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

In the Matter of:

Proposed Cease and Desist Orders
Against Individual Property Owners
and Residents in Los Osos/Baywood
Park Prohibition Zone

Re: Proposed Settlement Agreement,
Continuance of Hearings for
Designated Parties Who Have
Agreed to Settle

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

THURSDAY, DECEMBER 14, 2006
8:35 A.M.

Reported by:
Richard A. Friant

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

BOARD ADVISORS and ASSISTANTS
Michael Thomas, Assistant Executive Director
John Richards, Attorney
Carol Hewitt, Executive Assistant

WATER BOARD PROSECUTION STAFF
Reed Sato, Director, Office of Enforcement
Matt Thompson, Project Manager
Sorrel Marks, Project Manager
Harvey Packard, Division Chief

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

Gail McPherson

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CHAIRPERSON YOUNG: Good morning, everybody. I'm Jeff Young, Chair of the Central Coast Regional Water Quality Control Board. Today is December 14th, and we're here on the proposed cease and desist orders against individual dischargers in the Los Osos/Baywood prohibition zone.

To my left is John Richards, who is acting as our Board Counsel. And to my right is Michael Thomas, who is our Acting Executive Officer.

Ms. Hewitt, would you like to take roll.

MS. HEWITT: Thank you. Monica Hunter. Absent.

CHAIRPERSON YOUNG: Absent.

MS. HEWITT: Les Bowker.

CHAIRPERSON YOUNG: Absent.


BOARD MEMBER PRESS: Present.

MS. HEWITT: Russell Jeffries.

BOARD MEMBER JEFFRIES: Present.

MS. HEWITT: Jeffrey Young.

CHAIRPERSON YOUNG: Present.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
MS. HEWITT: Gary Shallcross.

BOARD MEMBER SHALLCROSS: Here.

MS. HEWITT: John Hayashi.

BOARD MEMBER HAYASHI: Here.

CHAIRPERSON YOUNG: Okay, thank you.

One thing I wanted to do was at some point maybe take roll of the proposed -- the recipients of the individual cease and desist orders to know who is here and who isn't, other than those that have agreed to a proposed settlement. And do we have a list?

Okay, folks, if you're here would you please let me know. Chris Allebe. Okay. Matt and Elaine Barnard. Okay, doesn't look like it. Larry and Kathleen Bishop.

MR. BISHOP: Here.

CHAIRPERSON YOUNG: Okay, both here.

Robert Borthwick. Okay. Pardon me?

UNIDENTIFIED SPEAKER: We submitted evidence together. I don't know if that means anything.

CHAIRPERSON YOUNG: Okay. And then I do have a number of people that did not want their names disclosed publicly, and so I'm just going to read their numbers.
Marina and Clement Michel, M-i-c-h-e-l.
Julie and Lawrence Kleiger, K-l-e-i-g-e-r. They asked to be able to testify tomorrow, and that's going to be okay with us. So they're not here today. John and Phyllis Mortara. Mr. Moylan and Mrs. DeWitt-Moylan. Bruce and Antoinette Payne.
MR. PAYNE: Here.
CHAIRPERSON YOUNG: Okay. Number 1001.
Carol Schuldt, S-c-h-u-l-d-t. Okay. Well, I don't know, number 1024, he's here. Okay.

Lazelle Speegle.

MR. SPEEGLE: Here.

CHAIRPERSON YOUNG: Okay, thank you.

Shane and Annemarie Stoneman. Katherine and Barry -- let's see, Barry Carney and Katherine Thomas, I believe.

MS. THOMAS: Here.

CHAIRPERSON YOUNG: Okay. All right.


You should know that there are approximately 21 people that have agreed to settle, and so I did not anticipate that they would necessarily be here. And they, of course, are mixed up in this group. I read all 45 names.

Okay, I've got two speaker cards so far.

Ms. Calhoun, you can speak at the public comment period, the public forum period at 1:00 on any item not on the agenda. Okay. And you'll have three minutes at that point in time. And if you wanted to speak about anything regarding what we're doing today, then that would be with the
interested persons comments, which are going to be item number 3.

MS. CALHOUN: I think that's what I wrote on --

CHAIRPERSON YOUNG: It says proposed settlement, so you want to speak --

MS. CALHOUN: Number 3 --

CHAIRPERSON YOUNG: You did. You did.

One minute for -- okay.

Okay. That's right, items not on the agenda are three minutes. Interested persons will have one minute.

UNIDENTIFIED SPEAKER: As long as they understand.

CHAIRPERSON YOUNG: Yeah. Okay. The prosecution team includes Reed Sato, who I have not really met yet. Good morning, Mr. Sato.

MR. SATO: Good morning.

CHAIRPERSON YOUNG: Director of the State Water Board Enforcement Unit. Harvey Packard, with the beard, the red beard, Division Chief for the Central Coast Water Board. And Matt Thompson, Water Resource Engineer for the Central Coast Water Board to the left of Mr. Sato. And Sorrel Marks. You know what? Should be there.
The order of events will be as follows:

- Consideration of a settlement agreement;
- Consideration of preliminary procedural matters;
- Nonevidentiary comments by governmental agencies and interested persons. And for those of you that wish to speak on what's going on today, you'll have one minute to do so; and please, fill out a speaker card. And that will be the time slot, that's item number 3.

   Designated parties should not submit speaker cards for the public forum unless they want to speak on something not on the agenda, as they will be called to speak in alphabetical order during their individual proceedings.

   Representatives of governmental agencies and interested persons should submit speaker cards.

   We'll then have presentation of evidence by prosecution team. Cross-examination of prosecution team by designated parties. Lunch break. Is that going to start at 1:00 or -- scheduled for 1:00, okay. Lunch will start at 1:00. Then we will be back here by 2:00.

   And that's when we would attempt to have our public forum, right about 2:00.
Number six, presentation of evidence by Los Osos CSD. And if you haven't done so, please put your cellphones on vibrate or silent. Cross-examination of the Los Osos CSD by designated parties.

Number eight, individual proceedings. Number nine, closing arguments. And ten, Board deliberation and decision.

The hearing today will end at 4:15. And begin tomorrow morning at 8:30. Board Members and staff counsel may ask questions to clarify testimony of a witness at anytime.

I will now administer the oath. If you intend to speak or provide testimony on any of these matters, please stand, raise your right hand, and repeat:

Whereupon,

ALL PROSPECTIVE WITNESSES were called as witnesses herein, and were thereupon duly sworn.

CHAIRPERSON YOUNG: Thank you, you may be seated.

The hearing notices notified the parties that they must submit any written comments, a list of witnesses and any exhibits to the Assistant
Executive Officer by November 15, 2006. The Water Board received copies of all materials submitted by the deadline. Anything that we received after that date is not going to be part of the record. Although there were a number of emails that did come in to Mr. Thomas and that I did review, myself, although I read them, they're not part of the record.

As you know in our notice we have made a requirement that if anybody is going to speak on behalf of anybody else, and that individual is not an attorney licensed to practice law, that they have to submit a notarized authorization form to do so.

If someone is here, I mean a designated party, a CDO recipient, and has not filled out a form, they can come to the podium and let us know that so-and-so is going to be making comments on their behalf or representing them. That is fine to do in lieu of filling out a form.

We do have a authorization, blank authorizations, if anybody wants to appoint someone to speak on their behalf, and then wants to leave the proceedings, they can do that if they fill this out and tell us that so-and-so is going
to be speaking on their behalf.

So, if anyone needs any forms, please let us know and we can have them for you. Does anybody want to come forward and tell us who is going to be representing them? Okay.

Yes, sir. And your name?

MR. DUGGAN: My name is Dave Duggan. Just yesterday I received authorization through a notarized form here to represent Cinthea Coleman. And I just received it yesterday after business hours. I'd like to have it submitted.

CHAIRPERSON YOUNG: Why don't you show it to Mr. Sato so he can take a look at it, and then Mr. Murphy.

(Pause.)

CHAIRPERSON YOUNG: Okay, and please show Mr. Murphy. Please show Mr. Murphy.

(Pause.)

CHAIRPERSON YOUNG: I take it our court reporter that is here is going to mark that as an exhibit.

Okay. I would like to take a look at it, myself, if I could. Do you have a copy?

Okay.

(Pause.)
CHAIRPERSON YOUNG: (inaudible) Ms. McPherson?

MS. McPHERSON: Yes.

CHAIRPERSON YOUNG: Are you representing anybody today?

MS. McPHERSON: Yes, I am. Laurie McCombs.

CHAIRPERSON YOUNG: Okay, you have the form?

MS. McPHERSON: Yes, I do.

CHAIRPERSON YOUNG: Okay.

MS. McPHERSON: And --

CHAIRPERSON YOUNG: Why don't you show it to Mr. Sato first, and be sure Mr. Murphy takes a look at it.

(Pause.)

CHAIRPERSON YOUNG: And, Ms. McPherson, how many people will you be speaking on behalf of?

MS. McPHERSON: At this point I have two documents, one from Timothy Rochte and one from Laurie McCombs. I anticipate that I'll be speaking for Laurie McCombs and leave it up to Tim Rochte if he gets here and wants to represent himself.

There is another person, Charles
Wilkerson, who could not attend; and he has a
letter he wanted me to deliver to you. But he was
not going to present testimony today. But he
didn't want to give up his right to a hearing.
There was some confusion on whether people asked
for a continuance and couldn't come, if that meant
that they could not give up their right to a
hearing or any appeals. So we would want to get
that clarified, too.

CHAIRPERSON YOUNG: I will address that.
Why don't you show that letter to Mr. Sato and
then make sure Mr. Murphy takes a look at that.

(Pause - verifying paperwork.)

CHAIRPERSON YOUNG: Folks, in response
to the letter from the Wilkersons, looks like Mrs.
Williams, Williamson, is that the first name?
Anybody that has submitted written comments whose
made an appearance as far as the Board is
concerned, if they're not here they're not going
to waive any of their rights to appeal or
participate in an appeal.

Ms. McPherson, we don't have one for Mr.
Rochte. Is --

MS. MCPHERSON: No, I explained that
that was --
CHAIRPERSON YOUNG: That he may show up.

MS. McPHERSON: Yes.

CHAIRPERSON YOUNG: And if he doesn't --

MS. McPHERSON: He does intend to --

CHAIRPERSON YOUNG: Fine. Okay.

Understood. Mr. Payne.

MR. PAYNE: Yes. On 11/7 we had that hearing of how to proceed with the prosecution. You made sort of a reference to the fact that I didn't have a CDO. And I've been receiving the material in my name and my wife's name, Mr. and Mrs. Bruce Payne.

But I do have a limited power of attorney from Mrs. Payne if it's necessary.

CHAIRPERSON YOUNG: It's not necessary. You know, if the property's owned by a married couple either one can come and present a case. It does not require both come and appear and testify.

MR. PAYNE: Okay, thank you. I won't have to turn that in, then.

CHAIRPERSON YOUNG: No, you don't have to, as long as you're going to be here.

MR. PAYNE: Thank you.

CHAIRPERSON YOUNG: Okay, I just wanted to make some brief comments, folks, about due
process and what this type of proceeding requires
as far as the Board is concerned.

I have received a tremendous number of
emails and correspondence going back really to the
beginning of these proceedings, with people making
claims that their due process rights were being
violated, they were going to be forced out of
their homes, et cetera, et cetera.

I want you to know that there is no
language in the proposed cease and desist orders
that speak at all to anybody being forced out of
their homes whatsoever. The proposed cease and
desist orders speak of a mandatory pumping
requirement of septic tanks; and then, too, a
series of timelines that need to be satisfied in
order for proposed or potential penalties to be
assessed.

And let me make one thing very clear.
The staff cannot impose any cease and desist order
penalties without there being another hearing.
Nothing happens automatically or by default. If,
for some reason, the prosecution team feels that
cease and desist order penalties should be
assessed, they have to notice a hearing and
something like this would start all over again for
that purpose.

As far as due process is concerned, unfortunately a lot of people have a misconception of what is really required of due process in this situation. Due process requires two things: notice and an opportunity to be heard.

And the notices have been given out a long time ago in these proposed proceedings. The requirements in the notice have been really clear as to what was going to happen. They have changed slightly in terms of there being initially a, I think a bi-monthly pumping scheme of septic tanks, and a slightly different time schedule order. That has changed through time to be, in my opinion, less onerous in terms of the pumping.

And the time schedule order portion has been modified because of the legislation that Mr. Blakeslee had authored. But the basic components of what the charges are, if you want to call them that, have not changed from their inception.

It's our opinion that the notice requirement has been duly satisfied. The next component was really an opportunity to be heard. And what is required of an opportunity to be heard? You can read a lot of cases on this; you
can read treatises. And it's a standard that is somewhat flexible and depends on the type of property interest that is at stake. And what could be deprived by government action.

In this situation there is no property interest that is being impacted. Some of you may feel very strongly that it looks like there's a property being impacted, but it's my opinion that it is not. Nobody has a right to discharge from a septic system in violation of a law. And that's what we have in this situation. The basin plan is a law, a regulatory law. And the prosecution team has alleged it is being violated. And there is no property right attached to that.

Cease and desist order hearings have their own statutory requirements for due process, if you want to call it that. They do require a hearing to be conducted. That is what we are doing. We have made a hearing available to those that want to participate orally and provide testimony. We have also accepted and requested written comments that we will consider in lieu of anyone's oral testimony.

We feel we have complied with what is required under due process. People have been
given an opportunity to appear if they want. They have been given an opportunity to provide written comments, and those we have accepted.

Any other comments? Okay.

In at attempt to focus everybody today I want to make sure that you hear this, and that is to clarify what are the issues before the Board.

One, are persons who own or occupy each property -- these are the persons named in each proposed cease and desist order -- discharging or threatening to discharge in violation of the Los Osos/Baywood Park prohibition in the basin plan? That's an issue. That's in dispute. That will be decided by this Board.

The second set of facts in dispute or contention and before the Board is: are the requirements of the proposed cease and desist orders the appropriate remedy for violations of the prohibition. Specific circumstances of each discharge are relevant only to the remedy that the Board may adopt if the Board finds that violations are taking place or are threatened to take place.

Some of you feel, and it's obvious from my review of all of your written testimony, and I have read most of them at least two or three
times, and I'm speaking about both the CSD and the individual homeowners, most of you have injected a lot of other issues into what you want us to consider.

When you're given your time to speak I am going to let you have your 15 minutes to say and do whatever you want. But, try to not waste your time on things that I have laid out as not being important for the Board to consider in determining what to do today.

I think that's it. We are ready to go. And the first item on our agenda would then be the proposed settlement agreement. And, Mr. Sato, I'll let you tell us what this is all about.

MR. SATO: Thank you very much. Mr. Chairman, Members of the Board, and members of the hearing team, good morning. My name is Reed Sato; I am the Director of the Office of Enforcement for the State Water Resources Control Board. And I hope some day to be able to come down here to talk to you about some of the really interesting things that our Office of Enforcement is doing, and to talk about some of the initiatives that we've got going on that will be of direct benefit and of interest to those of you here in Region 3.
However, today I am appearing merely as an attorney advising the prosecution team in this matter. And I want to talk to you specifically about the efforts that we have made to try and include a settlement alternative for those of the community who are faced the proposed cease and desist orders.

Now, I just want to say that, you know, people look at me as the head of the Office of Enforcement, think that I always want to bring a heavy hammer on people. And that's absolutely not true. I believe in settlement; I believe in the philosophy of trying to work out settlements whenever you can with people who face enforcement actions.

I settled the first major Superfund case in the State of California. I've done the first multi-million-dollar hazardous waste case in the State of California. The three largest penalty cases in the United States for underground storage tank violations. All of those judgments were obtained as a result of the settlement process. And that's what I believe in.

Now, of course, in this situation there are some difficulties poised for settlement. We
have 45 disparate parties who have different interests, different ideas about what they want to see accomplished. And we also are dealing with a cease and desist order process, as opposed to a penalty situation or something else. So the parameters and the kinds of things that can be negotiated are somewhat more constrained. But still, I don't think that serves as a barrier for wanting to try to go forward and see if we can accomplish some kind of resolution, some kind of settlement.

If you don't mind I'd like to just go through a little bit about the history of the settlement negotiations to explain where we started and how we got to where we are.

You know, it goes without saying that in order to have a settlement, you have to have settlement discussions. In order to have settlement discussions you have to have two willing parties to start talking about this.

As far as I know, and, of course, I come to this procedure very late in the game, but as far as I know there was no inquiries on the part of the CDO recipients to talk about settlement until about October of 2006.
And I was approached by a couple of the CDO recipients after a deposition that took place of Mr. Briggs. And they said, look, Reed, you know, is there any way that we can try to put off the CDO-type proceedings; is there some other method that the prosecution team might consider for achieving the same result, but without seeing the harsh results of what they considered the result of CDOs.

And, you know, like I said, I'm interested in settlement. I went back, talked to the prosecution team. And within a couple of days, I think, we put together a draft settlement proposal; and we provided it to those interested CDO recipients.

And over the next few weeks we exchanged various drafts. We understood that these people that we were dealing with on the CDO side were consulting and sharing it with other people. We didn't know exactly who, but we were getting their input as to the kinds of issues that they wanted to see.

And we crafted, you know, it was a back-and-forth; it was a good negotiation. I think we learned a lot about the perspectives that these
people were faced, or what they had about the
process that they were being faced.

And about October 25th we had put
together a document that was, I think, well enough
along that I came down to Los Osos; met with
members of the community. We went over what was
the draft settlement alternative at that time line
by line. I didn't try to talk anybody into it. I
just kind of went through it; explained what each
of these sentences, what each of the paragraphs
that we proposed meant. And I think we had a good
discussion.

They pointed out some ambiguities in
what I presented to them. I left that meeting,
fixed them, sent them back. And very shortly
thereafter we got some interest on the part of
several of the persons at that meeting, saying,
yes, this type of settlement approach would be
acceptable to them. They wanted to sign up. They
asked us if they signed up could we take them off
the hearing process for the CDO hearings. We said
absolutely; that would make the right sense until
we got approval from this Board as to whether or
not the kind of settlement agreement that we had
crafted was acceptable to this Board.
Now, shortly thereafter -- so, we started on this process, and I'll say we came up with something that I called our original settlement option. And that was very much parallel in terms of substantive terms along what the prosecution team had presented as our proposed cease and desist order.

After that, we were contacted by another group of CDO recipients -- I shouldn't say another group, but a group of CDO recipients had decided to retain counsel. And through that counsel they were expressing to us certain changes they would like to see in the settlement process.

And, in fact, as you may know, they submitted a fully signed settlement agreement to me. And I think they submitted it as evidence -- a number of them submitted it as evidence as part of their submissions.

Of course, because we hadn't negotiated and met with these folks, we didn't accept their settlement agreement. But we did, in fact, start conversations with their counsel. And they were good conversations. I mean they were raising issues to us about their perception that the way that we had structured the original settlement
agreement and the proposed CDOs was -- it looked
to them like we were trying to force them into an
unrealistic time schedule for having a sewage
treatment facility built for their community.

Also, they thought that perhaps -- they
were interpreting our proposals, settlement and
CDO proposal, as one that was trying to force them
into a Tri-W project. And that was simply not our
intent. And so we tried to think long and hard
about whether there was a different approach that
we could take to alleviate those types of
concerns.

And I'm happy to say that we did come up
with a different type of approach. I shouldn't
say different approach, I mean I think we
clarified what our original intent was in our
original settlement option. We came up with what
something I would call a revised settlement
option. And that is the document that we've
served to the Board, and made it available to all
of the proposed CDO recipients. And that is what
I believe many of the CDO recipients who indicated
an interest in settlement, that is the document
that they found acceptable to them to enter into.

I'm going to say that, you know, we were
not successful in getting all of the CDO recipients that we were negotiating with to sign up to our revised settlement option. And I think it's unfortunate and I'm sorry that happened.

But what seemed to happen is that we had a breakdown on a couple of issues that we, the prosecution team, thought were very key. One was in terms of our approach was that if the community sewer system was going forward under the AB-2701 process, things would be fine. But if there was -- if that process didn't go forward, there should be some clear kind of consequences with things that would happen if that process wasn't on track.

There was a disagreement between us and the 11 negotiating folks about what that meant. And whether there would be a discharge cessation date within the time period that we, the prosecution team, felt was acceptable.

Another issue that came up was that there was a question about how the document would be enforced. There was, the prosecution team, as you'll see in our settlement proposal, wanted to enforce under 13304 -- wanted an alternative that we didn't think was appropriate.
And there were other things, too. Because sometimes, as you know, as negotiations go along, at the end of the day things start getting Christmas-treed. And, you know, little things started getting added that I felt were pulling us farther apart rather than closer. And so we were ultimately unsuccessful with that group. Although I noticed that a couple of people that were formerly in the group have now joined and accepted the revised settlement option.

So, that is the history of our -- a brief history of our negotiations.

At this point we can put up the revised settlement agreement and go through it. Or, since you folks have already seen it, if you would simply want to proceed and ask me questions about any particular provisions, we can do it that way.

CHAIRPERSON YOUNG: Why don't you put it up so we can make sure we have the right document in front of us. And then maybe just lead us through the requirement components of it. And we'll see if the Board has any questions about that.

(Pause.)

MR. SATO: Are people in the audience
able to see that?

CHAIRPERSON YOUNG: Towards the beginning.

MR. SATO: Oh, okay. I'm sorry.

Members of the audience, apparently there are some hard copies of the revised settlement option in the back.

CHAIRPERSON YOUNG: Mr. Sato, is it dated October 30th?

MR. SATO: That is the original settlement option. The revised should say December 11th or something like that. December 7th, sorry.

(Pause.)

CHAIRPERSON YOUNG: I think we have all read these because they've been posted. But what I had asked staff to do is to prepare binders --

MR. SATO: Oh, okay.

CHAIRPERSON YOUNG: -- so that the Board Members wouldn't have to go through and do their own compilation of exhibits and comments and things of that nature. So, looks like that did not get included in what we have.

We have the October 30th one, not the December one.
MR. SATO: Sorry.

CHAIRPERSON YOUNG: It was emailed to us, yeah.

BOARD MEMBER PRESS: We've read --

CHAIRPERSON YOUNG: Yeah, we've read it.

BOARD MEMBER PRESS: We've read the new one.

CHAIRPERSON YOUNG: Right. You have a --

MR. SATO: You may find that it may be attached to a letter dated December 6th from Mr. Packard to the designated parties.

BOARD MEMBER JEFFRIES: Yeah, I have it.

CHAIRPERSON YOUNG: Why don't you go ahead.

MR. SATO: All right, okay.

CHAIRPERSON YOUNG: Okay. You've got it up on the screen and we'll fill in while we get copies.

MR. SATO: Well, basically, I mean, I'm not going to go line-by-line because -- let me just pick on the high points. And if people want to stop me and ask me about a particular paragraph, please do so.

Section A is basically the recitals.
Number 5 basically says nothing in this agreement shall be deemed an admission of liability on the part of the discharger.

I should go back, I mean we've identified the dischargers; we're going to identify the site. We state that the site has no wastewater disposal facility other than the septic system. We talk about how we recommended enforcement actions in the form of cease and desist orders, and that this settlement agreement is really an alternative to what those cease and desist orders would call for.

Moving on to page 2, the parties are acknowledging that there is an AB-2701 process in the works. And that we believe that if the AB-2701 process is successful in creating a wastewater -- a community wastewater treatment and collection system that is available to the site, and the site hooks up to it, that that will, in fact, satisfy the site's obligations with regard to the basin plan prohibition.

Number 7 is the Board -- that that complies with CEQA. And number 8 is the part that says that this language has been approved by this Board.
In terms of cessation of discharge, that is A on page 2, so we've got two different scenarios here. One is the County is going forward on the AB-2701 process. And so in our discussions with the County, and like I said, I had discussions, the prosecution team's collective discussions with the County, we understand that the milestone date, January 1, 2008, is realistic with regard to whether the County will approve a benefits assessment for the project that they are thinking about under 2701.

And so, you know, as long as they keep going forward, in going through this project, and they construct it and complete it according to a schedule approved by the Regional Board, then the settlers can continue to use their septic systems until after the septic system -- excuse me, after the sewage treatment system is available to the site. Then they would hook up, or then they would have to come up with an alternative for dealing with their discharge at that time.

So there is no specific time schedule there for an individual to stop using their septic system, because it's kind of dependent on the schedule that is going on with the County in the
development of the AB-2701 process.

In terms of the -- and then in terms of what happens if, in fact, a person when they have the site available to be hooked up to the available sewage collection system, if they don't hook up to it, then there are various things that they have to do to address that situation.

BOARD MEMBER PRESS: Mr. Sato, could I interrupt you here?

MR. SATO: Absolutely.

BOARD MEMBER PRESS: Under 1A, I want to just be clear what you're saying here. The discharger shall cease all unpermitted discharges no later than 60 days after the availability of a community wastewater collection system.

So, the scenario could be that the -- there's a chicken-and-egg here, issue that I want to resolve. The facility gets built and hookups start happening. But there are 4000 homes to hook up. So if a party that settled is far down on the list it might not happen in 60 days.

MR. SATO: Well, it seems -- you have to only be 60 days after the availability -- 60 days after the availability of the community collection and treatment system for connection to the site.
BOARD MEMBER PRESS: Okay, so that takes care of the how far down the line problem.

MR. SATO: Right. We anticipated that --

BOARD MEMBER PRESS: You are. Okay.

MR. SATO: -- you know, there might be a different time schedule for different people within the community.

BOARD MEMBER PRESS: Okay, great. Okay.

And the second question I had, I wasn't entirely clear understanding what you were saying about the indeterminacy of the date for the treatment facility. That is to say you have milestones. You have a January 1, 2008 milestone. Is there any relationship between part A1 and part A2?

In other words, if a treatment facility is not completed by January 1, 2011, although it is under progress, it's in progress, what's the -- how do I interpret the language here?

MR. SATO: Okay. I didn't get to A2 yet, but --

BOARD MEMBER PRESS: Okay, so maybe I'm jumping the gun. But it seemed like that was a separate issue, so --

MR. SATO: It is. I mean the idea is
that as long as the AB-2701 process is moving forward, regardless of when it's actually and ultimately completed, that people who have signed up to this agreement still get to use their septic system until that 60-day deadline that's identified.

Now, in the situation of where there is no AB-2701 process going forward, that's what A2 is designed to address.

BOARD MEMBER PRESS: Okay, but the only milestone appears to be the benefits assessment on January 1, 2008. I don't see other milestones --

MR. SATO: I'm going to get to that.

BOARD MEMBER PRESS: -- between now and some other date.

MR. SATO: Right. Well, because we don't know what those milestones are going to be at this point in time. The milestones that we did identify was January 1, 2008. And so we know that that's the soonest that we can be certain that a project under AB-2701 is not going to go forward.

So, let's say we pass January 1, 2008, and the project is going along. But somewhere along the line it stops, you know, for whatever reason. And we put that in this document. If
there's a material cessation of the Ab-2701
process, as determined by this Board. It's not
going to be the staff's determination, but the
Board's determination. Then that the suddenly
dischargers would also then be required to cease
discharge within a set time period.

CHAIRPERSON YOUNG: Mr. Sato, do you
have any indication as to when the County is going
to have this assessment vote or election?

MR. SATO: The information that we
received from our conversations with the County
was that the approval of the benefits assessment
that we contemplate here will take place in
December of 2007. So that's why we picked January
1, 2008.

So, I talked about A2 and A3. Does that
kind of -- conceptually already. Do you want me
to go through those again?

CHAIRPERSON YOUNG: Sure.

MR. SATO: Okay. So, in this situation,
so with A2 we're talking about what happens if the
benefits assessment is not approved by the County
by January 1, 2008. We said that, okay, that
means then if it's not going forward then there's
no project on the horizon. And there's really no
communitywide effort to try to address the basin plan discharge prohibition.

So we would then want the settling parties to then figure out a way to cease their discharge by January 1, 2011. And I can tell you that we originally had January 1, 2010. But we had been told that the January 1, 2010 has a lot of baggage associated with it. That it's somehow associated with the completion of the Tri-W site, and so therefore we thought in order to decouple our settlement proposal with any issues related to the construction of the Tri-W project, we'd put in January 1, 2011.

And then item number 3 is basically what I talked about in terms of the material cessation. That's we get past the January 1, 2008 hump. If, down the road, something else happens that causes the project to stop, then there's also a requirement that they cease discharges, you know, just comply with the basin plan prohibition.

BOARD MEMBER PRESS: Could you speak to the sentence that says the dischargers shall cease all discharges from the septic system by the later of January 1, 2011 or two years following written notice by the executive officer of the material
cessation.

I assume that the later of 2011 or two
years would be a determination that the Board
would make and then would instruct the executive
officer. Is that right?

I mean, because -- is that a decision
that the executive officer would make, whether
it's 2011 or 2013? Or --

MR. SATO: No. Here's how I envision it
to work. I mean, the reason why it says later is
let's say we get past the January 1, 2008 hump.
And we get to the middle of 2008. And also then
we find out that there's been a material cessation
of this project.

If we didn't have the later of, then it
would just require people to stop using their
systems two years after that determination of
material cessation. That two-year period might
occur before January 1, 2011. To us it didn't
make any sense to have that earlier period when
we'd already given them 2011 in the prior
paragraphs. So that is the explanation.

CHAIRPERSON YOUNG: And so that I'm
clear on something, and maybe this has already
been discussed. But, let's say that the first
assessment vote fails. Can there be a second
assessment vote that takes place in, you know, six
months or a year after that first one? And then
what would happen?

    MR. SATO: Well, I assume that, you
know, we're hoping that the first assessment will
obviously be successful. And the County would be
in a position to approve this project by January
1, 2008.

    Let's say they don't. I mean nothing
according to this agreement, pursuant to this
settlement agreement, or to this language,
requires anybody to do anything at this point. I
mean the requirement to cease their discharges is
down the road, it's January 1, 2011.

    There could be a number of things that
happen in the interim that would cause the project
to be back on track. And we have a provision in
C, number 6, that talks about how the compliance
dates can be extended by the executive officer
provided there's reasonable progress in
implementing a wastewater collection treatment
system for the community.

    So, the way we envisioned it is that
this would give -- we want to create a pretty, you
know, good target date for this process. There is some flexibility given to the executive officer to modify this order if things don't work out as we anticipate that they should work out.

CHAIRPERSON YOUNG: Okay.

MR. SATO: I basically talked about the section provisions of item A, you know. It's important to note that in number A4, noting the agreement authorizes discharges from the septic system at anytime, whether before or after, you know, January 1, 2011.

Now, we have certain interim compliance requirements. This is the requirement that there be kind of an interim inspection -- pumping, inspection and repair regime imposed upon the settling parties. It would be something to do now, or have done within the last three years. And then every three years on a going-forward basis until they are able to cease their discharge.

And that is basically the substance of our -- that's the substantive part of our agreement.

In terms of the other provisions, here we're talking about that if they submit reports it
has to be done, people have to submit an oath as
to the submissions that they're making. We allow
for dischargers to agree cooperatively in terms of
satisfying requirements of the agreement. That we
consider it's kind of boilerplate stuff.

We want them to inform subsequent owners
and occupants of this agreement; and provide them
with a copy. We want to be notified if there's a
change in ownership of the property within --
following the close of escrow or transfer of
record. And we want to know about new occupants
of the property.

And the, of course, we have item number
6, which is the ability of the executive officer
to extend the dates. And also the requirement
that the executive officer extend certain dates,
if, in fact, there are time schedule order issued
to either the CSD or the County related to the
construction of the community wastewater treatment
system that is contemplated.

Any questions about that part?

CHAIRPERSON YOUNG: Not yet. Okay, the
reporting requirements, once they do their
inspection and pumping. I had some concern that a
kind of a standardized form be used. And that it
be something that is in use, you know, in other jurisdictions.

I know that Santa Barbara County has one that is mandatory to use. And I think that Mr. Thomas had compiled something and submitted that to the prosecution team and the designated parties that had email access. Have you had a chance to take a look at that?

