In the Matter of: )
Proposed Cease and Desist Orders )
Against Individual Property Owners )
and Residents in Los Osos/Baywood )
Park Prohibition Zone )
Re: Proposed Settlement Agreement, )
Continuance of Hearings for )
Designated Parties Who Have )
Agreed to Settle )

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

VOLUME III
CONTINUED HEARING/PANEL HEARING

MONDAY, JANUARY 22, 2007
1:03 P.M.

Reported by:
Richard A. Friant

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
BOARD MEMBERS PRESENT
Jeffrey S. Young, Chairperson
Gary C. Shallcross
John H. Hayashi

BOARD MEMBERS RECUSED
Leslie S. Bowker
Monica S. Hunter

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

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

ALSO PRESENT
Gail McPherson
Shaunna Sullivan, Attorney
Sullivan Associates
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
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1:03 p.m.

CHAIRPERSON YOUNG: Good afternoon. I'm Jeff Young, Chair of the Central Coast Regional Water Quality Control Board. Today is January 22nd; we're in San Luis Obispo for a modified agenda. We're having a panel of the Board convene to hear a few very specific items.

AUDIENCE SPEAKER: Would you talk louder, please?

CHAIRPERSON YOUNG: Okay. How's that, any better?

AUDIENCE SPEAKERS: Yes.

CHAIRPERSON YOUNG: Okay. Is there a way to maybe adjust this? Okay.

Ms. Hewitt, would you like to take roll.

MS. HEWITT: Thank you. Gary Shallcross.

BOARD MEMBER SHALLCROSS: Here.

MS. HEWITT: Jeff Young.

CHAIRPERSON YOUNG: Here.

MS. HEWITT: John Hayashi.

BOARD MEMBER HAYASHI: Present.

CHAIRPERSON YOUNG: Okay, and, Mr. Thomas, would you like to do introductions for us.
MR. THOMAS: Yes. To my right is Carol Hewitt, our Executive Assistant. To my left on the other side of Chairman Young is John Richards, the Board's attorney for this matter.

At the prosecution table we have, on my right, Matt Thompson, Project Engineer with the Enforcement Unit; Reed Sato, Director of the Office of Enforcement for the State Water Board; Harvey Packard, our Division Chief; and Sorrel Marks.

CHAIRPERSON YOUNG: Good afternoon. I have a note here. Actually, if you want to read that.

MR. THOMAS: Okay, we do have assisted listening devices; if you need them, please let us know and we'll see if we can set you up with that.

CHAIRPERSON YOUNG: I guess they need to be checked out by the front office receptionist.

MR. THOMAS: Yes, that's correct.

CHAIRPERSON YOUNG: Okay, good. Well, before we begin with item number 3, I do have one card here for somebody that wants to speak as soon as possible. We do have public forum, which is agenda item 5. And I guess this card says it's about democracy and she'd like to address the
So, if this lady, I take it, would like to come up, identify yourself. I can't entirely read your last name.

MS. VAN EKEREN: Van Ekeren.

CHAIRPERSON YOUNG: Okay. Please come up, ma'am, and --

MS. VAN EKEREN: This is about the sewer. Ybi Van Ekeren; Y-b-i, Van, V-a-n, E-k-e-r-e-n. I live on 739 Santa Isabel in Los Osos.

CHAIRPERSON YOUNG: Thank you. You have three minutes, ma'am.

MS. VAN EKEREN: The people in Los Osos may be divided about the location of the sewer but they are united about getting a sewer. I think I am speaking for everybody here when I say that we want a sewer, and the sooner the better.

Los Osos is not just as a place to live; it's special. In Los Osos the rich live next to the poor. They seem to belong together like a positive and a negative fit together. The rich take care of the poor, and the poor help the rich.

We are not a bunch of people that need to be taught a lesson, but rather an example of
what a democracy should be all about.

This is why I think your method of dealing with your sewer problem is wrong. Let me give you an example of what will happen when you continue your lottery system.

During the second World War I lived in Holland under the German occupation. The German army needed local men to work for them, and all able men under 50 years that were not needed otherwise had to register.

Strangely enough, all men under 50 suddenly disappeared or showed up with falsified passes. From time to time the soldiers held what was called arrezia (phonetic); they went from house to house to arrest offenders who were then put in prison and made to work for the Germans.

