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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 (Absent)

BOARD ADVISORS and ASSISTANTS
Michael Thomas, Assistant Executive Director
Carol Hewitt, Executive Assistant
John Richards, Counsel
State Water Resources Control Board

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

LOS OSOS COMMUNITY SERVICES DISTRICT
Stephen R. Onstot, Attorney
Gregory M. Murphy, Attorney
Burke, Williams and Sorensen, LLP

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LOS OSOS COMMUNITY SERVICES DISTRICT

Daniel M. Bleskey, Interim General Manager
Willdan

Lisa Schicker, President, Director

Steven Paige

Daniel Wickham

DESIGNATED PARTIES

William Moylan

Beverly DeWitt-Moylan

Alan Martyn

Robert Shipe

Dustan Mattingly

Lawrence Bishop

Christopher Alabe

Lawrence Kleiger

Bruce Payne

Katherine "Kitty" Thomas

Laurie McCombs

Tim Rochte

Antoinette Payne

Richard Sargent

Donna Kirtley

INTERESTED PARTIES

Joey Racano

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Maria Kelly
Joyce Albright
Ann Calhoun
Keith Wimer
Jim Hensley
Lacey Cooper
Bo Cooper
Dianne Burke
David Duggan
Gewynn Taylor
Assemblyperson Sam Blakeslee
George Taylor
Alon Perlman
Pat Renshaw
Lawson Schaller
Julie Tacker
Anton Vesely
Joe Sparks
James Tkach
Chuck Cesena
Richard Margetson
Marla Jo Bruton
Tom Hollis
INTERESTED PARTIES
Gail McPherson
Elaine Watson
Al Barrow
Barbara Akle
Richard Sadowski
Geri Walsh
Linde Owen
Judy Vick
Carol Cribbs

ALSO PRESENT
Reginald Fagan
Sheila Cinderson

R. Wyatt Cash, Chief Deputy Counsel
County of San Luis Obispo

Kathy Bouchard, Deputy Counsel
County of San Luis Obispo

Steve Carnes
County of San Luis Obispo

Larry Allen
Air Pollution Control District
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
LATE AFTERNOON SESSION

4:26 p.m.

CHAIRPERSON YOUNG: And we have decided to take a few of those out of order anyway, like Mr. Shipe, and there's another name. DerGarabedian. Okay, and then also the -- Stoneman is gone. Moylan also. Did you have to leave?

MR. MOYLAN: I have to go see my father in Illinois.

CHAIRPERSON YOUNG: Right, you're leaving tonight?

MR. MOYLAN: No, Monday.

CHAIRPERSON YOUNG: Okay, okay. So, you're --

MR. MOYLAN: I just don't want to miss out on --

CHAIRPERSON YOUNG: Right. Okay.

MR. ONSTOT: Mr. Chair, we also have a Ms. Collins, who's 80 years old and needs to present her -- and an expert.

CHAIRPERSON YOUNG: Okay. Well, the expert we can do -- when does the expert have to leave?

MR. ONSTOT: Today.
CHAIRPERSON YOUNG: I mean can the expert be here till 10:00? Is the expert one of your witnesses?

MR. ONSTOT: He's the expert for the individual dischargers.

CHAIRPERSON YOUNG: Okay, and he's been called by all of the individual dischargers, or --

MR. ONSTOT: Yes. And also in the interest of time the CSD is willing to present its case-in-chief to allow as many individual homeowners to go, since they're already here. And we can go next time, as well. That's an option.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: Well, if that's the case, if the Board wants to make a decision after the individual homeowners present their evidence, then the CSD's presentation won't be part of the record for those homeowners.

CHAIRPERSON YOUNG: Yeah, I mean that's the --

(Parties speaking simultaneously.)

CHAIRPERSON YOUNG: My sense is that we keep to what we have proposed. And I know that we will get through the prosecution team's presentation and yours. Then we can take that
expert, and then get into this first group that
we've kind of mentioned. And then we'll see where
we're at at that point. Yeah, we're talking hours
at this point before we get to it.

Okay. Now, Judy Vick appeared, and she
did submit a card. I did tell her that I would
allow her, as the last interested person, to
speak. And you have two minutes, Ms. Vick. Come
to the podium, please.

(Applause.)

CHAIRPERSON YOUNG: Folks, please stop,
stop with the clapping, come on.

MS. VICK: Thank you for allowing me to
speak. I wasn't able to be here earlier. I live
in the prohibition zone and I share the concern
that most of us here do, that we purchased homes
with permitted septic tanks. We are motivated to
have our wastewater project. But we're in limbo
at the moment.

And we're very concerned that it's
unjust, these cease and desist orders, considering
there is not specific science regarding each site,
why these individuals were targeted. To my
knowledge you don't have specific information
regarding each site.
And I would propose that there are some homes that are 50 feet to groundwater that are likely not polluting the waters of Morro Bay. And it would be ideal if we could get specific information and deal with the properties that are, indeed, causing the biggest problem.

But in the meantime it appears to me the best solution, rather than penalize the people of Los Osos with these cease and desist orders, which risk the value of their home, threaten the businesses they have within their homes, it seems a far better idea to me to share the burden with the entire community in a septic tank maintenance program. And I would just ask that you would consider that.

The other thing I would like to ask is that because there were some last-minute changes as to the evidence that could be submitted, that once the prosecution is clear on what the charges are, that they community be allowed a week's period of time to consider that, to prepare adequately, and come back to you with their defense.

Thank you.

CHAIRPERSON YOUNG: Thank you. Okay.
Ms. Okun and Mr. Thompson, you have an hour and a half, is that what we -- an hour? One hour.

Okay. Run this clock up. Mr. Briggs, go ahead.

MR. BRIGGS: Thank you, Mr. Chairman.

Mr. Thomas introduced the folks in the front row here, but to kind of round out the introductions of the prosecution team, we have several staff who have worked part time helping out the team, and I want to make sure that you're aware that they're all here.

Matt Thompson is going to make our initial presentation. And he will be followed by Lori Okun, Counsel. As a second part of that presentation, we have Sorrel Marks and we have in the front row here Allison Millhollen and Harvey Packard. And as I said, we've all worked part time, varying degrees of time on this issue.

We also have all contributed to the presentations that you're going to hear, even though, of course, we haven't broken it up so that we're all giving the presentation. But what that means is that we request that as questions come up regarding our presentation, that we would use the person who's best suited to answer the question to actually provide those answers.
CHAIRPERSON YOUNG: One small detail.

We haven't sworn anybody in. Where's my readable sheet? Okay. Would everybody that is going to offer testimony, we've already had interested persons speak, but those are not related to the specific facts of dischargers.

But, would everyone who's going to speak from this point on please rise. And that's all of the designated parties, also. Anyone who thinks they're going to speak as a witness, includes the experts.

Okay, do you affirm that the testimony that you're going to give in this matter will be the truth?

ALL: I do.

CHAIRPERSON YOUNG: Okay. Has anyone said that they don't?

(No response.)

CHAIRPERSON YOUNG: All right, everyone that comes to the podium I'm going to assume has taken the oath and is going to tell the truth.

Yes, and of course, my attorney has to remind me that that oath is subject to penalty of perjury.

All right, Mr. Briggs.
MR. BRIGGS: Thank you. The names that I gave you were the truth, so I won't --

(Laughter.)

MR. BRIGGS: -- I won't repeat them. As I said, our presentation is in two parts, and Matt Thompson will kick it off, and will be followed by Lori Okun. I'm sequestering myself over here because I don't feel so good, and don't want to pass it around if I can avoid it.

MR. THOMPSON: Thank you, Roger. Good afternoon; I'm Matt Thompson, Water Resource Control Engineer, part of the Central Coast Water Board Prosecution Team.

Most properties in Los Osos have been violating our basin plan prohibition for nearly 20 years. Until last fall the community was making meaningful progress towards compliance. It is now apparent that compliance has been delayed several more years.

Enforcement actions against individual dischargers appears to be the only way to get the community to comply in a timely manner.

Los Osos Community Services District Council has, in fact, recently stated that action against individual dischargers is more appropriate
than action against them.

We are not pleased to do this. The community's inability to implement a wastewater management system has really left us no choice. Our reasoning of the proposed cease and desist orders is spelled out in our written staff report dated April 5th, and our April 29th technical and legal responses to comments and evidence submitted by designated parties and interested persons.

Excuse me, Roger, could you turn down the podium mike; that's number 12, I think. Thank you.

So I'm only going to take about -- I'm not going to reiterate all of those reasons here. I'm only going to take about ten minutes to provide a little background, and then briefly describe the proposed cease and desist orders. Lori Okun will then further explain our reasons for recent changes to our recommendation.

In 1983 this Board adopted a prohibition of waste discharges from septic system in the most densely developed area of Los Osos in Baywood Park, which is now commonly known as the Los Osos prohibition zone. The blue line on this slide depicts the boundary of the prohibition zone.
The prohibition took effect in 1988 and remains in effect today. None of the designated parties have denied that the discharge from their septic systems violate this prohibition.

Although septic system discharges in the prohibition zone are simply illegal, and therefore subject to cease and desist orders, we must point out that there is a wealth of evidence showing that these prohibited discharges have degraded groundwater quality and threaten public health. And that the prohibition zone boundaries are appropriate.

Los Osos CSD regularly monitors shallow groundwater throughout town and interpolates the data to develop isocontour maps of nitrate concentrations. The maps consistently indicate the groundwater nitrate concentrations exceed the drinking water standard all over town.

This is Los Osos CSD's most recent isocontour map of nitrate concentrations in October 2005. Although this data changes slightly every six months, this figure represents general conditions in Los Osos. This is difficult to read, so I've highlighted for you in red the area where groundwater exceeds the drinking water
standard of 10 mg/liter nitrate as nitrogen.

These darker highlighted areas show where nitrate concentrations are 50 percent or more greater than the drinking water standard. These areas of highest concentration correlate to areas with greatest septic system density in the prohibition zone. It is important to note that these areas include elevated parts of town down here where there is significant separation to groundwater.

Groundwater is impacted by nitrates whether depth of groundwater is ten feet or 100 feet. Los Osos is a textbook example of the fact that there is very little nitrate removal in sandy soil. Nitrate is highly soluble and moves down easily with percolating septic tank effluent.

Several shallow-water supply wells have been shut down due to nitrate exceeding drinking water standards. These shallow wells have been replaced with deeper supply wells which are now causing seawater to intrude inland.

Water quality degradation by septic systems is not limited to nitrate in groundwater. Shallow groundwater seeps into Morro Bay Estuary along the approximately two-and-a-half-mile
shoreline of the prohibition zone.

Analyses of these seeps indicate fecal coliform bacteria greatly exceeds standards. And DNA testing of E.coli in these seeps indicates the greatest source of these bacteria is humans. During wet weather cycles high groundwater causes septic tank effluent to surface in some areas of town and drain into the Morro Bay Estuary.

There is no question that septic systems in the prohibition zone are degrading water quality, and that the prohibition zone boundaries are appropriate.

First and foremost, the proposed cease and desist orders require property owners and tenants to cease discharging all waste by January 1, 2010, or 60 days after the availability of a community sewer system, whichever is sooner.

If the community sewer system will be available by January 1, 2010, the owner or tenant must submit a statement agreeing to connect to the community sewer system within 60 days after the sewage treatment plant becomes available, or submit a technical report proposing an alternate method of complying, and monitoring compliance with the requirement to cease their discharge.
If the community sewer system will not be available by January 2010, the owner or tenant must submit a technical report proposing alternate method of complying with the requirement to cease their discharge.

Until recently we were prepared to recommend interim compliance requirements that required each property owner or tenant to pump out their septic tank every two months, or propose an alternate method to reduce pollutant loading on the Los Osos groundwater basin.

After consulting with the local Air Pollution Control District Officials, we learned they're concerned about pumping out up to 4300 septic tanks every two months, which is our stated objective.

We learned they're concerned it may cause -- we learned they're concerned that pumping out the tanks may cause significant adverse impacts of air quality and public health.

So we would like to study the impacts of the pumping requirements further before we recommend you adopt them. So, at this time we're recommending scale back interim compliance requirements to pump out the septic system and
obtain an inspection report within three months. And, if necessary, complete recommended repairs to the septic system by February 1, 2007.

We randomly selected 45 properties from the prohibition zone to receive this first round of cease and desist orders. The blue dots on this slide depict the locations of the 45 selected properties in relation to nitrate concentrations in groundwater.

You can see the nitrate concentrations beneath 41 of the 45 properties that received cease and desist orders exceeds the drinking water standard. Those few properties that are outside the area where nitrate exceeds the drinking water standard still contribute to water quality degradation. Those properties are either up-gradient of and contributing pollutants to these areas, or are located close to the Bay where shallow groundwater is flushed into the Bay by tidal action.

As you know, many designated parties submitted comments and evidence in response to the proposed cease and desist orders. Our technical and legal responses to these submittals are detailed in our written rebuttal dated April 19th,
so I'm not going to belabor our responses here.

The facts of this case are really quite simple. Septic system discharges are prohibited in the Los Osos prohibition zone, and are subject to cease and desist orders. None of the designated parties deny that they discharge from their septic systems in the prohibition zone. If necessary, I am prepared to point out later where each of the designated parties are located to demonstrate that each is violating our basin plan prohibition.

We recommend adoption of the proposed cease and desist orders for all designated parties. So, unless you have further questions for me at this time, here's Lori Okun. Thank you.

CHAIRPERSON YOUNG: You have 49 minutes, Ms. Okun.

MS. OKUN: I'm going to talk about the change to the pumping recommendations, but before I do that, I have a few questions for Sorrel Marks, who's going to address a few of the comments by interested parties, and also some of the evidence submitted by designated parties.

Ms. Marks, how many years were you the Project Manager for Los Osos?
MS. MARKS: Sixteen years approximately.

MS. OKUN: Some of the designated parties refer to a blue ribbon study that was done some years ago, and Mr. Tkach spoke earlier and indicated that that study concluded that complete denitrification occurred 30 feet below ground surface. Could you address that, please.

MS. MARKS: Yes. In 1994 San Luis Obispo County had funded a study to evaluate the reduction in nitrate below some leachfields. The initial portion of the study was performed by an engineering firm called (inaudible). And there was a committee formed of citizens and other interested parties to participate in the study.

And there was quite a bit of controversy over what the study really showed. Some felt that it showed that there was significant reduction below the leachfield, and some felt that it was inconclusive about how much that reduction might have been.

So your Board asked that we consult with independent experts in this area. And we had independent reviews of this study material from two experts. And that was presented at a March 1995 hearing. The conclusion of which was that
not only did the study not document full
denitrification below the leachfields, but that it
would be exceptionally difficult to do so because
of the way the leaching septic systems moved below
the leachfields.

MS. OKUN: What was it about the way
that the effluent moved below the leachfields that
made the study difficult?

MS. MARKS: The effluent would move
through the soil in not exactly a random pattern,
but it would migrate both laterally as well as
vertically. And so you couldn't locate the
lysimeters in specific locations that would
accurately monitor the reduction.

And in addition the study was originally
designed to utilize some good systems, systems
that were relatively new, that were installed with
known design criteria. But when the lysimeters
were actually installed in these systems, it
turned out that several of them were completely
saturated with groundwater. And keeping in mind
that these were supposed to be good systems that
were known to be operating properly.

