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 )

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

THURSDAY, MAY 10, 2007
9:05 A.M.

Reported by:
Richard A. Friant

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

BOARD MEMBERS RECUSED - Agenda Item 4
Leslie S. Bowker
Monica S. Hunter

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

WATER BOARD PROSECUTION STAFF
Reed Sato, Director, Office of Enforcement
Harvey Packard, Division Chief
Allison Dominguez, Environmental Scientist

ALSO PRESENT
Lawrence Bishop
Rob Shipe

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
ALSO PRESENT

Gail McPherson
David Duggan
William Moylan
Beverly DeWitt-Moylan
Shaunna Sullivan, Attorney
Sullivan Associates

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
PROCEEDINGS

9:05 a.m.

CHAIRPERSON YOUNG: Good morning, everybody; I'm Jeff Young, Chair of the Central Coast Regional Water Quality Control Board. Welcome to San Luis Obispo. It's May 10th. And we'll begin with our roll call. Ms. Hewitt.

MR. THOMAS: Before you do the roll call, could the Board Members please turn your microphones on when you respond to the roll call.

MS. HEWITT: Thank you. Monica Hunter.

BOARD MEMBER HUNTER: Here.

MS. HEWITT: David Hodgin.

BOARD MEMBER HODGIN: Here.

MS. HEWITT: Daniel Press.

BOARD MEMBER PRESS: Present.

MS. HEWITT: Russell Jeffries.

VICE CHAIRPERSON JEFFRIES: Present.

MS. HEWITT: Jeffrey Young.

CHAIRPERSON YOUNG: Present.

MS. HEWITT: Gary Shallcross.

BOARD MEMBER SHALLCROSS: Here.

MS. HEWITT: John Hayashi.

BOARD MEMBER HAYASHI: Present.

MS. HEWITT: Les Bowker.
BOARD MEMBER BOWKER: Here.

CHAIRPERSON YOUNG: Thank you, Carol.

Okay, so we have two sets of microphones.

Okay, Mr. Thomas, would you like to do introductions.

MR. THOMAS: Yes. To my right is Carol Hewitt, our Executive Assistant. Further to the right is John Goni, Water Resource Engineer, who also helps out with our sound system.

To my left on the other side of Chairman Young is John Richards, Board’s Counsel on this for the Los Osos case. And at the table in front we have Harvey Packard, our Division Chief; and Allison Dominguez, our Environmental Scientist. And Allison will be presenting item number 3; and I’ll introduce other staff as they come up.

CHAIRPERSON YOUNG: Okay. I understand --

AUDIENCE SPEAKER: We can't hear you in the back of the room.

CHAIRPERSON YOUNG: Okay, we’ll try to speak a little louder. How's that? Is that better?

AUDIENCE SPEAKER: That's better.

CHAIRPERSON YOUNG: Okay, thank you.
Folks, just so you know our general public comment period for matters that are not appearing on the agenda today will be tomorrow.

The public will be able to speak on any of the agenda items that are on today's agenda by filling out a speaker card and submitting it; and putting down here which agenda item number they wish to speak on; and filling it out; and submitting that up here to Ms. Hewitt would be fine.

AUDIENCE SPEAKER: That's tomorrow?

CHAIRPERSON YOUNG: General comments from the public --

AUDIENCE SPEAKER: Oh, general. But if you say a specific item we wish to address, is that considered general?

CHAIRPERSON YOUNG: General in the sense that you're not a party; you're kind of an interested person.

BOARD MEMBER SHALLCROSS: They're not on the agenda.

CHAIRPERSON YOUNG: Yeah.

AUDIENCE SPEAKER: Oh, okay.

CHAIRPERSON YOUNG: So, if there's anything on today's agenda that anybody wishes to
comment, whether it involves them personally or
not, they can do so by filling out a speaker card.

AUDIENCE SPEAKER: Yes; and that will be
tomorrow.

CHAIRPERSON YOUNG: No. That will be
today.

AUDIENCE SPEAKER: Okay, thank you. Got
it, that clears it up.

CHAIRPERSON YOUNG: Okay, so I'm going
to go over it once more just so everyone's real
clear. Anything that's on today's agenda, the
Bishop property, the consideration of the panel
hearing, --

MR. THOMAS: Mr. Chairman.

CHAIRPERSON YOUNG: Yes.

MR. THOMAS: Mr. Richards, you can
correct me if I'm wrong here, but I don't believe
there's public comment on the panel hearing
recommendations. The public hearing portion is
closed.

MR. RICHARDS: There will be no
testimony on it. If the Board wishes to take
public comment, they may do so. But there's no
further testimony; the hearing has been conducted
and terminated.
MR. THOMAS: We did hear public comment on January --

MR. RICHARDS: That's right. That's right.

CHAIRPERSON YOUNG: Okay, so let's be clear. That's agenda item 4. Okay, so for 4 there's no further comment. Okay.

But for item 3, 5 and 6, those three items the public can fill out a card and comment on them.

Anything not on the agenda that people want to address the Board on, they can do so tomorrow, where we have a block of time set aside for that. Okay? Thank you. Mr. Thomas.

MR. THOMAS: Yes, a couple of other things. We have hearing devices for the hearing impaired, and they are out front with the receptionist. You can sign out one of devices with the receptionist and if you need help, Mr. Goni, could you help people if they need help, setting one of those up.

And also we have two supplemental sheets for item number 6. They should be in your blue folders. And we'll talk about those supplemental sheets when we get to item 6.
CHAIRPERSON YOUNG: Okay. I do have a few cards already that have put down agenda item number 4, so I'm just going to put those aside.

MR. PACKARD: Mr. Chairman.

CHAIRPERSON YOUNG: Yes.

MR. PACKARD: Mr. Moylan asked that his be placed in number 6 instead of number 4.

CHAIRPERSON YOUNG: Okay. And then there's one here, Randy -- is it Tillotson?

MR. TILLOTSON: Yeah.

CHAIRPERSON YOUNG: Okay, there is no agenda item number.

MR. TILLOTSON: Yeah, (inaudible).

CHAIRPERSON YOUNG: Okay, all right. Does Ms. De Witt-Moylan also want to change hers to number 6?

MS. De WITT-MOYLAN: If I can't speak on item number 4 --

CHAIRPERSON YOUNG: Correct.

MS. De WITT-MOYLAN: -- I will speak on item number 6, thank you.

AUDIENCE SPEAKER: Mr. Chairman, I would like to do the same. I was going to speak for Mr. Wilkerson on item 4. Can you move that to item 6?

CHAIRPERSON YOUNG: Why don't we move on
to our first agenda item, number 3.

Yes, Dr. Bowker?

(Pause.)

CHAIRPERSON YOUNG: Folks, both Drs. Hunter and Bowker have not recused themselves from this particular agenda item. The reason being it's fairly specific in nature; it has to do with a specific appeal of staff's decision regarding a bathroom.

And I think our attorney felt that there really was no issue involved with bias or conflict. And certainly if either one of them felt that they should recuse themselves, a Board Member always has that opportunity to do so. I didn't think there was any issue. And I think they have both decided to go ahead and participate.

So that's why they're here for agenda item 3. But they will not participate with the Board's deliberation on 4, 5 or 6.

Okay. Anything else that I should address before we continue on? Okay.

MR. THOMAS: Item number 3 is the Lawrence Bishop property in Los Osos. This is Board consideration of an appeal by Lawrence
Bishop regarding staff's determination to deny rebuild credit for an unpermitted existing bathroom. And making the presentation will be Allison Dominguez.

MS. DOMINGUEZ: Good morning, Chairman Young and Members of the Board. I'm Allison Dominguez. I would like to begin item 3 with a general summary of the item.

Lawrence and Kathleen Bishop own, but do not reside, at 1220 Santa Ysabel Street in Los Osos. It's a single family residence that is located in the prohibition zone.

On December 27, 2006, Lawrence Bishop requested authorization from the Central Coast Water Board to allow credit of an unpermitted existing garage bathroom towards installation of an equivalent bathroom in a house he rebuilt on the site.

Staff denied the request in a letter dated January 22, 2007. At the Board meeting held on March 23rd of this year, Mr. Bishop spoke during public comment and requested the Water Board hear his request for authorization of the unpermitted bathroom. The Board agreed to hear his case.
The staff report for this item clearly outlines staff's position on the item. Resolution 8313 prohibits the discharge of all wastes from onsite systems. The current residence contains only one legal bathroom; and only one legal bathroom should be permitted in the rebuilt house.

I recommend that the Board concur with staff's interpretation of the basin plan prohibition which does not allow credit for the unpermitted bathroom in the newly rebuilt house at 1220 Santa Ysabel, Los Osos.

I'm available for questions on this item or anything else contained in the staff report.

Thank you.

CHAIRPERSON YOUNG: Dr. Press.

BOARD MEMBER PRESS: Thank you. The unpermitted bathroom has been functional, right?

MS. DOMINGUEZ: Correct.

BOARD MEMBER PRESS: And has been in use, presumably?

MS. DOMINGUEZ: It is functional, so presumably, yes.

BOARD MEMBER PRESS: Okay. And the County calls it legal nonconforming?

MS. DOMINGUEZ: If it was built prior to
1959, it was --

BOARD MEMBER PRESS: But the County hasn't made Mr. Bishop take it out or unhook it?

MS. DOMINGUEZ: Correct.

BOARD MEMBER PRESS: Okay, thank you.

CHAIRPERSON YOUNG: Is the County going to permit it as part of a plan? I mean, have they accepted the plans and are just waiting for the Water Board to decide whether --

MS. DOMINGUEZ: If it was located anywhere else within the County they would allow another bathroom to be permitted in a house. But based on the fact that it's located in the prohibition zone, they do not permit it until we have concurred that it's acceptable.

CHAIRPERSON YOUNG: So the County's made no decision?

MS. DOMINGUEZ: Correct.

CHAIRPERSON YOUNG: And if this was not in Los Osos they would not?

MS. DOMINGUEZ: Based on the fact that the septic could allow for an additional bathroom, that it would be designed properly to accept that. So, if there was no problem for the house to have two bathrooms contained within it,
and the septic tank was designed for two bathroom,
it would be acceptable.

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

    BOARD MEMBER HAYASHI: So the septic
tank is not designed for two bathrooms?

    MS. DOMINGUEZ: I actually do not know
the exact amount, or the tank size for the
property. But presumably it would be one
bathroom, the standard tank could accept two
bathrooms.

    BOARD MEMBER HAYASHI: But it says here
the County considers it legal, or legal
nonconforming. Was it installed before 1959?

    MS. DOMINGUEZ: The County has evaluated
the bathroom, and based on the style that it was
installed and the use -- or the stuff that was
installed within the bathroom was built in about
the 1970s is what they guesstimate it to be.

    BOARD MEMBER HAYASHI: That's based on
the fixtures, right?