It was fairly easy to escape from the local prisons, but the Germans had a foolproof way to avoid that. Every morning if someone was missing the roll call they would pick two people at random and execute them. It worked very well for them, for fairly few escaped after that. But it created an intense hatred against the Germans that was felt by everyone in the community.

Punishing people at random is terribly
unfair. Your lottery system is somewhat like that. You do not execute us, but you take away the roof over our heads. If you continue this lottery system you are creating an enemy. Do you want us to get a sewer or are you after our blood by adding severe fines to our ever-increasing debt, thus making it impossible for us to hire a lawyer to defend us.

We are a well-educated community. Please listen to the people of Los Osos; we are not your enemy. We want your cooperation not your vengeance. We want to work with you to get a sewer. It's not our fault that San Luis Obispo never followed up on a mandated system to clean our septic tanks. We value our water supply and want to clean it up, rather than spend our money on fines and lawyers.

Los Osos is our place. We live here and we do not want to be dictated what to do by a board that was not elected by us, and seems to be intended to silence our voice by making threats. Los Osos will not be silenced.

Our CSD can come up with a reasonable plan to take care of the pumping of every tank in Los Osos. Please include us in decisions that
concern us. After all, we are the ones that will have to pay for our sewer. Is it unreasonable that we should have a say in it? Thank you.

CHAIRPERSON YOUNG: Thank you for your comments. Let's go to --

(Applause.)

MS. CASTLE: Jeff?

CHAIRPERSON YOUNG: Yes.

MS. CASTLE: Could I speak at public comment? I'll take less than three minutes. I have a card here.

I would just like to inform the Board that this -- thank you. My name is Nancy Castle; I'm trying to shorten time, AGB Video --

CHAIRPERSON YOUNG: Is this about the video?

MS. CASTLE: Yes. Does public comment -- do open public comment --

CHAIRPERSON YOUNG: Actually we're not in open public comment. This was a specific request because she had to leave for medical reasons.

MS. CASTLE: I also have to leave. Can I just thank the community for paying for the video production services today. The Regional
Board Staff was unable to find funding, and so the community has come together to allow us to be here. And I wanted to thank them. Thank you.

CHAIRPERSON YOUNG: Okay.

(Applause.)

CHAIRPERSON YOUNG: I would appreciate it if there will be no clapping, no applause during this afternoon's session. Thank you.

Okay. Item number 3, consideration of requests for rescission of orders R3-2006 -1040 and -1046.

(Pause.)

MR. RICHARDS: So at this point --

CHAIRPERSON YOUNG: We just go right to number 4.

MR. RICHARDS: -- just go right to number 4.

CHAIRPERSON YOUNG: Okay. Mr. Thomas, do you want to introduce --

(Pause.)

CHAIRPERSON YOUNG: No, we're off the record.

(Off the record.)

CHAIRPERSON YOUNG: How we're going to be proceeding today. Today's hearing is a
continuation of what we had began and almost completed in December. We had not finished with, I think, maybe four or five individual properties. Some people had asked for a continuance. Others had requested to come on day two, and then they were not able to show up on day two. They had contacted us and we had decided to take all of those people that were not able to get in on that second day, December 15th, and allow them to come in today. That's really what this panel hearing is about today.

We are not going to have any discussion of item number 3 on the agenda. And that was a consideration of a request for a rescission of a couple of orders. And the reason is that we don't have a full panel of the Board today. We need to have five Board Members to take any action to instate the cease and desist order or to rescind it.

What we have today is a subpanel. There's three of us here that are going to hear evidence on the remaining four or so cease and desist order matters. And the Board -- the panel that's here is going to vote on a recommendation to be made to the full Board at our next Board
meeting.

We have already had public comment on all of these proposed cease and desist orders. That took place December 14th and 15th. There will be no further public comment on the individual cease and desist orders today that the Board is going to hear.

Public forum, item number 5, will be our normal public forum where people can address the Board on any item not on the agenda. So, I have a card here that says, "I turned in testimony cards for items 3 and 4. When to comment on that?"

There is no time to comment on those individual items, unless you've been called as a witness by one of those individual cease and desist order recipients, because that time period for commenting has already taken place.