But because they were saturated with
groundwater you couldn't put the lysimeters in to
measure what needed to be measured for this
particular test. So, the data was extremely
limited and didn't demonstrate that there was
complete denitrification. And that study is also
in the record.

MS. MARKS: There was also some
testimony and some submissions regarding a 1997
study by Wade Brimm regarding the appropriateness
of the well monitoring network. Are you familiar
with that study?

MS. MARKS: Yes, I am. Mr. Brimm's
comment letter was primarily about the monitoring
wells. Mr. Brimm felt that the monitoring wells
that were used to collect the groundwater data
were not installed in an appropriate way.

And each of Mr. Brimm's submittals we
did respond to, but in addition to staff's
response, the CSD performed a comprehensive
evaluation in 2001. And those wells that they
found were not up to current standards for
monitoring wells. They did perform some repairs.
They did abandon some and they did install some
new ones to develop the communitywide groundwater
monitoring program network wells that they have
today. And they've been monitoring those since
2002.

MS. OKUN: Thank you. Back to the change in the pumping recommendations, staff continues to believe that a bimonthly pumping regime is an appropriate interim measure to protect water quality until there's a treatment plant available. The change in the recommendation is only so that the Board has time to address the concerns that the Air Pollution Control District raised.

We can skip the rest of this slide. I was going to briefly go over what the concerns were, but Mr. Allen's already addressed that.

There's two reasons to wait and do additional study of these potential impacts before imposing pumping requirements on any of the homeowners. The first one is a policy reason. The Air Pollution Control District, which is the agency charged with protecting air quality, has raised these concerns; and this is something that we take very seriously. Their opinion is that further study is needed, and whether or not CEQA requires that. We think that it's appropriate to do that study before taking any further action.
The second reason is that it's important to the prosecution staff that all similarly situated dischargers be treated the same. And we think that in order to insure that the Board does that, it's necessary to do this air quality study before imposing any pumping requirements, because the study may show that mitigation measures are appropriate to reduce any potential air quality impacts. And those mitigation measures should be imposed across the board.

In addition, it could be the case that the conclusion is that there's no air quality impacts if we issue pumping requirements to 1000 people, but not 4300 people. And in that case, I think some more thought should go into who those 1000 people should be, or 2000 or whatever it is, rather than simply imposing pumping requirements on this first group because they're first. We think that more information is needed in order to be able to make a reasoned decision.

In addition, in the scheme of things, I think that the few months of study that would be necessary to get more information is really negligible in the 23-year process that has been going on so far in solving these water quality
problems.

       Also, to address one of the questions
that came up earlier, whether we have cross-media
jurisdiction to impose mitigation measures
regarding air quality, there are a few things we
can do. For example, if the APCD is saying that
these filters would be appropriate, we could issue
orders that require the dischargers only to use
pumping companies that have the filters.

       As Mr. Allen said, they're very
expensive. And at this time I don't believe that
the pumping companies have them. But at some
point, if this is the way the Board wants to
address the interim water quality impacts, it will
be economically viable for these companies to
install the filters and there will be trucks
available to provide the service.

       If the impacts are significant enough
that mitigation measures are necessary but there's
no way for the Board to impose them, one
alternative is to do a focused EIR, and the Board
could make a decision that the water quality
impacts are significant enough that they override
the air quality impacts. And to require as much
mitigation as is feasible, and to move forward
with the pumping scheme in any event.

Next slide. In terms of CEQA, just I know the Board knows this, but just briefly, CEQA requires study of government activities that could adversely affect the environment. And these activities, in CEQA parlance, are called projects.

If there's a categorical exemption then no further CEQA analysis is required. Basically the only burden on a governmental agency approving the project is to show that it's within the categorical exemption. And the prosecution staff has done that. Basically there's no further burden to prove that there aren't going to be impacts.

There are four different categorical exemptions that apply here. One is for repair and maintenance activities for existing facilities. And the other three have to do with enforcement actions or regulatory activities to protect the environment or to enforce existing laws.

Even though prosecution staff wasn't required to do additional analysis, when we began receiving comments we did do the analysis that was in our written submission about the incremental increase in truck traffic. And concluded
initially that there was no evidence that anyone had presented that there would be significant impacts. But with the new information we did decide that that was necessary to study.

In terms of what the project is, there's a question on whether we have 45 projects before you today, whether each order is a separate project, whether there's going to be 4300 separate projects that the Board issues orders to all the dischargers. Or whether there's one project which is the enforcement program.

And really under CEQA you can't chop a program up into little pieces so that each little piece doesn't have any significant impact. It's referred to as piecemealing under CEQA. And there's legal arguments on whether that would apply in this case because normally piecemealing only applies if each little piece commits the Board to do another project, which isn't the case here.

But even if we treat these as 4300 separate projects instead of one project, the Board would have to consider the cumulative impacts. So I think that you end up in the same place either way.
And in terms of proving the exception to
the exemption, what the challenges are talking
about is that these CEQA categorical exemptions
don't apply if there will be significant adverse
impacts because of unusual circumstances. And you
have to show both prongs of that.

Because of what Mr. Allen testified to,
I think that the first prong is met. The second
prong, whether there are unusual circumstances,
means is this project of issuing these orders
different than the normal type of project under
these categorical exemptions.

Generally there's two types of cases
that find that there are unusual circumstances.
One is where the project in question is
incompatible with surrounding uses. Clearly
that's not the case here. We have a community
that's on septic. We're talking about repairs to
septic systems and compliance with an order, the
basin plan, that applies to those septic systems.
So you really couldn't get much more compatible
than that.

The other type of case basically has to
do with projects where there are circumstances of
those projects differ from the general
circumstances of other projects covered by the same exemption. And those circumstances creating the environmental risk that doesn't exist for the general class of exempt projects.

And the cases dealing with this definition tend to be cases where there are toxic contaminants in the ground that aren't going to be addressed by the project; or in some cases are going to be made worse by the project.

So, again, those cases are distinguishable. But because this is a somewhat subjective standard, I think the courts focus more on whether there are going to be adverse impacts rather than the unusual circumstances prong of that test. So, for that reason I think that it is necessary for the Board to consider these air quality impacts that the APCD has raised before moving forward with bimonthly pumping requirements.

And it is our intention to proceed with that study and develop a new recommendation, whether that is to do additional CEQA analysis or to -- the modeling may show that there won't be significant impacts and we can come back with that recommendation. But at this point we just don't
CHAIRPERSON YOUNG: Could I interrupt you one second. What would be your anticipated timeframe for doing a health effect study?

MS. OKUN: We need to contract that out; obviously, we don't have experts inhouse that can do that. We can talk to OEHHA, the Office of Emergency Health Hazard Assessment. In some cases they've done those types of studies for regional boards.

But I think it's going to be at least a couple months. And then APCD will need time to review it.

CHAIRPERSON YOUNG: Okay.

MS. OKUN: Next slide. So then the question arises why issue CDOs now at all. The discharges are already illegal; they're already prohibited by the basin plan. If we are not imposing interim measures to protect the environment, why do anything.

And there's a couple of reasons. The first is that there is an inspection and repair requirement. So that will provide some interim protection in those cases where there are systems that have problems in addition to the general
The next is that it puts individual dischargers on notice that they're responsible to comply with this prohibition. Legally that's not required. Everyone's responsible to know the law and comply with it, but we have heard in this process that there are dischargers who thought it was only up to the CSD to comply with the basin plan prohibition. And they didn't know that they were individual dischargers. So, that's another important benefit of having the cease and desist orders.

It also provides a date certain. Obviously, the best result is that there will be a community system for people to hook up to by the deadline. But if there's not, we'll have a program so that individual dischargers will have to propose an alternative so that they can comply with the basin plan by the January 2010 due date.

And finally it provides the Board with an additional enforcement tool. Since these discharges are already illegal, the dischargers are currently subject to penalties for violating the prohibition. And that would be an alternative
that the Board could take now.

But they're not subject to a court
injunction. If there are cease and desist orders
or cleanup and abatement orders in place, once
these deadlines arrive the Board could seek to
enforce them by having a court order the
dischargers to comply. And that's not something
that's available now. The Attorney General could
use its nuisance abatement authority to seek
injunctive relief, but it would be a much more
difficult case to prove.

I wanted to address two additional
things before making the final staff
recommendation. One is Assemblyman Blakeslee's
recommendation that the cease and desist orders
provide a sunset provision. And they basically
do, because what they say is when there's a
community system available the dischargers have to
hook up to it. Once they do that, they're done,
they're in compliance with the order and they
sunset. So I don't see that there are any
additional sunset provisions that are necessary.

The next -- after the CSD presents their
case, the next phase will be for the individual
dischargers to present their evidence and there's
a space for the prosecution staff to present site-specific evidence. And to avoid having to reiterate this every time, Mr. Thompson did address it in his presentation. But the basin plan prohibits all discharges from onsite systems. The way septic systems are designed they discharge when you use them. There's no sewer system available in the community. All of these properties are on septic systems and all the discharges from the septic systems are violating the basin plan.

So in terms of site-specific evidence we have the information that we receive from some of the dischargers about how many people reside in the properties, and we'll show you the locations. But, that's really all the site-specific evidence that we need. And I don't want to repeat it 45 times.

And with that, the staff recommends that you proceed to issue the orders as proposed with the revisions.

CHAIRPERSON YOUNG: Dr. Press.

QUESTIONS BY BOARD

BOARD MEMBER PRESS: Yeah, Ms. Okun, could you explain the date of January 1, 2010? I
looked in the revised proposed order and I didn't see a -- is that related to something else in the context?

MS. OKUN: When we started working on the orders it was January, and at that point the CSD was indicating that they thought it would take two years to develop an alternative project and two years to construct it. And so we were relying on the CSD's estimate of when a system would be available.

BOARD MEMBER PRESS: So four years from this past January, okay. Have you ever heard of a sewage treatment plant that has been designed and built in that timeframe?

MS. OKUN: No.

BOARD MEMBER PRESS: Okay. I'm asking the staff, is there anyone in the region, any sewage treatment plant that has been designed, gone through EIR and built in four years? To your knowledge?

MS. MARKS: I really couldn't identify specifically the timeframe of some, but, you know, -- I can't think of one that's of this size that has been completely to that timeframe.

But, --
BOARD MEMBER PRESS: From A to zed?

MS. MARKS: Right, right.

BOARD MEMBER PRESS: Thank you.

MS. MARKS: Only smaller ones.

MS. OKUN: One other thing to keep in mind is that there is still the Tri-W project which has gone through all the permitting and approval process. And one possibility --

(Audience speaking simultaneously.)

MS. OKUN: -- is that even the CSD or some successor entity would continue that project. And that certainly would be feasible to complete by January of 2010.

(Audience speaking simultaneously.)

MR. THOMPSON: I'd like to add to that, too, we are --

BOARD MEMBER PRESS: Mr. Chair, I can't hear the staff.

MR. THOMPSON: Yeah, back to Matt Thompson. We are aware of several wastewater treatment plant upgrades where construction -- upgrades, some of them amounting to basically a brand new treatment plant where construction took less than two years.

BOARD MEMBER PRESS: Okay. Where you
already have the lines in?

MR. THOMPSON: Where it's already designed, yes.

BOARD MEMBER PRESS: Yeah, okay; thank you.

CHAIRPERSON YOUNG: Okay, Mr. Richards had, I think, some questions.

MR. RICHARDS: Ms. Okun, you indicated that Mr. Thompson had established the basis that all these people are discharging their septic tanks.

As you noticed from the issues that the Board considers to be important, the critical, the threshold determination for each of these people is that they are discharging to a septic tank in the prohibition area.

Could you perhaps expand on the evidence that the Board should be relying upon in reaching the conclusion that each of these people is, in fact, discharging to a septic tank in the prohibition area?

MR. THOMPSON: A good point on clarification. I believe some people don't realize that septic systems are designed to -- or excuse me, septic tanks are designed to overflow.
A typical household may generate anywhere between 100 and 300 gallons per day, depending on how many people live there. A septic tank is, on the average, between 1000 and 1500 gallons. And basically every time you discharge wastewater that septic tank is overflowing. And for all intents and purposes it is constantly overflowing.

So, if the house is occupied and wastewater is generated the septic system is, you are discharging from the septic system.

CHAIRPERSON YOUNG: Mr. Shallcross, did you have any questions?

BOARD MEMBER SHALLCROSS: Yeah, just a little clarification. Lori, did you say that the 2010 date was based on statements by the Community Services District?

MS. OKUN: Yes.

BOARD MEMBER SHALLCROSS: On how long it would take them to get a plant going?

MS. OKUN: Yes.

BOARD MEMBER SHALLCROSS: Thanks.

CHAIRPERSON YOUNG: And when were those statements made?

MR. BRIGGS: Roger Briggs. I think they
were made -- can you hear me all right?

CHAIRPERSON YOUNG: Yes.

MR. BRIGGS: Can't hear myself. I think they were --

(Audience speaking simultaneously.)

MR. BRIGGS: Okay. Is that better?

AUDIENCE SPEAKERS: Yes.

MR. BRIGGS: I believe they were made initially, you've heard reference to the Blakeslee negotiations. And I know when we first met with the folks who were here from the CSD, they were indicating that it would take them six months to get into construction. And actually there would be no lag time whatsoever compared to the Tri-W project that would have the same completion date.

When they went into the Blakeslee negotiations I think they realized that that was not realistic, and they changed that to two years to get to construction and two years in construction. And also, if I remember correctly, yes.

CHAIRPERSON YOUNG: Are these comments or statements that you heard, yourself?

MR. BRIGGS: The first one was from the meeting that we had and I participated in.
CHAIRPERSON YOUNG: Okay.

MR. BRIGGS: So, I participated in --

CHAIRPERSON YOUNG: I just want to make -- I want to differentiate between what you've heard as opposed to maybe what you read somewhere or heard from someone else.

MR. BRIGGS: Right. The first meeting was with me and others on our staff. And then subsequently, --

CHAIRPERSON YOUNG: Well, was there anyone from the CSD involved in that?

MR. BRIGGS: Yes, with the CSD folks. There were two Directors and Attorney McClendon and Mr. Bleskey.

CHAIRPERSON YOUNG: Bleskey, okay. Go on.

MR. BRIGGS: And then I believe in transcript number two from the ACL hearings Mr. Fouche from the District Board reiterated that it would take them four years to complete the project.

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

BOARD MEMBER HAYASHI: How were they figuring to expedite permitting on new sites?
MR. BRIGGS: How was the CSD expecting to expedite permitting?

BOARD MEMBER HAYASHI: Yeah, was there any discussion about that?

MR. BRIGGS: There was. One of the key stumbling blocks in terms of moving quickly is CEQA. And I believe they intended to piggyback on existing CEQA process, to have, I think it's a supplemental EIR, so that would be a shorter process.

And then also, as far as I know it's still up in the air as far as the CSD's plans, but in terms of the question earlier about the possibility of proceeding with a project that quickly, keep in mind that there is a collection system already designed, you know, was started in construction. And certainly still possible that that existing design and all its environmental work could still be used even if the District is set on going to another site.

I say that's kind of up in the air because they've talked about changing the collection system, as well.

CHAIRPERSON YOUNG: All right, thank you. Okay.
BOARD MEMBER SHALLCROSS: I have one more quick question.

