

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

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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P R O C E E D I N G S

8:35 a.m.

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.

MS. HEWITT: Absent. Daniel Press.

BOARD MEMBER PRESS: Present.

MS. HEWITT: Russell Jeffries.

BOARD MEMBER JEFFRIES: Present.

MS. HEWITT: Jeffrey Young.

CHAIRPERSON YOUNG: Present.

1 MS. HEWITT: Gary Shallcross.

2 BOARD MEMBER SHALLCROSS: Here.

3 MS. HEWITT: John Hayashi.

4 BOARD MEMBER HAYASHI: Here.

5 CHAIRPERSON YOUNG: Okay, thank you.

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

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

16 MR. BISHOP: Here.

17 CHAIRPERSON YOUNG: Okay, both here.

18 Robert Borthwick. Okay. Pardon me?

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

22 CHAIRPERSON YOUNG: Okay. And then I do
23 have a number of people that did not want their
24 names disclosed publicly, and so I'm just going to
25 read their numbers.

1 Number 1002. Okay. Louis and Lucienne
2 Colin. Not here. Bill and Maryella Dannenbring.
3 Okay. Number 1029. Okay. Douglas and Paula
4 Dishen. Evelyn and Steven Moberg -- Evelyn Frame
5 and Steven Moberg. Okay. Number 1034. She's
6 here. Jane and Edwin Ingan, I-n-g-a-n. Okay.

7 Michael Javine, J-a-v-i-n-e. Dennis and
8 Sally Joller. Richard Kane. Kenneth and Kathryn
9 Kirtley, K-i-r-t-l-e-y. Number 1023. Number
10 1040. Sam and Patsy Mangum. Alan and Jacqueline
11 Martyn. General and Mary Mason. Dustan
12 Mattingly. Laurie McCombs. Mary Menne. And I
13 see here that there's a Gloria Galetka that's also
14 assisting her.

15 Marina and Clement Michel, M-i-c-h-e-l.
16 Julie and Lawrence Kleiger, K-l-e-i-g-e-r. They
17 asked to be able to testify tomorrow, and that's
18 going to be okay with us. So they're not here
19 today. John and Phyllis Mortara. Mr. Moylan and
20 Mrs. DeWitt-Moylan. Bruce and Antoinette Payne.

21 MR. PAYNE: Here.

22 CHAIRPERSON YOUNG: Okay. Number 1001.
23 Marsha Robinson. Tim Rochte. Kathryn and Ernest
24 Rossi. Jim and Jennifer Salio. Bevra and Marvin
25 Salzberg. Richard and Lois Sargent. Randall and

1 Carol Schuldt, S-c-h-u-l-d-t. Okay. Well, I
2 don't know, number 1024, he's here. Okay.
3 Lazelle Speegle.

4 MR. SPEEGLE: Here.

5 CHAIRPERSON YOUNG: Okay, thank you.

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

9 MS. THOMAS: Here.

10 CHAIRPERSON YOUNG: Okay. All right.

11 Number 1049. Gary and Carolyn Weyel, Weyel,
12 W-e-y-e-l. Michael -- Sue Felt and Michael
13 Wilhelm. Charles and Norma Wilkerson. Okay.

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

19 Okay, I've got two speaker cards so far.
20 Ms. Calhoun, you can speak at the public comment
21 period, the public forum period at 1:00 on any
22 item not on the agenda. Okay. And you'll have
23 three minutes at that point in time. And if you
24 wanted to speak about anything regarding what
25 we're doing today, then that would be with the

1 interested persons comments, which are going to be
2 item number 3.

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

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

7 MS. CALHOUN: Number 3 --

8 CHAIRPERSON YOUNG: You did. You did.
9 One minute for -- okay.

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

13 UNIDENTIFIED SPEAKER: As long as they
14 understand.

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

18 MR. SATO: Good morning.

19 CHAIRPERSON YOUNG: Director of the
20 State Water Board Enforcement Unit. Harvey
21 Packard, with the beard, the red beard, Division
22 Chief for the Central Coast Water Board. And Matt
23 Thompson, Water Resource Engineer for the Central
24 Coast Water Board to the left of Mr. Sato. And
25 Sorrel Marks. You know what? Should be there.

1 The order of events will be as follows
2 today? Consideration of a settlement agreement;
3 consideration of preliminary procedural matters;
4 nonevidentiary comments by governmental agencies
5 and interested persons. And for those of you that
6 wish to speak on what's going on today, you'll
7 have one minute to do so; and please, fill out a
8 speaker card. And that will be the time slot,
9 that's item number 3.

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

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

18 We'll then have presentation of evidence
19 by prosecution team. Cross-examination of
20 prosecution team by designated parties. Lunch
21 break. Is that going to start at 1:00 or --
22 scheduled for 1:00, okay. Lunch will start at
23 1:00. Then we will be back here by 2:00.

24 And that's when we would attempt to have
25 our public forum, right about 2:00.

1 Number six, presentation of evidence by
2 Los Osos CSD. And if you haven't done so, please
3 put your cellphones on vibrate or silent. Cross-
4 examination of the Los Osos CSD by designated
5 parties.

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

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

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

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

21 CHAIRPERSON YOUNG: Thank you, you may
22 be seated.

23 The hearing notices notified the parties
24 that they must submit any written comments, a list
25 of witnesses and any exhibits to the Assistant

1 Executive Officer by November 15, 2006. The Water
2 Board received copies of all materials submitted
3 by the deadline. Anything that we received after
4 that date is not going to be part of the record.
5 Although there were a number of emails that did
6 come in to Mr. Thomas and that I did review,
7 myself, although I read them, they're not part of
8 the record.

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

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

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

1 to be speaking on their behalf.

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

6 Yes, sir. And your name?

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

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

15 (Pause.)

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

18 (Pause.)

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

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

24 Okay.

25 (Pause.)

1 CHAIRPERSON YOUNG: (inaudible) Ms.
2 McPherson?

3 MS. McPHERSON: Yes.

4 CHAIRPERSON YOUNG: Are you representing
5 anybody today?

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

8 CHAIRPERSON YOUNG: Okay, you have the
9 form?

10 MS. McPHERSON: Yes, I do.

11 CHAIRPERSON YOUNG: Okay.

12 MS. McPHERSON: And --

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

16 (Pause.)

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

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

25 There is another person, Charles

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

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

13 (Pause - verifying paperwork.)

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

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

24 MS. McPHERSON: No, I explained that
25 that was --

1 CHAIRPERSON YOUNG: That he may show up.

2 MS. McPHERSON: Yes.

3 CHAIRPERSON YOUNG: And if he doesn't --

4 MS. McPHERSON: He does intend to --

5 CHAIRPERSON YOUNG: Fine. Okay.

6 Understood. Mr. Payne.

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

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

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

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

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

23 MR. PAYNE: Thank you.

24 CHAIRPERSON YOUNG: Okay, I just wanted
25 to make some brief comments, folks, about due

1 process and what this type of proceeding requires
2 as far as the Board is concerned.

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

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

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

1 that purpose.

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

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

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

21 It's our opinion that the notice
22 requirement has been duly satisfied. The next
23 component was really an opportunity to be heard.
24 And what is required of an opportunity to be
25 heard? You can read a lot of cases on this; you

1 can read treatises. And it's a standard that is
2 somewhat flexible and depends on the type of
3 property interest that is at stake. And what
4 could be deprived by government action.

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

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

24 We feel we have complied with what is
25 required under due process. People have been

1 given an opportunity to appear if they want. They
2 have been given an opportunity to provide written
3 comments, and those we have accepted.

4 Any other comments? Okay.

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

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

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

23 Some of you feel, and it's obvious from
24 my review of all of your written testimony, and I
25 have read most of them at least two or three

1 times, and I'm speaking about both the CSD and the
2 individual homeowners, most of you have injected a
3 lot of other issues into what you want us to
4 consider.

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

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

15 MR. SATO: Thank you very much. Mr.
16 Chairman, Members of the Board, and members of the
17 hearing team, good morning. My name is Reed Sato;
18 I am the Director of the Office of Enforcement for
19 the State Water Resources Control Board. And I
20 hope some day to be able to come down here to talk
21 to you about some of the really interesting things
22 that our Office of Enforcement is doing, and to
23 talk about some of the initiatives that we've got
24 going on that will be of direct benefit and of
25 interest to those of you here in Region 3.

1 However, today I am appearing merely as
2 an attorney advising the prosecution team in this
3 matter. And I want to talk to you specifically
4 about the efforts that we have made to try and
5 include a settlement alternative for those of the
6 community who are faced the proposed cease and
7 desist orders.

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

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

24 Now, of course, in this situation there
25 are some difficulties poised for settlement. We

1 have 45 disparate parties who have different
2 interests, different ideas about what they want to
3 see accomplished. And we also are dealing with a
4 cease and desist order process, as opposed to a
5 penalty situation or something else. So the
6 parameters and the kinds of things that can be
7 negotiated are somewhat more constrained. But
8 still, I don't think that serves as a barrier for
9 wanting to try to go forward and see if we can
10 accomplish some kind of resolution, some kind of
11 settlement.

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

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

21 As far as I know, and, of course, I come
22 to this procedure very late in the game, but as
23 far as I know there was no inquiries on the part
24 of the CDO recipients to talk about settlement
25 until about October of 2006.

1 And I was approached by a couple of the
2 CDO recipients after a deposition that took place
3 of Mr. Briggs. And they said, look, Reed, you
4 know, is there any way that we can try to put off
5 the CDO-type proceedings; is there some other
6 method that the prosecution team might consider
7 for achieving the same result, but without seeing
8 the harsh results of what they considered the
9 result of CDOs.

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

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

23 And we crafted, you know, it was a back-
24 and-forth; it was a good negotiation. I think we
25 learned a lot about the perspectives that these

1 people were faced, or what they had about the
2 process that they were being faced.

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

13 They pointed out some ambiguities in
14 what I presented to them. I left that meeting,
15 fixed them, sent them back. And very shortly
16 thereafter we got some interest on the part of
17 several of the persons at that meeting, saying,
18 yes, this type of settlement approach would be
19 acceptable to them. They wanted to sign up. They
20 asked us if they signed up could we take them off
21 the hearing process for the CDO hearings. We said
22 absolutely; that would make the right sense until
23 we got approval from this Board as to whether or
24 not the kind of settlement agreement that we had
25 crafted was acceptable to this Board.

1 Now, shortly thereafter -- so, we
2 started on this process, and I'll say we came up
3 with something that I called our original
4 settlement option. And that was very much
5 parallel in terms of substantive terms along what
6 the prosecution team had presented as our proposed
7 cease and desist order.

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

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

19 Of course, because we hadn't negotiated
20 and met with these folks, we didn't accept their
21 settlement agreement. But we did, in fact, start
22 conversations with their counsel. And they were
23 good conversations. I mean they were raising
24 issues to us about their perception that the way
25 that we had structured the original settlement

1 agreement and the proposed CDOs was -- it looked
2 to them like we were trying to force them into an
3 unrealistic time schedule for having a sewage
4 treatment facility built for their community.

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

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

25 I'm going to say that, you know, we were

1 not successful in getting all of the CDO
2 recipients that we were negotiating with to sign
3 up to our revised settlement option. And I think
4 it's unfortunate and I'm sorry that happened.

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

14
15 There was a disagreement between us and
16 the 11 negotiating folks about what that meant.
17 And whether there would be a discharge cessation
18 date within the time period that we, the
19 prosecution team, felt was acceptable.

20 Another issue that came up was that
21 there was a question about how the document would
22 be enforced. There was, the prosecution team, as
23 you'll see in our settlement proposal, wanted to
24 enforce under 13304 -- wanted an alternative that
25 we didn't think was appropriate.

1 And there were other things, too.
2 Because sometimes, as you know, as negotiations go
3 along, at the end of the day things start getting
4 Christmas-treed. And, you know, little things
5 started getting added that I felt were pulling us
6 farther apart rather than closer. And so we were
7 ultimately unsuccessful with that group. Although
8 I noticed that a couple of people that were
9 formerly in the group have now joined and accepted
10 the revised settlement option.

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

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

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

24 (Pause.)

25 MR. SATO: Are people in the audience

1 able to see that?

2 CHAIRPERSON YOUNG: Towards the
3 beginning.

4 MR. SATO: Oh, okay. I'm sorry.
5 Members of the audience, apparently there are some
6 hard copies of the revised settlement option in
7 the back.

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

10 MR. SATO: That is the original
11 settlement option. The revised should say
12 December 11th or something like that. December
13 7th, sorry.

14 (Pause.)

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

18 MR. SATO: Oh, okay.

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

24 We have the October 30th one, not the
25 December one.

1 MR. SATO: Sorry.

2 CHAIRPERSON YOUNG: It was emailed to
3 us, yeah.

4 BOARD MEMBER PRESS: We've read --

5 CHAIRPERSON YOUNG: Yeah, we've read it.

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

8 CHAIRPERSON YOUNG: Right. You have
9 a --

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

13 BOARD MEMBER JEFFRIES: Yeah, I have it.

14 CHAIRPERSON YOUNG: Why don't you go
15 ahead.

16 MR. SATO: All right, okay.

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

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

25 Section A is basically the recitals.

1 Number 5 basically says nothing in this agreement
2 shall be deemed an admission of liability on the
3 part of the discharger.

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

13 Moving on to page 2, the parties are
14 acknowledging that there is an AB-2701 process in
15 the works. And that we believe that if the AB-
16 2701 process is successful in creating a
17 wastewater -- a community wastewater treatment and
18 collection system that is available to the site,
19 and the site hooks up to it, that that will, in
20 fact, satisfy the site's obligations with regard
21 to the basin plan prohibition.

22 Number 7 is the Board -- that that
23 complies with CEQA. And number 8 is the part that
24 says that this language has been approved by this
25 Board.

1 In terms of cessation of discharge, that
2 is A on page 2, so we've got two different
3 scenarios here. One is the County is going
4 forward on the AB-2701 process. And so in our
5 discussions with the County, and like I said, I
6 had discussions, the prosecution team's collective
7 discussions with the County, we understand that
8 the milestone date, January 1, 2008, is realistic
9 with regard to whether the County will approve a
10 benefits assessment for the project that they are
11 thinking about under 2701.

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

22 So there is no specific time schedule
23 there for an individual to stop using their septic
24 system, because it's kind of dependent on the
25 schedule that is going on with the County in the

1 development of the AB-2701 process.

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

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

10 MR. SATO: Absolutely.

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

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

22 MR. SATO: Well, it seems -- you have to
23 only be 60 days after the availability -- 60 days
24 after the availability of the community collection
25 and treatment system for connection to the site.

1 BOARD MEMBER PRESS: Okay, so that takes
2 care of the how far down the line problem.

3 MR. SATO: Right. We anticipated
4 that --

5 BOARD MEMBER PRESS: You are. Okay.

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

9 BOARD MEMBER PRESS: Okay, great. Okay.
10 And the second question I had, I wasn't entirely
11 clear understanding what you were saying about the
12 indeterminacy of the date for the treatment
13 facility. That is to say you have milestones.
14 You have a January 1, 2008 milestone. Is there
15 any relationship between part A1 and part A2?

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

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

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

25 MR. SATO: It is. I mean the idea is

1 that as long as the AB-2701 process is moving
2 forward, regardless of when it's actually and
3 ultimately completed, that people who have signed
4 up to this agreement still get to use their septic
5 system until that 60-day deadline that's
6 identified.

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

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

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

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

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

22 So, let's say we pass January 1, 2008,
23 and the project is going along. But somewhere
24 along the line it stops, you know, for whatever
25 reason. And we put that in this document. If

1 there's a material cessation of the Ab-2701
2 process, as determined by this Board. It's not
3 going to be the staff's determination, but the
4 Board's determination. Then that the suddenly
5 dischargers would also then be required to cease
6 discharge within a set time period.

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

10 MR. SATO: The information that we
11 received from our conversations with the County
12 was that the approval of the benefits assessment
13 that we contemplate here will take place in
14 December of 2007. So that's why we picked January
15 1, 2008.

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

19 CHAIRPERSON YOUNG: Sure.

20 MR. SATO: Okay. So, in this situation,
21 so with A2 we're talking about what happens if the
22 benefits assessment is not approved by the County
23 by January 1, 2008. We said that, okay, that
24 means then if it's not going forward then there's
25 no project on the horizon. And there's really no

1 communitywide effort to try to address the basin
2 plan discharge prohibition.

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

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

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

1 cessation.

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

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

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

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

23 CHAIRPERSON YOUNG: And so that I'm
24 clear on something, and maybe this has already
25 been discussed. But, let's say that the first

1 assessment vote fails. Can there be a second
2 assessment vote that takes place in, you know, six
3 months or a year after that first one? And then
4 what would happen?

5 MR. SATO: Well, I assume that, you
6 know, we're hoping that the first assessment will
7 obviously be successful. And the County would be
8 in a position to approve this project by January
9 1, 2008.

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

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

24 So, the way we envisioned it is that
25 this would give -- we want to create a pretty, you

1 know, good target date for this process. There is
2 some flexibility given to the executive officer to
3 modify this order if things don't work out as we
4 anticipate that they should work out.

5 CHAIRPERSON YOUNG: Okay.

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

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

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

24 In terms of the other provisions, here
25 we're talking about that if they submit reports it

1 has to be done, people have to submit an oath as
2 to the submissions that they're making. We allow
3 for dischargers to agree cooperatively in terms of
4 satisfying requirements of the agreement. That we
5 consider it's kind of boilerplate stuff.

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

13 And the, of course, we have item number
14 6, which is the ability of the executive officer
15 to extend the dates. And also the requirement
16 that the executive officer extend certain dates,
17 if, in fact, there are time schedule order issued
18 to either the CSD or the County related to the
19 construction of the community wastewater treatment
20 system that is contemplated.

21 Any questions about that part?

22 CHAIRPERSON YOUNG: Not yet. Okay, the
23 reporting requirements, once they do their
24 inspection and pumping. I had some concern that a
25 kind of a standardized form be used. And that it

1 be something that is in use, you know, in other
2 jurisdictions.

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

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

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

13 (Pause.)

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

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

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

25 So this is very similar to the County of

1 Santa Barbara's form. It is different in that all
2 the information must be filled out. We say that
3 in the beginning. And that we mentioned what a
4 qualified inspector is. And that's someone with a
5 C42 sanitation system contractors license.

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

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

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

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

23 BOARD MEMBER PRESS: Mr. Chairman, do
24 you want to hear about the form or about the
25 settlement agreement?

1 CHAIRPERSON YOUNG: Well, let's hear
2 about the form.

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

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

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

13 BOARD MEMBER HAYASHI: Okay.

14 CHAIRPERSON YOUNG: Okay?

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

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

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

1 inspection? Or is he required to have that same
2 C42 license?

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

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

9 CHAIRPERSON YOUNG: Okay. All right.
10 Mr. Jeffries.

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

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

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

25 My other concern is that I really don't

1 read into what the consequences if they don't fill
2 it out and don't provide it, or don't make the
3 repairs that are needed to bring their septic tank
4 up to standards. There is some reference in this,
5 but it --

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

10 BOARD MEMBER JEFFRIES: Okay.

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

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

22 Of course, we're not talking about a
23 whole lot of people at this particular time. But
24 it could be expanded as we continue hearing the
25 individual CDOs.

1 Maybe if I pull it up a little bit
2 closer. And please excuse me, I'm fighting a cold
3 and my voice may disappear on me, so. Those are
4 some of my concerns, Mr. Sato.

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

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

11 CHAIRPERSON YOUNG: Go ahead.

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

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

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

1 deal with that issue.

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

7 BOARD MEMBER PRESS: Mr. Chair.

8 CHAIRPERSON YOUNG: Yes.

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

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

24 BOARD MEMBER PRESS: Actually what I
25 meant was that would we then have to hear again,

1 have another hearing in order to approve the
2 settlement because dischargers would have to have
3 a chance to look at the form and then come back,
4 or can we move ahead with --

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

12 BOARD MEMBER PRESS: All right, thank
13 you.

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

24 BOARD MEMBER PRESS: Thank you.

25 BOARD MEMBER SHALLCROSS: Mr. Chair.

1 CHAIRPERSON YOUNG: Yes.

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

6 MR. SATO: That's correct.

7 BOARD MEMBER SHALLCROSS: Okay, thanks.

8 CHAIRPERSON YOUNG: Okay. Continue.

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

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

1 opt in for that. And so that is why that is
2 there.

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

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

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

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

23 What we did want to point out though,
24 however, is that we are not recommending that
25 there be any kind of required minimum penalty that

1 might otherwise apply. And that's the assurance
2 that we provided for in this document.

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

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

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

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

24 CHAIRPERSON YOUNG: Okay. Mr. Thomas.

25 MR. THOMAS: On page 7, under remedies

1 for failure to comply, second paragraph, the last
2 sentence says, no negotiated resolution of any
3 enforcement action is required or guaranteed by
4 this provision. I didn't understand that.

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

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

19 MR. THOMAS: Okay, thank you.

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

24 BOARD MEMBER JEFFRIES: Mr. Chair,
25 before you go to that --

1 CHAIRPERSON YOUNG: Yes.

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

4 CHAIRPERSON YOUNG: Of course.

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

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

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

20 In terms of the new party, I mean the
21 new party, if they are buying, you know, don't
22 have any knowledge of this particular process,
23 then that's a different type of issue. And I
24 don't know that we can solve that in this
25 particular agreement.

1 However, at this point in time I don't
2 know how anybody could buy property in Los Osos
3 without now being told that there is this problem.

4 BOARD MEMBER JEFFRIES: Stranger things
5 have happened.

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

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

15 MR. SATO: That's correct.

16 BOARD MEMBER JEFFRIES: Thank you.

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

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

25 CHAIRPERSON YOUNG: And your name, sir?

1 MR. BISHOP: Larry Bishop.

2 CHAIRPERSON YOUNG: Okay.

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

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

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

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

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

24 CHAIRPERSON YOUNG: Okay. All right,
25 thank you. Mr. Shipe.

1 MR. SHIPE: Yes, thank you. Rob Shipe,
2 1024. Regarding the form, the County of San Luis
3 Obispo has a form. Myself and several of the
4 other dischargers have already pumped, as Mr. Sato
5 said, in an effort to show we are compliant.

6 And I request that you continue to use
7 this form. It's already made; they're available
8 readily. The pumpers in our area are familiar
9 with it. It comes with multiple parts, so
10 different parts can be filed with different
11 people. And it's already ready to go.

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

18 BOARD MEMBER PRESS: Could we see that
19 form?

20 MR. SHIPE: Here you go. Okay.

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

24 MR. SHIPE: From some of the things -- I
25 haven't got a chance to look at the other one, it

1 seems like there's questions like number of
2 bedrooms and things like that. Things are larger
3 detail; a whole page is dedicated to the little
4 square that's in the corner, the site map, a whole
5 page is dedicated to that in the one that you are
6 putting forward.

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

11 CHAIRPERSON YOUNG: Mr. Shallcross.

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

17 MR. THOMAS: There was not --

18 BOARD MEMBER SHALLCROSS: -- important
19 to our Board?

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

1 require that they actually fill it out.

2 BOARD MEMBER SHALLCROSS: I certainly --
3 why would we create yet one more form when this is
4 the County form?

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

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

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

14 CHAIRPERSON YOUNG: Yeah, well, --

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

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

20 MR. THOMAS: -- C42 or --

21 CHAIRPERSON YOUNG: -- make it
22 mandatory.

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

25 CHAIRPERSON YOUNG: Yeah.

1 BOARD MEMBER PRESS: But that can be
2 part in the settlement, itself. Why does it have
3 to be in the form?

4 BOARD MEMBER SHALLCROSS: Yeah.

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

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

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

20 And I believe with Clay's I paid like
21 125 extra to have the form filled out. So those
22 are additional things that you might want to
23 consider, additional costs to settlers.

24 CHAIRPERSON YOUNG: I know Santa Barbara
25 County, their pumpers also require extra money to

1 fill the form out, the mandatory form.

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

5 CHAIRPERSON YOUNG: Right, okay, thank
6 you.

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

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

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

25 Something that your Board may consider

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

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

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

16 What would we like to do? Yes, sir.
17 Are you a settling party?

18 NUMBER 1029: I do have a question.

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

21 NUMBER 1029: Board, we're party 1029,
22 and I would --

23 UNIDENTIFIED SPEAKER: State your name,
24 please?

25 NUMBER 1029: 1029.

1 (Laughter.)

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

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

10 What we're trying to do is those that
11 had agreed with Mr. Sato's team to settle based on
12 the terms that he had presented to them, that's
13 what we would address at this point in time.

14 I'm sure that a lot of people have maybe
15 some questions, and want to know what variations
16 are available. That can be taken up with Mr. Sato
17 later.

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

24 CHAIRPERSON YOUNG: Yeah, you know, --

25 MR. SATO: Mr. Chairman, I'd like to

1 speak to that issue if you're going to entertain
2 it.

3 CHAIRPERSON YOUNG: Okay. Mr. Jeffries.

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

11 MR. SATO: Well, we have indicated that
12 people could sign our settlement until they
13 started the CDO hearing process. I think that
14 this has basically been the preview to the CDO
15 hearing process that, you know, after this is over
16 and if this Board decides to adopt or approve some
17 type of settlement language, I think that we would
18 give people the opportunity to try to participate.