MR. SATO: I think Mr. Thompson has. I'm not going to address that; it was --

CHAIRPERSON YOUNG: We could maybe put that up on the projector.

(Pause.)

CHAIRPERSON YOUNG: Mr. Thomas, can you maybe tell us how this -- you put this together and what information you relied upon?

MR. THOMAS: I looked at the forms used by the County of Santa Barbara and the County of San Luis Obispo. As you mentioned, the County of Santa Barbara's form is mandatory. The County of San Luis Obispo's form is not.

They're very similar. I think the County of San Luis Obispo form is based on the County of Santa Barbara's form.

So this is very similar to the County of
Santa Barbara's form. It is different in that all
the information must be filled out. We say that
in the beginning. And that we mentioned what a
qualified inspector is. And that's someone with a
C42 sanitation system contractors license.

All the other information that is listed
there is the same as you would see on the Santa
Barbara County form. And most of it is on the San
Luis Obispo County form.

CHAIRPERSON YOUNG: Okay. I don't know
how the Board feels about this, but it has been my
thought that there should be a standardized form
that is used in Los Osos as we go forward with
this process. And that this be that form.

That was not part of the settlement
discussions that Mr. Sato had with these
designated parties. So if the Board feels that
this is something that should be included, that
would be a change to it.

So, I'd like to hear from the Board how
they feel about this form or anything else about
the settlement agreement. Dr. Press.

BOARD MEMBER PRESS: Mr. Chairman, do
you want to hear about the form or about the
settlement agreement?
CHAIRPERSON YOUNG: Well, let's hear about the form.

BOARD MEMBER PRESS: Oh, I think my colleagues have -- Mr. Hayashi and Mr. Jeffries have --

BOARD MEMBER HAYASHI: I'm assuming we're going to put this for the whole County, as opposed -- you made a notation only to move forward with Los Osos --

CHAIRPERSON YOUNG: Los Osos. The County is -- we're not proposing that for the whole County.

BOARD MEMBER HAYASHI: Okay.

CHAIRPERSON YOUNG: Okay?

BOARD MEMBER HAYASHI: Why are we not having the same --

CHAIRPERSON YOUNG: Well, Los Osos has its own set of challenges that the rest of the County doesn't.

BOARD MEMBER HAYASHI: The other question I have is if we're going to require a C42 license, okay, so if you have Mr. Jeffries' septic tank service, and he, as a general contractor, has a C42 license, and he sends his employee out that could be Mr. Z. Is he qualified to do the
inspection? Or is he required to have that same
C42 license?

MR. THOMAS: Using this form, if this
form were made a part of the settlement, the
person doing the inspection onsite would have to
ever have that license.

BOARD MEMBER HAYASHI: And that's not
unreasonable, I don't believe, is it?

CHAIRPERSON YOUNG: Okay. All right.

Mr. Jeffries.

BOARD MEMBER JEFFRIES: Well, my
comments on this, I think standardization is very
important. And to have everybody have the same
document instead of having several different
documents submitted to the staff.

My concern in reading the provisions,
it's kind of, to me, reading the provisions is
kind of loose. And I don't know, in my experience
you always hear that I don't know, I wasn't
explained to, it wasn't clear to me. All these
different scenarios.

And I don't know if we can put
everything in there to clarify what these
particular individuals would have to do.

My other concern is that I really don't
read into what the consequences if they don't fill
it out and don't provide it, or don't make the
repairs that are needed to bring their septic tank
up to standards. There is some reference in this,
but it --

MR. SATO: There's an enforcement
provision that we haven't gotten to yet because we
haven't gone through the complete agreement yet.
So maybe --

BOARD MEMBER JEFFRIES: Okay.

MR. SATO: -- we might wait to make the
comments about the entire agreement.

BOARD MEMBER JEFFRIES: But I think -- I
agree, the standardization of the form would be
extremely important. And then is it going to be
up to the staff to monitor each one of those and
make sure the forms come in on time? And how, you
know, are we going to have to run after these
individuals to make sure they get their forms in?
There's a lot of cumbersome difficulties I can
see.

Of course, we're not talking about a
whole lot of people at this particular time. But
it could be expanded as we continue hearing the
individual CDOs.
Maybe if I pull it up a little bit closer. And please excuse me, I'm fighting a cold and my voice may disappear on me, so. Those are some of my concerns, Mr. Sato.

CHAIRPERSON YOUNG: My apology, Mr. Sato, I thought you had finished with your discussion of the settlement agreement. Otherwise I wouldn't have launched into the report --

MR. SATO: Well, there's a couple key points still to be covered, but --

CHAIRPERSON YOUNG: Go ahead.

MR. SATO: We can just talk about the reporting program now, as you did raise it.

CHAIRPERSON YOUNG: Okay, but let's finish up.

MR. THOMPSON: Yeah, this is Matt Thompson of the prosecution team. I think we're comfortable with the form. But there are several people who have already pumped out their septic tanks in an attempt to demonstrate cooperation. And so I think we would have to deal with the fact that they already believe that they've satisfied the interim compliance requirement, even though the settlement agreement has not been approved, or the CDOs have not been approved. So we have to
deal with that issue.

As far as Mr. Jeffries' concern about
will it be up to staff to track these things, yes,
it will be. But that is what we do. We track
reporting of that type of thing. So, we're up to
the task.

BOARD MEMBER PRESS: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER PRESS: Could I just ask,
does the settlement have to go back to the parties
in order to incorporate this form? And, if so,
I'm not really sure why that would be the case.
After all, it's a reporting requirement. Isn't
that something that the staff works with each
party to determine what the reporting or what
form, I mean isn't that something up to the
discretion of staff?

MR. THOMPSON: Well, yeah, the
settlement agreement will go back to the
settlement dischargers; and I would just
anticipate this would be like an attachment to the
settlement agreement. And we would expect them to
use this form.

BOARD MEMBER PRESS: Actually what I
meant was that would we then have to hear again,
have another hearing in order to approve the
settlement because dischargers would have to have
a chance to look at the form and then come back,
or can we move ahead with --

MR. SATO: My impression is that this is
the hearing for you folks to tell us what type of
form of settlement you are comfortable with. We
don't have anybody who's actually signed a
settlement agreement with us. And so this is for
you folks to give us input as to what you consider
to be an acceptable alternative to a CDO.

BOARD MEMBER PRESS: All right, thank
you.

MR. RICHARDS: That's correct. The
process would be if the Board approves the
settlement and indicates that it is their desire
that the form be incorporated into the agreement
and order that has been proposed here. Then it
would be up to the prosecution team and the
settling parties to stipulate to that change, and
then actually execute the agreements. But no
further proceedings before the Board would be
necessary for that purpose.

BOARD MEMBER PRESS: Thank you.

BOARD MEMBER SHALLCROSS: Mr. Chair.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
CHAIRPERSON YOUNG: Yes.

BOARD MEMBER SHALLCROSS: I understand that obviously folks haven't signed the agreement yet, but you do have commitments at this point, right?

MR. SATO: That's correct.

BOARD MEMBER SHALLCROSS: Okay, thanks.

CHAIRPERSON YOUNG: Okay. Continue.

MR. SATO: So continuing on. I mean we have a section dealing with modifications. The agreement obviously can only be modified with the agreement of the parties and approval by the executive officer, or as provided for by law.

Moving on to the next clause, we have what I called the most favored status clause, which means that people who settle now with the prosecution team, if we reach future settlements or further settlements in the future, and they had materially different terms that somebody thinks would be of benefit to them, we don't think that the early settlers should be at a disadvantage. They ought to be able to have the ability to opt into those types of changes, you know, assuming that those changes are acceptable to the Board. People who have settled now ought to be able to
opt in for that. And so that is why that is
there.

CHAIRPERSON YOUNG: Well, then what if
the reverse happens? Something comes up and you
decide that there should be a more stringent
provision put in, what --

MR. SATO: The good thing about early
settlement is that you get the benefits of early
settlement, but you shouldn't get the detriments
of early settlement.

With regard to a number of remedies for
failure to comply. This was an issue that we had
with some people. I mean we intend to make this
order enforceable as a 13304 order issued by the
executive officer.

And we wanted to point out, however,
that -- and we wanted to spell out clearly for
people that there are penalties for violation of
the terms of this agreement. So, as you say, Mr.
Jeffries, that people don't say, well, we didn't
know that there would be some bad consequence if
we chose not to comply with this agreement.

What we did want to point out though,
however, is that we are not recommending that
there be any kind of required minimum penalty that
might otherwise apply. And that's the assurance that we provided for in this document.

And that the parties, of course, are not waiving any rights or defenses they may have with regard to any action to enforce the terms of this agreement.

The second clause of that remedies for failure to comply is that we will treat these settling parties as cooperative dischargers, to the extent that we have to take any further enforcement actions down the road to deal with them. We think that they get a plus point for their cooperation with regard to this agreement. And that would be a consideration in the future.

And then there's a boilerplate about how if you don't enforce it, it doesn't mean that we waive it.

And then we're down to the very end terms which is, you know, the termination of the agreement. The agreement terminates when the discharger connects to a community sewer treatment system or they are no longer associated with the property. And that's basically it.

CHAIRPERSON YOUNG: Okay. Mr. Thomas.

MR. THOMAS: On page 7, under remedies
for failure to comply, second paragraph, the last sentence says, no negotiated resolution of any enforcement action is required or guaranteed by this provision. I didn't understand that.

MR. SATO: Well, what it says is that in that paragraph we're talking about if we have a disagreement down the road, in that we think that they are having in violation of the consent agreement, that we will negotiate first. We aren't going to go straight into an enforcement action; we will have a meet-and-confer to talk about whatever issue that is in the future.

And that's all we're guaranteeing is that we're going to have a meeting, we're going to talk in good faith. By having those meetings and by talking in good faith it doesn't necessarily guarantee that there will be a resolution as a result of those good faith negotiations.

MR. THOMAS: Okay, thank you.

CHAIRPERSON YOUNG: Okay. I think what I would like to do is see if there's any of the settling parties that would like to just speak to this issue briefly.

BOARD MEMBER JEFFRIES: Mr. Chair,
CHAIRPERSON YOUNG: Yes.

BOARD MEMBER JEFFRIES: -- can I ask Mr. Sato one more --

CHAIRPERSON YOUNG: Of course.

BOARD MEMBER JEFFRIES: And it's dealing with a person that sells his property, he or she sells their property during this settlement agreement process. And they neglect, not purposely, but in the excitement of selling their home or their property they neglect to notify us. And the new resident is not aware of the issue.

I didn't -- at least I didn't clearly read how do we handle that issue.

MR. SATO: Well, you have enforcement discretion to penalize somebody for that neglect. The person who sells the property who fails to notify. That would be something that the Board can decide whether or not that's something they want to pursue.

In terms of the new party, I mean the new party, if they are buying, you know, don't have any knowledge of this particular process, then that's a different type of issue. And I don't know that we can solve that in this particular agreement.
However, at this point in time I don't know how anybody could buy property in Los Osos without now being told that there is this problem.

BOARD MEMBER JEFFRIES: Stranger things have happened.

MR. SATO: I suppose. But, no, we can't address somebody who's not part of this agreement at this point in time, I don't believe.

BOARD MEMBER JEFFRIES: Well, the point I wanted you to bring out was that the seller still has the obligation. And just because they sell the property and left the area, that doesn't relieve them the responsibility of possible penalties for not revealing that information.

MR. SATO: That's correct.

BOARD MEMBER JEFFRIES: Thank you.

CHAIRPERSON YOUNG: Okay. I see Mr. Shipe's hand. Are there any other settling parties that would like to address the Board on the proposed settlement agreement before the Board starts to discuss it? Okay. Let's have Mr. -- him first. Okay.

MR. BISHOP: Mr. Young, Board, as a contractor --

CHAIRPERSON YOUNG: And your name, sir?
MR. BISHOP: Larry Bishop.

CHAIRPERSON YOUNG: Okay.

MR. BISHOP: I'm speaking on the form for reporting. That you require a C42 license I believe it was there. As a contractor, under state law, I'm responsible for anybody that works under my license.

And if you're requiring the person that has the license to go out there and do the work, you may only have one person in the business that holds that license. So, you're asking just that one person in each pumping company to go and do all the inspections. However, under California law, he's still responsible for his employee to do the inspection and do it correctly.

CHAIRPERSON YOUNG: So he's required to train that person?

MR. BISHOP: He's required to make sure that that person fulfills the requirements the same as if he is doing the requirement.

So your form could just say that it has to be authorized by or signed by a C42 license, rather than inspected by somebody that has a C42.

CHAIRPERSON YOUNG: Okay. All right, thank you. Mr. Shipe.
MR. SHIPE: Yes, thank you. Rob Shipe, 1024. Regarding the form, the County of San Luis Obispo has a form. Myself and several of the other dischargers have already pumped, as Mr. Sato said, in an effort to show we are compliant. And I request that you continue to use this form. It's already made; they're available readily. The pumpers in our area are familiar with it. It comes with multiple parts, so different parts can be filed with different people. And it's already ready to go.

Your staff is already dealing with the County of San Luis Obispo and Barry Tolle in designing this form, and for making sure this form meets your standards. And so I think that should probably be the form to follow. So that's just my input on that.

BOARD MEMBER PRESS: Could we see that form?

MR. SHIPE: Here you go. Okay.

BOARD MEMBER JEFFRIES: The question would be what is the difference between that one and the one that we're proposing?

MR. SHIPE: From some of the things -- I haven't got a chance to look at the other one, it
seems like there's questions like number of
bedrooms and things like that. Things are larger
detail; a whole page is dedicated to the little
square that's in the corner, the site map, a whole
page is dedicated to that in the one that you are
putting forward.

And it just seems like a lot of other
little things like that. And that that would be
something your staff could also work out with the
County of San Luis Obispo.

CHAIRPERSON YOUNG: Mr. Shallcross.

BOARD MEMBER SHALLCROSS: Yeah, can I
ask Mr. Thomas, when you put this together was
there any big difference between the one you're
proposing and the San Luis Obispo County form
that's --

MR. THOMAS: There was not --

BOARD MEMBER SHALLCROSS: -- important
to our Board?

MR. THOMAS: I didn't think there was
much difference. One had a little more detail. I
used the one that had more detail. And I did take
out the square that Mr. Shipe is referring to.
That is intended to be a map of the site. I
wanted to make it bigger, put it on a page, and it
require that they actually fill it out.

BOARD MEMBER SHALLCROSS: I certainly --

why would we create yet one more form when this is
the County form?

BOARD MEMBER PRESS: Right. I'd have to
agree that just in the interests of bureaucratic
rationality, that we keep the one form.

CHAIRPERSON YOUNG: I think I need to
take a look at that form, but unless you can move
it, I think that this form does not require that a
C42 license --

BOARD MEMBER PRESS: Well, that change
could be made.

CHAIRPERSON YOUNG: Yeah, well, --

MR. THOMAS: Near the bottom of the page
on what's on the screen right now, it has the
question, inspector's qualifications --

CHAIRPERSON YOUNG: Qualifications, but
it doesn't --

MR. THOMAS: -- C42 or --

CHAIRPERSON YOUNG: -- make it
mandatory.

MR. THOMAS: That's right. And we did
make that change on ours.

CHAIRPERSON YOUNG: Yeah.
BOARD MEMBER PRESS: But that can be part in the settlement, itself. Why does it have to be in the form?

BOARD MEMBER SHALLCROSS: Yeah.

BOARD MEMBER PRESS: It can be in the settlement so that you don't have to modify -- I mean it sounds trivial, but creating a new form with all the printing and then who's got the form, who doesn't have the form, and oh, I had the wrong form, now I'm out of compliance.

I mean, let's try not to do that. Let's just take the form; put in the settlement that it has to be certified by somebody who holds a C42 license, and that's it.

MR. SHIPE: Also, just so you're aware, the County form, it involves septics charges, an extra $85 to file the County form, although he also has his own inspection form that he fills out that it doesn't cost the extra 85 bucks.

And I believe with Clay's I paid like 125 extra to have the form filled out. So those are additional things that you might want to consider, additional costs to settlers.

CHAIRPERSON YOUNG: I know Santa Barbara County, their pumpers also require extra money to
fill the form out, the mandatory form.

MR. SHIPE: Yeah. No, I'm -- someone just pointed that out to me so I wanted to make sure you guys were aware of it.

CHAIRPERSON YOUNG: Right, okay, thank you.

MR. SHIPE: In addition, let's see, I would ask that you approve the settlement. Regarding some of the notification issues that Mr. Jeffries has raised, there are serious notification issues with this whole process. And settlement is the appropriate response.

The settlement -- I, as one of the ones who first approach Mr. Sato regarding settlement, just to correct one item that he said, I went through my old emails and I found an email that I sent to Matt Thompson on February 1st of this year seeking settlement on this issue. I've been seeking settlement since this process started.

My goal in entering into the settlement talks was to hopefully have a deal good enough where you could get 40 to 45 people involved in it. And bothered that I wasn't able to bring the sides together to that point.

Something that your Board may consider
to help get us there, as Mr. Sato stated, this is
going to be enforced under code 13304, which is
clean up and abatement order. I have been pushing
for 13300, which is more of a time schedule order.
It doesn't carry the penalties under 13350 that a
clean up and abatement order or a CDO would.

However, under code 13350, violation of
basin plan prohibition is included in those
enforcements. So, I would ask that that section
be removed. But, other than that, that's about
it.

CHAIRPERSON YOUNG: Okay. Thank you for
your comments. Do any other settling parties wish
to address the Board before the Board discusses
what direction to give staff? Okay.

What would we like to do? Yes, sir.

Are you a settling party?

NUMBER 1029: I do have a question.

CHAIRPERSON YOUNG: Well, you're a
designated party. Come forward.

NUMBER 1029: Board, we're party 1029,

and I would --

UNIDENTIFIED SPEAKER: State your name,

please?

NUMBER 1029: 1029.
(Laughter.)

NUMBER 1029: And I'm just asking if the Board would be seeking comments from parties that chose not to settle?

CHAIRPERSON YOUNG: Not as part of this portion of the proceeding. But, obviously later if you're a designated party you're going to have time to go ahead and say what you want during that timeframe.

What we're trying to do is those that had agreed with Mr. Sato's team to settle based on the terms that he had presented to them, that's what we would address at this point in time. I'm sure that a lot of people have maybe some questions, and want to know what variations are available. That can be taken up with Mr. Sato later.

NUMBER 1029: I guess my comment is more to find out if the Board would be interested in hearing why some parties, the language we found objectionable in the settlement, and reasons we chose not to sign it. I'm not sure when the proper time to present that would be.

CHAIRPERSON YOUNG: Yeah, you know, --

MR. SATO: Mr. Chairman, I'd like to
speak to that issue if you're going to entertain it.

CHAIRPERSON YOUNG: Okay. Mr. Jeffries.

BOARD MEMBER JEFFRIES: While you're going to give a response to that, I'd like to have a response if some of the people that are here have not agreed to sign, but during the process they have a change of mind and want to join in, what is the process for them to do that? That hasn't been addressed.

MR. SATO: Well, we have indicated that people could sign our settlement until they started the CDO hearing process. I think that this has basically been the preview to the CDO hearing process that, you know, after this is over and if this Board decides to adopt or approve some type of settlement language, I think that we would give people the opportunity to try to participate. Like I said, I believe in settlements.

BOARD MEMBER JEFFRIES: So do I.

MR. SATO: And I don't think that we would arbitrarily hold up people. But, if you go to a hearing against somebody and they get, at the end of the day a CDO is issued, you know, I don't know at that point.
BOARD MEMBER JEFFRIES: Well, but let me just go over it further in my question. I understand if we start the process then it may be a little bit too late.

But if I'm sitting in the audience and my number hasn't come up; and what I've heard from the previous two or three processes of the CDOs, I have a change of heart and I want to join in with the settlement. Is it too late for me to join in?

MR. SATO: I don't know. I mean, I don't think -- I don't want to encourage people to hold out to the very end. They should decide. After they hear that the Board has approved the settlement proposal, to sign up to that settlement proposal or decide to, you know, express their views about the CDOs in the CDO process.

BOARD MEMBER JEFFRIES: Well, as you know, a lot of times there's a lot of hearsay information that's out floating around in the community. And the reason I bring these questions up, because now they're hearing it directly from the source. And some people that are here may change their minds one way or the other.

And I also believe in settlements and negotiations. I would like to give those people,
afford them an opportunity, if they decide before
their number is called, that they would have an
opportunity to contact the prosecution team and
say, I would like to be added.

CHAIRPERSON YOUNG: That would be fine,
you know, with me, if people want to do that. But
if someone comes forward after we give the
prosecution team direction, and we've passed that
part of the proceeding, and someone then decides
later, you know what, I think I changed my mind, I
want to opt in.

If they tell Mr. Sato that, and they're
here to go ahead and, you know, put that on the
record, we have that kind of agreement, that's
fine with me.

BOARD MEMBER JEFFRIES: I just wanted to
make that understood.

CHAIRPERSON YOUNG: Yeah.

BOARD MEMBER JEFFRIES: Okay.

CHAIRPERSON YOUNG: That's fine.

MR. SATO: That would be fine with us,
too. If I could just speak to one point that the
speaker is trying to raise.

CHAIRPERSON YOUNG: Go ahead.

MR. SATO: This part of the proceeding
is to deal with our settlement proposal to you folks and your approval of that process. If they have a difference of opinion as to how this matter should be resolved with regard to the proposed cease and desist order hearings, or have language they want to propose, that is -- the proper time to do that is when we are dealing with the cease and desist order, if they want to propose alternative language as to what the cease and desist order should look like, that's the time to do it. But not at this point and not at this juncture.

CHAIRPERSON YOUNG: Well, let me just ask the audience, how many non-settling designated parties would like to share with the Board their thoughts on why they are not going to enter into the settlement agreement? One, two, three, four, five, six, okay.

BOARD MEMBER SHALLCROSS: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER SHALLCROSS: I think what we risk is actually turning this hearing into a settlement agreement negotiation. And I think what they have to say, I'm certainly interested in why they didn't want to settle, but I think the
appropriate time would be during their 15 minutes.

BOARD MEMBER PRESS: I have to agree.

We risk modifying the settlement so much that parties that are already committed to settling will opt out because now the language is being changed.

So, I want to hear about it, but I think we've been presented by two parties with an agreement. And we need to give some direction.

CHAIRPERSON YOUNG: Just to play devil's advocate, I could see some benefit in us hearing what is problematic about it. And it may actually change the direction we give the Board.

But I will do what -- you know, we'll do what the Board wants to do as a body. Mr. Jeffries. Shall we just go ahead and let's these people speak later during their 15 minutes, or give them an opportunity now to share some thoughts with us?

BOARD MEMBER JEFFRIES: Well, whatever they've decided they've decided. But there are a number of people that have already made a decision. And I think, as Dr. Press has brought out, you know, we can deliberate this whole settlement agreement for the rest of this day and
may not come up --

CHAIRPERSON YOUNG: Okay, okay.

BOARD MEMBER JEFFRIES: -- the

conclusion at the end of that time. And the whole

agreement may be so changed or wanted to be

changed that we would have to go back to the

drawing board and completely redo it.

And what I've seen in the questions I've

asked, it's pretty much clear in my mind where I

would like to go with this.

CHAIRPERSON YOUNG: Okay. All right.

Mr. Hayashi.

BOARD MEMBER HAYASHI: I would agree

with my colleagues.

CHAIRPERSON YOUNG: Okay, all right.

One last comment from you, yes, Mr. Shipe and

Number 1029, and then we're going to move on and

the Board's going to give direction.

MR. SHIPE: I just wanted to remind you

that the settling dischargers represent one-half

of 1 percent to the people in Los Osos thus far.

And you have a long process in front of you. And

maybe getting some of these arguments now might

save you 20 hearings later on today and tomorrow.

Just something to thank about.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
CHAIRPERSON YOUNG: All right, thank you. And 1029?

NUMBER 1029: Director and Board, I would basically bear what Mr. Shipe just said, Mr. Press, I feel -- we're allowed to express our concerns or disagreement that no one would actually opt out because our concerns were of an ending nature, the agreement.

And there were approximately 20 of us that were represented by counsel that have chosen not to sign this because of concerns.

CHAIRPERSON YOUNG: Is there one of you that can represent the group of about ten hands that went up, that can just -- so there's a bunch of different issues that everybody has. Okay.

Well, that's what I guess we're not going to get into right now.

BOARD MEMBER SHALLCROSS: Can I ask a quick question?

CHAIRPERSON YOUNG: Yeah.

BOARD MEMBER SHALLCROSS: You were represented by counsel in the negotiating settlement?

NUMBER 1029: Yes, sir. Strictly for settlement purposes. Counsel's not here today.
BOARD MEMBER SHALLCROSS: And counsel's not here today.

CHAIRPERSON YOUNG: Okay.

NUMBER 1029: It was a limited contract with the counsel.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER SHALLCROSS: Well, one thing; I just want to reiterate one thing that Mr. Sato pointed out, there's future settlements may be entered into, and the early settlers will get the benefit of those later settlement, if there's some beneficial change.

So, it doesn't mean that this is the only settlement possibly. Maybe the prosecution team and these other folks can come to a different type of agreement, and the folks who sign onto this earlier agreement would then, I assume, have the choice to keep the original agreement or sign onto the new settlement agreement.

So, this isn't a set --

BOARD MEMBER PRESS: Right, moreover, as Mr. Shallcross has pointed out, the Board can give direction to the prosecution team. And if the Board hears in the individual presentations that there is something -- some change to the
settlement that they would like to see, then we can react to that, and listen to it; discuss it and give some reaction to the --

CHAIRPERSON YOUNG: Well, does the prosecution team expect that we will be just giving direction without a Board vote?

MR. SATO: No. I was expecting to approve --

CHAIRPERSON YOUNG: Okay, with a vote. Okay.

This gentleman is a non-settling. Did you wish to address us briefly, sir?

MR. WIMER: Yes.

CHAIRPERSON YOUNG: And your name?

MR. WIMER: My name is Keith Wimer.

CHAIRPERSON YOUNG: Okay.

MR. WIMER: I live in the prohibition zone. I've had experience as a negotiator with the state. I negotiated three or four labor contracts with the Department of Personnel Administration, as a (inaudible) member.

And the designated parties asked me to sit in on some of the discussions. So I have a pretty good overview and idea of the problems with this agreement. And if they're agreed to let me
speak on it, I could, I think, run some of those
by you.

And I think actually you've already
recognized a few of them. I noticed from just
your comments that you have some of the same
concerns that I had and a lot of the designated
parties had. So, if you'd allow me just to
briefly go over three or four areas here, I think
it may save a lot of problems down the line.
Because you do intend, I understand, to send this
out to the community.

And I know, you know, as a future
designated party, I'm going to be really arguing
against it. And I can tell you why. I can tell
you what the solution's going to be. And I think
they're fairly straightforward.

CHAIRPERSON YOUNG: I'll give you two
minutes --

MR. WIMER: Two minutes.

CHAIRPERSON YOUNG: Okay?

MR. WIMER: Okay, hurry up.

NUMBER 1029: Thank you, Chair.

MR. WIMER: The very first, I would
object a little bit to the characterization. I
don't think it was fairly negotiated. There were
only two people involved in the negotiations to begin with.

People are basically taking this as an unpleasant alternative. In the agreement there's not even a mention of the -- that it's a CAO. There's just a reference to the code section. So people are going to object to it in the future.

The second, of course, as you pointed out, that January 1, 2008 date is really problematic. That sets all the conditions basically on that one date. There's even a question whether that tends to coerce a vote, which is problematic.

Of course, the system starts up after 2008 you're going to want to have something in the contract that allows you to not automatically go to the options, which are that somebody installs an onsite system, or that, you know, they have to cease and desist.

Theoretically on the disagreement of January 2, 2008, people will, if there is no vote at that point, people will begin to look at onsite systems, which could undermine your whole intention here of trying to get an assessment district.
The other point is that -- I'll make this again; Mr. Jeffries brought it up -- is you're going to have a lot of people saying they didn't understand it. The people that are represented by an attorney did understand it. It's much better. It's much more in favor of people represented by an attorney in this. And failure to understand the language and understand what it intends to do.

One point here is that I wrote down, I would point out, that you mentioned this, Mr. Young, when you first started, is that this is a cleanup, I mean this is an error in compliance where people have to pump and inspect. It seems to me that the appropriate action is going to be to have more of a work plan. There was a -- in the settlement agreement there was a provision for a work plan on the 13300 and there was also consequences that involved, that would allow you to lower the hammer at some reasonable time.

We do have language that would address all these issues. The negotiations were basically shut down, I think, because there was a deadline. We didn't really get a chance to finish those.
negotiated agreement where anybody can really buy
into it, and it addresses the details that you
mentioned, and it's one that's a fair agreement,
then you're going to get voluntary compliance on
the part of the community. And it saves all the
unnecessary litigation that may come out later.

I'm not even sure that this agreement,
under these circumstances, would be considered a
real agreement, it would be, you know, not
appealable. I think that people feel coerced into
this agreement.

So, again, we have a much better one and
we considerably offer a lot better language. And
I just suggest that you allow the process to go
forward. People were very engaged in it. It was
a very good agreement.

One example was that addressing the
January 1, 2008 date, what we said is it could
either be that date, or it can be if any progress
is going, you know, and ongoing by 2010. Even
those which were on progression, that that then
becomes something -- you're not going to shut down
due process or get people going other places just
because they haven't met the 2008 date.

So, a lot of places that it could be a
lot better.

CHAIRPERSON YOUNG: Okay, thank you for your comments. Have you spoken with Mr. Sato about your specific concerns?

MR. WIMER: You know, I was involved in speaking with Shaunna Sullivan, Sullivan and Associates, and with the different members who were represented by her.

And so to the extent, you know, that I was there, and I was -- I did know what the last language was, there may be some minor disagreements. But basically it accomplishes what both parties are after. And it does it in a way that people will sign on.

And I am very, you know, I am aware of what the language means, unlike most of the people who are involved.

CHAIRPERSON YOUNG: Okay, well, the way settlements go is it's between the parties that are at issue with each other. So that's the prosecution team and the designated parties.

The Board, itself, doesn't get involved in that process except in the end to review it and make any last-minute comments or suggest changes in direction. So, sounds like you've got some
work to do. And I would talk to Mr. Sato at some point if that's what you want.

MR. WIMER: I feel, you know, with three years of fairly high-level negotiations, I feel that this can be worked out, you know, in a reasonable amount of time, a month or so.

CHAIRPERSON YOUNG: How long have you lived in Los Osos?

(Laughter.)

MR. WIMER: Well, I was out of town up in Sacramento, so --

CHAIRPERSON YOUNG: Well, --

MR. WIMER: Okay, thank you.

CHAIRPERSON YOUNG: -- okay. Thank you for your comments.

Let's go ahead, then, Board, and decide what we want to do with the settlement agreement.

Dr. Press.

BOARD MEMBER PRESS: Well, I don't know what to say about settlement changes at this point. I didn't hear exact language changes. So maybe this will have to be something that is another subsequent settlement version that is proposed to Mr. Sato, and then brought back.

CHAIRPERSON YOUNG: Well, there's
nothing in front of us.

BOARD MEMBER PRESS: No, I know that.

CHAIRPERSON YOUNG: They're just --

BOARD MEMBER PRESS: -- what I'm saying.

If there was exact language changes we could look
at those. But I tried to take those --

MR. SHIPE: It was in front of you. You
have it in front of you, what they submitted in
their evidence.

CHAIRPERSON YOUNG: Okay, but I mean --

MR. SHIPE: Yeah, okay. I was just
letting you know it was --

CHAIRPERSON YOUNG: -- it has not been
agreed to by the prosecution team, so therefore
it's not in front of us in that sense.

BOARD MEMBER PRESS: So, regarding the
settlement that is in front of us, I have a few
things to say about it. First of all, I support
it. Secondly, I think it's very mild, very
reasonable settlement.