Okay, so we're going to begin with item number 4.

MS. McCOMBS: -- if I can get clarification on what you're talking about when you go back to the Board?

CHAIRPERSON YOUNG: Okay.

MS. McCOMBS: You're stating that there's not enough people to make a decision --
CHAIRPERSON YOUNG: Well, let me explain this. With respect to cease and desist orders, okay, there has to be a minimum of five votes --

MS. McCOMBS: Oh, yes, I understood that.

CHAIRPERSON YOUNG: -- by the Board.

MS. McCOMBS: Okay.

CHAIRPERSON YOUNG: Okay? To take any type of action, whether to instate it or to rescind it.

MS. McCOMBS: Right, and my question is on that, how is that Board Member going to be brought up to speed on what people said today?

CHAIRPERSON YOUNG: Well, in fact, there's two of them that aren't here. And that's Dr. Press and Mr. Jeffries. So, obviously they're not here.

MS. McCOMBS: Yes.

CHAIRPERSON YOUNG: They're going to have to watch the DVD or videotape and look at the written material --

MS. McCOMBS: Okay.

CHAIRPERSON YOUNG: -- and a transcript. However they want to do it, but they have to review everything. And then what'll happen is our
vote today or the motion that will be made will
either be to -- it'll be for some type of
recommendation. And it's not going to be to do
anything specifically with the proposed cease and
desist orders. That really doesn't happen until
the next Board meeting.

MS. McCOMBS: Okay.

CHAIRPERSON YOUNG: And the reason for
doing this procedure like this was to make it
easier for the Board to take in the evidence.

MS. McCOMBS: Okay, I just -- I mean --

CHAIRPERSON YOUNG: Three of us can sit
here, take in the evidence and make a
recommendation, a minimum of three.

MS. McCOMBS: All I wanted to do is make
sure that those Board Members were going to watch
and have to go through --

CHAIRPERSON YOUNG: They have to. And
Mr. Richards is going to ask them whether they've
actually done that. Otherwise they can't
participate in the vote.

MS. McCOMBS: Okay, thank you.

CHAIRPERSON YOUNG: Okay, --

MS. TAYLOR: Mr. Young, what would you
have done if you had not had the ATP to televise
this through the donations of the community?

AUDIENCE CHORUS: Yes, right -- yeah.

AUDIENCE SPEAKER: What would they watch then?

CHAIRPERSON YOUNG: We have our own reporter and transcript.

MS. TAYLOR: Watch.

CHAIRPERSON YOUNG: They can watch; they don't have to watch. They can read the transcript. That's typically what's done. We pay for a reporter to be here. The video is a very nice and convenient way to get this out to the community, but it's not required.

MS. TAYLOR: It is not required, but two meetings ago one of your Members on the Board said that he preferred to watch rather than read or listen, he preferred to watch. And that was Mr. -- the gentleman from Salinas --

AUDIENCE SPEAKER: Jeffries.

MS. TAYLOR: -- Mr. Jeffries.

CHAIRPERSON YOUNG: Well, of course it would be easier to watch something than to have to read it. Okay, let's continue.

(Pause.)

CHAIRPERSON YOUNG: Okay, this is the
time and place for a hearing on proposed cease and
desist orders against individual dischargers in
Los Osos/Baywood prohibition zone.

I'm Jeffrey Young, Chairman of the
Regional Board. The individual panel members have
already been introduced to you. And the same with
the Prosecution Team members.

Designated parties, and today that would
just be those individuals who have had cease and
desist orders issued to them, should not submit
speaker cards for the public forum if they're
being proposed, as they will be called to speak in
alphabetical order during our individual
proceedings.

Representatives of governmental agencies
and interested persons should submit speaker
cards. Actually, that has already taken place,
also.

Okay, the order of presentation will be
as follows: Presentation of evidence by the
Prosecution Team; cross-examination of Prosecution
Team by designated parties; presentation of
evidence --

(Pause.)

CHAIRPERSON YOUNG: Folks, we just have
some changes that are made to our standard
procedure, and that's what I'm trying to figure
out here.

And then after the cross-examination of
Prosecution Team by designated parties we would
have closing arguments. And then the Board
deliberation and decision. And, of course, that
decision is simply a recommendation.