CHAIRPERSON YOUNG: All right, go ahead, Mr. Shallcross, and then --

BOARD MEMBER SHALLCROSS: Yeah, this is for Matt. From what I understand what you're saying is even a well maintained septic system violates the basin plan, is that correct?

MR. THOMPSON: Yes.

BOARD MEMBER SHALLCROSS: And does a well maintained septic tank discharge nitrates?

MR. THOMPSON: Definitely, yes.

BOARD MEMBER SHALLCROSS: Okay, thanks.

MS. OKUN: Mr. Thompson has a slide that demonstrates how a septic system works that he can show.

MR. THOMPSON: Yeah, just to expand a little bit on earlier questions, I just want to illustrate what a septic system does. It's not a holding tank.

The wastewater generated is discharged to the septic tank where the heavy solids and floating solids are removed before the clarified water overflows into a disposal field which is typically a leachfield or in cases where you don't...
have a lot of space, a seepage pit or leach-bed.

And, of course, that septic tank effluent percolates downward in the soil column towards groundwater. That's all.

CHAIRPERSON YOUNG: Okay, Michael, I think you had asked me --

BOARD MEMBER SHALLCROSS: Can I ask one more question on that?

CHAIRPERSON YOUNG: Sure.

BOARD MEMBER SHALLCROSS: And how far down does the water seep? A lot of folks just said that they're 50 feet above groundwater or something. Is there some point that water stops seeping, or what, or that effluent?

MR. THOMPSON: It is apparent that based on the nitrate contamination of underlying groundwater in areas where it would have depth to groundwater of about 150 feet, that the septic tank effluent will go down that far and further. As long as there is no clay layer impeding the downward percolation it will just keep going.

And in sandy soil there's no matrix for the -- micro-organisms that cause denitrification to -- there's nothing there for them. And so it just moves down through the soil column.
CHAIRPERSON YOUNG: Is there sandy soil throughout and above the clay aquatard?

MR. THOMPSON: I'm sorry, could you repeat --

CHAIRPERSON YOUNG: Is there sandy soil above the clay aquatard?

MR. THOMPSON: Definitely. In Los Osos they refer to that as the upper zone. And that is what is most -- has the highest contamination.

CHAIRPERSON YOUNG: Okay. All right, Mr. Thomas.

MR. THOMAS: Ms. Okun, you stated earlier that the discharges going from the septic systems inside the prohibition zone are illegal?

MS. OKUN: Yes.

MR. THOMAS: Is that a fact, or is that your legal argument as part of the prosecution team?

MS. OKUN: Well, saying that something's illegal is always a legal opinion. But the basin plan states that any discharges from septic systems, it says onsite sewage systems, within the prohibition zone, are prohibited. So any discharges within the prohibition zone from an onsite system is illegal, in my opinion.
MR. THOMAS: In order for that to become a fact, instead of a legal opinion, wouldn't that require an action by the Board, a determination by the Board to that effect?

MS. OKUN: No. The Board's already taken an action by adopting the prohibition, and these discharges are violating that prohibition, and so they're already illegal.

CHAIRPERSON YOUNG: Okay. Any other questions at this point? Okay, so that's concluded. You have 32 minutes left.

MR. THOMPSON: Excuse me, I just want to add one more thing.

CHAIRPERSON YOUNG: Sure.

MR. THOMPSON: I showed you a proper septic system function in Los Osos. We have high groundwater in Los Osos and high density. And so the majority of folks use seepage pits or leach-beds for their disposal field, which discharge deeper into the soil column. And this is more representative of the typical situation in Los Osos.

Also, I want to clarify that in septic tanks that nitrogen is a highly soluble -- there are not significant amounts of nitrogen removed
with the solid waste in the wastewater. And so the nitrogen essentially passes right through the septic tank into the disposal field.

CHAIRPERSON YOUNG: Well, of these 45 proposed CDOs, do you know how many are using seepage pits?

MR. THOMPSON: I spoke to one septic system installer in Los Osos and asked him how many use leachfields, which are preferable because they are shallower and they disperse the wastewater better. And he suggested that 99 out of 100 systems are either seepage pits or leach-beds.

(Audience speaking simultaneously.)

CHAIRPERSON YOUNG: Okay. Do you have any information that you've obtained, yourself, or staff has obtained?

MR. THOMPSON: Yes, we have received some site-specific information from some cease and desist order recipients, and nearly all of them have seepage pits.

CHAIRPERSON YOUNG: Are you going to present that when these individual CDOs come before us later?

MR. THOMPSON: We are prepared to,
although we don't believe it's necessary.

CHAIRPERSON YOUNG: Okay. Mr. Jeffries.

BOARD MEMBER JEFFRIES: Yes, Mr. Chairman, --

CHAIRPERSON YOUNG: Go ahead.

BOARD MEMBER JEFFRIES: Mr. Thompson, --mike is on -- can you hear me? Barely.

Can you tell me what the average lot size is in the prohibition zone?

MR. THOMPSON: Order 8313 had a finding that said the average lot size was 6600 square feet.

BOARD MEMBER JEFFRIES: What is the normal required size for a leachfield be placed?

MR. THOMPSON: The basin plan specifies that a septic system, you have to have at least an acre unless you have favorable conditions. An acres is what, 43,000 square feet. So that density that's in Los Osos is approximately six times greater than the basin plan requirements.

BOARD MEMBER JEFFRIES: What is the normal depth of a seepage pit?

MR. THOMPSON: In Los Osos they have fast percolating soil, sandy soil. And so they can get away with a seepage pit that's as shallow
as 15 feet. But it can vary anywhere from 15 to, you know, 50 feet, depending on what kind of equipment they used to install it.

BOARD MEMBER JEFFRIES: Okay, thank you.

CHAIRPERSON YOUNG: Okay. Ms. Okun, you have 32 minutes left. Michael, would you keep track of that?

All right. And, Mr. Onstot, you have two hours. Let's see what we're going to do. Well, we certainly can get through an hour right now.

MR. ONSTOT: I'm sorry, Mr. Chair, I thought there was going to be an opportunity for cross-examination. Is that not on your agenda now?

CHAIRPERSON YOUNG: Let's see, I didn't think about how we would handle that at this point. I thought about how we would handle that as we got to the individuals. Yeah, might as well do it now, I think that makes sense. So, go ahead. This doesn't count to your time.

MR. ONSTOT: Thank you.

CHAIRPERSON YOUNG: And then the individual cease and desist order recipients, you're going to have time, also, to come up and to
ask questions of the prosecution staff team. So, let the CSD go first.

MR. ONSTOT: Thank you.

CROSS-EXAMINATION

MR. ONSTOT: Mr. Thompson, what is your position at the Water Board?

MR. THOMPSON: Water Resource Control Engineer.

MR. ONSTOT: And where did you go to school?

MR. THOMPSON: CalPoly, San Luis Obispo.

MR. ONSTOT: And what formal training do you have on septic tank design and management?

MR. THOMPSON: I have a bachelors degree in environmental engineering.

MR. ONSTOT: Anything else?

MR. THOMPSON: Yes. I work at the Regional Water Quality Control Board where we retain several wastewater and onsite wastewater system experts, and I rely on their expertise.

MR. ONSTOT: And when did you first join the Regional Board?

MR. THOMPSON: April 1997 as a volunteer.

MR. ONSTOT: At what point in time did
the prosecution staff decide to pursue enforcement action against the septic tank owners and operators?

MR. THOMPSON: Again, I think we were planning it for years. And the first time I saw it in writing, that I saw it in writing was the transmittal letter for the Administrative Civil Liability complaint.

MR. ONSTOT: Do you recall ever seeing an email from Mr. Roger Briggs two days after the election saying we will now take enforcement action against individual septic tank owners and operators?

MR. THOMPSON: No, I do not recall seeing that email.

(Audience speaking simultaneously.)

MR. ONSTOT: Do you recall seeing anything in writing that triggered the enforcement action that we're here discussing today?

MR. THOMPSON: I don't recall whether it was in a meeting with management or whether it was through an email. Because I don't remember anything in writing, I think it might have been through verbal communication, internal verbal communications.
MR. ONSTOT: And when was that?

MS. OKUN: I object to the extent that this is calling for internal discussions of the prosecution team that are enforcement confidential or attorney/client privilege.

So, if you're -- what you're talking about is our internal discussions or communications from me, then don't answer.

CHAIRPERSON YOUNG: Okay, well, I'll sustain the objection on those grounds.

MR. ONSTOT: What triggered these enforcement proceedings, Mr. Thompson?

MR. THOMPSON: I don't believe I'm the best person to answer that question.

MR. ONSTOT: Fair enough. Who is?

MR. THOMPSON: That would be Roger Briggs.

MR. ONSTOT: Okay.

CHAIRPERSON YOUNG: Okay, hold on, are you done with this witness?

MR. ONSTOT: No. Either Mr. Briggs can answer it now or we have lots for him later, so. I'll ask that question of Mr. Briggs later.

CHAIRPERSON YOUNG: Let's do witness by witness, just to --
MR. ONSTOT: Okay.

CHAIRPERSON YOUNG: -- make it clean.

And then you'll have your time with Mr. Briggs.

MR. ONSTOT: That's fine. Mr. Thompson, you mentioned that there were 4300 septic systems in the prohibition zone, do you recall that?

MR. THOMPSON: Yes.

MR. ONSTOT: And how did you obtain that information?

MR. THOMPSON: We did an inhouse analysis of the -- let's see, this, again, is a better question for Roger Briggs. But I can answer it. According to our information there are 4993 residences in the prohibition zone. There are 466 in the Bayridge Estates, which has a community system, which is already subject to a cease and desist order. So you would subtract that from 4993. And there are 74 residences in Vista del Oro, which also has a community system. So you would subtract that.

There are 122 residences in the Bayview Heights, which are excluded. And there are another 47 in the Martin tract, which is also excluded. Which amounts to 4284 septic systems.

Again, that is our best estimate.
MR. ONSTOT: And of those 4284 septic systems how many owners and operators have been targeted for enforcement?

MS. OKUN: Do you mean now, or in all?

MR. ONSTOT: All.

MR. THOMPSON: All.

MR. ONSTOT: So it's the prosecution team's intent to bring 4284 enforcement actions against the septic tank owners and operators in the prohibition zone, is that correct?

MR. THOMPSON: That is our stated intent, yes.

MR. ONSTOT: Okay. You also mentioned that the initial -- strike that.

How many were on your initial list that you testified were chosen at random?

MR. THOMPSON: Fifty, 50 properties.

MR. ONSTOT: Fifty properties, and there are 45 CDO enforcement actions pending today, correct?

MR. THOMPSON: Correct.

MR. ONSTOT: What happened to the other five?

MR. THOMPSON: The five we learned, after issuing the initial round of cease and
desist orders, either -- there was one of them
that lived in Monarch Grove, which has a sewer
system, and so they are not subject to the basin
plan prohibition.

There were four of them in the Bayridge
Estates neighborhood, which has a community septic
system again, and is already subject to a cease
and desist orders through the Community Services
District. So we retracted the draft cease and
desist orders for those five properties, which is
why we're now at 45.

MR. ONSTOT: And is there a reason that
you didn't do your homework as to all 50 before
you issued those 50 draft cleanup and -- or,
excuse me, cease and desist orders?

MR. THOMPSON: Could you restate your
question?

CHAIRPERSON YOUNG: Okay, hold on. Mr.
Onstot, what is the relevancy of this testimony
towards the issues that I laid out for this
hearing? How does this tend to prove or disprove
that any of these individual properties are
discharging waste?

MR. ONSTOT: Well, because I just now
established that the prosecution staff did not do
their homework in selecting the people for
prosecuting cease and desist orders, and as we go
further we'll find out a lot with regards to the
actual selection process. Which ultimately leads
to a conclusion that there's a lack of evidence
with regards to the basis upon which the
prosecution team is pursuing these 45 cease and
desist orders.

CHAIRPERSON YOUNG: Okay, Mr. Onstot,
what I have heard so far is testimony that staff
intends to prosecute everybody in the prohibition
zone; that they randomly picked 50 properties;
they made a correction to that choice.

Everything else around whether there's
50 or 300 or over what timeframe, in my view, is
not relevant to whether these 45 are discharging
in violation of the basin plan prohibition. So --

MR. ONSTOT: That's what I'm trying to
get at.

CHAIRPERSON YOUNG: No, I didn't hear --
you're trying to jump through and make connections
that I don't see.

MR. ONSTOT: Okay, I will --

CHAIRPERSON YOUNG: And the testimony,
sir, that I heard so far, and it's this testimony
you can challenge. The staff's testimony is as long as the septic tanks are in use that that, in and of itself, is a violation. That's their position.

So, if you have evidence to compete with that, that's what we're most interested in. But this line of questioning could take a long time. And I think its relevancy is quite tenuous at best.

MR. ONSTOT: Okay.

CHAIRPERSON YOUNG: So, I know cross-examination can be quite broad, and you can go into areas that have not been brought up by their own direct examination. But I do want you to give me a better offer of proof as to what is necessary here. And I'm not -- so far I'm not satisfied.

MR. ONSTOT: We have alleged, and a large part of the defense is that the Water Board did not do its homework with regards to preparing the prosecution cases; that people were targeted on an other-than-random process; that there's not the evidence to support it; and that basically the facts upon which they rely upon are, indeed, unreliable.

And we should be allowed to cross -- I'm
not asking Mr. Thompson anything outside the scope
of what he testified to on direct.

               CHAIRPERSON YOUNG: Well, he said that
they randomly picked 50 people.
               MR. ONSTOT: Right, that --
               CHAIRPERSON YOUNG: And you don't
believe it was random?
               MR. ONSTOT: Then I will -- may I pursue
that line?
               CHAIRPERSON YOUNG: Yes.
               MR. ONSTOT: Mr. Thompson, you said that
50 people were selected at random. Could you
describe the process in as much detail as you are
able, as to how these 50 people before the Board
today, or 45, excuse me, were selected?
               MR. THOMPSON: Sure, I'd be glad to. We
started with a list of all properties in Los Osos
provided by the County Tax Assessor. At the time
we were relying on help from California
Environmental Protection Agency. And they culled
out a subset of the County Assessor's list for
those in the prohibition zone. They basically
compared Assessor's parcel numbers to the
prohibition zone boundaries.
               And then we took that list of that
subset of properties in the prohibition zone and
we applied -- and that was in a Microsoft Access
Database format. And there were a certain number.
At the time the California Environmental
Protection Agency was still culling out properties
along the boundaries, and so I think it was in the
neighborhood of 35 to 4000 properties, -- 3500 to
4000 properties, excuse me.

And then whatever that number was, 3500-
what-have-you, I went into Microsoft Excel and
Microsoft Excel has what's called a data analysis
tool pack, which is an add-in to Microsoft Excel.

And the data analysis tool pack allows
you to set to generate a certain number of random
numbers, okay. And so I used Excel to generate
those random numbers. And it was carried out to
like the tenth decimal place. Purely random
numbers, about 3500 of them.

I then inserted a row into the Microsoft
Access database and then inserted those random
numbers into that row. However they came, you
know, just as they were generated by Microsoft
Excel.

I then sorted that Microsoft Access
database based on the numerical order of those
random numbers and we picked the first 50. That's how we did it.

MR. ONSTOT: And do you have a list now of the other 4234?

MR. THOMPSON: No, because once we developed the first -- we selected the first 50, we eliminated that list because our intent is to recreate that process for the next round. So we don't have the list.