    MS. DOMINGUEZ: Yes, --

    BOARD MEMBER HAYASHI: I mean if it was
built in '59 to 1970, that's what, 11 years. So,
what could the odds of it being changed from an
old style, older water closet to a new one?

MS. DOMINGUEZ: Presumably that's hard to determine.

BOARD MEMBER HAYASHI: So we cannot determine for sure if it was built before '59 or not?

MS. DOMINGUEZ: Based on what the County has said it was built in the -- the current bathroom that's there was in the 1970s, but it could have been a replacement of a previous bathroom.

BOARD MEMBER HAYASHI: Yeah. When was the --

MR. BISHOP: Can I answer that question?

BOARD MEMBER HAYASHI: When was the garage built?

MS. DOMINGUEZ: Right. Go ahead.

MR. BISHOP: I have been trying to research this for quite awhile. The garage was built in 1958 --

BOARD MEMBER SHALLCROSS: Can you say who you are? Can you state your name, please.

MR. BISHOP: Oh, I'm sorry. I'm Larry Bishop --

MR. THOMAS: Mr. Bishop, is your
microphone on?

MR. BISHOP: I turned it on to -- can you hear me?

MR. THOMAS: Do you have a green light there?

MR. BISHOP: There's a green light.

Okay. Larry Bishop, Los Osos.

I have been trying to research when this bathroom was put in. The garage was built in 1958; the bathroom and a bedroom was in the garage at that -- some time. The house was built in 1973 or '74.

And I have been unable to go back through County records to find out if there was ever a septic tank put in, or anything put in prior to '73. So I can't prove that the bathroom was there and remodeled; and I can't prove that it wasn't there.

CHAIRPERSON YOUNG: When did you buy the property?

MR. BISHOP: I bought the property two years ago. And the person I bought it from is the one that built the house in '74. But he has dementia and has no clue what we're asking him.

BOARD MEMBER HAYASHI: Is there any
record in the title search or the -- about an
unpermitted bathroom?

MR. BISHOP: When I went through title
searching they only have on the computer back to
1990. And I was able to get back to 1972 through
all the searches, but I couldn't find anything
prior to that. And that was the date that the
previous owner bought the property.

BOARD MEMBER HAYASHI: So, the garage is
permitted?

MR. BISHOP: The garage is unpermitted.

BOARD MEMBER HAYASHI: It's not
permitted.

MR. BISHOP: Because it was built prior
to 1959.

CHAIRPERSON YOUNG: And the garage is
then --

BOARD MEMBER HAYASHI: So it was before
'59, it would not have been subject to a permit.

MR. BISHOP: That's correct.

CHAIRPERSON YOUNG: How were you able to
purchase a piece of property with an unpermitted
garage on the property? I don't understand that.

Doesn't the County have a mechanism?

MR. BISHOP: Well, if you -- you go
through a purchase procedures. If you disclose anything that's wrong with the property during that time of sale, it becomes a legal sale.

I have a document that's signed that the bathroom and the garage was unpermitted. It was signed by a lawyer for the seller. And on that document it said that no permits were required at the time.

Now, I can prove that the lawyer's statement is wrong. That in '73 permits would have been required. But, the document doesn't say when the bathroom was put in or -- it just says it was unpermitted.

CHAIRPERSON YOUNG: How have you been using this bathroom since your purchase of the property?

MR. BISHOP: Well, I've had the inside of the house rented out, and I've been using the garage for a workshop. So I've been using the bathroom for the last two years.

CHAIRPERSON YOUNG: Sporadically?

MR. BISHOP: Yes.

CHAIRPERSON YOUNG: I mean no one's living in the garage, I take it?

MR. BISHOP: Nobody's living in the
garage. Actually it's dangerous to live in the

garage because of all the other unpermitted stuff

that was done to the house.

I'm actually trying to bring the house

up to code. The safest way to do it is bulldoze

it and rebuild it.

CHAIRPERSON YOUNG: Right. See, the

concern I have, and I'm trying to look for some

leeway here, with something like this, is that the

prohibition speaks to not allowing any, you know,

increase in discharge.

And if you're using it in kind of a

sporadic level right now, certainly by getting it

permitted, bring it into the context of the full

residence, means it's going to be used, I would

assume, all the time.

Wouldn't that amount to an increase in

the flow of discharge?

MR. BISHOP: If we're having two people

live in the house, and we have two bathrooms, the

only thing it's going to do is make convenience.

It's not going to increase the amount of

discharge.

CHAIRPERSON YOUNG: Are you going to be

living there or renting?
MR. BISHOP: We're going to be renting.
We're going to be tearing it down and living
there.

CHAIRPERSON YOUNG: I see.

BOARD MEMBER PRESS: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER PRESS: I assume that the
facilities in the garage are probably not of the
most recent date, right? So, I imagine you don't
have a low-flow toilet in the garage, or low-flow
fixtures and so on?

MR. BISHOP: That's correct. All the
fixtures, the toilet, the shower, everything is
from '73.

BOARD MEMBER PRESS: Right, okay. So,
my sense is that this remodel is actually going to
bring things up to a much better standard. I
really don't see any reason why we have to deny
this. I just think that that's just ridiculous.

You had a situation where two bathrooms
were being used on the property. You're not
talking about having a fourplex in there with a
whole bunch of people. I just don't see it. I
think that it's not an improvement for water
quality, it's not necessary to be needlessly rigid
here.

CHAIRPERSON YOUNG: Okay. Mr. Shallcross.

BOARD MEMBER SHALLCROSS: Yeah, just a couple things. Is the bathroom in the new house going to be in the garage?

MR. BISHOP: No, it's not. The two new bathrooms are going to be in the bedrooms.

BOARD MEMBER SHALLCROSS: And how many bedrooms are currently in the house?

MR. BISHOP: It's a two bedroom house right now.

BOARD MEMBER SHALLCROSS: And how many bedrooms are going to be in the new house?

MR. BISHOP: It will be a two bedroom house.

BOARD MEMBER SHALLCROSS: Okay.

BOARD MEMBER HAYASHI: One last question.

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER HAYASHI: The new bathroom is put in, the current bathroom in the house --

MR. BISHOP: There's one bathroom permitted in the house now, and one unpermitted bathroom.
BOARD MEMBER HAYASHI: And the other one we have to assume is before '59 when permits weren't required. So therefore, at that point it would be legal. Does that make sense to you?

MR. BISHOP: If I could prove to you without a shadow of a doubt that it was put in '59, I would be here doing that.

BOARD MEMBER HAYASHI: All right, that's all I needed.

CHAIRPERSON YOUNG: Mr. Thomas.

MR. THOMAS: Mr. Chairman, I just wanted to point out that a few minutes ago you said that increasing discharges would be illegal.

CHAIRPERSON YOUNG: Correct.

MR. THOMAS: That is true. It is also true that the existing discharge is illegal.

CHAIRPERSON YOUNG: The problem with that garage --

BOARD MEMBER PRESS: Because the septic --

CHAIRPERSON YOUNG: -- from the septic tank, itself, --

BOARD MEMBER SHALLCROSS: The septic tank prohibition --

CHAIRPERSON YOUNG: Well, sure, right.
BOARD MEMBER SHALLCROSS: Mr. Chairman.

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER SHALLCROSS: Can I ask our counsel if we -- the claim and just go ahead and grant this, that this in no way affects the legality of the discharge.

MR. RICHARDS: That's correct. If the property is within the prohibition zone the discharge is prohibited; has been since 1988. And allowing Mr. Bishop to replace one permitted bathroom and one unpermitted bathroom, both of which are discharging illegally, with two permitted bathrooms, which will be discharging illegally, is not going to change the status. That is outside of this particular consideration.

BOARD MEMBER SHALLCROSS: Yeah, but basically I just wanted to forestall any argument that since we permitted, if we do permit this bathroom, that somehow it takes it outside of the basin plan, that we've somehow made that discharge legal. So, thank you.

CHAIRPERSON YOUNG: Okay. Why don't we hear from our public speakers on this. Did you have anything else, Mr. Bishop, that you just wanted to add. You've got time to do that. Do
you want to present anything?

  MR. BISHOP: I have time to do that. I
would just like to add one more thing, --

  CHAIRPERSON YOUNG: Sure.

  MR. BISHOP: -- and I won't go through
my whole summary here.

  CHAIRPERSON YOUNG: Well, take the time
you want.

  MR. BISHOP: In the attachment number
one, the County wrote to Roger Briggs clarifying
the building moratorium. And the letter does not
refer to fixtures as being permitted or
unpermitted during that reference. It does
represent existing fixtures, fixture-for-fixture.

  The attachment number two, a letter from
Roger Briggs to the County, provides further
clarification. The document provides explanation
for exemptions to it. I'm not asking for an
exemption; I'm asking fixture-for-fixture.

  Now, if you notice that in item number
one indicates a building permit. Then it says,
or, item number two refers to a project, will not
generate new or increased waste discharge; and
item three is another or, that the project will
result in water quality.
And I am taking out a leach pit and putting in a leach field. And reducing the present bathrooms that were built in '70 to low flow. So I'm improving water quality.

So even though I'm not asking for an exemption, Roger Briggs' letter says that I have the right to an exception. But I am only asking for fixture-forfixture.

Thank you.

CHAIRPERSON YOUNG: Anything else?

MR. BISHOP: That's all.

CHAIRPERSON YOUNG: Okay.

MR. BISHOP: Appreciate your help and your time.

CHAIRPERSON YOUNG: Okay. Why don't we move to our comment cards; then the Board can kind of discuss what to do.

We're going to have people spell their names. Will that kind of help you?

REPORTER: That would help, yes, thank you.

CHAIRPERSON YOUNG: Okay. Let's start with Mr. Shipe, Ms. McPherson, Mr. Duggan. That's all I have for this one.

If you could spell your name for the
reporter, that would be helpful to him.

MR. SHIPE: Rob Shipe, R-o-b S-h-i-p, as in Peter, -e. Resident of Los Osos.

CHAIRPERSON YOUNG: There we go.

MR. SHIPE: Okay. I'll go ahead and keep it brief. Rob Shipe of Los Osos. I just wanted to speak on Mr. Bishop's behalf.

Mr. Bishop -- I just wanted to make sure all of you understood that Mr. Bishop was vitally important to the whole settlement process that we went through previously. And he's a very reasonable man and I believe he's making a very reasonable request. And I ask that it be granted. Thank you.

CHAIRPERSON YOUNG: Okay. Gail McPherson.

MS. McPHERSON: Gail McPherson, M-c-P-h-e-r-s-o-n. I live in Los Osos. I'm commenting on Mr. Bishop's request.

I don't think that there should be any special treatment because somebody has signed a settlement agreement. And I think that's probably a bad idea.