Okay, Board Members and staff counsel
may ask questions to clarify testimony of a
witness at anytime. I will now administer the
oath. If you intend to speak or provide testimony
on any of these matters today, please stand, raise
your right hand, and repeat:

Mr. Moylan; and is your wife here?

MR. MOYLAN: She will be.

CHAIRPERSON YOUNG: Okay.

Whereupon,

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

CHAIRPERSON YOUNG: Thank you. The
hearing notices notified the parties that they
must submit any written comments, a list of
witnesses and any exhibits to the Assistant
Executive Officer by November 15, 2006. The Water Board received copies of all materials submitted by the deadline.

Okay, why don't we begin then. Mr. Sato.

MR. PACKARD: Thank you; my name is Harvey Packard. Matt Thompson has our presentation. Actually, do you want to introduce which hearing we're doing?

CHAIRPERSON YOUNG: Well, it doesn't matter to me. I know that we're going to let Mr. Moylan and Mrs. De Witt-Moylan go last. So, --

MR. PACKARD: We've heard from two of the four parties who have expressed a desire to settle. So we have asked that they not have a hearing today.

CHAIRPERSON YOUNG: And who are those parties?

MR. THOMPSON: Matt Thompson, Prosecution Team. Those two parties that wish to settle are Tim and Melissa Rochte; that was proposed CDO order number 1015. And John and Phyllis Mortara; that was CDO order number 1016.

So the two designated parties that we're proposing CDO hearings for are the Wilkersons; and
that's Charles and Norma Wilkerson; that's order
number 1008. And the last one would be order
number 1041, Bill Moylan and Beverley De Witt-
Moylan.

CHAIRPERSON YOUNG: Okay; have you heard
from the Wilkersons?

MR. THOMPSON: We have received written
correspondence from the Wilkersons, but we've --
we have sent them the settlement agreement but we
have not heard back from them.

CHAIRPERSON YOUNG: Are they here today?

AUDIENCE SPEAKER: Yes.

CHAIRPERSON YOUNG: Okay, good. As far
as the two parties that wish to settle, have they
signed the settlement agreement?

MR. THOMPSON: Those parties just
informed us of their willingness to settle late
last week. We have not prepared site-specific
settlement agreements for them to sign yet. We
anticipate sending that to them this week to
finalize that agreement, consistent with the
procedure we did for the December hearings.

CHAIRPERSON YOUNG: Okay. Why don't we
then proceed with Mr. and Mrs. Wilkerson.

MR. MARTYN: Mr. Chairman, point of
order, please. I saw the public stand up and take
an oath of office, but I didn't see everybody in
this room also --

CHAIRPERSON YOUNG: Sir, --

MR. MARTYN: -- hold up their hands --

CHAIRPERSON YOUNG: -- come up to a

microphone and speak.

MR. MARTYN: Mr. Chairman, Allan Martyn,
Los Osos resident, the recipient of a CDO. And I
heard the public stand up that is going to be
submitting any evidence, take an oath of office;
but I did not see everybody in this room take an
oath of office if they're going to make any
statements or testify in any way, shape or form or
submit any testimony that's going to be entered
into the record.

Could I please ask the Chair to ask
those people in the room that did not take that
oath of office, including the members of the
Board, that they do?

CHAIRPERSON YOUNG: Well, the Members of
the Board don't testify; they don't provide
evidence.

MR. MARTYN: Well, they submit a lot of
comments, Mr. Chairman. I've been at these
meetings several times that I've seen that, and I think it would only be proper and just and above board, and show the community that these gentlemen are telling the truth, the whole truth and nothing but the truth.

CHAIRPERSON YOUNG: Okay, Mr. Martyn, thank you for your comments. Please sit down.

MR. MARTYN: Thank you.

CHAIRPERSON YOUNG: M-a-r-t-y-n, Allan.

MS. McPHERSON: I have a question.

CHAIRPERSON YOUNG: Yes.

MS. McPHERSON: This has to do --

CHAIRPERSON YOUNG: Are you representing somebody today?

MS. McPHERSON: Yes, I'm asking a question on behalf of one of them.

CHAIRPERSON YOUNG: And who is that person?

MS. McPHERSON: Larry Kleiger.