19 Like I said, I believe in settlements.

20 BOARD MEMBER JEFFRIES: So do I.

21 MR. SATO: And I don't think that we
22 would arbitrarily hold up people. But, if you go
23 to a hearing against somebody and they get, at the
24 end of the day a CDO is issued, you know, I don't
25 know at that point.

1 BOARD MEMBER JEFFRIES: Well, but let me
2 just go over it further in my question. I
3 understand if we start the process then it may be
4 a little bit too late.

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

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

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

24 And I also believe in settlements and
25 negotiations. I would like to give those people,

1 afford them an opportunity, if they decide before
2 their number is called, that they would have an
3 opportunity to contact the prosecution team and
4 say, I would like to be added.

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

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

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

18 CHAIRPERSON YOUNG: Yeah.

19 BOARD MEMBER JEFFRIES: Okay.

20 CHAIRPERSON YOUNG: That's fine.

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

24 CHAIRPERSON YOUNG: Go ahead.

25 MR. SATO: This part of the proceeding

1 is to deal with our settlement proposal to you
2 folks and your approval of that process. If they
3 have a difference of opinion as to how this matter
4 should be resolved with regard to the proposed
5 cease and desist order hearings, or have language
6 they want to propose, that is -- the proper time
7 to do that is when we are dealing with the cease
8 and desist order, if they want to propose
9 alternative language as to what the cease and
10 desist order should look like, that's the time to
11 do it. But not at this point and not at this
12 juncture.

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

19 BOARD MEMBER SHALLCROSS: Mr. Chair.

20 CHAIRPERSON YOUNG: Yes.

21 BOARD MEMBER SHALLCROSS: I think what
22 we risk is actually turning this hearing into a
23 settlement agreement negotiation. And I think
24 what they have to say, I'm certainly interested in
25 why they didn't want to settle, but I think the

1 appropriate time would be during their 15 minutes.

2 BOARD MEMBER PRESS: I have to agree.

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

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

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

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

20 BOARD MEMBER JEFFRIES: Well, whatever
21 they've decided they've decided. But there are a
22 number of people that have already made a
23 decision. And I think, as Dr. Press has brought
24 out, you know, we can deliberate this whole
25 settlement agreement for the rest of this day and

1 may not come up --

2 CHAIRPERSON YOUNG: Okay, okay.

3 BOARD MEMBER JEFFRIES: -- the
4 conclusion at the end of that time. And the whole
5 agreement may be so changed or wanted to be
6 changed that we would have to go back to the
7 drawing board and completely redo it.

8 And what I've seen in the questions I've
9 asked, it's pretty much clear in my mind where I
10 would like to go with this.

11 CHAIRPERSON YOUNG: Okay. All right.
12 Mr. Hayashi.

13 BOARD MEMBER HAYASHI: I would agree
14 with my colleagues.

15 CHAIRPERSON YOUNG: Okay, all right.
16 One last comment from you, yes, Mr. Shipe and
17 Number 1029, and then we're going to move on and
18 the Board's going to give direction.

19 MR. SHIPE: I just wanted to remind you
20 that the settling dischargers represent one-half
21 of 1 percent to the people in Los Osos thus far.
22 And you have a long process in front of you. And
23 maybe getting some of these arguments now might
24 save you 20 hearings later on today and tomorrow.
25 Just something to thank about.

1 CHAIRPERSON YOUNG: All right, thank
2 you. And 1029?

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

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

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

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

18 BOARD MEMBER SHALLCROSS: Can I ask a
19 quick question?

20 CHAIRPERSON YOUNG: Yeah.

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

24 NUMBER 1029: Yes, sir. Strictly for
25 settlement purposes. Counsel's not here today.

1 BOARD MEMBER SHALLCROSS: And counsel's
2 not here today.

3 CHAIRPERSON YOUNG: Okay.

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

6 CHAIRPERSON YOUNG: Okay.

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

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

20 So, this isn't a set --

21 BOARD MEMBER PRESS: Right, moreover, as
22 Mr. Shallcross has pointed out, the Board can give
23 direction to the prosecution team. And if the
24 Board hears in the individual presentations that
25 there is something -- some change to the

1 settlement that they would like to see, then we
2 can react to that, and listen to it; discuss it
3 and give some reaction to the --

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

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

9 CHAIRPERSON YOUNG: Okay, with a vote.
10 Okay.

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

13 MR. WIMER: Yes.

14 CHAIRPERSON YOUNG: And your name?

15 MR. WIMER: My name is Keith Wimer.

16 CHAIRPERSON YOUNG: Okay.

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

22 And the designated parties asked me to
23 sit in on some of the discussions. So I have a
24 pretty good overview and idea of the problems with
25 this agreement. And if they're agreed to let me

1 speak on it, I could, I think, run some of those
2 by you.

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

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

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

19 MR. WIMER: Two minutes.

20 CHAIRPERSON YOUNG: Okay?

21 MR. WIMER: Okay, hurry up.

22 NUMBER 1029: Thank you, Chair.

23 MR. WIMER: The very first, I would
24 object a little bit to the characterization. I
25 don't think it was fairly negotiated. There were

1 only two people involved in the negotiations to
2 begin with.

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

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

14 Of course, the system starts up after
15 2008 you're going to want to have something in the
16 contract that allows you to not automatically go
17 to the options, which are that somebody installs
18 an onsite system, or that, you know, they have to
19 cease and desist.

20 Theoretically on the disagreement of
21 January 2, 2008, people will, if there is no vote
22 at that point, people will begin to look at onsite
23 systems, which could undermine your whole
24 intention here of trying to get an assessment
25 district.

1 The other point is that -- I'll make
2 this again; Mr. Jeffries brought it up -- is
3 you're going to have a lot of people saying they
4 didn't understand it. The people that are
5 represented by an attorney did understand it.
6 It's much better. It's much more in favor of
7 people represented by an attorney in this. And
8 failure to understand the language and understand
9 what it intends to do.

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

21 We do have language that would address
22 all these issues. The negotiations were basically
23 shut down, I think, because there was a deadline.
24 We didn't really get a chance to finish those.

25 And, like I said, again, if you have a

1 negotiated agreement where anybody can really buy
2 into it, and it addresses the details that you
3 mentioned, and it's one that's a fair agreement,
4 then you're going to get voluntary compliance on
5 the part of the community. And it saves all the
6 unnecessary litigation that may come out later.

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

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

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

25 So, a lot of places that it could be a

1 lot better.

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

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

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

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

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

22 The Board, itself, doesn't get involved
23 in that process except in the end to review it and
24 make any last-minute comments or suggest changes
25 in direction. So, sounds like you've got some

1 work to do. And I would talk to Mr. Sato at some
2 point if that's what you want.

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

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

9 (Laughter.)

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

12 CHAIRPERSON YOUNG: Well, --

13 MR. WIMER: Okay, thank you.

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

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

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

25 CHAIRPERSON YOUNG: Well, there's

1 nothing in front of us.

2 BOARD MEMBER PRESS: No, I know that.

3 CHAIRPERSON YOUNG: They're just --

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

5 If there was exact language changes we could look

6 at those. But I tried to take those --

7 MR. SHIPE: It was in front of you. You

8 have it in front of you, what they submitted in

9 their evidence.

10 CHAIRPERSON YOUNG: Okay, but I mean --

11 MR. SHIPE: Yeah, okay. I was just

12 letting you know it was --

13 CHAIRPERSON YOUNG: -- it has not been

14 agreed to by the prosecution team, so therefore

15 it's not in front of us in that sense.

16 BOARD MEMBER PRESS: So, regarding the

17 settlement that is in front of us, I have a few

18 things to say about it. First of all, I support

19 it. Secondly, I think it's very mild, very

20 reasonable settlement.

21 It's mild because it imposes very small

22 costs, either in terms of time or money. Most of

23 which would be associated with proper tank

24 maintenance anyway.

25 It imposes a deadline for ceasing

1 discharges, which the law already requires. But
2 that date is far off, and can be extended further
3 if there is progress towards a treatment plant.

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

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

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

23 So I really don't see why this
24 settlement is problematic. And so I would vote
25 for it.

1 CHAIRPERSON YOUNG: Any other Board
2 comments? Okay, what about --

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

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

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

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

24 Mr. Chair, I would insist that whatever
25 document we use, and I don't have any problems

1 with using the County of San Luis Obispo for
2 septic tanks, but whatever it is, it has to be
3 standard and everyone uses the same form. That's,
4 consistency is extremely important to me. And I
5 think it's important to the staff and to the
6 public. Because everybody would be using the same
7 document.

8 I think that as Dr. Press pointed out
9 that the times of even extending this from 2010 to
10 2011 disconnect. Why didn't we make it 2009?
11 Move it up a year. And, of course, I guess the
12 rationale of that is if the 2008 date then would
13 be enough time to run another assessment district,
14 or the County have an election to see if they
15 could get something forward.

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

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

24 CHAIRPERSON YOUNG: Down on this end?
25 Okay. Dr. Press.

1 BOARD MEMBER PRESS: I would just make a
2 recommendation that there should be some language
3 change to the section B interim compliance
4 requirements; some minor language change that
5 incorporates, by reference, this San Luis Obispo
6 form. And says in the language that, well, there
7 you go, thank you. Under number 2, obtain a
8 report with a C42 contractors license on the San
9 Luis Obispo County septic tank inspection form.

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

14 Want me to read that again?

15 MR. PACKARD: Can I clarify a point?
16 The settlement agreement now states that if the
17 seller can certify that the tank has been pumped
18 in the previous three years, that's okay. So, I'd
19 like to make the settlement agreement state that
20 that form would apply to prospective pumpings.

21 CHAIRPERSON YOUNG: Well, my desire
22 would be that whoever did the pumping prior today
23 fill out this form. They can date it the date
24 that they sign it. They can sign it the date, you
25 know, that they are presented with it. But I

1 think if someone had, in good faith, had the tanks
2 pumped before the Board even issued their order of
3 directions, to some degree they kind of jumped the
4 gun, to see what the Board was going to actually
5 require.

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

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

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

17 CHAIRPERSON YOUNG: Okay.

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

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

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

25 CHAIRPERSON YOUNG: Okay.

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

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

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

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

22 MR. BISHOP: I -- yes, --

23 BOARD MEMBER HAYASHI: Right, because
24 the general contractor's responsible for all the
25 work that's done underneath that license.

1 MR. BISHOP: It's the person that is
2 pumping the tank goes out and pumps the tank,
3 inspects it and signs the form; the person that
4 hired him that has the C42 license is responsible
5 for that signature. He's responsible for the work
6 that was done. And if it wasn't done properly
7 he's the one that the state would go after, and
8 not the employee.

9 BOARD MEMBER HAYASHI: The contractor.

10 MR. BISHOP: The contractor, itself.

11 BOARD MEMBER HAYASHI: That's correct.

12 That's the way I understand --

13 CHAIRPERSON YOUNG: That would be fine
14 with me.

15 BOARD MEMBER HAYASHI: Yeah.

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

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

22 CHAIRPERSON YOUNG: Okay, --

23 BOARD MEMBER HAYASHI: -- inspection
24 would sign it. But however the contractor's
25 responsible for the employee that signed the --

1 CHAIRPERSON YOUNG: Well, then there's
2 got to be some way to identify who that employee's
3 working for.

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

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

10 BOARD MEMBER HAYASHI: Yeah, I
11 understand that.

12 CHAIRPERSON YOUNG: -- whose number it
13 is.

14 BOARD MEMBER HAYASHI: I understand
15 that, but --

16 BOARD MEMBER SHALLCROSS: You want the
17 license number --

18 BOARD MEMBER HAYASHI: Yeah, okay.

19 CHAIRPERSON YOUNG: We need --

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

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

24 BOARD MEMBER HAYASHI: It would be the
25 operator --

1 CHAIRPERSON YOUNG: -- want to put it on
2 the form.

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

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

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

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

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

17 What's NAWT?

18 (Parties speaking simultaneously.)

19 BOARD MEMBER HAYASHI: All right.

20 CHAIRPERSON YOUNG: Well, we need to get
21 something on the form so that the holder of the
22 license is identified. Okay? We want the form to
23 be part of the settlement agreement; we want it to
24 be retroactive, okay. And my counsel has shown
25 me, let's see, this isn't B, right, John?

1 BOARD MEMBER PRESS: Mr. Chair, I'm
2 worried that the perfect will become the enemy of
3 the good here on the form. If we mess with the
4 form, then you're really creating a separate form.
5 And then you lose the benefit of consistency and
6 the existence of a form.

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

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

23 CHAIRPERSON YOUNG: But this is a form
24 that's coming back to us. We are -- this is our
25 deal. It's not the County's deal. We're just

1 going to use the County's form. I didn't hear
2 that the form had been finalized, that there was
3 some negotiations and discussions going on with
4 our staff. Mr. Thompson, do you have any idea
5 where -- I've been told this form is not
6 mandatory, is that true?

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

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

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

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

22 Now, to clarify for you, I want to point
23 out this is the signature block on the latter part
24 of the form. And it says, I certify under penalty
25 of perjury that the foregoing is true and correct.

1 And it has to be signed. And then the second
2 field there is the C42 state license number.

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

5 CHAIRPERSON YOUNG: That's fine, yeah.
6 That'll -- that's fine. Okay.

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

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

17 MR. THOMPSON: This has a County logo.

18 CHAIRPERSON YOUNG: Oh, okay.

19 MR. THOMPSON: This is a County form.

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

21 MR. THOMPSON: -- top right here.

22 Verification form.

23 CHAIRPERSON YOUNG: Okay.

24 MR. THOMPSON: It's a County form.

25 MR. SHIPE: My mistake.

1 CHAIRPERSON YOUNG: Okay.

2 MR. SHIPE: Thank you, Matt.

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

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

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

11 MR. THOMPSON: I do not believe so.

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

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

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

19 CHAIRPERSON YOUNG: Go ahead.

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

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

1 report has to come back to us.

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

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

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

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

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

25 CHAIRPERSON YOUNG: Well, the County

1 fills out the report. I guess is --

2 BOARD MEMBER SHALLCROSS: They do their
3 own?

4 CHAIRPERSON YOUNG: Who knows.

5 BOARD MEMBER SHALLCROSS: Okay.

6 CHAIRPERSON YOUNG: The County doesn't
7 do that.

8 BOARD MEMBER SHALLCROSS: That's fine.

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

13 Yes.

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

18 BOARD MEMBER SHALLCROSS: Yes, too much.

19 CHAIRPERSON YOUNG: It is?

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

23 CHAIRPERSON YOUNG: Well, I guess --

24 BOARD MEMBER SHALLCROSS: You know, --

25 CHAIRPERSON YOUNG: -- the County has it

1 as voluntary right now, so if the County wants to
2 make it mandatory --

3 BOARD MEMBER SHALLCROSS: That's up to
4 them.

5 CHAIRPERSON YOUNG: -- they can do that.

6 BOARD MEMBER SHALLCROSS: Yeah.

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

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

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

16 BOARD MEMBER HAYASHI: Okay.

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

19 BOARD MEMBER HAYASHI: Okay, that's
20 fine.

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

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

25 BOARD MEMBER SHALLCROSS: Yeah. I move

1 we accept the settlement as proposed with the
2 changed language just mentioned.

3 CHAIRPERSON YOUNG: And the report being
4 attached.

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

7 CHAIRPERSON YOUNG: Okay.

8 BOARD MEMBER PRESS: I'll second.

9 CHAIRPERSON YOUNG: Okay. All those in
10 favor?

11 (Ayes.)

12 CHAIRPERSON YOUNG: Any opposed? Okay.
13 Motion carries unanimously.

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

17 CHAIRPERSON YOUNG: And, Mr. Jeffries.

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

1 CHAIRPERSON YOUNG: Okay. All right, --

2 BOARD MEMBER JEFFRIES: So you never
3 know what you're going to find.

4 CHAIRPERSON YOUNG: Yeah, we're going to
5 take a break for, let's make it ten minutes.
6 We'll convene back at ten of ten.

7 BOARD MEMBER SHALLCROSS: Ten to 11:00.

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

10 (Brief recess.)

11 CHAIRPERSON YOUNG: Okay, let's see
12 where we are with that. Okay, the preliminary
13 procedural matters.

14 Before we do that I want everyone to
15 know that I did have a brief discussion with Mr.
16 Payne. He's not feeling well. And then Mr.
17 Martyn, also, had approached me on his behalf.

18 Mr. Payne is not feeling well. I told
19 him he ought to go home, get rest, try to feel
20 better. And that we would, you know, call him
21 tomorrow.

22 What I propose to do as we go through
23 the individual cease and desist orders is if
24 somebody is not here I'm not going to immediately
25 assume that they have failed to show up for the

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

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

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

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

25 MR. SATO: Well, yes.

1 CHAIRPERSON YOUNG: With further
2 objections?

3 MR. SATO: Further objections, dated
4 September 13, 2006.

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

8 MR. MURPHY: I have. I'd like to
9 address first Mr. Sato's objections to documents
10 632, 641, 705 and 784 through 847. Those
11 documents we submitted because we believe that
12 they are directly relevant to the proposed order.
13 Specifically in that -- and we'll make this
14 argument obviously at length later -- that the
15 11/08 date may not be a feasible or reasonable
16 date, cutoff date for the County's adoption of an
17 assessment.

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

23 So, to that extent, we believe that
24 those documents are relevant to that portion of
25 the CDO.

1 CHAIRPERSON YOUNG: That's 632, 641, 705
2 and 784 to 847?

3 MR. MURPHY: Yes.

4 CHAIRPERSON YOUNG: Okay.

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

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

10 MS. HEWITT: Thank you.

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

22 And, again, our purpose in doing this is
23 to show that the 11/08 hard date for what I like
24 to call Mr. Sato's safe harbor or more lenient
25 provision may not be the appropriate cutoff date.

1 CHAIRPERSON YOUNG: And these are
2 pleadings in what lawsuit?

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

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

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

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

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

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

20 CHAIRPERSON YOUNG: Yeah.

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

25 MR. MURPHY: Does not indicate, right.

1 I believe document 504 to be verified, but not
2 having it in front of me, sir, I do not know.

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

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

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

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

1 control, or indeed, the control of the CDO
2 recipients.

3 CHAIRPERSON YOUNG: Okay.

4 BOARD MEMBER SHALLCROSS: Mr. Chairman.

5 CHAIRPERSON YOUNG: Yes.

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

13 CHAIRPERSON YOUNG: Yeah, and it's --

14 BOARD MEMBER PRESS: Moreover, it's a
15 kind of an infinite regress, isn't it? I mean you
16 could say well, if the date were 2009 why not say
17 that it could be derailed because during 2007 and
18 2008 there were multiple lawsuits.

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

23 CHAIRPERSON YOUNG: Okay.

24 MR. MURPHY: I understand, thank you.

25 CHAIRPERSON YOUNG: Okay. And the other

1 ones in that --

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

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

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

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

20 CHAIRPERSON YOUNG: Okay.

21 BOARD MEMBER SHALLCROSS: Can I ask a
22 question?

23 CHAIRPERSON YOUNG: Yes.

24 BOARD MEMBER SHALLCROSS: What the
25 relevancy of that is to these cease and desist

1 orders?

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

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

17 CHAIRPERSON YOUNG: Okay. Well, let's
18 go ahead and deal with those documents right now.
19 What I would propose, and then, you know, the
20 Board can tell me if you agree with me, I would
21 tend to allow in -- I mean we'll give them some
22 leeway here with the documents. They're going to
23 have to argue anyway what relevancy they have, and
24 you know, where their strengths lie in trying to
25 persuade us.

1 The documents, beginning with 504 and
2 concluding at 847, I would allow in. And
3 hopefully Mr. Murphy's going to tell us why
4 they're important, why they're relevant. Okay.

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

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

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

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

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

17 MR. RICHARDS: No, that covers that
18 particular.

19 CHAIRPERSON YOUNG: Okay, so that we're
20 clear, 632, 641, 705, 784 through 847 can come in.
21 504 and 509 can come in. But 1, 3, 5, 6, 8, 10,
22 11, 13, 15 and 16 will not come in due to lack of
23 relevancy to these proceedings.

24 Okay, let's take the --

25 MR. SATO: Mr. Young, --

1 CHAIRPERSON YOUNG: Yes.

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

4 CHAIRPERSON YOUNG: Okay.

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

9 CHAIRPERSON YOUNG: Okay.

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

13 CHAIRPERSON YOUNG: Okay. All right.
14 We'll allow that, certainly. What we have read at
15 this point is not the actual documents, but just
16 the descriptions that have been provided. So, you
17 know, we haven't really learned what's in them.

18 What is the next group, then, that we
19 need to deal with, of documents?

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

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

24 MR. THOMAS: That we know of. Are there
25 other objections?

1 MR. SATO: Yes, we have an objection to
2 something that has been submitted by, I'll call
3 them the designated party group, called exhibit B.

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

6 MR. SATO: Correct.

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

12 MS. MCPHERSON: Yes.

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

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

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

25 I don't know whether this was an attempt

1 by the people who attached exhibit B to their
2 submissions, because they didn't explain what
3 exhibit B was in any of their submissions, as near
4 as I could tell.

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

7 MR. SATO: Yes, it was attached --

8 CHAIRPERSON YOUNG: The actual list, but
9 they just referred to the list.

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

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

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

1 don't you start, Ms. McPherson.

2 MS. McPHERSON: Okay. The list of --

3 CHAIRPERSON YOUNG: And speak up into
4 the mike so we can all hear you.

5 MS. McPHERSON: Thank you. Gail
6 McPherson. The exhibit B list is a --

7 MR. RICHARDS: Ms. McPherson, just as a
8 matter of protocol, when you start speaking please
9 state your name and who you are representing.

10 MS. McPHERSON: Oh. Gail McPherson,
11 Laurie McCombs.

12 CHAIRPERSON YOUNG: Okay.

13 MS. McPHERSON: The designated party
14 master list was submitted on the 15th. It was
15 delivered in disk form, electronic form, by Allen
16 Martyn; and witnesses also by Bill Moylan. They
17 have a stamped verification of that delivery of
18 the electronic files.

19 The master list was emailed by -- I
20 emailed it, but also Rhian Gulassa and one other
21 designated party, which I'm not sure who that was.
22 I think it was Rob Shipe. Also confirmed that it
23 was from them, so that it would be accepted as
24 from a designated party.

25 The box that was pretty much scanned and

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

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

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

21 So, you know, it's --

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

25 MS. McPHERSON: You know, some of them

1 may be duplicates. It was hard to tell what was
2 what. But I believe --

3 CHAIRPERSON YOUNG: Well, I think --

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

13 They have the --

14 CHAIRPERSON YOUNG: Who has these
15 documents?

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

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

24 MS. McPHERSON: Right.

25 MR. RICHARDS: They were allowed also to

1 incorporate by reference so that they wouldn't
2 have to submit copies of documents that were
3 already in the files of the Regional Board. They
4 were allowed to incorporate by reference documents
5 in the files of the Regional Board or documents
6 that have been submitted by the CSD or documents
7 that had been submitted by other designated
8 parties.

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

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

17 MS. McPHERSON: It's the second
18 statement.

19 MR. RICHARDS: So this is supposed to be
20 a comprehensive list of all the documents that the
21 designated parties have submitted on November
22 11th?

23 MS. McPHERSON: Correct.

24 MR. RICHARDS: Excuse me, November 15th.

25 MS. McPHERSON: It was, yeah, the 15th.

1 MR. RICHARDS: It's not an attempt to
2 incorporate into those submissions documents that
3 exist in the files of the Regional Board, or is
4 it?

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

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

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

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

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

21 BOARD MEMBER SHALLCROSS: Can't hear
22 you.

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

25 CHAIRPERSON YOUNG: Okay.

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

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

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

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

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

20 MS. McPHERSON: Yes.

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

23 MS. McPHERSON: No. All the documents.

24 MR. SATO: I'm sorry, you know, the
25 prosecution team does have some it looks like CDs

1 that we couldn't identify what they were, what
2 documents they are. We believed that they had
3 come to us from the Community Services District.
4 And in looking at the designations on there, they
5 don't seem to be at all associated with documents
6 on exhibit B.

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

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

13 MS. McPHERSON: There was one marked
14 exhibit--

15 CHAIRPERSON YOUNG: -- or is each
16 scanned --

17 MS. McPHERSON: There was one marked --

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

21 MS. McPHERSON: Yes.

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

24 MS. McPHERSON: In fact, it was less
25 messy than the CSD's, you know, documents. They

1 all were numbered. It was done by a professional
2 pdf -- it was pdf, you know, --

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

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

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

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

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

20 MS. McPHERSON: I can --

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

24 MS. McPHERSON: I can give them -- I can
25 get them another copy of that. I did want to make

1 a point that the reason the numbering seems to go
2 from, you know, connect with the CSD's numbering
3 is because initially the designated parties worked
4 with the CSD to put together the original list.
5 And wanted, and the intent was to keep all of the
6 documents together in one place so that we could
7 then kind of go to the well, get a document if we
8 needed it for a particular designated party. And
9 that it would be easier for everyone.

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

16 CHAIRPERSON YOUNG: Okay.

17 (Pause.)

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

22 And then we're going to go through the
23 CSD's presentation first before we get to that
24 separate list. We have your presentation. And so
25 it will be sometime in the afternoon before that

1 becomes an issue. I don't know, we may have to
2 take a quick break to have part of your staff
3 maybe go through that list. Or not take the break
4 and have someone split off to do that.