But I do believe that there's 375 gallons per day of discharge assumed from many of
the residents in Los Osos. I think that the
randomly selected CDO recipient, Mr. Bishop, was
very unfortunate to be pulled out of the bingo, or
the lotto, bag in 2006.

But I believe that his concern about his
property being a fixture-for_FIXTURE, and not as a
special exemption, ought to be considered. He is
already hooking -- agreeing to hook up to a sewer
when it becomes available, as provided in his
cleanup and abatement order. He's already paying
assessments on two properties for a sewer. And
he's already demonstrated that he's going to be
improving the property; he's not just simply
renting it out and letting people flush.

And I think based on the fact that the
allowance at 375 gallons per day for property, and
a septic system is going to be improved in the
interim, is probably sufficient to allow him to
have that, not exemption, but fixture-for_FIXTURE
approval.

Thank you very much.

CHAIRPERSON YOUNG: Thank you for your
comments. Mr. Duggan.

MR. DUGGAN: Dave Duggan, Los Osos.

(inaudible). I don't approve of you approving
this. Why? Because what has not been mentioned here is that there is a level three severity rating in Los Osos for water. He'll be drawing extra water from the basin. It will be degrading the lower aquifer by creating more draw and we'll have more seawater intrusion.

The more of these that are allowed that will keep coming to you after this, and I'm sure they're in there, the more will be drawn from the lower aquifer.

As well as, my conversation with people from the County, they're not going to permit this, regardless of what you do. And I think this is a waste of time. As well as, you're going out of your way to treat this person differently after the settlement. Why did he not come to you before that? Seems to me that he's getting special treatment because after the settlement agreement was signed, and it was just brought up by Mr. Sato, that that should be considered. No.

So I don't believe that this should be approved. First, on the basis that it is an illegal fixture, a bathroom not approved by the County. We are in severity three rating with seawater intrusion, which this will exacerbate.
And if you look at the circumstances there's a lot of well, maybe, well, it could have been before a certain time, or a certain date. We need to work on facts here. When was it in place? How many people are using it now? How many people have been using it? And how many people are going to use it afterwards? Is this going to be an increase? It might be an increase of discharge from what it is now.

So, I don't believe that this should be granted. Thank you.

CHAIRPERSON YOUNG: Thank you, Mr. Duggan.

MR. BISHOP: Mr. Chairman.

CHAIRPERSON YOUNG: Yes.

MR. BISHOP: May I clarify something?

CHAIRPERSON YOUNG: Sure, go ahead.

MR. BISHOP: Reference has been made to a settlement. The settlement is not on this property. The only thing that's against this property is the notice of violation. I have not brought up anything to do with the settlement; I am not asking for any special treatment because of that. I'm just one of the unfortunate to own two pieces of property, and one getting hit.
Thank you.

CHAIRPERSON YOUNG: Okay. I have no more speaker cards. Mr. Packard.

MR. PACKARD: May I make a few comments in response?

CHAIRPERSON YOUNG: Of course.

MR. PACKARD: A couple things. The County implements the basic plan prohibition in the form of a building moratorium. So, since 1988 the County has not issued permits for any construction or remodeling that would increase the amount of flow into septic systems.

And they've used as a basis for that counting fixtures as legally permitted fixture units, or bathrooms or kitchens or whatever.

So staff doesn't necessarily have a preference which way you go here, but recognize that this will be a change in the way the County and the Regional Board deals with these types of requests. It may affect past and future applicants.

Also, the County does not require low-flow fixtures. It's my understanding there's no requirement. So I would ask that if you do approve this you condition that low-flow fixtures
be installed.

Also Mr. Bishop mentioned that the
settlement agreement he signed does not cover this
property. We would ask that you condition any
approval on Mr. Bishop entering into a settlement
agreement for this new property. Or we will
propose that we'll issue a cleanup and abatement
order before approving the construction of the new
house. That's it.

CHAIRPERSON YOUNG: That's an
interesting wrinkle.

MR. PACKARD: Actually, I will add that
in past approvals that staff has made for fixture
credits and new construction which replaces
existing construction, we've always required, as a
condition of approval, that they agree to hook up
to a sewer as soon as it's available.

So requiring a settlement agreement or a
cleanup order here would be nothing new as far as
we're concerned.

CHAIRPERSON YOUNG: John, can we make
that a condition?

MR. RICHARDS: You certainly could, yes.
I mean you should ask Mr. Bishop if he's willing
to accept that condition. But, you can certainly
make that a condition of your approval.

CHAIRPERSON YOUNG: But, of course, staff issues those; the Board doesn't. CAOs.

MR. RICHARDS: Well, there is a settlement agreement that the Board has approved.

CHAIRPERSON YOUNG: Right.

MR. RICHARDS: And if Mr. Bishop were willing to sign that settlement agreement as a condition of receiving this approval from the Board, then that would be acceptable. It would be equally permissible for the Board to craft a condition that was substantially similar to that as Mr. Packard has indicated, if the Board requires that he hook up to the sewer.

CHAIRPERSON YOUNG: Any other Board comments? Mr. Jeffries.

VICE CHAIRPERSON JEFFRIES: Thank you, Mr. Chairman. Mr. Bishop, you have said that you have two pieces of property in Los Osos. Do you live on the other one now?

MR. BISHOP: Yes, I do.

VICE CHAIRPERSON JEFFRIES: And you're planning on demolishing this building that's in question today? It was up on the screen.

MR. BISHOP: We're going to demolish
that building and build a new house.

VICE CHAIRPERSON JEFFRIES: And so you want to have, when you build the new building you want to incorporate two legal bathrooms, that's what you're asking for?

MR. BISHOP: I would like to bring the entire house up to code.

VICE CHAIRPERSON JEFFRIES: And that's being done --

MR. BISHOP: That would include two bathrooms.

VICE CHAIRPERSON JEFFRIES: -- demolition. Are you going to sell your other residence, or are you going to rent it out?

MR. BISHOP: I'm going to sell the other residence. That is the residence that has the settlement agreement against it.

VICE CHAIRPERSON JEFFRIES: Yeah, I understand. My only concern is that, you know, you may change your mind; you might decide to sell the one that you're going to reconstruct with the two -- if it's approved -- with the two bathrooms, which might increase the discharge. I know your indication has said that you're going to live in it with your family.
Historically this Board has taken the position, since the prohibition zone has been in place, that we would not approve any increases in discharges. This is kind of halfway in between, because the bathroom has been there, whether it's been legal or illegal. It's been there; it's been operating.

I really don't know if it's going to cause an increase. But my thoughts are that you could build this and turn around and sell it, with the two bathrooms, which we could have an increase because the new owners would have a larger family than you do. And we'd have an increase in discharge.

My other question would be, with this decision we're making something that was illegal legal. And is that accepting in the future? Are we setting a precedence that others in the community might have the same situation and all of a sudden we get a rash of appeals to make all these other illegal restrooms, bathrooms, fixtures legal.

And then the argument's going to be the same that we've set a precedence and we'd be caught in a big quandary of why did we do the
first one.

So, Mr. Richards, I have a question for you. And I think you kind of answered this before, but I was reading some of the item, and I didn't really catch the total. I think Mr. Shallcross was asking -- maybe I'll rephrase the question.

If we agree to do this, and agree to the appeal, then we're accepting an illegal facilities to be legal. And we're accepting that the possibility of increased discharge could happen. Then, we, in my interpretation, would be in violation of our own prohibition of discharge. We're authorizing a discharge that's not legal at this present time, to be legal.

Then are we also saying that the prohibition is now legal because of that authorization? I know it's two different issues, but it all comes together in one.

Do you understand my question, Mr. Richards?

MR. RICHARDS: Yeah, I understand your question. Or at least I understand the quandary that you're struggling with. And I'm not -- I'm struggling with a way to answer your question.
First of all, to the extent that any discharge from the subject property, the one we're talking about here, is happening today within the prohibition zone, it is a violation of the prohibition, of the basin plan prohibition.

There are -- if I understood the testimony correctly, there are two people living in the house now. And Mr. Bishop uses the garage as a shop. There are now discharges occurring as a result of three persons using the house, two residing there and one using the shop.

The Board would not be approving, if it grants Mr. Bishop's appeal, the Board would not be approving the discharge. And, in fact, if the Board grants the appeal and Mr. Bishop remolds the house with two bathrooms, any discharges to the septic system would remain violations of the basin plan prohibition.

VICE CHAIRPERSON JEFFRIES: That I caught from --

MR. RICHARDS: And should the Board, at some point, impose liability upon persons who are violating the basin plan prohibition, then the fact that they had approved this appeal would not alter the status of the discharges as being in
VICE CHAIRPERSON JEFFRIES: I understand what you're saying, but it's hard for me to compute, because something that's illegal is illegal to me. And to make it legal it kind of changes the position of the discharge, in my own interpretation.

MR. RICHARDS: I guess what it comes down to is it's a -- I mean discharges in Los Osos, all the discharges in Los Osos have been illegal since 1988.

VICE CHAIRPERSON JEFFRIES: Yes, I understand that. But now we're --

MR. RICHARDS: The question is, and yet the Board has condoned, actually, during that period of time, the building of a certain number of houses and the remodeling of other houses provided that the level of discharge, the level of waste loading did not increase.

Now, Mr. Bishop is here before you asking that you consider his appeal on that basis. And if you are convinced that the level of discharge in the Los Osos prohibition area is going to increase as a result of this remodeling activity, then you should deny his appeal.
If you're satisfied that the remodeling project that he's proposing will not result in an increase in the discharge within the basin, then you would be in a position to consider it and approve it, if you felt that was appropriate.

But approving a change in an illegal discharge to be another form of an illegal discharge is -- I mean, it's still an illegal discharge.

MR. BISHOP: Mr. Chairman.

CHAIRPERSON YOUNG: Yes.

MR. BISHOP: If I could answer Mr. Jeffries' question --

CHAIRPERSON YOUNG: Go ahead.

MR. BISHOP: When I applied for the permit they gave me this covenant and agreement restriction for use of property, which I must sign and have recorded against my deed, that I will not add bathrooms or bedrooms to this facility. So this is the restriction that will be applied later on to prevent -- and this goes with the deed so future people cannot add bedrooms or bathrooms.

The reason I did not provide this to the Board earlier is because in the last month it's already been changed three times. And it's part
of what I have been trying to do, is get it to
become a legal document, because they wanted me to
sign this saying I completed the project before
they would give me a building permit. And I
didn't think I could perjure myself in that sense.

This is the document that will be on the
deed preventing any further stuff.

And I would like to just put a food for
thought about signing the settlement. If you
require me to sign a settlement it may be
interpreted later on that I was agreeing to settle
in order to get the bathroom. And I would not
want that type of statement to be put on this.