CHAIRPERSON YOUNG: Who?

MS. McPHERSON: Larry Kleiger; he's one of the CDO recipients that has not been notified when a hearing is scheduled, but would like to have a hearing. And he's the --

CHAIRPERSON YOUNG: This individual is
not one of the 45, is that correct?

MS. McPHERSON: He is one of the 45.

CHAIRPERSON YOUNG: No, not one of the four today, okay.

MS. McPHERSON: Not one of the two -- or the four today, correct.

CHAIRPERSON YOUNG: Yeah.

MS. McPHERSON: I just wanted to clarify that that doesn't mean -- you had made a statement that all of the rest would be today, and he wanted to make sure that he wasn't going to be precluded from a hearing.

CHAIRPERSON YOUNG: John, why don't you address that. I think there's a few that -- did he want to have his rescinded? Did he have one issue --

MS. McPHERSON: Yes, he did.

CHAIRPERSON YOUNG: -- and he wanted to have it rescinded?

MS. McPHERSON: Correct.

CHAIRPERSON YOUNG: Okay.

MS. McPHERSON: And there was a list of several that did, and I wasn't sure what the status of that is, since you're not ruling on that.
MR. RICHARDS: The status -- there are several people who did not appear at their hearing in December.

MS. McPHERSON: For various reason.

MR. RICHARDS: For various reasons. And their hearings were conducted -- the hearings on their orders were conducted in their absence by the Board because that was the time and the place for them to be present to address the Board.

All of those people received cease and desist orders from the Board at that time. Some of those people have asked that the Board reconsider the issuance of those cease and desist orders and rescind them for various reasons.

Since this is a panel hearing of the Board, convened solely to take testimony in the remaining cases that are still pending before the Board; in other words the four proceeding that were continued from the hearing, this panel is only entitled to hear the testimony in those four cases.

Since this is not a meeting of the Board, since there is no quorum of the Board here, this panel cannot consider requests for rescission or reconsideration of the orders that have been
issued.

That item will have to be deferred until the next scheduled meeting of the Board, at which there is a quorum that would be capable of considering those matters.

MS. McPHERSON: And I just wanted to make sure that that will be carried to the next meeting so that --

MR. RICHARDS: It is my understanding that this item, item 3 on the agenda for the Board meeting today, which cannot be conducted because of the lack of a quorum, will be carried over to the agenda for the next Board meeting.

MS. McPHERSON: Thank you very much.

BOARD MEMBER SHALLCROSS: Would it be the next meeting, or the one following? The next meeting's in Salinas.

MR. RICHARDS: It could certainly be any subsequent meeting of the Board.

BOARD MEMBER SHALLCROSS: I just didn't want folks to think they had to go to Salinas, necessarily.

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

MR. PACKARD: Mr. Thompson will make our
presentation.

CHAIRPERSON YOUNG: Let's go over our timing. Fifteen minutes.

BOARD MEMBER SHALLCROSS: And who are we hearing?

CHAIRPERSON YOUNG: He's going to tell us.

Okay, go ahead.

MR. THOMPSON: Yes, good afternoon, Chairman and Board Members. Again, Matt Thompson with the Prosecution Team. Charles and Norma Wilkerson live at 1273 12th Street in the location shown here with a little flag. They live within the prohibition zone. And they do occupy the property. And they have submitted written correspondence with several indications that they do own and operate a septic system.

And based on the evidence in the record and our best professional judgment we know that a discharge is occurring in violation of the prohibition; and at least a portion of that discharge reaches groundwater.

We therefore recommend adoption of cease and desist order number R3-2006-1008.

And before I finish, I want to clarify
something in the cease and desist order. In the interim compliance requirement there is the date that now outdated and needs to be corrected. It requires the discharger to provide documentation of their septic system pumping by February 1, 2007.

But our intent was to give them three months from the date of the order. And so we proposed to change February 1, 2007 to within three months after the date of this order.

That is all, thank you.

CHAIRPERSON YOUNG: Mr. Packard.

MR. PACKARD: That's all.

CHAIRPERSON YOUNG: Okay. Mr. Wilkerson, you can cross-examine, ask any questions of the Prosecution Team members.