(Audience speaking simultaneously.)

MR. ONSTOT: Thank you. If you can put up your slide again with regards to the nitrate levels in the prohibition zone. What process did you use to correlate these numbers here with the septic systems?

CHAIRPERSON YOUNG: Which septic system?

Can you --

MR. ONSTOT: You have a prohibition zone with levels of nitrates that are in the groundwater in the prohibition zone, is that correct?

MR. THOMPSON: Yeah, I understand your question. You can see there on the map, this is a map provided by the Los Osos CSD, and it's very hard to see because it's very small, but you can
see there that there, you know, squares indicating
improved properties, okay. And this is, you know,
the grid street pattern.

And it -- let's put it another way. You
have, I think nobody disputes that there's a high
density of homes in this area. There's a high
density of homes here, and there's a high density
of homes in this neighborhood, as well.

The process is by visual observation.
This area is open space, or whatever -- I believe
it's open space. I think that's the Tri-W site,
around here. And this area is not developed. And
so you can notice that the nitrate concentrations
are less there. To me it's very plain to see.

MR. ONSTOT: And what other sources of
nitrates have you identified that contributed to
that, other than the septic systems?

MR. THOMPSON: Well, we know of other
sources coming out of Morro Bay; Los Osos Creek is
loaded with nitrogen from agriculture, land use,
et cetera. And that's here. And so if nitrogen
was coming down here and recharging the
groundwater, one would expect to see high nitrogen
levels in this area.

There is a very clear correlation
between the area of greatest septic system density and highest nitrate concentrations.

I don't consider nitrogen fixing plants to be a source of nitrogen, if that's what you're asking.

MR. ONSTOT: Did you or anybody on the Board Staff that you know of personally go to any of the 45 property owners or operators that are here today and look at their septic systems if they had any?

MR. THOMPSON: We know that all of the 45 properties are located within the prohibition zone; they violate the basin plan prohibition. Therefore, subject to cease and desist orders. We did not visit the properties.

MR. ONSTOT: In your presentation you used the term discharge. Can you tell me what you meant by the term discharge?

MR. THOMPSON: Discharge is a common term. It means the release of waste, the release of waste.

BOARD MEMBER PRESS: Mr. Chairman.

CHAIRPERSON YOUNG: Yes, Dr. Press.

BOARD MEMBER PRESS: I don't think that Mr. Onstot has established the relevance of this
cross-examination along the lines that you
suggested, so I don't know where this is going.
And do you intend to allow this type of cross-
examining all night? Just wondering.

MR. ONSTOT: That's fine, I'm done.

CHAIRPERSON YOUNG: Okay. Well, he was
back on track, Dr. Press, at least to what Mr.
Thompson had been testifying about. So I was
comfortable that he was in the ballpark, okay. It
was the other examination on how they chose the 45
that was, I didn't think, relevant.

But, go ahead. Are you done with this
witness?

MR. ONSTOT: Correct.

CHAIRPERSON YOUNG: Okay, did you want
to ask Mr. Briggs questions?

MR. ONSTOT: Not at this time.

CHAIRPERSON YOUNG: Okay. Anyone else,
Mr. Onstot, from the prosecution team's --

MR. ONSTOT: Cross on the case-in-chief?

No.

CHAIRPERSON YOUNG: Okay. All right.

Any of the designated individual property owners?

Mr. Shipe.

MR. SHIPE: Yes.
CHAIRPERSON YOUNG: Come first.

MR. SHIPE: Bob Shipe. First I'd like to ask Matt a few questions. Regarding the random numbers generated, under that process I think I'm familiar with what you're talking about, and I thought the numbers started with 01.

And I'm trying to understand how you ended up with a 00 number as a beginning number using that random number generating process.

MR. THOMPSON: I think some clarification is in order, Rob. The order numbers?

MR. SHIPE: Yes, the order --

MR. THOMPSON: The order numbers are different than the random numbers.

MR. SHIPE: Oh.

MR. THOMPSON: The random numbers were numbers like carried out to the tenth decimal place. And the order numbers were just assigned to the first 50.

MR. SHIPE: Okay, thank you very much. Okay, that explains that.

And I wanted to address that slide that you guys showed that said Why CDOs now. And said because they would allow the prosecution and this
Board to inspect and repair, to notify dischargers and what was that other one, provide a date certain to provide alternative if community sewer is not available, and you can enforce by injunction.

Besides the last one, can you do those in other measures?

MS. OKUN: I object, that calls for a legal conclusion.

(Audience speaking simultaneously.)

MR. SHIPE: In my conversations with Matt Thompson I was --

CHAIRPERSON YOUNG: Excuse me, let me just speak to the Board's attorney.

(Pause.)

CHAIRPERSON YOUNG: Go ahead, I'm going to allow the question.

MR. RICHARDS: Well, let me clarify the context within which we're allowing this question. I think you're entitled to ask Mr. Thompson if there are other mechanisms that would approach, that could be used.

MR. SHIPE: Absolutely.

MR. RICHARDS: Whether or not those mechanisms would be chosen --
MR. SHIPE: I understand that, but the first line at the top says: Why issue CDOs now. And so they are using those examples as specific reasons why to issue CDOs.

MR. RICHARDS: You may ask your question, but understand that it's not appropriate for Mr. Thompson to be providing legal conclusions about various things.

MR. SHIPE: Okay. You want me to re-ask the question?

MR. THOMPSON: Yes, please.

MR. SHIPE: Okay. What I was wondering is are there other measures through your water quality enforcement procedures that would allow you to have inspection and repair, to notify dischargers and to date-certain to provide alternative if community sewer is not available.

MR. THOMPSON: I believe there are, but I am not certain.

MR. SHIPE: Okay, thank you. And then now under that last line, under can enforce injunctions, you described yourself as a water quality enforcement procedures expert to me, correct? This was what you were really good in, and so you understand the skill. I just want to
make sure before I start asking questions on it.

CHAIRPERSON YOUNG: Are you saying that he testified to that?

MR. SHIPE: No, this was something he told me in a conversation.

CHAIRPERSON YOUNG: When?

MR. SHIPE: A month ago because I was asking him specific questions about this, trying to mitigate the situation before we got in front of you.

CHAIRPERSON YOUNG: Okay.

MR. THOMPSON: I recall talking to Rob on repeated occasions. I talked to a lot of the designated parties on repeated occasions. I don't recall saying I'm a water quality enforcement procedures expert.

I'm familiar with water quality enforcement procedures.

MR. SHIPE: Okay. Well, are you familiar with the terms in the water quality enforcement procedures of cooperative dischargers and recalcitrant violators?

MR. THOMPSON: I can tell the difference between cooperative dischargers and recalcitrant dischargers if that's what you're asking.
MR. SHIPE: Okay, well, but I'm just --

because I've been studying the water quality enforcement procedures and it's a term that I found in there several times. And so I just wanted to, before I started asking you questions on it, I wanted to make sure you understood what those were.

Now, under that third line -- I'm sorry, under that fourth line, if you were to use one of those other measures, that would allow dischargers that would want to move forward to become cooperative dischargers, so that way this Board would have a much smaller number of the recalcitrant violators to deal with?

MR. THOMPSON: Is that a question?

MR. SHIPE: Yes, that was a yes or no question.

MR. THOMPSON: I need you to restate the question.

MR. SHIPE: Okay. By using some of those other measures that may be available, would that allow the prosecution staff to determine cooperative dischargers and recalcitrant violators so that the Board that we're in front of today can deal only with the recalcitrant violators and
allow cooperative dischargers to have inspection and repair, to put us on notice and to give us a date to provide an alternative if a community sewer is not available?

CHAIRPERSON YOUNG: Okay, Mr. Shipe,
your questions are off on a different tangent.

MR. SHIPE: Okay.

CHAIRPERSON YOUNG: Okay, their testimony is everyone is in violation just by discharging. And you're --

MR. SHIPE: Okay, I --

CHAIRPERSON YOUNG: -- trying to create a distinction that maybe some are recalcitrant and some are not recalcitrant or cooperative. It's not relevant today.

MR. SHIPE: That wasn't my point. If I could just address what my point was, and maybe I can help get back onto it.

My point was --

MR. RICHARDS: Mr. Shipe.

MR. SHIPE: Yes.

MR. RICHARDS: You will have an opportunity during your presentation to rebut any testimony and assertions and argument and positions that the prosecution team has made.
The purpose of cross-examination is to test the credibility and knowledge of the witnesses who have testified. And that's the purpose of the cross-examination. It is not to give you an opportunity to --

CHAIRPERSON YOUNG: Testify.

MR. RICHARDS: -- to testify and rebut the testimony that they've made.

MR. SHIPE: Okay. Thank you for that distinction. In that case, basically, like I said, the main thing I wanted to hit was the why CDOs are now.

CHAIRPERSON YOUNG: So, you're --

MR. SHIPE: Yes.

CHAIRPERSON YOUNG: -- testifying.

MR. SHIPE: No. I've asked my -- that was the question I wanted and it's been addressed. Thank you.

CHAIRPERSON YOUNG: Okay, thank you.

All right, Mr. Martyn.

MR. MARTYN: That is correct, Mr. Chairman, I would like to have -- I have prepared a list of questions and I would like to have Gail McPherson present them for me, if you would be so kind as to allow it.
That's fine.

Thank you very much.

That's fine.

A couple of --

It's important that we know who she's speaking -- is she speaking on behalf of --

I'm speaking -- Allen Martyn.

On Mr. Martyn.

Just Mr. Martyn?

Yeah.

Because I know she's representing a bunch of people. Just wanted to make that clear.

Yeah, and I --

Is that correct, Ms. McPherson, that you are at this point representing -- you're presenting the questions that Mr. Martyn has prepared for you?

Yes, yes.

I have a procedural question.

Since the individual dischargers will have an opportunity for cross-examination during the
individual presentations, if they're just asking questions on behalf of themselves is this the appropriate point to be doing that?

CHAIRPERSON YOUNG: You know, I think it's appropriate because this testimony has come in at this point. It's fresh. I don't know what's going to happen as things get chopped up. And I will exercise my discretion later to curtail questions that have already been asked and answered by previous witnesses.

MS. OKUN: Thank you.

MS. McPHERSON: I wanted to ask if in the process of the development of the cease and desist orders that you looked at whether or not enforcement actions based on ability to pay, when you put together your criteria for the septic tank pumping program. If that was a consideration?

MR. THOMPSON: My understanding of the ability to pay requirement submitted applies to administrative civil liability orders and not cease and desist orders.

MS. McPHERSON: Did you consider health effects outside of the diesel fumes, bacterial contamination in neighborhoods where pumping is going to be 100 pumps a day? Or I think you said
82 pumps a day.

MR. THOMPSON: I believe that pumping out septic tanks does not contribute significant bacterial pollutant loading to air.

MS. McPHERSON: And what is your qualifications for that statement? Are you -- what are your qualifications?

MR. THOMPSON: Again, I have a bachelors degree in environmental engineering. I'm a registered civil engineer.

MS. McPHERSON: Are you aware of the Lane County incident of airborne bacteria contamination and the illnesses that ensued?

MR. THOMPSON: Did you say L.A. County?

MS. McPHERSON: No, it's Lane --

MR. THOMPSON: Lane County?

MS. McPHERSON: Lane County, and it's Lane County, specifically a fairgrounds. It's a lawsuit that --

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

MS. McPHERSON: Okay. I was wondering on the issue about the DNA studies that were brought up in the presentation. Are you aware that Dr. Kitts, Christopher Kitts, is on our
witness list?

MR. THOMPSON: Yeah, I saw his name on the list.

MS. McPHERSON: Okay. He did make a statement several times, and I'd like to read from a very short statement in an email that's been submitted.

CHAIRPERSON YOUNG: Not at this time.

MS. McPHERSON: Okay. Are you aware that he refutes your statement that this is -- E.coli is proof of failing septic tanks?

CHAIRPERSON YOUNG: Ms. McPherson, it's best if you have the witness -- just let the witness go ahead and state that --

MS. McPHERSON: Okay.

CHAIRPERSON YOUNG: -- and I think that's the most powerful way to challenge the statement of someone else.

MS. McPHERSON: Okay.

CHAIRPERSON YOUNG: Next question.

MS. McPHERSON: The Black and Veatch study, the conclusions in the Black and Veatch study. They concluded that it was just hard to monitor. Is that --

CHAIRPERSON YOUNG: Okay, you're not
going to testify, Ms. McPherson. You can ask
questions.

MS. McPHERSON: Okay. Did you model in
any way whether or not it was an appropriate
measure to improve groundwater with the pumping of
the septic tanks? Or is this just a guess?

MR. THOMPSON: Did we model it? Is that
what you asked? I'm --

MS. McPHERSON: Do, yeah, some sort of
analysis or model, other than the --

MR. THOMPSON: Pumping would -- it's
plain to see that pumping out the septic tanks
would reduce wastewater loading to the Los Osos
groundwater basin. We did not do any
sophisticated modeling, no.

MS. McPHERSON: The 2010 date, how can
individuals -- what do individuals do at 2010 if
they've been pumping all that time? What do they
do at 2010 if there isn't a plant to hook up to?

MR. THOMPSON: They would essentially
have to pump and haul, or vacate the property.

(Audience speaking simultaneously.)

MR. THOMPSON: The cease and desist
orders provide that you can propose an alternate
method -- excuse me, submit a technical report.
proposing a method of complying.

   But, again, septic system discharges are prohibited. So the only way of really complying is to eliminate the discharge.

MS. McPHERSON: This violation of the basin plan, is this a public health emergency?

MR. THOMPSON: Well, when you consider that your drinking water supply exceeds drinking water standards, yes, I believe so.

MS. McPHERSON: The supply, can you clarify that as the supply that is served to the District in violation of the drinking water standards?

MR. THOMPSON: I believe that you guys pull your water now from deeper wells and treat it. So, --

(Audience speaking simultaneously.)

CHAIRPERSON YOUNG: Folks, please, no commenting from the back.

MR. THOMPSON: Okay, let me back up. I believe that you pump from deeper cleaner supplies, or where the particular well exceeds drinking water standards, you treat it. That's my best understanding of your water supply quality.

MS. McPHERSON: Are we in violation of
the Safe Drinking Water Act?

MR. THOMPSON: I don't know. I think
the Community Services District would be better to
ask that.

(Audience speaking simultaneously.)

MS. McPHERSON: I just have one more, I
think. When you did the random selection, you
used a statistical package within Excel, is that
what you testified to? Can I know what version?

MR. THOMPSON: Yeah, we used Microsoft
Office Professional SR 2000. I don't know what SR
means, but SR -- we used the Microsoft Office 2000
package. And part of that package is Microsoft
Excel. And as part, you know, my understanding as
the way it works is you have a couple CDs for the
program, and they have add-ins to the program.

And the data analysis tool pack is an
add-in, which I believe anybody that has Microsoft
Office can obtain.

MS. McPHERSON: Okay. Are you aware
that the tool pack allows you to analyze various
statistical probabilities?

MR. THOMPSON: Yeah, yeah, that's what
Excel is, a statistical --

MS. McPHERSON: Yeah. We were curious
because Mr. Payne and Mr. Alabe are next-door neighbors, and the statistical probability, are you aware of that coincidence?

MR. THOMPSON: I understand that they live next door to each other.

MS. McPHERSON: Okay, and the very last thing I have is do you know the difference between the leach-bed and the leachfield?