5 MR. SATO: Well, I think that --

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

11 So, any suggestions on how we proceed
12 with this?

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

24 CHAIRPERSON YOUNG: Okay.

25 MR. SATO: Allow us to move, I think,

1 more quickly.

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

4 BOARD MEMBER SHALLCROSS: That sounds --

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

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

10 CHAIRPERSON YOUNG: Right. So, --

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

13 CHAIRPERSON YOUNG: Yeah.

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

18 CHAIRPERSON YOUNG: Okay, go ahead.

19 (Pause.)

20 CHAIRPERSON YOUNG: Folks, while we're
21 waiting for Ms. McPherson to look through her DVDs
22 or CDs, the next on our list is going to be take
23 up, as part of these preliminary procedural
24 matters, if there's any other objections that the
25 Board needs to consider at this point before we

1 start with the item number 3, the nonevidentiary
2 comment by government agencies. So that would be
3 next in line.

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

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

15 It should be given in a more timely
16 manner.

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

19 MR. ROCHTE: Yes.

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

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

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

25 MR. ROCHTE: No.

1 CHAIRPERSON YOUNG: Okay.

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

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

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

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

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

18 BOARD MEMBER SHALLCROSS: That was the
19 statement.

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

24 MR. ROCHTE: Well, they were submitted
25 in a timely manner --

1 CHAIRPERSON YOUNG: Ms. McPherson said
2 she had submitted it. And I'm willing to accept
3 that statement that she had submitted it. And I'm
4 going to give those parties that want those
5 exhibits some time to make sure that the
6 prosecution team can go through them and decide if
7 they object to any.

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

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

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

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

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

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

1 about.

2 Mr. Duggan.

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

6 CHAIRPERSON YOUNG: Yes.

7 MR. DUGGAN: -- correct? Or objections?
8 So far I did have a few problems, but I'd like to
9 ask, did I hear Reed Sato indicate to you that he
10 had advised this Board earlier? Advised this
11 Board on how to proceed in this prosecution?

12 CHAIRPERSON YOUNG: That who said that?
13 I didn't catch the name.

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

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

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

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

25 MR. DUGGAN: Okay, but you are aware --

1 yes -- and there is --

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

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

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

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

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

21 CHAIRPERSON YOUNG: Okay.

22 MR. RICHARDS: It's entirely possible
23 that Mr. Sato may have used the term, I advised
24 the Board, in the context of I notified the Board.
25 Because that is terminology that is often used

1 interchangeably. But Mr. Sato has not been
2 advising the Board with respect to the legal
3 issues presented in this matter.

4 MR. DUGGAN: Okay, thank you.

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

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

11 CHAIRPERSON YOUNG: You're welcome.

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

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

17 MS. McPHERSON: Got them.

18 CHAIRPERSON YOUNG: You got them. Okay.
19 Is that on a CD, a DVD?

20 MS. McPHERSON: Yeah.

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

23 MS. McPHERSON: November 13th date.

24 CHAIRPERSON YOUNG: Do you have a
25 duplicate? Or just one copy?

1 MS. McPHERSON: I can get a duplicate.

2 CHAIRPERSON YOUNG: Okay, --

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

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

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

23 CHAIRPERSON YOUNG: All right.

24 MR. SATO: -- introduce documents into
25 the administrative record. I think it's more

1 useful to wait until we see whether any of the
2 documents --

3 CHAIRPERSON YOUNG: Okay.

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

7 CHAIRPERSON YOUNG: Why don't we do
8 that.

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

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

22 MS. McPHERSON: No. It starts at number
23 141 to 250, a couple hundred.

24 CHAIRPERSON YOUNG: Couple hundred,
25 okay. Well, I think when we -- let's -- I want to

1 move through this and maybe we then can take a
2 break in the proceedings so we can deal with that
3 issue before the individual CDO hearings begin.
4 Okay. Is that fine? All right.

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

9 (Pause.)

10 NUMBER 1029: Board, Chair, we're number
11 1029. My first question would be we've decided to
12 accept the settlement at the prior break, --

13 CHAIRPERSON YOUNG: Okay.

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

17 CHAIRPERSON YOUNG: Repeat the last
18 part?

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

22 CHAIRPERSON YOUNG: Well, what I would
23 say, as an interested person, you could then
24 speak, because we will take your CDO slot out of
25 the process. But if you want to speak as an

1 interested person, which is going to come up next,
2 you'd have a minute to do so.

3 NUMBER 1029: I'll wait for that minute.

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

7 NUMBER 1029: Yes, sir.

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

10 NUMBER 1029: Yes.

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

13 NUMBER 1029: Yes.

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

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

24 NUMBER 1029: Let me clarify, if I may.

25 CHAIRPERSON YOUNG: Okay.

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

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

10 NUMBER 1029: I understand that.

11 CHAIRPERSON YOUNG: Okay.

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

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

17 NUMBER 1029: Thank you.

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

20 MR. SATO: I notified staff.

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

24 MS. McPHERSON: I will give it to Greg
25 Murphy. We had some objections to not being able

1 to question and depose testimony from Roger
2 Briggs. And we had other issues with notice. And
3 the number of designated parties that did not
4 receive notice timely.

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

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

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

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

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

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

22 CHAIRPERSON YOUNG: Yes.

23 BOARD MEMBER SHALLCROSS: So if
24 something happens to someone else, then they need
25 to bring that up.

1 MR. RICHARDS: Yeah, at this proceeding
2 you are here only for the people you are
3 representing. You cannot speak for other --

4 MS. McPHERSON: Sure.

5 MR. RICHARDS: -- parties at all.

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

8 MR. RICHARDS: So you're --

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

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

17 MS. McPHERSON: I'm talking --

18 MR. RICHARDS: You are here --

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

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

24 MS. McPHERSON: Okay, I --

25 MR. RICHARDS: And you have no authority

1 from others to speak for them.

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

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

11 None of the large documents from the
12 21st of November were mailed out until this week.
13 The documents from December 1st were not mailed
14 out until this week. And so she did not have a
15 chance to properly prepare for her hearing. And
16 she wanted to raise that concern and objection.

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

24 CHAIRPERSON YOUNG: It's their burden to
25 come up and share it with you.

1 MS. McPHERSON: Yeah.

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

4 MS. McPHERSON: Laurie McCombs.

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

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

16 CHAIRPERSON YOUNG: Okay.

17 MS. McPHERSON: So, you know, --

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

21 MS. McPHERSON: Yes. There are a number
22 of people who did, and she was one of them. And
23 unfortunately, the request was for about in
24 September. And there was some discussion about it
25 with others. And there was not a notification to

1 the other designated parties this was taking
2 place.

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

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

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

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

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

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

25 CHAIRPERSON YOUNG: Well, but, see

1 people -- you don't have to have an attorney
2 represent you.

3 MS. McPHERSON: Of course not.

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

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

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

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

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

21 UNIDENTIFIED SPEAKER: He didn't ask any
22 questions.

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

25 MS. McPHERSON: No. The people

1 officially there --

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

8 MS. McPHERSON: I believe that there is.

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

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

18 And there was a letter that states that,
19 and it's very confusing because it was written in
20 2002. And so that's one document that we would
21 want to ask him about. We would want to ask him
22 about several others where it seems to be the
23 indication that the prohibition zone was set up to
24 prohibit future discharges, and not to come after
25 individuals now without an opportunity for

1 challenge.

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

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

8 MS. MCPHERSON: But it is --

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

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

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

24 I don't know that just because he signed
25 a letter back in 2002 that you have to take his

1 deposition over it.

2 And the judge yesterday --

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

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

22 CHAIRPERSON YOUNG: Okay.

23 Unfortunately, if you don't have a lawyer helping
24 you, some of these things may not become apparent.
25 I mean the Board, itself, is not responsible for

1 setting up Mr. Briggs' deposition. That's not our
2 doing. Okay.

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

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

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

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

21 MS. McPHERSON: They were proactive.
22 They did send out an email. They did not have it
23 responded to. It was responded to Rob Shipe. And
24 then that did not go out to the rest of the
25 people.

1 CHAIRPERSON YOUNG: Okay. Well, your
2 objection's noted about Mr. Briggs and his
3 deposition. Yes? Do you want to respond, Mr.
4 Sato, about each of her objections? Or if you
5 want to respond just to the Roger Briggs'
6 component of this, please do.

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

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

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

23 Let's get to the next one, and this was
24 about notices that Ms. McCombs has not received,
25 or not received timely or what?

1 MS. McPHERSON: Those and other notices
2 that she did not receive timely. Most recently is
3 the December 1st notices, the notices that are
4 posted on the website, but not mailed. And that
5 was a 44-page document that pretty much was the
6 rebuttal document to the submittals. There was
7 this limited amount of time to respond to that.
8 And by the time she received it, that response
9 time was over.

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

18 So, --

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

22 MS. McPHERSON: Yeah, we were assuming
23 that they were all the documents. We didn't know
24 that they had lost the disk. So we were assuming
25 that we needed to look at that.

1 CHAIRPERSON YOUNG: Well, the disk,
2 though, is your --

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

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

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

1 CHAIRPERSON YOUNG: See, --

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

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

13 MS. McPHERSON: Um-hum.

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

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

24 MS. McPHERSON: Yeah. There are some
25 documents that --

1 BOARD MEMBER SHALLCROSS: Specific
2 documents we're talking about that your client is
3 going to be relying on for her case.

4 MS. McPHERSON: Oh, okay.

5 CHAIRPERSON YOUNG: Or that were
6 objected to.

7 BOARD MEMBER SHALLCROSS: That were
8 objected to, right.

9 CHAIRPERSON YOUNG: Yeah.

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

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

14 BOARD MEMBER SHALLCROSS: Okay.

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

18 MS. McPHERSON: Okay.

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

21 MS. McPHERSON: Okay, that's fine.

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

25 MR. RICHARDS: Mr. Chairman.

1 CHAIRPERSON YOUNG: Yes.

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

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

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

23 And that is the protocol that was
24 established in the notice dated October 16th; and
25 that is the protocol that we have followed.

1 CHAIRPERSON YOUNG: All right. Well,
2 then allowing the designated parties to bring up
3 any document issues they have when they're putting
4 on their cases would be the appropriate --

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

7 CHAIRPERSON YOUNG: Okay.

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

11 CHAIRPERSON YOUNG: Okay.

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

16 CHAIRPERSON YOUNG: Doesn't violate
17 any --

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

20 CHAIRPERSON YOUNG: Okay. One last
21 thing.

22 MR. MURPHY: Mr. Chairman, --

23 CHAIRPERSON YOUNG: Yes.

24 MR. MURPHY: -- if I may, while it
25 doesn't violate the protocol, the fact that if I

1 understand the situation correctly, and forgive me
2 if I don't, but the fact that the rebuttal
3 argument by Mr. Sato was mailed on December 12th,
4 meaning that the soonest it could be received by
5 the individual designated parties, those without
6 access to the computer, would have been the 13th,
7 would have left them with only one day to prepare
8 their verbal responses to that rebuttal for
9 presentation today.

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

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

24 MR. MURPHY: Thank you, sir.

25 CHAIRPERSON YOUNG: All right. You

1 mentioned, Ms. McPherson, that Ms. McCombs did not
2 have adequate time to properly prepare. Was that
3 to properly prepare after getting kind of the late
4 receipt of the rebuttal of what documents were
5 going to be objected to? Or just in general?

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

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

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

22 CHAIRPERSON YOUNG: Well, as I recall in
23 May or June, or I think when we had our status
24 conference the first meeting after April, is when
25 the Board had said that we're going to keep the

1 same 45 people; staff had said they're going to
2 keep the same 45 people. And that their
3 submissions, even for the April 28th hearing,
4 would still be admissible and usable.

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

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

23 MS. McPHERSON: Well, there are a few
24 things that were a disconnect and could have been
25 done differently. Mr. Sato, himself, said in his

1 last correspondence that if there had been more
2 time, and the designated parties could have been
3 able to work together, and even be notified, that
4 they could have reached a settlement.

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

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

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

23 It's very confusing. This person has a
24 pile of papers in her house and had no clue what
25 they meant. And so it was very difficult.

1 CHAIRPERSON YOUNG: Well, okay, your
2 objection is noted.

3 MS. MCPHERSON: Okay.

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

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

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

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

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

22 Mr. Chairman, I would like to
23 corroborate Mrs. McPherson's testimony regarding
24 the issuance of data, you know, from the water
25 quality control panel, you know, the Board.

1 CHAIRPERSON YOUNG: Okay.

2 MR. MARTYN: And I have here as evidence
3 a copy of the order refuting, you know, that is
4 dated December 11th. So if you need prima facie
5 evidence of what she is testifying to, it's right
6 here for all the Board Members to see.

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

10 Now, if you think that that's adequate
11 time or that we need more time, we definitely do
12 need more time, Mr. Chairman. We cannot mount a
13 defense to all this data here, you know, within a
14 24-hour period. It's not right. It's not legal.
15 It's not fair. It's not constitutional.

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

23 CHAIRPERSON YOUNG: I've already ruled
24 on that. Your objection is noted, that you're
25 joining in Ms. McPherson's objection. If you want

1 to submit that to us when you have your individual
2 hearing time slot, why don't you do it at that
3 time.

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

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

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

1 Thank you, Mr. Chairman.

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

4 NUMBER 1034: I'm 1034.

5 CHAIRPERSON YOUNG: 1034?

6 NUMBER 1034: Yes.

7 CHAIRPERSON YOUNG: Okay.

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

10 CHAIRPERSON YOUNG: Join in --

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

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

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

25 So, obviously we didn't know about it.

1 We didn't have the evidence. There was no way we
2 could prepare for it. And we weren't notified.

3 Thank you.

4 CHAIRPERSON YOUNG: Okay, thank you.

5 Mr. Sato.

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

8 CHAIRPERSON YOUNG: Yes.

9 MR. SATO: -- about this deposition.
10 You know, Mr. Briggs did produce all of the
11 documents that were requested by Mr. Shipe at that
12 deposition; and they were exactly the same
13 documents that in the ill-considered attempt by
14 some of the others to also take a deposition. The
15 exact same documents that we requested.

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

19 UNIDENTIFIED SPEAKER: No, that's not
20 true.

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

25 CHAIRPERSON YOUNG: Okay. Yes.

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

9 (Pause.)

10 CHAIRPERSON YOUNG: Well, let's go ahead
11 and discuss this, because it's something that
12 we've been discussing, the Board had been
13 discussing earlier in terms of how to manage this.

14 And the way the notice is laid out, we'd
15 have the closing arguments after the conclusion of
16 each individual CDO hearing.

17 MR. MURPHY: That was my understanding.

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

23 So, I mean there's -- some of us may
24 feel that maybe your client should give its
25 closing argument at the end of the prosecution

1 team's case, and not provide a closing after each
2 individual.

3 MR. MURPHY: After each individual,
4 correct?

5 CHAIRPERSON YOUNG: Right.

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

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

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

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

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

25 CHAIRPERSON YOUNG: Well, I think after

1 the cross-examination or, you know, rebuttal takes
2 place, then you would do it --

3 MR. MURPHY: Okay, sure.

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

6 MR. SATO: That'd be fine.

7 MR. MURPHY: Thank you.

8 CHAIRPERSON YOUNG: Okay.

9 MR. MURPHY: Then my request, Ms.
10 McPherson asked that I seek leave to introduce
11 pleadings in the writ case that was concluded
12 yesterday. These, I believe, Ms. McPherson, will
13 be relied on by you client and by other designated
14 parties, is that correct?

15 MS. McPHERSON: Yes.

16 CHAIRPERSON YOUNG: Okay. What
17 documents are these?

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

21 MS. McPHERSON: Okay.

22 CHAIRPERSON YOUNG: And if you have the
23 set, you should give it to Mr. Sato, so while
24 we're discussing this he has something to comment
25 on in front of him.

1 MR. MURPHY: It would be the petition
2 for writ of mandate; the response by the Water
3 Board; the ex parte application for issuance of
4 the alternative writ of mandate; and the points
5 and authorities therein.

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

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

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

18 MR. MURPHY: I understand that.

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

1 of them. Am I mistaken?

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

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

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

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

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

21 MR. MURPHY: Thank you for your
22 consideration.

23 CHAIRPERSON YOUNG: I mean they are
24 pleadings in another case and so they're
25 essentially allegations. And if there's legal

1 arguments there that people want to rely upon,
2 they're going to have to orally give them to us
3 during their presentations.

4 Okay.

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

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

11 MR. THOMAS: Yes.

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

16 MS. McPHERSON: Excuse me, --

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

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

21 CHAIRPERSON YOUNG: Yes.

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

24 CHAIRPERSON YOUNG: Okay.

25 MS. McPHERSON: -- for me. The reliance

1 on testimony by other parties, --

2 CHAIRPERSON YOUNG: Right.

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

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

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

22 I hope that was clear.

23 MR. RICHARDS: There would be no
24 objection to -- well, there should be no objection
25 to any designated party incorporating by reference

1 into his or her presentation the written
2 documentation that has been provided to the Board
3 already; and that is posted on the website; that
4 is before the Board that Board Members have copies
5 of.

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

12 And the second part of your question
13 related to?

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

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

25 If they wanted to rely on the oral

1 testimony of people who would have come after
2 them, they are going to have to call those people.

3 MS. McPHERSON: So they would --

4 CHAIRPERSON YOUNG: As witnesses.

5 MS. McPHERSON: As witnesses.

6 CHAIRPERSON YOUNG: Yeah.

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

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

13 MS. McPHERSON: Okay.

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

17 MS. McPHERSON: Okay.

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

24 However, if you're hoping to rely on
25 oral testimony then you're going to have to put it

1 on.

2 MS. McPHERSON: Okay. Thank you very
3 much.

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

7 MR. THOMAS: No, they --

8 CHAIRPERSON YOUNG: Mr. Thompson, number
9 3.

10 MR. THOMAS: These would be people
11 that --

12 CHAIRPERSON YOUNG: Government agencies.

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

15 CHAIRPERSON YOUNG: Okay. Do we have
16 any other governmental agency witnesses that wish
17 to testify before the Board on this matter? Okay.

18 Now we'll go to interested persons that
19 wish to testify. Mr. Duggan, I have your card;
20 and I think I have some others here.

21 (Pause.)

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

1 Before I start --

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

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

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

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

21 MS. TAYLOR: Public comment.

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

1 three more.

2 Okay, Mr. Duggan.

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

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

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

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

25 CHAIRPERSON YOUNG: Okay, thank you.

1 1029.

2 NUMBER 1029: Before I begin, if I may
3 clarify the difference for myself between this
4 comment and the public comment to come later. If
5 you could clarify for me?

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

11 NUMBER 1029: And this now?

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

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

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

20 NUMBER 1029: Thank you.

21 CHAIRPERSON YOUNG: Okay. Keith Wimer.

22 UNIDENTIFIED SPEAKER: He's outside.

23 CHAIRPERSON YOUNG: He's outside. Okay,
24 I'll put this card on the bottom and we'll bring
25 him up. Ann Calhoun.

1 MS. CALHOUN: Ann Calhoun, Los Osos. I
2 filled out a card to speak on agenda item number
3 3, which was the proposed settlement. And that's
4 been voted on. It's pointless to comment.

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

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

17 This does streamline the process when
18 you get to a settlement. I was hoping that we
19 would get to a settlement that would be adequate,
20 that would work, and then could be something that
21 the entire community could embrace as a workplan
22 in a cooperative manner where they could work
23 together; and it might be something that could
24 eventually signal kumbaya.

25 I don't think that that is an impossible

1 goal. And I hope that through these hearings that
2 we get closer to that end. Thank you.

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

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

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

19 And I just wanted to have everybody on
20 your Board think for a minute what it would be
21 like if you found yourself in this situation. And
22 you realize there were people on both sides that
23 were very committed. But just imagine at this
24 point that you're faced with an order; and that
25 order could amount, given certain unfortunate set

1 of circumstances, to \$5000 a day. And imagine
2 that then you're being asked to get into a process
3 where you're expected to give input and so on to a
4 County process to get the sewer done. And hanging
5 over your head are these incredible fines and all
6 of this onus on your property.

7 So there is a whole group of us out
8 there in the middle that want to get the job done,
9 but we'd like to do it in a way where it is a very
10 cooperative and mutual way. And we are very
11 willing to work with your Board and work with the
12 prosecution team to get it done.

13 CHAIRPERSON YOUNG: Well, we appreciate
14 your comments. Thank you. Lawson Schaller, and
15 Anne Norment, and then Mr. Shipe.

16 MR. SCHALLER: Lawson Schaller, Los
17 Osos. Mr. Chair, Board Staff and citizens, I want
18 to just encourage a more thought-out resolution,
19 workplan, what-have-you, that most of the
20 community would accept. A fractured, divided,
21 confusing approach has been nonproductive.

22 We need efforts to include and consider
23 the entire community, not just a small fraction of
24 people.

25 Please consider and create pragmatic

1 steps, simple, clear, pragmatic steps that the
2 citizens can follow to avoid CDOs, the confusion,
3 the frustrating aspects for you, I'm sure, as well
4 as us, of the hearings and all these proceedings.

5 I think a list mailed out, as was
6 suggested in a letter, of -- mailed out certified
7 mail that says, here's what you got to do, real
8 simple steps. I think you'd find most of the
9 community would follow it. Those that don't then
10 need to face the CDOs and other issues. Thank
11 you.

12 CHAIRPERSON YOUNG: Thank you for your
13 comments. Ms. Norment.

14 MS. NORMENT: Anne Norment, Los Osos.
15 You know, we understand that the Water Board wants
16 clean water, and so do the citizens of Los Osos.
17 However, prosecuting individual citizens for
18 events that they really don't have control over
19 isn't going to get clean water in Los Osos.

20 You know, in order to further that end,
21 accountability for fixing things needs to be
22 aligned with the power to do it. Citizens can
23 realistically get their tanks pumped; they can get
24 them inspected; they can participate in public
25 comment and really think very deeply about the 218

1 vote that's before them is a good one, and
2 participate in that process. But beyond that,
3 they don't have a lot of control, you know. I
4 doubt this Board, together, could come up with a
5 sewer treatment plant on their own.

6 So, I really favor language in the
7 settlement or the CDOs that addressed the January
8 1, 2008 deadline. And also tighten up language
9 about what constitutes the AB-2701 process. As
10 well as material cessations. Issues like ancient
11 artifacts, problems holding up the process,
12 California Coastal Commission evaluation. Other
13 government agencies that really are beyond the
14 control of the citizens.

15 If you ally the power, you know, with
16 accountability then it's going to go forward.
17 Otherwise it's just punitive.

18 CHAIRPERSON YOUNG: Okay, thank you for
19 your comments. Mr. Shipe.

20 MR. SHIPE: Rob Shipe. Mr. Jeffries,
21 you're right, nobody does have a right to
22 discharge in violation of a discharge prohibition.
23 However, your agency, under their 1978 MOU with
24 the County of San Luis Obispo, has
25 responsibilities of notification to the County of

1 San Luis Obispo; and there's been evidence
2 submitted that your staff has failed on those
3 responsibilities. And I just want you to remember
4 that as you go forward and discuss these issues.

5 I've worked very hard over this last
6 year to help unify this Board and my community. I
7 believe we're getting closer; I believe we're
8 getting closer to Mr. Shallcross kumbaya moment.
9 And I encourage you all in this process to keep
10 that in mind, and to continue that process.
11 Because I believe we can get there. Thank you
12 very much.

13 CHAIRPERSON YOUNG: I guess Mr.
14 Shallcross is never going to forget that moment.
15 When it comes --

16 BOARD MEMBER SHALLCROSS: It was a joke.

17 CHAIRPERSON YOUNG: It was a joke, okay.
18 Yes. Let me get -- I'll pull your card up; it's
19 at the bottom of the list. Okay.

20 MR. SHIPE: And I would also like a
21 minute at the other public comment, as well.

22 CHAIRPERSON YOUNG: Yeah, that should be
23 -- yeah, there's no problem with that. Okay.
24 James Tkach. And then Richard Margetson and then
25 1029.

1 MR. TKACH: Good morning. I --

2 CHAIRPERSON YOUNG: Your name, please.

3 MR. TKACH: James T. Tkach, Los Osos. I
4 want to let you know I object to this process,
5 holding individual citizens accountable for the
6 failure of the government is not a way to proceed.
7 As one speaker said, I ask you to imagine
8 yourselves in this position.

9 As a member of the wastewater committee
10 we're actively involved in pursuing a project as
11 best we can, even though the County's taken over.
12 We've reviewed an interim septic management
13 pumping program that we tried to get incorporated
14 into the community. That was something that you
15 guys asked the County to do a long time ago.

16 This CSD Board and the community is
17 willing to get it done. It would accomplish a lot
18 of the goals of what you want accomplished by the
19 CDOs. The CDOs are punitive in nature. I see it
20 no other way. And I'd ask you to try and convince
21 me otherwise.

22 We do want a sewer. You know the story.
23 We just didn't want it in the middle of our town.
24 We are proceeding towards those ends, and I ask
25 you not to issue any CDOs. Thank you.

1 CHAIRPERSON YOUNG: Okay, thank you. Go
2 ahead, Mr. Margetson.

3 MR. MARGETSON: Richard Margetson. The
4 first thing I want to talk about is as you proceed
5 to the next phase, if you're going to incorporate
6 the requirement for the owners to notify the next
7 occupant of the property, I don't think you have
8 the documentation in place; and I don't think that
9 California Association of Realtors has developed a
10 form to make that notification mandatory. I think
11 you're going to have problems down the road for
12 those people that don't do the noticing. I have a
13 problem with the 30 days after the close of escrow
14 notice.

