my engineer tells me it's because it includes the ocean. So just sort of keep in mind, we know that Los Osos isn't inland.

The issue there is clear, that you had a paradigm with a County that was elected, had a five-member Board that sat at San Luis Obispo and the pact was between the Regional Board, the folks within the -- the property owners within the prohibition zone, and the County of San Luis Obispo.
The folks in the prohibition zone, or the folks in the community, whether they were registered voters or et cetera, had very little influence on the Country because it was a regional government. They could only elect or participate in electing District 2 Supervisor. Otherwise, the other four were impervious to elections, recalls, et cetera. That was the paradigm.

When 8313 was enacted the Coastal Commission I don't even believe was in existence. The regulatory framework of putting in a wastewater treatment project was virtually nonexistent, other than, as we all know, we got big grants to do it.

Next slide, please. No, I'm sorry, should be -- that should be 6. When the District was formed that paradigm shifted dramatically. The prohibition zone is shown in white; the total District boundary and the voters changed -- sorry, in the orange there.

The paradigm shifted dramatically. The voters, the registered voters now within the District elected the administrators of Regional Water Quality Control Board orders. It wasn't the County electing them, it was the voters within the
District that elected them. That paradigm shifted. The paradigm shifted from a registered voter base that was local control to -- for an issue with the property owners within the prohibition zone and the Regional Water Quality Control Board. A dramatic paradigm shift on how to develop a project.

No one, the Regional Board, in enacting 00-131 or any of these orders ever recognized that paradigm shift, and how. And it is a paradigm shift that you are going to have to address if you want to see a wastewater treatment project in Los Osos.

The idea of fining these types of issues isn't going to provide you with the basis. What you're going to get, a consensus between the registered voters, the property owners within that District. You have choices to make, but when you sit back in closed session, you think how am I achieving water quality, if you don't consider the paradigm that is up there on that, how am I going to do it, how am I going to get the people in the orange in synch with the people in the white.

Because they all elect the same five Board Members. And not only that, there are
property owners within the prohibition zone that
don't even live in the prohibition zone. Not only
that, there are properties within the prohibition
zone that aren't violating 8313, because they're
vacant.

That is the paradigm that you need to
address. It's the very paradigm that 00-131
ignores, 100 percent, total. And if you think
that fining somebody is going to shift that
paradigm I think you're mistaken.

Everybody in that District boundary has
to have an equal stake in seeing this wastewater
treatment -- a, whatever wastewater treatment
project is going to move forward. Whether you
expand the prohibition zone so that it's District-
wide, AB-885, or your own inherent powers. If you
don't implement a paradigm shift on how this
governmental agency actually interacts between its
voters and this project and the prohibition zone,
we will be here again.

I want you to really seriously consider
the dramatic difference between the County's
project when 8313 was enacted and those cease and
desist orders and all those things. Big
difference.
Next slide, please. No, I think it's document number 8. Part of that paradigm is how the Los Osos Community Services District actually interacts with its different zones of benefit.

You saw this slide as part of our case-in-chief. The point of it is that it's zone E -- I bought this, too, just for this purpose -- this and this and the fire department are the ones that are violating the 8313.

These folks and these folks pay, those are the folks that pay the District to discharge. Those are the people that are on the hook for whatever fines you come up with based on their discharge to the groundwater basin. And I think you heard it was 140 residential units, from someplace, from Mr. Buel, I think 60 from the other one.

The fire department provides fire service total District-wide, which means that they provide service to people within the prohibition zone and people outside the prohibition zone. They provide service to folks that aren't violating 8313 and they provide service to folks that are violating 8313 with their septage.

When you take a look, that's why I've
been so strong on this, these ar the folks that
are violating the discharge. It's this little
zone of benefit, it's this little zone of benefit,
it's this fire department. The issue that we keep
hearing about property taxes being, well, they can
do something with the property taxes, you had
direct testimony that 99.9 percent of that goes to
the fire department.

So what are you telling the residents of
Los Osos? You have a discharge at your fire
department that can probably be cleaned up very
easily, because it's a very limited septic system,
and now we're just going to levy a million dollar,
$2 million, $12 million fine for the entire
prohibition zone against the fire department.

These folks, when you take a look at
that 11307 and you start thinking about the effect
on health and safety of this community, on what
your staff is proposing that you do, or the
effects on E and F up here, without a time
schedule to fix it, the very same time schedule
you've offered every other zone, including E and F
when the County had the project, to fix these
issues that you perceive, is violating your own
State Water Resources Control Board policies that
tell you that cease and desist orders and clean up
and abatement orders with timelines are the
applicable avenue for cleaning up prohibition,
violations of prohibitions.

And I can read them to you, but I don't
think I have the time. But, if you're going to
carry those policies in there, if I have time at
the end, I will reflect on them.

CHAIRPERSON YOUNG: Mr. Seitz, could I
just interrupt you just quickly because I thought
I heard testimony that there are cease and desist
orders applicable against those entities that
you're speaking of.

MR. SEITZ: When we get to that, that is
-- we queried that a thousand time, and we have
statements from your prosecution team, and we're
going to provide you a document that those cease
and desist orders are not the subject of this ACL
complaint.

Staff hasn't told you that. Staff
hasn't argued these cease and desist orders
because they know that there's a document in our
files, in their administrative record, that
specifically states those cease and desist orders
are stale. And we're going to show you that
May we see the next slide, please. This gives you the reserve balances in these accounts. And remember, we're talking about the Vista del Oro account, 19,000; we're talking about the fire fund that had 669,000. Mr. Buel testified as to what that money is used for. And you have the Bay Ridge Estates, 31,624.

Does anybody here think that you're going to use assessment District money from the prohibition zone that have no relationship or an on-and-off relationship with these zones of benefit for their alleged violations, and they're going to be charged?

You're going to fine the entire District for -- you really think that you're going to take assessment District money from all the folks in the assessment District, even though they don't live in Bay Ridge? They don't live in Vista del Oro. And you're going to say, well, they got money, they paid their lawyers, they got this, they did that, they got this. That money isn't Bay Ridge Estate money, and it's certainly not Vista del Oro money, and it's certainly not fire department money.
It's just, we asked for these stipulations as to what are we being liable for, and we keep hearing it's these discharges.

Next slide, please. What makes this more complicated and why I keep coming back to this, because we talk about the water department. Well, the water department just got some money because they settled an MTBE violation; that's going to clean up MTBE issues and water contamination.

So, let's not give it to the fire department. Let's transfer it over to the sewer department. I want you to know, take a look at how many water departments operate in the prohibition zone. Three. That's the District one, this is CalCities, and this is S&T.

Next slide, please. Here's 00-131. And if I can go to -- oh, by the way, this is slide 11. I keep getting so excited. If you take a look on paragraph 13, and it's 11 in your packet, 13 says: The civil penalty established by this order, $10,000 per day of violation of the time schedule is established in an amount necessary to achieve compliance and does not include any amount intended to redress previous violations.
Here's the kicker: The amount is necessary to achieve compliance in light of the project's cost. Estimated at $70 million.

Again, what staff is asking you to do is to apply a total project cost in a time schedule order of $70 million to these three uses of septic tanks. And we keep telling -- we keep wondering, where are you getting this? How can you go from, they say, this isn't prohibition oriented, it's project oriented towards these three operations. Yet the very penalties, $10,000 per day, isn't based on the discharge from Bay Ridge, Vista del Oro or anybody else. It's primarily based on us not constructing a wastewater treatment project.

That's 00-131, paragraph 13.

Secondly of all, it's uncontradicted testimony that 00-131 was based on the timeline for the State Water Resources Control Board loan. Let's not lose track of that.

It was not based on a stipulated agreement. Now, I'm going to show you the next slide. If you can go back up to 15, sorry, slide 15, please.

This is the minutes when this Board adopted 00-131. The Board did conduct a special
meeting or an adjourned meeting so that the Board Members could be present at this meeting.

And what I want to point out to you, what this says is number one, President Bowker and Gary Grimm added testimony in support of revising the cease and desist orders. The cease and desist orders at Bay Ridge, the cease and desist orders at the fire department, the cease and desist orders that were at the Vista del Oro and Bay Ridge. And not adopting 00-131.