It's mild because it imposes very small
costs, either in terms of time or money. Most of
which would be associated with proper tank
maintenance anyway.

It imposes a deadline for ceasing
discharges, which the law already requires. But
that date is far off, and can be extended further
if there is progress towards a treatment plant.

However, for the record, I want to point
out that as far as I'm concerned the settlement
doesn't really get us much in the way of water
quality improvements any time soon. It
basically -- I mean, after having seen this
process for four years, go on, I cannot conclude --
- I can't see how this, agreeing to this
settlement does anything different than what's
been happening so far.

That is, that if you're a homeowner, you
take care of your septic tank. That's all it
says. You already had to abide with the basin
plan prohibition. It was already the law that the
dischargers were in violation. So this doesn't
change that; it doesn't change that at all.

All it does is say that you have some
time, if progress is being made by the County and
by the community, then you can still continue
discharging.

So I really don't see why this
settlement is problematic. And so I would vote
for it.
CHAIRPERSON YOUNG: Any other Board comments? Okay, what about --

BOARD MEMBER JEFFRIES: I do, I know you looked at me and I didn't acknowledge, but I was just trying to think what I was going to say.

This process has been ongoing for a number of years and it's been delayed for one reason or another. The settlement agreement, as Dr. Press pointed out, really to me it doesn't have a whole lot of teeth more than the CDOs did to start with in the process.

I'm not really opposed to the settlement agreement because I'm a strong supporter in negotiations and a settlement if you can avoid any drastic decisions that would come down. So I kind of support it, but to me it really isn't language that really ties anybody up, per se.

I would like to see a little stronger language. Maybe a little bit more definition to the public because my experience tells me that there's going to be a lot of folks out there that doesn't really understand what the language really says.

Mr. Chair, I would insist that whatever document we use, and I don't have any problems
with using the County of San Luis Obispo for
septic tanks, but whatever it is, it has to be
standard and everyone uses the same form. That's,
consistency is extremely important to me. And I
think it's important to the staff and to the
public. Because everybody would be using the same
document.

I think that as Dr. Press pointed out
that the times of even extending this from 2010 to
2011 disconnect. Why didn't we make it 2009?
Move it up a year. And, of course, I guess the
rationale of that is if the 2008 date then would
be enough time to run another assessment district,
or the County have an election to see if they
could get something forward.

So, you know, my job is to make sure the
waters of California are cleaned up. And go by
the basin plan. And the sooner that we can
accomplish that, the better I feel. That's my
job. That's why I was put here, to make sure that
the waters of California are cleaned up.

So that's the only comments I have, Mr.
Chairman.

CHAIRPERSON YOUNG: Down on this end?
Okay. Dr. Press.
BOARD MEMBER PRESS: I would just make a recommendation that there should be some language change to the section B interim compliance requirements; some minor language change that incorporates, by reference, this San Luis Obispo form. And says in the language that, well, there you go, thank you. Under number 2, obtain a report with a C42 contractors license on the San Luis Obispo County septic tank inspection form.

So that would address the form consistency and the assurance that the inspection was at least certified or completed by somebody with a C42 license.

Want me to read that again?

MR. PACKARD: Can I clarify a point?

The settlement agreement now states that if the seller can certify that the tank has been pumped in the previous three years, that's okay. So, I'd like to make the settlement agreement state that that form would apply to prospective pumpings.

CHAIRPERSON YOUNG: Well, my desire would be that whoever did the pumping prior today fill out this form. They can date it the date that they sign it. They can sign it the date, you know, that they are presented with it. But I
think if someone had, in good faith, had the tanks pumped before the Board even issued their order of directions, to some degree they kind of jumped the gun, to see what the Board was going to actually require.

But if they had someone do the inspection and pumping who really wasn't qualified, then it's not fair to the others that are coming afterward that are going to have to, you know, comply with this. And so I think there's got to be some effort made to get this form complied with.

And so how many people, Mr. Packard, do you know have already done this pumping?

MR. PACKARD: Well, I don't know how many of the current --

CHAIRPERSON YOUNG: Okay.

MR. PACKARD: -- people have done it, but I'm thinking of the community in general --

CHAIRPERSON YOUNG: I think if Al's did it, I think -- Mr. Hayashi, Al has that license?

BOARD MEMBER HAYASHI: I know that Clay's has a C42 license. I'm not sure what they do, if they do or not.

CHAIRPERSON YOUNG: Okay.
BOARD MEMBER HAYASHI: But by C42, it's a definition is a sanitation systems contractor. And I'm assuming that if you're doing septic tank work you need to have that license.

CHAIRPERSON YOUNG: Okay. I'd rather just deal with that later when we face it. But that would be the requirement.

BOARD MEMBER HAYASHI: Because I think the key word is pump and work. I think anybody could pump a tank. I think that you just have to show to the County of San Luis that you have the capability of pumping a tank safely and properly. And then you need a C42 license, and that's required by state law, to do sanitation systems contracting. So that's where it would come.

Who was the contractor that was just here? Is that correct, that you need a C42 license to do -- if you're the contractor and you send your guy out there to do an inspection of a tank; he does the inspection and you're the guy that signs off on it?

MR. BISHOP: I -- yes, --

BOARD MEMBER HAYASHI: Right, because the general contractor's responsible for all the work that's done underneath that license.
MR. BISHOP: It's the person that is pumping the tank goes out and pumps the tank, inspects it and signs the form; the person that hired him that has the C42 license is responsible for that signature. He's responsible for the work that was done. And if it wasn't done properly he's the one that the state would go after, and not the employee.

BOARD MEMBER HAYASHI: The contractor.

MR. BISHOP: The contractor, itself.

BOARD MEMBER HAYASHI: That's correct.

That's the way I understand --

CHAIRPERSON YOUNG: That would be fine with me.

BOARD MEMBER HAYASHI: Yeah.

CHAIRPERSON YOUNG: The person holding the license can sign the form. Even if they actually didn't go out there.

BOARD MEMBER HAYASHI: I don't think that's what he said; I think he said the employee that did the --

CHAIRPERSON YOUNG: Okay, --

BOARD MEMBER HAYASHI: -- inspection would sign it. But however the contractor's responsible for the employee that signed the --
CHAIRPERSON YOUNG: Well, then there's got to be some way to identify who that employee's working for.

BOARD MEMBER HAYASHI: Well, yeah, it would be on the form as a C42, because we're recommending a C42 license.

CHAIRPERSON YOUNG: Well, if you look at the way the form's written, someone just checks that off. And I don't know --

BOARD MEMBER HAYASHI: Yeah, I understand that.

CHAIRPERSON YOUNG: -- whose number it is.

BOARD MEMBER HAYASHI: I understand that, but --

BOARD MEMBER SHALLCROSS: You want the license number --

BOARD MEMBER HAYASHI: Yeah, okay.

CHAIRPERSON YOUNG: We need --

BOARD MEMBER HAYASHI: You just need to have the --

CHAIRPERSON YOUNG: Well, we need to identify who has the license.

BOARD MEMBER HAYASHI: It would be the operator --
CHAIRPERSON YOUNG: -- want to put it on the form.

BOARD MEMBER SHALLCROSS: I think we're getting in the weeds here.

CHAIRPERSON YOUNG: No, but this was kind of the problem. We had gone through the form and made changes because Michael and I had contemplated some of these subtleties.

BOARD MEMBER HAYASHI: So there's a line on the bottom that says, it says signature of qualified inspector.

CHAIRPERSON YOUNG: Yeah, you're looking at -- well, this one, too.

BOARD MEMBER HAYASHI: Yeah, the San Luis one, it says right there, signature of qualified inspector, date and phone.

What's NAWT?

(Parties speaking simultaneously.)

BOARD MEMBER HAYASHI: All right.

CHAIRPERSON YOUNG: Well, we need to get something on the form so that the holder of the license is identified. Okay? We want the form to be part of the settlement agreement; we want it to be retroactive, okay. And my counsel has shown me, let's see, this isn't B, right, John?
BOARD MEMBER PRESS: Mr. Chair, I'm worried that the perfect will become the enemy of the good here on the form. If we mess with the form, then you're really creating a separate form. And then you lose the benefit of consistency and the existence of a form.

If you have a requirement in the language that it be completed or certified by somebody with a C42, that is what it means. That's what it means when somebody signs this form. That's it. That's it. I don't think you want to get -- because, if you're going to say, well, you have to put your license number on the form, you know, I think you're going to -- we're worried here about ease, transparency, about logistics.

You know there's a form that exists. If the designated parties know that they have to get that form, they should feel like once they've filled out the form that they're confident that it's done. Otherwise, you get into, you might as well have your own form.

CHAIRPERSON YOUNG: But this is a form that's coming back to us. We are -- this is our deal. It's not the County's deal. We're just
going to use the County's form. I didn't hear that the form had been finalized, that there was some negotiations and discussions going on with our staff. Mr. Thompson, do you have any idea where -- I've been told this form is not mandatory, is that true?

MR. THOMPSON: Yeah, I'll try and clarify that. I believe that when it was developed that staff was aware of it. But that the County has finalized it. And they gave it to the septic tank pumping company community essentially saying it's voluntary.

The County's intent with the form was to populate a database so they can track septic systems across the County.

CHAIRPERSON YOUNG: So, it's voluntary in the County?

MR. THOMPSON: It was voluntary. In Santa Barbara, it's mandatory. But in here it was voluntary. There was one company, Clay Septic, that used it consistently.

Now, to clarify for you, I want to point out this is the signature block on the latter part of the form. And it says, I certify under penalty of perjury that the foregoing is true and correct.
And it has to be signed. And then the second field there is the C42 state license number.

I point this out because I believe this form meets your requirements.

CHAIRPERSON YOUNG: That's fine, yeah.

That'll -- that's fine. Okay.

MR. SHIPE: That was from Clay's has their own inspection form. And so basically what happened was that's my pumping. That came with my receipt. And so when I got my receipt from Clay's, I sent my receipt, the County form and everything, and I had it pdf'd and sent it in with my evidence submission.

CHAIRPERSON YOUNG: So, Mr. Thompson, this is Clay's form, not the County's form. Does the County's form have the same?

MR. THOMPSON: This has a County logo.

CHAIRPERSON YOUNG: Oh, okay.

MR. THOMPSON: This is a County form.

MR. SHIPE: Oh, okay, oops. I'm sorry.

MR. THOMPSON: -- top right here. Verification form.

CHAIRPERSON YOUNG: Okay.

MR. THOMPSON: It's a County form.

MR. SHIPE: My mistake.
CHAIRPERSON YOUNG: Okay.

MR. SHIPE: Thank you, Matt.

CHAIRPERSON YOUNG: It's different than the other County form that we were given.

MR. THOMPSON: This is the second page; this is another part of the same form. That's my understanding. This is the form that you saw previously, and this is the verification --

CHAIRPERSON YOUNG: Okay, are there any other pages to the form?

MR. THOMPSON: I do not believe so.

CHAIRPERSON YOUNG: Okay, so let's make sure that pages 1 and 2 are attached as the exhibit to the agreement. Okay. Thank you.

Mr. Richards, I think -- Mr. Shallcross, did you have a question?

BOARD MEMBER SHALLCROSS: No, no, I was going to move that we approve the settlement --

CHAIRPERSON YOUNG: Go ahead.

BOARD MEMBER SHALLCROSS: I move we approve the settlement agreement.

CHAIRPERSON YOUNG: Let's see, one -- there was some language we needed to put in here, which would be under the interim compliance requirements, B. Why don't you go ahead. The
report has to come back to us.

MR. RICHARDS: Okay. In order to make sure that the report is submitted to the Regional Board and satisfies the Board's concerns about the qualifications of the inspectors, I would suggest that under section B, interim compliance requirements, in the first sentence, on the third line of the first sentence, after the number (2) in parentheses, the sentence should be amended to read:

"Obtain and submit to the Water Board a report by the County of San Luis Obispo, or a septic tank pumper with a C42 contractors license on the San Luis Obispo County septic tank inspection form and septic verification form that either describes recommended repairs to the septic system or states that no repairs are necessary."

BOARD MEMBER SHALLCROSS: What was the bit about the County or an inspector?

CHAIRPERSON YOUNG: -- a report by the County or septic tank pumper.

BOARD MEMBER SHALLCROSS: So they wouldn't need a pumper report if they got one from the County?

CHAIRPERSON YOUNG: Well, the County
fills out the report. I guess is --

BOARD MEMBER SHALLCROSS: They do their own?

CHAIRPERSON YOUNG: Who knows.

BOARD MEMBER SHALLCROSS: Okay.

CHAIRPERSON YOUNG: The County doesn't do that.

BOARD MEMBER SHALLCROSS: That's fine.

CHAIRPERSON YOUNG: But then to add to that, an example of the form is attached as an exhibit, whatever the exhibit number is going to be, to this agreement.

Yes.

MR. THOMPSON: May I add, to assist the County in tracking these septic systems, would it be too much to ask that we require a copy be sent to them, as well?

BOARD MEMBER SHALLCROSS: Yes, too much.

CHAIRPERSON YOUNG: It is?

BOARD MEMBER SHALLCROSS: If they want to send one to the County, or if the County wants them to, that's up to them.

CHAIRPERSON YOUNG: Well, I guess --

BOARD MEMBER SHALLCROSS: You know, --

CHAIRPERSON YOUNG: -- the County has it
as voluntary right now, so if the County wants to make it mandatory --

BOARD MEMBER SHALLCROSS: That's up to them.

CHAIRPERSON YOUNG: -- they can do that.

BOARD MEMBER SHALLCROSS: Yeah.

CHAIRPERSON YOUNG: Okay. So we have that amendment. Mr. Hayashi.

BOARD MEMBER HAYASHI: For clarification, so when you say from a septic tank pumper, are we going to -- it has to be put on that form, or will we accept like on Clay's form where it has a signature and a C42 license number?

CHAIRPERSON YOUNG: The form is going to be attached as an exhibit to the agreement.

BOARD MEMBER HAYASHI: Okay.

CHAIRPERSON YOUNG: It's the one we just looked at that has two pages.

BOARD MEMBER HAYASHI: Okay, that's fine.

CHAIRPERSON YOUNG: Yeah. We're not going to make any changes to that form.

Do you want to restate your motion, Mr. Shallcross?

BOARD MEMBER SHALLCROSS: Yeah. I move
we accept the settlement as proposed with the
changed language just mentioned.

CHAIRPERSON YOUNG:  And the report being
attached.

BOARD MEMBER SHALLCROSS:  And the report
being attached as an exhibit.

CHAIRPERSON YOUNG:  Okay.

BOARD MEMBER PRESS:  I'll second.

CHAIRPERSON YOUNG:  Okay. All those in
favor?

(Ayes.)

CHAIRPERSON YOUNG:  Any opposed? Okay.

Motion carries unanimously.

BOARD MEMBER SHALLCROSS:  I'd just like
to thank the prosecution team and the folks who
entered into this settlement agreement.

CHAIRPERSON YOUNG:  And, Mr. Jeffries.

BOARD MEMBER JEFFRIES:  If I may add a
little levity to this settlement agreement and why
we need inspections of septic tanks, this
morning's paper I read, and of course this is in
Australia, a lady called a plumber to inspect her
septic tank because it wasn't working properly.
And they found a seven-foot python in it. And
that's the reason it wasn't working properly.
CHAIRPERSON YOUNG: Okay. All right, --

BOARD MEMBER JEFFRIES: So you never

know what you're going to find.

CHAIRPERSON YOUNG: Yeah, we're going to
take a break for, let's make it ten minutes.

We'll convene back at ten of ten.

BOARD MEMBER SHALLCROSS: Ten to 11:00.

CHAIRPERSON YOUNG: Ten to 11:00, yeah,
you're right, ten to 11:00.

(Brief recess.)

CHAIRPERSON YOUNG: Okay, let's see

where we are with that. Okay, the preliminary

procedural matters.

Before we do that I want everyone to

know that I did have a brief discussion with Mr.

Payne. He's not feeling well. And then Mr.

Martyn, also, had approached me on his behalf.

Mr. Payne is not feeling well. I told

him he ought to go home, get rest, try to feel

better. And that we would, you know, call him
tomorrow.

What I propose to do as we go through

the individual cease and desist orders is if

somebody is not here I'm not going to immediately

assume that they have failed to show up for the
hearing. They'll go to the bottom of the list. And then once we get to that point where everyone has appeared and testified, and we've resolved those cases where people have been present, I'll then go through that portion of the list where people have not shown up in order. And they'll have another opportunity at that point.

I did tell Mr. Payne that we would give him a call on his phone and tell him when we think we're getting close to when he should come back here.

So, procedural matters. Okay. Let's start with -- folks, we're going to go through the objections and responses to the documents that have been proposed for submission by the prosecution team and the Community Services District. And I know that we had received Mr. Sato's reply to Mr. Murphy's changes to the document list after the Chair had made a ruling.

Okay, what's being handed out then, it's dated December 12th, it's Mr. Murphy's and the CSD's revised document submittal. And I think, Mr. Sato, is this the one that you've already provided us with your reply to?

MR. SATO: Well, yes.
CHAIRPERSON YOUNG: With further objections?


CHAIRPERSON YOUNG: Okay. Good morning, Mr. Murphy. Have you had a chance to review Mr. Sato's -- okay.

MR. MURPHY: I have. I'd like to address first Mr. Sato's objections to documents 632, 641, 705 and 784 through 847. Those documents we submitted because we believe that they are directly relevant to the proposed order. Specifically in that -- and we'll make this argument obviously at length later -- that the 11/08 date may not be a feasible or reasonable date, cutoff date for the County's adoption of an assessment.

We believe that these documents show that the County has a number of issues to consider prior to even beginning its Prop 218 vote on the assessment, specifically with regards to engineering options.

So, to that extent, we believe that those documents are relevant to that portion of the CDO.
CHAIRPERSON YOUNG: That's 632, 641, 705 and 784 to 847?

MR. MURPHY: Yes.

CHAIRPERSON YOUNG: Okay.

MS. HEWITT: Excuse me, would you state your name for the record?

MR. MURPHY: I apologize. My name is Greg Murphy of Burke, Williams and Sorensen, for the Community Services District.

MS. HEWITT: Thank you.

MR. MURPHY: Working backwards, again, Mr. Chairman. Documents 504 and 509, both of which are pleadings in lawsuits that have occurred previously in Los Osos, also show challenges that the County might face in meeting the 11/08 date. It would be -- and, again, we'll deal with this more later, but it would be unfortunate to see that date not met by the County due to some sort of legal challenge that stops the County Board of Supervisors from approving an assessment that was otherwise adopted or agreed to by the voters.

And, again, our purpose in doing this is to show that the 11/08 hard date for what I like to call Mr. Sato's safe harbor or more lenient provision may not be the appropriate cutoff date.
CHAIRPERSON YOUNG: And these are pleadings in what lawsuit?

MR. MURPHY: These are two lawsuits that were filed, one, I believe, in 1997; and one, I believe, in 2004, although I might be wrong on the dates.

Both of which dealt with previous -- I apologize -- at least the 2004 lawsuit dealt with a previous Prop 218 vote undertaken in the Los Osos community.

CHAIRPERSON YOUNG: Okay, and what part of the pleadings do these document numbers contemplate?

MR. MURPHY: They are the petitions for writ, both of them.

CHAIRPERSON YOUNG: Okay. Yeah, you know, -- is that a verified petition?

MR. MURPHY: I don't have it in front of me. I apologize.

CHAIRPERSON YOUNG: Yeah.

MR. RICHARDS: According to your table, document number 509 is listed as a verified petition document; 504 does not indicate that it is a verified petition.

MR. MURPHY: Does not indicate, right.
I believe document 504 to be verified, but not having it in front of me, sir, I do not know.

CHAIRPERSON YOUNG: Okay. You know, my sense would be pleadings are allegations, you know, of facts that have not been resolved. And so, if they were verified that would be, you know, lend more weight to their credibility than just allegations in a lawsuit.

And so that's why I have trouble really trying to pin down the reliability of that evidence.

MR. MURPHY: I understand, Mr. Chairman. I don't submit them for the facts contained therein, or more to the point, as you said, the allegations contained therein. I submit them for what they represent, which is the potential for some disaffected person to bring a lawsuit that would derail the County's ability to adopt the assessment by 11/08.

So the facts therein are not relevant except to show that in the past Prop 218 votes have been challenged in the District, or in the Los Osos community. They're more relevant to show that the County could well not hit the target date in Mr. Sato's CDO due to matters outside their
control, or indeed, the control of the CDO recipients.

      CHAIRPERSON YOUNG: Okay.

      BOARD MEMBER SHALLCROSS: Mr. Chairman.

      CHAIRPERSON YOUNG: Yes.

      BOARD MEMBER SHALLCROSS: Can't we just take notice that any action by any entity can be, you know, petitioned or filed against, and we understand that? That's not an unusual occurrence in our society. Anyone can file on just about anything. So, I'm not sure what the point of this is.

      CHAIRPERSON YOUNG: Yeah, and it's --

      BOARD MEMBER PRESS: Moreover, it's a kind of an infinite regress, isn't it? I mean you could say well, if the date were 2009 why not say that it could be derailed because during 2007 and 2008 there were multiple lawsuits.

At some point, and what the Board is frustrated with, is multiple reasons do exist for delaying the start of a treatment plant. I think we know that.

      CHAIRPERSON YOUNG: Okay.

      MR. MURPHY: I understand, thank you.

      CHAIRPERSON YOUNG: Okay. And the other
ones in that --

MR. MURPHY: With regard to the others, --

CHAIRPERSON YOUNG: -- beginning with 1, 3 and 5.

MR. MURPHY: -- beginning with 1 and running through 16, they provide background regarding the Community Services District finances. To the extent that we've been given a greater opportunity to speak, I won't speak in the next segment on behalf of the local government, and rather will tuck this in later.

But to some extent the imposition of CDOs can have a negative impact on the CSD's overall financial situation, as it moves forward. And these documents are presented to show the current financial situation, and to support the discussion we'll have later regarding the potential financial impacts.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER SHALLCROSS: Can I ask a question?

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER SHALLCROSS: What the relevancy of that is to these cease and desist
orders?

MR. MURPHY: Mr. Shallcross, I'll address that at length later, but in sum, to the extent that individuals would, because of the CDOs, be encouraged to or feel any need to implement an alternative system on their own property, then as this region moves forward and the County adopts the communitywide wastewater treatment system, those people who have alternative systems onsite would feel no compulsion to hook up to the communitywide sewer system.

That would require either the District raise the fees on those people who do hook up; or in the alternative, find other ways to manage that cost.

CHAIRPERSON YOUNG: Okay. Well, let's go ahead and deal with those documents right now. What I would propose, and then, you know, the Board can tell me if you agree with me, I would tend to allow in -- I mean we'll give them some leeway here with the documents. They're going to have to argue anyway what relevancy they have, and you know, where their strengths lie in trying to persuade us.
The documents, beginning with 504 and concluding at 847, I would allow in. And hopefully Mr. Murphy's going to tell us why they're important, why they're relevant. Okay.

The others, though, beginning with 1 and ending in 16, I would say would not come in because the CSD finances are really not at issue at this point in time with these proceedings.

So, any comments or concerns by the rest of the Board?

BOARD MEMBER SHALLCROSS: No, as long as we're going to hear why they're relevant.

CHAIRPERSON YOUNG: Well, I'm giving him that leeway. Okay.

Mr. Richards, anything else we need to do about those?

MR. RICHARDS: No, that covers that particular.

CHAIRPERSON YOUNG: Okay, so that we're clear, 632, 641, 705, 784 through 847 can come in. 504 and 509 can come in. But 1, 3, 5, 6, 8, 10, 11, 13, 15 and 16 will not come in due to lack of relevancy to these proceedings.

Okay, let's take the --

MR. SATO: Mr. Young, --

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
CHAIRPERSON YOUNG: Yes.

MR. SATO: -- may I speak to this issue before you actually finally do it?

CHAIRPERSON YOUNG: Okay.

MR. SATO: It seems to me that, you know, there is this question of relevancy. And would like to have the ability to argue against the relevancy at the time that --

CHAIRPERSON YOUNG: Okay.

MR. SATO: -- they are trying to be introduced or actually utilized or referenced by Mr. Murphy.

CHAIRPERSON YOUNG: Okay. All right. We'll allow that, certainly. What we have read at this point is not the actual documents, but just the descriptions that have been provided. So, you know, we haven't really learned what's in them. What is the next group, then, that we need to deal with, of documents?

MR. THOMAS: Well, there is no objection, --

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

MR. THOMAS: That we know of. Are there other objections?
MR. SATO: Yes, we have an objection to something that has been submitted by, I'll call them the designated party group, called exhibit B.

CHAIRPERSON YOUNG: Okay. Good. So now we're done with the CSD's exhibits?

MR. SATO: Correct.

CHAIRPERSON YOUNG: Okay. We'll go to the other exhibit list. Ms. McPherson, do you know something about this list? This list is exhibit B, designated parties master list submitted 11/15/2006.

MS. McPHERSON: Yes.

CHAIRPERSON YOUNG: Okay. All right, go ahead, Mr. Sato.

MR. SATO: Let me just state my position. We're not certain as to whether any of the documents that have been attached or referenced on exhibit B have actually been submitted into the record by any of the designated parties.

You know, we see that they're being referenced, but we don't know, or we couldn't tell from looking at our files, whether or not we had actually seen these documents previously.

I don't know whether this was an attempt...
by the people who attached exhibit B to their
submissions, because they didn't explain what
exhibit B was in any of their submissions, as near
as I could tell.

CHAIRPERSON YOUNG: Did they attach this
to their submissions? I think some of them did.

MR. SATO: Yes, it was attached --
CHAIRPERSON YOUNG: The actual list, but
they just referred to the list.

MR. SATO: They didn't even refer to the
list, it was just part of their submission. We
didn't hear an explanation as to what these
documents were for; how they intended to use them;
whether they were going to try to introduce these
at this hearing, or present them otherwise.

I guess we're somewhat in the dark as to
what the status of the actual documents are.

CHAIRPERSON YOUNG: Okay. Well, then
why don't we invite any of the designated parties
that are going to rely or have submitted this
exhibit B list, and I know Ms. McPherson is
representing some of them, if there's anyone else
in the audience that does want to address why this
exhibit list should be admitted. Would you please
come up so we can figure out what's going on. Why
MS. McPHERSON: Okay. The list of --

CHAIRPERSON YOUNG: And speak up into

the mike so we can all hear you.

MS. McPHERSON: Thank you. Gail

McPherson. The exhibit B list is a --

MR. RICHARDS: Ms. McPherson, just as a

matter of protocol, when you start speaking please

state your name and who you are representing.

MS. McPHERSON: Oh. Gail McPherson,

Laurie McCombs.

CHAIRPERSON YOUNG: Okay.

MS. McPHERSON: The designated party

master list was submitted on the 15th. It was

delivered in disk form, electronic form, by Allen

Martyn; and witnesses also by Bill Moylan. They

have a stamped verification of that delivery of

the electronic files.

The master list was emailed by -- I

emailed it, but also Rhian Gulassa and one other

designated party, which I'm not sure who that was.

I think it was Rob Shipe. Also confirmed that it

was from them, so that it would be accepted as

from a designated party.

The box that was pretty much scanned and
put into form here was things, the documents that they thought they might need to use. And that would be many designated parties, not just one. And because the Board had encouraged them to try to work together and consolidate some of their arguments, they truly tried to do this.

They were very much in the dark on what would be allowed. And, you know, the procedures and protocol and things like that. And so they weren't really sure what they were going to use until -- actually, some of them just now received yesterday in the mail, received the list of the disallowed documents.

And so they haven't had a chance to even look at this or exhibit A, and to ascertain whether or not they have documents that they're going to use. You even said last night that they were going to just say, well, I won't introduce any documents because I have no clue at this point what will be allowed and what's not allowed.

So, you know, it's --

CHAIRPERSON YOUNG: So this is a comprehensive list -- do these documents also appear in the CSD's list?

MS. McPHERSON: You know, some of them
may be duplicates. It was hard to tell what was
what. But I believe --

CHAIRPERSON YOUNG: Well, I think --

MS. McPHERSON: -- these, for the most
part, are not duplicates. I know that they wanted
to show progress in the, you know, progress and
changed conditions. And so they have a lot of
documents that go to reasonable progress in a
wastewater project, which is the basis for the
CDOs, you know, we didn't have a project. So they
have some of the documents that go to that
argument.

They have the --

CHAIRPERSON YOUNG: Who has these
documents?

MS. McPHERSON: The Water Board has
these documents in electronic format on a CD, or a
DVD.

MR. RICHARDS: This is what we're having
a little bit of trouble understanding, as the
advisors to the Board. The designated parties
were required to submit the documents that they
wanted to rely upon on the 15th of November.

MS. McPHERSON: Right.

MR. RICHARDS: They were allowed also to
incorporate by reference so that they wouldn't
have to submit copies of documents that were
already in the files of the Regional Board. They
were allowed to incorporate by reference documents
in the files of the Regional Board or documents
that have been submitted by the CSD or documents
that had been submitted by other designated
parties.

So, the first thing we need to
understand is, in looking at this list, is this a
list of documents that are supposed to be existing
already in the files of the Regional Board that
various designated parties want to rely upon?

Or, is this a master list of all the
documents that all the designated parties have
submitted? Which is it?

MS. McPHERSON: It's the second
statement.

MR. RICHARDS: So this is supposed to be
a comprehensive list of all the documents that the
designated parties have submitted on November
11th?

MS. McPHERSON: Correct.

MR. RICHARDS: Excuse me, November 15th.

MS. McPHERSON: It was, yeah, the 15th.
MR. RICHARDS: It's not an attempt to incorporate into those submissions documents that exist in the files of the Regional Board, or is it?

MS. McPHERSON: If some of these documents exist in the Regional Board's files, then, yes. But they'd be duplicated in the submission. In the --

MR. RICHARDS: So this includes incorporations by reference and documents that were actually physically submitted?

MS. McPHERSON: All of these documents were physically submitted that are on this list.

CHAIRPERSON YOUNG: Okay, well, I think we need to also start with that point, because we've never -- the Board hasn't seen the DVD or the CD. Mr. Sato, has the prosecution team received --

MR. SATO: We don't believe that we received the list --

BOARD MEMBER SHALLCROSS: Can't hear you.

MR. SATO: We don't believe that we received these documents.

CHAIRPERSON YOUNG: Okay.
MS. McPHERSON: In the first letter that I believe in the first letter there was a reference to some documents that they didn't have a master sheet for called exhibit B. And they were disks, CDs. And they referenced that. So I think they do have them. I don't think they had the master list from the email that they -- you know, that they connected with that, to go through that list.

We do have a stamped delivery on time of the documents, themselves, electronically, as they requested.

MR. THOMAS: Of these documents that you have listed here, or a list of the documents?

MS. McPHERSON: No, this is the list that came by email. We have a DVD that was dropped off on the 15th.

MR. THOMAS: And that DVD included all the documents that are on this list?

MS. McPHERSON: Yes.

MR. THOMAS: Not just the list, but the documents, themselves?

MS. McPHERSON: No. All the documents.

MR. SATO: I'm sorry, you know, the prosecution team does have some it looks like CDs
that we couldn't identify what they were, what
documents they are. We believed that they had
come to us from the Community Services District.
And in looking at the designations on there, they
don't seem to be at all associated with documents
on exhibit B.

So we're somewhat in a -- we certainly
don't have anything that looks like a DVD in our
possession.

CHAIRPERSON YOUNG: Ms. McPherson, do
you have any where they -- was there one DVD? Was
there one CD? Are they --

MS. McPHERSON: There was one marked
exhibit--

CHAIRPERSON YOUNG: -- or is each
scanned --

MS. McPHERSON: There was one marked --

CHAIRPERSON YOUNG: -- individually? Is
there a pdf file with an identifying notation on
it so that somebody can quickly pull it up --

MS. McPHERSON: Yes.

CHAIRPERSON YOUNG: -- and go, oh, here
it is; it's 852.