MR. THOMPSON: Yeah. A leach-bed is rather than having, you know, a three-foot-wide leach lines that are ten feet apart, like a leachfield, a leach-bed might be, you know, a three-foot deep by, you know, ten foot wide by 20 foot long gravel-lined bed. It's essentially a flat seepage bed.

MS. McPHERSON: Is that the information you received from the septic tank expert? When you received that were you both speaking about the same thing? Or was this -- I guess my question is are you certain that when he said leach-pit and the rest were leach-beds, that he wasn't referring to leachfields?

MR. THOMPSON: Oh, you're referring to the septic system installer. He said that -- I said how many of the leachfields that you've
installed or repaired in Los Osos are leachfields, clearly meaning dispersal fields. And he said, well, -- I said is it like, what, eight or nine out of ten. And he said, well, no, you'd have to count it out of 100. And he said because of the density of septic systems in Los Osos, that 99 out of 100 are either leach-beds or seepage pits.

MS. McPHERSON: Thank you.

CHAIRPERSON YOUNG: Okay. Next property owner that wishes to examine the prosecution team? Ma'am, could you state your name?

MS. THOMAS: My name is Kitty Thomas.

CHAIRPERSON YOUNG: Okay.

MS. THOMAS: And I am a CDO, too.

CHAIRPERSON YOUNG: Okay.

MS. THOMAS: I have two questions, and I apologize if it's not appropriate. This is not a normal forum for me to --

CHAIRPERSON YOUNG: You don't do this every day?

MS. THOMAS: Pardon?

CHAIRPERSON YOUNG: You don't do this every day?

MS. THOMAS: No, not every day, no.

One, when the original prohibition was
done in 1988 how were all the property owners notified, and from that date forward, as property was sold, how were they notified? That's one question I have. And I don't know if --

CHAIRPERSON YOUNG: Well, let's take one at a time.

MS. THOMAS: Oh, actually -- all right, then I have three.

CHAIRPERSON YOUNG: That's fine.

MS. THOMAS: Do you know?

MR. THOMPSON: I don't know.

MS. THOMAS: Okay, is that for both?

CHAIRPERSON YOUNG: Well, does someone else have the answer to that?

MS. MARKS: Actually the notification was in 1983 when the resolution was adopted. And as far as subsequent property owners being notified, as far as I know, the Regional Board has not provided that notification. I would expect that the realtors would provide that sort of disclosure.

(Audience speaking simultaneously.)

MS. THOMAS: I am a California licensed realtor. And that is not any information that is given to us --
MR. RICHARDS: Excuse me, this is not
your opportunity to testify here.

MS. THOMAS: Okay, oh, I'm sorry --

MR. RICHARDS: You may ask them
questions --

MS. THOMAS: Okay, I'll tell that later.

Forget that.

CHAIRPERSON YOUNG: All right.

MS. THOMAS: The next question I have
then is for Mr. Thompson. Mr. Michael Thomas gave
me Mr. Thompson's name for prospective buyers for
Los Osos. Can I continue with that? And just
want to know if Mr. Thompson recalls a
conversation with a gentleman who was interested
in buying in Los Osos, and he had said, and I
don't have the person -- this is definitely
hearsay -- that you said you would never buy in
Los Osos because the water quality is so bad. And
that was your personal opinion, though you were
speaking as a professional giving them your
information for the Regional Water Quality Board.

MS. OKUN: What was the question?

MS. THOMAS: Well, as the CSD and the
Regional Quality Board are the two forces that are
conducting this, and is affecting Los Osos. So
these are the two sources that prospective
homeowners in Los Osos go to for information.

And I'm asking if Mr. Thompson recalls
telling a prospective buyer that he wouldn't buy
in Los Osos because the water quality was so poor.

MR. THOMPSON: Yes. I don't remember
the gentleman's name, but when asked if I would
buy in Los Osos I replied no.

MS. OKUN: I don't know if this
witness -- or this person has any other questions
along these lines, but if she does, I object based
on relevance.

CHAIRPERSON YOUNG: Okay.

MS. THOMAS: I'm done, thank you.

CHAIRPERSON YOUNG: All right, thank
you. All right. Sir, state your name.

UNIDENTIFIED SPEAKER (Name Redacted):
Our CDO is 1029.

CHAIRPERSON YOUNG: Okay. All right.

UNIDENTIFIED SPEAKER: And I had a few
questions for Mr. Thompson.

CHAIRPERSON YOUNG: Anyone on the
prosecution team staff that you want to ask
questions of, go ahead.

UNIDENTIFIED SPEAKER: Thank you. Not
to belabor the point, Mr. Thompson, and I
appreciate the several hard years you put in at
CalPoly.

(Laughter.)

UNIDENTIFIED SPEAKER: No, no joke
intended. But specific training within your
profession specific to septic or septic tanks or
onsite disposal systems, could you expound on that
just a little bit as to what your training would
be on that? I understand in the profession it's a
bit of a lost topic. And I was just wondering if
you could expand on that a little bit, please.

MR. THOMPSON: Yeah, my concentration in
environmental engineering was wastewater
treatment. And much of that training was focused
on centralized wastewater systems. I, as I said
previously, most of my hands-on knowledge of
onsite wastewater systems came through my
experience here at the Water Quality Control
Board.

UNIDENTIFIED SPEAKER: Could you try and
quantify it? In other words did you have 50 units
of sewer-type treatment classes and 5 units of
septic system? Or can you give me some type of,
just to help me understand, just some type of
quantification? Your best estimate. I understand.

MR. THOMPSON: Can I go get my transcripts, please?

(Laughter.)

UNIDENTIFIED SPEAKER: I'll accept your best guess and consider that --

MR. THOMPSON: I don't know.

CHAIRPERSON YOUNG: Well, I don't want guessing; there's no guessing. His best estimate is what we would look for.

UNIDENTIFIED SPEAKER: Best estimate.

MR. THOMPSON: Out of 210 units focused on wastewater -- you mean focused on onsite -- focused on wastewater, maybe 30.

UNIDENTIFIED SPEAKER: Specifically onsite, our issue at hand, our septic tanks.

MR. THOMPSON: None.

UNIDENTIFIED SPEAKER: Okay. So no formal training on septic, but you've been on the Board here since '97, was that correct? Almost ten years? And your training has been through your work here, is that correct?

MR. THOMPSON: Correct.

UNIDENTIFIED SPEAKER: Okay, thank you.
During your presentation, and if I may ask, also, you had a slide that said the CDOs were appropriate, and it listed some items. And I wonder if we might be able to see that slide again?

And while you're bringing that up, during the presentation the statement was made, the boundaries to the prohibition zone are appropriate. I believe you made that statement, and if not, direct it to the panel here. I would ask why you feel that boundary is an appropriate boundary.

CHAIRPERSON YOUNG: I'm going to object to the question because, -- yeah, I can't object. We're not here to test the validity or the legality of the prohibition zone. So, --

UNIDENTIFIED SPEAKER: I was trying to follow the statement. If that's out of line, then I'll move on. But they raised the issue.

CHAIRPERSON YOUNG: Go ahead, you made the statement, Mr. Thompson. Go ahead and give an explanation.

MR. THOMPSON: I believe the prohibition zone boundary is appropriate because of the very strong correlation between nitrate concentrations...
in groundwater and the prohibition zone boundary.

UNIDENTIFIED SPEAKER: Thank you.

MR. RICHARDS: Mr. Chairman.

CHAIRPERSON YOUNG: Yes.

MR. RICHARDS: I would point out that while you have allowed the witness to answer the question, the fact is that the validity --

AUDIENCE SPEAKER: Speak into the mike.

MR. RICHARDS: -- the validity of the prohibition zone boundaries are not an issue before the Board at this time. The prohibition zone boundaries were established in 1983 by resolution of the Board that was approved by the State Water Resources Control Board, and is now ensconced in the basin plan. And those are the boundaries that the Regional Board has to work with, implement and respect and enforce in all its subsequent proceedings, such as this one.

CHAIRPERSON YOUNG: Okay.

UNIDENTIFIED SPEAKER: And if I -- that was my last question on that issue anyway. Thank you, Mr. Richards.

CHAIRPERSON YOUNG: Okay.

UNIDENTIFIED SPEAKER: If I may still get that one other slide, Mr. Thompson, I would
appreciate it.

The different nitrate studies, the Kitts study, Black and Veatch, and I believe there were one or two other studies done at that time, and you cited some issues of nitrates in your presentation. Did you differentiate between any of the studies? Did you give any one more relevance than the other? Or did they kind of all flow together?

MR. THOMPSON: I believe that actual monitoring data, which I have presented here, is much more relevant than those studies. I did not -- I'm not sure I understand your question. If you could restate it?

UNIDENTIFIED SPEAKER: Some of those studies gave us different conclusions. So I guess perhaps I'm wondering if you weighed heavily on one of those studies for your conclusions.

MS. MARKS: Maybe I could answer this because Mr. Thompson didn't mention the Black and Veatch study. There's a huge number of studies on Los Osos in general, but the information we've presented here in this groundwater data is from the recent groundwater monitoring from the CSD. So that's what this data is.
UNIDENTIFIED SPEAKER: Okay, thank you. I'm going to skip a couple questions. I would like to ask of this slide there, and it's simply, the caption, Why issue the CDOs now. And I would ask the panel here if they had given thought to issuing orders other than cease and desist orders before we came to this point in time today.

MS. OKUN: I object based on relevance, so object to the extent that the answer would disclose confidential enforcement investigation or attorney/client privilege information.

CHAIRPERSON YOUNG: Well, I think that's an important point, that the answer to that question involves conversations they had with their lawyer. And so that's protected.

I mean the fact is this is what they chose to do. They chose CDOs. Sounds like they could have done other things, but this is what they chose to do. That's what we're looking at today.

MR. RICHARDS: Mr. Chairman, --

CHAIRPERSON YOUNG: Yes.

MR. RICHARDS: -- let me perhaps guide the designated parties in their cross-examination. This slide presents recommendations and rationale
that the prosecution staff is urging the Board to
take a particular action for these reasons, among
others.

It is not factual evidence. The purpose
of cross-examination is to give parties an
opportunity to test the credibility of witnesses
who've testified to factual evidence.

Therefore, when you ask the prosecution
team or any other witnesses questions, you need to
focus on the factual testimony that they have
given. And the scientific, technical basis for
that.

If you're dealing with an expert witness
who has given an opinion as to a certain thing,
then you can also examine that witness about the
basis for the opinion.

But you cannot go into an inquiry as to,
you know, the internal deliberations of the
prosecution team as to why they chose one
particular approach over another.

UNIDENTIFIED SPEAKER: Thank you, Mr.
Richards.

CHAIRPERSON YOUNG: Okay.

UNIDENTIFIED SPEAKER: One last
question?
CHAIRPERSON YOUNG: Sure.

UNIDENTIFIED SPEAKER: If you will indulge. The Excel random chart, is that available as evidence for us to review?

MS. OKUN: Asked and answered.

CHAIRPERSON YOUNG: Well, I think he --

UNIDENTIFIED SPEAKER: I mean a hard copy. I understand the process that was used --

CHAIRPERSON YOUNG: But let me ask this, you know, what's the relevancy of how they came up with their randomized list? I mean is --

UNIDENTIFIED SPEAKER: There is --

CHAIRPERSON YOUNG: Does everybody here want us to accept the inference that these 45 were targeted in an un-randomized fashion?

AUDIENCE SPEAKERS: Yes.

CHAIRPERSON YOUNG: Okay, all right. Then we don't have to ask any more questions, because I understand that that's the inference that you want us to take from this.

But I don't know what else he can do or any witness can do with this testimony. He's described a randomized way that they came up with these 50, and then 45 properties. You guys can make the point that you think there was intent
here; that the 45 or the 50 were targeted; and
we'll listen to that.

But we can spend a lot of time on
tangents. It's not going to be fruitful to us.
So, he told you what program he actually had.

Now, do you want his computer?

UNIDENTIFIED SPEAKER: No.

CHAIRPERSON YOUNG: Do you want -- I
mean, how far do we --

UNIDENTIFIED SPEAKER: Actually I wanted
to review it to look for the randomization.
That's the area I'm fairly well at. But that's
fine, sir.

CHAIRPERSON YOUNG: I'm not going --
yeah, I'm not going to allow it, because I really
don't think it's close to where we should be with
our questions, that's all.

UNIDENTIFIED SPEAKER: Okay.

MR. RICHARDS: Mr. Chairman, in fact,
I'm not sure that it would be relevant if they
could, in fact, establish that these people had
been chosen for some particular reason.

CHAIRPERSON YOUNG: Right. Okay. Any
other questions, sir?

UNIDENTIFIED SPEAKER: Thank you for
your time.

CHAIRPERSON YOUNG: Sure. Okay. Mr.

Moylan.

MR. MOYLAN: Yes, my name is Mr. Moylan.

CHAIRPERSON YOUNG: Yeah.

MR. MOYLAN: And I'm -- speaking to your counsel, Mr. Richards, there, I think there would be a lot of relevance, especially if there was a certain selection process going on, because it would be discriminatory.

But let me get to my questions. And I'm going to be brief. I've only got like two or three questions. And so a simple yes or no will suffice.

First my question is to Lori Okun. In your testimony, Lori, you were talking with --

CHAIRPERSON YOUNG: Well, she didn't testify, you know. She presents a case. She's a lawyer.

MR. MOYLAN: She went --

CHAIRPERSON YOUNG: Just like Mr. Onstot really doesn't testify. He asks questions -- he will be asking questions --

MR. MOYLAN: Okay, well, she made a statement --
CHAIRPERSON YOUNG: -- of his witnesses.

MR. MOYLAN: This is in regards to a statement she made.

MS. OKUN: I don't mind letting him ask the question before I object.

CHAIRPERSON YOUNG: Okay. Okay.

(Laughter.)

MR. MOYLAN: Okay, Lori. You were talking about the APCD and balancing out whether it was better to pump the aquifer -- or pump the septic tanks, to clean up the aquifer, or would the actual air pollution, you know, -- would the balancing act be better to pump the aquifer. And I think you said something to this effect, and you can correct me if I'm wrong. You said, well, we'd have to study and weigh the impacts of air pollution versus water quality. And if it merits it, then pumping the septic out would out-weigh the negative effects of air pollution.

Now, that is an opinion, isn't it? And it's not based on science?

MS. OKUN: Objection. I was making a legal argument and it's not appropriate for cross-examination.

MR. MOYLAN: When will it be appropriate
for me to cross-examine you, Lori?

CHAIRPERSON YOUNG: Well, it's not appropriate to examine lawyers.

MR. MOYLAN: Well, I just wanted to ask her --

CHAIRPERSON YOUNG: No, it's not appropriate to examine lawyers, okay. They're not witnesses. That's the point.

MR. MOYLAN: Well, I just wanted to know, I mean --

CHAIRPERSON YOUNG: Well, I'm telling you. I'm telling you.

MR. MOYLAN: Okay, okay, okay, okay.

All right. We got one shot down. Let me ask the next question.

This has to go to Matt Thompson, whom I've had the pleasure of meeting and speaking to a couple of times. And I think the first time we met, Matt, we were talking about -- I'm going to get to my question. I have to freshen his memory about this.

When we first met, when we sat down in the lobby, and I poured out my heart to you; and I said, the issuance of these CDOs is going to hurt many many people. There are people that are just
living on a shoestring.