I have no question about signing the
settlement, but I don't really feel that if you
require it, it could come back later and say,
well, he signed the settlement; I want to have a
bathroom, I'll sign the settlement. I'd like it
to stand on its own merit. Thanks.

CHAIRPERSON YOUNG: Okay. Hang on, Dr.
Press. Dr. Hunter, are you sure you want to weigh
in on this?

BOARD MEMBER HUNTER: Yes, I do. Thank
you. I just would like to suggest that we look at
the broader situation. I think, Mr. Jeffries, you
raised a consideration that there may be many
unpermitted bathrooms that were built prior to, or
at least in the '50s. And that these are being
used currently and that we may see requests
similar to what we see here with Bishop's.

But I think, you know, I would like to
look at this in terms of the role that the Water
Board has to play in helping to shape the
transition. I think these bathrooms are being
used. There are many impacts of these bathrooms.
But ultimately they need to be upgraded.
Ultimately we need to see the kinds of changes
that help to improve the situation in Los Osos.

Certainly low-flow and upgraded fixtures
are one of those elements which Mr. Bishop is
committing to. What I think also, I haven't heard
anybody else mention, he's got a leach pit. And
he's in an area that is close to the Bay. I think
moving to a leach field is another improvement
that he's willing to put into place at a cost and
at a time when he is also going to be facing the
transition to hook up to the sewer collection
system.

So, I think, you know, the interim time
of six -- I won't guess how many years -- how many
years it will be before there is a hook-up
available for him, in the interim we have the
opportunity to see at least one more home shift to
a system that we know works a little more
efficiently and has less of an impact on the
groundwater.

So, for those reasons I would like to
consider that although there may be illegal
bathrooms, and we may see more people coming
forward as this decision, the implications of this
decision are better known in the community, I
still believe that the Water Board has a role to
play encouraging the current situation to move
forward, even if it's incremental.

CHAIRPERSON YOUNG: Thank you. Dr.

Bowker.

BOARD MEMBER BOWKER: Having purchased
two homes in Los Osos, many times when you
purchase a home you don't know whether your
bathroom is legal or not. You're just buying a
home.

And I think there's a fundamental
difference between purchasing a home with a
bathroom that turns out later to be unpermitted,
versus putting in your own unpermitted bathroom.
So it's a timing event.

So, the second part is if you do nothing then you've got two bathrooms and a leach bed.

But if you grant this, then you have two low-flow bathrooms and a leach field.

So, bottomline is you're going to draw up less water, and given the way water bills are going, you're going to save money.

CHAIRPERSON YOUNG: I think that that raises kind of a good point. What's the flow rate on the existing two fixtures? Are they the same types of toilets? The two toilets that you've got in there.

MR. BISHOP: The fixtures that are in there are from 1973. So, that's what, I think five or six gallons per flush.

CHAIRPERSON YOUNG: Okay, --

MR. BISHOP: -- compared to what a new one would be; it would be either 1.6 or --

CHAIRPERSON YOUNG: Okay.

MR. BISHOP: And then showerheads would be full force compared to low-flow for showerheads.

CHAIRPERSON YOUNG: Okay. Well, right there that makes sense. If you go to low-flow
versus the existing situation. Well, but how
often is the sporadic one, the one in the garage,
used? Is it like once a week, once every other
week?

MR. BISHOP: I'm getting to that age I
use it a lot more than I should.

(Laughter.)

CHAIRPERSON YOUNG: When you're in your
shop, huh? What about, are there two people
living there now that you're renting to?

MR. BISHOP: Right now the house is
empty because we already have the building permit
in hand and we're --

CHAIRPERSON YOUNG: Okay.

MR. BISHOP: -- to tear down the house.

CHAIRPERSON YOUNG: All right. How
many, since you bought it in 2004, at that time
how many people were renting?

MR. BISHOP: We had one person in the
house, because since 2004 we've been trying to
tear the house down.

CHAIRPERSON YOUNG: I see. And how many
people will be living there once it is rebuilt?

MR. BISHOP: There'll be two of us.

CHAIRPERSON YOUNG: Well, Russ, just
looking at the numbers there, you know, my issue
is not to increase waste discharge. That's where
I see the --

VICE CHAIRPERSON JEFFRIES: Well, my --
CHAIRPERSON YOUNG: -- the only
stumbling block here.

VICE CHAIRPERSON JEFFRIES: -- Mr.
Chair, my question was going to be, because I've
heard some, I think Mr. Packard alluded to -- my
understanding of what you said, Mr. Packard, was
there's no requirement in San Luis Obispo County
to have low-flow fixtures?

AUDIENCE SPEAKER: Yes, there is.

AUDIENCE SPEAKER: Yes, there is.
MR. PACKARD: That's my understanding.
I believe they're talking about making it a
requirement now. I've heard that there is no
current requirement.

VICE CHAIRPERSON JEFFRIES: Mr. Bishop,
then I will ask you, the requirements of the
building permit, does it specify what type of
fixtures that you have in your new facilities?

MR. BISHOP: I cannot tell you about
that. I had the architect design and put it all
in. I know that the bathrooms went in as low-
flow. And that's the approved fixtures that went
in during their calculations of energy and
conservation. That they handled all of that.

CHAIRPERSON YOUNG: We can just make it
a condition of --

VICE CHAIRPERSON JEFFRIES: Well, that's
a possibility.

CHAIRPERSON YOUNG: Yeah.

VICE CHAIRPERSON JEFFRIES: My other
question, Mr. Bishop, is are you going to build
this regardless?

MR. BISHOP: Yes. And even though
I've -- with the Board, the second bathroom will
be plumbed in. And as soon as we connect to the
sewer I will be able to get the permit and put it
in. So the house is going to be built.

CHAIRPERSON YOUNG: Dr. Press.

BOARD MEMBER PRESS: Well, we could
discuss hypotheticals all day. We could deny; he
could decide not to build; he could rent; he could
rent to people who would have a larger family; he
could rent to students. In Santa Cruz a garage
with a bathroom goes for, you know, 950 a month,
and so on.

So, in my view there's a clear benefit
to water quality. I would move to condition our
approval on Mr. Bishop's agreement to certify that
he'll put in low-flow fixtures. And that's it.

BOARD MEMBER HAYASHI: I second.

CHAIRPERSON YOUNG: You second it, Mr.

Hayashi?

BOARD MEMBER HAYASHI: Yes.

BOARD MEMBER SHALLCROSS: Can I just --

CHAIRPERSON YOUNG: Of course, Mr.

Shallcross.

BOARD MEMBER SHALLCROSS: I think we're
getting a little off, also, on whether or not the
bathroom is legal or not. That's a County issue.
We don't legalize bathrooms.

I think we should stick to what we do,
which is deal with water, water quality. And it
sounds like this is going to improve it by any
means. How many people move in is really
irrelevant. People move into houses all over the
prohibition zone. Two people move out, four may
move in. We have no control over that.

It sounds like he's doing the right
thing. I'm not too worried about a big rash of
others. We'll deal with those on a case-by-case
basis.
I did want to ask, Mr. Packard, what was the language that you included in other folks' --
there was some language I think you said where they agreed to hook up to a sewer.
I also don't want to get into having him sign the settlement agreement. I think that confuses the two issues. But if other folks are required to abide by a condition to hook up to a sewer as soon as it's available, I don't think that's too much. Is that -- was that what

MR. PACKARD: Well, typically what we've done is just make that a condition in a letter that we'll issue to either the County or the homeowner. It's not a very enforceable way of doing it.

BOARD MEMBER SHALLCROSS: Okay, well,

then --

MR. PACKARD: Even if Mr. Bishop prefers not to sign a settlement agreement, we have a cease and desist -- or a cleanup and abatement order draft that staff could issue unilaterally that would take care of it.

BOARD MEMBER SHALLCROSS: I think I'm ready to vote for it.

CHAIRPERSON YOUNG: Any other Board
comments or questions?

Okay, we have a motion. We've got a second.

MR. RICHARDS: Who seconded it?

CHAIRPERSON YOUNG: Mr. Hayashi did.

MR. RICHARDS: Press made it and --

BOARD MEMBER SHALLCROSS: Yeah, Hayashi seconded it.

MR. RICHARDS: -- Hayashi seconded it.

CHAIRPERSON YOUNG: Okay.

All those in favor of the motion?

(Ayes.)

CHAIRPERSON YOUNG: Any opposed? Okay, motion carries unanimously. Thank you.

MR. BISHOP: Thank you, Mr. Chairman and the Board, thank you very much.

(Whereupon, Board Member Bowker and Board Member Hunter were recused.)

CHAIRPERSON YOUNG: Okay, we'll move on to agenda item number 4. Consideration of panel hearing recommendation to adopt proposed cease and desist orders. There are two of them. Mr. Thomas.

MR. THOMAS: Mr. Chairman, on January 22nd a panel of the Board considered cease and
desist orders against two property owners in Los Osos. They heard the evidence submitted by the prosecution team and the defendants; and heard public testimony or public comments. And unanimously recommended that the full Board adopt the cease and desist orders.

You have the staff report that summarizes the issues; and Mr. Richards and I will answer any questions that the Board may have.

CHAIRPERSON YOUNG: Okay. John, what we do is essentially just go into Board deliberation right now?

MR. RICHARDS: That's right. Yes. This is your opportunity. You've held the hearing; the testimony is in; the argument has been presented to the panel. The panel is making its recommendation. And it's now the opportunity for a quorum of the Board to deliberate on that recommendation.

CHAIRPERSON YOUNG: Okay. Let me just ask Mr. Hodgin, have you had a chance to review?

BOARD MEMBER HODGIN: Yes, I have.

CHAIRPERSON YOUNG: Okay. And can I ask, what did you review for this item? What did staff give you? Because I don't know. Was it a
transcript or a video or a DVD, or --

BOARD MEMBER HODGIN: Yes. I've reviewed the video; also looked through the transcript. And there have been several other documents that I've been reading on this topic.

CHAIRPERSON YOUNG: Okay.

MR. THOMAS: Mr. Chairman.

CHAIRPERSON YOUNG: Yes.

MR. THOMAS: We sent the DVD --

CHAIRPERSON YOUNG: Okay.

MR. THOMAS: -- of the panel hearing; and the evidence that was submitted by the parties, all of the evidence. So, the evidence, the DVD and the transcript from the hearing.

CHAIRPERSON YOUNG: Okay.

MR. THOMAS: Was sent out to the Board Members.

CHAIRPERSON YOUNG: We need to ask Dr. Press the same question. Yeah, he's kind of left us.

VICE CHAIRPERSON JEFFRIES: You're not going to ask me?

CHAIRPERSON YOUNG: You weren't there? Okay. Mr. Jeffries.

VICE CHAIRPERSON JEFFRIES: I read all
CHAIRPERSON YOUNG: Okay. And did you watch anything?