MS. McPHERSON: In fact, it was less
messy than the CSD's, you know, documents. They
all were numbered. It was done by a professional
pdf -- it was pdf, you know, --

CHAIRPERSON YOUNG: Okay, do you have a
copy of it?

MS. McPHERSON: I can get a copy of it.

CHAIRPERSON YOUNG: Does any other
designated party have a copy of this DVD or CD
that you're going to rely upon? Okay.

Well, the problem we have is if the
prosecution team, for whatever reason, doesn't
have it in front of them, right now they can't
comment except to object to anything that they
haven't seen.

And I want to give you an opportunity to
at least get the documents in front of them to
review. Now, some of these, I might have, you
know, questions about the relevancy on my own.
But I would rather the prosecution team worry
about that.

MS. McPHERSON: I can --

CHAIRPERSON YOUNG: And that we could
just kind of decide what's going to come in and
what isn't.

MS. McPHERSON: I can give them -- I can
get them another copy of that. I did want to make
a point that the reason the numbering seems to go 
from, you know, connect with the CSD's numbering 
is because initially the designated parties worked 
with the CSD to put together the original list. 
And wanted, and the intent was to keep all of the 
documents together in one place so that we could 
then kind of go to the well, get a document if we 
needed it for a particular designated party. And 
that it would be easier for everyone. 

It was the intent for exhibit B to be 
introduced with the CSD, but there was a 
disconnect and so the designated parties, 
themselves, submitted that, and then referenced 
that as something they might be using in their 
hearings. 

CHAIRPERSON YOUNG: Okay. 
(Pause.) 

CHAIRPERSON YOUNG: What I'd like to do 
then would be to have Ms. McPherson obtain a copy 
of the CD, DVD, whatever it is; submit it to you; 
and have you take a look at it. 

And then we're going to go through the 
CSD's presentation first before we get to that 
separate list. We have your presentation. And so 
it will be sometime in the afternoon before that
becomes an issue. I don't know, we may have to
take a quick break to have part of your staff
maybe go through that list. Or not take the break
and have someone split off to do that.

MR. SATO: Well, I think that --

CHAIRPERSON YOUNG: So, I don't know how
else. Ms. McPherson says that she submitted it to
the prosecution team, so I'm willing to accept
that, that it has taken place. And maybe we have
it here, and maybe it's just not labeled.

So, any suggestions on how we proceed
with this?

MR. SATO: Well, one of the other ways
we could deal with it is that not then having to
review every single document on the DVD, but might
be provided to us in advance of whatever testimony
might be provided. That we can wait to see
whether or not any of the designated parties
actually incorporate or try to refer to any one of
these documents, and at the time that they try to,
then we can determine the relevancy or address any
evidentiary objections that I might have at that
time.

CHAIRPERSON YOUNG: Okay.

MR. SATO: Allow us to move, I think,
more quickly.

MR. MURPHY: We're going to incorporate it, so to save the time.

BOARD MEMBER SHALLCROSS: That sounds --

CHAIRPERSON YOUNG: Okay. But we're still going to need to see what the document is.

BOARD MEMBER SHALLCROSS: They have to produce it if they're going to introduce it, right?

CHAIRPERSON YOUNG: Right. So, --

MR. MURPHY: We produced it; they don't have it.

CHAIRPERSON YOUNG: Yeah.

MS. McPHERSON: Well, I do have a couple of DVDs here. And I want to look at them and see if that's it. If it is, then I can give this to them.

CHAIRPERSON YOUNG: Okay, go ahead.

(Pause.)

CHAIRPERSON YOUNG: Folks, while we're waiting for Ms. McPherson to look through her DVDs or CDs, the next on our list is going to be take up, as part of these preliminary procedural matters, if there's any other objections that the Board needs to consider at this point before we
start with the item number 3, the nonevidentiary comment by government agencies. So that would be next in line.

So this would be for any other designated parties that have some procedural objections or evidentiary concerns that they want the Board to consider, now would be the time to do that, once Ms. McPherson has told us what she has.

MR. ROCHTE: My name is Tim Rochte and I'm 1015. I object to not having received the documents that were sent out in rebuttal to the documents submitted by the CSD. Got home last night after my daughter's soccer game; there was some information there. Not helpful.

It should be given in a more timely manner.

CHAIRPERSON YOUNG: Okay, are you referring to Mr. Sato's rebuttal?

MR. ROCHTE: Yes.

CHAIRPERSON YOUNG: Okay. Do you have a copy now?

MR. ROCHTE: It's at home, yeah.

CHAIRPERSON YOUNG: Okay, do you need one for today?

MR. ROCHTE: No.
CHAIRPERSON YOUNG: Okay.

MR. ROCHTE: I also want to do a reality check. Am I hearing that we have evidence that we submitted or Gail, the CSD submitted a document, a CD or a DVD.

And it's not being found by the prosecution team, and therefore they can object to that?

I mean if they have done sloppy staff work, then that needs to be recognized. And if that's what I'm hearing, then I object to that kind of --

BOARD MEMBER SHALLCROSS: It's not clear where the sloppiness lies at this point.

MR. ROCHTE: I heard that it was received by this -- by the prosecution team, did I not? Or just clarify that for me.

BOARD MEMBER SHALLCROSS: That was the statement.

CHAIRPERSON YOUNG: I did not hear that they had received it. They've got some DVDs that they couldn't identify the contents related to the exhibit list.

MR. ROCHTE: Well, they were submitted in a timely manner --
CHAIRPERSON YOUNG: Ms. McPherson said
she had submitted it. And I'm willing to accept
that statement that she had submitted it. And I'm
going to give those parties that want those
exhibits some time to make sure that the
prosecution team can go through them and decide if
they object to any.

MR. ROCHTE: But if we're assuming that
they got it in a timely way, why are they now
saying that they didn't know it was labeled, they
don't know what's in it?

CHAIRPERSON YOUNG: Well, I can't answer
for them.

MR. ROCHTE: Well, can we ask them to
answer? Or how does this work?

CHAIRPERSON YOUNG: Well, that's a
different issue --

MR. ROCHTE: Okay, let's just let it --
we'll let it stand, then.

CHAIRPERSON YOUNG: -- as to how they
receive documents and review them; and I don't
think that's important. What's important for us
is to see where they are; see if there's
objections; and see how they may or may not come
into the hearing. That's all I'm really concerned
Mr. Duggan.

MR. DUGGAN: Dave Duggan, representing Cinthea Coleman. This is questions about procedure,

CHAIRPERSON YOUNG: Yes.

MR. DUGGAN: -- correct? Or objections?

So far I did have a few problems, but I'd like to ask, did I hear Reed Sato indicate to you that he had advised this Board earlier? Advised this Board on how to proceed in this prosecution?

CHAIRPERSON YOUNG: That who said that?

I didn't catch the name.

MR. DUGGAN: Mr. Sato. I thought I heard that he said he had been advising this Board on how to proceed.

CHAIRPERSON YOUNG: You know, I didn't hear that. And --

MR. DUGGAN: Well, I'm going to take a look --

CHAIRPERSON YOUNG: -- the first time I met him, myself, is this morning. And so we have had no contacts with the people sitting at Mr. Sato's table. The only one --

MR. DUGGAN: Okay, but you are aware --
yes -- and there is --

CHAIRPERSON YOUNG: -- yeah, the only ones advising us, Mr. Duggan, is Mr. Richards and Mr. Thomas.

MR. DUGGAN: Okay, well, that is my question whether or not I did hear him say that. And so I will be reviewing the tape, but we are aware that his position is not to be an advisor to this Board, that's correct?

CHAIRPERSON YOUNG: Mr. Sato, do you want to clarify anything that may have been heard?

MR. SATO: I actually don't know what -- said that. I don't advise the Board. I've never advised the Board. I said in the very beginning that I was looking forward to speaking with them in a public meeting about some initiatives that my office was going to undertake. But that's not advising this Board.

MR. DUGGAN: Okay. Thank you for the clarification.

CHAIRPERSON YOUNG: Okay.

MR. RICHARDS: It's entirely possible that Mr. Sato may have used the term, I advised the Board, in the context of I notified the Board. Because that is terminology that is often used
interchangeably. But Mr. Sato has not been
advising the Board with respect to the legal
issues presented in this matter.

MR. DUGGAN: Okay, thank you.

CHAIRPERSON YOUNG: And not with any
other matter that this Board may be involved with.
With any other item that we deal with he has not
been involved in anything.

MR. DUGGAN: And I thank you for your
clarification.

CHAIRPERSON YOUNG: You're welcome.

MR. DUGGAN: But I think we had this
discussion awhile back, a few months or so, so,
thank you.

CHAIRPERSON YOUNG: Right. Okay. How
are we doing, Ms. McPherson?

MS. McPHerson: Got them.

CHAIRPERSON YOUNG: You got them. Okay.

Is that on a CD, a DVD?

MS. McPHerson: Yeah.

CHAIRPERSON YOUNG: And it does say
exhibit B on it. Okay.

MS. McPHerson: November 13th date.

CHAIRPERSON YOUNG: Do you have a
duplicate? Or just one copy?
MS. McPHERSON: I can get a duplicate.

CHAIRPERSON YOUNG: Okay, --

MS. McPHERSON: I have a duplicate at
another --

CHAIRPERSON YOUNG: -- well, do you want
to -- how should we do this, Mr. Sato? Do you
want, she can give you the copy that she's got.
And at some point you guys could take a look at
it, or we can then just rely upon the individual
CDO recipients to try to get whatever documents
they want before us identified at that time?
Would you like to do it that way?

MR. SATO: No. Now Mr. Thompson has
advised me that he believes that he thinks that we
have the document. So, I think let's -- we'll
look at this, the documents that we have right
now. I think that it's still -- I can certainly
make an objection now to the documents based upon
the use of exhibit B. I prefer to wait to see
whether the documents are actually used, because I
think this is an example of one of those kitchen-
sink kinds of efforts to --

CHAIRPERSON YOUNG: All right.

MR. SATO: -- introduce documents into
the administrative record. I think it's more
useful to wait until we see whether any of the documents --

CHAIRPERSON YOUNG: Okay.

MR. SATO: -- might actually be utilized before we start talking about whether they're relevant or should be submitted into evidence.

CHAIRPERSON YOUNG: Why don't we do that.

BOARD MEMBER PRESS: Well, I think that some of the designated parties have said that they're going to incorporate them all in their testimony. So, it may be, in order just to save time and to move ahead, maybe there should be a break in the proceedings for the prosecution team to look as quickly as possible, to flip through them and see if they really want to pull some out. Because I think we're going to just be there again when we get to the individual parties. It sounds like it, am I right?

CHAIRPERSON YOUNG: Well, Ms. McPherson, how many are there on here, 50, 60 or something?

MS. McPHERSON: No. It starts at number 141 to 250, a couple hundred.

CHAIRPERSON YOUNG: Couple hundred, okay. Well, I think when we -- let's -- I want to
move through this and maybe we then can take a break in the proceedings so we can deal with that issue before the individual CDO hearings begin.
Okay. Is that fine? All right.

Any other designated party have any objections or issues procedurally or evidentiary-wise that they would like to raise with the Board at this time? Yes, sir, 1029, come on up.

(Pause.)

NUMBER 1029: Board, Chair, we're number 1029. My first question would be we've decided to accept the settlement at the prior break, --

CHAIRPERSON YOUNG: Okay.

NUMBER 1029: -- and so my question is, am I still allowed to present a -- not a CDO defense, but some points as to the process?

CHAIRPERSON YOUNG: Repeat the last part?

NUMBER 1029: And procedural issues. Am I still allowed to raise some questions I had as to procedure?

CHAIRPERSON YOUNG: Well, what I would say, as an interested person, you could then speak, because we will take your CDO slot out of the process. But if you want to speak as an
interested person, which is going to come up next, you'd have a minute to do so.

NUMBER 1029: I'll wait for that minute.

CHAIRPERSON YOUNG: But then you have heard the discussion before about the settlement agreement and the proposed changes to it --

NUMBER 1029: Yes, sir.

CHAIRPERSON YOUNG: -- with the reporting form, and that's acceptable to you?

NUMBER 1029: Yes.

CHAIRPERSON YOUNG: And you do agree to sign that agreement?

NUMBER 1029: Yes.

CHAIRPERSON YOUNG: Okay. Well, okay, let's remove that. Yes?

MR. RICHARDS: I would point out that if any person who settles would be waiving their opportunity to challenge the issuance of the -- I mean the -- of the order approving the settlement. I mean, if a person settles they have no ability to challenge the provisions of the settlement agreement by appealing to the State Board or petitioning a court for review later.

NUMBER 1029: Let me clarify, if I may.

CHAIRPERSON YOUNG: Okay.
NUMBER 1029: My question here was if I would be allowed perhaps the one minute just to comment on some of the procedural issues we've had. And with regards to the settlement, perhaps a closing public comments. I would still like to make some comments on the agreement we're going to sign, if that's appropriate.

CHAIRPERSON YOUNG: You're going to have an opportunity in our next session.

NUMBER 1029: I understand that.

CHAIRPERSON YOUNG: Okay.

NUMBER 1029: So right now I need to wait for the one minute for interested parties?

CHAIRPERSON YOUNG: You just need to wait for that, so we can try to take care of things orally, and not get sidetracked.

NUMBER 1029: Thank you.

CHAIRPERSON YOUNG: So, we'll take 1029, then, off. Okay. Mr. Sato.

MR. SATO: I notified staff.

CHAIRPERSON YOUNG: Okay, good. All right. Does anyone else wish to address the Board? Ms. McPherson?

MS. McPHERSON: I will give it to Greg Murphy. We had some objections to not being able
to question and depose testimony from Roger Briggs. And we had other issues with notice. And the number of designated parties that did not receive notice timely.

And one example where just yesterday they received something that was postmarked as of the 12th, and the 12th was the deadline for them to respond to the document, so --

BOARD MEMBER SHALLCROSS: Excuse me a second. I thought you were only speaking for one designated party.

MS. McPHERSON: Well, I am speaking for that designated party. But I'm bringing up the fact --

BOARD MEMBER SHALLCROSS: Okay, just a second. I'm --

MS. McPHERSON: -- that there were others that also --

BOARD MEMBER SHALLCROSS: I understand that, but I'm assuming her objection only goes to the person she's representing.

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER SHALLCROSS: So if something happens to someone else, then they need to bring that up.
MR. RICHARDS: Yeah, at this proceeding you are here only for the people you are representing. You cannot speak for other --

MS. McPHERSON: Sure.

MR. RICHARDS: -- parties at all.

MS. McPHERSON: I understand that, thank you. So, --

MR. RICHARDS: So you're --

MS. McPHERSON: -- when I would speak on something that would be something that someone else would be also in agreement with, then they should stand at the podium to make that same argument?

MR. RICHARDS: No. They will have an opportunity during the course of their hearing to make whatever arguments they want to make.

MS. McPHERSON: I'm talking --

MR. RICHARDS: You are here --

MS. McPHERSON: I'm talking about the objections.

MR. RICHARDS: You are here only to represent the people who have provided you with their power of attorney to represent them.

MS. McPHERSON: Okay, I --

MR. RICHARDS: And you have no authority.
from others to speak for them.

MS. McPHERSON: Okay. So, in behalf of the person that I'm representing, she did not get a chance to depose Roger Briggs; and that is something that I had brought up, and I'll bring that up again.

Same thing with notices. She had several times that she documented that she did not receive notices. She brought her notice yesterday that she just received.

None of the large documents from the 21st of November were mailed out until this week. The documents from December 1st were not mailed out until this week. And so she did not have a chance to properly prepare for her hearing. And she wanted to raise that concern and objection.

And then, of course, there is the Water Board's use of email instead of the mail; and there was a lot of inconsistencies there for her, as well. So I'm just bringing that up. And I understand that I'm only speaking for myself. And if others had that same problem, that would be their --

CHAIRPERSON YOUNG: It's their burden to come up and share it with you.
MS. McPHERSON: Yeah.

CHAIRPERSON YOUNG: Now, and you're representing who, again? Excuse me.

MS. McPHERSON: Laurie McCombs.

CHAIRPERSON YOUNG: Does she get email? Does she have email access?

MS. McPHERSON: Only at work. Only at work. And it was set up in the beginning where they wrote down their email -- she wrote down her email address, but that did not necessarily mean that she expected service that way. It was just, you know, you write down your phone number on the form and you write down your email. It didn't necessarily indicate that she wanted to get service by email or electronically.

CHAIRPERSON YOUNG: Okay.

MS. McPHERSON: So, you know, --

CHAIRPERSON YOUNG: Now, the issue of Mr. Briggs' deposition. Did she specifically want to take his deposition?

MS. McPHERSON: Yes. There are a number of people who did, and she was one of them. And unfortunately, the request was for about in September. And there was some discussion about it with others. And there was not a notification to
the other designated parties this was taking
place.

And so on the 27th of September there
was a request by a few parties, and they added
"and others" to it. And she thought she was part
of that. And many others, too, I suppose.

But when it did finally take place,
there was no notification and there was no real
coordination to get that testimony. And so she's
requesting that she have that opportunity to
depose and have Mr. Briggs present at the hearing.

CHAIRPERSON YOUNG: His transcript is
posted on the website. Is she aware of that?

MS. McPHERSON: The transcript was done
by an amateur. There was not an attorney
representing those people who took that
deposition. The questions and the documents that
she wanted to question him about were not part of
that. And it was very very limited.

CHAIRPERSON YOUNG: Wait, wait, wait,
the transcript that I reviewed was done by a
certified court reporter.

MS. McPHERSON: A court reporter, but
there was not an attorney that was representing --

CHAIRPERSON YOUNG: Well, but, see
people -- you don't have to have an attorney represent you.

MS. McPHERSON: Of course not.

CHAIRPERSON YOUNG: That's everyone's choice in this matter, to be represented or not be represented.

MS. McPHERSON: Well, she wasn't notified that that was taking place. And she was not able to be there to ask the questions or have those questions asked. Those were very limited in the interest of one person's hearing. It was --

CHAIRPERSON YOUNG: Well, there was more than one person asking questions. I think Mr. Shipe asked a number of questions.

MS. McPHERSON: I know there were two people --

CHAIRPERSON YOUNG: I think even Mr. Moylan asked questions. And there might have been -- I think Mr. Payne was there, also, if I'm not mistaken.

UNIDENTIFIED SPEAKER: He didn't ask any questions.

CHAIRPERSON YOUNG: He didn't ask any questions. Okay.

MS. McPHERSON: No. The people
officially there --

CHAIRPERSON YOUNG: I've read the
transcript. And I'm aware of how the judge ruled
yesterday on this issue in Superior Court. Is
there really anything that Mr. Briggs could bring
to bear on the issues that we've identified in
this case that only he can provide?

MS. McPHERSON: I believe that there is.

CHAIRPERSON YOUNG: And what are they?
If you were to give me an offer of proof of what
you think only he could bring to bear on this,
what --

MS. McPHERSON: There are several
letters that he wrote where he indicated that only
new discharges were prohibited. And that the
intent was to keep people from moving in the
moratorium zone.

And there was a letter that states that,
and it's very confusing because it was written in
2002. And so that's one document that we would
want to ask him about. We would want to ask him
about several others where it seems to be the
indication that the prohibition zone was set up to
prohibit future discharges, and not to come after
individuals now without an opportunity for
Challenge.

CHAIRPERSON YOUNG: Well, the prohibition zone and its validity or nonvalidity, if you want to describe it that way, is not an issue we're dealing with.

I tried to go through that early on in this proceeding this morning so that you would --

MS. McPHERSON: But it is --

CHAIRPERSON YOUNG: --know. Some people may feel there are issues that are important to them. And the Board's not going to entertain testimony or discussion of those things. That's one of them.

Now you can discuss this with the State Water Board or Superior Court if you think that we're making a mistake. But, it's not relevant to what we're doing.

As far as letter that may have been signed by Mr. Briggs, just because the head of an agency signs a letter does not mean that that is the only individual that has knowledge or information about what went into putting the letter together.

I don't know that just because he signed a letter back in 2002 that you have to take his
deposition over it.

And the judge yesterday --

MS. McPHERSON: The opportunity to take
the deposition is what we're challenging. There
should have been an opportunity to take that
deposition. And the case wasn't filed, refiled
until September 8th. And then we came about the
17th or the 19th of September with a request. And
we followed that through. And there wasn't the
coordination or the communication from the Board,
from the Board Staff that this was going to
happen.

And so the only people that were
notified were the ones that happened to have a
conversation or relationship with Matt Thompson,
or the prosecution. And -- or Michael Thomas, I
think it was. And get this thing set up. The
rest of them were completely left out in the cold.
And for 45 people to end up with none of them
knowing that this was available to them is what
the problem is.

CHAIRPERSON YOUNG: Okay.

Unfortunately, if you don't have a lawyer helping
you, some of these things may not become apparent.
I mean the Board, itself, is not responsible for
setting up Mr. Briggs' deposition. That's not our doing. Okay.

There were notices that were sent out and discussions made by Mr. Briggs that he was going to be taking a sabbatical. Somehow Mr. Shipe was aware that this was taking place. Any of the 45 designated parties, including the CSD, could have noticed his deposition at any time that they wanted to.

But you're saying that each party was supposed to sit back and someone was going to kind of feed them the information that this was taking place. You know what, in a Superior Court proceeding that would happen, or an administrative proceeding. It's different --

MS. McPHERSON: But these people have been assured that the --

CHAIRPERSON YOUNG: They could have noticed the deposition on their own. They could have been proactive and not reactive.

MS. McPHERSON: They were proactive. They did send out an email. They did not have it responded to. It was responded to Rob Shipe. And then that did not go out to the rest of the people.
CHAIRPERSON YOUNG: Okay. Well, your objection's noted about Mr. Briggs and his deposition. Yes? Do you want to respond, Mr. Sato, about each of her objections? Or if you want to respond just to the Roger Briggs' component of this, please do.

MR. SATO: Well, it's clear on the record that there is a long period of time in which anybody who is interested in taking Mr. Briggs' deposition, could have. And for whatever reason, people did not. There was a belated attempt by some people to notice the depositions. We moved to quash that notice. It was granted by the Chair and this Board. And I believe upheld now by the Superior Court.

So, -- I haven't been at the proceedings, but it is like, you know, we went through this process. The opportunity for deposition has come and gone. Mr. Briggs is not here. I think we ought to move on.

CHAIRPERSON YOUNG: Thank you. Your objection's noted for that.

Let's get to the next one, and this was about notices that Ms. McCombs has not received, or not received timely or what?
MS. McPHERSON: Those and other notices that she did not receive timely. Most recently is the December 1st notices, the notices that are posted on the website, but not mailed. And that was a 44-page document that pretty much was the rebuttal document to the submittals. There was this limited amount of time to respond to that. And by the time she received it, that response time was over.

And then again, on the documents, the documents that were objected to were posted, were not mailed out. And finally they did mail it out. I sent complaints about that, and they did finally mail it out. I believe they mailed it on the, it was postmarked the 12th, and that's the day that they had to respond by. And so they missed that deadline.

So, --

CHAIRPERSON YOUNG: Excuse me, and you're referring to the prosecution team's objection to the CSD's documents?

MS. McPHERSON: Yeah, we were assuming that they were all the documents. We didn't know that they had lost the disk. So we were assuming that we needed to look at that.
CHAIRPERSON YOUNG: Well, the disk, though, is your --

MS. McPHERSON: The CSD's documents are also documents that the designated parties have, from the very beginning have said they would be relying on, rather than submitting their own complete sets. And so we consolidated all the documents to make that easier for not just the designated parties, but also for the prosecution, to have all the documents in one place. And then the designated parties could then go through, pick the documents that were most relevant to their testimony.

CHAIRPERSON YOUNG: Okay, well, is Ms. McCombs or you ready to tell us about the documents that we have ruled inadmissible at this point? Is there -- I'll give you an opportunity to tell us why those documents are relevant and important.

MS. McPHERSON: Well, when you look at the number of documents that are there, and I don't think that there was time to really look and see if that was -- we did note that one document we wanted to use is still there among the hundreds that have been tossed.
CHAIRPERSON YOUNG: See, --

MS. McPHERSON: And that's good news, but --

CHAIRPERSON YOUNG: -- my sense is about this that if you're going to put on a case or defend a case, and you're going to rely on documents, that you're really going to know which ones you want, you know. You've identified them, and you know that you're going to be ready at any point when you see an objection to that document that you're ready to step forward and say, wait a minute, I want it in; this is why it's important.

MS. McPHERSON: Um-hum.

CHAIRPERSON YOUNG: I know there's a lot of documents, but those were created by the CSD and some of the designated parties. They created that; they created the burden for themselves instead of maybe paring it down to what they really intend to use and go forward with.

BOARD MEMBER SHALLCROSS: Maybe Ms. McPherson can identify the documents that her client would like to comment on that were objected to.

MS. McPHERSON: Yeah. There are some documents that --
BOARD MEMBER SHALLCROSS: Specific documents we're talking about that your client is going to be relying on for her case.

MS. McPHERSON: Oh, okay.

CHAIRPERSON YOUNG: Or that were objected to.

BOARD MEMBER SHALLCROSS: That were objected to, right.

CHAIRPERSON YOUNG: Yeah.

BOARD MEMBER SHALLCROSS: Sure, that's what we're talking about.

CHAIRPERSON YOUNG: One way to deal with it is just to wait and see --

BOARD MEMBER SHALLCROSS: Okay.

CHAIRPERSON YOUNG: -- during your presentation of her CDO, and you can tell us, we want to use this document.

MS. McPHERSON: Okay.

CHAIRPERSON YOUNG: We'll deal with it at that point.

MS. McPHERSON: Okay, that's fine.

CHAIRPERSON YOUNG: Now, you made a comment about not having an adequate time to properly prepare.

MR. RICHARDS: Mr. Chairman.
CHAIRPERSON YOUNG: Yes.

MR. RICHARDS: I think there's -- the notice that was dated October 16th, revised notice of public hearing, addresses this. And it set up a protocol whereby this is the document, this is the notice that set up the protocol whereby the designated parties' responses to the prosecution's case were to be filed by November 15th.

The prosecution was required to file any rebuttal including any evidence included in its rebuttal by Friday, December 1st. Designated parties were entitled to submit written responses to the comments filed by the interested persons on November 15th by December 1st.

And that is all. There's no provision in that notice for designated parties to respond to the rebuttal prepared by the prosecution team. And, in fact, that's a fairly common practice. The prosecution team presents its case; the respondents respond; then the prosecution team provides rebuttal. And that sets up the issues that are going to be addressed in the hearing.

And that is the protocol that was established in the notice dated October 16th; and that is the protocol that we have followed.
CHAIRPERSON YOUNG: All right. Well, then allowing the designated parties to bring up any document issues they have when they're putting on their cases would be the appropriate --

MR. RICHARDS: That would be the appropriate time to --

CHAIRPERSON YOUNG: Okay.

MR. RICHARDS: -- address the document, the admissibility of documents, is when they put on their cases.

CHAIRPERSON YOUNG: Okay.

MR. RICHARDS: The fact that various people have not received, you know, the various exchanges of documents that have happened subsequent to these dates is not --

CHAIRPERSON YOUNG: Doesn't violate any --

MR. RICHARDS: -- doesn't violate the protocol that was established.

CHAIRPERSON YOUNG: Okay. One last thing.

MR. MURPHY: Mr. Chairman, --

CHAIRPERSON YOUNG: Yes.

MR. MURPHY: -- if I may, while it doesn't violate the protocol, the fact that if I
understand the situation correctly, and forgive me if I don't, but the fact that the rebuttal argument by Mr. Sato was mailed on December 12th, meaning that the soonest it could be received by the individual designated parties, those without access to the computer, would have been the 13th, would have left them with only one day to prepare their verbal responses to that rebuttal for presentation today.

I tend to have a problem with unrepresented parties without access to computer having only one day to prepare those verbal rebuttals. But obviously ultimately the decision is yours.

CHAIRPERSON YOUNG: Well, and I can appreciate that. I'm not insensitive, you know, to that fact, and that's why I would allow them to go ahead while they do their individual cases, even if we could rule something to be inadmissible, I'll hear the argument about it and then decide whether it should come in or not. And give Mr. Sato a chance to respond to that. Kind of deal with it at that point.

MR. MURPHY: Thank you, sir.

CHAIRPERSON YOUNG: All right. You
mentioned, Ms. McPherson, that Ms. McCombs did not have adequate time to properly prepare. Was that to properly prepare after getting kind of the late receipt of the rebuttal of what documents were going to be objected to? Or just in general?

MS. McPHERSON: I would say that the way the continuance of the hearing from the 28th of April proceeded, there was an exchange of five questions and how to proceed. And then that went back and forth.

And there was some thought that, by hopeful as it might have been, that you might have decided to proceed by, or the prosecution, by dismissing the whole thing and starting over. And starting over might have meant picking new defendants or changing the whole process.

And so actually for the party, it started at September 8th. So September 8th is where it started. And then the opportunity to depose witnesses and to organize for this made it very difficult to prepare a case.

CHAIRPERSON YOUNG: Well, as I recall in May or June, or I think when we had our status conference the first meeting after April, is when the Board had said that we're going to keep the
same 45 people; staff had said they're going to
keep the same 45 people. And that their
submissions, even for the April 28th hearing,
would still be admissible and usable.

So I think it was quite clear who the
people were. There was no intent at all, or
effort to try to change the defendants in this.
You know, once September 1st came around, if
that's the date that you want to use, there was
September, October, November and December. I
don't know when did Mr. Briggs leave, but there
was time beginning in September for people to
collectively decide, you know, we're going to
prepare and take Mr. Briggs' deposition.

So, there's always going to be somebody
that feels that they need more time. And I think
that the issues in these matters are pretty
straightforward, even though there's a tendency to
try to make them appear to be more complex and
complicated. Can you tell me what more time would
be needed to adequate prepare? What would really
need to be done?

MS. McPHERSON: Well, there are a few
things that were a disconnect and could have been
done differently. Mr. Sato, himself, said in his
last correspondence that if there had been more
time, and the designated parties could have been
able to work together, and even be notified, that
they could have reached a settlement.

The same thing is true for some of the
information that came out about getting testimony
and putting together a case. The more time, I
think, had to do with the disconnect that my party
had in seeing what was going on and working
together. It was very difficult.

And so I think that her complaint
probably goes more to the inability to access the
procedures and the system and work her way through
that, short of hiring an attorney.

And these proceedings have always been
kind of -- these proceedings have been said to be
kind of straightforward, not so complicated, but I
can tell you for individuals this is not the right
method to go about dealing with this kind of an
enforcement action. Because they're not equipped
to deal with the legal. I'm not equipped to do
that, and I do better than some of the others.

It's very confusing. This person has a
pile of papers in her house and had no clue what
they meant. And so it was very difficult.
CHAIRPERSON YOUNG: Well, okay, your objection is noted.

MS. McPHERSON: Okay.

CHAIRPERSON YOUNG: We're going to move on. And unfortunately, some people may never have enough time to adequately prepare under certain circumstances, but we've got to move forward.

I think there have been so many months that have passed since people were aware of what was happening and what they needed to do, that there is a requirement, an obligation on their behalf to step up and get assistance, you know, coordinate. Or maybe collectively hire a lawyer to help them. So, all right.

We're going to move on now to the item number -- yeah, okay, excuse me. Mr. Martyn.

MR. MARTYN: I believe that we're discussing procedural process at this particular time, is that correct?

My name is Alan Martyn. The Chairman knows, I presumed everybody else did, too.

Mr. Chairman, I would like to corroborate Mrs. McPherson's testimony regarding the issuance of data, you know, from the water quality control panel, you know, the Board.
MR. MARTYN: And I have here as evidence a copy of the order refuting, you know, that is dated December 11th. So if you need prima facie evidence of what she is testifying to, it's right here for all the Board Members to see.

I received it December the 12th. So I get 50 pages, you know, to respond to one day, you know, before I'm due here before you.