And I said, didn't you know that that
would hurt many many people. And you said to me
something to the effect of, what can we do, the
project was stopped.

So my question, Matt, is did issuing
these CDOs have anything to do with changing the
political will of the people? A simple yes or no.
You're under oath.

(Audience speaking simultaneously.)

CHAIRPERSON YOUNG: Please.

MR. THOMPSON: Issuance of the cease and
desist orders is intended to compel compliance.

MR. MOYLAN: Did it have anything to do
with changing, even a little bit, even partially,
the political will of the people of Los Osos to
get them to put in the sewer plant in the middle
of town? Was that a consideration? Simple yes or
no will do.

MR. THOMPSON: I wouldn't call it the
political will, but something has to change in Los
Osos, yes.

MR. MOYLAN: Thank you.

CHAIRPERSON YOUNG: Okay, thank you.

Ma'am, can you tell us who you are?
MS. McCOMBS: Laurie McCombs.

CHAIRPERSON YOUNG: Okay. Go ahead.

MS. McCOMBS: Are you aware of the septic tank pumping cost increases?

CHAIRPERSON YOUNG: And to --

MS. McCOMBS: To Matt.

CHAIRPERSON YOUNG: Okay.

MR. THOMPSON: Since when?

MS. McCOMBS: Have you recalculated costs for fueling and dumping fees? When was your last study?

MR. THOMPSON: No, I understand that the septic tank pumping is on the average between $275 and $400.

MS. McCOMBS: Well, that's -- no, it's not. Are you aware of increases in July of last year, of course?

MR. THOMPSON: No, ma'am.

MS. McCOMBS: Have you considered any revision to the cost estimates or impacts?

CHAIRPERSON YOUNG: Of what, ma'am?

MS. McCOMBS: The cost estimates of pumping and having it dumped.

MR. THOMPSON: No, I just --

CHAIRPERSON YOUNG: I need to make sure
I understand the question. Do you mean other than the $275 to $400 per trip?

MS. McCOMBS: Correct, because that is not --

CHAIRPERSON YOUNG: Okay.

MS. McCOMBS: -- a correct figure at all.

CHAIRPERSON YOUNG: Okay, well, when you have your opportunity you can tell us all about what the costs are.

MS. McCOMBS: Okay. What is the dumping capacity at Santa Maria? Do we know that? Because that's where it's going to go.

MR. THOMPSON: Yes. Yes. We, prior to issuance of the draft cease and desist orders, consulted the City of Santa Maria wastewater treatment plant staff. They did their own independent calculations and determined that they had an adequate capacity to accept the septage resulting from our proposed cease and desist orders.

MS. McCOMBS: When was this conversation?

MR. THOMPSON: This was in late January 2006. I'd have to check my notes to get the exact
MS. McCOMBS: And what did they say the capacity was?

MR. THOMPSON: The capacity of the facility, I think it's six million gallons per day. And their current flow is like a fraction of that, maybe half or 60 percent of that.

MS. MARKS: I think the question is what is the capacity for additional septage? Is that what the question is?

MS. McCOMBS: Um-hum.

MS. MARKS: We didn't specifically ask for the gallon capacity.

MS. McCOMBS: So we don't know if all that gets pumped can go there?

CHAIRPERSON YOUNG: Well, his testimony, ma'am, was that they asked the plant whether they could receive what was being proposed. The answer from the Santa Maria was we can accept what you're proposing to generate. So, that's kind of a way to get that question answered.

MS. McCOMBS: Thank you.

CHAIRPERSON YOUNG: Okay, thank you.

MR. ALABE: Chris Alabe, CDO number 19.

CHAIRPERSON YOUNG: Okay.
MR. ALABE: All right. I've just been waiting for a chance to get this random selection figured out. Now, you're dealing with me, you're dealing with the biggest idiot in California when it comes to computers. I know nothing about them at all.

It's my understanding, Mr. Thompson here said that they picked 3500 numbers out of a strip?

CHAIRPERSON YOUNG: I'm not going to allow any questions into this, how they chose the 50 that they did. It's not relevant to what issues are before the Board. We've heard they used a computer program to do it.

MR. ALABE: Which is, I'm wondering why.

CHAIRPERSON YOUNG: Well, --

MR. ALABE: Why not put a bunch of beans in a barrel and spin it around and --

CHAIRPERSON YOUNG: I don't --

MR. ALABE: -- pull 50 beans out of there?

CHAIRPERSON YOUNG: Well, I don't see an importance into the answer to that.

MR. ALABE: And were there any witnesses?

CHAIRPERSON YOUNG: Well, --
MS. OKUN: He can answer that question.

MR. THOMPSON: Yes, there was a witness.

I had a staff member, Allison Millhollen, look over my back as I did it.

MR. ALABE: Okay, that makes me feel a lot better.

(Laughter.)

(Audience speaking simultaneously.)

CHAIRPERSON YOUNG: Okay. And your name, sir?

MR. MATTINGLY: Mr. Mattingly once again.

CHAIRPERSON YOUNG: Okay.

MR. MATTINGLY: I was just wondering, Mr. Thompson, could you put the prohibition zone back up onto the screen, please?

One thing, first question is, was there a restudy of the 1983 selection of the prohibition zone?

MR. THOMPSON: No.

MR. MATTINGLY: Okay. Also, you expressed that you had spoken with a pumping expertise, or a septic pump guy. What certification or expertise by certifications did you get from him before receiving this
information? Did you check his credentials?

MR. THOMPSON: I spoke to -- the one conversation I remember most was with Roger Greene of Ingram and Greene, who has been doing it for like 30 years. And he's widely regarded as one of the best, or the most honest pumping service providers.

MR. MATTINGLY: By who?

MR. THOMPSON: By the wastewater community which I am in constant communication with.

MR. MATTINGLY: Okay. How many septic pumpers are currently pumping in Los Osos?

MR. THOMPSON: I don't know.

MR. MATTINGLY: And did you not feel it necessary to maybe ask all of the septic pumpers, expertise septic pumpers, to get their expertise and their certifications and maybe actually check credentials and what kind of schooling they had on septic systems and pumping and discharge of fumes and grease and oil underneath the vehicles that they will be using on the streets on a random occasion?

MR. THOMPSON: Did I --

MR. MATTINGLY: Did you --
(Parties speaking simultaneously.)

MR. THOMPSON: -- no, no --

CHAIRPERSON YOUNG: Hang on, hang on. I don't know that I heard any testimony that there is more than one pumper. Did you testify, Mr. Thompson, that there's more than one pumper operating?

MR. MATTINGLY: What I'm asking is he said he had checked --

CHAIRPERSON YOUNG: Okay, Mr. --

MR. MATTINGLY: -- one person.

CHAIRPERSON YOUNG: Okay, --

MR. MATTINGLY: Saying he had checked one of the pumpers, is saying that there is more than one pumper --

CHAIRPERSON YOUNG: Okay, do --

MR. MATTINGLY: -- in Los Osos, sir.

CHAIRPERSON YOUNG: Okay, excuse me. Do you know if there is more than one pumper operating?

MR. THOMPSON: Yeah, I mean I know there's Al's, which is located in Los Osos and does a lot of work there. But I presume that most of the other major companies also do work in Los Osos.
CHAIRPERSON YOUNG: Okay, well, --

MR. MATTINGLY: Who -- could you find out who does the most pumping? I'd like to dispute that. I think Al's probably does the most. If you didn't question him --

MR. THOMPSON: I didn't say that. I believe that Al's does the most.

MR. MATTINGLY: You do believe that. But you did not question the person who does the most?

MS. OKUN: Objection, relevance.

MR. MATTINGLY: Relevance is --

CHAIRPERSON YOUNG: He can answer --

MR. MATTINGLY: -- he took one person's say, instead of getting everybody's when he had an ample chance, unlike the people of Los Osos, who haven't had an ample chance to prepare themselves. He has had the ample chance. He's the one that decided to put this on us.

MS. OKUN: I also object to this question as vague, because I'm not sure what Mr. Thompson consulted the septic pumper about. The question was --

MR. MATTINGLY: It was the 99 percent of leachfields and the pit. I'm sure you could look
into the transcripts of what was said earlier.

Unless you want me to do it for you.

MR. THOMPSON: Yeah, there's a
distinction that needs to be made, sir. I was
referring to a septic system installer and
repairer, a backhoe operator named Frank Merrill,
when I was referring to the number of seepage pits
and leach-beds versus leachfields.

MR. MATTINGLY: So you take the person
that does it the least in Los Osos?

CHAIRPERSON YOUNG: No. He said he
spoke --

MR. MATTINGLY: You took his word?

CHAIRPERSON YOUNG: -- to an installer/
repairer, not a pumper.

MR. MATTINGLY: No reason to get upset,
sir.

MR. THOMPSON: I think there's a
distinction between a septic system installer and
somebody who pumps it out.

MR. MATTINGLY: Actually, Al does
install --

CHAIRPERSON YOUNG: Okay, sir, you'll
have an --

MR. MATTINGLY: -- septic systems --
CHAIRPERSON YOUNG: -- opportunity when it's your time to put on all --

MR. MATTINGLY: Okay, next question.

CHAIRPERSON YOUNG: -- this testimony.

Excuse me, Board Member Shallcross.

BOARD MEMBER SHALLCROSS: Yeah, I'd like to ask a quick question of Matt. Whether a person in the prohibition zone has a leachfield, a leach-pit or what's the other one, the third one?

CHAIRPERSON YOUNG: Leach-bed. Leach-bed.

MR. THOMPSON: Leach-bed.

BOARD MEMBER SHALLCROSS: Leach-bed, yeah. Does that matter for purposes of violation or not a violation of the prohibition, of the order?

MR. THOMPSON: No, sir.

MR. MATTINGLY: Was there (Parties speaking simultaneously.)

UNIDENTIFIED SPEAKER: Can you just wait your turn?

MR. MATTINGLY: Okay, excuse me. Sure.

BOARD MEMBER SHALLCROSS: So, what's the distinction? I mean why were you bringing that up? What does it matter whether 99 percent are
leachfields or 99 percent are -- I mean, why is this an issue?

MR. THOMPSON: I was asked a question and I answered it.

BOARD MEMBER SHALLCROSS: No, no, no, no, I mean your original description, why did you bring that up?

CHAIRPERSON YOUNG: You put a slide up there that shows --

(Audience speaking simultaneously.)

BOARD MEMBER SHALLCROSS: You put a slide up that showed the difference between --

CHAIRPERSON YOUNG: A seepage pit --

BOARD MEMBER SHALLCROSS: -- you know, seepage pits. And so when you did that apparently it seemed to some people here that there's some distinction of import there. And all I'm trying to get to, is there, for purposes of the cease and desist order in this case? Whatever -- a leachfield, should a person who has a leachfield be treated any differently than a person with a seepage pit or a leach-bed within the prohibition zone?

MR. THOMPSON: No, sir.

BOARD MEMBER SHALLCROSS: Okay, thank
you. So I'm really wondering what the relevancy
of all this is.

CHAIRPERSON YOUNG: Well, --

MR. MATTINGLY: He just made a
statement; I wanted to find out where he was going
with the statement.

CHAIRPERSON YOUNG: All right, next
question.

MR. MATTINGLY: And he had the chart; it
must have some relevance, I --

CHAIRPERSON YOUNG: Next question.

MR. MATTINGLY: Yes, another one to --
let's see, I would say -- oh, could you tell me
what a vadose zone is, please? And if you can
tell me what a vadose zone is, could you point out
where the highest vadose zone is in Los Osos,
please? And what residents are in that vadose
zone that have been selected in this 45 supposed
lucky lottery winners?

MR. THOMPSON: A vadose zone is also
sometimes called the unsaturated zone; that is the
part of the soil column where water, basin water,
whatever you have there, is moving down through
the soil column.

And as far as your second question,
you're asking where there's the most vadose zone. And to my knowledge the groundwater flow roughly mimics topography. And I can get you more detailed information, but this area is the more elevated part of town. And I presume that it has the --

MR. MATTINGLY: The highest vadose zone.

MR. THOMPSON: -- the most separation to groundwater, yes.

MR. MATTINGLY: Okay. And is it true that in a vadose zone, that is the highest likelihood place for a septic system to work?

MR. THOMPSON: If the septic system was properly sited, yes.

MR. MATTINGLY: Okay. Have you done any tests on proper siting of the septic systems?

MR. THOMPSON: There are numerous technical references referring to proper septic system density.

MR. MATTINGLY: Have you came to my house to look at my illegal discharging septic to see if it was placed, since I do live in the highest vadose zone, which I've been notified is the most likely place in all of Los Osos for a septic system to work.
BOARD MEMBER PRESS: Mr. Chair, didn't you rule on the relevancy of the discharge to the -- being in the prohibition zone? I mean, --

CHAIRPERSON YOUNG: I did. I am --

BOARD MEMBER PRESS: Do you want to enforce that ruling?

CHAIRPERSON YOUNG: -- trying to allow a little bit of leeway for these people to ask questions that are somewhat related to this --

MR. MATTINGLY: This is also --

CHAIRPERSON YOUNG: It's important to them. It may not have that much relevancy to the issues that I have continued to spell out are before us. But, I understand your point.

MR. MATTINGLY: Your worries.

CHAIRPERSON YOUNG: You know, sir, obviously there's high levels even in your area.

MR. MATTINGLY: Yes, I do -- I do understand that, but I'm wondering --

CHAIRPERSON YOUNG: And so whatever point you'd like to derive from this, I'm --

MR. MATTINGLY: -- when this --

CHAIRPERSON YOUNG: -- a little concerned that --

MR. MATTINGLY: Okay, what I wanted --
CHAIRPERSON YOUNG: -- it's missing something critical.

MR. MATTINGLY: Well, where I'm going with this is if this prohibition zone was adapted in 1983, I think was what I heard, and the studies haven't really been relooked at about when they did this, and technology being the way it is a lot better, like we do have Microsoft. I don't remember that system of the random numbers being back in 1983 when I was at Morro Bay High School. It could have been, I don't know. I might not have been there.

CHAIRPERSON YOUNG: Okay, please make your point.

(Laughter.)

MR. MATTINGLY: But what I'm going at is maybe that we should revisit the whole thought of this prohibition zone or --

CHAIRPERSON YOUNG: All right, sir, --

MR. MATTINGLY: -- look into that --

CHAIRPERSON YOUNG: -- that is not before us and --

(Applause.)

MR. MATTINGLY: Oh, you're out of here. Officer.
Laughter.)

CHAIRPERSON YOUNG: So, no more questions about that.

MR. MATTINGLY: About the -- well, if the vadose zone is there and they didn't look at this vadose zone in 1983 --

CHAIRPERSON YOUNG: You'll be able to testify and make that point when it's your turn.

MR. MATTINGLY: Thank you, sir.

CHAIRPERSON YOUNG: Thank you.

(Applause.)

MS. OKUN: I'd just also like to object that --

MR. MATTINGLY: One more --

MS. OKUN: -- that misstates the testimony.

MR. MATTINGLY: One more thing. I'm going to have Mr. Duggan ask a couple questions for me. Thank you.

CHAIRPERSON YOUNG: Wait, are you an interested person or a --

MR. MATTINGLY: He's a witness.

MR. DUGGAN: He doesn't -- as you can tell, he can't articulate.