VICE CHAIRPERSON JEFFRIES: No, I did not. When I found out the length of the meeting my wife wouldn't let me tie up the DVD that long.

(Laughter.)

VICE CHAIRPERSON JEFFRIES: So I read all 202 pages during "Deal or No Deal".

CHAIRPERSON YOUNG: Okay. And, Dr. Press, can you tell us what you reviewed in terms of --

BOARD MEMBER PRESS: I read the transcript, every single word.

CHAIRPERSON YOUNG: Okay. All right. Well, the Board can deliberate on this and discuss what to do. There's been a -- the panel has recommended the adoption of the cease and desist orders. Any comments? No comments. Okay.

How about, Dr. Press?

BOARD MEMBER PRESS: Yeah, Mr. Chair, I feel that the CDO in this case, in terms of the prohibition and the discharge, in my view is no different than the others.

However, I have been getting
increasingly frustrated with the way the
discussion has centered on the maximum penalties.
In these CDOs we have maximum penalties of $5000 a
day. And that, understandably, has made people
nervous about a scenario in which nothing
happened, the boom got lowered, and maximum
penalties were imposed. And people are afraid of
losing their homes.

The specter of that cost has so taken
over the discussion that we are, in my view,
getting away from water quality and the public's
interest in water quality.

So, I would be much happier with this
CDO, and others, if the maximum penalties were
lowered to a level that reflected the --
essentially that reflects the Water Code's
interest in making sure that dischargers don't
have an economic benefit from violating. In other
words, the equivalent to a sewer hookup or
something like that.

So, instead of $5000 a day, I would cap
them at something like $30 a day. Which, in my
view, is more along the lines of what, with
increasing costs, are the economic benefit
foregone from not being on a sewer line.
And that's still a lot of money, but it's not the cataclysmic --

CHAIRPERSON YOUNG: It's $5000 a day.

BOARD MEMBER PRESS: Yeah, it's not the catastrophic specter. So, anyway, that's how I would want to deal with the penalty portion of these CDOs, so that the discussion can stay focused on water quality.

CHAIRPERSON YOUNG: Okay. Mr. Shallcross.

BOARD MEMBER SHALLCROSS: Yeah, I concur wholeheartedly. And also I think it has to be reiterated that whatever the cap, or any cap is, that's the top. That doesn't mean that the Board would necessarily impose that top figure.

I don't think we've ever imposed a top figure on anybody, even the worst case discharger. So, you know, folks should understand that the Board can impose nothing if they want to. It's within the discretion of the Board. And if it certainly makes folks feel more comfortable -- I know it would me -- that the top were some other more reasonable figure, that that's fine with me. And I think it's good, because we need to get this $5000-a-day issue off the table and talk about
what the real issues are here.

So, I wholeheartedly agree.

CHAIRPERSON YOUNG: Mr. Richards, can the Board change the, you know, put a cap within these two CDOs?

MR. RICHARDS: Certainly it could.

CHAIRPERSON YOUNG: Okay.

MR. RICHARDS: It could make findings; it could adjust the directive provisions. But the fact is that the CDO does not set or limit in any way the Board's discretion. I mean, the proposed CDO, as drafted, does not set or limit the discretion of the Board in assessing liability.

CHAIRPERSON YOUNG: Right.

MR. RICHARDS: And, in fact, legally it would be a little difficult for the Board to make a directive in this or any other cease and desist order that would bind the Board's discretion in a subsequent enforcement proceeding based on the cease and desist order.

The cease and desist order is an order by the Board directing the discharger to cease doing a particular thing, and possibly directing the discharger to do other things in the interim.

You would be directing yourselves to do
something in the future if you said the Board shall not impose liability of greater than a
certain amount in the cease and desist order.

So I think it would be perfectly appropriate for the Board to include a finding in
the cease and desist orders that indicated what the Board would contemplate as an appropriate
maximum of liability. But I think there is a certain amount of difficulty in amending the order
part of the cease and desist order to set that kind of limit.

CHAIRPERSON YOUNG: But why is that?

MR. RICHARDS: Just logistically. I mean just the difficulty of using the order in that way is -- it can be done. I mean, the Board could say, and therefore it is hereby ordered that, you know, the maximum liability shall not be greater than so-and-so. It could be done.

I mean, it's awkward, but it could be done.

BOARD MEMBER PRESS: Mr. Chair.

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER PRESS: I think it's already awkward. The CDO is, with the Water Code penalty there, that made it awkward. And we
already have a maximum penalty. I don't see how
making one that is a different number is making it
any more awkward than --

CHAIRPERSON YOUNG: What is awkward the
way it is right now?

BOARD MEMBER PRESS: Well, right now
that's the maximum penalty; and as a kind of --
you know, why do you have penalties. You have
penalties so that --

CHAIRPERSON YOUNG: Yeah, but why is it
awkward. I know why we have penalties, but the
penalty comes right out of the Water Code.

BOARD MEMBER PRESS: I understand, but
it's awkward because it makes it so that the
discussion is all about this huge penalty instead
of --

CHAIRPERSON YOUNG: There are members of
the community that have hijacked that issue and
have made that a focus and that's what you're
wanting to address.

BOARD MEMBER PRESS: Well, anyway, I
just think that --

CHAIRPERSON YOUNG: I don't disagree
with you, that, you know, maybe we could modify
that cap. I just want to understand what we're
doing and whether we can really limit the future
Board that you and I may not be on.

BOARD MEMBER PRESS: Well, I think if
we're making findings that that is an appropriate
level, I don't see --

CHAIRPERSON YOUNG: Based on what we
know today.

BOARD MEMBER PRESS: That's right.

CHAIRPERSON YOUNG: And staff may issue
something in the future; there may be changed
circumstances; we don't know what those may be or
may not be.

BOARD MEMBER PRESS: I think -- I guess
what I'm saying is I find it hard to imagine that
a future Board would make findings that a single
septic tank should be penalized at the range of
scores of thousands, or hundreds of thousands of
dollars a year. That's really hard for me to
fathom.

CHAIRPERSON YOUNG: I don't disagree
with that.

MR. SATO: Mr. Chairman, would you be
willing to entertain comments from the prosecution
team?

CHAIRPERSON YOUNG: Of course. Well,
let's see. If we do that --

MR. RICHARDS: That kind of opens up --

CHAIRPERSON YOUNG: Yeah. If we do that, Mr. Sato, then we --

MR. RICHARDS: -- listen to others.

MR. SATO: Well, I wanted to speak specifically to the issue that Dr. Press raised; and I think I can help you in terms of some legal issues that's related to his suggestion.

CHAIRPERSON YOUNG: Okay, but --

MR. MOYLAN: I'd like equal time, though.

MR. RICHARDS: Yeah, if you listen to the prosecution team --

(Parties speaking simultaneously.)

MR. MOYLAN: I want equal time.

(Pause.)

MR. RICHARDS: This proceeding has been agendized as an opportunity for the Board to conduct its discussion and deliberate on the recommendation of the hearing panel. And if the Board wants to open its discussion further to consult with the prosecution team on this, I think that you'd better be prepared to listen to what other parties have to say.
CHAIRPERSON YOUNG: All right. Let me suggest this. Doesn't the Board have, within its discretion, the right to ask questions of any of the parties?

AUDIENCE SPEAKER: Chairman Young, would you please, and would you ask the lawyer to speak into the mike. It's very difficult to hear back here. Thank you.

CHAIRPERSON YOUNG: Okay. Mr. Richards, doesn't the Board have the right to ask questions of the parties, even during deliberation, if they want clarification?

MR. RICHARDS: Typically they do.

CHAIRPERSON YOUNG: Okay. And without opening it up to the public.

MR. RICHARDS: That's true.

CHAIRPERSON YOUNG: Okay.

MR. RICHARDS: The Board controls the process.

CHAIRPERSON YOUNG: Okay. We can ask Mr. Sato, if we have any questions, we can ask Mr. Moylan and Ms. De Witt-Moylan if they have any questions of --

MR. RICHARDS: That would be true.

CHAIRPERSON YOUNG: -- kind of leave it
at that.

   MR. RICHARDS: That's right.

   CHAIRPERSON YOUNG: All right. Let me 

   hear from Mr. Hayashi.

   BOARD MEMBER HAYASHI: I almost forgot 

   what I was going to ask. If we do something like 

   this, how are we going to differentiate between 

   the community septic tank. You know, where you 

   have -- if we're going to hold it to one, you 

   know, the $30 a day. And you go to an apartment 

   building, how does that work?

   CHAIRPERSON YOUNG: Well, I think that 

   discussion, if the Board decides to go down that 

   path then we would have to consider what to do 

   about the previously issued CDOs.

   BOARD MEMBER HAYASHI: Correct.

   CHAIRPERSON YOUNG: And then later any 

   subsequent enforcement actions and how to try to 

   equalize everything.

   BOARD MEMBER HAYASHI: But I think 

   everybody would be on the same playing field.

   CHAIRPERSON YOUNG: Well, I think that's 

   what we would want. Everyone's going to be 

   treated the same. So, maybe you're talking about 

   a per-day penalty per unit.
CHAIRPERSON YOUNG: Per unit. So, Mr. Sato, let me ask you this: Do you have any thoughts about Dr. Press' suggestion that the Board -- and Mr. Moylan and Ms. De Witt-Moylan, do you want to come up here and take a seat at that table --

BOARD MEMBER HAYASHI: Chairman Young.
CHAIRPERSON YOUNG: Yes.

BOARD MEMBER HAYASHI: Whatever we do today and the decisions that we make, that we're saying if we make it for a Board after we're gone --

CHAIRPERSON YOUNG: Right.

BOARD MEMBER HAYASHI: -- they're going to have the same power that we have. They can disregard what we've done, or they could go along with what we've done. Hopefully that future Board would take a little bit of -- would think about how we came to our decision and go from there.

CHAIRPERSON YOUNG: To do that, Mr. Richards, the Board would have to actually kind of partially rescind.

MR. RICHARDS: To do what?
CHAIRPERSON YOUNG: To undo what we do
today. Assuming that we were to go down the path and put a cap on --

MR. RICHARDS: Nothing would preclude a future Board from disregarding the cap with appropriate findings.

CHAIRPERSON YOUNG: With appropriate findings, okay.

MR. RICHARDS: I mean they would -- in order to impose a cap at this time, the Board would have to make findings that justify the imposition of the cap. In other words, it would have to make findings that imposition of the maximum liability would be inappropriate; and that imposition of liability in excess of some amount would be inappropriate, for whatever reason, based on the statutory considerations.

The subsequent Board, in view of the fact that there is not a lot of evidence in the record regarding the proper amount of liability that would be appropriate for whatever future violation is out there, a future Board could easily make contrary findings and say, having considered the evidence in the record at this point in time, in the future, we conclude that the Board's prior finding was not justified, or may
have been justified then but isn't justified now, and we conclude that we're going to disregard the cap and do something entirely different.