15 And there was a question brought up
16 earlier about going after people after the fact.
17 What about people who move out of the State of
18 California? What mechanism are you going to have
19 to possibly find them?

20 The three-year pumping requirement,
21 subsequent pumping requirement after the initial
22 pumping, I thought you heard testimony at the last
23 hearing from Dr. Wickham, and I'd like to know how
24 that became the standard, the three-year standard.

25 And then my last comment is all the

1 money that's been spent on these hearings, on both
2 the staff level, the CSD level and paying for you
3 to be here over the last few years, we could have
4 had a septic management program in place already.
5 And we could have had a toilet retrofit and
6 showerhead retrofit program in place in Los Osos.
7 And I think that would have gone a lot further to
8 correcting our water problems than what we have
9 now, by sitting here at these meetings twice a
10 year, year after year.

11 Thank you.

12 CHAIRPERSON YOUNG: Thank you for your
13 comments. And the last speaker is number 1029.

14 NUMBER 1029: Mr. Young, Board, Staff,
15 I'm 1029, interested party. I just wanted to make
16 two brief comments.

17 Regarding the settlement agreement and
18 the hearings this Board will have over the next
19 day and a half, I would like to request Board
20 direction back to staff regardless of your
21 decisions on to issue or not issue CDOs, that we
22 may continue with staff to reach a better
23 settlement agreement that will reach out to the
24 community and not just people possibly accepting
25 it for other than the pure merit of the agreement,

1 itself.

2 A better agreement that alleviates the
3 two main fears that are still in the settlement.
4 One being possible unreachable goal of 2008 due to
5 election certification dates after the 218 vote.

6 And the other to have an agreement
7 instead of an order that we're fearful may be
8 changed unilaterally by the Board.

9 Thank you.

10 CHAIRPERSON YOUNG: Okay, what was the
11 last point set down to not be or to be changed
12 unilaterally by the Board.

13 NUMBER 1029: There is a fear that some
14 order may be changed unilaterally -- I'm sorry, by
15 staff not the Board, I misspoke. There's a fear
16 that an order could be changed once it is signed,
17 whereas the settlement agreement would have to be
18 renegotiated. Unless that's a misconception.
19 There's a fear among people that did not want to
20 settle.

21 CHAIRPERSON YOUNG: We'll have Mr.
22 Richards address that for you. He's concerned,
23 amongst other things, that the staff may --

24 MR. RICHARDS: Since this is an order
25 it could be changed by the executive officer under

1 the authority -- yeah, it was on -- I can't
2 imagine the executive officer being able to change
3 this settlement agreement without the consent of
4 the Board. Because this is -- the order in this
5 case is based on a negotiated settlement that has
6 been endorsed by the Board.

7 And while the settlement agreement is
8 going to be enforceable as an order under section
9 13304, the executive officer would not be able to
10 adjust the terms of that now that it has been
11 adopted by the Board, without presenting it back
12 to the Board again.

13 And certainly that kind of unilateral
14 adjustment would invalidate the agreement of
15 the --

16 CHAIRPERSON YOUNG: Right, of the
17 parties.

18 MR. RICHARDS: -- of the parties --

19 CHAIRPERSON YOUNG: Right.

20 MR. RICHARDS: -- who have agreed, have
21 consented to the imposition of these obligations.

22 CHAIRPERSON YOUNG: I wouldn't expect
23 that we're going to see that happen at all. As
24 far as your other concerns, a cease and desist
25 order is proposed by staff; only the Board can

1 issue it. Only the Board can change it. The
2 Board has control over that.

3 And the Board can revisit a CDO in the
4 future. Members of the public can write letters,
5 or can come to the public comment portion of a
6 Board meeting and address this if they've got some
7 issues with the CDOs, or they want to see changes
8 done. That's not impossible to do if the
9 circumstances warranted it. It's got to go
10 through staff to do.

11 And so if, down this line, and I would
12 anticipate actually, I mean people comment that
13 we've targeted 45 and what's going to happen to
14 the rest, I anticipate the prosecution team is
15 probably going to address that issue after we're
16 done today and tomorrow, where everyone is going
17 to be treated perhaps in a couple or one big
18 chunk. And everyone's going to be on the same
19 footing. And things will speed up and be
20 processed.

21 And if there is a more favorable
22 settlement agreement that takes place later, we
23 heard Mr. Sato say the people that settled earlier
24 would get the benefit of that.

25 NUMBER 1029: I appreciate that and I do

1 believe that. The concern is once many settle
2 today or by tomorrow, this may be the final
3 agreement. And there's several that don't think
4 the agreement has gone far enough to be even-
5 handed. The fear is the staff may say this is the
6 agreement, it's the only one we're going to
7 entertain now. And they may stop negotiating.

8 CHAIRPERSON YOUNG: Well, but --

9 NUMBER 1029: And I guess I'm requesting
10 Board --

11 CHAIRPERSON YOUNG: But here's the
12 problem with that. You have to settle with them,
13 not with us. We're just reviewing the
14 settlements. So you have to deal with the
15 prosecution team on that. We can't tell them what
16 to --

17 NUMBER 1029: I guess I'm just -- I
18 guess I'm asking the Board to perhaps ask them to
19 keep an open mind and that's all.

20 CHAIRPERSON YOUNG: Okay, well, I think
21 that they've heard your concerns, I think. I
22 don't know how I would enforce that direction, --

23 NUMBER 1029: Thank you.

24 CHAIRPERSON YOUNG: -- you know. Okay,
25 yes.

1 MR. RICHARDS: Mr. Chairman, it's been
2 brought to my attention that there may be some
3 misunderstanding about the settlement process.
4 And that people may be able to negotiate
5 settlement after the issuance of cease and desist
6 orders against them.

7 And I would point out that that would
8 not be possible. A settlement is only possible
9 before the CDO is issued, before any enforcement
10 action is taken. It's inherently a compromise
11 that is achieved between the prosecution and the
12 respondent to avoid going through the hearing
13 process in which the adjudication will take place.

14 Once the adjudication takes place, and a
15 cease and desist order is issued, if, in fact,
16 that is the outcome, then it is too late to
17 attempt to negotiate more favorable settlement
18 terms.

19 CHAIRPERSON YOUNG: Right. Yeah, my
20 comment was only that because the Board issues the
21 cease and desist orders, I mean it's not
22 impossible for the Board to revisit a cease and
23 desist order --

24 MR. RICHARDS: Well, that's future --

25 CHAIRPERSON YOUNG: -- if the

1 circumstances --

2 MR. RICHARDS: That is certainly true.

3 CHAIRPERSON YOUNG: -- warrant it --

4 MR. RICHARDS: The Board retains the
5 jurisdiction to amend cease and desist orders as
6 it retains the jurisdiction to amend cleanup and
7 abatement orders and waste discharge requirements,
8 as the circumstances warrant.

9 So the Board does retain control over
10 this, and the Board also would retain control over
11 any proposed enforcement of either the cease and
12 desist order or the settlement agreements.

13 CHAIRPERSON YOUNG: Okay.

14 NUMBER 1029: Mr. Chair, may I add my
15 understanding of that language?

16 CHAIRPERSON YOUNG: Your --

17 MR. WIMER: And just to clarify, I
18 believe it's -- the settlement agreement's being
19 misinterpreted to some extent. What I'm trying to
20 say is Mr. (Number 1029) does have a very good and
21 legitimate concern about that language where we
22 mentioned the January 1, 2008 date. If, for some
23 reason, there's a hiccup and that doesn't, you
24 know, there isn't a vote that's approved and
25 certified by that time, then it actually falls to

1 the prosecution team or is it the executive
2 officer; and then to, at his discretion, grant,
3 you know, a further extension of that date.

4 And it's a very discretionary type of
5 language. I think people are very concerned about
6 that, and that's why we were so concerned about
7 the date and wanted to actually build in, as
8 another person indicated from the community, a
9 more a benchmark so that the process is understood
10 and people don't have to go to a CAO.

11 See, the other thing about the CAO, I
12 understand, is that the staff and prosecution team
13 have a lot more discretion over about how that's
14 enforced. And because it's a CAO rather than a
15 CDO, then there is quite a bit more discretionary
16 enforcement action there.

17 CHAIRPERSON YOUNG: Okay.

18 BOARD MEMBER PRESS: Mr. Chair, I have
19 a --

20 CHAIRPERSON YOUNG: As far as the
21 language in the settlement agreement, you have to
22 talk to them about that. If you want to come up
23 with something that you think is more favorable,
24 more defined, better for this reason, that's not
25 going to happen today. We've already reached that

1 agreement. It's been passed.

2 MR. WIMER: I just --

3 CHAIRPERSON YOUNG: So, you have to talk
4 to them later; and that would really apply to
5 people coming in after today and tomorrow.

6 MR. WIMER: Okay.

7 CHAIRPERSON YOUNG: Okay.

8 BOARD MEMBER PRESS: Mr. Chair.

9 CHAIRPERSON YOUNG: Yes, Dr. Press.

10 BOARD MEMBER PRESS: Could I, again, by
11 way of clarifying the settlement language under
12 A.2 in the event that the benefits assessment is
13 not approved by the County before January 1, 2008,
14 dischargers shall cease all discharges no later
15 than January 1, 2011.

16 My understanding of the settlement
17 agreement was that January 1, 2008 might come;
18 there might not be a benefits assessment. And
19 then the clock starts.

20 But, what if January 1, 2008 comes and
21 there is a vote, a 218 vote scheduled for March
22 2008. My read of the language is that the Board,
23 there's that three-year window in which progress
24 towards a treatment facility can be demonstrated,
25 for example, by a benefits assessment happening in

1 March and then subsequent steps.

2 And at that point neither the Board nor
3 the executive officer is mandated by the agreement
4 to start issuing penalties or against settlement,
5 parties that settled, right? I mean, in other
6 words, people are getting concerned that the
7 January 1, 2008 deadline won't be met, even though
8 some short months after that there might be some
9 kind of -- there might be a 218 vote.

10 My read of the language is that if it's
11 clear that there is going to be a vote, it doesn't
12 vitiate the timespan allowed by the -- so, John,
13 could you speak to this? Could you clarify if
14 I've understood it correctly?

15 MR. RICHARDS: You're saying that
16 there's no mandatory enforcement provision in the
17 event that if they don't approve an assessment.

18 BOARD MEMBER PRESS: Right. I'm trying
19 to imagine the scenario in which January 1st
20 arrives and --

21 MR. RICHARDS: And they don't have --

22 BOARD MEMBER PRESS: -- it's on the
23 March ballot.

24 MR. RICHARDS: Right.

25 BOARD MEMBER PRESS: Not on a

1 December --

2 MR. RICHARDS: Well, at that point in
3 time they would still have to cease discharging
4 within three years. However, the settlement
5 agreement does provide for the possibility to
6 extend times if circumstances would warrant it.

7 In other words, if, perhaps, instead of
8 by January, by March they would have the
9 assessment district and be making the requisite
10 progress and be able to, you know, if not catch
11 up, at least approach progress.

12 At that point the executive officer
13 could extend the times.

14 CHAIRPERSON YOUNG: You know what,
15 let's -- we'll put that off because that's
16 something that may or may not happen. And we have
17 an agreement that's been agreed to, we've passed
18 on it. I mean I could envision different
19 scenarios here and I don't know if we can address
20 all of them. And it's their agreement.

21 So, we'll just have to wait and see what
22 happens, and at that point react to it.

23 Okay, Joe Sparks and then Keith Swanson,
24 the last two speakers. If anyone else wishes to
25 address the Board for a minute who is not a

1 designated party, now's the time to do it. Go
2 ahead.

3 MR. SPARKS: Chairman Young and the
4 Board, Joe Sparks. I am a Director of the Los
5 Osos Community Services District, but speaking as
6 a private citizen today.

7 I do want to share some concerns I have
8 specifically regarding that I don't believe we
9 have a clear mechanism still for these individuals
10 to comply with the discharge prohibition. As we
11 know, this saga is replete with agency decisions
12 that have prevented compliance from these
13 homeowners for complying with the prohibition
14 discharge going back to Coastal's decision almost
15 a decade ago not to issue a CD permit.

16 And understanding that there is
17 significant change in the law, AB-2701 that
18 occurred subsequent to these enforcement hearings
19 beginning, going back to last year.

20 This week the County Administrator,
21 David Edge, even stated that the County was not
22 fully committed to do a project in the sense that
23 they had some discretion and no obligation. They
24 have committed the funds and they are proceeding
25 towards a 218 vote.

1 But without clear authority and
2 obligation for any lead agency to complete a
3 project, there is that possibility out there that
4 these homeowners still are signing settlement
5 agreements, you're issuing CDOs where they have no
6 real means to potentially hook up to a wastewater
7 treatment system.

8 And I'd hoped this agency, both the
9 Board and through the staff, can communicate that
10 to the Legislature, that concern to the
11 Legislature and the County, that there does need
12 to have this commitment and obligation by an
13 agency that we get a project completed. And I
14 very much want to see a project completed in an
15 expeditious manner. Thank you.

16 CHAIRPERSON YOUNG: Thank you. Mr.
17 Swanson. And last speaker is Eric Greening.

18 MR. SWANSON: Keith Swanson, Los Osos.
19 I just find this whole process is a waste of time
20 for our community. It seemed to me it was almost
21 trying to influence a vote, which it did not; two
22 of the directors were reelected.

23 The CDO recipients have no control over
24 the building of a wastewater project. You can see
25 by the progress being made with the County, AB-

1 2701, that they're working towards resolving this
2 issue.

3 The people that were issued this -- some
4 of these people may not even have voted, or may
5 have voted against stopping the project. But they
6 had no control over that. And I just don't
7 understand the logic here in what you're trying to
8 accomplish.

9 I think everybody in Los Osos wants a
10 wastewater project; they just want one that they
11 can afford.

12 And I think going through the process
13 that you're going through now, I think you're
14 setting a precedent that you're going to have to
15 oblige every subsequent CDO recipient the same
16 process instead of just doing a blanket CDO to
17 40,000 whatever, 4000 people.

18 And my final comment is this Board and
19 staff has prevented public comment at two previous
20 meetings of this Board, which is against -- in
21 violation of the Brown Act and freedom of speech.

22 CHAIRPERSON YOUNG: Which meetings are
23 you referring to? Up in Monterey?

24 MR. SWANSON: Monterey --

25 CHAIRPERSON YOUNG: Let me just say

1 something about that. Because I was the Chair at
2 that meeting; it was my decision not to allow it.
3 When we have a pending enforcement action, in
4 order for any person to address the Board and give
5 them information about a pending enforcement
6 action it's only fair that all designated parties
7 are present to hear that.

8 MR. SWANSON: No, I --

9 CHAIRPERSON YOUNG: They were not all
10 present. I made the decision that the designated
11 parties' rights to hear influence on the Board,
12 information given to the Board trumped people's
13 individual rights, if you want to call it, or
14 privilege to come and speak to the Board at public
15 comment.

16 MR. SWANSON: Well, see, I disagree
17 because it was an item that was not on the agenda.
18 They had a right to speak about it.

19 CHAIRPERSON YOUNG: Thank you for your
20 comments and your opinion. Okay. Mr. Greening.

21 MR. GREENING: Eric Greening, and I
22 share the concern of Ann Calhoun that you've
23 actually taken action on the contents of the
24 settlement agreement before opening it to public
25 comment.

1 As I read what you have approved, it
2 appears that for those who sign, those who settle,
3 the ultimate hammer does not go away. It still is
4 there if things don't go right, to the ceiling of
5 \$5000 a day. You have removed the floor of \$500 a
6 day at your discretion, but the ceiling is still
7 there. The hammer is still there.

8 And what I'm also hearing is that it's
9 at your discretion to decide as of January 1,
10 2008, whether circumstances are or are not within
11 the control of the CDO recipients. And I'm
12 wondering what due process rights they forfeit
13 under those circumstances as a result of signing.
14 It seems that signing does forfeit due process
15 rights with the hammer still in place.

16 But I just want some clarification.
17 Thank you.

18 CHAIRPERSON YOUNG: Okay. That is my
19 last card.

20 MS. TAYLOR: Mr. Young, I would like to
21 clarify something --

22 CHAIRPERSON YOUNG: Okay.

23 MS. TAYLOR: Gwynn Taylor. I was
24 denied last Friday the right under public comment
25 to speak on an item that was not on the agenda.

1 So I, too, was denied my right to speak as a
2 public comment. Thank you.

3 CHAIRPERSON YOUNG: Last Friday? You're
4 talking about the December 1st Board meeting?

5 MS. TAYLOR: Yes, sir.

6 CHAIRPERSON YOUNG: Okay. That was two
7 weeks ago, all right. Okay, that's it. No more
8 interested persons to speak.

9 I think we ought to just go ahead and
10 break for lunch; we'll come back at 2:00. And
11 then we will begin, I believe, with the
12 prosecution's case.

13 MR. MURPHY: Mr. Chairman, I think you
14 have general open public comment at 2:00.

15 CHAIRPERSON YOUNG: Yeah, maybe we'll go
16 ahead and take that before. Thank you. Right.
17 We'll have general public comment before the
18 prosecution team puts on its case.

19 (Whereupon, at 12:55 p.m., the meeting
20 was adjourned, to reconvene at 2:00
21 p.m., this same day.)

22 --o0o--

23

24

25

1 AFTERNOON SESSION

2 2:00 p.m.

3 CHAIRPERSON YOUNG: We are right at 2:00
4 and we are going to go to a public comment period
5 first before we have the prosecution team commence
6 its case. And I have four cards for the public
7 comment period. And these are comments for items
8 not on today's agenda.

9 Eric Greening; Ms. Taylor; Mr. Payne,
10 who is not here; and then Mr. Wimer. And if
11 anyone else wishes to address us on anything not
12 on the agenda, please get a speaker card; fill it
13 out; and have it brought up to me.

14 Did you --

15 MR. RICHARDS: He wanted to speak, as
16 well.

17 CHAIRPERSON YOUNG: Okay, you wanted to
18 speak, as well, in public comment, 1029?

19 NUMBER 1029: Yes.

20 CHAIRPERSON YOUNG: Okay. Mr. Greening,
21 go ahead, you have three minutes.

22 MR. GREENING: Thank you. I am Eric
23 Greening from Atascadero. At your last meeting I
24 read language from San Luis Obispo County Measure
25 J indicating the intention to construct a package

1 wastewater treatment plant to serve a large
2 development which happens to occupy a flood plane.
3 And other language preempting any County
4 department from reviewing or conditioning any part
5 of the project aside from the minimal requirements
6 of a ministerial building permit.

7 Since County Environmental Health would
8 normally oversee the plans for the wastewater
9 treatment plant, and is out of the picture, I
10 asked if your Board could get involved at any
11 stage sooner than your normal role permitting the
12 ultimate discharge.

13 I've heard several answers. At the
14 meeting Ms. Okun said they could take the risk of
15 building a treatment plant and then see if your
16 board would or would not approve the discharge.
17 Mr. Thomas said the developers had been in contact
18 with your staff presumably seeking advice and
19 guidance.

20 Since the meeting Mr. Packard has
21 suggested to me that the discharge and the
22 facility creating the discharge could be subject
23 to CEQA. Since the County is unable to conduct
24 CEQA review, that would give your Board the lead
25 agency role.

1 I know such a role is unusual for you,
2 but it's not unheard of. Several years back I
3 remember when you exercised lead agency authority
4 relative to proposed land application of sewage
5 sludge near San Miguel, the County having
6 forfeited that role.

7 So I'm here to ask you if that will be
8 the case in this instance, if you are in a
9 position to receive lead agency status will it
10 take an agendaized Board action to do so? Or can
11 staff proceed with initial study with your Board
12 role beginning with the decision of what level of
13 environmental review is appropriate?

14 I think it would be best if everyone,
15 the developer, the community, your Board and your
16 staff were all on the same page with this.
17 Because I think somebody has to do it, and if it's
18 you, I hope you will take the affirmative action
19 you need to.

20 Thank you.

21 CHAIRPERSON YOUNG: Okay, thank you.
22 And I think we did discuss this, Mr. Greening, at
23 the last Board meeting, the one in Monterey.

24 MR. GREENING: This is a follow-up
25 comment --

1 CHAIRPERSON YOUNG: Right.

2 MR. GREENING: -- based on questions
3 that have come up from the responses, both at that
4 meeting and since. Thank you.

5 CHAIRPERSON YOUNG: Okay, thank you.

6 And so, Mr. Thomas, where are we with that?

7 MR. THOMAS: I don't know the answer to
8 the question about will we be lead agency. Harvey
9 Packard might have more information on it.

10 But, --

11 CHAIRPERSON YOUNG: Okay.

12 MR. THOMAS: -- we would wait for
13 direction from our counsel. And some application
14 from the applicant, I believe, Mr. Packard.

15 MR. PACKARD: Harvey Packard. We
16 possibly could end up being lead agency. It
17 depends on how many other -- if other state
18 agencies also have CEQA responsibilities. For
19 instance, if Fish and Game were CEQA lead and
20 might be able to be co-leads with them, but I
21 suspect we will end up being lead agency for
22 construction of the plant.

23 CHAIRPERSON YOUNG: You think that that
24 will happen?

25 MR. PACKARD: Yes.

1 MR. THOMAS: For construction of the
2 plant, only, not for the project.

3 MR. PACKARD: Just for the plant, yes.

4 CHAIRPERSON YOUNG: Okay.

5 BOARD MEMBER PRESS: Could we instruct
6 staff to get a definitive answer about that and
7 then --

8 MR. PACKARD: Oh, yeah, we're going to
9 have to, yeah. Larry could probably answer better
10 than I could, but that's my understanding at this
11 point.

12 BOARD MEMBER PRESS: All right, let's
13 have an answer about that.

14 CHAIRPERSON YOUNG: And let's have that
15 as part of the next EO report.

16 BOARD MEMBER PRESS: Yeah, right.

17 CHAIRPERSON YOUNG: The executive
18 officer's report, you can give us a status on
19 that.

20 MR. PACKARD: Okay.

21 CHAIRPERSON YOUNG: Okay. Ms. Taylor.

22 MS. TAYLOR: Good afternoon. My name is
23 Gwynn Taylor. I'm a resident of Los Osos. This
24 is not December 1st, but that is what I had on the
25 agenda to speak to you about. Los Osos was not on

1 your agenda. So this is what I was going to tell
2 you.

3 Since 1994 as the basin plan was being
4 developed there have been three executive
5 officers, Ken Jones, William Leonard and Roger
6 Briggs. Any one of these executive officers could
7 have and should have ordered the implementation of
8 an onsite wastewater management district by the
9 County.

10 The Los Osos area is the area that is
11 under question now. This Board should mandate an
12 onsite wastewater district now as a mitigation
13 until the sewer project is in and completed.

14 A realistic time should, for the
15 completion of the sewer project and hookup by all
16 property owners, be at least 2015. Until the
17 project is available for hookup a wastewater
18 management district will address the potential
19 problems of onsite treatment disposal systems.

20 The Water Board can address the
21 requirements of an onsite wastewater management
22 district for Los Osos if they will set aside the
23 political pressure that has dictated their actions
24 in the past. Thank you.

25 CHAIRPERSON YOUNG: Thank you for your

1 comments. Mr. Wimer.

2 MR. WIMER: Thank you, Mr. Chair. Just
3 a quick point. As I was talking to people outside
4 they were asking me about the agreement, the
5 agreement that they signed in one case, and are
6 about to sign.

7 CHAIRPERSON YOUNG: Mr. Wimer, this is
8 supposed to be for things not on the agenda.

9 MR. WIMER: Okay, anyway --

10 CHAIRPERSON YOUNG: This is the general
11 public comment.

12 MR. WIMER: Got it. They weren't clear
13 on it. I will put on a different hat at this
14 point, to say I used to work for the Department of
15 Corrections. And there I learned the first
16 principle of law enforcement, it's well schooled.
17 And that is to use only as much force as necessary
18 to obtain compliance.

19 I think that the Board is not using that
20 in the case of Los Osos. You're not beginning at
21 the lowest level of enforcement, and not really
22 allowing people to retain their self respect by
23 simply asking them to cooperate. I think 90
24 percent of the people would respond to the pump
25 and inspection if they just received a letter.

1 You're also assuming that we won't vote
2 for a treatment facility, so you're basically
3 holding a gun to our heads. Further, you are
4 backing people into a corner by threatening their
5 homes at a time when they, at least that's their
6 perception, at a time when they fear losing their
7 homes due to high cost of sewer.

8 CHAIRPERSON YOUNG: You're not talking
9 about Los Osos, are you?

10 MR. WIMER: Well, it does sound like
11 that, doesn't it?

12 CHAIRPERSON YOUNG: It does.

13 MR. WIMER: Okay, well, in --

14 CHAIRPERSON YOUNG: Please, this is what
15 concerns me that --

16 MR. WIMER: -- I will -- all right -- I
17 will --

18 CHAIRPERSON YOUNG: -- things kind of
19 disintegrate. Anything that's not on our agenda,
20 tell us about it. You have a minute and 20
21 seconds left.