This whole idea that there was some type of agreement that this was all hunky-dory is refuted directly by this slide. And going up to, again it's repeated right here, Gary Grimm urged the Regional Water Quality Control Board not to adopt 00-131, since LOCSD was already highly motivated.

Executive Officer Briggs recommended that RWQCB adopt order 00-131 as a new layer of directive to the LOCSD on the theory that existing cease and desist orders had become stale.

The District has always had a position that if the Regional Water Quality Control Board was indeed interested in these cease and desist orders that they should have been expanded.
Understand this, that at the time 00-131 was ordered, the District had already submitted a plan, the Oswald plan, that was a STEP system that would have complied with those existing cease and desist orders. Now, it may have had objections, and there may have been things to have worked out, and your staff may not have been as happy because it didn't sewer the entire prohibition zone, it only sewer the lower ones, but the District had the ability at that time to comply with those cease and desist orders. Don't lose fact of that one -- don't lose sight of that one fact.

Next slide, please. And additionally, the District filed a petition, by the way, with the State Water Resources Control Board immediately after that.

Now, what's interesting about this, this is a letter, this is from your files, and you can see your administrative record file. This is document 16. This is a letter in February 7th, '003 from the State Water Resources Control Board saying, we're going to extend your loan.

You might recall that the County had this loan from the State Water Resources Control Board before the District was formed. And the
District negotiated with the State Water Resources
Control Board to transfer that loan over to the
District. This is the letter saying, February
7th, the loan is extended.

At that point in time it was incumbent
upon this Board and your staff to extend 00-131,
predicated on the State Water Resources Control
Board loan commitment. They changed, you should
have changed.

Next slide. This is a letter from Bruce
Buel, and if I can go to the next -- this is
document, you can see the document number, this is
document 17; if I can go to 18, please. This is
the second page.

This is Mr. Buel to the Regional Water
Quality Control Board regarding time schedule
order 00-131. The time schedule is out of date
due to delays beyond the reasonable control of the
District and should be modified at the appropriate
time.

Next document, please. This is Mr. --
the February 2003 Regional Water Quality Control
Board Staff report. Know what's interesting about
that? That's your waste discharge requirements.
And these folks are trying to tell you to fine
them back to 2002. That's your staff report. Not only that, this is a staff report to a matter that was litigated. We didn't have a discharge permit for a year and a half later as a result of the CalCities litigation that challenged your waste discharge permit.

Most important thing is page 20. And if you take a look at page 20, and it's this paragraph right here. This is in response to Mr. Buel's request for an extension. The time schedule order enforces the CSD's obligation to proceed with design and construction of the system. The Regional Board will make a determination regarding the time schedule order compliance at a separate proceeding.

The District's expectation, and what Mr. Briggs is telling you, is that hey, we are not -- there's no way they can comply with this. There's no way. It's an impossibility.

We're going to come back and we're going to amend TSO-00-131 so it's reality-based and not myth-based. Not based on some idea, well, if they do this one, then we won't fine you; if they do this one. That's not the purpose of time schedule orders. It's to set out milestones for project
completion, realistic ones.

Then if they don't meet the realistic ones, then you fine them. It's not this mythical thing of pushing these things out in the future and say, well, you don't meet these hypothetical future ones, then we're going to fine you. It's backwards, absolutely backwards.

Now, and it's backwards for a lot of reasons. But, from that point on it became impossible for the Los Osos Community Services District to ever comply with 00-131. It was never going to happen.

The construction was supposed to occur a year before this. And it was litigation. But to put a governmental agency in a spot of saying this continual threat, this continual hammer with nothing in front of them to achieve except for a threat if you don't achieve something, we're going to come back and fine you. And that's the position they put you in here today.

Furthermore, I'm going to read to you, I usually don't do this, some Civil Code sections regarding enforcing impossibilities. This is Civil Code section 3526, responsible for unavoidable occurrences: No man is responsible
for that which no man can control."

3531, impossibilities: The law never requires an impossibility." From that point on we were in an -- it was impossible for us to comply with the timelines.

Those timelines in 00-131 should have been amended. It is the application of 00-131 that upsets us the most.

Now, on October 2005 the Regional Water Quality Control Board initiates an ACL complaint charging allegations are a violation of 00-131. Now, we know that at that time, now we know that that complaint was directed at the discharges of Vista del Oro, BayRidge and the fire department. And that the violation of the prohibition zone discharges of 8313 from these three discharges.

We know that the fines under 00-131 that staff is trying to enforce aren't related to BayRidge, Vista del Oro; they're related to the District's failure to build a wastewater treatment project, if you recall, that's the $10,000 per-day fine based on the $70 million wastewater treatment project. It's not designed, it's not predicated on cleaning up BayRidge, Vista del Oro and the fire department. In fact, the District had
previously submitted such a document that would have accomplished that.

And now we're talking about let's, well, we can sell Tri-W and we can get these millions of dollars, and we can -- I don't even want to go into the next one -- we can sell Broderson and get these millions of dollars.

The prohibition zone bought those properties. It wasn't Vista del Oro that bought those properties. Those are folks that don't live in Vista del Oro, those are folks that don't have, are not illegally discharging under 8313, they don't live in BayRidge. They are provided service through the fire department, but their fire department only has a minuscule septic tank. And they service areas much broader than the prohibition zone. So just a non-starter.

And then you say, well, we have this settlement from the Regional Water Quality Control Board -- I mean, it's not the settlement, this SRF funding. Again, its root-source is the prohibition zone. That is the return of assessment District money. It is not this panoply of spend it where we want, spend it where you can.

Even to the extent that you object to
the District's expenditure of that money, doesn't
make it available to you. That is between the
District, the State Water Resources Control Board
and its assessment District. You're not in that
mix. You're just not in that mix. For the
discharges of BayRidge, Vista del Oro and the fire
department.

What you have that's in that mix is
those fundings. You have in that mix the
availability with certain compliance requirements
of raising fees and charges within BayRidge or the
fire department if that's really what you think is
in the best interests, understanding that paradigm
that I showed you at the very beginning of this
presentation.

This is slide number 9, again, please.
There. Can the District raise fees in BayRidge to
put in some type of hybrid sewer system if that's
really what you're interested in? Yes. Let me
say this, most likely yes. But it's so litigious
that I would say most likely yes.

Vista del Oro. Do they have the ability
to raise fire taxes? Yeah, if you want them to
raise fire taxes, I would suggest to you that from
fire department there may be much simpler ways of
addressing that issue because that septic tank
only provides septage effluent for the fire
department. It's not even residential; it's a
fire department. My guess is there's much more
economical ways than having a hybrid system up
there.

This deserves a time schedule; this
deserves a clean up and abatement order or a cease
and desist order. It deserves the community, and
these folks in these various zones, an opportunity
to address it just like you've done in the past.

Next slide, please. I think it's 21.

Here's some of the questions from the Board. If
the Board agrees to impose a fine against the CSD,
could the CSD use SRF funds to pay it? Your
staff: No. Backed up by Anne Hartridge. This is
slide 21.

Los Osos Community Services District's
response, not quite as lengthy, but the same
thing. Payment of fines is not an eligible cost
under the SRF loan contracts.

It goes right back to this. This SRF
money is prohibition zone money; it's assessment
District money.

Next slide, please. This is slide 22.
What are CSD's options for paying potential ACL fine? Can they increase the assessment? Would an increase in the assessment have to go before the voters? Regional Water Quality Control Board prosecution team's response: Yes. Our response: Yes.

And if you take a look and you note down at the bottom of this slide 21 (sic), we also add this, what we've been talking about here today: Vacant parcels within the prohibition zone are not violating RWQCB order 8313, and the owners of those vacant parcels would also vote on an increase in the assessment.

In other words, when you start thinking about using prohibition zone money, understand this, you are using money from folks that aren't violating 8313.

Next slide, please. This is the prohibition zone. And the reason why I wanted this slide up here is because it shows you within these parameters, this is slide 23, the vacant properties that aren't discharging to the underlying groundwater basin. And they are significant.

The idea of saying, we're going to take
their money and we're going to pay for Vista del Oro and we're going to pay for the fire department and we're -- remember the fire department's up here that serves in this area. It's inappropriate to do that. These folks here have paid into that prohibition -- paid the assessments that have gone to buy the Tri-W site, that have gone to pay those things that the SRF loan wouldn't commit to. And it's those folks that are being reimbursed the moneys from the SRF.