Now, if you think that that's adequate time or that we need more time, we definitely do need more time, Mr. Chairman. We cannot mount a defense to all this data here, you know, within a 24-hour period. It's not right. It's not legal. It's not fair. It's not constitutional.

And when I look at all these documents, which would, you know, require a Philadelphia lawyer, you know, to try and interpret and read; you know, your objections to all the data, and I would like to pass this on to the Chairman and the Members so that they could see the date on that letter.

CHAIRPERSON YOUNG: I've already ruled on that. Your objection is noted, that you're joining in Ms. McPherson's objection. If you want
to submit that to us when you have your individual
hearing time slot, why don't you do it at that
time.

MR. MARTYN: Very good, Mr. Chairman. I
also would like to say that I do object to the
hearings. I object to the process. I object to
the procedure. I object to Mr. Sato's
disingenuous proposal.

I object to the fact that the so-called
deposition that she took was not an official
deposition, and he knows it. It was a voluntary
deposition. We were advised by counsel that Mr.
Briggs did not have all the data that we had
requested. So, in essence there was no basis, you
know, for that deposition. And he knows full
well, you know, that that is a fact.

I have seen the video; I don't have a
copy of the transcript. But I can tell you that
it was a very disingenuous approach and testimony
that she's giving you, the Board. And I disagree
with it wholeheartedly. And I will present my
defense. I am not in favor of his agreement,
which was orchestrated wrongly, and it's not going
to benefit the community. And I'll bring that up
in my defense, when the time comes.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
Thank you, Mr. Chairman.

CHAIRPERSON YOUNG: Thank you for your comments. Yes. And you are?

NUMBER 1034: I'm 1034.

CHAIRPERSON YOUNG: 1034?

NUMBER 1034: Yes.

CHAIRPERSON YOUNG: Okay.

NUMBER 1034: And I would like to also join --

CHAIRPERSON YOUNG: Join in --

NUMBER 1034: -- Ms. McPherson's objections. And I'd also like to add into that that the prosecution evidence was not presented online until the day of the deposition. Okay.

And we were told that we would be able to have this deposition, he would be leaving by mid October. And instead he left on the 6th. So there really wasn't a chance.

Also, Mr. Shipe was notified. We weren't notified, but Mr. Shipe was. And he was busy that evening; he had to get up in front of the community and he had other responsibilities. He was not able to get to all of us and let us know about that deposition.

So, obviously we didn't know about it.
We didn't have the evidence. There was no way we could prepare for it. And we weren't notified.

Thank you.

CHAIRPERSON YOUNG: Okay, thank you.

Mr. Sato.

MR. SATO: Mr. Chairman, could I just mention one thing --

CHAIRPERSON YOUNG: Yes.

MR. SATO: -- about this deposition.

You know, Mr. Briggs did produce all of the documents that were requested by Mr. Shipe at that deposition; and they were exactly the same documents that in the ill-considered attempt by some of the others to also take a deposition. The exact same documents that we requested.

Those documents were produced. No one introduced them. They didn't use them at the deposition. They --

UNIDENTIFIED SPEAKER: No, that's not true.

MR. SATO: Well, I can say a couple. But I mean the vast majority of the documents, they were there, and people could have utilized them if they had chosen to. Thank you.

CHAIRPERSON YOUNG: Okay. Yes.
MR. MURPHY: Mr. Chairman, I have a question and a request. The question is for clarification as to the order of proceedings. With regard to closing arguments, I am unclear as to whether those will be heard at the tail-end of this entire proceeding, or at the end of each individual proposed cease and desist order proceeding?

(Pause.)

CHAIRPERSON YOUNG: Well, let's go ahead and discuss this, because it's something that we've been discussing, the Board had been discussing earlier in terms of how to manage this. And the way the notice is laid out, we'd have the closing arguments after the conclusion of each individual CDO hearing.

MR. MURPHY: That was my understanding.

CHAIRPERSON YOUNG: And that's what's in here. We have put kind of an advisory in the beginning, a note that said the Water Board Chairman may adjust the timing and order of these proceedings during the hearing.

So, I mean there's -- some of us may feel that maybe your client should give its closing argument at the end of the prosecution
team's case, and not provide a closing after each individual.

MR. MURPHY: After each individual, correct?

CHAIRPERSON YOUNG: Right.

MR. MURPHY: Or, for that matter, looking at it the other way, each individual should give their closing argument after their hearing and not -- after all of the hearing. Someone who starts today shouldn't come back tomorrow at potentially 8:00, 9:00 p.m. to give a close? That was more my fear, I --

CHAIRPERSON YOUNG: Well, that's correct. People would only have to do it, you know, one time obviously.

MR. MURPHY: And you certainly don't want to hear from me after each and every hearing?

CHAIRPERSON YOUNG: Well, that's the way we wrote it. But I would prefer that you give your closing after the prosecution team is done with its case-in-chief.

MR. MURPHY: So then I'll give a case-in-chief and include the closing as a portion of that?

CHAIRPERSON YOUNG: Well, I think after
the cross-examination or, you know, rebuttal takes
place, then you would do it --

MR. MURPHY: Okay, sure.

CHAIRPERSON YOUNG: -- that way. Is
that okay, Mr. Sato, with you?

MR. SATO: That'd be fine.

MR. MURPHY: Thank you.

CHAIRPERSON YOUNG: Okay.

MR. MURPHY: Then my request, Ms.

McPherson asked that I seek leave to introduce
pleadings in the writ case that was concluded
yesterday. These, I believe, Ms. McPherson, will
be relied on by you client and by other designated
parties, is that correct?

MS. McPHERSON: Yes.

CHAIRPERSON YOUNG: Okay. What
documents are these?

MR. MURPHY: Can you explain, maybe,
just let them know which pleadings you'd like to
introduce.

MS. McPHERSON: Okay.

CHAIRPERSON YOUNG: And if you have the
set, you should give it to Mr. Sato, so while
we're discussing this he has something to comment
on in front of him.
MR. MURPHY: It would be the petition for writ of mandate; the response by the Water Board; the ex parte application for issuance of the alternative writ of mandate; and the points and authorities therein.

I believe, if I understand correctly, that the purpose of this is to set forth certain legal arguments that were made before the court, and on which some of the individual designated parties would be relying in their presentations to you today.

That it would be beneficial to them to have those legal arguments spelled out in written form. And then they would be able to more quickly summarize them for you in their spoken comments.

CHAIRPERSON YOUNG: Well, the deadline for submission of written comments has passed.

MR. MURPHY: I understand that.

CHAIRPERSON YOUNG: So I mean I certainly don't -- people are going to have time to go ahead and comment and tell us what they want during the 15 minutes that they're going to have. But these are official court documents for purposes of appeal or later, anybody can ask a reviewing body, I think, to take judicial notice
of them. Am I mistaken?

MR. SATO: No, that's correct. These are documents that can be judicially noticed at any time.

CHAIRPERSON YOUNG: I mean at the State Board you can ask that they be included, you know, in the record. I don't have -- why don't we hear from Mr. Sato.

MR. SATO: You know, it's certainly irregular to have pleadings introduced as evidence. I mean they can talk about the same issues that they would like, but, you know, why introduce all of the pleadings from this particular writ proceeding into this matter.

I mean you guys aren't reviewing the decision of the Superior Court, certainly. And so the, you know, relevance of these documents is pretty much zero.

CHAIRPERSON YOUNG: Okay. All right. Not going to come in.

MR. MURPHY: Thank you for your consideration.

CHAIRPERSON YOUNG: I mean they are pleadings in another case and so they're essentially allegations. And if there's legal
arguments there that people want to rely upon, they're going to have to orally give them to us during their presentations.

Okay.

MR. RICHARDS: I would point out, also, that the time for the designated parties to submit their response to the prosecution's case was November 15th.

CHAIRPERSON YOUNG: Okay. I believe we are ready for item number 3, right, Mr. Thomas?

MR. THOMAS: Yes.

CHAIRPERSON YOUNG: And that would be nonevidentiary comments by government agencies. And I don't think I have any speaker cards for that. Are there --

MS. McPHERSON: Excuse me, --

CHAIRPERSON YOUNG: Well, there wouldn't be. Yes?

MS. McPHERSON: Excuse me, I'm sorry; I was trying to get your attention.

CHAIRPERSON YOUNG: Yes.

MS. McPHERSON: I had one other question procedurally, just to make it a little clearer --

CHAIRPERSON YOUNG: Okay.

MS. McPHERSON: -- for me. The reliance
on testimony by other parties, --

CHAIRPERSON YOUNG: Right.

MS. McPHERSON: -- in order to not
duplicate the same thing over and over, we've
been, you know, we've been trying to kind of focus
in on designated parties maybe covering certain
areas.

And in doing so they are expecting to
rely on one another's testimony. We're expecting
to rely on others' testimony. And in some cases
on the 15th when we put in our testimony, our
written testimony anyway, we were looking at
people who subsequently have settled to have made
that part of our case which we would have
incorporated by reference. And that makes it very
difficult now.

Is there -- and also if we have a case
that's heard, and then, you know, are you ruling
after each -- at the conclusion of each case?
Because then how do we incorporate, by reference,
the testimony of others that come after us?

I hope that was clear.

MR. RICHARDS: There would be no
objection to -- well, there should be no objection
to any designated party incorporating by reference
into his or her presentation the written documentation that has been provided to the Board already; and that is posted on the website; that is before the Board that Board Members have copies of.

So, if the person you're representing wants to incorporate by reference, into her proceeding, the testimony that has been presented in writing, or the argument that has been presented in writing by any other designated party, she may do so.

And the second part of your question related to?

MS. McPherson: Had to do with whether you're going to rule on the CDO after each hearing, individual hearing. And how would you incorporate testimony that would come after, in that case. So that you could make that ruling with that knowledge.

MR. Richards: You are entitled to -- the parties are entitled to incorporate by reference the documentation. And certainly they would be entitled to rely on any testimony that was offered before they appeared.

If they wanted to rely on the oral
testimony of people who would have come after
them, they are going to have to call those people.

MS. McPHERSON: So they would --
CHAIRPERSON YOUNG: As witnesses.

MS. McPHERSON: As witnesses.

CHAIRPERSON YOUNG: Yeah.

MS. McPHERSON: And that would go for
any designated party that perhaps settled, that
had researched an area that we were depending upon
them to --

CHAIRPERSON YOUNG: You have to call
them as a witness --

MS. McPHERSON: Okay.

CHAIRPERSON YOUNG: -- if you want their
oral testimony, their oral evidence to come in. I
don't know how else you would do it.

MS. McPHERSON: Okay.

MR. RICHARDS: If their research and
conclusions have been presented to the Board in
written documents, as has been the hope of the
Board in setting up this protocol, then you will
have no trouble in bringing that evidence into
your cases.

However, if you're hoping to rely on
oral testimony then you're going to have to put it
MS. McPHERSON: Okay. Thank you very much.

CHAIRPERSON YOUNG: Okay. Mr. Thomas, we are -- are those witnesses? Do they have speaker cards?

MR. THOMAS: No, they --

CHAIRPERSON YOUNG: Mr. Thompson, number 3.

MR. THOMAS: These would be people that --

CHAIRPERSON YOUNG: Government agencies.

MR. THOMAS: -- submitted cards, but I don't have any cards for government agencies.

CHAIRPERSON YOUNG: Okay. Do we have any other governmental agency witnesses that wish to testify before the Board on this matter? Okay. Now we'll go to interested persons that wish to testify. Mr. Duggan, I have your card; and I think I have some others here.

(Pause.)

CHAIRPERSON YOUNG: And this is a minute to speak on behalf of yourself, not on Ms. Coleman, who you're going to deal with -- we're going to deal with her later. Okay.
Before I start --

MR. DUGGAN: My name's Dave Duggan, Los Osos.

CHAIRPERSON YOUNG: Okay, before you start, let me just make sure I have these names properly identified. And I guess Lawson Schaller; this is another interested person. Okay, Anne Norment.

Okay, this is public -- Keith Wimer, this is public comment. I don't know if this means interested persons or this afternoon, public comment, because it says public comment I'm going to put it aside.

Mr. Payne is not here right now. Let's see, public comment and new County project. All right. Number 1029 -- wait, 1029, okay. Yeah, you can speak because you have settled. Agreement CDO number 3, okay, Keith Wimer does have this. And Ann Calhoun is on this list. Ms. Taylor, says this is an interested person.

MS. TAYLOR: Public comment.

CHAIRPERSON YOUNG: Public comment, okay. And then Eric Greening, nonagenda comment on measure. Okay, so that would be this afternoon. Interested persons, okay, we have
Okay, Mr. Duggan.

MR. DUGGAN: My name's Dave Duggan, Los Osos. As an interested party in the previous hearings I submitted, I believe, 18 pages of documentation, which, of course, the prosecution dismissed as having no merit.

Then having the air quality control board come in and basically stop the idea of pumping every two months because of health concerns for air pollution, I believe that gave my documentation merit. Because that was part of my argument.

Also, too, there is a section in there at the end, and my summary that this really amounted to a septic system maintenance program of pump, inspect, repair or replace if necessary. Again, this settlement gave my argument as an interested party merit.

Of course, that paperwork has been unceremoniously dumped, I believe, and it no longer exists, I guess, as a testimony. But I would like to say that when I do say something up here, I do consider it having merit. Thank you.

CHAIRPERSON YOUNG: Okay, thank you.
NUMBER 1029: Before I begin, if I may clarify the difference for myself between this comment and the public comment to come later. If you could clarify for me?

CHAIRPERSON YOUNG: The public comment period we have to have at every meeting that the Board has. We invite the public to comment on matters not on the agenda. That's what that public comment is for.

NUMBER 1029: And this now?

CHAIRPERSON YOUNG: This is related. People from the public can comment specifically on what's before us, the proposed cease and desist orders.

NUMBER 1029: Okay. Mine would be for the nonagenda slot.

CHAIRPERSON YOUNG: Okay. I'll move you to this afternoon then.

NUMBER 1029: Thank you.


UNIDENTIFIED SPEAKER: He's outside.

CHAIRPERSON YOUNG: He's outside. Okay, I'll put this card on the bottom and we'll bring him up. Ann Calhoun.
MS. CALHOUN: Ann Calhoun, Los Osos. I filled out a card to speak on agenda item number 3, which was the proposed settlement. And that's been voted on. It's pointless to comment.

CHAIRPERSON YOUNG: All right. Okay. Ms. McPherson. Mr. Wimer, we'll get to you next, right after Ms. McPherson. Okay.

MS. MCPHERSON: Gail McPherson, Los Osos. I was involved, I've been involved with the CDOs since the beginning when a neighbor came and said, what in the heck is this thing. And I just wanted to note that I think the designated parties in this first round of prosecution, because they are a test case, have some of their rights to a fair hearing denied, because they are the first.

And this is an experiment. This does streamline the process when you get to a settlement. I was hoping that we would get to a settlement that would be adequate, that would work, and then could be something that the entire community could embrace as a workplan in a cooperative manner where they could work together; and it might be something that could eventually signal kumbaya.

I don't think that that is an impossible
goal. And I hope that through these hearings that we get closer to that end. Thank you.

CHAIRPERSON YOUNG: Okay, thank you for your comments. Mr. Wimer.

MR. WIMER: Thank you. First I wanted to correct possibly a misperception. As I was leaving the lectern just a little while ago you quipped just a little bit about, you know, how long have you lived in Los Osos, referring to some of the dissention and controversy.

And I responded back automatically. But I wanted to, just for the record, let you know that I believe we've really been maligned in many ways. And that there is a whole group of us that are not, you know, tuned into getting into controversy, and that's one of the reasons I wanted to get a settlement agreement that everybody could live with.

And I just wanted to have everybody on your Board think for a minute what it would be like if you found yourself in this situation. And you realize there were people on both sides that were very committed. But just imagine at this point that you're faced with an order; and that order could amount, given certain unfortunate set
of circumstances, to $5000 a day. And imagine
that then you're being asked to get into a process
where you're expected to give input and so on to a
County process to get the sewer done. And hanging
over your head are these incredible fines and all
of this onus on your property.

So there is a whole group of us out
there in the middle that want to get the job done,
but we'd like to do it in a way where it is a very
cooporative and mutual way. And we are very
willing to work with your Board and work with the
prosecution team to get it done.

CHAIRPERSON YOUNG: Well, we appreciate
your comments. Thank you. Lawson Schaller, and
Anne Norment, and then Mr. Shipe.

MR. SCHALLER: Lawson Schaller, Los
Osos. Mr. Chair, Board Staff and citizens, I want
to just encourage a more thought-out resolution,
workplan, what-have-you, that most of the
community would accept. A fractured, divided,
confusing approach has been nonproductive.

We need efforts to include and consider
the entire community, not just a small fraction of
people.

Please consider and create pragmatic
steps, simple, clear, pragmatic steps that the
citizens can follow to avoid CDOs, the confusion,
the frustrating aspects for you, I'm sure, as well
as us, of the hearings and all these proceedings.

I think a list mailed out, as was
suggested in a letter, of -- mailed out certified
mail that says, here's what you got to do, real
simple steps. I think you'd find most of the
community would follow it. Those that don't then
need to face the CDOs and other issues. Thank
you.

CHAIRPERSON YOUNG: Thank you for your
comments. Ms. Norment.

MS. NORMENT: Anne Norment, Los Osos.
You know, we understand that the Water Board wants
clean water, and so do the citizens of Los Osos.
However, prosecuting individual citizens for
events that they really don't have control over
isn't going to get clean water in Los Osos.

You know, in order to further that end,
accountability for fixing things needs to be
aligned with the power to do it. Citizens can
realistically get their tanks pumped; they can get
them inspected; they can participate in public
comment and really think very deeply about the
vote that's before them is a good one, and
participate in that process. But beyond that,
they don't have a lot of control, you know. I
doubt this Board, together, could come up with a
sewer treatment plant on their own.

So, I really favor language in the
settlement or the CDOs that addressed the January
1, 2008 deadline. And also tighten up language
about what constitutes the AB-2701 process. As
well as material cessations. Issues like ancient
artifacts, problems holding up the process,
California Coastal Commission evaluation. Other
government agencies that really are beyond the
control of the citizens.

If you ally the power, you know, with
accountability then it's going to go forward.
Otherwise it's just punitive.

CHAIRPERSON YOUNG: Okay, thank you for
your comments. Mr. Shipe.

MR. SHIPE: Rob Shipe. Mr. Jeffries,
you're right, nobody does have a right to
discharge in violation of a discharge prohibition.
However, your agency, under their 1978 MOU with
the County of San Luis Obispo, has
responsibilities of notification to the County of
San Luis Obispo; and there's been evidence submitted that your staff has failed on those responsibilities. And I just want you to remember that as you go forward and discuss these issues.

I've worked very hard over this last year to help unify this Board and my community. I believe we're getting closer; I believe we're getting closer to Mr. Shallcross kumbaya moment. And I encourage you all in this process to keep that in mind, and to continue that process. Because I believe we can get there. Thank you very much.

CHAIRPERSON YOUNG: I guess Mr. Shallcross is never going to forget that moment.

When it comes --

BOARD MEMBER SHALLCROSS: It was a joke.

CHAIRPERSON YOUNG: It was a joke, okay.

Yes. Let me get -- I'll pull your card up; it's at the bottom of the list. Okay.

MR. SHIPE: And I would also like a minute at the other public comment, as well.

CHAIRPERSON YOUNG: Yeah, that should be -- yeah, there's no problem with that. Okay. James Tkach. And then Richard Margenson and then

1029.
MR. TKACH: Good morning. I --

CHAIRPERSON YOUNG: Your name, please.

MR. TKACH: James T. Tkach, Los Osos. I want to let you know I object to this process, holding individual citizens accountable for the failure of the government is not a way to proceed. As one speaker said, I ask you to imagine yourselves in this position.

As a member of the wastewater committee we're actively involved in pursuing a project as best we can, even though the County's taken over. We've reviewed an interim septic management pumping program that we tried to get incorporated into the community. That was something that you guys asked the County to do a long time ago.

This CSD Board and the community is willing to get it done. It would accomplish a lot of the goals of what you want accomplished by the CDOs. The CDOs are punitive in nature. I see it no other way. And I'd ask you to try and convince me otherwise.

We do want a sewer. You know the story. We just didn't want it in the middle of our town. We are proceeding towards those ends, and I ask you not to issue any CDOs. Thank you.
CHAIRPERSON YOUNG: Okay, thank you. Go ahead, Mr. Margetson.

MR. MARGETSON: Richard Margetson. The first thing I want to talk about is as you proceed to the next phase, if you're going to incorporate the requirement for the owners to notify the next occupant of the property, I don't think you have the documentation in place; and I don't think that California Association of Realtors has developed a form to make that notification mandatory. I think you're going to have problems down the road for those people that don't do the noticing. I have a problem with the 30 days after the close of escrow notice.

And there was a question brought up earlier about going after people after the fact. What about people who move out of the State of California? What mechanism are you going to have to possibly find them?

The three-year pumping requirement, subsequent pumping requirement after the initial pumping, I thought you heard testimony at the last hearing from Dr. Wickham, and I'd like to know how that became the standard, the three-year standard.

And then my last comment is all the
money that's been spent on these hearings, on both
the staff level, the CSD level and paying for you
to be here over the last few years, we could have
had a septic management program in place already.
And we could have had a toilet retrofit and
showerhead retrofit program in place in Los Osos.
And I think that would have gone a lot further to
correcting our water problems than what we have
now, by sitting here at these meetings twice a
year, year after year.

Thank you.

CHAIRPERSON YOUNG: Thank you for your
comments. And the last speaker is number 1029.

NUMBER 1029: Mr. Young, Board, Staff,
I'm 1029, interested party. I just wanted to make
two brief comments.

Regarding the settlement agreement and
the hearings this Board will have over the next
day and a half, I would like to request Board
direction back to staff regardless of your
decisions on to issue or not issue CDOs, that we
may continue with staff to reach a better
settlement agreement that will reach out to the
community and not just people possibly accepting
it for other than the pure merit of the agreement,
itself.

A better agreement that alleviates the two main fears that are still in the settlement. One being possible unreachable goal of 2008 due to election certification dates after the 218 vote. And the other to have an agreement instead of an order that we're fearful may be changed unilaterally by the Board.

Thank you.

CHAIRPERSON YOUNG: Okay, what was the last point set down to not be or to be changed unilaterally by the Board.

NUMBER 1029: There is a fear that some order may be changed unilaterally -- I'm sorry, by staff not the Board, I mispoke. There's a fear that an order could be changed once it is signed, whereas the settlement agreement would have to be renegotiated. Unless that's a misconception. There's a fear among people that did not want to settle.

CHAIRPERSON YOUNG: We'll have Mr. Richards address that for you. He's concerned, amongst other things, that the staff may --

MR. RICHARDS: Since this is an order it could be changed by the executive officer under...
the authority -- yeah, it was on -- I can't imagine the executive officer being able to change this settlement agreement without the consent of the Board. Because this is -- the order in this case is based on a negotiated settlement that has been endorsed by the Board.

And while the settlement agreement is going to be enforceable as an order under section 13304, the executive officer would not be able to adjust the terms of that now that it has been adopted by the Board, without presenting it back to the Board again.

And certainly that kind of unilateral adjustment would invalidate the agreement of the --

CHAIRPERSON YOUNG: Right, of the parties.

MR. RICHARDS: -- of the parties --

CHAIRPERSON YOUNG: Right.

MR. RICHARDS: -- who have agreed, have consented to the imposition of these obligations.

CHAIRPERSON YOUNG: I wouldn't expect that we're going to see that happen at all. As far as your other concerns, a cease and desist order is proposed by staff; only the Board can
issue it. Only the Board can change it. The
Board has control over that.

And the Board can revisit a CDO in the
future. Members of the public can write letters,
or can come to the public comment portion of a
Board meeting and address this if they've got some
issues with the CDOs, or they want to see changes
done. That's not impossible to do if the
circumstances warranted it. It's got to go
through staff to do.

And so if, down this line, and I would
anticipate actually, I mean people comment that
we've targeted 45 and what's going to happen to
the rest, I anticipate the prosecution team is
probably going to address that issue after we're
done today and tomorrow, where everyone is going
to be treated perhaps in a couple or one big
chunk. And everyone's going to be on the same
footing. And things will speed up and be
processed.

And if there is a more favorable
settlement agreement that takes place later, we
heard Mr. Sato say the people that settled earlier
would get the benefit of that.
believe that. The concern is once many settle
today or by tomorrow, this may be the final
agreement. And there's several that don't think
the agreement has gone far enough to be even-
handed. The fear is the staff may say this is the
agreement, it's the only one we're going to
entertain now. And they may stop negotiating.

CHAIRPERSON YOUNG: Well, but --

NUMBER 1029: And I guess I'm requesting
Board --

CHAIRPERSON YOUNG: But here's the
problem with that. You have to settle with them,
not with us. We're just reviewing the
settlements. So you have to deal with the
prosecution team on that. We can't tell them what
to --

NUMBER 1029: I guess I'm just -- I
guess I'm asking the Board to perhaps ask them to
keep an open mind and that's all.

CHAIRPERSON YOUNG: Okay, well, I think
that they've heard your concerns, I think. I
don't know how I would enforce that direction, --

NUMBER 1029: Thank you.

CHAIRPERSON YOUNG: -- you know. Okay,
yes.
MR. RICHARDS: Mr. Chairman, it's been brought to my attention that there may be some misunderstanding about the settlement process. And that people may be able to negotiate settlement after the issuance of cease and desist orders against them.

And I would point out that that would not be possible. A settlement is only possible before the CDO is issued, before any enforcement action is taken. It's inherently a compromise that is achieved between the prosecution and the respondent to avoid going through the hearing process in which the adjudication will take place.

Once the adjudication takes place, and a cease and desist order is issued, if, in fact, that is the outcome, then it is too late to attempt to negotiate more favorable settlement terms.

CHAIRPERSON YOUNG: Right. Yeah, my comment was only that because the Board issues the cease and desist orders, I mean it's not impossible for the Board to revisit a cease and desist order --

MR. RICHARDS: Well, that's future --

CHAIRPERSON YOUNG: -- if the
circumstances --

MR. RICHARDS: That is certainly true.

CHAIRPERSON YOUNG: -- warrant it --

MR. RICHARDS: The Board retains the jurisdiction to amend cease and desist orders as it retains the jurisdiction to amend cleanup and abatement orders and waste discharge requirements, as the circumstances warrant.

So the Board does retain control over this, and the Board also would retain control over any proposed enforcement of either the cease and desist order or the settlement agreements.

CHAIRPERSON YOUNG: Okay.

NUMBER 1029: Mr. Chair, may I add my understanding of that language?

CHAIRPERSON YOUNG: Your --

MR. WIMER: And just to clarify, I believe it's -- the settlement agreement's being misinterpreted to some extent. What I'm trying to say is Mr. (Number 1029) does have a very good and legitimate concern about that language where we mentioned the January 1, 2008 date. If, for some reason, there's a hiccup and that doesn't, you know, there isn't a vote that's approved and certified by that time, then it actually falls to
the prosecution team or is it the executive
officer; and then to, at his discretion, grant,
you know, a further extension of that date.

And it's a very discretionary type of
language. I think people are very concerned about
that, and that's why we were so concerned about
the date and wanted to actually build in, as
another person indicated from the community, a
more a benchmark so that the process is understood
and people don't have to go to a CAO.

See, the other thing about the CAO, I
understand, is that the staff and prosecution team
have a lot more discretion over about how that's
enforced. And because it's a CAO rather than a
CDO, then there is quite a bit more discretionary
enforcement action there.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER PRESS: Mr. Chair, I have
a --

CHAIRPERSON YOUNG: As far as the
language in the settlement agreement, you have to
talk to them about that. If you want to come up
with something that you think is more favorable,
more defined, better for this reason, that's not
going to happen today. We've already reached that
agreement. It's been passed.

MR. WIMER: I just --

CHAIRPERSON YOUNG: So, you have to talk to them later; and that would really apply to people coming in after today and tomorrow.

MR. WIMER: Okay.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER PRESS: Mr. Chair.

CHAIRPERSON YOUNG: Yes, Dr. Press.

BOARD MEMBER PRESS: Could I, again, by way of clarifying the settlement language under A.2 in the event that the benefits assessment is not approved by the County before January 1, 2008, dischargers shall cease all discharges no later than January 1, 2011.

My understanding of the settlement agreement was that January 1, 2008 might come; there might not be a benefits assessment. And then the clock starts.

But, what if January 1, 2008 comes and there is a vote, a 218 vote scheduled for March 2008. My read of the language is that the Board, there's that three-year window in which progress towards a treatment facility can be demonstrated, for example, by a benefits assessment happening in
March and then subsequent steps.

And at that point neither the Board nor the executive officer is mandated by the agreement to start issuing penalties or against settlement, parties that settled, right? I mean, in other words, people are getting concerned that the January 1, 2008 deadline won't be met, even though some short months after that there might be some kind of -- there might be a 218 vote.

My read of the language is that if it's clear that there is going to be a vote, it doesn't vitiate the timespan allowed by the -- so, John, could you speak to this? Could you clarify if I've understood it correctly?

MR. RICHARDS: You're saying that there's no mandatory enforcement provision in the event that if they don't approve an assessment.

BOARD MEMBER PRESS: Right. I'm trying to imagine the scenario in which January 1st arrives and --

MR. RICHARDS: And they don't have --

BOARD MEMBER PRESS: -- it's on the March ballot.

MR. RICHARDS: Right.

BOARD MEMBER PRESS: Not on a
December --

MR. RICHARDS: Well, at that point in time they would still have to cease discharging within three years. However, the settlement agreement does provide for the possibility to extend times if circumstances would warrant it.

In other words, if, perhaps, instead of by January, by March they would have the assessment district and be making the requisite progress and be able to, you know, if not catch up, at least approach progress.

At that point the executive officer could extend the times.

CHAIRPERSON YOUNG: You know what, let's -- we'll put that off because that's something that may or may not happen. And we have an agreement that's been agreed to, we've passed on it. I mean I could envision different scenarios here and I don't know if we can address all of them. And it's their agreement.

So, we'll just have to wait and see what happens, and at that point react to it.

Okay, Joe Sparks and then Keith Swanson, the last two speakers. If anyone else wishes to address the Board for a minute who is not a
designated party, now's the time to do it. Go ahead.

MR. SPARKS: Chairman Young and the Board, Joe Sparks. I am a Director of the Los Osos Community Services District, but speaking as a private citizen today.

I do want to share some concerns I have specifically regarding that I don't believe we have a clear mechanism still for these individuals to comply with the discharge prohibition. As we know, this saga is replete with agency decisions that have prevented compliance from these homeowners for complying with the prohibition discharge going back to Coastal's decision almost a decade ago not to issue a CD permit.

And understanding that there is significant change in the law, AB-2701 that occurred subsequent to these enforcement hearings beginning, going back to last year.

This week the County Administrator, David Edge, even stated that the County was not fully committed to do a project in the sense that they had some discretion and no obligation. They have committed the funds and they are proceeding towards a 218 vote.
But without clear authority and obligation for any lead agency to complete a project, there is that possibility out there that these homeowners still are signing settlement agreements, you're issuing CDOs where they have no real means to potentially hook up to a wastewater treatment system.

And I'd hoped this agency, both the Board and through the staff, can communicate that to the Legislature, that concern to the Legislature and the County, that there does need to have this commitment and obligation by an agency that we get a project completed. And I very much want to see a project completed in an expeditious manner. Thank you.

CHAIRPERSON YOUNG: Thank you. Mr. Swanson. And last speaker is Eric Greening.

MR. SWANSON: Keith Swanson, Los Osos. I just find this whole process is a waste of time for our community. It seemed to me it was almost trying to influence a vote, which it did not; two of the directors were reelected.

The CDO recipients have no control over the building of a wastewater project. You can see by the progress being made with the County, AB-
2701, that they're working towards resolving this issue.