22 MR. WIMER: The 2701 is my concern.
23 It's a process that everybody, you know, wants to
24 see move forward. I'll just read one comment from
25 State Water Resources Control Board Chair

1 Tam M. Doduc: We look forward to working with
2 Assemblyman Blakeslee and all the residents."

3 And so in that spirit I would like to
4 see a lower level of enforcement. Thank you.

5 CHAIRPERSON YOUNG: Thank you. Mr.
6 Duggan.

7 MR. DUGGAN: I'm Dave Duggan, Los Osos.
8 As I drove up from getting lunch today I noticed
9 four Members of this Board standing around in the
10 parking lot, or on the sidewalk having a
11 conversation. And I sat there for a little while
12 and I watched.

13 And I finally got out of my car and
14 walked over to the four Members of the Board and
15 asked if there was a Brown Act violation going
16 here, which I believe is actually a Bagley-Keene
17 Act violation, concerning sunshine laws and such.
18 A perception of bias.

19 When I asked if there was a violation
20 here their conversation went towards, well, we
21 were just talking about the weather. And I was
22 wondering if I would have to ask about the ex
23 parte conversation going on in this four-person
24 conversation. And the response was but we're just
25 talking about the weather. So, so much for the

1 sunshine laws.

2 So I stood there and waited for the
3 conversation about the weather to go on, and I
4 guess it was a private conversation, because a
5 very long pregnant pause happened there, and
6 nothing was said. And so I said, well, I guess it
7 is a nice day and I walked away.

8 But my question is, if you want to --
9 why would you want to gather together and present
10 this perception. Perhaps you may be talking about
11 an item on the agenda that you haven't ruled on
12 yet. It really troubles me that that happened.
13 And I'm not trying to put a dispersion on anybody
14 individually. I'm just trying to say that there
15 is a perception.

16 And I remember at the last hearings for
17 these CDOs that the question of bias came up. And
18 that you guys talked it away, said, well, we're
19 not biased. In reality, when there's a question
20 of bias, you, as the Board, who is being
21 questioned about, there's a question about bias,
22 aren't supposed to make that decision, whether or
23 not you're biased. It's supposed to go to another
24 body for that question of bias.

25 Now, I'm only going to ask what was the

1 topic of your conversation, and was it other than
2 the weather?

3 Thank you.

4 CHAIRPERSON YOUNG: Okay. Mr. 1029.

5 And --

6 NUMBER 1029: 1029, Los Osos. Board,
7 staff, I have two items to speak about right now.
8 The first is having to do with the basin plan.
9 And I just wanted to state that my understanding
10 is there were changes in the laws regulating a
11 challenge of the basin plan.

12 At the time it was enacted you were
13 supposed to challenge it when it was enforced upon
14 someone down the road. But the law changed, and
15 it stated you had a certain fixed amount of time
16 from its enactment date to challenge it. And our
17 town lost out on its ability to challenge that
18 basin plan in the changing of the laws.

19 The reason I bring that up is because I
20 want to ask you, Board and staff, to assist our
21 town in building this wastewater treatment system.
22 And the only way we can see to reach a common goal
23 is if you actually remove the basin plan
24 prohibitions and incorporate the Los Osos zone to
25 be the same drawn line as the area that needs the

1 sewer system.

2 We currently have people that have to
3 have some type of wastewater treatment plant.
4 Many of us are here today. And half the town, or
5 part of the town that doesn't care if we ever get
6 one or not. And your Board could assist us in
7 reaching this common goal by revising that plan.

8 Lastly, I want to mention, as I
9 understand the County of San Luis Obispo is having
10 a type of town hall meeting Monday night, this
11 coming Monday, the 18th, at the Los Osos Middle
12 School in Los Osos; 6:00 or 7:00, I'm not sure.

13 I would like to ask your staff or the
14 Board to possibly open up conversations with the
15 County and actually invite you to our town in the
16 hope to start the process of getting us all a
17 system that anyone can be happy with. Everyone's
18 goal is clean water, I'm sure.

19 And if we could use a part of your
20 staff, other than the enforcement arm, whether
21 it's the regulatory branch or whatnot, to help us
22 get to a plant that is acceptable for everyone's
23 goals instead of going along towards something we
24 think will work, and then just having staff say
25 it's not acceptable. If you can be at the startup

1 or the buy-in of this project, I think it will go
2 a long way towards helping everyone achieve the
3 goals we all have in common.

4 Thank you.

5 CHAIRPERSON YOUNG: Okay, thank you.

6 I'm just curious, is anyone from staff planning on
7 attending any of the County meetings?

8 MR. PACKARD: Harvey Packard, again. We
9 have discussed it and I haven't talked to Pabo
10 over in the County yet, but I left him voicemails
11 to discuss it some more. We can certainly do
12 that. And I just want to say we have been in
13 discussions with the County; I plan on continuing
14 those through this whole process. We're not going
15 to be standing on the outside watching; we'll be
16 involved with the 1071, AB-2071 process. So,
17 we'll definitely be there.

18 CHAIRPERSON YOUNG: Okay, thank you.

19 Lisa Schicker, and then Ron Shipe.

20 BOARD MEMBER SHALLCROSS: So far we've
21 heard about some more Los Osos issues. Can you
22 maybe remind people --

23 CHAIRPERSON YOUNG: Right, no --

24 BOARD MEMBER SHALLCROSS: -- that it's
25 not Los Osos we're talking about?

1 CHAIRPERSON YOUNG: Yeah. Okay, Ms.

2 Schicker.

3 MS. SCHICKER: Okay, with that reminder.

4 Yes, my name is Lisa Schicker; I'm the President
5 of the Los Osos CSD and I'm speaking as a citizen
6 at this moment.

7 I don't know if I can have my government
8 time, I was at work, about the hearing, but I'm
9 asking for that because I wasn't here and I wasn't
10 here and I was at work, but I'm just asking. You
11 can so no, but --

12 CHAIRPERSON YOUNG: Okay, well, this
13 is --

14 MS. SCHICKER: I know, this is public
15 comment.

16 CHAIRPERSON YOUNG: Just public comment.

17 MS. SCHICKER: I know. And I'm going to
18 talk about that.

19 CHAIRPERSON YOUNG: Okay, you have an
20 attorney that's going to be putting on a case for
21 you. That's when --

22 MS. SCHICKER: You know, the one-minute,
23 the one-minute --

24 CHAIRPERSON YOUNG: That' already
25 happened. So, --

1 MS. SCHICKER: That's what I was
2 referring to in saying I'm sorry I missed it, and
3 I was requesting if I could have my one minute
4 before he begins. That's all. I was just asking.

5 So, three things --

6 CHAIRPERSON YOUNG: Go ahead.

7 MR. RICHARDS: She's a party; she can
8 have as much time as she wants during the
9 presentation.

10 CHAIRPERSON YOUNG: That's true, yeah,
11 you don't need the one minute. You have a case
12 that's going to be put on, and you can utilize
13 that time to tell us what you want.

14 MS. SCHICKER: Okay.

15 MR. RICHARDS: They have an hour.

16 CHAIRPERSON YOUNG: There's an hour, I
17 believe; right, Mr. Murphy? So you can speak at
18 that time. Okay.

19 MS. SCHICKER: Okay.

20 CHAIRPERSON YOUNG: You have three
21 minutes now to talk about things that we're not
22 dealing with today.

23 MS. SCHICKER: That's right, okay.

24 CHAIRPERSON YOUNG: Okay? I'm starting.
25 Go ahead.

1 MS. SCHICKER: Well, the first thing I
2 was going to say, and stop me if I can't say it,
3 is I wanted to commend your Board for allowing us
4 to continue talking and meeting with your staff on
5 a regular basis. Our Los Osos CSD Board has been
6 meeting with your staff, and we're finding it very
7 productive and very helpful. So I wanted to
8 commend you and thank you. That was the first
9 thing.

10 And the second thing I wanted to talk
11 about was basin plans, I guess in general, not the
12 Los Osos basin plan. But, basin plans can be
13 revised, and I recommend that they should be
14 revised on a regular basis. And I think there
15 would be some benefit to that, and I'd really
16 highly like to recommend that for you. I think
17 that would go a long way towards your goals of
18 clean water in a productive way.

19 And the third thing I wanted to talk
20 about was this document here called Water Quality
21 Enforcement document. I'm sure all of you are
22 quite aware of this document. It's published by
23 the State Water Resources Control Board. The
24 latest copy I have is February 2002.

25 And I'd like to refer when I'm speaking

1 to page 5. And it talks about enforcement
2 policies. And it talks about a term called
3 progressive enforcement. And when the Water Board
4 has people or persons or entities that are not
5 recalcitrant and are cooperative, there is a
6 process that the Water Boards do encourage. And
7 it's called progressive enforcement. Which means
8 that you don't hit the people with the hardest
9 thing first. You hit them with something softer.

10 And I think that this policy is a good
11 one. And I would recommend that it be considered
12 by your Board in all your decisions that you make.
13 Thank you.

14 CHAIRPERSON YOUNG: Thank you. Ms.
15 Schicker, there is --I believe we have staff that
16 does deal with basin plan changes. And who is
17 that? Is that Mr. Packard, do you know? Or Mr.
18 Thomas?

19 MR. PACKARD: Harvey Packard here. Lisa
20 McCann --

21 CHAIRPERSON YOUNG: Okay. So there is
22 someone who deals with that as part of their job.
23 So that's who I would contact and discuss what you
24 think might be appropriate as some change to the
25 basin plan. Okay?

1 MS. SCHICKER: Thank you.

2 CHAIRPERSON YOUNG: Thank you. All
3 right, Mr. Shipe.

4 MR. SHIPE: That was basically my
5 question. I understand there's a 2007 triennial
6 review. I looked at -- it was something I saw on
7 the website, I wasn't quite sure. I was looking
8 for a little bit more information. I guess Lisa
9 McCann would probably be the person to speak with
10 on that. Would that be correct?

11 CHAIRPERSON YOUNG: Well, is that the
12 triennial review of the ocean plan?

13 MR. SHIPE: I thought it --

14 CHAIRPERSON YOUNG: The inland waters
15 plan, or is it --

16 MR. SHIPE: The basin plan is what it
17 says.

18 CHAIRPERSON YOUNG: It is the basin
19 plan? Okay.

20 MR. SHIPE: And so I was wondering how
21 we would get involved in doing something like
22 that, if possible.

23 CHAIRPERSON YOUNG: Talk to Lisa McCann.

24 MR. SHIPE: Okay, thank you very much.

25 CHAIRPERSON YOUNG: Okay. That's it.

1 Ms. McPherson, the last but not least, right?

2 MS. McPHERSON: Hi, Gail McPherson. I
3 was wanting to speak today about grant programs,
4 and I wanted to thank the staff for offering to
5 work with us citizens of Los Osos, to work towards
6 grants and opportunities for funding.

7 And also as we look into affordability
8 and affordability issues that go along with the
9 sustainability requirements that are now part of
10 the SRF program, it'll be very important for us to
11 do that. And I'm just looking forward to a
12 positive relationship and working towards those
13 common goals.

14 And thank you very much.

15 CHAIRPERSON YOUNG: Okay, thank you.

16 Richard Margetson.

17 MR. MARGETSON: Richard Margetson. I
18 came today to ask who we need to see to recoup the
19 expenses that the CSD District put out for the
20 last CDO hearing that was stopped basically
21 because an impropriety on behalf of the lead
22 attorney.

23 My problem is that this wasn't something
24 that you were made aware of at that hearing or
25 after that hearing. This is something that was

1 brought to the Board's attention last October,
2 down in Santa Barbara.

3 The District incurred a tremendous
4 amount of expense. The District has financial
5 problems now. The District needs that money
6 because of the fault of somebody from the Water
7 Board Staff. Who do we see to get those funds
8 back?

9 And then I'd like to add that I think
10 because of knowing about it last October, you have
11 a problem with the ACL hearing being tainted. And
12 the expense of the District incurred for that.

13 I'll leave it at that at this point.
14 We'll address some things later.

15 BOARD MEMBER SHALLCROSS: I mean
16 certainly the Community Services District has
17 attorneys. They can tell them who they would seek
18 redress for, for recouping those moneys.

19 MR. SHIPE: Okay, thank you.

20 CHAIRPERSON YOUNG: Okay. That closes
21 the public comment period unless there's anyone
22 else in the audience that still wishes to address
23 the Board on any matter not on the agenda. Okay.

24 Let's move on. Mr. Sato, you have --

25 MR. PACKARD: Actually I'll start.

1 CHAIRPERSON YOUNG: Yes, okay. And you
2 have a half hour.

3 MR. PACKARD: Correct.

4 CHAIRPERSON YOUNG: Right? And we'll
5 start the clock. Okay, you tell me when. Right
6 now?

7 MR. PACKARD: Okay.

8 CHAIRPERSON YOUNG: Go ahead.

9 MR. PACKARD: Good afternoon, Chairman,
10 Members of the Board, and staff on the advisory
11 team. I'm Harvey Packard, lead staff person on
12 the prosecution team. We introduced the team this
13 morning, but I'd like to go a little bit more --
14 in a little more depth.

15 Mr. Sato you've met. To my right is
16 Sorrel Marks; she has a bachelor of science degree
17 in natural resources management, which includes
18 courses in environmental engineering, microbiology
19 and chemistry and physics, among others. She has
20 19 years experience regulating design, site
21 suitability and operations about site wastewater
22 systems. Has taught classes in the basics of
23 wastewater treatment; applied math and industrial
24 waste pretreatment. She has five years experience
25 working at a municipal wastewater facility which

1 include clarification, biological process similar
2 to those which take place in onsite facilities.

3 Matt Thompson holds a bachelors degree
4 in environmental -- from CalPoly San Luis Obispo.
5 With an emphasis on water pollution control and
6 wastewater treatment. He completed intensive
7 course work in chemistry, bacteriology, fluid
8 mechanics, groundwater hydraulics, groundwater
9 measurements, water and wastewater treatment
10 design, and water -- policy. He's a registered
11 civil engineer in the State of California. And
12 has served on staff for five and a half years.

13 Howard Kolb, though he's not here today,
14 has also participated with the prosecution team.
15 He has a master of science degree in public health
16 engineering. He's also a registered civil
17 engineer in California. And has over 20 years
18 experience working with onsite systems. And has
19 co-authored a number of reports and papers on
20 septic systems and the fate of bacteria in the
21 environment.

22 This afternoon on behalf of the
23 prosecution team, I want to let you know that
24 we've worked long and hard on devising an
25 appropriate enforcement strategy to address the

1 District's prohibition issues in the Los Osos
2 prohibition zone.

3 Bringing a case against 45 different
4 parties is procedurally challenging, as we've
5 witnessed this morning. And it's complex, even
6 when the underlying issues are relatively
7 straightforward.

8 As you heard this morning one petition
9 had already been filed even before final action
10 had been taken by the Water Board.

11 Let me make a few observations. We
12 understand that there's a lot of history with the
13 use of septic systems in the prohibition zone. We
14 understand there's a lot of frustration on the
15 part of citizens in Los Osos, and especially those
16 that are being asked -- who are here today to
17 receive cease and desist orders. We get that some
18 of the citizens subject to these proposed orders
19 feel there's been a lack of due process.

20 We understand it's a potential for
21 division in the community as to what the
22 appropriate action should be to end septic system
23 discharges. We understand there's even
24 dischargers, or community members here today who
25 would be cooperative, or would otherwise support a

1 communitywide response to the septic system
2 problem and they're being treated the same as
3 those who are recalcitrant or don't even care.

4 We get that some of the community
5 members who have already paid into an assessment
6 for a community sewer proposed by the CSD feel
7 that they've done everything practically possible
8 to end their reliance on septic tanks and feel
9 that the proposed CDOs against them personally is
10 unnecessary and unfair.

11 In short, as we saw this morning, we
12 understand there's a lot of misunderstanding. We
13 believe there's been a great deal of
14 miscommunication about the underlying facts and
15 our motives in bringing these proposed cease and
16 desist orders to you today.

17 But what we'd like to say, and what is
18 paramount to us, is that the water quality in the
19 prohibition zone has not improved since 1988 when
20 the prohibition took effect. A concrete solution
21 for addressing those water quality impacts is
22 promised once again through the Blakeslee process,
23 but it's still potentially elusive.

24 We acknowledge that the new process has
25 been put into place by AB-27 and we want that

1 process to succeed. At the same time we
2 understand that the new process is in its nascent
3 stages and that there are a number of things that
4 need to occur in the future to bring the promise
5 of AB-27 into a concrete functioning community
6 wastewater collection and treatment system that
7 addresses the illegal discharges.

8 Despite the local agencies to date may
9 have failed citizens of Los Osos in developing a
10 reasonable alternative to the use of septic
11 systems in the prohibition zone, the law makes
12 clear that each user and owner of an onsite system
13 is ultimately responsible for compliance with the
14 law, and is liable for the consequence of any
15 noncompliance.

16 We come to you this afternoon with a
17 straightforward approach to addressing the
18 prohibition zone issue. The proposed cease and
19 desist order is not the most stringent requirement
20 that we could place on those dischargers.
21 However, under the circumstances we believe it to
22 be a fair and reasonable approach to putting a
23 community on the road to achieving compliance with
24 the basin plan prohibition.

25 As we heard this morning, concurrently

1 with preparing these enforcement actions your
2 staff also developed a settlement approach for
3 achieving the same goals sought by the cease and
4 desist orders. The opportunity to settle was
5 offered to every potential CDO recipient.

6 As you heard this morning those terms
7 were fair and reasonable. Those who have agreed
8 to settle did so without certainty that the Board
9 would adopt the proposed order, or that that would
10 even -- or that the hearings would even come to
11 completion. We ask that you proceed to the
12 completion of this process in fairness to those
13 who have settled.

14 As to the dischargers who have
15 determined not to settle on the terms offered, we
16 are prepared to move forward on their individual
17 cease and desist orders. We believe that the
18 evidence is undisputed that their use of a septic
19 tank system within the prohibition zone violates
20 the discharge prohibition. And that the proposed
21 remedy provided by the orders is fully justified.

22 To the extent that we can clarify
23 aspects of the proposed CDOs based on comments
24 from the dischargers, we did so by submitting the
25 revised CDO template on December 1st.

1 At the end of these proceedings we ask
2 that you issue the proposed CDOs to each of the
3 respondents.

4 Matt Thompson will now make a short
5 presentation, after which the prosecution team's
6 presentation will be concluded.

7 MR. THOMPSON: Thank you, Harvey. Good
8 afternoon, Chairman Young and Board Members. I'm
9 Matt Thompson with the prosecution team. I
10 prepared the technical and scientific arguments
11 for the prosecution team contained in your written
12 materials. I'm not going to rehash those
13 arguments at this point, but I am prepared to
14 defend them should they be challenged during the
15 individual hearings. The prosecution team trusts
16 that you have already heard our case through our
17 written submittals.

18 We understand the issues before you are
19 simply, one, whether the persons named in the
20 proposed cease and desist orders are discharging
21 or threatening to discharge in violation of the
22 basin plan prohibition. And, two, whether the
23 requirements of the proposed cease and desist
24 order are the appropriate remedies for these
25 violations.

1 I believe the answers to these questions
2 should already be clear. So I am simply going to
3 take a few minutes to highlight some important
4 facts, briefly describe Assembly Bill 2701, and
5 then summarize the proposed cease and desist
6 orders for you.

7 Here are some of the important facts of
8 this case. First, multiple studies and a wealth
9 of monitoring data demonstrate the continued
10 septic system discharges in the densely developed
11 areas of Los Osos/Baywood Park have degraded and
12 continue to degrade water quality. The Los
13 Osos/Baywood Park prohibition zone was adopted in
14 1983 and remains in effect.

15 Second, local government has not
16 complied with the Los Osos/Baywood Part discharge
17 prohibition for over 20 years.

18 Next, multiple enforcement actions,
19 including cease and desist orders, time schedule
20 orders, and administrative civil liability have
21 not compelled local government to solve the
22 problem thus far.

23 Next, as dischargers, individuals are
24 responsible for their septic system discharges.
25 Lastly, there is no dispute that the persons named

1 in the proposed cease and desist orders are
2 discharging from their septic systems and
3 violating the prohibition.

4 Here's a map of the prohibition zone
5 with the location of the designated parties'
6 properties depicted by red dots. You can see that
7 all 45 properties are located within the
8 prohibition zone. If necessary, I'm prepared to
9 show you later where each individual designated
10 party is located.

11 Considering these facts, we believe the
12 proposed cease and desist orders are the
13 appropriate next step to achieve compliance.

14 Before I describe the cease and desist
15 orders for you, it's important to consider recent
16 special legislation, Assembly bill 2701 authored
17 by local Assemblyman Sam Blakeslee. The Governor
18 has signed this important legislation into law and
19 it becomes effective on the first of the new
20 year. The full text of this legislation is
21 included with our legal rebuttal memo.

22 In short, Assembly bill 2701 authorizes
23 the County of San Luis Obispo to take over the
24 community wastewater project. It contemplates the
25 County will prepare and submit a proposed

1 assessment vote to Los Osos property owners to pay
2 for the facilities. According to County Staff
3 this will happen in 2007. This benefit assessment
4 is essential for the County to have security that
5 the community will pay for the project.

6 From our perspective a positive benefit
7 assessment vote would also demonstrate that the
8 community is committed to eliminating its illegal
9 septic system discharges.

10 The legislation contemplates that after
11 approval of the benefit assessment the County then
12 will consider several relevant factors, such as
13 the availability of sufficient financing, before
14 it finally commits to constructing and then
15 temporarily operating the community wastewater
16 system.

17 This benefit assessment and due
18 diligence process will take some time, and it will
19 affect the ability of the designated parties to
20 meet our originally proposed compliance deadline
21 of January 1, 2010.

22 Considering this legislation and written
23 submittals by designated parties, we are proposing
24 the following requirements and the cease and
25 desist orders. These CDOs I will describe are

1 found in your written materials as an attachment
2 to our legal rebuttals memo.

3 First, the proposed CDO is clear that as
4 long as the process contemplated by AB-2701 is
5 moving forward there is no specific date to cease
6 discharging from the septic systems. There is no
7 requirement in the CDO that the community
8 wastewater system be completed by any particular
9 date. Contrary to what some designated parties
10 may say, the CDO is not intended to force the
11 community to adopt the Tri-W site for the location
12 of its wastewater treatment plant.

13 Now, while this Assembly bill 2701
14 process is promising, completion of the community
15 wastewater system is not guaranteed by this
16 legislation. For example, if the benefits
17 assessment does not happen the project will not
18 proceed.

19 So if the AB-2701 process does not move
20 forward the cease and desist order has an
21 alternative to comply with the basin plan
22 prohibition. This alternative is a firm date to
23 end septic system discharges. This discharge
24 cessation date becomes effective if either the
25 County of San Luis Obispo fails to approve the

1 benefits assessment by January 1, 2008, or if
2 during the project there is a material cessation
3 of work.

4 Let us be clear, though, that to cease
5 the discharge does not mean to vacate the
6 property. There are many ways to cease a septic
7 system discharge. Here's how this would work: If
8 the benefits assessment fails by January 1, 2008,
9 the discharger will be required to cease its
10 septic system discharge by January 1, 2011. If
11 there is not a community wastewater system in the
12 works by 2008 we believe this additional three
13 years to fully end the illegal septic system
14 discharge is sufficient.

15 If the benefit assessment is approved,
16 but then later there is a material cessation of
17 the project, the discharger must cease its septic
18 system discharge by January 1, 2011, or within two
19 years after receiving notice of material cessation
20 from us, whichever is later.

21 As for this material cessation standard,
22 we believe it appropriate that you, the Board, as
23 opposed to staff, make that determination. So if
24 there were a work stoppage, we would come back to
25 you in a public meeting such as this, and ask that

1 you make ask that you make a determination as to
2 whether it constitutes a material cessation.

3 And, of course, if the community
4 wastewater project continues to completion, and
5 assuming the discharger connects into the system,
6 the discharger's violation of the basin plan
7 prohibition is resolved.

8 We believe these requirements are very
9 reasonable and ask that you adopt the cease and
10 desist order for those dischargers who do not
11 reach the settlement agreement with the
12 prosecution team.

13 Thank you.

14 CHAIRPERSON YOUNG: A quick question and
15 I'll stop the clock for you. So this does mean
16 that if there was a material cessation in December
17 of 2010, then there would be an additional two
18 years beyond that date to December of 2012 to
19 complete the project?

20 MR. THOMPSON: It is a whichever-is-
21 later statement, yes.

22 CHAIRPERSON YOUNG: Okay, so whichever
23 later could be beyond 2011.

24 MR. THOMPSON: Correct.

25 CHAIRPERSON YOUNG: All right. Go

1 ahead.

2 MR. PACKARD: That's it, actually. I do
3 have one addition. We propose to add the same
4 language regarding the County's inspection form to
5 the cease and desist order, because it's not in
6 there currently.

7 BOARD MEMBER PRESS: Question.

8 CHAIRPERSON YOUNG: Yes.

9 BOARD MEMBER PRESS: Actually I think
10 Gary was first, go ahead.

11 CHAIRPERSON YOUNG: Go ahead.

12 BOARD MEMBER SHALLCROSS: Go ahead.

13 BOARD MEMBER PRESS: Could you go over
14 the compliance consequences, what are you -- just
15 remind us of that. And, in particular, the issue
16 of mandatory minimum penalties, ceiling and floor;
17 there's been a lot of talk about that, and I'd
18 like you to address it. Thanks.