So, there's a great deal of difficulty in attempting to bind that future Board; especially in view of the fact that there has been little testimony and little argument related to the appropriateness of a level of liability that should be assessed in the event of some speculative future violation.

CHAIRPERSON YOUNG: Okay. Mr. Sato, any comments about Dr. Press' proposal that perhaps the per-day penalty be capped?

MR. SATO: Well, I'm certainly sympathetic to -- and by the way, I'm Reed Sato; I'm the Director of the Office of Enforcement for the State Water Resources Control Board. I appear here today as the legal counsel for the prosecution team.

I am sympathetic to the concerns expressed by Dr. Press. Usually where these kinds of caps on penalties occur within an enforcement proceeding are usually done by stipulation between parties through a settlement-type process where both entities agree that both prosecution and the
defendant would be limited. And then have that
agreement endorsed by a hearing body such as
yourself.

The problem with just coming up with
caps, and Mr. Richards has touched upon a number
of the difficulties, and there's a lot of case law
on the issue about whether or not one board can
bind a future board with regard to certain types
of enforcement issues. It's generally not done.
It's generally frowned upon.

The idea of having, you know, the range
of numbers available is to give boards the
appropriate discretion at the time when the facts
are in front of them, to weigh whatever issues
they have to weigh, and to impose the appropriate
sanction.

The only reason why we have the numbers
in the cease and desist order, and any other
orders that we would impose either in this
proceeding or any other proceeding, is to advise
the discharger what their exposure is. And to let
them know that in the future some range of
sanction may be available to a board in the event
that somebody does not comply with the order.

The problems, and I think the reason
that people have stayed away generally from trying
to establish caps early on, is that it's hard to
know what the appropriate cap is. And, two, it
requires a great deal of precision to get around
the legal sanctions against trying to establish
such a cap for the purposes of having one board
find for a completely separate and future board.

CHAIRPERSON YOUNG: What legal
sanctions?

MR. SATO: Pardon me?

CHAIRPERSON YOUNG: What legal sanctions
are you speaking of?

MR. SATO: Well, in the sense that those
types of caps are disregarded by the future board.
So, it's not -- I certainly think that this Board,
if you were interested, could do it on an advisory
basis. And say something, you know, we're looking
at this issue; we believe that, you know, the
maximum penalties would not be appropriate unless
the following, you know, bad things occur.

But to then try to hone it down to a
particular number, to a particular range, I mean
we're proposing certainly to do that within our
stipulated cleanup and abatement orders for the
next round of folks. And we think that we've come
up with a number that we think is relatively good.

But that is simply a recommendation by
the staff. It's not a binding type of document on
a future board.

And I'd be happy to address any specific
questions that Dr. Press or any of the Board
Members may have about this concept of caps.

You can certainly take it out of the
order, too. You could just refer to the statute,
as well. If the actual number is the thing that's
scary, simply refer to the statute.

CHAIRPERSON YOUNG: Okay. Mr. Moylan.

Mr. Sato took about --

MR. MOYLAN: My name is Mr. Moylan -- or
Bill, Bill Moylan. And I live in Los Osos and I
am, I'm one of the people on agenda item number 4,
along with my wife and the Wilkersons.

And I appreciate that Dr. Press was
concerned about the absolute number of $5000 a
day, because that scares most everyone, including
myself. It's kind of a fear tactic imposed by the
Water Board, in my opinion.

And initially CDOs weren't, with those
kinds of numbers, weren't really meant for
individual residences. They were meant for big
polluters like oil companies or canning companies
or trucking companies that were deliberately
polluting. So the threat of $5000 a day was
indeed a deterrent for them.

But $5000 a day is ridiculous for an
individual residence, because it's not just a
deterrent, it does, in fact, imply that if you do
decide to apply the $5000 a day cap, because there
is a cap there, it's only $5000 a day, that the
people would have to vacate the premises in the
order to -- Matt Thompson, April 28, 2006 when he
was asked what would we do if we could not afford,
or if there was no sewer to hook up, he did say
you'd have to vacate the premises. Absolute
opposite of what Mr. Reed Sato said to Mr.
Wilkerson on January 22, 2007, where did you get
the idea that you would have to vacate the
premises. And Mr. Wilkerson just couldn't
remember it. But I had to ask Matt Thompson, did,
in fact, you say that we'd have to vacate the
premises on April 28, 2006. And he said, yes, I
did say that. And I said, thank you.

So, what I'd like to know is do you
intend to scare the living daylights out of people
and have them potentially move from their homes
with $5000-a-day caps, or, as in the settlement
agreement that Mr. Reed Sato has proposed, only
$100 a day, which sounds like a real deal.
There's a cap there, too, Mr. Sato.

So, I'd like to know what is reasonable.
And what is enough to make people think, we do
need a sewer; I don't want to get fined. Most
people already believe that. They do believe that
we want to have a wastewater treatment facility in
Los Osos.

So the issue of having a wastewater
treatment facility is not an issue. It's already
a given. We want that. It's just a matter of how
much it's going to cost and where it's going to
be. And also the type of system it's going to be.

Now, I'd like to go back to this cap of
$5000 a day, or $30 a day, or whatever. I think
it is reasonable to put a cap on cease and desist
orders for residences. And you have that
authority, just like Mr. Richards said.

Thank you.

CHAIRPERSON YOUNG: Okay, you have
another minute, almost two minutes. Did you want
to complete the --

MR. MOYLAN: Bev.
MS. De WITT-MOYLAN: Yes. I'm sorry, I'm having a hard time hearing you.

CHAIRPERSON YOUNG: You've got a couple more minutes.

MS. De WITT-MOYLAN: Thank you. I think what I want to say is the fact that we're having this discussion at all demonstrates how inappropriate cease and desist orders or other orders are to be imposed individually on homeowners for a failure of government.

My husband and I signed a settlement agreement. And that settlement agreement was that we agree to hook up to a wastewater treatment facility when one was available. That is something that a homeowner can do. That is something that a homeowner can afford.

If a homeowner deciding when a wastewater treatment facility was available that they did not want to hook up, if they refused to hook up, then a cease and desist order would be appropriate. But to impose any find on us at this stage of the game is just ridiculous. We have no way of complying with an order that tells us we have to do something that doesn't exist.

So I want to say that I take this very
seriously. I know that people that I know in our
town take it very seriously. And I have to say
that I felt a little bit insulted, or maybe more
than a little bit insulted, by Mr. Jeffries'
comments regarding his observations and reading
our testimony at our hearing. To say that it
interfered with his time with his video player;
and that he had to squeeze it in during one of his
programs.

We have lived under this $5000-a-day
fine for I don't know how many months, over a
year, since January 30, 2006. We take it very
seriously.

And I think the last thing that I would
like to say is why wasn't this discussion taken up
in January 2006. Many people have suffered
tremendously just from the idea of having this
$5000-a-day fine, of having to leave our homes.
It's very real to us. And I hope that you take it
more seriously than it sounds like some of you
have. Thank you.

MS. SULLIVAN: I would like an
opportunity to address this on behalf of the
Wilkersons.

CHAIRPERSON YOUNG: You do, yeah, you
have four minutes.

MS. SULLIVAN: All right.

CHAIRPERSON YOUNG: Okay, go ahead.

MS. SULLIVAN: My name is Shaunna Sullivan. On behalf of the other CDO recipients, the Wilkersons, I would like to bring up a couple points.

I appreciate Dr. Press' suggestion of a maximum penalty, or a cap on that maximum penalty. And I think it's a good one.

However, I think a maximum penalty is really not being considered by this Board. The real maximum penalty is requiring people to cease discharge as of January 2011, which will require them to vacate their homes.

And I would like the opportunity to cross-examine Mr. Sato on that point, as well. But I'd also like to bring up that if you're going to consider a cap on the dollar amount, I would suggest that you consider a cap on the maximum penalty that we would suffer, which is enjoining us from living in our homes come January 2011.

And I'd also like to know, since staff is taking the position that regardless of what the CDO states, that they can still charge a daily...
liability for basin plan violations, is that in
addition to whatever amount is on the CDO? What
is meant with the statements made in the staff
report that needed a proposed settlement -- cease
and desist orders that will need past or ongoing
daily liability for basin plan violations. Is
that an additional amount you'll charge on top of
what you're talking about right now?

CHAIRPERSON YOUNG: Mr. Richards, the
answer to that is yes, right? The CDOs --

MR. RICHARDS: That's right. There is --

CHAIRPERSON YOUNG: -- with the ongoing
basin plan.

MR. RICHARDS: No, there are any number
of -- first of all there's nothing in the proposed
CDOs that talks about the amount of liability. It
simply says -- if I'm on the right document --
down at the bottom in bold type it says: Failure
to comply with the provisions of this order may
subject the discharger to further enforcement
action, including assessment of civil liability
under section 13268 or 13350 of the Water Code,
and referral to the Attorney General for
injunctive relief and civil or criminal
liability."

And that's sort of a -- that is the standard language that's used in regional board orders to indicate the fact that these orders are enforceable in subsequent proceedings.

And the cited sections of the Water Code provide for civil liability; and occasionally criminal liability for violation. For instance, falsification of a monitoring report to a regional board can be referred to the district attorney for criminal prosecution.

That does not set any particular liability. The fact is that the statute does allow the regional board to assess up to $5000 a day for various violations. One of those violations is discharge in violation of an enforcement order, either a cease and desist order or a cleanup and abatement order.

Therefore, any person who violates the terms of a cease and desist order is subject to liability of up to $5000 per day for that violation.

Another basis for civil liability is a discharge in violation of a prohibition. The maximum liability is the same, is $5000 per day.
for each day of violation of a basin plan prohibition.

    CHAIRPERSON YOUNG: So I think --

    MR. RICHARDS: Persons discharging to septic systems in the Los Osos area have been subject to a potential maximum liability of $5000 a day for every day since 1988 in which they have discharged to septic systems.

    CHAIRPERSON YOUNG: And that liability is not modified or waived or dispensed --

    MR. RICHARDS: That is --

    CHAIRPERSON YOUNG: -- upon the issuance of the cease and desist order --

    MR. RICHARDS: No. The cease and desist order adds an additional obligation to do specified things by specified dates. And violation of those requirements is subject to a separate assessment of civil liability.

    CHAIRPERSON YOUNG: Okay. Yes.

    MR. THOMAS: I just wanted to clarify, Mr. Richards, that regardless of what this Board can put into this cleanup and abatement order, or what this Board says in adopting this order, or even if they were to do something else, adopt a resolution, say, with their opinion about what a
maximum fine should be, it does not trump the law in any way.

MR. RICHARDS: That's true.