MS. SULLIVAN: My name is Shaunna Sullivan. I'm an attorney. I'm here on behalf of the Wilkersons. I wanted to address, before your clock starts ticking, a few procedural matters.

The first one is in the notice of this hearing that was posted on a corrected notice on the 16th there is a list of documents that have been admitted into evidence. There's a number of documents that are missing that have already been
admitted, but they're not reflected in your notice.

So I wanted to go over those to make sure that you do realize those are admitted into evidence, and to address the other documents that are not reflected in the notice as being admitted into evidence.

CHAIRPERSON YOUNG: Have you talked to Mr. Sato about this?

MS. SULLIVAN: No, I haven't. So what I'd like to do, since we're incorporating by reference, and that has been what the designated parties have been asked to do, I would like to make sure we have a record that we're all in agreement on.

CHAIRPERSON YOUNG: That's fine.

MS. SULLIVAN: Okay. But I don't want my clock to be going --

CHAIRPERSON YOUNG: It's not.

MS. SULLIVAN: -- on this. I don't want to burn my time on it, --

CHAIRPERSON YOUNG: It's not.

MS. SULLIVAN: -- because it's procedural. And with regard to procedures I just
want to have an objection on the record that we
oppose the fact that there's not a full panel
before us, hearing this.

And also that members of Los Osos, or
residents of Los Osos who are Members of this
Board have been required to recuse themselves. We
think that they should be able to hear this
matter.

So, as far as procedurally, from the way
this corrected notice, there was testimony of
Bruce Payne that was admitted into the record.
I'm sorry, we've got an exhibit; that will make it
a lot clearer.

Mr. Allebe and Mr. Payne produced quite
a few documents and asked they be included in the
record. And they aren't included on the latest
corrected notice. And we've listed those and
they're reflected on this overhead. And those
documents are not listed on the notice, but all of
them were admitted into evidence because all
objections were withdrawn by Mr. Sato.

So we'd just like to make sure those are
all in the record.

CHAIRPERSON YOUNG: Well, Ms. Sullivan,
perhaps you could kind of help us by telling us
how these are relevant, these documents are relevant?

MS. SULLIVAN: They've all been testified to; they've all been addressed. They were all admitted and they're not reflected on your notice of this hearing as being a document.

CHAIRPERSON YOUNG: Okay, I don't think that that's true, that they've all been admitted, that they've all been addressed --

MS. SULLIVAN: Yes, if you will look at the deposition testimony I can give you the exact page if you'd like.

CHAIRPERSON YOUNG: The deposition testimony?

MS. SULLIVAN: I'm sorry, the testimony of this proceeding on December 15th. There is a withdrawal of any objections to the documents produced and introduced by Mr. Payne and Mr. Allebe. And so all these documents should come in by virtue of the testimony that was before us. And we wish to incorporate, by reference, these same documents.

And so the offer of proof and the testimony has already been presented to this Board. These were documents already introduced.
CHAIRPERSON YOUNG: Any comment, Mr. Sato?

MR. SATO: You know, I don't recall that we withdrew any objections to any testimony that was submitted by Mr. Allebe and Mr. Payne. I think it would have been appropriate for Ms. Sullivan, that she had these issues, to have notified us previously so we could go back and check through the record.

No, I mean, I'll just look at my notes again to see if I can recall, but you know, my indication is that, for example, 52, it's irrelevant; has nothing to do with the issue of whether or not a cease and desist order should be issued in this matter.

Number 53, same issue; it may be something that somebody did mention, but I don't recall that they ever referenced any particular item or matter within the Ripley project in this particular report.

The hearing regulations, I mean the hearing regulations are hearing regulations. I don't know that they're particularly evidence. So that would be something to be addressed as a matter of evidence of not evidence.
I think the telephone notes we specifically objected to because they're hearsay; the person, whoever Mary Ellen is, is not here to testify about the veracity of any of those types of statements or documents; and they are, in fact, hearsay. And I do specifically recall objecting to those.

So, I don't know where Ms. Sullivan claims that we withdraw these objections. I mean I think the fact of the matter is that -- and I can go through -- we'll object to --

MS. SULLIVAN: Your Honor -- I mean, Your Honor, all of these have already had an objection already rendered.

CHAIRPERSON YOUNG: Excuse me, excuse me, let Mr. Sato finish and then I'll give you the time that you would like.