19 MR. THOMPSON: At the end of the
20 proposed CDO template, it's exhibit, I think, C in
21 the legal rebuttal. It says: failure to comply
22 with the provisions of this order may subject the
23 discharger to further enforcement action including
24 assessment of civil liability under section 13268
25 or 13350 of the Water Code. And referral to the

1 Attorney General for injunctive relief and civil
2 or criminal liability."

3 Now, it would be quite likely that if we
4 were to pursue penalties we would first pursue
5 penalties under Water Code section 13350. And
6 there are provisions in 13350 for penalties of up
7 to \$5000 per day. And there is some relatively
8 new language in 13350 that calls for a -- unless
9 there is a consideration of certain factors that
10 justify it, it calls for a minimum penalty of \$500
11 per day.

12 MR. PACKARD: That's a minimum penalty
13 if the Board decides to act. There's no mandatory
14 penalty with this violation.

15 BOARD MEMBER PRESS: Right, so following
16 up on that, if the cessation date came would the
17 penalty phase come back before the Board for a
18 hearing? Is this automatic, or --

19 MR. PACKARD: It's not automatic. Staff
20 could bring a penalty hearing before the Board.
21 But it's not automatic or mandatory.

22 BOARD MEMBER PRESS: I should ask John
23 about that, is that something that is at the
24 discretion of the Board, or is it -- or does it
25 have to be in the language of CDOs?

1 MR. RICHARDS: Violation of a CDO, or
2 alleged violation of a CDO does not automatically
3 result in imposition of liability. That such a
4 circumstance can be brought into play if the Board
5 proceeded under 13308, which is a specific statute
6 that allows the Board to pre-establish liabilities
7 in the event that there is an anticipated breach
8 of requirements. But that is not the standard
9 approach --

10 BOARD MEMBER PRESS: Well, what --

11 MR. RICHARDS: -- violation of the cease
12 and desist order. The violation of the cease and
13 desist order, in order to result in liability,
14 would have to be preceded by the issuance of a
15 complaint alleging violations of the cease and
16 desist order, together with a recommendation for
17 assessment of liability that would then come on
18 before the Board in a hearing. And the Board
19 would consider the factors in 13350 and determine
20 what amount of liability, if any, would be
21 appropriate for the alleged violations of the
22 cease and desist order.

23 BOARD MEMBER PRESS: All right, thank
24 you. Go over again the mandatory minimum. You
25 said it was 500, but not?

1 MR. RICHARDS: This is -- I'm not sure
2 that there is a mandatory minimum in this
3 situation. There is a mandatory minimum of \$500
4 where there has been a violation of a cleanup and
5 abatement order; however, in this case the
6 allegation would be that there have been violation
7 of a cease and desist order in which case I'm not
8 aware that there is a \$500 minimum liability.

9 I think this concept came into the
10 settlement agreement because the settlement
11 agreement involves enforcement as a cleanup and
12 abatement order. And therefore, under ordinary
13 circumstances, there would be for violation of the
14 terms of the settlement agreement treated as a
15 cleanup and abatement order, there would be the
16 \$500 minimum liability.

17 MR. SATO: That is correct. I think Mr.
18 Thompson simply misspoke when he talked about the
19 application and the minimum penalty for the
20 violation of a cease and desist order.

21 CHAIRPERSON YOUNG: Anything else, Mr.
22 Packard? You have 16 minutes left.

23 MR. PACKARD: Not at this time.

24 CHAIRPERSON YOUNG: Okay. Now we have
25 cross-examination by designated parties of any of

1 the prosecution team's witnesses.

2 Why don't we just start with Mr. Murphy,
3 since you're an easy target. We'll start with the
4 CSD and then -- and this doesn't come off of their
5 time, does it? No, it doesn't come off their
6 time, okay. And then we'll just proceed, whoever
7 wants to cross-examine these witnesses, just raise
8 your hand as we go down the line.

9 Okay, Mr. Murphy, why don't you begin.

10 MR. MURPHY: I'd just like to ask a
11 couple questions of Mr. Thompson, if I may. You
12 had mentioned that it's undisputed that these
13 individuals are discharging into the groundwater.
14 Have you visited any of the specific sites to
15 insure that the septic systems are actually in use
16 and are actually discharging into the groundwater?

17 MR. THOMPSON: No. I have visited the
18 prohibition zone; I'm familiar with the area.

19 MR. MURPHY: Thank you, but with regard
20 to any of the, I believe there's somewhere south
21 of ten defendants today -- any of those ten
22 defendants, there's no actual inspection to insure
23 that they are actually using their septic system
24 rather than having already adopted some kind of
25 other alternative system on the property?

1 MR. THOMPSON: We don't have waste
2 discharge requirements for those individual
3 systems. I don't have inspection authority like I
4 do with other facilities we operate, so I haven't
5 inspected them, no.

6 MR. MURPHY: Okay, thank you. With
7 regard to Assembly bill 2701, I know that the most
8 recent copy of the CDO has been amended in light
9 of AB-2701. At what point did you or did your
10 staff determine that AB-2701 would have an impact
11 on these orders?

12 MR. THOMPSON: I'm sorry, I don't
13 recall.

14 MR. MURPHY: Okay. And I only ask that,
15 I guess I'm trying to figure out whether if these
16 hearings had gone forward as anticipated on
17 November 2nd, whether they would have taken AB-
18 2701 into account, or whether we might be dealing
19 with some sort of order that would be in conflict
20 with AB-2701.

21 But if you don't know, then I apologize.
22 I believe that's the last question I have, Mr.
23 Chairman.

24 CHAIRPERSON YOUNG: Was that a question
25 or a statement?

1 MR. MURPHY: No, that's -- I apologize
2 for asking -- okay, he doesn't know, I'm finished.
3 Thank you, Mr. Chairman.

4 CHAIRPERSON YOUNG: Okay. Ms.
5 McPherson, I'll take you next; and then any other
6 designated parties after you.

7 MS. MCPHERSON: Okay. Thank you. Gail
8 McPherson for Laurie McCombs. I wanted to ask if
9 there -- again, this is probably a duplicate of --
10 but I wanted to ask whether they're aware of any
11 data that was collected on Roy McCombs' property,
12 or other properties in Los Osos?

13 MR. THOMPSON: The Los Osos Community
14 Services District has a network of about 26
15 monitoring wells that represent groundwater
16 monitoring throughout town. That groundwater
17 data, we contend, is representative of the area
18 bounded by that monitoring well network.

19 We do not have data collected from
20 immediately beneath Laurie McCombs' property, no.

21 MS. MCPHERSON: Okay, so the 26
22 monitoring wells, that series of monitoring wells,
23 you're using that to represent over 5000
24 properties, is that correct? Is that what I'm
25 hearing?

1 MR. THOMPSON: The monitoring data
2 that's provided by the Community Services District
3 represents shallow groundwater throughout Los
4 Osos, including some of the areas outside the
5 prohibition zone.

6 MS. McPHERSON: Can you tell me what the
7 difference is, what's the net difference in the
8 contaminant load reaching the groundwater between
9 a functioning and a nonfunctioning septic tank?

10 CHAIRPERSON YOUNG: I think I'll need a
11 little clarification. What do you mean by
12 functioning versus nonfunctioning?

13 MS. McPHERSON: Well, one of the CDOs'
14 terms is that we need to make sure we have
15 functioning septic tanks. And what I'm asking is
16 if there's a difference in the contaminant load to
17 that groundwater between a functioning and a
18 nonfunctioning septic tank. And, you know, -- do
19 you have information on the net difference.

20 MR. THOMAS: Okay. The nitrate loading
21 from a functioning versus a nonfunctioning septic
22 system would be roughly the same. But, the reason
23 -- there's another reason for the interim
24 compliance requirement to pump out and make sure
25 the system's operating properly, and that's that

1 there are areas of town where there's very shallow
2 groundwater. And we know that leachfields and
3 such might be failing. And there are other
4 threats to water quality than just nitrate.

5 MS. McPHERSON: So the CDO pumping
6 inspection program would not have a significant
7 positive effect on the water quality before the
8 community sewer is built? Is that a correct
9 characterization of what you said?

10 MR. THOMPSON: No.

11 MS. McPHERSON: I'm sorry. Then can you
12 answer will it have a significant positive effect
13 on the water quality before the community sewer is
14 built?

15 MR. THOMPSON: In the sense that you are
16 correcting leachfields and such that might be
17 failing that are threatening surface water
18 quality, or that are discharging directly into
19 groundwater, yes, there will be improvement to
20 water quality.

21 MS. McPHERSON: The CDOs don't include
22 an inspection of the leachfield. I don't know if
23 you are aware of that. But it requires the septic
24 tanks to be pumped and inspected. So I don't know
25 that that is an issue for the surface water.

1 But we're asking about the water that's
2 in the -- that you're using from the 27 monitoring
3 wells, that is characterized as polluting from
4 this address.

5 Isn't the basic problem septic tank
6 density? I think I read that in the staff report?
7 Not whether or not a septic tank is functioning or
8 not, but the density?

9 MR. THOMPSON: Based on my read of the
10 data I believe that the factor that is causing --
11 the greatest factor causing groundwater
12 contamination is septic system density. That's
13 why we are requiring elimination of the septic
14 system discharges.

15 MS. McPHERSON: And we aren't opposing
16 that, but we are wondering, the conclusion in that
17 report states that the requirement of the CDOs are
18 reasonable interim measures to reduce the water
19 quality effects of the ongoing illegal septic
20 system discharges.

21 So that isn't really true since it's a
22 factor of density and not a factor of whether a
23 septic tank is operating correctly or not. Is
24 that right?

25 MR. THOMPSON: Could you restate your

1 question, please?

2 MS. McPHERSON: Yeah, it's a quote from
3 the staff report. The conclusion, the
4 requirements of the CDO are reasonable interim
5 measures to reduce the water quality effects of
6 the ongoing illegal septic system discharges.

7 Based on what we've just said, it's a
8 factor of density and not a factor of whether or
9 not a septic tank is operating properly.

10 And so that statement isn't really true.
11 Septic tanks, whether they're pumped and inspected
12 once in the next three years before a treatment
13 plant comes about, --

14 CHAIRPERSON YOUNG: Well, let him answer
15 the question first.

16 MS. McPHERSON: Okay, I was just trying
17 to --

18 CHAIRPERSON YOUNG: Okay, and if you
19 have a follow-up question, --

20 MS. McPHERSON: Okay, I was --

21 CHAIRPERSON YOUNG: -- you can do that.

22 MS. McPHERSON: -- wasn't sure if he got
23 it. Okay.

24 CHAIRPERSON YOUNG: That way we can keep
25 things kind of in order.

1 MR. THOMPSON: I said that I believe the
2 primary factor affecting groundwater quality is
3 septic system density. There are other factors,
4 you know, separation to groundwater, that sort of
5 thing. But, as I said, there are other problems
6 with failing septic systems in Los Osos, such as
7 surfacing septic tank effluent.

8 And we believe the interim compliance
9 requirement will solve those problems. And
10 therefore, will improve water quality.

11 MS. McPHERSON: Do you have records on
12 the surfacing septic tanks? I did research and
13 could not find anything recent where there are
14 septic tanks that are surfacing, have surface
15 water problems --

16 MR. RICHARDS: Are you asking a
17 question, --

18 MS. McPHERSON: Yes.

19 MR. RICHARDS: -- or are you testifying?

20 MS. McPHERSON: No, I'm asking him if --
21 I'm sorry, I apologize for that. Do you have
22 records from the County or from any source that
23 there's surfacing water from septic tank failed
24 leachfields?

25 MR. THOMPSON: The County is lead agency

1 for regulation of septic systems there, and in the
2 County. My understanding is that they are trying
3 to collect information on failing septic systems.
4 That was the purpose of the form that we discussed
5 earlier.

6 I do not have -- we do have indications
7 from the County of some septic system failures.
8 But I would not characterize that as a complete
9 record of all septic system failures.

10 MS. McPHERSON: In the staff report it
11 says, going to reduce water quality effects; and
12 can you tell me, reduce by how much?

13 MR. THOMPSON: Could you please tell me
14 which page you're referring to for context?

15 MS. McPHERSON: I'm sorry, I don't have
16 it in front of me. As a matter of fact, my client
17 didn't get that mailing. It's the staff report.

18 MR. THOMPSON: You said it will reduce
19 water quality effects; could you please be a
20 little more specific?

21 MS. McPHERSON: It had to do with the
22 requirements of the CDO are reasonable and interim
23 measures to reduce the water quality effects of
24 the ongoing illegal septic system discharges.
25 That's the quote.

1 And so I'm asking, reduce the water
2 quality effects, what does that mean, reduce by
3 how much?

4 MR. PACKARD: I think we'll agree that
5 interim measures discussed in the CDO are not
6 going to have the same effect as ceasing
7 discharge. There's no doubt that ceasing
8 discharge is the real effect we're looking for.

9 The interim measures are just interim in
10 an effort to improve what water quality can be
11 improved until the sewer system's in place.

12 CHAIRPERSON YOUNG: But I think her
13 question was trying to get in point whether you
14 have a predetermined amount of reduction in
15 pollution. Anticipated.

16 MR. PACKARD: We have not quantified
17 that, no.

18 MS. McPHERSON: So my question is, okay,
19 so it hasn't been quantified as a benefit. And I
20 think everyone believes that pumping septic tanks
21 is a good idea. But the conclusion is that it
22 doesn't really improve groundwater quality, is
23 that correct? If density is the issue.

24 MR. THOMPSON: Well, you will be
25 removing pollutants from the basin. So there will

1 be some very minor reduction in pollutant loading
2 to groundwater.

3 MS. McPHERSON: You mean the couple
4 hundred gallons of water that's being pumped out
5 of the septic tank by a resident between now and
6 2011? Is that what you mean?

7 MR. THOMPSON: Well, it's usually
8 between 1000 and 1500 gallons, but, yes.

9 MS. McPHERSON: Okay. Are you familiar
10 with the Yates and Williams study?

11 MR. THOMPSON: The Yates and what?

12 MS. McPHERSON: I believe it's -- is it
13 Williams? Yates. The Yates studies. I'm sorry,
14 what? Yeah. It's the Yates, Yates and Williams.

15 MR. THOMPSON: Off the top of my head,
16 no. I may have seen it in the past, but unless
17 it's in front of me, I'm sorry.

18 MR. PACKARD: Do you have the date of
19 that study?

20 MS. McPHERSON: I do for later, but I
21 just wanted to ask from a hydrogeologic
22 perspective, it was noted in the Yates and
23 Williams study that there was going to be no
24 significant changes in the upper aquifer based on
25 the proposed cease and desist order.

1 And essentially they were saying that it
2 was going to take --

3 CHAIRPERSON YOUNG: Well, are you --

4 MS. McPHERSON: Okay.

5 CHAIRPERSON YOUNG: -- going to follow
6 this with a question?

7 MS. McPHERSON: Okay, I follow you with
8 a question.

9 CHAIRPERSON YOUNG: If you are, then
10 I'll let you make a statement. But, --

11 MS. McPHERSON: Okay.

12 MR. SATO: Well, I'll object --

13 (Parties speaking simultaneously.)

14 MS. McPHERSON: Is it true --

15 MR. SATO: -- not based upon any fact --

16 MS. McPHERSON: -- is it -- is it --

17 How about this. Is it true that the
18 water quality improvements will take a few

19 decades, even with a sewer in place, for
20 improvement?

21 MS. MARKS: Can I go ahead and answer
22 that?

23 MR. THOMPSON: Did she say permits?

24 Yeah, please, go ahead.

25 MS. MARKS: The various hydrologic

1 studies that have been done to date indicate that
2 the water quality improvements would begin
3 immediately; but the shallow groundwater would not
4 be restored to drinkable quality for a few
5 decades. Estimated at four decades.

6 MS. McPHERSON: Can you tell me kind of
7 how many milligrams-per-liter reduction in the
8 nitrogen levels say in 20 years?

9 MS. MARKS: No, I wouldn't attempt to
10 guess at that right now.

11 MS. McPHERSON: Okay, thank you. So the
12 interim plan really offers no significant effect
13 on improving water quality?

14 MS. MARKS: I think Matt's already
15 answered that several times over.

16 MS. McPHERSON: Is that an answer?

17 MR. THOMPSON: I think I answered
18 previously that there would be some limited
19 improvement in water quality with the interim
20 compliance requirement.

21 MS. McPHERSON: But that's not
22 quantified?

23 MR. THOMPSON: Correct.

24 MS. McPHERSON: There were some
25 questions about progressive enforcement. Do you

1 have any other choices in how you might enforce
2 upon the people of Los Osos and have the same
3 result, pumping septic tanks and hooking up to a
4 sewer, which were the two requirements? Can you
5 describe what progressive enforcement actions
6 might be available other than a CDO?

7 MR. PACKARD: I believe that the only
8 method that the Board has available to actually
9 establish a date for hooking up to a sewer would
10 be through a 13308 time schedule order, or a cease
11 and desist order or a cleanup or abatement order.

12 MS. McPHERSON: There is not an option
13 to send a notice to comply, or some sort of more
14 informal -- I had read that there's --

15 MR. PACKARD: Not with an enforceable
16 date in it, no.

17 MS. McPHERSON: I saw that the date
18 wasn't going to be enforced in the presentation.
19 So that in any case you would not have to stop
20 pumping -- I mean stop discharging at 2011. And
21 can you clarify that for me? Because it looks to
22 me like there's an enforceable date there.

23 And yet in your presentation you made it
24 seem as though people would not have to stop
25 discharging and move out of their houses.

1 MR. PACKARD: Providing the process
2 envisioned in the Blakeslee bill is proceeding,
3 there is no date in the CDO. If that process is
4 not proceeding, then there is an enforceable date.

5 MS. McPHERSON: And did you meet, in the
6 process of putting out the dates, with the County
7 and ascertain when the 2008 whatever that date is
8 for the 218 vote, if that was realistic?

9 MR. SATO: I think that we did talk with
10 the County. My understanding is that the County
11 intends to have their benefits assessment ready
12 for approval by the board of supervisors as of
13 December 2007. So that is why we picked the
14 January 1, 2008 timeframe.

15 MS. McPHERSON: Okay. I think that's
16 all I have right now. Thanks.

17 CHAIRPERSON YOUNG: Okay. Are there any
18 other designated parties that wish to ask cross-
19 examination questions of the prosecution team
20 witnesses? Go ahead, and then just tell us your
21 name for the record.

22 NUMBER 1034: My name's 1034.

23 CHAIRPERSON YOUNG: 1034. Okay.

24 NUMBER 1034: Yes. My first question is
25 the prosecution --

1 CHAIRPERSON YOUNG: Is your mike on?

2 NUMBER 1034: Thank you. The
3 prosecution states that there have been
4 miscommunications between the County and the
5 Regional Water Board. Could you elaborate on
6 that?

7 MR. PACKARD: I believe I said something
8 along the lines of we understand and believe there
9 may have been miscommunication and
10 misunderstanding between the community and the
11 prosecution staff about why we're bringing these
12 cases before the Board today. I don't believe I
13 mentioned the County.

14 NUMBER 1034: Okay. And you also state
15 that local government has failed. Has the agency,
16 has this agency lived up to all their promises and
17 their obligations?

18 MR. SATO: Objection, it's
19 argumentative.

20 CHAIRPERSON YOUNG: Sustained.

21 NUMBER 1034: Thank you.

22 CHAIRPERSON YOUNG: Mr. Rochte.

23 MR. ROCHTE: Yes, sir.

24 CHAIRPERSON YOUNG: Oh, okay, good.

25 MR. ROCHTE: This is regarding -- Tim

1 Rochte, Tim Rochte, R-o-c-h-t-e.

2 This is just regarding the form, the
3 septic tank inspection form. At the closing of
4 the presentation Mr. Packard referenced, I
5 believe, the action the Board took on recommending
6 using the County form.

7 And maybe it's too late, but I wanted to
8 get a plug in for using the form that your staff
9 brought up. Or is it too late?

10 CHAIRPERSON YOUNG: Well, this is the
11 time to ask questions of the prosecution team
12 witnesses.

13 MR. ROCHTE: Can you use the form that
14 you guys developed instead of the County form?

15 MR. PACKARD: We could.

16 MR. ROCHTE: I'd just say great job
17 because they listened. When it first came up they
18 said they wanted a form. I contacted Michael and
19 Matt and said, you guys need to have your own
20 form, because I'd gone to the septic tank people
21 in Los Osos and they said, we don't know what form
22 they want to use. You know, so we said, okay, how
23 about the form that you guys use. And they said
24 that's okay if it does the things that we ask for.

25 And I did that in good faith, knowing

1 that you hadn't ruled on, you know, this interim
2 compliance business. But I just wanted to say
3 thanks to the staff. If you can, can you; and if
4 you can't, great. Because I think it will be less
5 costly to the people out in Los Osos because Al's
6 and the others charge \$85 to process the County
7 form; it's multiple pages. This one looks a
8 little more streamlined.

9 CHAIRPERSON YOUNG: Well, that's an
10 interesting bit of information about the form.
11 You mean they may not charge --

12 MR. ROCHTE: You know, I work for the
13 state --

14 CHAIRPERSON YOUNG: -- for using our
15 form? But they may charge for using the County
16 form? Is that what you're getting at?

17 MR. ROCHTE: That's what my
18 understanding is from talking to them. If you
19 could, you know, or do whatever it takes to not
20 add more charges. You know, 85 bucks, I could buy
21 a pair of shoes for that.

22 CHAIRPERSON YOUNG: All right.

23 MR. ROCHTE: Okay, you know, it happened
24 so fast before I didn't get a chance to say it, so
25 thanks for your forbearance.

1 CHAIRPERSON YOUNG: Okay. Mr. Duggan.

2 MR. DUGGAN: Dave Duggan representing
3 Cinthea Coleman.

4 CHAIRPERSON YOUNG: And you're
5 representing Cinthea Coleman?

6 MR. DUGGAN: That's right.

7 CHAIRPERSON YOUNG: Go ahead.

8 MR. DUGGAN: Actually I'm asking for a
9 procedural information first, that Cinthea Coleman
10 has indicated to me, after -- during the lunch
11 period, that she may be wanting to sign on to
12 this --

13 CHAIRPERSON YOUNG: Settlement.

14 MR. DUGGAN: -- settlement.

15 CHAIRPERSON YOUNG: Okay.

16 MR. DUGGAN: But she wishes to talk that
17 over with me; and also to view the downstream from
18 the video, which it's not a live tv and so she
19 wasn't able to actually see what's going on here.
20 And I'm going to get a copy tonight.

21 While I have opportunity to cross-
22 examination, if it turns out that she feels that
23 she can't do the settlement, after reviewing the
24 video, will I have time to do this cross-
25 examination tomorrow, if I can get an extension

1 till tomorrow?

2 CHAIRPERSON YOUNG: No. This cross-
3 examination is going to take place now.

4 MR. DUGGAN: The problem is --

5 CHAIRPERSON YOUNG: If she needs time to
6 think about this, you know, we're not getting to
7 her CDO until later, obviously. And you
8 probably --

9 MR. DUGGAN: And would that be a good
10 time to ask --

11 CHAIRPERSON YOUNG: Not till tomorrow.
12 If she talks to the prosecution team before the
13 presentation of her CDO, and wants to agree to
14 settle, that's fine.

15 But you should avail yourself of the
16 opportunity now to do the cross-examination.

17 MR. DUGGAN: And we're going to do that.
18 On the website for the State Water Board I believe
19 for the regional board there's enforcement
20 policies. I think Lisa Schicker spoke towards
21 that earlier.

22 And the first section, -- well, let's go
23 back over to here -- this section she talked about
24 progressive enforcement. And I want to go back to
25 1983 --

1 CHAIRPERSON YOUNG: Well, Mr. Duggan,
2 let me just stop you for a second.

3 MR. DUGGAN: And I'm going to ask a
4 question.

5 CHAIRPERSON YOUNG: Okay, as long as
6 you're going to end up with a question, that's
7 fine. But we don't want to hear a statement.

8 MR. DUGGAN: Okay. Back in 1983 --
9 (Pause.)

10 CHAIRPERSON YOUNG: Go ahead, Mr.
11 Duggan.

12 MR. DUGGAN: Back in 1983 when 8313 was
13 a resolution passed by this Board, has staff
14 considered the fact that in doing this enforcement
15 the way it is now, that it has not been fair
16 because of the fact that these CDOs probably
17 should have been brought forward years ago? In
18 fact, around 1988, '89? Have you taken that into
19 consideration that the fairness of bringing the
20 CDOs now is not fair because the CDOs were not
21 brought forward at that previous time?

22 MR. PACKARD: I think you can say that
23 this enforcement is somewhat progressive because
24 in 1988 we did issue -- that right year exactly,
25 but we did issue cease and desist orders to the

1 County.

2 MR. DUGGAN: And when the County failed
3 to forward a wastewater treatment facility for, I
4 would say, another ten years, at any time did the
5 Regional Water Quality Control Board consider
6 issuing CDOs to individuals as they are doing now?

7 MR. PACKARD: I believe there are staff
8 reports from 1994, or 2004 and maybe previous,
9 where we did explain to the Board the various
10 options for enforcement, including individual
11 enforcement.

12 MR. DUGGAN: Prior to the LOCSB being
13 created, at anytime did the subject of CDOs to
14 individuals ever come up with staff or the
15 Regional Water Quality Control Board?

16 MS. MARKS: Since we're talking about
17 prior to 1998, it is a stretch of my memory, but I
18 believe there have been other staff reports prior
19 to formation of the CSD that have addressed the
20 potential of all enforcement options available at
21 the time.