MR. THOMAS: A future board --

MR. RICHARDS: When the future board comes to look at some future potential violation it will have the full discretion provided by the law. Now, as I indicated before, if this Board has made findings about the appropriate level of liability, it would have to address those findings and make findings that would supersede them. But nothing would preclude it from doing so.

MR. THOMAS: We're calling it a cap, but the cap is what is in the law; a true cap is what is in the law.

MR. RICHARDS: That's right. And the maximum liability available to the regional board anytime it considers violations of cease and desist order, violations of prohibitions and a variety of other discharge violations is $5000 per day.

MR. THOMAS: So if the Board were to talk about an upper limit now, and put it into some document, it would be a preference at this point in time. And that's it.
BOARD MEMBER PRESS: Excuse me, but that would be done with findings. What Mr. Richards is saying is that we would need to make findings.
And that a subsequent board would have to make other findings that would then raise that maximum.

And, again, we have -- I mean it's clear we have constraints on what we can do. We are not the Legislature; we can't write the law. We're given some discretion.

But what I'm trying to get at is to try to, insofar as we are capable, I am trying to signal a findings-based policy preference for a level of maximum liability that I think is more appropriate to the issue than what the maximum allowed in the law.

We cannot control future boards, that's clear. We can't rewrite the Water Code, that, too, is clear. But we have the discretion, according to Mr. Richards, to make findings and express this current Board's policy preference. And I think we should do that.

BOARD MEMBER SHALLCROSS: Mr. Chairman.

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER SHALLCROSS: I've been sort of wordsmithing here on something along the lines
of what Dr. Press is suggesting. And what I came
up with is including a finding that -- I would
like to include this in the past cease and desist
orders, too, however that's done -- and it would
be something like this:

Because the cease and desist order
recipient is a residence, this Board finds that
any penalties imposed for failure to comply should
not exceed $30 per day unless specific findings
are made by the Board to justify exceeding that
amount."

BOARD MEMBER PRESS: I think you ought
to add some -- because the Water Code wants
usually to enumerate things like hardship and
economic benefit and so on, and so those should be
enumerated. That more than that would impose too
much hardship; that's one finding.

Another finding is that that level --
CHAIRPERSON YOUNG: More clearly relates
to the economic advantage --

BOARD MEMBER PRESS: Yes. Well, that
was the next point.

CHAIRPERSON YOUNG: Right.

BOARD MEMBER PRESS: Is that economic
advantage of not being on a sewer is certainly not
greater than $900 a month in any kind of reasonable scope.

So, you've got some deterrents; you've got some economic advantage; you've got a consideration of hardship. I mean I think it's all -- those are good findings. And they are findings that the Water Code asks us to make.

CHAIRPERSON YOUNG: Right. At the time that there's a second hearing, not at this time --

BOARD MEMBER PRESS: Well, we can only do at the time. This is the time, this is the only time --

CHAIRPERSON YOUNG: Daniel, this is not the time, under the law, for worrying about those factors, so --

BOARD MEMBER PRESS: I understand.

CHAIRPERSON YOUNG: And you'll confuse things by suggesting that every time that the Board does something like this, it has to entertain that. And it doesn't.

I think it's -- I agree with you that it's appropriate that we signal what we would do today, and what factors we think are important. I think we should --

BOARD MEMBER PRESS: That's all I'm
CHAIRPERSON YOUNG: -- have a finding, yeah.

BOARD MEMBER PRESS: That's all I'm doing.

CHAIRPERSON YOUNG: Okay. Yeah, what I'd like to do, and I'll go right back to you. Ms. Sullivan, you have another couple of minutes. I didn't want to cut you off --

MS. SULLIVAN: Oh, great. Good.

CHAIRPERSON YOUNG: So, go ahead.

MS. SULLIVAN: I would like to ask Mr. Sato a question --

CHAIRPERSON YOUNG: Well, the testimony phase has ended, so --

MS. SULLIVAN: Okay, then I'll just make the statement: Mr. Sato has told me that he believes the Board has the ability and will, if they have to, make people move from their residence. They will make them vacate the residence, and that is the ultimate maximum penalty we're looking at.

MR. SATO: That is not true. And that is also a settlement -- any kind of communication I've had with Ms. Sullivan --
CHAIRPERSON YOUNG: Okay, Mr. Sato. Mr. Sato.

MR. SATO: -- is a settlement communication.

CHAIRPERSON YOUNG: Mr. Sato, okay.

MR. SATO: And that would be an unethical disclosure of any conversation that I've had with her.

MS. SULLIVAN: There's been a complete waiver of settlements right in your staff report. You've attached it and waived any settlement.

CHAIRPERSON YOUNG: Okay.

MR. RICHARDS: This is not an appropriate forum for this kind of discussion. This is --

CHAIRPERSON YOUNG: Ms. Sullivan, you're going to open up a whole thing with he-said, she-said, and there's nothing we can do about that.

MS. SULLIVAN: I --

CHAIRPERSON YOUNG: If you are going to refer to things in the settlement agreement that are confidential, I don't know whether they are or they aren't, you know we don't do that in --

MS. SULLIVAN: Okay.

CHAIRPERSON YOUNG: -- this kind of a
setting.

MS. SULLIVAN: I would just like this Board to consider the ultimate maximum penalty which would be ordering people to move from their homes. And I would like to see this Board say, no, we're not going to do that to you.

CHAIRPERSON YOUNG: Ms. Sullivan, is there any language in these two CDOs that says that someone is going to be ordered from their home?

MS. SULLIVAN: Yes. If you look under the two statutes that you referenced earlier, the Water Code sections for penalties, and referring to that Attorney General's Office, those refer to a cessation --

CHAIRPERSON YOUNG: Moving people --

MS. SULLIVAN: -- of the prohibition, I mean cessation of the discharge. And if he is not capable of any other way, then it can be -- to stop, the people will have to move to stop discharging.

CHAIRPERSON YOUNG: That's a choice people make. The Code does not say --

(Audience parties speaking simultaneously.)
CHAIRPERSON YOUNG: Excuse me, the Code does not say that the Water Board can make anybody move from their homes. The Water Code says that the Board can order a cease in discharge from a prohibited activity. If people want to put in some other alternative method to comply with the prohibition, they can do so.

But you're confusing things.

MS. SULLIVAN: Actually, no. I would like to --

CHAIRPERSON YOUNG: Show me the language that says that the Water Board can order somebody to move from their home.

MS. SULLIVAN: It's in the two Code sections you just referenced.

CHAIRPERSON YOUNG: No. Show me. I've read them.

MS. SULLIVAN: I don't have the section in front of me. Sorry, I didn't bring it with me.

BOARD MEMBER SHALLCROSS: Let's move on.

MS. SULLIVAN: But I do think that people shouldn't be forced to the election of having to move from their home or face fines. Which is the only way they can comply with cessation of the discharging.
CHAIRPERSON YOUNG: Anything else?

MS. SULLIVAN: No.

CHAIRPERSON YOUNG: Okay. Mr. Thomas.

MR. THOMAS: I just wanted to follow up on the conversation that we've been having. Actually I wanted to make clear that I agree with you, Dr. Press. Where I was going with this was that I think that the upper limit that the Board indicates should be based on something that's more than an arbitrary number, like 30 or 100 or whatever that number is.

And that instead you should reference something that's more realistic such as the cost of the facility.

So, the Board's assessment of penalties would not be significantly greater than the monthly cost of the facility. That's a real number. We don't know what that number is, but it is a real number.

BOARD MEMBER PRESS: Well, right, that's the problem, is we don't -- I mean, --

BOARD MEMBER SHALLCROSS: That would --

I'm sorry.

BOARD MEMBER PRESS: Well, go ahead. I suppose what you could do is you could say that
you could look at the assessments that were in place a year and a half ago. I mean, you could base it on those. You could take the average of assessments in recent years in California. I mean, if you want to do it that way. I don't know.

MR. RICHARDS: The problem with any of this is that there is no evidence in the record to support those findings at this point, because there was no testimony offered that would establish what these costs would be or might be.

BOARD MEMBER SHALLCROSS: I think that would be covered by whatever finding the board at that time would make to impose, to impose penalties. That would be a finding they could make to impose penalties.

I don't think we need to do that necessarily. I mean that specific.

MR. THOMAS: I had a suggestion along those lines that one thing the Board could consider is making a decision on the cease and desist orders as they are written now. And at item number six, today, you will be considering future enforcement actions. And at that time the Board could include in whatever the prosecution
team's decision is to move forward with enforcement action, the Board could indicate its preference regarding a cap. And give that direction to the prosecution team, as far as considering that in future actions.

CHAIRPERSON YOUNG: The question is, Daniel and Gary, what --

BOARD MEMBER PRESS: Yeah, what is to be done on these two CDOs. I'm not comfortable with the -- just the reference to the statute with the maximum penalty in there.

And since our actions don't bind future boards from making their own findings, I don't really see why we can't made different findings right now --

CHAIRPERSON YOUNG: John, can't we just -- we have evidence that they're homeowners.

MR. RICHARDS: You have evidence that they're homeowners.

CHAIRPERSON YOUNG: Okay. We have evidence that they use septic systems. I think there was some testimony about the frequency of pumping that would be imposed.

There hasn't been specific evidence of the monthly cost that they would incur --
MR. RICHARDS: No.

CHAIRPERSON YOUNG: -- if they had to --

MR. RICHARDS: -- because --

CHAIRPERSON YOUNG: -- we have had in other hearings. Is it entirely inappropriate to refer to that other testimony?

MR. RICHARDS: No. You have, in the record, the files of the Regional Board on these matters, and the evidence that was adduced in the other hearings.

But to -- we would have to go hunting for that evidence to try and figure out what the economic benefits might be; and what the levels of hardship are.

I think that -- I mean it's possible to do that. I think it would be --

CHAIRPERSON YOUNG: Well, is there --

MR. RICHARDS: Yeah, it would take some time.

CHAIRPERSON YOUNG: Well, I think it was during the ACL hearing against the CSD when we probably heard that.

Gary, have you -- do you want to --

MR. RICHARDS: I'm not sure if that -- that's not part of the record of this proceeding.
CHAIRPERSON YOUNG: No, but that's what I was referring to, that there are other proceedings related to Los Osos where we've had testimony in evidence. But then, again, Mr. Hodgin was not part of those.

BOARD MEMBER SHALLCROSS: Are you suggesting that we restrict it to the benefit that they would receive by not --

CHAIRPERSON YOUNG: Well, I was trying to use -- trying to refer to all the evidence that we could to base findings.

Gary, can you read what you have so far?

BOARD MEMBER SHALLCROSS: Yeah.

CHAIRPERSON YOUNG: Go ahead.

BOARD MEMBER SHALLCROSS: Because the cease and desist order applies to a residence, this Board finds that any penalties imposed for failure to comply should not exceed $30 per day unless specific findings are made by the Board to justify this exceedance.