The people that were issued this -- some of these people may not even have voted, or may have voted against stopping the project. But they had no control over that. And I just don't understand the logic here in what you're trying to accomplish.

I think everybody in Los Osos wants a wastewater project; they just want one that they can afford.

And I think going through the process that you're going through now, I think you're setting a precedent that you're going to have to oblige every subsequent CDO recipient the same process instead of just doing a blanket CDO to 40,000 whatever, 4000 people.

And my final comment is this Board and staff has prevented public comment at two previous meetings of this Board, which is against -- in violation of the Brown Act and freedom of speech.

CHAIRPERSON YOUNG: Which meetings are you referring to? Up in Monterey?

MR. SWANSON: Monterey --

CHAIRPERSON YOUNG: Let me just say
something about that. Because I was the Chair at
that meeting; it was my decision not to allow it.

When we have a pending enforcement action, in
order for any person to address the Board and give
them information about a pending enforcement
action it's only fair that all designated parties
are present to hear that.

       MR. SWANSON: No, I --
CHAIRPERSON YOUNG: They were not all
present. I made the decision that the designated
parties' rights to hear influence on the Board,
information given to the Board trumped people's
individual rights, if you want to call it, or
privilege to come and speak to the Board at public
comment.

       MR. SWANSON: Well, see, I disagree
because it was an item that was not on the agenda.
They had a right to speak about it.

CHAIRPERSON YOUNG: Thank you for your
comments and your opinion. Okay. Mr. Greening.

       MR. GREENING: Eric Greening, and I
share the concern of Ann Calhoun that you've
actually taken action on the contents of the
settlement agreement before opening it to public
comment.
As I read what you have approved, it appears that for those who sign, those who settle, the ultimate hammer does not go away. It still is there if things don't go right, to the ceiling of $5000 a day. You have removed the floor of $500 a day at your discretion, but the ceiling is still there. The hammer is still there.

And what I'm also hearing is that it's at your discretion to decide as of January 1, 2008, whether circumstances are or are not within the control of the CDO recipients. And I'm wondering what due process rights they forfeit under those circumstances as a result of signing. It seems that signing does forfeit due process rights with the hammer still in place.

But I just want some clarification.

Thank you.

CHAIRPERSON YOUNG: Okay. That is my last card.

MS. TAYLOR: Mr. Young, I would like to clarify something --

CHAIRPERSON YOUNG: Okay.

MS. TAYLOR: Gewynn Taylor. I was denied last Friday the right under public comment to speak on an item that was not on the agenda.
So I, too, was denied my right to speak as a public comment. Thank you.

CHAIRPERSON YOUNG: Last Friday? You're talking about the December 1st Board meeting?

MS. TAYLOR: Yes, sir.

CHAIRPERSON YOUNG: Okay. That was two weeks ago, all right. Okay, that's it. No more interested persons to speak.

I think we ought to just go ahead and break for lunch; we'll come back at 2:00. And then we will begin, I believe, with the prosecution's case.

MR. MURPHY: Mr. Chairman, I think you have general open public comment at 2:00.

CHAIRPERSON YOUNG: Yeah, maybe we'll go ahead and take that before. Thank you. Right. We'll have general public comment before the prosecution team puts on its case.

(Whereupon, at 12:55 p.m., the meeting was adjourned, to reconvene at 2:00 p.m., this same day.)

--o0o--
AFTERNOON SESSION

2:00 p.m.

CHAIRPERSON YOUNG: We are right at 2:00 and we are going to go to a public comment period first before we have the prosecution team commence its case. And I have four cards for the public comment period. And these are comments for items not on today's agenda.

Eric Greening; Ms. Taylor; Mr. Payne, who is not here; and then Mr. Wimer. And if anyone else wishes to address us on anything not on the agenda, please get a speaker card; fill it out; and have it brought up to me.

Did you --

MR. RICHARDS: He wanted to speak, as well.

CHAIRPERSON YOUNG: Okay, you wanted to speak, as well, in public comment, 1029?

NUMBER 1029: Yes.

CHAIRPERSON YOUNG: Okay. Mr. Greening, go ahead, you have three minutes.

MR. GREENING: Thank you. I am Eric Greening from Atascadero. At your last meeting I read language from San Luis Obispo County Measure J indicating the intention to construct a package
wastewater treatment plant to serve a large
development which happens to occupy a flood plane.
And other language preempting any County
department from reviewing or conditioning any part
of the project aside from the minimal requirements
of a ministerial building permit.

Since County Environmental Health would
normally oversee the plans for the wastewater
treatment plant, and is out of the picture, I
asked if your Board could get involved at any
stage sooner than your normal role permitting the
ultimate discharge.

I've heard several answers. At the
meeting Ms. Okun said they could take the risk of
building a treatment plant and then see if your
board would or would not approve the discharge.
Mr. Thomas said the developers had been in contact
with your staff presumably seeking advice and
guidance.

Since the meeting Mr. Packard has
suggested to me that the discharge and the
facility creating the discharge could be subject
to CEQA. Since the County is unable to conduct
CEQA review, that would give your Board the lead
agency role.
I know such a role is unusual for you, but it's not unheard of. Several years back I remember when you exercised lead agency authority relative to proposed land application of sewage sludge near San Miguel, the County having forfeited that role.

So I'm here to ask you if that will be the case in this instance, if you are in a position to receive lead agency status will it take an agendized Board action to do so? Or can staff proceed with initial study with your Board role beginning with the decision of what level of environmental review is appropriate?

I think it would be best if everyone, the developer, the community, your Board and your staff were all on the same page with this. Because I think somebody has to do it, and if it's you, I hope you will take the affirmative action you need to.

Thank you.

CHAIRPERSON YOUNG: Okay, thank you. And I think we did discuss this, Mr. Greening, at the last Board meeting, the one in Monterey.

MR. GREENING: This is a follow-up comment --
CHAIRPERSON YOUNG: Right.

MR. GREENING: -- based on questions that have come up from the responses, both at that meeting and since. Thank you.

CHAIRPERSON YOUNG: Okay, thank you.

And so, Mr. Thomas, where are we with that?

MR. THOMAS: I don't know the answer to the question about will we be lead agency. Harvey Packard might have more information on it.

But, --

CHAIRPERSON YOUNG: Okay.

MR. THOMAS: -- we would wait for direction from our counsel. And some application from the applicant, I believe, Mr. Packard.

MR. PACKARD: Harvey Packard. We possibly could end up being lead agency. It depends on how many other -- if other state agencies also have CEQA responsibilities. For instance, if Fish and Game were CEQA lead and might be able to be co-leads with them, but I suspect we will end up being lead agency for construction of the plant.

CHAIRPERSON YOUNG: You think that that will happen?

MR. PACKARD: Yes.
MR. THOMAS: For construction of the plant, only, not for the project.

MR. PACKARD: Just for the plant, yes.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER PRESS: Could we instruct staff to get a definitive answer about that and then --

MR. PACKARD: Oh, yeah, we're going to have to, yeah. Larry could probably answer better than I could, but that's my understanding at this point.

BOARD MEMBER PRESS: All right, let's have an answer about that.

CHAIRPERSON YOUNG: And let's have that as part of the next EO report.

BOARD MEMBER PRESS: Yeah, right.

CHAIRPERSON YOUNG: The executive officer's report, you can give us a status on that.

MR. PACKARD: Okay.


MS. TAYLOR: Good afternoon. My name is Gewynn Taylor. I'm a resident of Los Osos. This is not December 1st, but that is what I had on the agenda to speak to you about. Los Osos was not on
your agenda. So this is what I was going to tell you.

Since 1994 as the basin plan was being developed there have been three executive officers, Ken Jones, William Leonard and Roger Briggs. Any one of these executive officers could have and should have ordered the implementation of an onsite wastewater management district by the County.

The Los Osos area is the area that is under question now. This Board should mandate an onsite wastewater district now as a mitigation until the sewer project is in and completed.

A realistic time should, for the completion of the sewer project and hookup by all property owners, be at least 2015. Until the project is available for hookup a wastewater management district will address the potential problems of onsite treatment disposal systems.

The Water Board can address the requirements of an onsite wastewater management district for Los Osos if they will set aside the political pressure that has dictated their actions in the past. Thank you.

CHAIRPERSON YOUNG: Thank you for your
comments. Mr. Wimer.

MR. WIMER: Thank you, Mr. Chair. Just a quick point. As I was talking to people outside they were asking me about the agreement, the agreement that they signed in one case, and are about to sign.

CHAIRPERSON YOUNG: Mr. Wimer, this is supposed to be for things not on the agenda.

MR. WIMER: Okay, anyway --

CHAIRPERSON YOUNG: This is the general public comment.

MR. WIMER: Got it. They weren't clear on it. I will put on a different hat at this point, to say I used to work for the Department of Corrections. And there I learned the first principle of law enforcement, it's well schooled. And that is to use only as much force as necessary to obtain compliance.

I think that the Board is not using that in the case of Los Osos. You're not beginning at the lowest level of enforcement, and not really allowing people to retain their self respect by simply asking them to cooperate. I think 90 percent of the people would respond to the pump and inspection if they just received a letter.
You're also assuming that we won't vote for a treatment facility, so you're basically holding a gun to our heads. Further, you are backing people into a corner by threatening their homes at a time when they, at least that's their perception, at a time when they fear losing their homes due to high cost of sewer.

CHAIRPERSON YOUNG: You're not talking about Los Osos, are you?

MR. WIMER: Well, it does sound like that, doesn't it?

CHAIRPERSON YOUNG: It does.

MR. WIMER: Okay, well, in --

CHAIRPERSON YOUNG: Please, this is what concerns me that --

MR. WIMER: -- I will -- all right -- I will --

CHAIRPERSON YOUNG: -- things kind of disintegrate. Anything that's not on our agenda, tell us about it. You have a minute and 20 seconds left.

MR. WIMER: The 2701 is my concern.

It's a process that everybody, you know, wants to see move forward. I'll just read one comment from State Water Resources Control Board Chair

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Tam M. Doduc: We look forward to working with Assemblyman Blakeslee and all the residents."

And so in that spirit I would like to see a lower level of enforcement. Thank you.

CHAIRPERSON YOUNG: Thank you. Mr. Duggan.

MR. DUGGAN: I'm Dave Duggan, Los Osos. As I drove up from getting lunch today I noticed four Members of this Board standing around in the parking lot, or on the sidewalk having a conversation. And I sat there for a little while and I watched.

And I finally got out of my car and walked over to the four Members of the Board and asked if there was a Brown Act violation going here, which I believe is actually a Bagley-Keene Act violation, concerning sunshine laws and such. A perception of bias.

When I asked if there was a violation here their conversation went towards, well, we were just talking about the weather. And I was wondering if I would have to ask about the ex parte conversation going on in this four-person conversation. And the response was but we're just talking about the weather. So, so much for the
sunshine laws.

So I stood there and waited for the conversation about the weather to go on, and I guess it was a private conversation, because a very long pregnant pause happened there, and nothing was said. And so I said, well, I guess it is a nice day and I walked away.

But my question is, if you want to -- why would you want to gather together and present this perception. Perhaps you may be talking about an item on the agenda that you haven't ruled on yet. It really troubles me that that happened. And I'm not trying to put a dispersion on anybody individually. I'm just trying to say that there is a perception.

And I remember at the last hearings for these CDOs that the question of bias came up. And that you guys talked it away, said, well, we're not biased. In reality, when there's a question of bias, you, as the Board, who is being questioned about, there's a question about bias, aren't supposed to make that decision, whether or not you're biased. It's supposed to go to another body for that question of bias.

Now, I'm only going to ask what was the
topic of your conversation, and was it other than
the weather?

Thank you.

CHAIRPERSON YOUNG: Okay. Mr. 1029.

And --

NUMBER 1029: 1029, Los Osos. Board,
staff, I have two items to speak about right now.
The first is having to do with the basin plan.
And I just wanted to state that my understanding
is there were changes in the laws regulating a
challenge of the basin plan.

At the time it was enacted you were
supposed to challenge it when it was enforced upon
someone down the road. But the law changed, and
it stated you had a certain fixed amount of time
from its enactment date to challenge it. And our
town lost out on its ability to challenge that
basin plan in the changing of the laws.

The reason I bring that up is because I
want to ask you, Board and staff, to assist our
town in building this wastewater treatment system.
And the only way we can see to reach a common goal
is if you actually remove the basin plan
prohibitions and incorporate the Los Osos zone to
be the same drawn line as the area that needs the
sewer system.

We currently have people that have to have some type of wastewater treatment plant. Many of us are here today. And half the town, or part of the town that doesn't care if we ever get one or not. And your Board could assist us in reaching this common goal by revising that plan.

Lastly, I want to mention, as I understand the County of San Luis Obispo is having a type of town hall meeting Monday night, this coming Monday, the 18th, at the Los Osos Middle School in Los Osos; 6:00 or 7:00, I'm not sure.

I would like to ask your staff or the Board to possibly open up conversations with the County and actually invite you to our town in the hope to start the process of getting us all a system that anyone can be happy with. Everyone's goal is clean water, I'm sure.

And if we could use a part of your staff, other than the enforcement arm, whether it's the regulatory branch or whatnot, to help us get to a plant that is acceptable for everyone's goals instead of going along towards something we think will work, and then just having staff say it's not acceptable. If you can be at the startup
or the buy-in of this project, I think it will go
a long way towards helping everyone achieve the
goals we all have in common.

Thank you.

CHAIRPERSON YOUNG: Okay, thank you.

I'm just curious, is anyone from staff planning on
attending any of the County meetings?

MR. PACKARD: Harvey Packard, again. We
have discussed it and I haven't talked to Pabo
over in the County yet, but I left him voicemails
to discuss it some more. We can certainly do
that. And I just want to say we have been in
discussions with the County; I plan on continuing
those through this whole process. We're not going
to be standing on the outside watching; we'll be
involved with the 1071, AB-2071 process. So,
we'll definitely be there.

CHAIRPERSON YOUNG: Okay, thank you.

Lisa Schicker, and then Ron Shipe.

BOARD MEMBER SHALLCROSS: So far we've
heard about some more Los Osos issues. Can you
maybe remind people --

CHAIRPERSON YOUNG: Right, no --

BOARD MEMBER SHALLCROSS: -- that it's
not Los Osos we're talking about?
MS. SCHICKER: Okay, with that reminder.

Yes, my name is Lisa Schicker; I'm the President of the Los Osos CSD and I'm speaking as a citizen at this moment.

I don't know if I can have my government time, I was at work, about the hearing, but I'm asking for that because I wasn't here and I wasn't here and I was at work, but I'm just asking. You can so no, but --

CHAIRPERSON YOUNG: Okay, well, this is --

MS. SCHICKER: I know, this is public comment.

CHAIRPERSON YOUNG: Just public comment.

MS. SCHICKER: I know. And I'm going to talk about that.

CHAIRPERSON YOUNG: Okay, you have an attorney that's going to be putting on a case for you. That's when --

MS. SCHICKER: You know, the one-minute, the one-minute --

CHAIRPERSON YOUNG: That' already happened. So, --
MS. SCHICKER: That's what I was referring to in saying I'm sorry I missed it, and I was requesting if I could have my one minute before he begins. That's all. I was just asking.

So, three things --

CHAIRPERSON YOUNG: Go ahead.

MR. RICHARDS: She's a party; she can have as much time as she wants during the presentation.

CHAIRPERSON YOUNG: That's true, yeah, you don't need the one minute. You have a case that's going to be put on, and you can utilize that time to tell us what you want.

MS. SCHICKER: Okay.

MR. RICHARDS: They have an hour.

CHAIRPERSON YOUNG: There's an hour, I believe; right, Mr. Murphy? So you can speak at that time. Okay.

MS. SCHICKER: Okay.

CHAIRPERSON YOUNG: You have three minutes now to talk about things that we're not dealing with today.

MS. SCHICKER: That's right, okay.

CHAIRPERSON YOUNG: Okay? I'm starting. Go ahead.
MS. SCHICKER: Well, the first thing I was going to say, and stop me if I can't say it, is I wanted to commend your Board for allowing us to continue talking and meeting with your staff on a regular basis. Our Los Osos CSD Board has been meeting with your staff, and we're finding it very productive and very helpful. So I wanted to commend you and thank you. That was the first thing.

And the second thing I wanted to talk about was basin plans, I guess in general, not the Los Osos basin plan. But, basin plans can be revised, and I recommend that they should be revised on a regular basis. And I think there would be some benefit to that, and I'd really highly like to recommend that for you. I think that would go a long way towards your goals of clean water in a productive way.

And the third thing I wanted to talk about was this document here called Water Quality Enforcement document. I'm sure all of you are quite aware of this document. It's published by the State Water Resources Control Board. The latest copy I have is February 2002.

And I'd like to refer when I'm speaking
to page 5. And it talks about enforcement policies. And it talks about a term called progressive enforcement. And when the Water Board has people or persons or entities that are not recalcitrant and are cooperative, there is a process that the Water Boards do encourage. And it's called progressive enforcement. Which means that you don't hit the people with the hardest thing first. You hit them with something softer. And I think that this policy is a good one. And I would recommend that it be considered by your Board in all your decisions that you make. Thank you.

CHAIRPERSON YOUNG: Thank you. Ms. Schicker, there is --I believe we have staff that does deal with basin plan changes. And who is that? Is that Mr. Packard, do you know? Or Mr. Thomas?

MR. PACKARD: Harvey Packard here. Lisa McCann --

CHAIRPERSON YOUNG: Okay. So there is someone who deals with that as part of their job. So that's who I would contact and discuss what you think might be appropriate as some change to the basin plan. Okay?
MS. SCHICKER: Thank you.

CHAIRPERSON YOUNG: Thank you. All right, Mr. Shipe.

MR. SHIPE: That was basically my question. I understand there's a 2007 triennial review. I looked at -- it was something I saw on the website, I wasn't quite sure. I was looking for a little bit more information. I guess Lisa McCann would probably be the person to speak with on that. Would that be correct?

CHAIRPERSON YOUNG: Well, is that the triennial review of the ocean plan?

MR. SHIPE: I thought it --

CHAIRPERSON YOUNG: The inland waters plan, or is it --

MR. SHIPE: The basin plan is what it says.

CHAIRPERSON YOUNG: It is the basin plan? Okay.

MR. SHIPE: And so I was wondering how we would get involved in doing something like that, if possible.

CHAIRPERSON YOUNG: Talk to Lisa McCann.

MR. SHIPE: Okay, thank you very much.

CHAIRPERSON YOUNG: Okay. That's it.

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Ms. McPherson, the last but not least, right?

MS. McPHERSON: Hi, Gail McPherson. I was wanting to speak today about grant programs, and I wanted to thank the staff for offering to work with us citizens of Los Osos, to work towards grants and opportunities for funding.

And also as we look into affordability and affordability issues that go along with the sustainability requirements that are now part of the SRF program, it'll be very important for us to do that. And I'm just looking forward to a positive relationship and working towards those common goals.

And thank you very much.

CHAIRPERSON YOUNG: Okay, thank you.

Richard Margetson.

MR. MARGETSON: Richard Margetson. I came today to ask who we need to see to recoup the expenses that the CSD District put out for the last CDO hearing that was stopped basically because an impropriety on behalf of the lead attorney.

My problem is that this wasn't something that you were made aware of at that hearing or after that hearing. This is something that was
brought to the Board's attention last October, down in Santa Barbara.

The District incurred a tremendous amount of expense. The District has financial problems now. The District needs that money because of the fault of somebody from the Water Board Staff. Who do we see to get those funds back?

And then I'd like to add that I think because of knowing about it last October, you have a problem with the ACL hearing being tainted. And the expense of the District incurred for that.

I'll leave it at that at this point. We'll address some things later.

BOARD MEMBER SHALLCROSS: I mean certainly the Community Services District has attorneys. They can tell them who they would seek redress for, for recouping those moneys.

MR. SHIPE: Okay, thank you.

CHAIRPERSON YOUNG: Okay. That closes the public comment period unless there's anyone else in the audience that still wishes to address the Board on any matter not on the agenda. Okay. Let's move on. Mr. Sato, you have --

MR. PACKARD: Actually I'll start.
CHAIRPERSON YOUNG: Yes, okay. And you have a half hour.

MR. PACKARD: Correct.

CHAIRPERSON YOUNG: Right? And we'll start the clock. Okay, you tell me when. Right now?

MR. PACKARD: Okay.

CHAIRPERSON YOUNG: Go ahead.

MR. PACKARD: Good afternoon, Chairman, Members of the Board, and staff on the advisory team. I'm Harvey Packard, lead staff person on the prosecution team. We introduced the team this morning, but I'd like to go a little bit more -- in a little more depth.

Mr. Sato you've met. To my right is Sorrel Marks; she has a bachelor of science degree in natural resources management, which includes courses in environmental engineering, microbiology and chemistry and physics, among others. She has 19 years experience regulating design, site suitability and operations about site wastewater systems. Has taught classes in the basics of wastewater treatment; applied math and industrial waste pretreatment. She has five years experience working at a municipal wastewater facility which
include clarification, biological process similar
to those which take place in onsite facilities.

Matt Thompson holds a bachelors degree
in environmental -- from CalPoly San Luis Obispo.
With an emphasis on water pollution control and
wastewater treatment. He completed intensive
course work in chemistry, bacteriology, fluid
mechanics, groundwater hydraulics, groundwater
measurements, water and wastewater treatment
design, and water -- policy. He's a registered
civil engineer in the State of California. And
has served on staff for five and a half years.

Howard Kolb, though he's not here today,
has also participated with the prosecution team.
He has a master of science degree in public health
engineering. He's also a registered civil
engineer in California. And has over 20 years
experience working with onsite systems. And has
co-authored a number of reports and papers on
septic systems and the fate of bacteria in the
environment.

This afternoon on behalf of the
prosecution team, I want to let you know that
we've worked long and hard on devising an
appropriate enforcement strategy to address the
District's prohibition issues in the Los Osos prohibition zone.

Bringing a case against 45 different parties is procedurally challenging, as we've witnessed this morning. And it's complex, even when the underlying issues are relatively straightforward.

As you heard this morning one petition had already been filed even before final action had been taken by the Water Board.

Let me make a few observations. We understand that there's a lot of history with the use of septic systems in the prohibition zone. We understand there's a lot of frustration on the part of citizens in Los Osos, and especially those that are being asked -- who are here today to receive cease and desist orders. We get that some of the citizens subject to these proposed orders feel there's been a lack of due process.

We understand it's a potential for division in the community as to what the appropriate action should be to end septic system discharges. We understand there's even dischargers, or community members here today who would be cooperative, or would otherwise support a
communitywide response to the septic system
problem and they're being treated the same as
those who are recalcitrant or don't even care.

We get that some of the community
members who have already paid into an assessment
for a community sewer proposed by the CSD feel
that they've done everything practically possible
to end their reliance on septic tanks and feel
that the proposed CDOs against them personally is
unnecessary and unfair.

In short, as we saw this morning, we
understand there's a lot of misunderstanding. We
believe there's been a great deal of
miscommunication about the underlying facts and
our motives in bringing these proposed cease and
desist orders to you today.

But what we'd like to say, and what is
paramount to us, is that the water quality in the
prohibition zone has not improved since 1988 when
the prohibition took effect. A concrete solution
for addressing those water quality impacts is
promised once again through the Blakeslee process,
but it's still potentially elusive.

We acknowledge that the new process has
been put into place by AB-27 and we want that
process to succeed. At the same time we understand that the new process is in its nascent stages and that there are a number of things that need to occur in the future to bring the promise of AB-27 into a concrete functioning community wastewater collection and treatment system that addresses the illegal discharges.

Despite the local agencies to date may have failed citizens of Los Osos in developing a reasonable alternative to the use of septic systems in the prohibition zone, the law makes clear that each user and owner of an onsite system is ultimately responsible for compliance with the law, and is liable for the consequence of any noncompliance.

We come to you this afternoon with a straightforward approach to addressing the prohibition zone issue. The proposed cease and desist order is not the most stringent requirement that we could place on those dischargers. However, under the circumstances we believe it to be a fair and reasonable approach to putting a community on the road to achieving compliance with the basin plan prohibition.

As we heard this morning, concurrently
with preparing these enforcement actions your staff also developed a settlement approach for achieving the same goals sought by the cease and desist orders. The opportunity to settle was offered to every potential CDO recipient.

As you heard this morning those terms were fair and reasonable. Those who have agreed to settle did so without certainty that the Board would adopt the proposed order, or that that would even -- or that the hearings would even come to completion. We ask that you proceed to the completion of this process in fairness to those who have settled.

As to the dischargers who have determined not to settle on the terms offered, we are prepared to move forward on their individual cease and desist orders. We believe that the evidence is undisputed that their use of a septic tank system within the prohibition zone violates the discharge prohibition. And that the proposed remedy provided by the orders is fully justified.

To the extent that we can clarify aspects of the proposed CDOs based on comments from the dischargers, we did so by submitting the revised CDO template on December 1st.
At the end of these proceedings we ask that you issue the proposed CDOs to each of the respondents.

Matt Thompson will now make a short presentation, after which the prosecution team's presentation will be concluded.

MR. THOMPSON: Thank you, Harvey. Good afternoon, Chairman Young and Board Members. I'm Matt Thompson with the prosecution team. I prepared the technical and scientific arguments for the prosecution team contained in your written materials. I'm not going to rehash those arguments at this point, but I am prepared to defend them should they be challenged during the individual hearings. The prosecution team trusts that you have already heard our case through our written submittals.

We understand the issues before you are simply, one, whether the persons named in the proposed cease and desist orders are discharging or threatening to discharge in violation of the basin plan prohibition. And, two, whether the requirements of the proposed cease and desist order are the appropriate remedies for these violations.
I believe the answers to these questions should already be clear. So I am simply going to take a few minutes to highlight some important facts, briefly describe Assembly Bill 2701, and then summarize the proposed cease and desist orders for you.

Here are some of the important facts of this case. First, multiple studies and a wealth of monitoring data demonstrate the continued septic system discharges in the densely developed areas of Los Osos/Baywood Park have degraded and continue to degrade water quality. The Los Osos/Baywood Park prohibition zone was adopted in 1983 and remains in effect.

Second, local government has not complied with the Los Osos/Baywood Part discharge prohibition for over 20 years.

Next, multiple enforcement actions, including cease and desist orders, time schedule orders, and administrative civil liability have not compelled local government to solve the problem thus far.

Next, as dischargers, individuals are responsible for their septic system discharges. Lastly, there is no dispute that the persons named
in the proposed cease and desist orders are
discharging from their septic systems and
violating the prohibition.

   Here's a map of the prohibition zone
with the location of the designated parties'
properties depicted by red dots. You can see that
all 45 properties are located within the
prohibition zone. If necessary, I'm prepared to
show you later where each individual designated
party is located.

   Considering these facts, we believe the
proposed cease and desist orders are the
appropriate next step to achieve compliance.

   Before I describe the cease and desist
orders for you, it's important to consider recent
special legislation, Assembly bill 2701 authored
by local Assemblyman Sam Blakeslee. The Governor
has signed this important legislation into law and
it becomes effective on the first of the new
year. The full text of this legislation is
included with our legal rebuttal memo.

   In short, Assembly bill 2701 authorizes
the County of San Luis Obispo to take over the
community wastewater project. It contemplates the
County will prepare and submit a proposed
assess the vote to Los Osos property owners to pay for the facilities. According to County Staff this will happen in 2007. This benefit assessment is essential for the County to have security that the community will pay for the project.

From our perspective a positive benefit assessment vote would also demonstrate that the community is committed to eliminating its illegal septic system discharges.

The legislation contemplates that after approval of the benefit assessment the County then will consider several relevant factors, such as the availability of sufficient financing, before it finally commits to constructing and then temporarily operating the community wastewater system.

This benefit assessment and due diligence process will take some time, and it will affect the ability of the designated parties to meet our originally proposed compliance deadline of January 1, 2010.

Considering this legislation and written submittals by designated parties, we are proposing the following requirements and the cease and desist orders. These CDOs I will describe are
found in your written materials as an attachment
to our legal rebuttals memo.

First, the proposed CDO is clear that as
long as the process contemplated by AB-2701 is
moving forward there is no specific date to cease
discharging from the septic systems. There is no
requirement in the CDO that the community
wastewater system be completed by any particular
date. Contrary to what some designated parties
may say, the CDO is not intended to force the
community to adopt the Tri-W site for the location
of its wastewater treatment plant.

Now, while this Assembly bill 2701
process is promising, completion of the community
wastewater system is not guaranteed by this
legislation. For example, if the benefits
assessment does not happen the project will not
proceed.

So if the AB-2701 process does not move
forward the cease and desist order has an
alternative to comply with the basin plan
prohibition. This alternative is a firm date to
end septic system discharges. This discharge
cessation date becomes effective if either the
County of San Luis Obispo fails to approve the
benefits assessment by January 1, 2008, or if
during the project there is a material cessation
of work.

Let us be clear, though, that to cease
the discharge does not mean to vacate the
property. There are many ways to cease a septic
system discharge. Here's how this would work: If
the benefits assessment fails by January 1, 2008,
the discharger will be required to cease its
septic system discharge by January 1, 2011. If
there is not a community wastewater system in the
works by 2008 we believe this additional three
years to fully end the illegal septic system
discharge is sufficient.

If the benefit assessment is approved,
but then later there is a material cessation of
the project, the discharger must cease its septic
system discharge by January 1, 2011, or within two
years after receiving notice of material cessation
from us, whichever is later.

As for this material cessation standard,
we believe it appropriate that you, the Board, as
opposed to staff, make that determination. So if
there were a work stoppage, we would come back to
you in a public meeting such as this, and ask that
you make ask that you make a determination as to
whether it constitutes a material cessation.

And, of course, if the community
wastewater project continues to completion, and
assuming the discharger connects into the system,
the discharger's violation of the basin plan
prohibition is resolved.

We believe these requirements are very
reasonable and ask that you adopt the cease and
desist order for those dischargers who do not
reach the settlement agreement with the
prosecution team.

Thank you.

CHAIRPERSON YOUNG: A quick question and
I'll stop the clock for you. So this does mean
that if there was a material cessation in December
of 2010, then there would be an additional two
years beyond that date to December of 2012 to
complete the project?

MR. THOMPSON: It is a whichever-is-
later statement, yes.

CHAIRPERSON YOUNG: Okay, so whichever
later could be beyond 2011.

MR. THOMPSON: Correct.

CHAIRPERSON YOUNG: All right. Go
ahead.

MR. PACKARD: That's it, actually. I do have one addition. We propose to add the same language regarding the County's inspection form to the cease and desist order, because it's not in there currently.

BOARD MEMBER PRESS: Question.

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER PRESS: Actually I think Gary was first, go ahead.

CHAIRPERSON YOUNG: Go ahead.

BOARD MEMBER SHALLCROSS: Go ahead.

BOARD MEMBER PRESS: Could you go over the compliance consequences, what are you -- just remind us of that. And, in particular, the issue of mandatory minimum penalties, ceiling and floor; there's been a lot of talk about that, and I'd like you to address it. Thanks.

MR. THOMPSON: At the end of the proposed CDO template, it's exhibit, I think, C in the legal rebuttal. It says: failure to comply with the provisions of this order may subject the discharger to further enforcement action including assessment of civil liability under section 13268 or 13350 of the Water Code. And referral to the
Attorney General for injunctive relief and civil
or criminal liability."

Now, it would be quite likely that if we
were to pursue penalties we would first pursue
penalties under Water Code section 13350. And
there are provisions in 13350 for penalties of up
to $5000 per day. And there is some relatively
new language in 13350 that calls for a -- unless
there is a consideration of certain factors that
justify it, it calls for a minimum penalty of $500
per day.

MR. PACKARD: That's a minimum penalty
if the Board decides to act. There's no mandatory
penalty with this violation.

BOARD MEMBER PRESS: Right, so following
up on that, if the cessation date came would the
penalty phase come back before the Board for a
hearing? Is this automatic, or --

MR. PACKARD: It's not automatic. Staff
could bring a penalty hearing before the Board.