22 CHAIRPERSON YOUNG: But his specific
23 question is did staff consider bringing individual
24 enforcement actions against homeowners, if I'm not
25 mistaken. That's what he's looking at. That's

1 what his question is.

2 MS. MARKS: Prior to formation of the
3 CSD?

4 CHAIRPERSON YOUNG: Yes.

5 MS. MARKS: I don't remember when
6 exactly, but I believe it was considered with
7 other enforcement options. And while the
8 representative government was moving forward with
9 a project, it was not considered the most
10 effective option.

11 MR. DUGGAN: Were these options voices
12 in a public forum? Or were they just staff
13 reports?

14 MS. MARKS: If they were in a staff
15 report, that is a public forum, I believe it would
16 be part of our agendized public hearing. But as I
17 said, I can't remember the specific time, so I
18 really can't be specific about it.

19 MR. DUGGAN: And your own enforcement
20 policy, I believe, is section F, environmental
21 justice. And it talks about the state and
22 regional board shall promote enforcement of all
23 health and environmental statutes within their
24 jurisdiction in a manner that insures the fair
25 treatment of all people of all races, cultures and

1 income levels, including minority populations and
2 low-income population in the state.

3 In considering these CDOs did you
4 consider minority population, or the low-income
5 residents in Los Osos?

6 MR. PACKARD: We haven't made any
7 specific findings on any of those -- either of
8 those subjects.

9 MR. DUGGAN: You are aware that State
10 Water Resources Control Board is participating and
11 fully supports the efforts of the California
12 Environmental Protection Agency working group on
13 environmental justice, aren't you?

14 MR. PACKARD: What was the question?

15 MR. DUGGAN: Are you aware that the
16 State Water Resources Control Board is
17 participating fully supporting the efforts of the
18 California Environmental Protection Agency working
19 group on environmental justice? It's right out of
20 your own enforcement policy.

21 MR. PACKARD: I'm sure I'm not up to
22 date on everything the State Water Board's doing
23 with respect to --

24 MR. DUGGAN: Can you tell me how many
25 minorities do reside in Los Osos?

1 MR. PACKARD: No.

2 MR. DUGGAN: Can you tell me how many
3 low-income households there are in Los Osos?

4 MR. PACKARD: I couldn't even if you
5 gave me the definition of low income.

6 MR. DUGGAN: Well, low income is
7 basically -- is a standard set by both the federal
8 and probably the state. But do you know, even can
9 venture to guess what those are? Have you taken
10 any consideration -- excuse me, have you taken
11 that in consideration?

12 MR. PACKARD: Not with respect to these
13 cease and desist orders, no.

14 MR. DUGGAN: But you are aware what I
15 have just talked to you about is in your
16 enforcement policy, aren't you? Or are you not?

17 MR. PACKARD: Yes.

18 MR. DUGGAN: And you have not considered
19 these factors in issuing the CDOs?

20 MR. SATO: The response of the
21 prosecution team is that we were not under the
22 impression that there is any environmental justice
23 issues related to the issuance of these CDOs.

24 MR. DUGGAN: Well. On more than one
25 occasion I'm sure there's people that have asked

1 staff what they can do to bring themselves into
2 compliance. And I was one of the persons who has
3 only been an interested party, but now I'm
4 representing Cinthea Coleman. I asked what it
5 would take to bring themselves into compliance.

6 And I remember asking Sorrel Marks this
7 question in our first conversation. Do you
8 remember that conversation, Sorrel Marks?

9 MS. MARKS: You'll have to be a bit more
10 specific. We've had numerous conversations.

11 MR. DUGGAN: The first time we met.
12 Which was months ago.

13 MS. MARKS: Please be more specific.

14 MR. DUGGAN: I asked you specifically
15 what it would take to come into compliance to
16 avoid these CDOs. Do you remember that
17 conversation?

18 MS. MARKS: Yes, I do, as a matter of
19 fact.

20 MR. DUGGAN: Do you remember your
21 response?

22 MS. MARKS: Yes.

23 MR. DUGGAN: What was your response?

24 MS. MARKS: The dischargers of
25 wastewater in the community need to be eliminated.

1 MR. DUGGAN: And you did not mention or
2 bring up the subject of the prior project to be
3 restarted?

4 MS. MARKS: Oh, we discussed that, as
5 well.

6 MR. DUGGAN: Okay.

7 MS. MARKS: I think your conversation
8 was how is that practical. And I indicated that I
9 believed the most practical way of doing that was
10 the project that was permitted at that time.

11 MR. DUGGAN: I remember the gist of the
12 conversation. And I'm asking if you remember it
13 the same way I do, --

14 MR. RICHARDS: Mr. Duggan, --

15 MR. DUGGAN: -- but when I asked what --

16 MR. RICHARDS: Mr. Duggan, --

17 MR. DUGGAN: I'm asking her if she
18 remembers the --

19 MR. RICHARDS: If you're asking a
20 question, by all means, ask questions. But, don't
21 testify.

22 MR. DUGGAN: I won't. As I remember our
23 conversation, and I hope you can, do you --

24 CHAIRPERSON YOUNG: But that's -- you're
25 testifying --

1 MR. DUGGAN: -- remember it the same way
2 that --

3 CHAIRPERSON YOUNG: But you're
4 testifying when --

5 MR. DUGGAN: -- I do --

6 CHAIRPERSON YOUNG: -- you say, as I
7 remember. You can ask her if she remembers
8 something, --

9 MR. DUGGAN: Do you remember when I
10 asked you about --

11 CHAIRPERSON YOUNG: Oh, Mr. Duggan, --

12 MR. DUGGAN: -- compliance --

13 MR. SATO: I'll object --

14 MR. DUGGAN: -- what your response was
15 to Tri-W?

16 MR. SATO: Let me object. Maybe it
17 would be quicker if Mr. Duggan would make some
18 offer of proof as to where this line of
19 questioning is going. Because I don't know that
20 trying to recollect conversation that occurred
21 back and forth between himself and Ms. Marks are
22 particularly relevant to any of the issues that
23 you are faced with today.

24 So if he could tell us why, where he's
25 going, it may be somewhat more helpful.

1 MR. DUGGAN: Okay, well, I can do
2 something here then. Are you aware of Water Code
3 section 13360(a), Ms. Marks?

4 MS. MARKS: No, I can't call to mind
5 what it specifically says.

6 MR. DUGGAN: In the enforcement there --
7 I'm going to make a statement and end this with a
8 question.

9 In your enforcement policies, State
10 Water Resources Control Board water quality
11 enforcement policies, it makes a statement in
12 section 4, with specified exception, California
13 Water Code section 13360(a) prohibits the State
14 Water Resources Control Board or the Regional
15 Water Quality Control Board from specifying the
16 design, location, type of construction for a
17 particular manner in which compliance may be had
18 with a particular requirement."

19 Do you know of that code and that
20 specific enforcement policy statement in your
21 enforcement code?

22 MS. MARKS: I am familiar with that
23 policy, yes.

24 MR. DUGGAN: How many times have you
25 responded to CDO notification, people you've

1 notified for the CDO hearings that restarting the
2 Tri-W project would be the quickest way to
3 compliance?

4 MS. MARKS: I haven't kept track.

5 MR. DUGGAN: Do you not feel as if you
6 are violating this section of your own enforcement
7 policy and Water Code by suggesting how they reach
8 compliance requirements?

9 CHAIRPERSON YOUNG: You know, Mr.
10 Duggan, if I may, I --

11 MR. DUGGAN: Okay, I will withdraw that
12 question.

13 CHAIRPERSON YOUNG: Yeah, but I don't
14 see the relevance, also, to what's before us. I
15 mean I don't know --

16 MR. DUGGAN: Well, it's to -- I --

17 CHAIRPERSON YOUNG: -- what Ms. Marks
18 said with the individual CDO recipients, but
19 that's not in evidence --

20 MR. DUGGAN: This leads me to my next
21 question. And I won't go on. There was a
22 statement made earlier that there are many ways to
23 meet the requirements of the CDOs. And I believe
24 it was Matt Thompson here, this person here. And
25 he did not explain what those requirements -- I'm

1 asking him to explain what other options are there
2 other than having to move out of your house to
3 reach compliance if a wastewater treatment
4 facility does not go online.

5 MR. THOMPSON: Well, you could pump and
6 haul.

7 MR. DUGGAN: At what frequency?

8 MR. THOMPSON: At whatever frequency is
9 necessary to prevent wastewater from leaving the
10 septic.

11 MR. DUGGAN: Well, according to you it
12 would be every day, every other day?

13 MR. THOMPSON: No. I'm familiar with
14 pump and haul schemes in places like Alaska where
15 the ground is frozen, and they just have a big
16 tank. And they store it there. And then whenever
17 necessary they come and have it hauled.

18 MR. DUGGAN: So this is considered an
19 onsite system that you're talking about? Onsite
20 storage?

21 MR. THOMPSON: It's storage and hauling
22 it, yes. Is it onsite, yeah, it's onsite.

23 MR. DUGGAN: And you are aware of those
24 regulations governing onsite storage of wastewater
25 other than in your septic tank?

1 MR. THOMPSON: I'm not aware. Perhaps
2 you can point it out for me?

3 MR. DUGGAN: I can do that later. I
4 already asked my questions on environmental
5 justice. I believe that's it -- may I have a
6 second, please?

7 I was just informed that holding tanks
8 aren't prohibited. If I was to ask you now,
9 because you made the statement of all the
10 different options, how many options are there
11 other than discharging from your septic tank that
12 you recommend? Or are allowable?

13 MR. THOMPSON: Well, there's one that I
14 mentioned. I'm sure there are other ways to
15 eliminate a discharge. In some instances people
16 have proposed what they call evaporative wetlands,
17 which are like a zero discharge line thing. And
18 so there's zero discharge. That might be a
19 possibility.

20 It's really up to the discharger to
21 propose that solution.

22 MR. DUGGAN: As you know there are
23 standards set for water quality, and specifically
24 in this area of Los Osos they're set to nitrates.
25 What is the minimum allowed nitrate concentration

1 for drinking water?

2 MR. THOMPSON: What is the minimum
3 allowed nitrate?

4 MR. DUGGAN: That's right.

5 MR. THOMPSON: The minimum allowed
6 nitrate --

7 MR. DUGGAN: What is the standard set
8 at?

9 MR. THOMPSON: The drinking water
10 standard?

11 MR. DUGGAN: Yes.

12 MR. THOMPSON: For nitrate is 10
13 mg/liter as nitrogen. That's the maximum
14 standard.

15 MR. DUGGAN: I'm sorry, --

16 MR. THOMPSON: A minimum would be zero.

17 MR. DUGGAN: Right, correct. But
18 according to you, since there's been a prohibition
19 in Los Osos they don't have a maximum, they have
20 zero discharge, is that correct? Within the
21 prohibition zone.

22 MR. THOMPSON: I'm not sure I understand
23 your question. Could you restate it, please.

24 MR. DUGGAN: If a septic tank and
25 leachfield system, an onsite Los Osos system,

1 septic tank system, was tested and it showed that
2 it comes, itself, by itself, comes up underneath
3 the standard set, would that be allowed?

4 MR. THOMPSON: Septic system discharges
5 are prohibited despite the concentration of
6 nitrate coming out of the septic tank.

7 MR. DUGGAN: So an individual who has a
8 perfectly functioning septic tank that comes in
9 under the maximum allowable is still in violation
10 of the prohibition zone, correct?

11 MR. THOMPSON: I'm not familiar with any
12 that do that, but yes, they still are in violation
13 of the basin plan prohibition.

14 MR. DUGGAN: Are you familiar with any
15 that do not meet that standard? In other words,
16 have you tested any of these leachfields, or
17 beneath these leachfields, to find out?

18 MR. THOMPSON: We regulate community
19 septic systems throughout --

20 MR. DUGGAN: No, I'm talking about Los
21 Osos --

22 MR. THOMPSON: -- that's the Coast
23 Region, which are representative of typical septic
24 tanks in Los Osos, and which typically have
25 between 40 and 50 mg/liter total nitrogen coming

1 out of the septic tank.

2 MR. DUGGAN: I'm asking --

3 MR. THOMPSON: -- would also be
4 representative of Los Osos.

5 MR. DUGGAN: I'm specifically asking --

6 MS. MARKS: I'd ask if I could add to
7 that, that we have about 25 regulated septic
8 systems that do monitor.

9 MR. DUGGAN: In Los Osos?

10 MS. MARKS: In Los Osos, yes.

11 MR. DUGGAN: You have 25 systems that
12 are being monitored within the prohibition zone?

13 MS. MARKS: Correct.

14 MR. DUGGAN: With lysimeters of some
15 sort, some testing beneath their leachfield?

16 MS. MARKS: With lysimeters? No.
17 They're not monitored -- the effluent is
18 monitored.

19 MR. DUGGAN: -- the effluent from the
20 septic tank?

21 MS. MARKS: Correct.

22 MR. DUGGAN: But not from underneath the
23 leachfield?

24 MS. MARKS: Correct.

25 MR. DUGGAN: And that is where the

1 denitrification takes place, is that not so?

2 MS. MARKS: In a perfect system, yes.

3 MR. DUGGAN: And so in order, wouldn't
4 it be more factual then, statement to say that
5 unless the leachfields have been proven to be
6 nonfunctioning in Los Osos, that assumption -- I'm
7 going to rephrase that.

8 How many leachfields in Los Osos have
9 you determined to be malfunctioning?

10 MR. THOMPSON: We don't have a number.

11 MR. DUGGAN: Have you tested any of the
12 leachfields in Los Osos?

13 MR. THOMPSON: Well, we monitor several
14 systems, as Ms. Marks suggested, with inspection
15 risers and that sort of thing. So, yeah, we keep
16 an eye on them.

17 MR. DUGGAN: Specifically have you
18 tested Cinthea Coleman's leachfield for nitrates?

19 MR. THOMPSON: No.

20 MR. DUGGAN: You mentioned test wells
21 within the Los Osos area that are run by the
22 LOCSD, is that correct, -- by the CSD?

23 MR. THOMPSON: I did mention monitoring
24 wells, yes.

25 MR. DUGGAN: And you are aware in the

1 basin plan, and I don't have the specific area of
2 the basin plan, that it recommends against using
3 water wells, whether or not they're producing or
4 not, private- or agency-owned, not to use drinking
5 water wells as test wells when monitoring water,
6 groundwater quality? Are you aware of that?

7 MR. THOMPSON: Yeah, I'm aware of that,
8 but I also know that only a fraction of the couple
9 dozen monitoring wells that CSD has are water
10 wells. Most of them are dedicated monitoring
11 wells.

12 MR. DUGGAN: And even though the basin
13 plan recommends against it, you're still accepting
14 that data?

15 MR. THOMPSON: Yeah.

16 MR. DUGGAN: So if a drinking water well
17 is malfunctioning and it's perhaps it's been
18 damaged in some way, which you don't have any way
19 of knowing, that data could -- excuse me, let me
20 rephrase that.

21 Do you know why they recommend against
22 using the drinking water wells as test wells?

23 MR. PACKARD: Can you specify where in
24 the basin plan it says that, what it says exactly?
25 I'm not familiar with that section.

1 MR. DUGGAN: You aren't familiar with
2 that section? I'd have to get it to you. Maybe
3 we'll leave that until later.

4 (Parties speaking simultaneously.)

5 MR. DUGGAN: By his own testimony he
6 says that he understands that's in there. Is that
7 not true? Didn't you just testify?

8 MR. THOMPSON: I understand that with
9 groundwater monitoring networks that a dedicated
10 monitoring well is preferred. But in this
11 situation they are using some water supply wells,
12 which does seem appropriate because it is pulling
13 from the same aquifer.

14 MR. DUGGAN: Do you know how many of
15 those are privately owned and CSD owned?

16 MR. THOMPSON: I'm sorry, I do not.

17 MR. DUGGAN: I know at least two that
18 are private wells. Can you --

19 CHAIRPERSON YOUNG: Question, question,
20 please.

21 MR. DUGGAN: Can you attest to the
22 quality of those wells and whether or not they've
23 been damaged in any way?

24 MS. MARKS: The CSD, as I'm sure you're
25 aware, has done extensive evaluation of the

1 integrity of the wells in their monitoring system.
2 And as a result of that evaluation, abandoned some
3 wells, installed some others and made some
4 improvements to some others.

5 MR. DUGGAN: Are you aware also that
6 there are private wells being used in this
7 testing?

8 MS. MARKS: I don't know.

9 MR. DUGGAN: Specifically a well, and I
10 don't have the number for it specifically, but the
11 well that is next to the golf course in Los Osos,
12 are you familiar with that test well?

13 MS. MARKS: Not the specifics of it, but
14 I think if you have specific questions about the
15 CSD's groundwater monitoring system it probably
16 would be helpful for you to direct them to the
17 CSD.

18 MR. DUGGAN: Well, the question is that
19 are you aware that the water coming into the golf
20 course is Title 22 water? For their watering.

21 CHAIRPERSON YOUNG: Excuse me, Mr.
22 Duggan, your cross-examination is getting far
23 afield from really what's before us. I'm going to
24 give you another four minutes to try to wrap up
25 your cross-examination. And you are going to have

1 time with Ms. Coleman's individual matter to get
2 into these other areas that really they didn't
3 touch on in their presentation.

4 MR. DUGGAN: Specifically he talked
5 about drinking water, or I mean water wells, test
6 wells. So I'm going to that.

7 CHAIRPERSON YOUNG: Okay, you got
8 another four minutes. And then there's other
9 people that also want to do cross-examination.

10 MR. DUGGAN: Are you aware that the
11 water being used to water the lawn at the golf
12 course is Title 22 water?

13 MS. MARKS: If by Title 22 you mean
14 recycled water, yes, I'm aware of that.

15 MR. DUGGAN: Do you know what the
16 nitrate level of that water is when it's put onto
17 the grass?

18 MS. MARKS: Yes, I do.

19 MR. DUGGAN: Would you tell me, because
20 I'm not allowed to know that because it's their --
21 they won't tell me, let's put it that way.

22 MS. MARKS: Well, those records are
23 certainly public records. They're available here
24 if you would like to see them. They usually --

25 MR. DUGGAN: Are they above --

1 (Parties speaking simultaneously.)

2 MR. DUGGAN: Are they above the
3 standards set for nitrate levels --

4 MS. MARKS: Not for that facility, no.

5 MR. DUGGAN: Are they higher than 10
6 mg/liter?

7 MS. MARKS: Yes.

8 MR. DUGGAN: You are aware that that
9 drinking water well has a test result of 22
10 mg/liter continuously?

11 MS. MARKS: I'm not sure what drinking
12 water well you're talking about.

13 MR. DUGGAN: Go back to the -- you
14 stated before, somebody up here stated before the
15 specific question, there has been a continuous and
16 I believe a -- the nitrate levels in Los Osos have
17 been continuously raising. Is that not a correct
18 statement on your parts?

19 MR. THOMPSON: I believe I said that
20 continuous septic system discharge continue to
21 degrade water quality.

22 MR. DUGGAN: And that's specific to
23 nitrate levels, is that not correct?

24 MR. THOMPSON: Yeah, nitrate levels
25 exceed the drinking water standard all over town.

1 MR. DUGGAN: Are you aware of any that
2 do not, tests that do not show the nitrate levels
3 being exceeding standards?

4 MR. THOMPSON: Yeah, there are a couple
5 of wells that don't.

6 MR. DUGGAN: Are you aware of the ones
7 that are within the -- part of Los Osos showing
8 extremely low levels of nitrates?

9 MR. THOMPSON: Yeah, there's one well
10 near the Baywood commercial district, 7N1, I think
11 it's commonly called the Third Street well. And
12 we believe that it's screened in the bottom of the
13 shallow aquifer, or even in the deeper aquifer.
14 And it consistently has a nitrate level of about
15 2.1 mg/liter --

16 MR. DUGGAN: Do you know of any other
17 wells in Los Osos that are around 2.2 mg/liter?

18 MR. THOMPSON: Are there any other wells
19 around 2.2?

20 MR. DUGGAN: Yeah, approximately.

21 MR. THOMPSON: Yeah. Can I show you a
22 map?

23 MR. DUGGAN: Certainly.

24 CHAIRPERSON YOUNG: You have one minute
25 left, Mr. Duggan.

1 MR. THOMPSON: This is the Community
2 Services District's isocontour map of nitrate
3 concentrations in shallow groundwater from October
4 2005. It hasn't changed much since then. But the
5 well I was referring to earlier is right here, the
6 Third Street well. And then there's this well up
7 here that is on the up-gradient edge of the
8 prohibition zone.

9 MR. DUGGAN: Yes.

10 MR. THOMPSON: Which has a nitrate
11 concentration of .8 mg/liter as nitrogen.

12 MR. DUGGAN: Go right into the middle of
13 the big red portion here, I would believe, it's --

14 MR. THOMPSON: That well?

15 MR. DUGGAN: What are the nitrate levels
16 for that well?

17 MR. THOMPSON: Well, the red line is the
18 drinking water standard. And it looks like the
19 recent long-term average is around 8 mg/liter. In
20 this case, the most recent result is 3 mg/liter.

21 MR. DUGGAN: -- stops at January or
22 sometime in '04?

23 MR. THOMPSON: The latest data is
24 October 2005.

25 MR. DUGGAN: And you are aware that

1 other test results have taken place every six
2 months at that well?

3 MR. THOMPSON: I believe that results
4 are taken there semi-annually, yes.

5 MR. DUGGAN: And you're aware that
6 they've been steady at 2.2, 2.5?

7 MR. THOMPSON: Well, according to this
8 chart the history, the long-term average is more
9 like 7 or 8.

10 MR. DUGGAN: Okay, that's all I have;
11 thank you.

12 CHAIRPERSON YOUNG: All right. Have you
13 asked cross-examination questions before?

14 MR. ROCHTE: I don't know if you called
15 them questions.

16 CHAIRPERSON YOUNG: Well, that's what
17 this is right now.

18 MR. ROCHTE: Yeah, I got a question.

19 CHAIRPERSON YOUNG: No, I mean, did you
20 participate in cross-examination

21 MR. ALLEBE: Yes.

22 CHAIRPERSON YOUNG: -- of these
23 witnesses?

24 MR. ALLEBE: Sure.

25 CHAIRPERSON YOUNG: Okay, you already

1 have?

2 MR. ROCHTE: Yeah.

3 CHAIRPERSON YOUNG: Okay, we're going to
4 go through everyone else. And I don't know that -
5 - but I don't --

6 MR. ROCHTE: Okay, I just wanted -- just
7 remember that map.

8 CHAIRPERSON YOUNG: Okay, but I don't
9 know that we're going to go and have everyone have
10 double and triple takes at asking questions. So
11 everyone's going to have an opportunity --

12 MR. ROCHTE: Do it now or do it later --

13 CHAIRPERSON YOUNG: -- to go through.

14 MR. ROCHTE: I get a chance later, too,
15 I know.

16 CHAIRPERSON YOUNG: Mr. Allebe.

17 MR. ALLEBE: Yes, sir.

18 CHAIRPERSON YOUNG: Okay. Go ahead.

19 MR. ALLEBE: Chris Allebe, CDO 19. I
20 just got three fast questions here. Do you have a
21 map or anything that shows where these 25
22 leachfields test sites are monitored?

23 I wasn't aware that we were monitoring
24 leachfields, just wells.

25 MS. MARKS: I think I clearly stated

1 that they were not monitoring leachfields. They
2 were monitoring the discharge from the septic
3 system, the septic tank. Regulated sites, and
4 they are not on the map, that Matt has available.
5 However, it is public records if you would like to
6 review them at another time. I don't have them
7 with me.

8 MR. ALLEBE: Okay, that'll be fine. And
9 then if we get to the point of fines, firing
10 squads, whatever, what is the procedure for
11 collecting those fines? Is a lien put on the
12 property? Or do you actually, do you get billed
13 for cash in the mail? Just how does that work?

14 MR. PACKARD: Well, if the Board were to
15 adopt a penalty you would get a -- you would have
16 a requirement to pay within 30 days. I believe
17 the Board does authority to place a lien on a
18 property for nonpayment of a penalty.

19 MR. ALLEBE: If you didn't pay that in
20 30 days, an order to jail or property taken from
21 you? At what point do you lose the house?

22 MR. PACKARD: I'm not aware of a
23 situation that would lead to that.

24 MR. ALLEBE: Okay, so basically you'd be
25 given a bill for a cash payment? Would it be on

1 your property taxes or --

2 MR. PACKARD: It would be not on your
3 property taxes; separate.

4 MR. ALLEBE: The burning question of the
5 hour is where is Roger Briggs. I think everybody
6 would like to know the answer to that.

7 CHAIRPERSON YOUNG: Well, he's not here,
8 but --

9 MR. ALLEBE: That's a fact.

10 CHAIRPERSON YOUNG: Yeah. Okay. All
11 right, any --

12 MR. ALLEBE: But we have no means of
13 subpoenaing him or --

14 CHAIRPERSON YOUNG: He is not available
15 for these proceedings. So, it's not timely now to
16 subpoena him for these proceedings.