CHAIRPERSON YOUNG: No, he does quite
well, actually. You're an interested person, not a designated party --

MR. DUGGAN: These are some of the questions that he's asked me --

CHAIRPERSON YOUNG: -- no questions -- excuse me. No. No. He's capable of doing it, himself.

MR. DUGGAN: Such as Gail McPherson had a chance to ask for somebody else?

CHAIRPERSON YOUNG: I'm sorry, you're going to speak for this gentleman who just spoke?

MR. DUGGAN: Yes.

CHAIRPERSON YOUNG: No. Next, please.

MR. ROCHTE: Mr. Chairman, --

CHAIRPERSON YOUNG: Yes.

MR. ROCHTE: -- my name is Tim Rochte. I'm CDO 1015. And I have a couple of questions. I have been a resident of Los Osos for over 25 years, and I've been doing a fair amount of research on the water quality issue out there.

I have a question about the governmental accountability. And I understand from the testimony given this morning that the prohibition zone was established in 1983, and went into effect in 1988. My understanding further is if the
County permitted an additional 1000-plus septic tanks out there -- is that correct? I believe that's correct -- why was it that the Water Board did not issue CDOs at that time?

(Applause.)

CHAIRPERSON YOUNG: All right. Do we have any staff back there, because the next person that claps I do want them to leave. And I'd like someone to help me with this. I know that people are doing that in the back of the room. I've asked numerous times, and I guess you don't take me seriously.

Do we have any staff back here? Mr. Briggs?

MR. BRIGGS: I'll --

CHAIRPERSON YOUNG: The officer. Officer, thank you. Please. You've got my permission. The next time this happens, just ask them to leave for me. Thank you.

MR. ROCHTE: I'll try to ask questions that don't elicit applause.

CHAIRPERSON YOUNG: Okay.

MR. ROCHTE: So my question again was just why weren't CDOs --

CHAIRPERSON YOUNG: And how is that
relevant to what's before us?

MR. ROCHTE: Well, because it was what they testified -- they stated, that there --

CHAIRPERSON YOUNG: Right.

MR. ROCHTE: -- were --

CHAIRPERSON YOUNG: A thousand more properties that were allowed --

MR. ROCHTE: Yes, and that there was a -- yeah --

CHAIRPERSON YOUNG: -- to be developed.

MR. ROCHTE: And I'm just wondering why CDOs -- I'll certainly bring his up in my testimony, but --

CHAIRPERSON YOUNG: Okay.

MR. ROCHTE: -- I just wondered if, to save time later, they can answer that question now. Maybe Sorrel knows because she was --

MS. OKUN: We actually didn't state that, but if you do want someone to answer that question, Ms. Marks would be the appropriate person to answer it.

MR. ROCHTE: Thank you.

CHAIRPERSON YOUNG: Go ahead.

MS. MARKS: Was the question why didn't we issue cease and desist -- or why didn't the
Board issue cease and desist orders?

MR. ROCHTE: Correct.

MS. MARKS: They did.

MR. ROCHTE: They did in '88?

MS. MARKS: Actually through -- some were issued in '87, '88 and '89.

MR. ROCHTE: Thank you for clarifying that. Why didn't it get to this point back then, then? Why are we only getting to this now, some 20 years later?

MS. MARKS: I'm not clear on what the question is.

MR. ROCHTE: I'm just wondering, it was --

CHAIRPERSON YOUNG: Do you mean why are cease and desist orders being proposed at this point in time?

MR. ROCHTE: Exactly, right.

CHAIRPERSON YOUNG: Well, I thought that Ms. Marks just --

MR. ROCHTE: When there was an established --

CHAIRPERSON YOUNG: -- testified that some were ordered in '87 and '88.

MR. ROCHTE: Okay. All right, well,, --
CHAIRPERSON YOUNG: That's the testimony.

MR. ROCHTE: Yeah, and I'm just wondering why they didn't pursue it further at that time, as is the case now.

CHAIRPERSON YOUNG: And how is the answer to that relevant to what we are determining today?

MR. ROCHTE: It has to do with, I believe, the weak level of staff work that has been done and continues to be done.

CHAIRPERSON YOUNG: In terms of what?

MR. ROCHTE: In terms of the level of technical expertise that is possessed by the part of the staff.

CHAIRPERSON YOUNG: In terms of what?

With respect to what issues, --

MR. ROCHTE: In terms of --

CHAIRPERSON YOUNG: -- whether people are discharging --

MR. ROCHTE: -- why are --

CHAIRPERSON YOUNG: -- in violation of the basin plan?

MR. ROCHTE: Why are they now only getting around to this level of CDOs?
CHAIRPERSON YOUNG: Well, --

MR. ROCHTE: Okay, I'll continue. I have just a couple more questions.

CHAIRPERSON YOUNG: Go ahead.

MR. ROCHTE: Thank you. Matt, did you research the number of septic installers in Los Osos, how many there are?

MR. THOMPSON: No, sir.

MR. ROCHTE: Did you research the number of septic tank pumpers?

MR. THOMPSON: Yeah, a little bit. There are about a dozen that are in the phone book that service this area.

MR. ROCHTE: Okay. And in order to find out the number of installers you could have gone to the phone book. You went to one, is that my understanding? Is that what you said?

MS. OKUN: Objection, that misstates his testimony.

MR. ROCHTE: Okay, I believe that's what he said, he only talked to one.

Mr. Chair, my point is, and I'll bring it back in my later testimony, is that there is a very weak level of research being done by the staff. And there's too much at stake in the
community for this to be allowed. Thank you.

CHAIRPERSON YOUNG: Okay, you can testify to that when it's your turn. Thank you.

MS. PAYNE: My name is Antoinette Payne, and I have received a CDO. I am a real estate broker in Los Osos. I have a question for Mr. Thompson. Because I, too, have spoken to septic specialists in Los Osos.

And, I had asked Mr. Thompson I think the first night when we all gathered when we first received the CDOs, if pumping my septic tank every two months was going to be detrimental to my tank and to my property. And he replied that that wasn't so.

And when I spoke with Al's Septic, he stated specifically that septics were not made to be that way.

CHAIRPERSON YOUNG: Ma'am, do you have a question for any of the witnesses of the Water Board Staff? Is there a question that you're proposing?

MS. PAYNE: Well, I'll just repeat the question, I guess, because --

CHAIRPERSON YOUNG: Well, I'm --

MS. PAYNE: The question is, does
frequent pumping of septic tanks destroy the
septic tank?

CHAIRPERSON YOUNG: Okay, that's a good
question. Mr. Thompson, can you answer that
question?

MR. THOMPSON: To my knowledge, no.

CHAIRPERSON YOUNG: Okay.

MS. PAYNE: Now, can I disagree?

Because of what I know --

CHAIRPERSON YOUNG: No. You -- no, when
it's your turn to put on your case then you can
disagree all you want. And you can call witnesses
to impeach that testimony. That's how it's done.

Okay, --

MR. MOYLAN: I have two other questions.

CHAIRPERSON YOUNG: -- have you already
asked questions?

MR. MOYLAN: Yeah, but I --

CHAIRPERSON YOUNG: Okay, --

MR. MOYLAN: -- got so excited --

CHAIRPERSON YOUNG: Well, I know, and

I'm --

(Laughter.)

CHAIRPERSON YOUNG: Sir, are you waiting
to ask questions, also? Please come forward. I
want to take everyone first who has not had an opportunity.

MR. BISHOP: I'm Larry Bishop and I have a CDO.

CHAIRPERSON YOUNG: Yes.

MR. BISHOP: And I'll even stay on topic for you. So I hope everybody gets to listen to this. Matt Thompson --

CHAIRPERSON YOUNG: It's a question, right?

MR. BISHOP: It's a question. Everybody wake up. Matt, if you remember back in the beginning of February when my wife and I came in and read all the documents. We had a conversation and I asked you what would the level of nitrates leaving my septic tank be acceptable limits. Do you remember your answer?

MR. THOMPSON: Yes, I do. Again, all discharges are prohibited, Larry. But when we were discussing alternative methods of compliance, something that we were -- alternatives to the septic tank pumping requirement, something that we were considering internally was a performance standard equivalent to the waste discharge requirements issued to the Community Services
District in 2003.

That was a -- the effluent from the
groundwater to
the septic tank distance to the ground, what is
acceptable?

CHAIRPERSON YOUNG: Okay, I'm -- he's
not going to answer that because --

MR. BISHOP: No, it's one of the --
CHAIRPERSON YOUNG: -- we've all --

MR. BISHOP: -- one of the questions, and I have a specific point.

CHAIRPERSON YOUNG: No, the point is for this proceeding if there's a discharge that's the issue staff is making, that that's what's actionable. Not the distance to groundwater.

MR. BISHOP: Okay.

CHAIRPERSON YOUNG: So, --

MR. BISHOP: They said that the groundwater, that it made no difference. According to the prosecution documents, under the basin plan they said that 35 feet was an acceptable distance for groundwater separation.

This is --

CHAIRPERSON YOUNG: In Los Osos?

MR. BISHOP: In Los Osos Valley. This is why they --

CHAIRPERSON YOUNG: Wait, wait. In the prohibition zone or elsewhere in Los Osos?

MR. BISHOP: This is why they said --

CHAIRPERSON YOUNG: No, --

MR. BISHOP: -- that outside the prohibition zone was acceptable. We have the same ground level, ground inside and out.
CHAIRPERSON YOUNG: Yeah, but that's a different standard, okay. And we don't have -- I don't see any evidence being presented that there are high nitrate levels in groundwater elsewhere.

(Audience speaking simultaneously.)

CHAIRPERSON YOUNG: Okay.

MR. BISHOP: Okay. My next question. You have this displayed up here, but you do not have the actual measurements from the testing wells?

MR. THOMPSON: Yeah, I have the actual measurements. They're on there. Which well do you want? I can show you the data. I mean we have all of the data, Larry.

MR. BISHOP: Well, I'm saying that this is a snapshot in time, and if you look at the total time period from 1982 to 2005, you'll see that out of nine months out of the year you have a very low, during the wetter seasons you have a high tolerance. And I think what you're --

CHAIRPERSON YOUNG: Okay, Mr Bishop, if you're going to testify --

MR. BISHOP: -- you're showing here --

CHAIRPERSON YOUNG: -- if you're going to testify you can do that later --
MR. BISHOP: I think he's misleading the Board --

CHAIRPERSON YOUNG: Okay, --

MR. BISHOP: -- of what the nitrate levels are actually reading.

CHAIRPERSON YOUNG: Okay, and when it's your opportunity then you can give us the information that you think we should be considering, or that discredits their testimony. So, you can ask him questions about it, but don't get into the testimony, your own testimony.

MR. BISHOP: Well, I'm asking why he decided not to --

CHAIRPERSON YOUNG: Well, he said he had --

MR. BISHOP: -- not to provide you with the actual measurements --

CHAIRPERSON YOUNG: The actual data, okay.

MR. BISHOP: -- the data that he colored in and said this is what it is.

MR. THOMPSON: This is the most recent data we have. And as I testified it represents general conditions in Los Osos. I have, again,
all septic system dischargers in the prohibition
zone are prohibited. And I simply intended to
summarize that, the water quality impacts. And
the most recent data is the most appropriate way
to do that.

MR. BISHOP: Okay, thank you.

CHAIRPERSON YOUNG: Matt, over what
period of time was this data taken? Why don't you
tell us more about it.

MR. THOMPSON: I think the --

CHAIRPERSON YOUNG: I saw the date 2005
somewhere.

MR. THOMPSON: It was taken in October
2005; there's something like 26 wells. And I
think the monitoring event takes a few days.

CHAIRPERSON YOUNG: And how many data
points are there?

MR. THOMPSON: I believe there are 26
well data points represented by this figure.

CHAIRPERSON YOUNG: And those are the
blue dots? Are those the wells?

MR. THOMPSON: Actually, they're --

CHAIRPERSON YOUNG: Those are the 45 CDO
recipients. Okay.

MR. THOMPSON: See this box right here?
That represents the result from the well that is right next to it.

CHAIRPERSON YOUNG: Okay.

MR. THOMPSON: So that's the actual data.

CHAIRPERSON YOUNG: That box says 17. Yeah, the one that --

MR. THOMPSON: Yeah, it says 17; that one says 20, --

CHAIRPERSON YOUNG: Okay.

MR. THOMPSON: -- 14.

CHAIRPERSON YOUNG: So that is the data?

MR. THOMPSON: That's the actual data, yeah.

CHAIRPERSON YOUNG: Mr. Bishop, there's the data.

MR. BISHOP: Okay. That indicates that the nitrate level increased from 2.4 to 12 in five months. Now, it's either saying that --

CHAIRPERSON YOUNG: Well, --

MR. BISHOP: -- the data's wrong or --

CHAIRPERSON YOUNG: Okay, you'll have your --

MR. BISHOP: -- there's some major thing happening there.
CHAIRPERSON YOUNG: -- opportunity to address this, thank you. Okay. Go ahead, sir.

UNIDENTIFIED SPEAKER (Redacted): CDO 1043.

CHAIRPERSON YOUNG: And your name, sir?

UNIDENTIFIED SPEAKER: I'd like to just go by my CDO number, please, thank you.

CHAIRPERSON YOUNG: Okay.

UNIDENTIFIED SPEAKER: Can I ask a clarifying question to Ms. Okun on something that she presented?

CHAIRPERSON YOUNG: You can ask her anything you want.

UNIDENTIFIED SPEAKER: I just -- Ms. Okun, when you said that -- prosecution said that, you said everything should be consistently applied was one of the reasonings for waiting to do the pumping to the study, could you explain that a little further? Do you remember that slide you showed up there, you said that was one of the reasons -- I just didn't understand what you meant by that.

MS. OKUN: I don't mind answering.

CHAIRPERSON YOUNG: Go ahead.

MS. OKUN: We think it's important that
all dischargers who are similarly situated to be
treated the same. If it's necessary to impose
conditions or mitigations to minimize any
potential air quality impacts, we think that it's
important to know what those conditions might be
before any pumping requirements are imposed so
that the Board will know whether they should be
imposed on certain people due to their location
based on data, water quality data, separation to
groundwater or whatever factors the Board wants to
consider.

I'm not suggesting that one thing is
more important than another. I just was
suggesting that if there are going to be
differences between the various orders, the Board
needs to know what those differences are before
they decide who to impose those requirements on.

UNIDENTIFIED SPEAKER: Thank you. Would
that also apply then to if there was pumping to be
done, that the pumping would wait until all cease
and desist orders are issued, so there is not a
disparity in pumping among recipients of cease and
desist orders?

MS. OKUN: I object to the question.

That was not anything I testified to, and it's --
I'm not a witness.

UNIDENTIFIED SPEAKER: I just was seeking clarification if that's what she was implying. But she answered my question.

CHAIRPERSON YOUNG: Okay.

UNIDENTIFIED SPEAKER: The other question I had was if, with your recommendation right now you are not recommending pumping until environmental reports, some kind of study is done on it.

At a later date if pumping is part of the cease and desist orders, would that require another hearing before the Board?

MS. OKUN: Yes.

UNIDENTIFIED SPEAKER: Thank you.

That's all --

MS. OKUN: If it's in the form of a cease and desist order, as opposed to some other forms of orders that can be issued by the Executive Officer.

UNIDENTIFIED SPEAKER: Okay. Did that answer my question, I'm not sure.