The only conclusion you can reach is these folks are not, these folks in here cannot be held responsible for Vista del Oro, BayRidge or the fire department.

When you go in I hope that you can take a worksheet with 11327 with you. Because one of the questions is, whether the discharge is acceptable to clean up or abatement? The answer to that is yes. Vista del Oro, BayRidge and the fire department are susceptible to clean up and abatement. We've proven it in the past. We submitted a plan. You have continually asked for that through cease and desist orders, clean up and abatement orders. There's nothing to believe. Unless, again, your staff wants to convince you
that it's this, and not these discharges, that you're concerned about.

The ability to pay. We put that directly at issue. The effect on the ability to continue in business, as we have pointed out, that through our budgets, and we need to go back to slide 9.

There's the ability to pay. The effect on the ability to continue in business. Staff has -- if BayRidge Estates, the fire department and Vista del Oro are run as a business, they have their separate budgets, and the ability to exact $1 million worth of fines payable immediately.

There's 31,000, there's 669, and there's 19,700.

Remember the paradigm that you are operating in when you think about the Los Osos Community Services District.

Any voluntary cleanup taken, yes. In 2000 we offered the original Oswald report before 00-131 came out, that would have sewered these.

Now, staff makes this deal. Well, they haven't tried it lately. Well, folks, we've spent $25 million trying to do a project that's now failed, and we're not here to stipulate to that.

But my guess is if Mr. Briggs would have
saw us building some type of plant to service BayRidge and Vista del Oro, you would have had an ACL complaint before you at that time lickety-split. Because he would have said, you're diverting money from the prohibition zone cleanup.

Understand the paradigm.

Prior histories of violation, you bet. It goes back to 1983. And we're not here to argue that 8313 isn't a good legitimate order. What we're telling you, trying to convince you of is that under the paradigm of the Los Osos Community Services District, the paradigm of enforcing orders like this on a population base that is bifurcated between property owners, registered voters and people that don't live in the prohibition zone, is a non-starter.

You need to get these people in synch. You need to come up with a strategy to --

CHAIRPERSON YOUNG: You're at the 15-minute warning.

MR. SEITZ: Thanks. This is going to work out pretty good.

The next one, the degree of culpability, economic benefit or savings resulting from the violation. I've heard of convoluted arguments on
how the District is saving money by spending money. The District is not saving money by this, in fact, we're losing money. We're losing money by being here. We're losing money by not having our efforts directed at trying to reach a solution to this problem. We are losing money. But it's not an economic benefit. This money isn't drifting back into the coffers. This isn't a private industry where you can say ABX Corporation is operating in a prohibition zone, and they're operating a terrible discharge system, and because they're operating that terrible discharge system, their coffers, they got more money in profits, more money for their shareholders. That's not how this works. We're losing money. And the idea that us losing money and saving money on a future project is an economic benefit to the District, how stretched do you have to go to make that argument. Way out there. Way out there. We are not saving a dime. We are spending money being here. We are spending money daily. The idea that we're being enriched as a result of this, unfortunate term of events. It's just, to me, beyond comprehension that anybody could make that
argument. And it should be beyond your
comprehension to accept it.

The next one, other matters as justice
may require. Very quickly here. State Water
Resources Control Board water quality enforcement
policy, section IV, enforcement actions, section
C(4). Clean up and abatement orders, CAOs are
adopted pursuant to the California Water Code
section 13304. CAOs may be used to any person who
has discharged or discharges waste into the waters
of the state in violation of any waste discharge
requirement or other order prohibition.

State Water Resources Control Board
water quality enforcement policy, section IV,
section C(7). Cease and desist orders are adopted
pursuant to California Water Code section 13301
and 13303. CDOs may be issued to dischargers
violating or threatening to violate WDRs or
prohibitions prescribed by the Regional Water
Quality Control Board.

I appreciate -- I don't think your
prosecution team is -- I hate to use the term,
evil-doers, but whatever you think, I don't think
that. I think that that offer of settlement was
genuine. That was up there. If it would be an
offer that said, look, we're really interested in
you cleaning up those three discharges that we've
all said that we're interested in cleaning up, and
came up with a time schedule where the Regional
Board and staff and they get together and come up
with a time schedule, and a methodology of getting
those discharges cleaned up, I think you're going
to find absolute cooperation between the District
and your staff to do it.

But to go back and say, clean up the
entire basin ignores the paradigm. Completely
ignores the paradigm. You need to shift that
paradigm with the District. You need to get the
entire District, the people in the white and the
people in the orange on the same page. You will
always be faced with a significant voter
population that has no financial interest in this
project.

Thank you.

CHAIRPERSON YOUNG: Thank you. You're
at 43, and so you've got, I think, up to what, 53.
Another ten minutes.

MR. ONSTOT: Thank you, Mr. Chair,
Members of the Board. As I said, my name is Steve
Onstot, and I'm fairly new to this. But in a past
life with the Department of Toxic Substances
Control, I'm fairly familiar with the process and
I do understand the difficulty that you have to go
through in weighing this.

I'm going to make three points. I'm not
going to repeat what Mr. Seitz said, except that
we specifically designed our closing arguments to
present you with documents, with case law, as
opposed to what you've seen so far from the
prosecution's closing, which was a PowerPoint that
had no exhibits attached to it, and was basically
interpretations of what was said.

A lot's been said about my first point,
and that's the due process argument. And when I
came to this case about November 17th, the first
thing I did is I looked at the ACL, of course.
And then I went to the website, the Water Board's
website because the first step in due process is
that every governmental entity is supposed to
follow its own rules.

And I did that. And I was very pleased
to see for December 1st and 2nd, attached to the
agenda, the conduct of meeting and hearing
procedures. One of which, item I, says that all
Board files, exhibits and agenda material
pertaining to items on this agenda are here part
of the record.

Now, that's why, when we asked for
documents to be brought into the record via
incorporation, we relied on the Water Board's
posted rules with regards to that, at least as
they were dated December 1st and 2nd of 2005.

Of course, the prosecution's response
was, well, we weren't specific enough. But as I
read this, it's pretty clear that Water Board
files on this matter are part of the record.

The second thing that I noticed with joy
was item D, that said, late submissions that
consist of evidence will generally be deemed
prejudicial unless all designated parties have had
time to consider the evidence before the meeting.

And to me, that Water Board rule,
adopted by this Board, was absolutely and
perfectly consistent with the regulation that
governs all of the Boards statewide, which is
648.4(a). It is the policy of the State and the
Regional Boards to discourage the introduction of
surprise testimony and exhibits.

It goes to the very fundamental concept
of fairness in these proceedings; a $10 million
fine upon a governmental entity is at issue here, and there was two months to prepare. And even after December 1st when this hearing began, a number of ruling changes that I think we all in this room can agree, that there was surprise evidence and documents that were introduced all the way up until today.

The second point that I want to make alludes to the concept of fining. Now, in reviewing the transcripts from December 2nd, the Chair posed a question to Mr. Seitz, saying, are there any cases out there that say if you impose a fine that's too onerous it's reversed, or that addresses the issue.

And Mr. Seitz, on the spot, said that he didn't know of one. And there isn't one. there is not one that pertains to Regional Quality Control Boards or even the State Board.

But there is one on due process. And the case is called Walsh v. Kirby. I have copies for all the Board Members and the prosecution team. It's not evidence. It's a case law, and it's by our Supreme Court.

And in that case the Alcohol Beverage Control Board reversed the decision -- or, excuse
me, the Supreme Court reversed the decision of the
Alcohol Beverage Control Board because the Control
board was only authorized pursuant to statute to
impose penalties to achieve compliance. Not to be
punitive.

And what the Board actually did, it was
in the concept of fair trade, went way beyond what
the statute allowed and the Supreme Court had no
problem finding that the Board acted beyond its
authority, and therefore annulled the decision.

The two quotes that I'll give you, and
again you can take this into closed session with
you because it is law, it's not evidence. When a
governmental entity vested with broad
administrative powers acts in an arbitrary manner
so as to effect capriciously the property or
property rights of persons subjected to its
administrative controls, it has denied to those
persons due process of law.

Quote number two: The foregoing
discloses that the section is not intended merely
to exact tribute for the general fund, or by the
imposition of insurmountable financial burdens to
punish or eliminate a licensee who is in default.