And then Dr. Press suggested exceedance of $30 per day would likely cause undue hardship, financial hardship; and would be unreasonably -- that's not the right word -- anyway, higher than the benefit.
CHAIRPERSON YOUNG: And maybe that is the problem. That's where we don't have the evidence to support the latter part of those findings.

BOARD MEMBER SHALLCROSS: Well, that's in the law.

CHAIRPERSON YOUNG: Well, what you wrote; the first sentence you wrote, as stated --

BOARD MEMBER SHALLCROSS: Oh, I see.

CHAIRPERSON YOUNG: -- I think is fine.

BOARD MEMBER SHALLCROSS: Okay.

CHAIRPERSON YOUNG: As far as I'm concerned. And, John, do you find a problem with that if the Board votes to adopt the CDOs and just makes this finding?

BOARD MEMBER SHALLCROSS: Based on the fact that they're residences.

MR. RICHARDS: No, I think the evidence before the Board could probably justify that finding.

CHAIRPERSON YOUNG: Good, okay. So --

BOARD MEMBER HAYASHI: Make the motion.

CHAIRPERSON YOUNG: I think we take out, Daniel, the part you wanted because we don't have the evidence in this hearing to support that. But
we leave in the first part that Gary had written.

BOARD MEMBER PRESS: Yeah, well, I'm happy with Mr. Shallcross' language.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER PRESS: I mean, personally, I feel that there's a prima facie case to be made that as homeowners in California 2007 there are certain economic limits that speak to the hardship factor and speak to the economic advantage factor. And those are prima facie evidence, constitutes prima facie.

Anyway, but I'm happy with his language.

CHAIRPERSON YOUNG: Okay.

MR. SATO: May I make a comment, Mr. Chairman?

CHAIRPERSON YOUNG: Sure.

MR. SATO: I just want to point out that, you know, the Water Board's enforcement policy talks about the weighing of factors with regard to the statutes 13350 and 13385. And certainly economic benefit is one of those issues that people should look at.

And certainly it is appropriate for this Board to instruct future boards that if they want to emphasize the consideration of those kinds of
factors on a discharger, that would certainly be appropriate.

One of the concerns that everybody has with just tying a future penalty just to economic benefit, is that there is really no disincentive for noncompliance. It's simply the cost, your violations continue simply to be the cost of doing business. What happens if people -- there is nothing for somebody to do to come into compliance, that they simply just pay the money, don't stop the discharge, and just pay the money, pay the money, pay the money.

Where will you get the compliance with the discharge prohibition if the only factor that you're looking at, or the thing that you want to peg your penalty to is just economic benefit. You'll have no disincentive. And that is set forth in the Water Board's enforcement policy.

CHAIRPERSON YOUNG: Okay.

MR. MOYLAN: I'd like to address that.

CHAIRPERSON YOUNG: You can. Let me reset it.

MR. MOYLAN: Mr. Sato was saying what's the incentive for them to comply; they just pay the money, pay the money, pay the money. Even at
$30 a day that's $900 a month. I doubt that there
are more than ten people in this room right now
that could afford $900 a month out of pocket
besides their other living expenses.

So, that is an incentive. $30 a day is
a major incentive. $5000 a day is a killing
incentive. $100 a day is a killing incentive.
That would be $3000 a month.

Nobody wants to go with this as far as
having to pay fines. I told you before, and I
still believe most of the people I talk to in Los
Osos want to get this thing moving ahead. They
want the County process to move forward.

So, there is an incentive in the town to
go forward with this. $30 a day is still $900 a
month. There aren't very many people that can
even afford that.


MS. SULLIVAN: I'll just leave it at
that.

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: I think Mr. Moylan
expressed it quite well.

CHAIRPERSON YOUNG: All right, Ms. De
Witt-Moylan, do you want to use your minute?
Okay. Well, we can have a motion. We have some language that's been proposed.

BOARD MEMBER HAYASHI: But what sentence are you going to leave off?

BOARD MEMBER SHALLCROSS: It's just the bit about hardship.

BOARD MEMBER HAYASHI: Well, read the -- give me the proposed language or some --

BOARD MEMBER SHALLCROSS: Okay. Because the cease and desist order applies to a residence, this Board finds that any penalties imposed for failure to comply should not exceed $30 per day unless specific findings are made by the Board to justify such an exceedance.

BOARD MEMBER HAYASHI: That's fine.

I'll move; I'll second.

BOARD MEMBER SHALLCROSS: And just to make this clear, that doesn't mean that the fines would be $30. They could be up to $30 a day. So it could be $1 a day. So, just --

CHAIRPERSON YOUNG: And they could go over that if --

BOARD MEMBER SHALLCROSS: But there could be no --

CHAIRPERSON YOUNG: -- a future board
does make specific findings that is warranted.

So, I think the intent here is to kind of signal, you know, the Board's appreciation for the fact that you are homeowners. And that obviously $5000 a day would be exorbitant.

MR. MOYLAN: To say the least.

CHAIRPERSON YOUNG: We understand that, but that's simply because the law allows that for this type of enforcement action.

So I'm in favor of that language. I want to say something before we vote, and that is, and, Ms. De Witt-Moylan, you referred to this.

And I need to make this very clear because you said that this action essentially sets you down the road to being moved out of your home if we don't modify that cap.

And the public needs to understand something. These CDOs, the ones that were previously issued, do nothing but set the stage for another enforcement hearing, which staff would bring at some time that hasn't even been determined will exist.

So the issuance of these CDOs imposes no monetary penalty on you unless there's another hearing. Okay. Nothing is going to happen other
than the deadlines have to be complied with.
Okay.

MS. De WITT-MOYLAN: May I just respond?
CHAIRPERSON YOUNG: No. No.
Just so everybody knows, I think Ms. Schicker and whoever else wanted to speak on number 4, the public is not speaking on this issue. Only the parties are, because the Board asked specific questions of Mr. Sato; and then we gave equal time to the other parties.

MS. SCHICKER: What's the legal statute that allows me not to speak?
CHAIRPERSON YOUNG: Okay, the public -- any other comments? Okay.

Go ahead, Mr. Shallcross, did you want to -- did you make the motion?
BOARD MEMBER SHALLCROSS: I move it.
CHAIRPERSON YOUNG: You second?
BOARD MEMBER HAYASHI: I second it, with that addition.

CHAIRPERSON YOUNG: Okay, all those in favor of the motion with --

(Ayes.)
AUDIENCE SPEAKER: Un-legal.

CHAIRPERSON YOUNG: Any opposed?
AUDIENCE SPEAKER: I am.

BOARD MEMBER SHALLCROSS: And is there some way that we can include this language in the other -- the previous cease and desist orders? How do we do that? Can we amend them?

CHAIRPERSON YOUNG: Mr. Hodgin, you were a no vote?

BOARD MEMBER Hodgin: No, I was a yes vote.

CHAIRPERSON YOUNG: You were a yes. Did anyone vote no?

BOARD MEMBER SHALLCROSS: No.

CHAIRPERSON YOUNG: Okay. All right.

MR. SATO: Mr. Chairman, point of clarification. Did that motion, was that intended to cover both orders?

CHAIRPERSON YOUNG: Yes. Both of the two that were, by the panel recommendation. Okay. Now, Mr. Shallcross raises a good point, and that is what about the previously issued cease and desist orders. And, Mr. Richards, what can the Board do about adding -- do we have to reopen with a noticed hearing?

MR. RICHARDS: Yes, that’s essentially the only way to amend a cease and desist order.
CHAIRPERSON YOUNG: To add a special finding.

MR. RICHARDS: To add a finding.

CHAIRPERSON YOUNG: Okay.

MR. RICHARDS: I think that --

BOARD MEMBER HAYASHI: We have to open a complete hearing?

MR. RICHARDS: Well, the problem is that you -- I mean, here's the problem. You could certainly have -- you could propose to amend the cease and desist orders to add this finding. And the notice would go forth that the cease and desist orders would be reconsidered to add that particular finding.

But the problem is that it would require a hearing, and as we've seen, it's very difficult to keep people to the issues involved.

BOARD MEMBER HAYASHI: Why can't we just notice it? Why don't we notice it, that we're making these findings; that we're going to make these retroactive to the ones previous. And if any of the parties have a problem let them respond. If they don't want to accept it, they don't have to accept it.

MR. RICHARDS: Well, you can try to do
it by a stipulation.

BOARD MEMBER HAYASHI: Well, then so stipulated.

BOARD MEMBER SHALLCROSS: Let's do it that --

(Laughter.)

MR. RICHARDS: No. A stipulation would -- I mean you could ask the parties who have received the cease and desist orders to stipulate to the amendment and offer them an opportunity for a hearing.

BOARD MEMBER HAYASHI: Then let's do it that way. If they don't want to take it, they don't have to take it.

CHAIRPERSON YOUNG: Okay, I missed that last part, but I think that, Gary, we could do this offer to amend by stipulation, is that right?

BOARD MEMBER SHALLCROSS: Would we need to have a hearing on that?

CHAIRPERSON YOUNG: Not --

BOARD MEMBER SHALLCROSS: If they're stipulating, why --

MR. RICHARDS: Well, if they stipulate to the amendment of their cease and desist order to add that finding, you would not have to have a
hearing.

BOARD MEMBER SHALLCROSS: Okay.

MR. RICHARDS: But you have to offer

them an opportunity for a hearing.

BOARD MEMBER SHALLCROSS: Okay, and if

the hearing's opened up then anything can be

changed.

MR. RICHARDS: Then it --

BOARD MEMBER SHALLCROSS: For just that

issue.

MR. RICHARDS: The difficulty is to

limit the hearing to the issue of that particular

finding.

BOARD MEMBER SHALLCROSS: Well, maybe

staff could come back with a recommendation.

CHAIRPERSON YOUNG: Okay, and is that

our staff or the prosecution team that does that?

This is something --

BOARD MEMBER SHALLCROSS: Well, the

cease and desist order is issued by us, not the

prosecution team.

CHAIRPERSON YOUNG: Right. But in terms

of this contact, is it something, Michael, that

you can approach --

BOARD MEMBER SHALLCROSS: Yeah, maybe
Michael --

(Parties speaking simultaneously.)

MR. THOMAS: I have a recommendation.

Wait until item number six, where we consider future enforcement actions.

CHAIRPERSON YOUNG: Okay. All right, we can take that up then. Thank you, we're done with this agenda item.

Why don't we take a break because it is 12:00. Dr. Press, take a break? Okay.

And when we come back we will start with agenda item number 5. Well, we have to take a break anyway.

AUDIENCE SPEAKERS: How long?

AUDIENCE SPEAKER: And what time?

CHAIRPERSON YOUNG: An hour; one hour.

(Whereupon, at 12:01 p.m., the reporter was excused from further duties and released for the day.)

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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 24th day of May, 2007.

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