MR. SATO: Okay. On the 889 I believe that is something that we did not object to. 890, I don't think that that has anything to do with any relevance to the procedures at hand. I don't recall whether we objected to that document previously or not. If the transcript suggests that it was not admitted, then I'd go with the transcript.
I don't even recall that this was something that was introduced specifically by Mr. Allebe, so.

I think we objected to the lawsuits filed by 929 -- the lawsuits filed by CCLO versus LOCSD. If it were just -- I don't know how those can be evidence of anything, they're simply pleadings.

CHAIRPERSON YOUNG: And I do remember that discussion. My concern that anything in any other cases were just pleadings and allegations, if they weren't verified pleadings. And so I'm -- now, I'm going to turn it back over to you. So, can you show us where --

MS. SULLIVAN: Sure.

CHAIRPERSON YOUNG: -- the Board actually decided that they would allow --

MS. SULLIVAN: Yes. If you look at the transcript on the 15th, which you posted on --

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: -- posted recently, if you look at page 367, this is a conversation with Mr. Payne and the Board about concluding the hearing. And there was a suggestion by Mr. Sato to withdraw the evidence. And Mr. Richards says,
"I think that in view of the fact that we have allowed the designated parties to rely upon the testimony and documentation provided by other settling parties, that it would not be appropriate to allow the" -- I'm missing my page here -- my line, I'm sorry. Does anyone have the full transcript?

CHAIRPERSON YOUNG: Normally when a party settles they have withdrawn --

MS. SULLIVAN: No. And then we continue with Mr. Young said, "This is why we have lawyers." And Board Member Press said, "I agree, I agree." Chairperson Young said, "Okay." Mr. Richards said -- or Mr. Sato said, "Okay, I withdraw my objections. We can keep going." Chairman Young said, "Okay, all right, what is next?" And you moved on to the next topic.

So, when Mr. Sato tried to strike from the record everything that Mr. Payne had put in, all of his documents and everything, and then placed his objections earlier; at the time of the settlement, or the time he said he would -- indicated he would settle, the objections were raised and the Board -- Mr. Sato withdrew the objections to all the evidence.
So all of the evidence should be coming in. All of Mr. Payne's testimony and all of the documents he referenced, because all of the objections were withdrawn by Mr. Sato.

CHAIRPERSON YOUNG: Okay. Mr. Shallcross.

BOARD MEMBER SHALLCROSS: Did Mr. Sato objected to some of these documents prior to that statement? Weren't some --

MS. SULLIVAN: Oh, yes, and he was trying to have the entire testimony struck, yes.

BOARD MEMBER SHALLCROSS: It was my understanding that he was only withdrawing the objection as to the documents that were already allowed in.

MS. SULLIVAN: No.

MR. RICHARDS: Excuse me, but that would be my understanding, as well. And if I were to advise the Board, that would be my interpretation of the --

BOARD MEMBER SHALLCROSS: Yes.

MR. RICHARDS: -- situation. That was my recollection of what was being done at the time.

BOARD MEMBER SHALLCROSS: Right, because
Mr. Sato --

MR. RICHARDS: At the time Mr. Sato was objecting to allowing other parties to rely on the documentation provided by the settling parties. And if the Board concluded that to the extent that those documents had been admitted already, through the discussion of admissibility that had preceded the individual cases, they should continue to be admitted.

However, to the extent that the documents had been stricken from the record as inadmissible during the course of the discussion on the admissibility of documents, they would not be reauthorized to come in.

BOARD MEMBER SHALLCROSS: Right, because at that point the documents that had been ruled against were no longer part of that person's record.

MS. SULLIVAN: Sure, that would be true. But that's not my point. My point is there was a motion by Mr. Sato where he asked this Board to strike this entire testimony and all the documents and all the evidence of Mr. Payne. And he withdrew that objection.

Obviously if there was an objection and
it was ruled on, okay, we have that. But these
were not included in the record and they weren't
ruled on. And so they need to be included in the
record because all objection to them has been
withdrawn.

CHAIRPERSON YOUNG: Well, that is not my
recolletion, either. Because I do specifically
remember going over some of these documents and
questioning their relevance at all to what issues
are before us. I know, and I specifically recall
anything related to any other lawsuits. That I'm
certain of. There was no need to bring in any
documents relating to another lawsuit, as those
were, are just allegations contained in a
pleading.