However, discretion cannot be exercised
so as to enlarge its own boundaries or support acts requiring other legal bases. Even within legal limits the power's not unbridled. It is a legal discretion to be exercised in conformity with the spirit of the law, and the manner to subserve and not to impede or defeat the ends of substantial justice.

It is evident that the purposes of the statute are further frustrated by the imposition of heavy cumulative penalties upon a retailer when such penalties are used as weapons. That is a violation of due process when the Legislature specifically proscribes such activities.

The power vested by the statute is indeed perverted when the department utilizes its tools to do indirectly that which is directly and expressly prohibited. And I will come back to that in a moment.

CHAIRPERSON YOUNG: Mr. Onstot, which statute are you referring to? It's not a Water Code statute, is it?

MR. ONSTOT: No, no. This case is the Supreme Court making rulings on due process issues in the context of the Alcohol Beverage Control Board.
CHAIRPERSON YOUNG: Right, okay.

MR. ONSTOT: Okay. The facts are completely different, but the law is the same because you also are faced now with the statute that says that you can't impose punitive penalties.

CHAIRPERSON YOUNG: Okay, let me ask you a question. Is there any dollar amount that you think this Board could impose that would not violate due process?

MR. ONSTOT: No.

CHAIRPERSON YOUNG: So you're saying any penalty would violate due process?

MR. ONSTOT: In this case, yes, based upon the reasons Mr. Seitz stated.

CHAIRPERSON YOUNG: Okay, thank you.

MR. ONSTOT: All the monies that are available are allocated or restricted to someplace else. There's not the ability to pay the fines.

MR. SEITZ: I don't want to argue with co-counsel. I believe he's correct. But when you go back to those budgets, there's 31,000 -- I mean if you really want to shut the business down, you got to wrestle with this issue, there's roughly 31,000 in BayRidge, if you really want to deplete
the fire department -- remember what Mr. Buel testified to the use of those monies. Those are for emergencies.

If you want to take the emergency money away from the fire department, you've got about $600,000. If you want to take away replacement in emergency from Vista del Oro, you got 19,720. If you want to take away the emergency reserves from the Bay Ridge Estates, you got 31,624.

I submit to you that those monies are much more appropriate to clean up an abatement orders or cease and desist orders, to get those discharges cleaned up. Not sitting around here taking these monies away. And remember, that's sewer, street lighting and drainage. That's just not sewer that is up there in those budgets.

MR. ONSTOT: So my third point that I got when I first looked at this case is why are we here. If the purpose is to get money out of the District, I think that's been foreclosed.

If the purpose is to achieve compliance I think that's been foreclosed, too, for a number of reasons. From testimony regarding the Water Board Staff's unwillingness to talk and meet with us starting in October. All the way to the point
of not commenting on some proposed amendments to
the time schedule order.

So, what is the big picture and what is
the objective here. And if you go through all of
your notes there is one thread, one thread where
everything makes sense. And that is staff's
intent to mandate construction of a wastewater
treatment facility at the Tri-W site.

If you look at all of their
presentation, if you look at what is in the
record, it all goes to that. Even my question to
Mr. Briggs. Because what happened was Roger
Briggs and Lori Okun lost the election. The next
day, according to that email, the ACL was on Mr.
Briggs' desk.

He testified it was in October, based
upon the new District Board, suspension of work,
huh-uh. Either he was not telling the truth then
or his email that I confronted him with told the
truth.

The day after the election that ACL
complaint came out. It was before the
certification of the election, before there was a
Board, and if you don't have a Board you can't
have an agenda, and if you can't have an agenda,
you can't have a proposed action to suspend work.

Now, everybody knows, especially the Board Members, I'm sure, with regards to the prohibition set forth in Water Code section 13360 that says no waste discharge requirement or other order of a Regional Board shall specify the design location, type of construction or particular manner which compliance may be had with that requirement, order or decree. And the person so ordered shall be permitted to comply with the order in any lawful manner.

Your counsel and your Executive Officer have been advocating Tri-W for a long time. They testified in court, they were deposed on it. That is no secret.

But, when the law says that you can't mandate something like construction of a wastewater treatment plant at a particular site, I'll go back and quote the Walsh case that I'll give you. Last sentence.

CHAIRPERSON YOUNG: You have used your time up. I'll give you a minute just to wrap it up.

MR. ONSTOT: Okay.

CHAIRPERSON YOUNG: Thank you.
MR. ONSTOT: The power vested by the statute is indeed perverted when the Department utilizes its tools to do indirectly that which is directly and expressly prohibited.

This proceeding, the only way it makes sense is an attempt by staff to coerce construction at the Tri-W site. Even Mr. Briggs' last slide up there said that. He wants Tri-W. You cannot use enforcement proceedings to circumvent the statute in the Water Code that says you cannot mandate construction or certain mode to get to an end.

Thank you for your time.

CHAIRPERSON YOUNG: Okay, thank you.

That, then, concludes the District's closing argument. And we'll go back to prosecution staff for any rebuttal. And then that will conclude this portion of the hearing and the Board will go into closed session.

MR. SEITZ: Mr. Chair, --

CHAIRPERSON YOUNG: Yes.

MR. SEITZ: -- is our expectation that you're going to come out of closed session with a decision today? Should we stick around here?

CHAIRPERSON YOUNG: Well, I think you
should stick around.

MR. SEITZ: Okay.

CHAIRPERSON YOUNG: I don't really know what's going to happen. But my sense is that we'll kind of get an idea of kind of what we would like to do, how we'd like to do it. We may come out and finish the deliberation publicly and debate certain things. So I wouldn't go anywhere.

MR. SEITZ: Thank you.

CHAIRPERSON YOUNG: Okay, are you ready?

MS. OKUN: Yes.

MR. SEITZ: Oh, I thought she said no.

CHAIRPERSON YOUNG: No, she's ready.

MR. SEITZ: Oh, -- sorry. I misheard, I thought they said they had no rebuttal. They weren't going to rebut.

MS. OKUN: The District's closing argument focused entirely on the time schedule order, and that was the basis of the staff recommendation for the penalties, the time schedule order, as opposed to the basin plan violations.

But, I just remind the Board that based on how the complaint was drafted, if after hearing the evidence the Board decides that the basin plan
violations are a more appropriate basis for assessing an ACL order, the Board still has that option.

Regarding whether or not we're alleging basin plan-wide violations, I think we've made it very clear that we're only alleging violations based on the District's three discharges. All of the other factors that we've discussed go to culpability and go to whether the Board should assess the maximum $10,000 a day or not.

The District is the entity that the community elected to build a treatment plant, and that's relevant to the District's culpability here. That's all I have to say on that.

In terms of the paradigm shift, I have two comments on that. First, the paradigm shift was recognized when the District was formed. The time schedule order gave them the time they requested to develop a new plan, and implement the new plan, obtain funding.

The original cease and desist orders issued to the District had a schedule in them. The time schedule order lengthened that schedule in order to recognize that the District was a new entity, and that there was a new paradigm.
The second thing is that for the District to come in here and suggest that this Board should fix the problems with their paradigm is outrageous. The community went to the Coastal Commission and enlisted the Coastal Commission's assistance in having the opportunity to form a local entity to build the treatment plant.

And Mr. Seitz argued in his closing argument that that was appropriate because when the County had the project, the effective voters were a tiny little proportion of the County.

It was set up in a way so that some of the District is in the prohibition zone and some of it's outside the prohibition zone. Maybe that's the only legal way to set up a community services district, but to say that this Board has to fix that by expanding the prohibition zone or doing anything else is outrageous, particularly since, as the District well knows, if the prohibition zone area is expanded, there's going to be a lot of opposition to that. Because there is a lot of sentiment in the community and possibly at the Coastal Commission that that would have growth-inducing impacts, which are objectionable.
The cease and desist orders, as I have said, are not the basis of the allegations. But the District now argues that it should get new cease and desist orders. And I just don't understand that because there were cease and desist orders that had schedules in there. The District couldn't meet them, so the Board gave them more time by adopting a time schedule order.

The enforcement policy does talk about clean up and abatement orders and cease and desist orders as options. But it also talks about progressive enforcement which is in section D, page 3 of the enforcement policy. Which says that progressive enforcement is an escalating series of actions that allows the efficient and effective use of enforcement resources.