CHAIRPERSON YOUNG: I think she said in her opinion, --

UNIDENTIFIED SPEAKER: Yes.
CHAIRPERSON YOUNG: -- her legal opinion it would require a subsequent hearing.

UNIDENTIFIED SPEAKER: Thank you.

CHAIRPERSON YOUNG: Okay. All right,

Mr. Moylan, you have --

MR. MOYLAN: Two questions.

CHAIRPERSON YOUNG: -- two questions.

MR. MOYLAN: My name is Bill Moylan and this question is for Sorrel Marks. First time I came down here, after we were ordered to come down to provide information about who lived in our home, all the people 18 years older, with the threat of $1000 fines, so I came down right away.

I talk to Sorrel. And I asked Sorrel -- lost my train --

CHAIRPERSON YOUNG: Mr. Moylan, what is your question for this witness?

MR. MOYLAN: I'm trying to get through it. I said, what can I do, Sorrel, what can I do. I said, I'm just one person. I can't make the CSD just suddenly build a sewer. What can I do.

And she said, well, you need to get the community together. And the question that I had after that was, well, they've already canceled --

I said, what are our options. And you said well,
you do have that Tri-W site. You guys voted.

And I said, yeah. And what was I
supposed to draw from that statement of yours?

MS. MARKS: If I recall our conversation
correctly, you asked me if anything could be done.

MR. MOYLAN: I said what could I do, I'm
just one person.

MS. MARKS: And I pointed out some of
the alternatives that could be done.

MR. MOYLAN: You said, well, you did
have that Tri-W site there. And you kind of left
it hanging in the air. What was I supposed to
draw from that statement of yours?

CHAIRPERSON YOUNG: And what is the
importance of that answer? What is it relevant
to?

MR. MOYLAN: It's relevant to --

CHAIRPERSON YOUNG: I mean, let's say
the Tri-W site is an alternative.

AUDIENCE SPEAKER: It's not.

CHAIRPERSON YOUNG: Okay. Let's assume
that it is --

MR. MOYLAN: Okay, -- I guess that
answers my question. I do have one for Matt. You
just recently said in testimony that it's plain to
see that pumping the tanks will clean up the groundwater. And yet the biology teacher that spoke here earlier this evening said that it takes decades to clean up an aquifer the size that we have, decades.

So your statement about it's plain to see it will clean up the aquifer is not based on science, is it, Matt?

MR. THOMPSON: That's not what I said.

MR. MOYLAN: What did you say?

MR. THOMPSON: I said frequent septic tank pumping would reduce pollutant loading to Los Osos' groundwater basin.

MR. MOYLAN: And you're certain about that? It's based on science, now. Are you certain that it will clean up the groundwater?

MR. THOMPSON: If you reduce --

MS. OKUN: Objection, that misstates what he just testified to.

MR. MOYLAN: I just asked him if he was certain that it would clean up the groundwater.

CHAIRPERSON YOUNG: I think it's his opinion that it will reduce pollutant loading. That's his testimony.

MR. MOYLAN: Okay, it's an opinion,
thank you.

CHAIRPERSON YOUNG: Okay.

MR. RICHARDS: But I think it's appropriate to recognize Ms. Okun's objection that he repeatedly misstated what the testimony of Mr. Thompson was. Mr. Thompson testified that it was his opinion that frequent pumping would reduce pollutant loading.

CHAIRPERSON YOUNG: Pollutant loading.

MR. RICHARDS: And Mr. Moylan kept asking him if it was his testimony that this would clean up the groundwater. And those are entirely different issues.

CHAIRPERSON YOUNG: Okay. And is this Mr. Sargent?

MR. SARGENT: Yes.

CHAIRPERSON YOUNG: Okay.

MR. SARGENT: Dick Sargent, a supporter. This is looking a little ahead and I'm thinking about alternatives, and I'm thinking about how you might, or if you have investigated the nitrate content of some of the discharges. And I'm thinking along the line of the federal marine requirements.

CHAIRPERSON YOUNG: Well, Mr. Sargent,
the point we are at now in this proceeding is that these witnesses are asking questions of staff. So, you're free to ask questions.

MR. SARGENT: Okay.

CHAIRPERSON YOUNG: You want to pose that to --

MR. SARGENT: Sure. I think maybe Matt, any one of you --

CHAIRPERSON YOUNG: If he's a --

MR. SARGENT: -- are welcome --

CHAIRPERSON YOUNG: If --

MR. SARGENT: -- to answer --

CHAIRPERSON YOUNG: Mr. Sargent, as long as these are relevant questions.

MR. SARGENT: I think so. Because I'm thinking that you wholesale reject hybrid approaches and alternatives. I mean you, the state. And so I'm thinking, because we're faced with some pretty bad situations, there might be a possibility of distinguishing between black water, grey water, as the federals do.

CHAIRPERSON YOUNG: Okay.

MR. SARGENT: And I'm asking Matt, have you done any investigation of that?

MR. THOMPSON: Yeah, I mean we know that
most of the nitrogen loading comes from the urea, you know. And you can't really reduce nitrogen loading without reducing black water discharge. Grey water has some nitrogen in it.

Yeah, I mean we considered it, yeah, not like documented detail, but, yeah, we considered it.

MR. SARGENT: Would you consider it in the future if we say, started to go along those lines? I'm really interested in exactly why the feds will allow grey water in certain discharges in certain areas, and then, of course, no black water.

So I think maybe we have a possible answer in that regard there. So I don't want to take any more time, that's good enough.

CHAIRPERSON YOUNG: Okay, thank you. Mr. Martyn, you've already asked questions, correct?

MR. MARTYN: Mr. Chairman, I was wondering if you could schedule me for next week. My wife is feeling poorly and we would prefer to be scheduled that week if that's --

CHAIRPERSON YOUNG: Well, I think that we can probably accommodate that, given the time
it is, and given that your last name begins with M.

MR. MARTYN: Right.

CHAIRPERSON YOUNG: Okay?

MR. MARTYN: Thank you very much.

CHAIRPERSON YOUNG: All right.

MR. MARTYN: Thank you for the consideration.

CHAIRPERSON YOUNG: Well, I don't know that it's next week. The Board hasn't discussed what to do in terms of continuing the hearing. We will continue it; I don't know when it's going to take place.

MR. MARTYN: Well, whenever it does --

CHAIRPERSON YOUNG: Whenever it does.

MR. MARTYN: -- that'll be fine. I'll be here.

CHAIRPERSON YOUNG: Okay. All right.

MR. MARTYN: Thank you, thank you very much.

CHAIRPERSON YOUNG: You've already asked questions.

MR. SHIPE: Yes.

CHAIRPERSON YOUNG: Only one question, one more; that's it.
MR. SHIPE: Okay. Then I'll ask this one. Mr. Thompson, you testified that it will reduce the nitrate loading. So, will it or won't it clean up the groundwater? Will the pumping program clean up the groundwater, since that was what was misstated before?

MR. THOMPSON: I believe that a centralized wastewater treatment plant with a robust nitrogen --

MR. SHIPE: That was not the question.

MR. THOMPSON: -- the groundwater.

MR. SHIPE: That was not the question.

The question was regarding the pumping program, will the pumping program clean up the groundwater?

MR. THOMPSON: The pumping requirement is an interim compliance requirement until a centralized treatment plant --

MR. SHIPE: That does not answer my question, sir. It's a yes or no question. Will the pumping requirement clean up the groundwater?

MR. THOMPSON: The groundwater is so heavily contaminated it will likely take decades before drinking water is restored to standards.

MR. SHIPE: So, the answer is no?

CHAIRPERSON YOUNG: That's not what he
just testified to. He gave you an explanation. I
know you'd like a yes or a no, --

MR. SHIPE: Okay.

CHAIRPERSON YOUNG: -- he can't give it
to you. He also testified, in his opinion that
pumping would reduce pollutant loading to the
groundwater table.

MR. SHIPE: Yes, and that's the reason
why I was asking specifically to the other
question, because there was some confusion with
Mr. Moylan's. Because Mr. Moylan kept misstating
his comments. And so because of that I just
wanted to get it on the record whether or not this
will clean up the groundwater, since --

CHAIRPERSON YOUNG: Mr. Richards.

MR. SHIPE: -- yes, Mr. Richards stated
that it was a misstatement.

CHAIRPERSON YOUNG: Well, apparently --

MR. SHIPE: Okay, thank you.

CHAIRPERSON YOUNG: -- if this was the
only system that was employed, apparently what his
testimony is is that it could take decades --

MR. SHIPE: Yes.

CHAIRPERSON YOUNG: -- at this rate of
pumping. Is that what you intended, Mr. Thompson,
by that comment?

MR. THOMPSON: Yes.

CHAIRPERSON YOUNG: Okay.

MR. SHIPE: I believe he also said no.

CHAIRPERSON YOUNG: Okay, well, you --

MR. SHIPE: Okay, okay.

CHAIRPERSON YOUNG: -- can point that out when it's --

MR. SHIPE: Okay.

CHAIRPERSON YOUNG: -- your time. And I hope we get to your time, Mr. Shipe, because we're running out of time all together.

Mr. Payne.

MR. PAYNE: Good evening, again. Bruce Payne. Resident of Los Osos. I'm against everything.

(Laughter.)

MR. PAYNE: On your education you were pretty honest about not knowing how many hours you had on septic tank, and that most of your experience was -- knowledge of septic tanks was learned here on the job. I thought that was very nice of you to let us in on that.

The thing I'd like to know, could you put up that picture of the septic tank and the
leachfields that you have, please?

MR. THOMPSON: I have two of them, --

MR. PAYNE: That's very good. Now, did somebody give you that picture out of a book, or where did that come from?

MR. THOMPSON: No, no, no, sir, this is a representation of what we believe is going on in the subsurface. You have a lot of seepage pits and you have relatively high groundwater. I developed this slide.

MR. PAYNE: Okay. When you were being told about septic tanks on the job here, did anybody tell you that they had two compartments in a septic tank? The picture there is not of a septic tank.

MR. THOMPSON: Yeah, I understand that there are two compartments in a septic tank. This is a very simplified representation of a septic tank.

MR. PAYNE: Okay, we're a lot more exotic in our knowledge, just as laymen in Los Osos. The question I guess I would like to know is basically who taught you your information about septic tanks and leachfields on the job.

MR. THOMPSON: Well, first of all, the
siting and design criteria for septic systems is established in our basin plan. It's pretty cookbook.

And secondly, we have somebody who's renown on site wastewater system expert in Howard Kolb.

MR. PAYNE: Howard Kolb?

MR. THOMPSON: Yes, sir.

MR. PAYNE: Thank you. And basically what you said, we're pretty much all the same in Los Osos groundwater-wise. I didn't quite understand that, just the last statement. Textbook what?

MS. OKUN: That misstates his testimony. I think he used the term cookbook to refer to the general siting criteria for septic tanks in the basin plan that applies regionwide to areas where septic tanks are allowed and where they're appropriate.

MR. RICHARDS: Mr. Payne, could you clarify your question, please.

MR. PAYNE: Yes. Basically this cookbook situation defining all septic tanks in Los Osos when they have not had any site-specific scientific knowledge about how to clean up the
groundwater by using pumping.

MR. RICHARDS: I'm sorry, but I still don't understand your question.

MR. PAYNE: Oh, that's --

MR. RICHARDS: I don't understand the specific question that you're asking Mr. Thompson.

MR. PAYNE: Yeah, I'm probably a little beyond your septic tank knowledge, too.

(Laughter.)

MR. PAYNE: Basically, but --

MR. RICHARDS: No, I hate to dispute your level of septic tank knowledge, but that isn't the issue. The issue is the clarity with which you have articulated the question that you are attempting to get Mr. Thompson to answer.

It's not a matter of septic tank knowledge. It's a matter of articulating your question clearly so that the Board can understand what information you're trying to get Mr. Thompson to give them.

MR. PAYNE: Okay. Basically they gave us pictures of a vadose zone and the fact that with enough vadose zone it denitrified before it got to groundwater. And we can't really use a cookbook thing to cover all of Los Osos.
We're built on sand dunes, there, sir.

MR. THOMPSON: And that's --

CHAIRPERSON YOUNG: Okay, but what is the question, Mr. Payne?

MR. PAYNE: The question is what scientific knowledge did you use to do site-specific studies, if any.

CHAIRPERSON YOUNG: Well, the first question you should ask him is did he do site-specific studies.

MR. PAYNE: Did you do site-specific studies?

MR. THOMPSON: No, sir.

CHAIRPERSON YOUNG: Okay, and that's the answer to your question.

MR. PAYNE: Right, that's the answer to my question. Do you have any more questions I could ask him?

(Laughter.)

MR. PAYNE: I think I'll let him off the hotseat for now. Thank you.

CHAIRPERSON YOUNG: Okay. I like ending on a happy note. For now, we're going to take a break. And when we return we are going to begin.

UNIDENTIFIED SPEAKER: We're going to do
to dinner.

CHAIRPERSON YOUNG: Well, do you have an appetite?

UNIDENTIFIED SPEAKER: Yeah, it's 7:00.


UNIDENTIFIED SPEAKER: I'm surely not going to eat at 10:00, 11:00 tonight.

CHAIRPERSON YOUNG: Okay. All right.

Mr. Jeffries is giving his stern look, so I'm not about to --

MR. MATTINGLY: Excuse me, sir.

CHAIRPERSON YOUNG: Yes.

MR. MATTINGLY: I'd like to do you a favor and I have an 11-year-old that's dying to go to the movies.

CHAIRPERSON YOUNG: Go right now.

MR. MATTINGLY: I'm an M, so am I going to be able to have my 15 minutes sometime at a later date?

CHAIRPERSON YOUNG: Of course.

MR. MATTINGLY: How long are we going to go to today?

CHAIRPERSON YOUNG: We don't have time to get to very many tonight.

MR. MATTINGLY: Okay.
CHAIRPERSON YOUNG: Okay, and I think the few that --

MR. MATTINGLY: And another thing is for the chart he put up there, I haven't seen very many three-story houses --

CHAIRPERSON YOUNG: Okay, --

MR. MATTINGLY: -- or three-door garages in Los Osos.

CHAIRPERSON YOUNG: -- the few that we pulled out to reprioritize look like we will be lucky to get to at this rate. But eventually we're going to get to everybody. You can be sure of that.

MR. MATTINGLY: Thank you, sir.

CHAIRPERSON YOUNG: Okay?

MR. MATTINGLY: Thank you.

CHAIRPERSON YOUNG: All right. Board, what would you like to do in terms of dinner and reconvening? Forty-five minutes? What do you want?

UNIDENTIFIED SPEAKER: I don't know, how long is it going to take? I don't know where this place is, I don't know how fast they serve.

CHAIRPERSON YOUNG: Carol, what are we doing?
(Parties speaking simultaneously.)

CHAIRPERSON YOUNG: Okay. Folks, what we are going to do is reconvene in 45 minutes, 45 minutes. We're just going to get a sandwich and we're going to come back here, so we can be done in 45 minutes.

The goal really is to give the CSD their two hours so we can at least complete that this evening. And if we have to go over a little bit, then we will do that from the 10:00 time.

Okay, so, 7:45.

(Whereupon, at 7:04 p.m., the meeting was adjourned, to reconvene at 7:45 p.m., this same evening.)

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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 Meeting; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of May, 2006.

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