But it's not automatic or mandatory.

BOARD MEMBER PRESS: I should ask John
about that, is that something that is at the
discretion of the Board, or is it -- or does it
have to be in the language of CDOs?
MR. RICHARDS: Violation of a CDO, or alleged violation of a CDO does not automatically result in imposition of liability. That such a circumstance can be brought into play if the Board proceeded under 13308, which is a specific statute that allows the Board to pre-establish liabilities in the event that there is an anticipated breach of requirements. But that is not the standard approach --

BOARD MEMBER PRESS: Well, what --

MR. RICHARDS: -- violation of the cease and desist order. The violation of the cease and desist order, in order to result in liability, would have to be preceded by the issuance of a complaint alleging violations of the cease and desist order, together with a recommendation for assessment of liability that would then come on before the Board in a hearing. And the Board would consider the factors in 13350 and determine what amount of liability, if any, would be appropriate for the alleged violations of the cease and desist order.

BOARD MEMBER PRESS: All right, thank you. Go over again the mandatory minimum. You said it was 500, but not?
MR. RICHARDS: This is -- I'm not sure that there is a mandatory minimum in this situation. There is a mandatory minimum of $500 where there has been a violation of a cleanup and abatement order; however, in this case the allegation would be that there have been violation of a cease and desist order in which case I'm not aware that there is a $500 minimum liability.

I think this concept came into the settlement agreement because the settlement agreement involves enforcement as a cleanup and abatement order. And therefore, under ordinary circumstances, there would be for violation of the terms of the settlement agreement treated as a cleanup and abatement order, there would be the $500 minimum liability.

MR. SATO: That is correct. I think Mr. Thompson simply misspoke when he talked about the application and the minimum penalty for the violation of a cease and desist order.

CHAIRPERSON YOUNG: Anything else, Mr. Packard? You have 16 minutes left.

MR. PACKARD: Not at this time.

CHAIRPERSON YOUNG: Okay. Now we have cross-examination by designated parties of any of
the prosecution team's witnesses.

Why don't we just start with Mr. Murphy, since you're an easy target. We'll start with the CSD and then -- and this doesn't come off of their time, does it? No, it doesn't come off their time, okay. And then we'll just proceed, whoever wants to cross-examine these witnesses, just raise your hand as we go down the line.

Okay, Mr. Murphy, why don't you begin.

MR. MURPHY: I'd just like to ask a couple questions of Mr. Thompson, if I may. You had mentioned that it's undisputed that these individuals are discharging into the groundwater. Have you visited any of the specific sites to insure that the septic systems are actually in use and are actually discharging into the groundwater?

MR. THOMPSON: No. I have visited the prohibition zone; I'm familiar with the area.

MR. MURPHY: Thank you, but with regard to any of the, I believe there's somewhere south of ten defendants today -- any of those ten defendants, there's no actual inspection to insure that they are actually using their septic system rather than having already adopted some kind of other alternative system on the property?
MR. THOMPSON: We don't have waste discharge requirements for those individual systems. I don't have inspection authority like I do with other facilities we operate, so I haven't inspected them, no.

MR. MURPHY: Okay, thank you. With regard to Assembly bill 2701, I know that the most recent copy of the CDO has been amended in light of AB-2701. At what point did you or did your staff determine that AB-2701 would have an impact on these orders?

MR. THOMPSON: I'm sorry, I don't recall.

MR. MURPHY: Okay. And I only ask that, I guess I'm trying to figure out whether if these hearings had gone forward as anticipated on November 2nd, whether they would have taken AB-2701 into account, or whether we might be dealing with some sort of order that would be in conflict with AB-2701.

But if you don't know, then I apologize. I believe that's the last question I have, Mr. Chairman.

CHAIRPERSON YOUNG: Was that a question or a statement?
MR. MURPHY: No, that's -- I apologize
for asking -- okay, he doesn't know, I'm finished.
Thank you, Mr. Chairman.

CHAIRPERSON YOUNG: Okay. Ms.

McPherson, I'll take you next; and then any other
designated parties after you.

MS. McPHERSON: Okay. Thank you. Gail
McPherson for Laurie McCombs. I wanted to ask if
there -- again, this is probably a duplicate of --
but I wanted to ask whether they're aware of any
data that was collected on Roy McCombs' property,
or other properties in Los Osos?

MR. THOMPSON: The Los Osos Community
Services District has a network of about 26
monitoring wells that represent groundwater
monitoring throughout town. That groundwater
data, we contend, is representative of the area
bounded by that monitoring well network.

We do not have data collected from
immediately beneath Laurie McCombs' property, no.

MS. McPHERSON: Okay, so the 26
monitoring wells, that series of monitoring wells,
you're using that to represent over 5000
properties, is that correct? Is that what I'm
hearing?
MR. THOMPSON: The monitoring data that's provided by the Community Services District represents shallow groundwater throughout Los Osos, including some of the areas outside the prohibition zone.

MS. McPHERSON: Can you tell me what the difference is, what's the net difference in the contaminant load reaching the groundwater between a functioning and a nonfunctioning septic tank?

CHAIRPERSON YOUNG: I think I'll need a little clarification. What do you mean by functioning versus nonfunctioning?

MS. McPHERSON: Well, one of the CDOs' terms is that we need to make sure we have functioning septic tanks. And what I'm asking is if there's a difference in the contaminant load to that groundwater between a functioning and a nonfunctioning septic tank. And, you know, -- do you have information on the net difference.

MR. THOMAS: Okay. The nitrate loading from a functioning versus a nonfunctioning septic system would be roughly the same. But, the reason -- there's another reason for the interim compliance requirement to pump out and make sure the system's operating properly, and that's that
there are areas of town where there's very shallow groundwater. And we know that leachfields and such might be failing. And there are other threats to water quality than just nitrate.

MS. McPHERSON: So the CDO pumping inspection program would not have a significant positive effect on the water quality before the community sewer is built? Is that a correct characterization of what you said?

MR. THOMPSON: No.

MS. McPHERSON: I'm sorry. Then can you answer will it have a significant positive effect on the water quality before the community sewer is built?

MR. THOMPSON: In the sense that you are correcting leachfields and such that might be failing that are threatening surface water quality, or that are discharging directly into groundwater, yes, there will be improvement to water quality.

MS. McPHERSON: The CDOs don't include an inspection of the leachfield. I don't know if you are aware of that. But it requires the septic tanks to be pumped and inspected. So I don't know that that is an issue for the surface water.
But we're asking about the water that's in the -- that you're using from the 27 monitoring wells, that is characterized as polluting from this address.

Isn't the basic problem septic tank density? I think I read that in the staff report? Not whether or not a septic tank is functioning or not, but the density?

MR. THOMPSON: Based on my read of the data I believe that the factor that is causing -- the greatest factor causing groundwater contamination is septic system density. That's why we are requiring elimination of the septic system discharges.

MS. McPHERSON: And we aren't opposing that, but we are wondering, the conclusion in that report states that the requirement of the CDOs are reasonable interim measures to reduce the water quality effects of the ongoing illegal septic system discharges.

So that isn't really true since it's a factor of density and not a factor of whether a septic tank is operating correctly or not. Is that right?

MR. THOMPSON: Could you restate your
question, please?

MS. McPHERSON: Yeah, it's a quote from the staff report. The conclusion, the requirements of the CDO are reasonable interim measures to reduce the water quality effects of the ongoing illegal septic system discharges.

Based on what we've just said, it's a factor of density and not a factor of whether or not a septic tank is operating properly.

And so that statement isn't really true. Septic tanks, whether they're pumped and inspected once in the next three years before a treatment plant comes about, --

CHAIRPERSON YOUNG: Well, let him answer the question first.

MS. McPHERSON: Okay, I was just trying to --

CHAIRPERSON YOUNG: Okay, and if you have a follow-up question, --

MS. McPHERSON: Okay, I was --

CHAIRPERSON YOUNG: -- you can do that.

MS. McPHERSON: -- wasn't sure if he got it. Okay.

CHAIRPERSON YOUNG: That way we can keep things kind of in order.
MR. THOMPSON: I said that I believe the primary factor affecting groundwater quality is septic system density. There are other factors, you know, separation to groundwater, that sort of thing. But, as I said, there are other problems with failing septic systems in Los Osos, such as surfacing septic tank effluent.

And we believe the interim compliance requirement will solve those problems. And therefore, will improve water quality.

MS. McPHERSON: Do you have records on the surfacing septic tanks? I did research and could not find anything recent where there are septic tanks that are surfacing, have surface water problems --

MR. RICHARDS: Are you asking a question, --

MS. McPHERSON: Yes.

MR. RICHARDS: -- or are you testifying?

MS. McPHERSON: No, I'm asking him if -- I'm sorry, I apologize for that. Do you have records from the County or from any source that there's surfacing water from septic tank failed leachfields?

MR. THOMPSON: The County is lead agency
for regulation of septic systems there, and in the County. My understanding is that they are trying to collect information on failing septic systems. That was the purpose of the form that we discussed earlier.

I do not have -- we do have indications from the County of some septic system failures. But I would not characterize that as a complete record of all septic system failures.

MS. McPHERSON: In the staff report it says, going to reduce water quality effects; and can you tell me, reduce by how much?

MR. THOMPSON: Could you please tell me which page you're referring to for context?

MS. McPHERSON: I'm sorry, I don't have it in front of me. As a matter of fact, my client didn't get that mailing. It's the staff report.

MR. THOMPSON: You said it will reduce water quality effects; could you please be a little more specific?

MS. McPHERSON: It had to do with the requirements of the CDO are reasonable and interim measures to reduce the water quality effects of the ongoing illegal septic system discharges. That's the quote.
And so I'm asking, reduce the water quality effects, what does that mean, reduce by how much?

MR. PACKARD: I think we'll agree that interim measures discussed in the CDO are not going to have the same effect as ceasing discharge. There's no doubt that ceasing discharge is the real effect we're looking for.

The interim measures are just interim in an effort to improve what water quality can be improved until the sewer system's in place.

CHAIRPERSON YOUNG: But I think her question was trying to get in point whether you have a predetermined amount of reduction in pollution. Anticipated.

MR. PACKARD: We have not quantified that, no.

MS. McPHERSON: So my question is, okay, so it hasn't been quantified as a benefit. And I think everyone believes that pumping septic tanks is a good idea. But the conclusion is that it doesn't really improve groundwater quality, is that correct? If density is the issue.

MR. THOMPSON: Well, you will be removing pollutants from the basin. So there will
be some very minor reduction in pollutant loading
to groundwater.

MS. McPHERSON: You mean the couple
hundred gallons of water that's being pumped out
of the septic tank by a resident between now and
2011? Is that what you mean?

MR. THOMPSON: Well, it's usually
between 1000 and 1500 gallons, but, yes.

MS. McPHERSON: Okay. Are you familiar
with the Yates and Williams study?

MR. THOMPSON: The Yates and what?

MS. McPHERSON: I believe it's -- is it
Williams? Yates. The Yates studies. I'm sorry,

MR. THOMPSON: Off the top of my head,
no. I may have seen it in the past, but unless
it's in front of me, I'm sorry.

MR. PACKARD: Do you have the date of
that study?

MS. McPHERSON: I do for later, but I
just wanted to ask from a hydrogeologic
perspective, it was noted in the Yates and
Williams study that there was going to be no
significant changes in the upper aquifer based on
the proposed cease and desist order.
And essentially they were saying that it was going to take --

CHAIRPERSON YOUNG: Well, are you --

MS. McPHERSON: Okay.

CHAIRPERSON YOUNG: -- going to follow this with a question?

MS. McPHERSON: Okay, I follow you with a question.

CHAIRPERSON YOUNG: If you are, then I'll let you make a statement. But, --

MS. McPHERSON: Okay.

MR. SATO: Well, I'll object --

(Parties speaking simultaneously.)

MS. McPHERSON: Is it true --

MR. SATO: -- not based upon any fact --

MS. McPHERSON: -- is it -- is it --

How about this. Is it true that the water quality improvements will take a few decades, even with a sewer in place, for improvement?

MS. MARKS: Can I go ahead and answer that?

MR. THOMPSON: Did she say permits?

Yeah, please, go ahead.

MS. MARKS: The various hydrologic
studies that have been done to date indicate that
the water quality improvements would begin
immediately; but the shallow groundwater would not
be restored to drinkable quality for a few
decades. Estimated at four decades.

MS. McPHERSON: Can you tell me kind of
how many milligrams-per-liter reduction in the
nitrogen levels say in 20 years?

MS. MARKS: No, I wouldn't attempt to
guess at that right now.

MS. McPHERSON: Okay, thank you. So the
interim plan really offers no significant effect
on improving water quality?

MS. MARKS: I think Matt's already
answered that several times over.

MS. McPHERSON: Is that an answer?

MR. THOMPSON: I think I answered
previously that there would be some limited
improvement in water quality with the interim
compliance requirement.

MS. McPHERSON: But that's not
quantified?

MR. THOMPSON: Correct.

MS. McPHERSON: There were some
questions about progressive enforcement. Do you
have any other choices in how you might enforce
upon the people of Los Osos and have the same
result, pumping septic tanks and hooking up to a
sewer, which were the two requirements? Can you
describe what progressive enforcement actions
might be available other than a CDO?

MR. PACKARD: I believe that the only
method that the Board has available to actually
establish a date for hooking up to a sewer would
be through a 13308 time schedule order, or a cease
and desist order or a cleanup or abatement order.

MS. McPHERSON: There is not an option
to send a notice to comply, or some sort of more
informal -- I had read that there's --

MR. PACKARD: Not with an enforceable
date in it, no.

MS. McPHERSON: I saw that the date
wasn't going to be enforced in the presentation.
So that in any case you would not have to stop
pumping -- I mean stop discharging at 2011. And
can you clarify that for me? Because it looks to
me like there's an enforceable date there.

And yet in your presentation you made it
seem as though people would not have to stop
discharging and move out of their houses.

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MR. PACKARD: Providing the process envisioned in the Blakeslee bill is proceeding, there is no date in the CDO. If that process is not proceeding, then there is an enforceable date.

MS. McPHERSON: And did you meet, in the process of putting out the dates, with the County and ascertain when the 2008 whatever that date is for the 218 vote, if that was realistic?

MR. SATO: I think that we did talk with the County. My understanding is that the County intends to have their benefits assessment ready for approval by the board of supervisors as of December 2007. So that is why we picked the January 1, 2008 timeframe.

MS. McPHERSON: Okay. I think that's all I have right now. Thanks.

CHAIRPERSON YOUNG: Okay. Are there any other designated parties that wish to ask cross-examination questions of the prosecution team witnesses? Go ahead, and then just tell us your name for the record.

NUMBER 1034: My name's 1034.

CHAIRPERSON YOUNG: 1034. Okay.

NUMBER 1034: Yes. My first question is the prosecution --
CHAIRPERSON YOUNG: Is your mike on?

NUMBER 1034: Thank you. The prosecution states that there have been miscommunications between the County and the Regional Water Board. Could you elaborate on that?

MR. PACKARD: I believe I said something along the lines of we understand and believe there may have been miscommunication and misunderstanding between the community and the prosecution staff about why we're bringing these cases before the Board today. I don't believe I mentioned the County.

NUMBER 1034: Okay. And you also state that local government has failed. Has the agency, has this agency lived up to all their promises and their obligations?

MR. SATO: Objection, it's argumentative.

CHAIRPERSON YOUNG: Sustained.

NUMBER 1034: Thank you.

CHAIRPERSON YOUNG: Mr. Rochte.

MR. ROCHTE: Yes, sir.

CHAIRPERSON YOUNG: Oh, okay, good.

MR. ROCHTE: This is regarding -- Tim

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Rochte, Tim Rochte, R-o-c-h-t-e.

This is just regarding the form, the septic tank inspection form. At the closing of the presentation Mr. Packard referenced, I believe, the action the Board took on recommending using the County form.

And maybe it's too late, but I wanted to get a plug in for using the form that your staff brought up. Or is it too late?

CHAIRPERSON YOUNG: Well, this is the time to ask questions of the prosecution team witnesses.

MR. ROCHTE: Can you use the form that you guys developed instead of the County form?

MR. PACKARD: We could.

MR. ROCHTE: I'd just say great job because they listened. When it first came up they said they wanted a form. I contacted Michael and Matt and said, you guys need to have your own form, because I'd gone to the septic tank people in Los Osos and they said, we don't know what form they want to use. You know, so we said, okay, how about the form that you guys use. And they said that's okay if it does the things that we ask for.

And I did that in good faith, knowing
that you hadn't ruled on, you know, this interim compliance business. But I just wanted to say thanks to the staff. If you can, can you; and if you can't, great. Because I think it will be less costly to the people out in Los Osos because Al's and the others charge $85 to process the County form; it's multiple pages. This one looks a little more streamlined.

CHAIRPERSON YOUNG: Well, that's an interesting bit of information about the form. You mean they may not charge --

MR. ROCHTE: You know, I work for the state --

CHAIRPERSON YOUNG: -- for using our form? But they may charge for using the County form? Is that what you're getting at?

MR. ROCHTE: That's what my understanding is from talking to them. If you could, you know, or do whatever it takes to not add more charges. You know, 85 bucks, I could buy a pair of shoes for that.

CHAIRPERSON YOUNG: All right.

MR. ROCHTE: Okay, you know, it happened so fast before I didn't get a chance to say it, so thanks for your forbearance.

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CHAIRPERSON YOUNG: Okay. Mr. Duggan.

MR. DUGGAN: Dave Duggan representing Cinthea Coleman.

CHAIRPERSON YOUNG: And you're representing Cinthea Coleman?

MR. DUGGAN: That's right.

CHAIRPERSON YOUNG: Go ahead.

MR. DUGGAN: Actually I'm asking for a procedural information first, that Cinthea Coleman has indicated to me, after -- during the lunch period, that she may be wanting to sign on to this --

CHAIRPERSON YOUNG: Settlement.

MR. DUGGAN: -- settlement.

CHAIRPERSON YOUNG: Okay.

MR. DUGGAN: But she wishes to talk that over with me; and also to view the downstream from the video, which it's not a live tv and so she wasn't able to actually see what's going on here. And I'm going to get a copy tonight.

While I have opportunity to cross-examination, if it turns out that she feels that she can't do the settlement, after reviewing the video, will I have time to do this cross-examination tomorrow, if I can get an extension
till tomorrow?

CHAIRPERSON YOUNG: No. This cross-

examination is going to take place now.

MR. DUGGAN: The problem is --

CHAIRPERSON YOUNG: If she needs time to

think about this, you know, we're not getting to

her CDO until later, obviously. And you

probably --

MR. DUGGAN: And would that be a good
time to ask --

CHAIRPERSON YOUNG: Not till tomorrow.

If she talks to the prosecution team before the

presentation of her CDO, and wants to agree to

settle, that's fine.

But you should avail yourself of the

opportunity now to do the cross-examination.

MR. DUGGAN: And we're going to do that.

On the website for the State Water Board I believe

for the regional board there's enforcement

policies. I think Lisa Schicker spoke towards

that earlier.

And the first section, -- well, let's go

back over to here -- this section she talked about

progressive enforcement. And I want to go back to

1983 --
CHAIRPERSON YOUNG: Well, Mr. Duggan,

let me just stop you for a second.

MR. DUGGAN: And I'm going to ask a

question.

CHAIRPERSON YOUNG: Okay, as long as

you're going to end up with a question, that's

fine. But we don't want to hear a statement.

MR. DUGGAN: Okay. Back in 1983 --

(Pause.)

CHAIRPERSON YOUNG: Go ahead, Mr.

Duggan.

MR. DUGGAN: Back in 1983 when 8313 was

a resolution passed by this Board, has staff

considered the fact that in doing this enforcement

the way it is now, that it has not been fair

because of the fact that these CDOs probably

should have been brought forward years ago? In

fact, around 1988, '89? Have you taken that into

consideration that the fairness of bringing the

CDOs now is not fair because the CDOs were not

brought forward at that previous time?

MR. PACKARD: I think you can say that

this enforcement is somewhat progressive because

in 1988 we did issue -- that right year exactly,

but we did issue cease and desist orders to the
County.

MR. DUGGAN: And when the County failed to forward a wastewater treatment facility for, I would say, another ten years, at any time did the Regional Water Quality Control Board consider issuing CDOs to individuals as they are doing now?

MR. PACKARD: I believe there are staff reports from 1994, or 2004 and maybe previous, where we did explain to the Board the various options for enforcement, including individual enforcement.

MR. DUGGAN: Prior to the LOCSD being created, at anytime did the subject of CDOs to individuals ever come up with staff or the Regional Water Quality Control Board?

MS. MARKS: Since we're talking about prior to 1998, it is a stretch of my memory, but I believe there have been other staff reports prior to formation of the CSD that have addressed the potential of all enforcement options available at the time.

CHAIRPERSON YOUNG: But his specific question is did staff consider bringing individual enforcement actions against homeowners, if I'm not mistaken. That's what he's looking at. That's
what his question is.

MS. MARKS: Prior to formation of the CSD?

CHAIRPERSON YOUNG: Yes.

MS. MARKS: I don't remember when exactly, but I believe it was considered with other enforcement options. And while the representative government was moving forward with a project, it was not considered the most effective option.

MR. DUGGAN: Were these options voices in a public forum? Or were they just staff reports?

MS. MARKS: If they were in a staff report, that is a public forum, I believe it would be part of our agendized public hearing. But as I said, I can't remember the specific time, so I really can't be specific about it.

MR. DUGGAN: And your own enforcement policy, I believe, is section F, environmental justice. And it talks about the state and regional board shall promote enforcement of all health and environmental statutes within their jurisdiction in a manner that insures the fair treatment of all people of all races, cultures and
income levels, including minority populations and
low-income population in the state.

  In considering these CDOs did you
consider minority population, or the low-income
residents in Los Osos?

  MR. PACKARD: We haven't made any
specific findings on any of those -- either of
those subjects.

  MR. DUGGAN: You are aware that State
Water Resources Control Board is participating and
fully supports the efforts of the California
Environmental Protection Agency working group on
environmental justice, aren't you?

  MR. PACKARD: What was the question?

  MR. DUGGAN: Are you aware that the
State Water Resources Control Board is
participating fully supporting the efforts of the
California Environmental Protection Agency working
group on environmental justice? It's right out of
your own enforcement policy.

  MR. PACKARD: I'm sure I'm not up to
date on everything the State Water Board's doing
with respect to --

  MR. DUGGAN: Can you tell me how many
minorities do reside in Los Osos?
MR. PACKARD: No.

MR. DUGGAN: Can you tell me how many low-income households there are in Los Osos?

MR. PACKARD: I couldn't even if you gave me the definition of low income.

MR. DUGGAN: Well, low income is basically -- is a standard set by both the federal and probably the state. But do you know, even can venture to guess what those are? Have you taken any consideration -- excuse me, have you taken that in consideration?

MR. PACKARD: Not with respect to these cease and desist orders, no.

MR. DUGGAN: But you are aware what I have just talked to you about is in your enforcement policy, aren't you? Or are you not?

MR. PACKARD: Yes.

MR. DUGGAN: And you have not considered these factors in issuing the CDOs?

MR. SATO: The response of the prosecution team is that we were not under the impression that there is any environmental justice issues related to the issuance of these CDOs.

MR. DUGGAN: Well. On more than one occasion I'm sure there's people that have asked
staff what they can do to bring themselves into compliance. And I was one of the persons who has only been an interested party, but now I'm representing Cinthea Coleman. I asked what it would take to bring themselves into compliance.

And I remember asking Sorrel Marks this question in our first conversation. Do you remember that conversation, Sorrel Marks?

MS. MARKS: You'll have to be a bit more specific. We've had numerous conversations.

MR. DUGGAN: The first time we met. Which was months ago.

MS. MARKS: Please be more specific.

MR. DUGGAN: I asked you specifically what it would take to come into compliance to avoid these CDOs. Do you remember that conversation?

MS. MARKS: Yes, I do, as a matter of fact.

MR. DUGGAN: Do you remember your response?

MS. MARKS: Yes.

MR. DUGGAN: What was your response?

MS. MARKS: The dischargers of wastewater in the community need to be eliminated.
MR. DUGGAN: And you did not mention or
bring up the subject of the prior project to be
restarted?

MS. MARKS: Oh, we discussed that, as
well.

MR. DUGGAN: Okay.

MS. MARKS: I think your conversation
was how is that practical. And I indicated that I
believed the most practical way of doing that was
the project that was permitted at that time.

MR. DUGGAN: I remember the gist of the
conversation. And I'm asking if you remember it
the same way I do, --

MR. RICHARDS: Mr. Duggan, --

MR. DUGGAN: -- but when I asked what --

MR. RICHARDS: Mr. Duggan, --

MR. DUGGAN: I'm asking her if she
remembers the --

MR. RICHARDS: If you're asking a
question, by all means, ask questions. But, don't
testify.

MR. DUGGAN: I won't. As I remember our
conversation, and I hope you can, do you --

CHAIRPERSON YOUNG: But that's -- you're
testifying --

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MR. DUGGAN: -- remember it the same way that --

CHAIRPERSON YOUNG: But you're testifying when --

MR. DUGGAN: -- I do --

CHAIRPERSON YOUNG: -- you say, as I remember. You can ask her if she remembers something, --

MR. DUGGAN: Do you remember when I asked you about --

CHAIRPERSON YOUNG: Oh, Mr. Duggan, --

MR. DUGGAN: -- compliance --

MR. SATO: I'll object --

MR. DUGGAN: -- what your response was to Tri-W?

MR. SATO: Let me object. Maybe it would be quicker if Mr. Duggan would make some offer of proof as to where this line of questioning is going. Because I don't know that trying to recollect conversation that occurred back and forth between himself and Ms. Marks are particularly relevant to any of the issues that you are faced with today.

So if he could tell us why, where he's going, it may be somewhat more helpful.
MR. DUGGAN: Okay, well, I can do something here then. Are you aware of Water Code section 13360(a), Ms. Marks?

MS. MARKS: No, I can't call to mind what it specifically says.

MR. DUGGAN: In the enforcement there -- I'm going to make a statement and end this with a question.

In your enforcement policies, State Water Resources Control Board water quality enforcement policies, it makes a statement in section 4, with specified exception, California Water Code section 13360(a) prohibits the State Water Resources Control Board or the Regional Water Quality Control Board from specifying the design, location, type of construction for a particular manner in which compliance may be had with a particular requirement."

Do you know of that code and that specific enforcement policy statement in your enforcement code?

MS. MARKS: I am familiar with that policy, yes.

MR. DUGGAN: How many times have you responded to CDO notification, people you've
notified for the CDO hearings that restarting the
Tri-W project would be the quickest way to
compliance?

MS. MARKS:  I haven't kept track.

MR. DUGGAN:  Do you not feel as if you
are violating this section of your own enforcement
policy and Water Code by suggesting how they reach
compliance requirements?

CHAIRPERSON YOUNG:  You know, Mr.
Duggan, if I may, I --

MR. DUGGAN:  Okay, I will withdraw that
question.

CHAIRPERSON YOUNG:  Yeah, but I don't
see the relevance, also, to what's before us.  I
mean I don't know --

MR. DUGGAN:  Well, it's to -- I --

CHAIRPERSON YOUNG:  -- what Ms. Marks
said with the individual CDO recipients, but
that's not in evidence --

MR. DUGGAN:  This leads me to my next
question.  And I won't go on.  There was a
statement made earlier that there are many ways to
meet the requirements of the CDOs.  And I believe
it was Matt Thompson here, this person here.  And
he did not explain what those requirements -- I'm
asking him to explain what other options are there
other than having to move out of your house to
reach compliance if a wastewater treatment
facility does not go online.

MR. THOMPSON: Well, you could pump and
haul.

MR. DUGGAN: At what frequency?

MR. THOMPSON: At whatever frequency is
necessary to prevent wastewater from leaving the
septic.

MR. DUGGAN: Well, according to you it
would be every day, every other day?

MR. THOMPSON: No. I'm familiar with
pump and haul schemes in places like Alaska where
the ground is frozen, and they just have a big
tank. And they store it there. And then whenever
necessary they come and have it hauled.

MR. DUGGAN: So this is considered an
onsite system that you're talking about? Onsite
storage?

MR. THOMPSON: It's storage and hauling
it, yes. Is it onsite, yeah, it's onsite.

MR. DUGGAN: And you are aware of those
regulations governing onsite storage of wastewater
other than in your septic tank?
MR. THOMPSON: I'm not aware. Perhaps you can point it out for me?

MR. DUGGAN: I can do that later. I already asked my questions on environmental justice. I believe that's it -- may I have a second, please?

I was just informed that holding tanks aren't prohibited. If I was to ask you now, because you made the statement of all the different options, how many options are there other than discharging from your septic tank that you recommend? Or are allowable?

MR. THOMPSON: Well, there's one that I mentioned. I'm sure there are other ways to eliminate a discharge. In some instances people have proposed what they call evaporative wetlands, which are like a zero discharge line thing. And so there's zero discharge. That might be a possibility.

It's really up to the discharger to propose that solution.

MR. DUGGAN: As you know there are standards set for water quality, and specifically in this area of Los Osos they're set to nitrates. What is the minimum allowed nitrate concentration
for drinking water?

MR. THOMPSON: What is the minimum allowed nitrate?

MR. DUGGAN: That's right.

MR. THOMPSON: The minimum allowed nitrate --

MR. DUGGAN: What is the standard set at?

MR. THOMPSON: The drinking water standard?

MR. DUGGAN: Yes.

MR. THOMPSON: For nitrate is 10 mg/liter as nitrogen. That's the maximum standard.

MR. DUGGAN: I'm sorry, --

MR. THOMPSON: A minimum would be zero.

MR. DUGGAN: Right, correct. But according to you, since there's been a prohibition in Los Osos they don't have a maximum, they have zero discharge, is that correct? Within the prohibition zone.

MR. THOMPSON: I'm not sure I understand your question. Could you restate it, please.

MR. DUGGAN: If a septic tank and leachfield system, an onsite Los Osos system,
septic tank system, was tested and it showed that it comes, itself, by itself, comes up underneath the standard set, would that be allowed?

    MR. THOMPSON: Septic system discharges are prohibited despite the concentration of nitrate coming out of the septic tank.

    MR. DUGGAN: So an individual who has a perfectly functioning septic tank that comes in under the maximum allowable is still in violation of the prohibition zone, correct?

    MR. THOMPSON: I'm not familiar with any that do that, but yes, they still are in violation of the basin plan prohibition.

    MR. DUGGAN: Are you familiar with any that do not meet that standard? In other words, have you tested any of these leachfields, or beneath these leachfields, to find out?

    MR. THOMPSON: We regulate community septic systems throughout --

    MR. DUGGAN: No, I'm talking about Los Osos --

    MR. THOMPSON: -- that's the Coast Region, which are representative of typical septic tanks in Los Osos, and which typically have between 40 and 50 mg/liter total nitrogen coming
out of the septic tank.

MR. DUGGAN: I'm asking --

MR. THOMPSON: -- would also be

representative of Los Osos.

MR. DUGGAN: I'm specifically asking --

MS. MARKS: I'd ask if I could add to

that, that we have about 25 regulated septic

systems that do monitor.

MR. DUGGAN: In Los Osos?

MS. MARKS: In Los Osos, yes.

MR. DUGGAN: You have 25 systems that

are being monitored within the prohibition zone?

MS. MARKS: Correct.

MR. DUGGAN: With lysimeters of some

sort, some testing beneath their leachfield?


They're not monitored -- the effluent is

monitored.

MR. DUGGAN: -- the effluent from the

septic tank?

MS. MARKS: Correct.

MR. DUGGAN: But not from underneath the

leachfield?

MS. MARKS: Correct.

MR. DUGGAN: And that is where the
denitrification takes place, is that not so?

MS. MARKS: In a perfect system, yes.

MR. DUGGAN: And so in order, wouldn't it be more factual then, statement to say that unless the leachfields have been proven to be nonfunctioning in Los Osos, that assumption -- I'm going to rephrase that.