So you go from the least stringent enforcement action that's likely to achieve compliance. And if that doesn't work, you move to the next step and to the next step. Well, what the District's asking you to do is to move back six years in steps, to go to cease and desist orders again.

With respect to the 2000 project, it wasn't just a project to clean up these
facilities. It was a project to sewer portions of
the community and, as Ms. Marks testified, the
District withdrew that. The Board never
considered it; the Board never rejected it.

Staff made some comments including that
it would be better to sewer a larger area. But
other comments on problems with that project, and
the District withdrew it in favor of the Tri-W
project.

There was some discussion that the cease
and desist orders were stale. Well, they were
stale because the District was already in
violation of the time schedules in those cease and
desist orders. And the Board cured that by
issuing a longer schedule.

Regarding who should pay the
assessments. I don't have any further comments on
that. I'll leave it to the discretion of the
Board to consider how to weigh that evidence. But
it still doesn't seem any different to me that
some people are in the prohibition zone and some
people are out of the prohibition zone, than it
would be for a county who's running a treatment
plant for a portion of the county, servicing only
a portion of the community. Except that in that
case it may be a much smaller portion of the community.

The District argued that there was a delay of a year and a half because of the CalCities challenge to the WDRs and suggested that somehow it was this Board's fault that its WDRs were being challenged.

Well, the basis for the CalCities challenge was that the WDRs included effluent limits which weren't stringent enough. So, I don't think that the District's suggesting that the Board should have issued WDRs with more stringent effluent limits, but I think that you should keep that in mind when considering that argument.

Regarding the sale of Broderson and the Tri-W property, we're certainly not advocating the sale of either of those properties. We don't encourage the District to sell the Broderson property in violation of their prop 13 grant.

As Mr. Onstot testified, the staff does -- not testified, argued -- the staff does want to see the Tri-W project built. It's the only feasible project that's out there. We didn't pick the Tri-W project. Wanting them to build the
only possible solution doesn't violate section 13360.

The Tri-W project is all that's out there. It has permits. The District owns the property where the project is going to be built. And until December 9th it was completely 100 percent funded.

On the due process issues, I'm not sure what surprise evidence Mr. Onstot was talking about. We didn't introduce any evidence today. We provided all the -- the last evidence we provided was on December 12th, which was almost a month ago. We did attempt to introduce a newspaper article two days ago and the Chair denied that request.

The conduct of this meeting was subject to very extensive and specific hearing notices that included hearing procedures.

The objections regarding incorporating all exhibits I don't really understand. I think Ms. Schaffner addressed that with Mr. Seitz earlier today.

I obviously can't respond to the discussion of Walsh v. Kirby, but I find it a little surprising that the District would finally
provide legal authority for their arguments, when
the Chair and the Chair Staff have been requesting
that for over a month, particularly since the
District expressed some concern that we would use
our rebuttal to sandbag them.

But I'm happy that they did finally
provide some authority.

I do also have authority regarding the
amount of penalties being punitive. And the case
is called Ojavan Investors, Inc. v. Coastal
Commission. It's a Court of Appeal case from
1997.

It involves some violations of Coastal
Commission permits. And one of the violations had
to do with a transfer of development credit -- a
program for transfer of development credits, or
TDCs, that was intended to protect coastal
resources.

They're not called dischargers, the
permittees argued that the penalty, which had
actually been imposed by a court, not an
administrative agency, was punitive.

And the court said, we disagree in light
of the public interest goals of the TDC program.
The need for uniform compliance with the programs
was to further the Coastal Act's objectives to protect the coast, and appellant's blatant disregard of the deed restrictions.

The violation of the deed restrictions was the basis of the penalty.

The court said that the penalty was an acceptable amount, even though there was no physical damage to the environment, and the defendants made no profit.

The penalty in that case was $10 million.

That's all we have to say and we thank you for all your attention.

CHAIRPERSON YOUNG: Any Board questions before we go into closed session? Okay, seeing none, we will break.

I don't know how long we will be in, but at least it's my hope that we will come out, come out to here. We're going in another room. And we're going to -- what's that?

(Pause.)

CHAIRPERSON YOUNG: Half hour, I think a half hour. Let's just say a half hour is our target. Because we can complete deliberation out here if we just cover some things.
Okay, so a half hour is our target for returning here in this room, one-half hour.

(Whereupon, at 7:00 p.m., the Board was adjourned into closed session, to reconvene at 7:30 p.m., this same evening.)

--o0o--
EVENING SESSION

9:05 p.m.

CHAIRPERSON YOUNG: All right. We have come to a decision. I'm going to tell you what the decision is, describe it, and then let the Board Members go ahead and weigh in and say what they want to say individually.

We have deliberated and come up with written findings that I think Sheryl is going to project. And then we can read through those and share that with the public and the parties.

The Board has decided to find the CSD in violation of the basin plan prohibition for its three facilities, beginning October 1st of 1999 up to September 30th of '05. This is a total of 2189 days.

The Board discussed what would an appropriate dollar amount be per day. The maximum would be $15,000 for the three facilities. The Board decided that $1000 a day would be an adequate number based on the record.

That number comes out to $6,567,000.

The Board also decided to find the CSD in violation of the time schedule order. However, only from the date of, was it the certification --
MS. SCHAFFNER: When you verified --

CHAIRPERSON YOUNG: -- of Measure B.

When was Measure B certified, do we know?

MS. OKUN: The vote was certified by the
County Clerk on September 29th or 30th --

MS. SCHAFFNER: That's what we had,
yeah.

MR. ONSTOT: September 29th.

MS. SCHAFFNER: Okay, thank you.

CHAIRPERSON YOUNG: September 29th.

Okay, well, the date that we -- we intentionally
did not overlap these. So one has the front end
and then the smaller one is the time schedule
order violations is really the rear end of this.

And it's from the date of certification.

We computed there was about six days.

MS. SCHAFFNER: Yes. Although if you
don't want any overlap you don't want to --

CHAIRPERSON YOUNG: Well, does it start
October 1st?

MS. SCHAFFNER: The date of -- yes, the
6th --

CHAIRPERSON YOUNG: I didn't write down
the date adjustment.

MS. SCHAFFNER: I'll find it right here.
Yes, September 30th through October 6th, or six
days at $10,000 per day -- seven days.

CHAIRPERSON YOUNG: Okay. So then I
think that that would be an additional seven days.

MS. SCHAFFNER: Actually, so if you're
going to assess the ACL for the discharges through
October 1st, we could just move that to October
1st and that way they would not -- the $1000 per
day per facility from October 1, 1999 to September
30, 2005.

Then pick up the $10,000 per day for the
violation of the TSO on October 1st. That would
make six days for the TSO.

CHAIRPERSON YOUNG: Okay, so October
1st, 2nd, 3rd, 4th, 5th and 6th.

MS. SCHAFFNER: Um-hum.

CHAIRPERSON YOUNG: Okay, that was the
six days, then, --

MS. SCHAFFNER: That's right.

CHAIRPERSON YOUNG: -- at $10,000 a day.

We discussed whether to waive any of this based on
any kind of change of conduct of the District. We
just decided it's just much cleaner. We could get
into a whole Pandora's Box of what do you define
compliance and interpretation. We just want to
avoid that.

It's very simple this way. The fine comes out to $6,627,000. And that would be due --

MS. SCHAFFNER: Within 30 days.

CHAIRPERSON YOUNG: -- within 30 days.

Something that all of the Board discussed, all Board Members did, and it's something that I think was really driven home somewhat by Mr. Seitz.

And that is what to do about the kind of ongoing threats to water quality and the discharges by the individual homeowners. And I know Mr. Briggs, in his cover letter to the ACL to the District, made comment about individual enforcement actions.

I can only tell you, Mr. Briggs, that the Board would like to hear what you have in mind. They're concerned about this fine. It's going to be appealed. How much of it gets paid we don't know.

It's necessary, though, to back up the Board's basin plan prohibition and the violations that occurred. But, we really want to know what staff has in mind for individual enforcement actions. So we would like to hear from you.
MR. BRIGGS: As in now?

CHAIRPERSON YOUNG: In now, because some Board Members have expressed some concern about whether this penalty is enough. And so without getting into the details of that, I think there's a real issue as to dealing with the ongoing discharges.