17 MR. ALLEBE: All right, thank you.

18 CHAIRPERSON YOUNG: Okay. Anyone else
19 wish to ask any cross-examination questions of the
20 prosecution team?

21 Okay. No one else -- I'll allow Mr.
22 Rochte only one follow-up question, and then I do
23 want to move on, sir.

24 MR. ROCHTE: Thank you very much.

25 CHAIRPERSON YOUNG: Okay.

1 MR. ROCHTE: Mr. Rochte, Tim. Could you
2 put the map up, map of 8N2 monitoring well,
3 please. That's the one that's closest to my
4 property. And it's wonderful to see that chart.

5 MR. THOMPSON: I realize this is hard to
6 read, I apologize.

7 MR. ROCHTE: Can you get up the
8 histogram like you had on that other one?

9 MR. THOMPSON: Yeah. Could you help me
10 point it out, please.

11 MR. ROCHTE: Sure, it's right there,
12 you're on it.

13 MR. THOMPSON: That one?

14 MR. ALLEBE: Yeah.

15 MR. THOMPSON: Yeah.

16 (Pause.)

17 MR. THOMPSON: Oh, I'm sorry, that's the
18 school there; there's the junior high.

19 CHAIRPERSON YOUNG: How did it get fuzzy
20 when before it was clear?

21 MR. THOMPSON: I'll try and adjust the
22 focus here.

23 MR. ROCHTE: It's okay this one's out of
24 focus because it's not the right one.

25 CHAIRPERSON YOUNG: Okay.

1 (Laughter.)

2 MR. ROCHTE: The one that I'm just
3 wanting to point out that 8N2, according to one of
4 the earlier slides he had showed a .8 mg/liter.
5 I'm going to be covering that in my -- I just
6 wanted to have a visual in people's minds.

7 CHAIRPERSON YOUNG: Okay.

8 MR. THOMPSON: This is 8N2, Tim.

9 MR. ROCHTE: Okay, thank you.

10 MR. THOMPSON: Let me switch it.

11 MR. ROCHTE: Does that show to you, as a
12 question, you know, that the rates are pretty darn
13 low over a period of time? Well within drinking
14 water standards?

15 MR. THOMPSON: Yeah, that colored line
16 across there, that's the drinking water standard.
17 And looks like the long-term average is down
18 around 2. But, as I've stated in my written
19 submittals, this is up-gradient of much of the
20 prohibition zone. You can see immediately down-
21 gradient of the prohibition zone boundary we have
22 some serious degradation of groundwater quality.

23 MR. ROCHTE: Okay, thank you.

24 CHAIRPERSON YOUNG: Okay. Mr. Martyn.

25 MR. MARTYN: I had a question, several

1 questions for the prosecution team. I'd like to
2 start off with a comment that Mr. Harvey Package
3 made, that there were many ways in the works to
4 abate some of the discharges. Could you expound
5 on that a little bit more?

6 CHAIRPERSON YOUNG: You know, Mr.
7 Martyn, typically I'd let Mr. Sato go ahead and
8 object, but that has been asked and answered. And
9 so I think that we're going to move on to some
10 other questions.

11 MR. MARTYN: All right, I have some
12 other questions then.

13 CHAIRPERSON YOUNG: Go ahead.

14 MR. MARTYN: Did you say the CDOs was
15 not intended to stop discharges or lead to fines
16 as long as construction is moving forward?

17 MR. THOMPSON: As drafted, that's true,
18 yes.

19 MR. MARTYN: I'm sorry, I didn't hear
20 you.

21 MR. THOMPSON: That is correct.

22 MR. MARTYN: Thank you. What happens if
23 there is not a certified assessment by June 1st of
24 2008?

25 MR. PACKARD: The date in the CDO is

1 actually January 1, 2008. And the wording is not
2 certified, but approved by the County.

3 If there's not an approved benefits
4 assessment by January 1, 2008, then the discharger
5 shall cease all discharges from the septic system
6 no later than January 1, 2011.

7 MR. MARTYN: Did you say that this CDO
8 was supposed to support the 2701, Assembly bill
9 2701?

10 MR. PACKARD: I don't believe I said
11 that.

12 MR. MARTYN: What if -- announce a
13 system after January 1st of 2008?

14 MR. PACKARD: It's still prohibited by
15 the basin plan. Dischargers are free to ask the
16 Board for exemptions or for waste discharge
17 requirement.

18 MR. MARTYN: What does section 13300 say
19 regarding working to lower the level of
20 enforcement?

21 MR. PACKARD: I can't recall the exact
22 language of that Water Code section off the top of
23 my head.

24 MR. MARTYN: All right, okay. Thank
25 you.

1 CHAIRPERSON YOUNG: Okay. What we will
2 do now, then, is proceed with -- we have a half
3 hour left. And, Mr. Murphy, would you like to
4 begin your case? We are going to stop right at
5 4:15.

6 MR. MURPHY: 4:15, Mr. Chairman?

7 CHAIRPERSON YOUNG: Yeah.

8 MR. MURPHY: That's fine, but before I
9 begin I note that your order gave you the option
10 to allow other parties with communitywide issues
11 to raise them during the time, the CSD's one-hour
12 timeframe. It's page 2, footnote 2 of your order
13 setting the schedule.

14 Documentation relevant to all or several
15 properties that may be subject to individual cease
16 and desist orders should be presented at this
17 time. The Chair will consider a request by
18 designated parties, other than the LOCSD, to
19 present general evidence at this time.

20 And in light of the fact that the CSD's
21 presentation, much like the prosecution team's, is
22 abbreviated and we'll be submitting quite a bit on
23 the papers, I did want to give any designated
24 parties that have general evidence of that kind at
25 least the opportunity to petition you for the

1 chance to present it at this time.

2 CHAIRPERSON YOUNG: To present their own
3 general evidence?

4 MR. MURPHY: If they have evidence that
5 they feel is relevant to issues communitywide.

6 CHAIRPERSON YOUNG: I think that's fine.
7 I think that's what we had in mind. I just hadn't
8 read that footnote in awhile. But we probably
9 won't get to that.

10 MR. MURPHY: Certainly. I would
11 anticipate that we would close today, and if --

12 CHAIRPERSON YOUNG: That's right.

13 MR. MURPHY: -- then you could take
14 cross-examinations today, and then the other
15 parties could start in the morning.

16 CHAIRPERSON YOUNG: Right. Okay.

17 MR. MURPHY: Then as I said, much like
18 the prosecution team, the CSD's planning to, in
19 large part, submit on our written submissions to
20 you. There are a number of items and arguments in
21 there which we've debated back and forth since at
22 least February; in some cases possibly longer.

23 But we believe that a few key issues are
24 most important for the Board to hear and consider
25 today. So, in light of that, I'll submit the rest

1 of the issues on the written pleadings.

2 First of all, I think you've heard,
3 particularly from Mr. Thompson, that there is no
4 actual evidence that any designated party has any
5 working septic system that is polluting the
6 groundwater.

7 The evidence that they have presented to
8 you so far would be competent evidence were you,
9 in the process of a hearing, dealing with my
10 client or with the County, who are at different
11 times have both been responsible for the status of
12 the groundwater areawide.

13 However, when considering individual
14 dischargers you need something more; you need
15 actual individual evidence. Particularly I note
16 the case of McCoy vs. Board of Retirement,
17 183CalAp.3d.1044, that in administrative
18 proceedings the party asserting the affirmative of
19 an issue, in this case the violations are
20 occurring, has the burden to prove the charges
21 levied.

22 And accompanying that, Coombs v. Pierce,
23 1CalAp.4.568, to meet this burden you have to
24 submit actual evidence supporting the affirmative
25 claims being made.

1 Obviously the prosecution team need not
2 meet any kind of beyond-a-reasonable-doubt
3 standard like they would in a criminal case, but
4 they have to at least meet a preponderance of
5 evidence standard.

6 Here they have given no evidence. In
7 fact, they've admitted that they have no site-
8 specific evidence for any of the apparently now
9 ten or so parties remaining today. Instead
10 they're relying communitywide evidence, and
11 believe that that should be enough for you to
12 enforce against individuals.

13 This is somewhat similar to gathering
14 speed data on a freeway, and then randomly pulling
15 over cars passing along that freeway and saying
16 that because in general people speed on the
17 freeway, each individual must be speeding.

18 This is the sort of prosecution by
19 implication. There's a presumption of guilt that
20 attaches to that. And I believe -- my client
21 believes that this is not the kind of evidence
22 that can possibly sustain a CDO where one's been
23 issued in this case.

24 In addition, and as has been discussed
25 with the settlements this morning, and to some

1 extent with the CDOs this afternoon, we believe
2 that the safe harbor provision provided by section
3 (a) subsection (1), while it is an excellent
4 alternative, is ultimately not practical.

5 I could, and if you like, will read all
6 of California Constitution Article XIII-D
7 regarding assessment and property-related fees,
8 but I don't think it's necessary. Most of you
9 know, as well as I do, that when doing a Prop 13
10 vote -- I'm sorry, Prop -- when doing a vote
11 according to Article XIII-D, you need to have
12 engineering studies prior to the vote. You need
13 to get the vote out. It takes 45 days until you
14 can even hold the hearing. You need to deal with
15 protests. And then you need to certify the vote.

16 The CDO, as currently constituted, talks
17 about the County approving a benefits assessment.
18 I'm not quite sure what that means. I don't know
19 if that means that they approve the results of the
20 benefit assessment vote. Don't know if that means
21 that they are certifying those results. Or
22 possibly, and this would be best for all of us, I
23 think, would they approve the fact that a vote is
24 going forward. They approve the project that the
25 vote would be held to fund.

1 In any case, what we currently have is a
2 very flexible, nonlegal word in a CDO that
3 provides, if that flexible, nonlegal word applies,
4 the subject of the CDO have a great deal of
5 leeway. Whereas, if that flexible, nonlegal word
6 does not apply, the citizens have some very hard
7 and fast deadlines that they must meet; deadlines
8 that could prove costly. And deadlines that
9 could, at some point, affect my client.

10 We believe that should paragraph A-2 or
11 paragraph A-3 come into play, what you will see is
12 members of the Los Osos community opting out of in
13 future sewage or wastewater system by attempting
14 to put their own systems on their properties.

15 That would do one of two things. Either
16 make the community system more expensive for
17 everyone. Or, in the alternative, negatively
18 impact the finances of my client.

19 What's most important, though, I
20 believe, going forward, is fixing the language of
21 section A-1. Either fixing the January 1, 2008
22 date to provide something more than, as Mr. Sato
23 said, a one-month -- or as Mr. Sato implied, a
24 one-month window for the County to eventually
25 approve a vote that would take place in December

1 of next year. Or some sort of legally binding
2 term for the approving of benefits assessment in
3 place of approving the benefits assessment that
4 would give some certainty as to how this will
5 actually be treated.

6 It's been said before, and we just want
7 to repeat for the record, that we find it somewhat
8 disconcerting that the individuals are being
9 prosecuted at this point, when Assembly bill 2701
10 is apparently moving forward. The individuals
11 have very little authority over wastewater at this
12 time. We don't even have the authority at this
13 point to elect local government to handle the
14 problem. The problem has been taken over by the
15 County.

16 In light of that, if you do desire to
17 issue the CDOs we feel it would be appropriate to
18 hold them in abeyance until after such time as the
19 County's taken over the project and you can review
20 how the County's doing. Again, we feel that no
21 issuance is the best route, but at the very least
22 holding them off for a period of time to see how
23 the County moves forward is a better bet.

24 Finally, I'd like to just simply go over
25 quite briefly a few of the due process issues,

1 some of which have been discussed today; some a
2 bit longer. Issues that we've voiced previously.

3 With regards to the absence of Mr.
4 Briggs today, we understand that people were given
5 the opportunity to question Mr. Briggs. I know
6 that Ms. Okun, last spring, had several times
7 called Mr. Briggs a unique witness and a necessary
8 witness for this case, due to his role in working
9 on issues related to groundwater in Los Osos from
10 the early 1980s through today.

11 At the April hearing my colleague, Mr.
12 Onstot, called Mr. Briggs and were able to begin
13 to move forward with our case because of that.
14 Without Mr. Briggs being here certainly we're
15 missing out on some pieces of the puzzle.

16 But more importantly, the time that
17 questioning Mr. Briggs did take place on October
18 4th. We note that that was the day that the
19 prosecution team's documents actually all became
20 available for review by the public.

21 In light of that, the actual questioning
22 of Mr. Briggs that took place had to take place
23 without first an analysis and review of the
24 prosecution team's entire case, making that
25 questioning, well, somewhat valuable, ultimately

1 not enough in light of his unique role in this
2 case.

3 Also, the CDOs, as modified, were
4 modified on December 1st in what was supposed to
5 be a rebuttal argument from the prosecution.
6 Rather than rebuttals, the prosecution team set
7 out a new rationale for the CDO, tying it to AB-
8 2701. And made substantive changes to the CDO.

9 As I asked earlier, and retracted my
10 second question on it, it is uncertain whether had
11 these hearings been held as scheduled on November
12 2nd and November 9th, AB-2701 would have taken
13 place, or would have been considered at all in the
14 CDOs.

15 Which leads me to a general statement
16 regarding the manner in which the prosecution has
17 been conducted, which is at many times throughout
18 this process the prosecution team has acted in a
19 sort of reactive fashion to new information
20 brought to them by the designated parties and the
21 CSD.

22 Obviously you are aware that last spring
23 a change was made in the prosecution team and,
24 indeed, the way the State Water Board is
25 prosecuting in general. And while that change is

1 probably a long time coming, as regards to this
2 case it was made not sua sponte by the prosecution
3 team, but in response to my colleague's statements
4 at the April hearing.

5 It seems to me that the prosecution
6 team, in their dissemination of evidence, has
7 continuously violated the due process rights of
8 the citizens involved here. As you know, the
9 Administrative Procedure Act in Government Code
10 section 11425.10 requires simply the notice and
11 opportunity to be heard in this case. However,
12 the case of Slattery v. Unemployment Insurance
13 Appeals Board states that the opportunity to be
14 heard must be tailored to the capacities and
15 circumstances of each defendant.

16 Therefore, we believe that the due
17 process rights of individuals in this case,
18 individuals who the prosecution team has known are
19 running their own businesses, some of whom are
20 ill, who have to deal with their families, their
21 due process rights have been trampled on in light
22 of the late dissemination of evidence, in light of
23 communication via email and not directly with the
24 parties, and in light of the manner, as we all
25 know from months ago, in which this prosecution

1 was initially begun. With the \$1000-a-day-fine
2 threats and other things that we don't need to go
3 into again at this time.

4 Because of those actions, because of the
5 accrued deficiencies in the CDO, and because of
6 the lack of evidence with regard to any individual
7 property, it is our contention that if CDOs are
8 issued at this time, they would ultimately be
9 subject to reversal or to vacation.

10 Thank you very much.

11 CHAIRPERSON YOUNG: Is that your --

12 MR. MURPHY: That is all.

13 CHAIRPERSON YOUNG: That's all. Just so
14 I'm clear, can you tell me what, you know, the due
15 process discussion you talk about, you know,
16 property rights.

17 MR. MURPHY: Sure.

18 CHAIRPERSON YOUNG: What is the property
19 right here that -- of course, we're talking about
20 the individuals and not the CSD -- what do you see
21 as the property right that's being impacted?

22 MR. MURPHY: The property right would be
23 the need to replace the current system with a new
24 alternative system should the January 1, '08 date
25 not be met.

1 CHAIRPERSON YOUNG: Okay. All right,
2 thank you. Okay, I guess what we could do is then
3 go to cross-examination. We've got almost ten
4 minutes left. Yeah, we'll keep on going. Let me
5 just check my schedule here.

6 Okay, so any of the designated parties
7 can cross-examine Mr. Murphy or anyone else with
8 Mr. Murphy. Mr. Sato, -- we'll start with the
9 prosecution team, Mr. Sato.

10 MR. SATO: Thank you, Mr. Chairman.
11 Just a quick question, then. Mr. Murphy, you have
12 now completed the presentation of you information?

13 MR. MURPHY: I have, Mr. Sato.

14 MR. SATO: Okay, then I move to strike
15 the documents that you submitted that we objected
16 to previously, 1, 3, 5, 6, 8, 10, 11, 13, 15, 16,
17 and I think the Chairperson already ruled on 504,
18 509. And then also on 62, 632, 641, 705 and 785
19 through 847. I didn't hear any reference to any
20 of those documents in your testimony or the
21 arguments you presented so far.

22 MR. MURPHY: Mr. Chairman, I would
23 respond that as ordered by the Board we submitted
24 documents both on our own behalf and documents
25 that could be relied on by other parties. I would

1 ask that you not rule on that until such time as
2 those documents may be relied on by other parties.

3 CHAIRPERSON YOUNG: Okay, we'll allow
4 them to do that. That's fine.

5 MR. MURPHY: Thank you.

6 MR. SATO: All right, as long as the CSD
7 is not entitled to rely on those documents.

8 CHAIRPERSON YOUNG: Well, the CSD's not
9 going to be able to rely upon them. But others
10 can if they show us what the relevance is and how
11 they're going to rely on them.

12 MR. SATO: Thank you.

13 CHAIRPERSON YOUNG: Any other questions,
14 Mr. Sato?

15 MR. SATO: I do have a question. Mr.
16 Murphy, you have indicated a concern about the
17 date of January 1, 2008 that has been proposed in
18 the modified cease and desist order. Do you have
19 any information from any representative of the
20 County that they will not, in fact, conduct their
21 benefits assessment approval hearing in December
22 of 2007?

23 MR. MURPHY: Mr. Sato, my client did
24 meet with the County in the past week. They gave
25 indications that they would be, as you know, --

1 let me start by giving a bit of background.

2 As you may know, AB-2701 gives the
3 County the ability to, but not the requirement to,
4 take over the Los Osos wastewater project. In
5 light of that the County has decided to begin
6 moving forward, but not actively take over the
7 project, or the County has made representations to
8 my client that they will not actively take over
9 the project as of the first of this year. But
10 will instead do so once they find a project to be
11 viable.

12 This is also described in the staff
13 report for December 12th, two days ago, by the
14 planning department of the County.

15 It's also my contention, Mr. Sato, even
16 if the County were to take over this project on
17 January 1, 2007, it being a rather large
18 construction project, and there being quite a bit
19 of engineering that has to go into a Prop 218 vote
20 before ballots can be sent out, I think anyone
21 familiar with construction knows that you need to
22 build in a bit of leeway for potential issues that
23 arise with contractors.

24 Therefore, while I don't suggest a date
25 certain, I do suggest that a one-month window in

1 which this very fair safe harbor would disappear
2 could prove ultimately to be an unfair order if
3 issued by -- or a nonpractical order if issued by
4 the Board.

5 MR. SATO: In terms of the concept of, I
6 think you expressed a concern about the use of the
7 term approval of a benefits assessment, is that
8 correct?

9 MR. MURPHY: Yes, sir.

10 MR. SATO: And are you aware that in AB-
11 2701 the concept of approval of a benefits
12 assessment is specifically addressed by that
13 legislation?

14 MR. MURPHY: In what way?

15 MR. SATO: Well, it talks about approval
16 of a benefits assessment.

17 MR. MURPHY: Okay. And it merely just
18 says approval?

19 MR. SATO: Yes.

20 MR. MURPHY: Okay. Unfortunately, it
21 appears that the Legislature, as it does from time
22 to time, has not been as clear as they could be.
23 In order to avoid litigation in the future, I
24 would ask merely that this Board be more clear
25 than the Legislature was.

1 MR. SATO: All right. And then for --
2 just so I understand how we can make it more
3 clear, if we said that -- if we clarified what
4 approval was in terms of the approval of the 218
5 vote by the Board, as it's contemplated, at least
6 as I understand it's contemplated in December that
7 would alleviate that concern, would that be
8 correct?

9 MR. MURPHY: Were you to say, for
10 example, the certification of a prop 218 vote,
11 then again I would ask that be moved back to give
12 some leeway for engineering. But certainly that
13 would create, or that would solve a problem that
14 we see in the CDO as currently constituted.

15 MR. SATO: All right. I have no further
16 questions.

17 CHAIRPERSON YOUNG: Okay, do any other
18 designated parties wish to cross-examine the
19 Community Services District? Okay.

20 Ms. McPherson.

21 MS. MCPHERSON: I do. I just have a
22 couple of quick questions on that approval of the
23 218 vote. You testified that that was your
24 understanding that it was December 2007, is that
25 correct?

1 MR. MURPHY: No. I was referring to Mr.
2 Sato's report of the prosecution staff's
3 discussion with County Staff that led them to
4 believe that December of 2007 was when a vote
5 would take place.

6 MS. McPHERSON: And the County control
7 of the project would follow that. Do you have a
8 date when that County control would kick in?

9 MR. MURPHY: I have no idea. They have
10 the right to take control as of January 1st. I
11 don't know when they will actually do so.

12 MS. McPHERSON: Okay. Would it be, in
13 your opinion, wise to recommend that County
14 control would be the trigger instead of a 218
15 vote, since the County control is anticipated
16 after the 218 vote? And would not be used to
17 coerce a vote, perhaps?

18 MR. MURPHY: I believe my answer to what
19 you've asked is no. But I would really need to
20 think about it more than I have.

21 MS. McPHERSON: Okay, thank you.

22 CHAIRPERSON YOUNG: Mr. Duggan.

23 MR. DUGGAN: Dave Duggan representing
24 Cinthea Coleman. You mentioned the 218 vote.
25 Now, you are aware there is an advisory vote

1 that's supposed to take place?

2 MR. MURPHY: I am.

3 MR. DUGGAN: And the advisory vote
4 constitute votes of every person within the LOCSD?
5 Every person who is in a vote, basically.

6 MR. MURPHY: I don't know the specifics
7 of the advisory vote off the top of my head.

8 MR. DUGGAN: Do you know whether that's
9 just within the prohibition zone or --

10 MR. MURPHY: I don't know.

11 MR. DUGGAN: Even if there is a 218
12 vote, whether or not a 218 vote is approved, the
13 County still has a due diligence period according
14 to the chart we saw. Do you remember that chart?

15 MR. MURPHY: The County does have a due
16 diligence period, of course.

17 MR. DUGGAN: And that could take more
18 than just a couple of months according to that
19 chart? In fact, it's well into 2008.

20 MR. MURPHY: That's what the chart said,
21 yes.

22 MR. DUGGAN: Okay. And anywhere along
23 the way there could be legal challenges against
24 the 218 vote?

25 MR. MURPHY: As we discussed this

1 morning, there can always be legal challenges,
2 yes.

3 MR. DUGGAN: And individuals, of course,
4 that aren't involved in these legal challenges, is
5 it your understanding that the CDOs penalty,
6 basically the CDOs may kick in whether or not they
7 are party to these --

8 MR. MURPHY: It's my understanding,
9 based on section A-1, that depending on the
10 meaning of the word approved, everyone involved
11 could lose the safe harbor of such an A-1 should
12 the County not be able to approve the benefits
13 assessment by January 1, 2008. That's my
14 understanding based on my read.

15 MR. DUGGAN: And to take this a little
16 bit further, but within the realm of a 218 vote, a
17 vote of assessment district, between now and when
18 the County decides whether or not they're going to
19 take the project, is there a possibility that
20 someone would try to initiate a sanitation
21 district in lieu of the County taking this
22 project?

23 MR. MURPHY: I have no idea.

24 MR. DUGGAN: But it's possible that a
25 sanitation district could be formed before the

1 County takes this project?

2 MR. MURPHY: I don't know the process
3 for forming a sanitation district. So I can't
4 answer that question.

5 MR. DUGGAN: If a sanitation district
6 was formed, how do you expect the process to
7 affect the CDOs?

8 MR. MURPHY: I honestly don't know.

9 MR. DUGGAN: Thank you.

10 MR. MURPHY: I haven't thought that out.

11 CHAIRPERSON YOUNG: Okay. Are there any
12 other designated parties that wish to ask Mr.
13 Murphy questions? All right.

14 We will stop today. When we convene in
15 the morning at 8:30 we will consider requests by
16 designated parties, other than the CSD, to present
17 general evidence relevant to multiple parties.

18 So anyone other than the CSD, and this
19 would be general evidence applicable to multiple
20 parties. I think that effort was offered to, I
21 don't know, make the use of their 15 minutes a
22 little more specific, and allow them to cobble
23 general evidence together and get it before the
24 Board in one presentation instead of multiple
25 presentations.

1 BOARD MEMBER PRESS: How much time is
2 available for that, Mr. Chair?

3 CHAIRPERSON YOUNG: I don't have a time
4 for that.

5 BOARD MEMBER PRESS: Isn't it the
6 remainder of the CSD's --

7 (Parties speaking simultaneously.)

8 CHAIRPERSON YOUNG: They used 15, but
9 that was not timed. I anticipate it coming off of
10 their one hour. It's not a request by the CSD.
11 The CSD had its own hour.

12 BOARD MEMBER PRESS: My understanding of
13 the interpretation of the footnote was that the
14 CSD was piggybacking, or the designated parties
15 were piggybacking on the CSD's hour with these
16 general comments.

17 And that's what I would urge you to
18 adhere to.

19 CHAIRPERSON YOUNG: Okay, I'll think
20 about that. But I would like to entertain any
21 requests in the morning from designated parties
22 that wish to present general evidence. And we'll
23 see what we've got.

24 I'll make the decision at that point.

25 Okay, have a good evening, and we'll see

1 you at 8:30.

2 (Whereupon, at 4:15 p.m., the meeting
3 was adjourned, to reconvene, Friday,
4 December 15, 2006, at 8:30 a.m. at this
5 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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