How many leachfields in Los Osos have you determined to be malfunctioning?

MR. THOMPSON: We don't have a number.

MR. DUGGAN: Have you tested any of the leachfields in Los Osos?

MR. THOMPSON: Well, we monitor several systems, as Ms. Marks suggested, with inspection risers and that sort of thing. So, yeah, we keep an eye on them.

MR. DUGGAN: Specifically have you tested Cinthea Coleman's leachfield for nitrates?

MR. THOMPSON: No.

MR. DUGGAN: You mentioned test wells within the Los Osos area that are run by the LOCSD, is that correct, -- by the CSD?

MR. THOMPSON: I did mention monitoring wells, yes.

MR. DUGGAN: And you are aware in the
basin plan, and I don't have the specific area of the basin plan, that it recommends against using water wells, whether or not they're producing or not, private- or agency-owned, not to use drinking water wells as test wells when monitoring water, groundwater quality? Are you aware of that?

MR. THOMPSON: Yeah, I'm aware of that, but I also know that only a fraction of the couple dozen monitoring wells that CSD has are water wells. Most of them are dedicated monitoring wells.

MR. DUGGAN: And even though the basin plan recommends against it, you're still accepting that data?

MR. THOMPSON: Yeah.

MR. DUGGAN: So if a drinking water well is malfunctioning and it's perhaps it's been damaged in some way, which you don't have any way of knowing, that data could -- excuse me, let me rephrase that.

Do you know why they recommend against using the drinking water wells as test wells?

MR. PACKARD: Can you specify where in the basin plan it says that, what it says exactly? I'm not familiar with that section.
MR. DUGGAN: You aren't familiar with that section? I'd have to get it to you. Maybe we'll leave that until later.

(Parties speaking simultaneously.)

MR. DUGGAN: By his own testimony he says that he understands that's in there. Is that not true? Didn't you just testify?

MR. THOMPSON: I understand that with groundwater monitoring networks that a dedicated monitoring well is preferred. But in this situation they are using some water supply wells, which does seem appropriate because it is pulling from the same aquifer.

MR. DUGGAN: Do you know how many of those are privately owned and CSD owned?

MR. THOMPSON: I'm sorry, I do not.

MR. DUGGAN: I know at least two that are private wells. Can you --

CHAIRPERSON YOUNG: Question, question, please.

MR. DUGGAN: Can you attest to the quality of those wells and whether or not they've been damaged in any way?

MS. MARKS: The CSD, as I'm sure you're aware, has done extensive evaluation of the
integrity of the wells in their monitoring system. And as a result of that evaluation, abandoned some wells, installed some others and made some improvements to some others.

MR. DUGGAN: Are you aware also that there are private wells being used in this testing?

MS. MARKS: I don't know.

MR. DUGGAN: Specifically a well, and I don't have the number for it specifically, but the well that is next to the golf course in Los Osos, are you familiar with that test well?

MS. MARKS: Not the specifics of it, but I think if you have specific questions about the CSD's groundwater monitoring system it probably would be helpful for you to direct them to the CSD.

MR. DUGGAN: Well, the question is that are you aware that the water coming into the golf course is Title 22 water? For their watering.

CHAIRPERSON YOUNG: Excuse me, Mr. Duggan, your cross-examination is getting far afield from really what's before us. I'm going to give you another four minutes to try to wrap up your cross-examination. And you are going to have
time with Ms. Coleman's individual matter to get
into these other areas that really they didn't
touch on in their presentation.

MR. DUGGAN: Specifically he talked
about drinking water, or I mean water wells, test
wells. So I'm going to that.

CHAIRPERSON YOUNG: Okay, you got
another four minutes. And then there's other
people that also want to do cross-examination.

MR. DUGGAN: Are you aware that the
water being used to water the lawn at the golf
course is Title 22 water?

MS. MARKS: If by Title 22 you mean
recycled water, yes, I'm aware of that.

MR. DUGGAN: Do you know what the
nitrate level of that water is when it's put onto
the grass?

MS. MARKS: Yes, I do.

MR. DUGGAN: Would you tell me, because
I'm not allowed to know that because it's their --
they won't tell me, let's put it that way.

MS. MARKS: Well, those records are
certainly public records. They're available here
if you would like to see them. They usually --

MR. DUGGAN: Are they above --
MR. DUGGAN: Are they above the standards set for nitrate levels --

MS. MARKS: Not for that facility, no.

MR. DUGGAN: Are they higher than 10 mg/liter?

MS. MARKS: Yes.

MR. DUGGAN: You are aware that that drinking water well has a test result of 22 mg/liter continuously?

MS. MARKS: I'm not sure what drinking water well you're talking about.

MR. DUGGAN: Go back to the -- you stated before, somebody up here stated before the specific question, there has been a continuous and I believe a -- the nitrate levels in Los Osos have been continuously raising. Is that not a correct statement on your parts?

MR. THOMPSON: I believe I said that continuous septic system discharge continue to degrade water quality.

MR. DUGGAN: And that's specific to nitrate levels, is that not correct?

MR. THOMPSON: Yeah, nitrate levels exceed the drinking water standard all over town.
MR. DUGGAN: Are you aware of any that do not, tests that do not show the nitrate levels being exceeding standards?

MR. THOMPSON: Yeah, there are a couple of wells that don't.

MR. DUGGAN: Are you aware of the ones that are within the -- part of Los Osos showing extremely low levels of nitrates?

MR. THOMPSON: Yeah, there's one well near the Baywood commercial district, 7N1, I think it's commonly called the Third Street well. And we believe that it's screened in the bottom of the shallow aquifer, or even in the deeper aquifer. And it consistently has a nitrate level of about 2.1 mg/liter --

MR. DUGGAN: Do you know of any other wells in Los Osos that are around 2.2 mg/liter?

MR. THOMPSON: Are there any other wells around 2.2?

MR. DUGGAN: Yeah, approximately.

MR. THOMPSON: Yeah. Can I show you a map?

MR. DUGGAN: Certainly.

CHAIRPERSON YOUNG: You have one minute left, Mr. Duggan.
MR. THOMPSON: This is the Community Services District's isocontour map of nitrate concentrations in shallow groundwater from October 2005. It hasn't changed much since then. But the well I was referring to earlier is right here, the Third Street well. And then there's this well up here that is on the up-gradient edge of the prohibition zone.

MR. DUGGAN: Yes.

MR. THOMPSON: Which has a nitrate concentration of .8 mg/liter as nitrogen.

MR. DUGGAN: Go right into the middle of the big red portion here, I would believe, it's --

MR. THOMPSON: That well?

MR. DUGGAN: What are the nitrate levels for that well?

MR. THOMPSON: Well, the red line is the drinking water standard. And it looks like the recent long-term average is around 8 mg/liter. In this case, the most recent result is 3 mg/liter.

MR. DUGGAN: -- stops at January or sometime in '04?

MR. THOMPSON: The latest data is October 2005.

MR. DUGGAN: And you are aware that
other test results have taken place every six
months at that well?

MR. THOMPSON: I believe that results
are taken there semi-annually, yes.

MR. DUGGAN: And you're aware that
they've been steady at 2.2, 2.5?

MR. THOMPSON: Well, according to this
chart the history, the long-term average is more
like 7 or 8.

MR. DUGGAN: Okay, that's all I have;
thank you.

CHAIRPERSON YOUNG: All right. Have you
asked cross-examination questions before?

MR. ROCHTE: I don't know if you called
them questions.

CHAIRPERSON YOUNG: Well, that's what
this is right now.

MR. ROCHTE: Yeah, I got a question.

CHAIRPERSON YOUNG: No, I mean, did you
participate in cross-examination

MR. ALLEBE: Yes.

CHAIRPERSON YOUNG: -- of these
witnesses?

MR. ALLEBE: Sure.

CHAIRPERSON YOUNG: Okay, you already
have?

MR. ROCHTE: Yeah.

CHAIRPERSON YOUNG: Okay, we're going to go through everyone else. And I don't know that -- but I don't --

MR. ROCHTE: Okay, I just wanted -- just remember that map.

CHAIRPERSON YOUNG: Okay, but I don't know that we're going to go and have everyone have double and triple takes at asking questions. So everyone's going to have an opportunity --

MR. ROCHTE: Do it now or do it later --

CHAIRPERSON YOUNG: -- to go through.

MR. ROCHTE: I get a chance later, too, I know.

CHAIRPERSON YOUNG: Mr. Allebe.

MR. ALLEBE: Yes, sir.

CHAIRPERSON YOUNG: Okay. Go ahead.

MR. ALLEBE: Chris Allebe, CDO 19. I just got three fast questions here. Do you have a map or anything that shows where these 25 leachfields test sites are monitored?

I wasn't aware that we were monitoring leachfields, just wells.

MS. MARKS: I think I clearly stated
that they were not monitoring leachfields. They were monitoring the discharge from the septic system, the septic tank. Regulated sites, and they are not on the map, that Matt has available. However, it is public records if you would like to review them at another time. I don't have them with me.

MR. ALLEBE: Okay, that'll be fine. And then if we get to the point of fines, firing squads, whatever, what is the procedure for collecting those fines? Is a lien put on the property? Or do you actually, do you get billed for cash in the mail? Just how does that work?

MR. PACKARD: Well, if the Board were to adopt a penalty you would get a -- you would have a requirement to pay within 30 days. I believe the Board does authority to place a lien on a property for nonpayment of a penalty.

MR. ALLEBE: If you didn't pay that in 30 days, an order to jail or property taken from you? At what point do you lose the house?

MR. PACKARD: I'm not aware of a situation that would lead to that.

MR. ALLEBE: Okay, so basically you'd be given a bill for a cash payment? Would it be on
your property taxes or --

MR. PACKARD: It would be not on your
property taxes; separate.

MR. ALLEBE: The burning question of the
hour is where is Roger Briggs. I think everybody
would like to know the answer to that.

CHAIRPERSON YOUNG: Well, he's not here,
but --

MR. ALLEBE: That's a fact.

CHAIRPERSON YOUNG: Yeah. Okay. All
right, any --

MR. ALLEBE: But we have no means of
subpoenaing him or --

CHAIRPERSON YOUNG: He is not available
for these proceedings. So, it's not timely now to
subpoena him for these proceedings.

MR. ALLEBE: All right, thank you.

CHAIRPERSON YOUNG: Okay. Anyone else
wish to ask any cross-examination questions of the
prosecution team?

Okay. No one else -- I'll allow Mr.
Rochte only one follow-up question, and then I do
want to move on, sir.

MR. ROCHTE: Thank you very much.

CHAIRPERSON YOUNG: Okay.
MR. ROCHTE: Mr. Rochte, Tim. Could you
put the map up, map of 8N2 monitoring well,
please. That's the one that's closest to my
property. And it's wonderful to see that chart.
MR. THOMPSON: I realize this is hard to
read, I apologize.
MR. ROCHTE: Can you get up the
histogram like you had on that other one?
MR. THOMPSON: Yeah. Could you help me
point it out, please.
MR. ROCHTE: Sure, it's right there,
you're on it.
MR. THOMPSON: That one?
MR. ALLEBE: Yeah.
MR. THOMPSON: Yeah.
(Pause.)
MR. THOMPSON: Oh, I'm sorry, that's the
school there; there's the junior high.
CHAIRPERSON YOUNG: How did it get fuzzy
when before it was clear?
MR. THOMPSON: I'll try and adjust the
focus here.
MR. ROCHTE: It's okay this one's out of
focus because it's not the right one.
CHAIRPERSON YOUNG: Okay.
MR. ROCHTE: The one that I'm just wanting to point out that 8N2, according to one of the earlier slides he had showed a .8 mg/liter. I'm going to be covering that in my -- I just wanted to have a visual in people's minds.

CHAIRPERSON YOUNG: Okay.

MR. THOMPSON: This is 8N2, Tim.

MR. ROCHTE: Okay, thank you.

MR. THOMPSON: Let me switch it.

MR. ROCHTE: Does that show to you, as a question, you know, that the rates are pretty darn low over a period of time? Well within drinking water standards?

MR. THOMPSON: Yeah, that colored line across there, that's the drinking water standard. And looks like the long-term average is down around 2. But, as I've stated in my written submittals, this is up-gradient of much of the prohibition zone. You can see immediately down-gradient of the prohibition zone boundary we have some serious degradation of groundwater quality.

MR. ROCHTE: Okay, thank you.

CHAIRPERSON YOUNG: Okay. Mr. Martyn.

MR. MARTYN: I had a question, several
questions for the prosecution team. I'd like to
start off with a comment that Mr. Harvey Package
made, that there were many ways in the works to
abate some of the discharges. Could you expound
on that a little bit more?

CHAIRPERSON YOUNG: You know, Mr.
Martyn, typically I'd let Mr. Sato go ahead and
object, but that has been asked and answered. And
so I think that we're going to move on to some
other questions.

MR. MARTYN: All right, I have some
other questions then.

CHAIRPERSON YOUNG: Go ahead.

MR. MARTYN: Did you say the CDOs was
not intended to stop discharges or lead to fines
as long as construction is moving forward?

MR. THOMPSON: As drafted, that's true,
yes.

MR. MARTYN: I'm sorry, I didn't hear
you.

MR. THOMPSON: That is correct.

MR. MARTYN: Thank you. What happens if
there is not a certified assessment by June 1st of
2008?

MR. PACKARD: The date in the CDO is
actually January 1, 2008. And the wording is not
certified, but approved by the County.

If there's not an approved benefits
assessment by January 1, 2008, then the discharger
shall cease all discharges from the septic system
no later than January 1, 2011.

MR. MARTYN: Did you say that this CDO
was supposed to support the 2701, Assembly bill
2701?

MR. PACKARD: I don't believe I said
that.

MR. MARTYN: What if -- announce a
system after January 1st of 2008?

MR. PACKARD: It's still prohibited by
the basin plan. Dischargers are free to ask the
Board for exemptions or for waste discharge
requirement.

MR. MARTYN: What does section 13300 say
regarding working to lower the level of
enforcement?

MR. PACKARD: I can't recall the exact
language of that Water Code section off the top of
my head.

MR. MARTYN: All right, okay. Thank
you.
CHAIRPERSON YOUNG: Okay. What we will do now, then, is proceed with -- we have a half hour left. And, Mr. Murphy, would you like to begin your case? We are going to stop right at 4:15.

MR. MURPHY: 4:15, Mr. Chairman?

CHAIRPERSON YOUNG: Yeah.

MR. MURPHY: That's fine, but before I begin I note that your order gave you the option to allow other parties with communitywide issues to raise them during the time, the CSD's one-hour timeframe. It's page 2, footnote 2 of your order setting the schedule.

Documentation relevant to all or several properties that may be subject to individual cease and desist orders should be presented at this time. The Chair will consider a request by designated parties, other than the LOCSD, to present general evidence at this time.

And in light of the fact that the CSD's presentation, much like the prosecution team's, is abbreviated and we'll be submitting quite a bit on the papers, I did want to give any designated parties that have general evidence of that kind at least the opportunity to petition you for the
chance to present it at this time.

CHAIRPERSON YOUNG: To present their own
general evidence?

MR. MURPHY: If they have evidence that
they feel is relevant to issues communitywide.

CHAIRPERSON YOUNG: I think that's fine.
I think that's what we had in mind. I just hadn't
read that footnote in awhile. But we probably
won't get to that.

MR. MURPHY: Certainly. I would
anticipate that we would close today, and if --

CHAIRPERSON YOUNG: That's right.

MR. MURPHY: -- then you could take
cross-examinations today, and then the other
parties could start in the morning.

CHAIRPERSON YOUNG: Right. Okay.

MR. MURPHY: Then as I said, much like
the prosecution team, the CSD's planning to, in
large part, submit on our written submissions to
you. There are a number of items and arguments in
there which we've debated back and forth since at
least February; in some cases possibly longer.

But we believe that a few key issues are
most important for the Board to hear and consider
today. So, in light of that, I'll submit the rest
First of all, I think you've heard, particularly from Mr. Thompson, that there is no actual evidence that any designated party has any working septic system that is polluting the groundwater.

The evidence that they have presented to you so far would be competent evidence were you, in the process of a hearing, dealing with my client or with the County, who are at different times have both been responsible for the status of the groundwater areawide.

However, when considering individual dischargers you need something more; you need actual individual evidence. Particularly I note the case of McCoy vs. Board of Retirement, 183CalAp.3d.1044, that in administrative proceedings the party asserting the affirmative of an issue, in this case the violations are occurring, has the burden to prove the charges levied.

And accompanying that, Coombs v. Pierce, 1CalAp.4.568, to meet this burden you have to submit actual evidence supporting the affirmative claims being made.
Obviously the prosecution team need not meet any kind of beyond-a-reasonable-doubt standard like they would in a criminal case, but they have to at least meet a preponderance of evidence standard.

Here they have given no evidence. In fact, they've admitted that they have no site-specific evidence for any of the apparently now ten or so parties remaining today. Instead they're relying communitywide evidence, and believe that that should be enough for you to enforce against individuals.

This is somewhat similar to gathering speed data on a freeway, and then randomly pulling over cars passing along that freeway and saying that because in general people speed on the freeway, each individual must be speeding.

This is the sort of prosecution by implication. There's a presumption of guilt that attaches to that. And I believe -- my client believes that this is not the kind of evidence that can possibly sustain a CDO where one's been issued in this case.

In addition, and as has been discussed with the settlements this morning, and to some
extent with the CDOs this afternoon, we believe that the safe harbor provision provided by section (a) subsection (1), while it is an excellent alternative, is ultimately not practical.

I could, and if you like, will read all of California Constitution Article XIII-D regarding assessment and property-related fees, but I don't think it's necessary. Most of you know, as well as I do, that when doing a Prop 13 vote -- I'm sorry, Prop -- when doing a vote according to Article XIII-D, you need to have engineering studies prior to the vote. You need to get the vote out. It takes 45 days until you can even hold the hearing. You need to deal with protests. And then you need to certify the vote.

The CDO, as currently constituted, talks about the County approving a benefits assessment. I'm not quite sure what that means. I don't know if that means that they approve the results of the benefit assessment vote. Don't know if that means that they are certifying those results. Or possibly, and this would be best for all of us, I think, would they approve the fact that a vote is going forward. They approve the project that the vote would be held to fund.
In any case, what we currently have is a very flexible, nonlegal word in a CDO that provides, if that flexible, nonlegal word applies, the subject of the CDO have a great deal of leeway. Whereas, if that flexible, nonlegal word does not apply, the citizens have some very hard and fast deadlines that they must meet; deadlines that could prove costly. And deadlines that could, at some point, affect my client.

We believe that should paragraph A-2 or paragraph A-3 come into play, what you will see is members of the Los Osos community opting out of in future sewage or wastewater system by attempting to put their own systems on their properties.

That would do one of two things. Either make the community system more expensive for everyone. Or, in the alternative, negatively impact the finances of my client.

What's most important, though, I believe, going forward, is fixing the language of section A-1. Either fixing the January 1, 2008 date to provide something more than, as Mr. Sato said, a one-month -- or as Mr. Sato implied, a one-month window for the County to eventually approve a vote that would take place in December
of next year. Or some sort of legally binding
term for the approving of benefits assessment in
place of approving the benefits assessment that
would give some certainty as to how this will
actually be treated.

It's been said before, and we just want
to repeat for the record, that we find it somewhat
disconcerting that the individuals are being
prosecuted at this point, when Assembly bill 2701
is apparently moving forward. The individuals
have very little authority over wastewater at this
time. We don't even have the authority at this
point to elect local government to handle the
problem. The problem has been taken over by the
County.

In light of that, if you do desire to
issue the CDOs we feel it would be appropriate to
hold them in abeyance until after such time as the
County's taken over the project and you can review
how the County's doing. Again, we feel that no
issuance is the best route, but at the very least
holding them off for a period of time to see how
the County moves forward is a better bet.

Finally, I'd like to just simply go over
quite briefly a few of the due process issues,
some of which have been discussed today; some a
bit longer. Issues that we've voiced previously.

With regards to the absence of Mr.
Briggs today, we understand that people were given
the opportunity to question Mr. Briggs. I know
that Ms. Okun, last spring, had several times
called Mr. Briggs a unique witness and a necessary
witness for this case, due to his role in working
on issues related to groundwater in Los Osos from
the early 1980s through today.

At the April hearing my colleague, Mr.
Onstot, called Mr. Briggs and were able to begin
to move forward with our case because of that.
Without Mr. Briggs being here certainly we're
missing out on some pieces of the puzzle.

But more importantly, the time that
questioning Mr. Briggs did take place on October
4th. We note that that was the day that the
prosecution team's documents actually all became
available for review by the public.

In light of that, the actual questioning
of Mr. Briggs that took place had to take place
without first an analysis and review of the
prosecution team's entire case, making that
questioning, well, somewhat valuable, ultimately
not enough in light of his unique role in this case.

Also, the CDOs, as modified, were modified on December 1st in what was supposed to be a rebuttal argument from the prosecution. Rather than rebuttals, the prosecution team set out a new rationale for the CDO, tying it to AB-2701. And made substantive changes to the CDO.

As I asked earlier, and retracted my second question on it, it is uncertain whether had these hearings been held as scheduled on November 2nd and November 9th, AB-2701 would have taken place, or would have been considered at all in the CDOs.

Which leads me to a general statement regarding the manner in which the prosecution has been conducted, which is at many times throughout this process the prosecution team has acted in a sort of reactive fashion to new information brought to them by the designated parties and the CSD.

Obviously you are aware that last spring a change was made in the prosecution team and, indeed, the way the State Water Board is prosecuting in general. And while that change is
probably a long time coming, as regards to this
case it was made not sua sponte by the prosecution
team, but in response to my colleague's statements
at the April hearing.

It seems to me that the prosecution
team, in their dissemination of evidence, has
continuously violated the due process rights of
the citizens involved here. As you know, the
Administrative Procedure Act in Government Code
section 11425.10 requires simply the notice and
opportunity to be heard in this case. However,
the case of Slattery v. Unemployment Insurance
Appeals Board states that the opportunity to be
heard must be tailored to the capacities and
circumstances of each defendant.

Therefore, we believe that the due
process rights of individuals in this case,
individuals who the prosecution team has known are
running their own businesses, some of whom are
ill, who have to deal with their families, their
due process rights have been trampled on in light
of the late dissemination of evidence, in light of
communication via email and not directly with the
parties, and in light of the manner, as we all
know from months ago, in which this prosecution
was initially begun. With the $1000-a-day-fine
threats and other things that we don't need to go
into again at this time.

Because of those actions, because of the
accrued deficiencies in the CDO, and because of
the lack of evidence with regard to any individual
property, it is our contention that if CDOs are
issued at this time, they would ultimately be
subject to reversal or to vacation.

Thank you very much.

CHAIRPERSON YOUNG: Is that your --

MR. MURPHY: That is all.

CHAIRPERSON YOUNG: That's all. Just so
I'm clear, can you tell me what, you know, the due
process discussion you talk about, you know,
property rights.

MR. MURPHY: Sure.

CHAIRPERSON YOUNG: What is the property
right here that -- of course, we're talking about
the individuals and not the CSD -- what do you see
as the property right that's being impacted?

MR. MURPHY: The property right would be
the need to replace the current system with a new
alternative system should the January 1, '08 date
not be met.
CHAIRPERSON YOUNG: Okay. All right, thank you. Okay, I guess what we could do is then go to cross-examination. We've got almost ten minutes left. Yeah, we'll keep on going. Let me just check my schedule here.

Okay, so any of the designated parties can cross-examine Mr. Murphy or anyone else with Mr. Murphy. Mr. Sato, -- we'll start with the prosecution team, Mr. Sato.

MR. SATO: Thank you, Mr. Chairman. Just a quick question, then. Mr. Murphy, you have now completed the presentation of you information?

MR. MURPHY: I have, Mr. Sato.

MR. SATO: Okay, then I move to strike the documents that you submitted that we objected to previously, 1, 3, 5, 6, 8, 10, 11, 13, 15, 16, and I think the Chairperson already ruled on 504, 509. And then also on 62, 632, 641, 705 and 785 through 847. I didn't hear any reference to any of those documents in your testimony or the arguments you presented so far.

MR. MURPHY: Mr. Chairman, I would respond that as ordered by the Board we submitted documents both on our own behalf and documents that could be relied on by other parties. I would
ask that you not rule on that until such time as
those documents may be relied on by other parties.

CHAIRPERSON YOUNG: Okay, we'll allow
them to do that. That's fine.

MR. MURPHY: Thank you.

MR. SATO: All right, as long as the CSD
is not entitled to rely on those documents.

CHAIRPERSON YOUNG: Well, the CSD's not
going to be able to rely upon them. But others
can if they show us what the relevance is and how
they're going to rely on them.

MR. SATO: Thank you.

CHAIRPERSON YOUNG: Any other questions,
Mr. Sato?

MR. SATO: I do have a question. Mr.
Murphy, you have indicated a concern about the
date of January 1, 2008 that has been proposed in
the modified cease and desist order. Do you have
any information from any representative of the
County that they will not, in fact, conduct their
benefits assessment approval hearing in December
of 2007?

MR. MURPHY: Mr. Sato, my client did
meet with the County in the past week. They gave
indications that they would be, as you know, --
let me start by giving a bit of background.

As you may know, AB-2701 gives the County the ability to, but not the requirement to, take over the Los Osos wastewater project. In light of that the County has decided to begin moving forward, but not actively take over the project, or the County has made representations to my client that they will not actively take over the project as of the first of this year. But will instead do so once they find a project to be viable.

This is also described in the staff report for December 12th, two days ago, by the planning department of the County.

It's also my contention, Mr. Sato, even if the County were to take over this project on January 1, 2007, it being a rather large construction project, and there being quite a bit of engineering that has to go into a Prop 218 vote before ballots can be sent out, I think anyone familiar with construction knows that you need to build in a bit of leeway for potential issues that arise with contractors.

Therefore, while I don't suggest a date certain, I do suggest that a one-month window in
which this very fair safe harbor would disappear
could prove ultimately to be an unfair order if
issued by -- or a nonpractical order if issued by
the Board.

MR. SATO: In terms of the concept of, I
think you expressed a concern about the use of the
term approval of a benefits assessment, is that
correct?

MR. MURPHY: Yes, sir.

MR. SATO: And are you aware that in AB-2701 the concept of approval of a benefits
assessment is specifically addressed by that
legislation?

MR. MURPHY: In what way?

MR. SATO: Well, it talks about approval
of a benefits assessment.

MR. MURPHY: Okay. And it merely just
says approval?

MR. SATO: Yes.

MR. MURPHY: Okay. Unfortunately, it
appears that the Legislature, as it does from time
to time, has not been as clear as they could be.

In order to avoid litigation in the future, I
would ask merely that this Board be more clear
than the Legislature was.
MR. SATO: All right. And then for -- just so I understand how we can make it more clear, if we said that -- if we clarified what approval was in terms of the approval of the 218 vote by the Board, as it's contemplated, at least as I understand it's contemplated in December that would alleviate that concern, would that be correct?

MR. MURPHY: Were you to say, for example, the certification of a prop 218 vote, then again I would ask that be moved back to give some leeway for engineering. But certainly that would create, or that would solve a problem that we see in the CDO as currently constituted.

MR. SATO: All right. I have no further questions.

CHAIRPERSON YOUNG: Okay, do any other designated parties wish to cross-examine the Community Services District? Okay.

Ms. McPherson.

MS. McPHERSON: I do. I just have a couple of quick questions on that approval of the 218 vote. You testified that that was your understanding that it was December 2007, is that correct?
MR. MURPHY: No. I was referring to Mr. Sato's report of the prosecution staff's discussion with County Staff that led them to believe that December of 2007 was when a vote would take place.

MS. McPHERSON: And the County control of the project would follow that. Do you have a date when that County control would kick in?

MR. MURPHY: I have no idea. They have the right to take control as of January 1st. I don't know when they will actually do so.

MS. McPHERSON: Okay. Would it be, in your opinion, wise to recommend that County control would be the trigger instead of a 218 vote, since the County control is anticipated after the 218 vote? And would not be used to coerce a vote, perhaps?

MR. MURPHY: I believe my answer to what you've asked is no. But I would really need to think about it more than I have.

MS. McPHERSON: Okay, thank you.

CHAIRPERSON YOUNG: Mr. Duggan.

MR. DUGGAN: Dave Duggan representing Cinthea Coleman. You mentioned the 218 vote. Now, you are aware there is an advisory vote.
that's supposed to take place?

MR. MURPHY: I am.

MR. DUGGAN: And the advisory vote constitute votes of every person within the LOCSD?

Every person who is in a vote, basically.

MR. MURPHY: I don't know the specifics of the advisory vote off the top of my head.

MR. DUGGAN: Do you know whether that's just within the prohibition zone or --

MR. MURPHY: I don't know.

MR. DUGGAN: Even if there is a 218 vote, whether or not a 218 vote is approved, the County still has a due diligence period according to the chart we saw. Do you remember that chart?

MR. MURPHY: The County does have a due diligence period, of course.

MR. DUGGAN: And that could take more than just a couple of months according to that chart? In fact, it's well into 2008.

MR. MURPHY: That's what the chart said, yes.

MR. DUGGAN: Okay. And anywhere along the way there could be legal challenges against the 218 vote?

MR. MURPHY: As we discussed this
morning, there can always be legal challenges,
yes.

MR. DUGGAN: And individuals, of course,
that aren't involved in these legal challenges, is
it your understanding that the CDOs penalty,
basically the CDOs may kick in whether or not they
are party to these --

MR. MURPHY: It's my understanding,
based on section A-1, that depending on the
meaning of the word approved, everyone involved
could lose the safe harbor of such an A-1 should
the County not be able to approve the benefits
assessment by January 1, 2008. That's my
understanding based on my read.

MR. DUGGAN: And to take this a little
bit further, but within the realm of a 218 vote, a
vote of assessment district, between now and when
the County decides whether or not they're going to
take the project, is there a possibility that
someone would try to initiate a sanitation
district in lieu of the County taking this
project?

MR. MURPHY: I have no idea.

MR. DUGGAN: But it's possible that a
sanitation district could be formed before the
County takes this project?

MR. MURPHY: I don't know the process for forming a sanitation district. So I can't answer that question.

MR. DUGGAN: If a sanitation district was formed, how do you expect the process to affect the CDOs?

MR. MURPHY: I honestly don't know.

MR. DUGGAN: Thank you.

MR. MURPHY: I haven't thought that out.

CHAIRPERSON YOUNG: Okay. Are there any other designated parties that wish to ask Mr. Murphy questions? All right.

We will stop today. When we convene in the morning at 8:30 we will consider requests by designated parties, other than the CSD, to present general evidence relevant to multiple parties.

So anyone other than the CSD, and this would be general evidence applicable to multiple parties. I think that effort was offered to, I don't know, make the use of their 15 minutes a little more specific, and allow them to cobble general evidence together and get it before the Board in one presentation instead of multiple presentations.
BOARD MEMBER PRESS: How much time is available for that, Mr. Chair?

CHAIRPERSON YOUNG: I don't have a time for that.

BOARD MEMBER PRESS: Isn't it the remainder of the CSD's --

(Parties speaking simultaneously.)

CHAIRPERSON YOUNG: They used 15, but that was not timed. I anticipate it coming off of their one hour. It's not a request by the CSD. The CSD had its own hour.

BOARD MEMBER PRESS: My understanding of the interpretation of the footnote was that the CSD was piggybacking, or the designated parties were piggybacking on the CSD's hour with these general comments.

And that's what I would urge you to adhere to.

CHAIRPERSON YOUNG: Okay, I'll think about that. But I would like to entertain any requests in the morning from designated parties that wish to present general evidence. And we'll see what we've got.

I'll make the decision at that point.

Okay, have a good evening, and we'll see
you at 8:30.

(Whereupon, at 4:15 p.m., the meeting was adjourned, to reconvene, Friday, December 15, 2006, at 8:30 a.m. at this same location.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of January, 2007.

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