So, whatever you can tell us about what staff's plans are, what the timeframe is, when the Board might see something, we would like to hear about it.

MR. BRIGGS: Okay. I've got to be a little bit careful because we're talking about enforcement action that's in progress, but I guess that's the first status report is that it is in progress.

And we have been working on -- we've already made some assignments in terms of putting together information on individual dischargers to take enforcement action against individuals.

And we've talked about, you know, some of the logistic problems of doing that. One of which, of course, is just the, one of the biggest bottlenecks is this process right here, the hearing.
Even using a panel of the Regional Board that would be, you know, substantial time would be required. So we've talked about how to deal with that.

And we've talked about proceeding with actions against individual dischargers in phases. And talked about different ways that would be appropriate to, you know, how do we select the first group of dischargers. And --

CHAIRPERSON YOUNG: By dischargers you're referring to individual involved --

MR. BRIGGS: Individual dischargers, right.

CHAIRPERSON YOUNG: Okay.

MR. BRIGGS: And, you know, I suppose I could go into some more detail about the different methods that we've discussed on how to do that. And what we favor. But I'd rather not discuss that right now.

CHAIRPERSON YOUNG: Well, are you going to be coming back to the Board with options? Or are you going to decide on an enforcement process?

MR. BRIGGS: Our intent was --

CHAIRPERSON YOUNG: I mean you could do, there's a number of things that staff could
propose.

MR. BRIGGS: Um-hum.

CHAIRPERSON YOUNG: Are you going to come back with one recommendation, or is it going to be a couple of recommendations, two or three or something?

MR. BRIGGS: Our intent was to go ahead and issue an initial batch of enforcement orders against individuals.

CHAIRPERSON YOUNG: ACLs or what?

MR. BRIGGS: Not necessarily ACLs. I could tell you an option is clean up and abatement orders that would require specific actions towards actually cleaning up the basin. Such as frequent pumping so that, while that's not a practical solution in terms of eliminating the discharge, it would be a step towards reducing the loading on the basin.

And it would be -- it would cost individual homeowners money to do that on an ongoing basis, which would be different than a typical ACL, which would be a one-time deal.

And it would be more on-target in terms of money that's actually going towards reducing the loading on the basin, as opposed to just a
penalty.

So I guess it's fair to say that's one of our top options right now.

Oh, I'm sorry, we talked about the benefit of a cease and desist order versus a clean up or abatement order, and we actually concluded the cease and desist order would be preferable. Although, as I was alluding to, one of the consequences of that is that the cease and desist orders come to the Board, as opposed to being administratively issued.

But, yeah, we have decided the cease and desist orders would be better.

CHAIRPERSON YOUNG: Would be better?

MR. BRIGGS: Yes.

CHAIRPERSON YOUNG: Okay. But you haven't determined yet, or decided whether it's going to be clean up and abatement orders or cease and desist orders, is that what you're still --

MR. BRIGGS: No. We've pretty well settled it, cease and desist orders would be better.

CHAIRPERSON YOUNG: On individual property owners?

MR. BRIGGS: Right.
CHAIRPERSON YOUNG: Okay. And idea how many in the first group? Can you give us a range?

MR. BRIGGS: No, I don't think we're prepared to say that yet.

CHAIRPERSON YOUNG: Okay. Can you tell us what timeframe? How soon would the Board be looking at hearing individual CDOs?

MR. BRIGGS: Yeah. I had hoped that it actually would progress a little bit faster than it has. Like I say, we've assigned some folks, in terms of putting together basically a database with assessor parcel numbers. And coming up with the basic information we need regarding the people who are responsible for the discharge.

But, we have been focusing on this hearing, and with essentially the same people, with some exceptions, same staff people.

But, I'd like to say that March or May would be possibilities.

CHAIRPERSON YOUNG: And does -- how many Board Members have to weigh in on a CDO? Do you need -- would it be the same five?

MR. BRIGGS: Well, a panel would be three, but you need to have five voting to validate or to adopt a cease and desist order.
CHAIRPERSON YOUNG: Okay. All right.

MR. BRIGGS: I believe it has to be, say you only had five Members, I believe it has to be unanimous.

MS. OKUN: Right.

CHAIRPERSON YOUNG: At that point, okay. Mr. Jeffries, I know you had maybe some thoughts on this. Did you want to weigh in at this point with respect to this? You're the Vice Chair, and you know, we give some direction to staff. I certainly don't mind if you want to weigh in.

VICE CHAIRPERSON JEFFRIES: No, I don't have any comments at this time. But I do want this to come back as soon as possible. We talked about this many years ago about doing this very same thing.

And I'm concerned, the process that we've had it's evident it's not working. So we have to do something else.

MR. BRIGGS: That's the conclusion we came to, and as I said in my transmittal letter on the ACL to the District, that was our intent to go that route.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: If I could just add one thing...
on the option to use cease and desist orders
rather than ACLs, that's due partly to the fact
that there are 5000 dischargers. If we issue
cease and desist orders, the facts are pretty much
all the same for all of them. Everyone will have
an opportunity to defend their particular order.

But if we do ACLs we have to consider
all the factors that we've done for the last three
days. And I think it will slow down the process
quite a bit.

A cease and desist order can order the
homeowner to either hook up to a treatment plant
within x number of years, if one exists. And if
one doesn't exist, to otherwise cease discharging
or face penalties.

CHAIRPERSON YOUNG: You're talking about
the CDOs?

MS. OKUN: Um-hum.

CHAIRPERSON YOUNG: Well, wouldn't it
require that they begin some periodic pumping
schedule?

MS. OKUN: Right, right. There would be
interim tasks.

CHAIRPERSON YOUNG: And, do you have any
idea, because I know people probably are listening
to this, any idea at this point from staff as to what kind of periodicity with the pumping?

MR. BRIGGS: We've talked about possibly quarterly. Also talked about monthly. And we think that we would enforce that through requiring submittal of receipts indicating pumping.

CHAIRPERSON YOUNG: Okay. All right. Why don't we do this. Did you have anything else to add related to that? Okay.

Give the Board Members an opportunity, if they wish, to put any comments on the record, separate and apart from the findings that we discussed.

Who would like to go first? Dr. Press.

Mr. Jeffries.

BOARD MEMBER PRESS: I'll defer to my --

VICE CHAIRPERSON JEFFRIES: Well, thank you. The comment I have, I'd just like to -- I know the hour is late, but I want to just give you something personal that I'm running down the same line as the CSD.

And when we started this back in December 1st I was introduced as the former Mayor of Salinas. When I ran for the City Council in 1981 the issue I ran on was that I was opposed to
going to a regional sewer facilities. That I
thought the City of Salinas could upgrade their
facilities to a tertiary treatment plant, and it
would be much cheaper to the ratepayers and the
taxpayers of the City of Salinas.

Two months before I was elected the City
Council issued the permits to start construction.
And they started construction.

When I finally was sworn in on the City
Council the first thing I did was I sat down with
the City Attorney and the Project Attorneys. When
they laid out the financial responsibilities of
terminating those contracts and reversing the
contracts that we had signed in a JPA, I realized
it was not beneficial for the City of Salinas to
back out of those particular contracts because the
financial burden on the taxpayers and the
ratepayers of the City of Salinas was overwhelming
because of litigation.

Needless to say, I had to go to my
constituency that elected me and explain to them
why the financial consequences changed my mind. I
had enough votes to overturn that, but after doing
that research and doing my due diligence, I
realized that that was not the best way for us in
the City of Salinas to go.

So needless to say, we do have a
regional facilities which is working fine. We're
paying, been paying since 1981.

But I looked at that and thought of what
the CSD and what the citizens of that location are
going to go through. And I'm just wondering what
in the world are you really thinking about.

Mr. Chairman, that's all I have to say.

CHAIRPERSON YOUNG: Okay. Dr. Press.

BOARD MEMBER PRESS: I have always been
less interested in money than in water quality.
In my view we could have imposed larger fines; we
could have looked at a schedule of suspended fines
and tried to get some of the fines if we get some
progress.

But I'm not so interested in the money.
I'm interested in water quality, and that is why
we are instructing staff and urging staff to come
back with individual enforcement actions. Because
that's the only way that I can see at this moment
that there will be a water quality improvement in
anything like, remotely like a reasonable period
of time.

So, to me that's the even bigger story,
I think, tonight, is that movement. And I would like to be on the record as strongly supporting that.

CHAIRPERSON YOUNG: Mr. Shallcross? Mr. Hayashi?

BOARD MEMBER SHALLCROSS: I concur with Dr. Press. The one thing I wanted to address is something that the CSD attorneys brought up. There seemed to be an implication that the -- and if you carried your argument to its, actually you didn't have to take too much of a leap to get there, that basically you were saying that the CSD can't be fined.

And what that does is that basically, you know, one of the attorneys was saying you can't be fined, and the other was saying give us cease and desist orders. Well, if you can't fine them, then cease and desist orders are worthless. So I just wanted to say that if we can't fine someone then all of our enforcement tools are out the window, if we don't have fines to back it up. So I didn't buy that argument, obviously.

The other thing I just wanted to say is I think it's probably one of the saddest things that's come before the Board, just to see a
community like this sort of going at each other's throats in a really ugly way. It hasn't been fun to watch.

At first maybe it was sort of entertaining, but, you know, the more I learned about it, the more I read about it, the more I saw what was going on with the community, it sort of makes me sick to my stomach really. I really feel sorry for the folks who are there and have to go through it, no matter which side you're on. It's really very sad.

Hopefully at some point you guys can all get together and hold hands and sing kumbaya. But, it doesn't look like it's going to happen anytime soon.

Again, just to reiterate the other sentiments, it looks like our enforcement abilities going down the path we have been have been ineffectual. For many years now we've tried to work with the CSD. We tried to work with the folks prior to the CSD.

We don't seem to be able to get anywhere, and so hopefully going after the individual dischargers may create the political will for something to happen in a reasonable
amount of time.

CHAIRPERSON YOUNG: Mr. Hayashi.

BOARD MEMBER HAYASHI: Yeah, I'd like to echo the same feelings from my fellow Board Members. Especially, you know, something that's so important as water quality and how it affects each and every one of you and your community.

I mean when you have something that's important and you have less than 29 percent of the people come out and vote, then you've changed the whole direction by 15 votes. I mean, where were the people that -- where was everybody to vote?

(Audience participation.)

BOARD MEMBER HAYASHI: So, -- 69 percent came out? Oh, I got -- okay. But, anyway, it's a sad time. And I don't know what to say. I mean one day things will happen, one day things will change. And we just have to hope for the best.

So, that's all I have to say.

CHAIRPERSON YOUNG: All right. You know, I know that there are people that are just not going to understand nor agree with what the Board has said or what the Board has done.

People will look at a situation and come
away from it having two different perspectives and
two different recollections of what happened, as
to what was important, what wasn't important, and
what should have been done.

It is clear to me that this community is
tremendously polarized. But it is a community.
And the community, as a whole, really is
responsible for what has happened and the current
situation that it is in.

I don't look at the CSD Board as the old
board or the new board, as being two separate
entities, that one bears responsibility for what's
happened, and the other one does not bear
responsibility for what has happened.

I can tell you one thing, that had the
community not put the blocks on the current
project that we would not be here with an ACL
hearing. We would not be here arguing about
whether the time schedule order was appropriate
and should have been amended. I mean all of that
is really not that relevant to me in my
decisionmaking.

Frankly, the previous CSD Board was
working feverishly to come to compliance. At
least they, from what I can tell, firmly were
trying to comply with our order. And Mr. Briggs' threats of water quality enforcement, I think they took that very seriously.

And the community decided, either because of the personalities of that Board, or because of other issues that they were going to just get rid of them. And I can only tell you that it was the most short-sighted thing to do while at the same time adopting Measure B, and then killing the Tri-W site.

Now, we don't mandate that Tri-W be built. We don't mandate to any discharger that they build a particular facility in any location. But it was this CSD, with its previous assemblage of Directors, that chose the Tri-W site. It was fully permitted, fully funded, fully engineered and got all of the okays that it needed to proceed under state and federal law.

What I heard in terms of complaints about it's not environmentally superior, it's not aesthetically superior, I mean those may be realities to some individuals. I look at them as being subjective and not objective. I look at the objective criteria as being whether something gets funded and permitted and gets on target to be
There's always going to be tradeoffs with any facility like this that gets built anywhere. Moving it out of town, to me, as though it's clear sailing, that we can do it in four years, don't worry about lawsuits, we can deal with these other issues, is just, I think, the same wishful thinking that went into this community when it believed that the Regional Board would never impose fines. That it believed that we could just get the state revolving fund loan modified to a new location. And we can just stop the construction contracts and get them modified also.

Unfortunately that was a lot of poor advice that was given to the voters that that is something they could depend on. I think the electorate, some of the electorate was deceived by representations that were made during that election.

Measure B, to me, was, boy, just a wonderful Trojan Horse, a nice poison pill. And it became very disturbing to me that you had individual Board Members that were advocating positions with respect to Measure B. And then at
the same time, I was hearing argument that, well, we can't, shouldn't look at them, what they do as individuals because that's a separate right they have under the First Amendment. And you should only look at what the CSD does as a whole. That was a little hard for me to stomach and listen to.

I never heard any testimony that this CSD really has taken -- by this CSD, I mean the current members, really bear any responsibility for what has happened and the situation that they're in.

But I've heard lots of complaints and accusations that it's the State Board's fault. They issued a loan that was improper. EPA didn't have proper oversight. Criticisms of everybody else in the world, except the CSD, itself.

And I didn't see anything, in fact Mr. Onstot really didn't want to allow any discussion into whether there was any balancing, any consideration given to, you know, what if we take a course of action to assume Measure B is valid, stop the contracts, the construction, try to get the loan changed. How do we balance that against the known threats by Mr. Briggs that there would be enforcement actions.
And in the face of State and Federal water quality protection laws that are bearing down on the District, nothing really happened. I didn't anything that made me feel comfortable that this was really kind of an informed decision, other than a predetermined decision that has been clear throughout that the intent, unequivocally, was to stop the site at its current location -- stop the project at its current location, period. That's essentially what has happened.

I agree that the individual enforcement actions I think are critical. I think that they have to start as soon as staff can start to process things and get them moving.

It's quite clear to me that the folks of Los Osos, in my opinion, are really not capable of addressing these issues with their wastewater disposal in a rational way. I don't know what's going to happen. A bunch of lawsuits have been settled, then replaced by an equal number of lawsuits. We're just exchanging lawsuits.

And I don't really see any clear end to this dilemma at this point because the community is really so polarized. And it really is just a, it's a tragedy.
So, having said that, Sheryl, do you want to vote first, or do you want to read the findings?

MS. SCHAFFNER: I think we need to go over the findings before you vote, so that they will be part of your vote.

CHAIRPERSON YOUNG: Okay. Fine.

MS. SCHAFFNER: Can we get these projected?

This will take a few minutes, so please bear with us. We only have the onscreen version. What I would like to do is go through these page-by-page. And I will want to just get a signal from both parties, both counsel tables, when you're done reading the page at hand so we can move on. Just make sure everybody gets a chance to go over this.

CHAIRPERSON YOUNG: You're not asking for any concurrence. You just want to --

MS. SCHAFFNER: I am not.

CHAIRPERSON YOUNG: -- make sure that they have read everything?

MS. SCHAFFNER: That's right, make sure they understand what the vote is. And I'm not sure if everybody in the audience can read it.
Would it be helpful for me to read the document as you go?

(Pause.)

MS. SCHAFFNER: To make sure everybody is following along, I'll just go ahead and read it as we go.

These are proposed additions to the Administrative Civil Liability order that everyone has. Start with inserting a new finding number 3, which would read as follows: The CSD has asserted that no administrative liability should be imposed in this matter because the failure to meet the deadlines was beyond the reasonable control of the CSD to avoid.

New number 4: The Board finds that administrative liability is appropriate because a) the provision in the TSO cited in paragraph -- actually that should say paragraph 1 above -- is a discretionary opportunity for the Board to modify prospective deadlines in the TSO not a basis for excusing long-term -- right -- not a basis for excusing long-past deadlines.

B: The CSD was forewarned by the Executive Officer that any failure to continue on a compliance track would result in recommended
penalties for all missed deadlines, including those which the Executive Officer was willing to forebear so long as the CSD was on a compliance track.

And C: To the degree that Water Code section 13327 factors might implicate equitable consideration of the hurdles for compliance presented by Measure B, or the loss of the state revolving fund loan monies, the CSD, itself, created or permitted those hurdles to come into being and to continue in effect.

Specifically, one, with the adoption of Measure B by the electorate of the CSD, a barrier was created inhibiting compliance with the TSO and making future compliance with that order subject to subsequent CSD voter approval.

Two, the CSD Board of Directors and employees simply represent and derive all of their powers and authorities from the voters in the CSD. In short, the voters are the CSD. The voters in this matter exercised their ultimate authority as decisionmakers for the CSD, and the passage of Measure B was therefore an affirmative act of the CSD. An affirmative act to halt compliance with the TSO.
Three: Thus by approval of Measure B through its initiative vote the CSD prohibited its Board and Staff from taking the steps necessary to comply with the TSO.

Four: After Measure B was passed the CSD's new Board of Directors, with the new majority installed by the CSD voters in the same election as Measure B, chose to abandon the previous Board of Directors legal efforts to invalidate Measure B, thereby affirmatively taking further steps to inhibit the CSD's ability to comply with the TSO.

Five: After Measure B was passed, when faced with the choice of complying with Measure B and being subject to a potential lawsuit by the District's initiative proponents, or stop work on compliance with the TSO, and be subject to potential Administrative Civil Liability, the CSD, through its Directors and Managers, chose the latter. It chose to stop work on the project, and thereby consciously chose to increase the extent of the CSD's long-term noncompliance and face this Administrative Civil Liability.

Six: On the basis of the foregoing, the assessment of Administrative Civil Liabilities for
violation of Water Code section 13308 for the period ranging from the date of certification of Measure B, October 1, 2005, and the date of issuance of the draft ACL, October 6, 2005, -- it's still one, two, three, four, five, six; it's still six. I think I'm missing a -- um-hum, we're missing -- is appropriate, we're missing a verb.

Okay, for the six days the assessment of this violation is -- thus for six days at $10,000 per day, the assessment for this violation is $60,000. Appropriate, thank you. Got it.

Renumber the interim paragraphs accordingly. And then add a new paragraph, which I want to make sure I've got that number correct. It would be after the old paragraph 12, we'd add a new paragraph:

The Central Coast Water Board took extensive written evidence, argument and oral testimony from the prosecution staff, the CSD and heard the views of the interested public concerning this matter.

Based on this record, applicable law and good public policy, the Central Coast Water Board finds:

(a) Regarding nature, extent and
gravity, there have been and continues to be
ongoing, unpermitted discharges occurring in
violation of the TSO, and the basin plan discharge
prohibition. And evidence supports the conclusion
that those discharges contain nitrates and
pathogens that are getting into groundwater and
threaten to migrate to drinking water supplies,
and potentially discharging surface waters.

These discharges threaten the public
health and the environment and violate the
applicable basin plan prohibitions.

(b) Regarding prior history of
violations, the CSD has been under various
directions, prohibitions, cease and desist orders
and time schedule orders since its inception to
address the problems addressed above, and intended
to be addressed to compliance with the TSO.

(c) Regarding economic benefit or
savings. I want to be clear here before I read
this that these are not the avoided costs of
building the system, because those costs are still
going to be incurred. Because someday there will
have to be a plant built. These are simply the
avoided costs of not building the plant in a
timely fashion based on the CSD's own testimony.
To resume reading the findings (c): The CSD Board of Directors presented testimony and evidence, noting that had they complied with the TSO the operation and maintenance of the treatment system would cost approximately $2.5 million per year, or $208,333 per month. The TSO required that the plant be built by August 30, 2004. Therefore the CSD has realized, at a minimum, an economic savings or benefit of $2,708,329 dollars for 13 months of avoided costs as of October 1, 2005.

(d) Regarding ability to pay, this is the sole factor militating in favor of a less-than-maximum liability, and is the basis for assessing only $6,627,000 instead of the $44,040,000 maximum calculated by staff. The CSD has presented evidence of its inability to pay any penalty of any significant amount. However, pursuant to State Water Resources Control Board enforcement policy, a reduction is appropriate only where the discharger is acting in a cooperative manner. And has the ability and intent to come into compliance in a reasonable period of time. That has not been demonstrated.
The CSD has abandoned the Tri-W site that was funded and permitted. It has no alternative site identified, project designed, engineered, funded or permitted. Thus there is no evidence of an ability or current intent to come into compliance in a reasonable period of time.

(e) Regarding other matters as justice may require, it is vital to the Regional Board's ability to maintain an effective water quality protection program to insure the communities are held to account, literally and figuratively, for their conscious decisions to not do what is required under state law and Regional Water Board orders to protect water quality and the public health and environment that depends thereon.

Decades of patience, cooperation, assistance, prodding, pushing, and ordering by the Central Coast Water Board has led to this point where the CSD and its decisionmakers feels that if it chooses not to, compliance is not required, and without consequences.

A strong enforcement action is necessary to clear up that misconception and deter further noncompliance.

New Finding: The Central Coast Water
Board finds that the unlawful dischargers from each of the three CSD-controlled facilities warrant an assessment of administrative civil liabilities $1000 per day for the period of October 1, 1999 to September 30, 2005, under Water Code section 13350, totaling $6,567,000.

New Finding: The administrative civil liabilities imposed here for violation of the basin plan prohibition and the Water Code section 13350 are based on discharges only from the CSD's three facilities, and no other dischargers.

The next paragraph is amended from the draft to reflect the new figures, which are the combination of the calculation based on the dischargers from the three facilities and the six days of violations of the time schedule order date schedules.

And those, it now reads: It is hereby ordered, pursuant to the California Water Code section 13308 and 13350 that Los Osos Community Services District is assessed a total civil liability of $6,627,000 to be delivered to the Central Coast Water Board at the letterhead address by February 6, 2006. The check is to be made payable to the State Water Resources Control.
Those are the proposed amendments by the Board to consider for its vote.

MS. OKUN: I know you didn't want concurrence from us, but can I just make one correction. There was a --

MS. SCHAFFNER: All corrections -- any observations of errors would be welcome.

MS. OKUN: Okay. There's a recitation or finding that staff's calculated maximum liability was $44,040,000. And we actually revised the worksheet so the maximum liability was calculated at $32,850,000 to avoid charging under both sections.

MS. SCHAFFNER: To avoid the overlap?

MS. OKUN: Right.

MS. SCHAFFNER: Thank you for that. I simply added them together. State the figure again.

MS. OKUN: 32,850,000.

MS. SCHAFFNER: Okay, thank you. Any other errors that either party sees? I understand you aren't agreeing with the substance of it, but if there are any errors we would welcome corrections.
VICE CHAIRPERSON JEFFRIES: Mr. Chair, if you're ready for a motion.

CHAIRPERSON YOUNG: I think we are ready for a motion.

BOARD MEMBER SHALLCROSS: I move the adoption of the ACL, as amended, --

VICE CHAIRPERSON JEFFRIES: I second.

BOARD MEMBER SHALLCROSS: -- with the findings. And with the findings.

CHAIRPERSON YOUNG: With the findings.

VICE CHAIRPERSON JEFFRIES: Yes.

CHAIRPERSON YOUNG: Okay.

All those in favor?

(Ayes.)

CHAIRPERSON YOUNG: Any opposed? Okay, the motion carries unanimously.

This concludes the hearing, but are there any housekeeping matters we need to deal with at this point?

MR. ONSTOT: Yes, Mr. Chair. At this time the CSD would move that the order be stayed pending appeal. And for final confirmation, that this is final Board action effective as of this date.

MS. SCHAFFNER: I'd just, as a point of
law, I would note that you have 30 days to file a petition with the State Board. And upon filing of the petition with the State Board, your obligation to pay the penalty is suspended by operation of law.

So, we don't need to take an action for that to happen. You just need to file your petition.

MR. ONSTOT: No, I understand that.

MS. SCHAFFNER: Okay.

MR. ONSTOT: I still want to request a stay if, -- you know.


All right, that concludes everything. We are done.

(Whereupon, at 9:50 p.m., the hearing was closed.)
CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of January, 2006.

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