So, as far as, you know, going over the
list right now, they're all in that category of
not being relevant to the issues before us. If
you want to tell us how they're specifically
relevant to your client's interest I'll listen to
it.

MS. SULLIVAN: Well, the offer of proofs
have already been made and the testimony has
already been made prior. And the fact of the
matter is you don't have in the record any denial
of any of these documents. You have a withdrawal of any objection that was made to these documents.

So anything that hasn't been denied must be admitted.

CHAIRPERSON YOUNG: Well, they were --

MS. SULLIVAN: And that's not included in your record of -- or notice of this hearing.

CHAIRPERSON YOUNG: Okay, well, then we'll have to go ahead and specifically deny the admission of these documents into the record.

MS. SULLIVAN: Okay.

MR. PAYNE: I object.

MR. SATO: May I speak to this? First of all, if you don't mind, Mr. Chairman, --

CHAIRPERSON YOUNG: Sure.

MR. SATO: -- I think that the representation by Ms. Sullivan is actually inaccurate. And also, too, if this is something that she wanted to raise, she should have done it by motion. And has not raised this by motion. The time for the hearing has come and gone. If she wants to raise these kinds of objections, she had -- obviously her client had notice of this hearing; had notice of the documents that were proposed to be admitted into evidence.
And, you know, I think this effort by Ms. Sullivan to raise this at the eleventh hour is just another example of the kind of thing that goes on in these proceedings where people don't follow the rules, don't raise the issues early on, don't allow us to have a full airing of these issues --

(Multiple audience speakers.)

MR. SATO: And then now, you know, without the proper team to go back and look at the records, consider the issue, we're left to try to puzzle this out at this moment.

BOARD MEMBER SHALLCROSS: Can we do this, Mr. Chair, this is a suggestion.

CHAIRPERSON YOUNG: Yeah.

BOARD MEMBER SHALLCROSS: During the Wilkerson case as it's being presented, how about if she wants to refer to one of these documents in her argument, she can ask that it be entered at that point.

MS. SULLIVAN: I don't really want to do that, sir, because that takes too much time to try to introduce these documents. I only have 15 minutes. So, I just want to be able to incorporate what's gone on before and the
documents that were identified and addressed and
presented by other people or produced timely.

And I just want to be able to use -- I
want to be able to have those in the record. If
this Board feels that they should now deny all
these documents, then let's put it all in the
record then.

I would like to have a record of what
happened to these documents because Mr. Payne
introduced them. Reed Sato originally asked that
they all be struck. You then went through that
objection. And this Board moved on.

BOARD MEMBER SHALLCROSS: I know there
were actions before that. I know for sure the
telephone notes were ruled as hearsay. And it
makes me wonder on some of the others. I know we
discussed them.

MR. RICHARDS: Mr. Chairman, I think
that the appropriate thing to do is to stick with
the incorporation that has been set forth in the
notice. Because at that time that was based on
the decisions that were made by the Board in their
discussion of the admissibility of all of the
documentary evidence that was before the Board.

There was a full discussion of the
relevance of the documents, of the objections made
by the Prosecution Team and so forth. And the
Board ruled on the admissibility of those
documents at that time. And our notice then
reflected those rulings.

So, the interchange between Mr. Sato and
Mr. Allebe and Mr. Payne simply allowed the
documents that had not been ruled inadmissible --
CHAIRPERSON YOUNG: Or had not been
admitted specifically.

MR. RICHARDS: -- or had not been
admitted previously to remain in the record to be
relied upon by subsequent designated parties.

And so the notice reflects the
admissibility of all the evidence as determined by
the Board in December.

CHAIRPERSON YOUNG: And I think what Ms.
Sullivan is simply looking for is a very clear
ruling that we have actually not admitted these
documents.

MS. SULLIVAN: Or denied them.

CHAIRPERSON YOUNG: Yeah. Right, or
denied --

MS. SULLIVAN: And, of course, I would
object to that too as being untimely, but, sure.
CHAIRPERSON YOUNG: Well, that's kind of an explanation of what we did before. Was that all the documents were discussed and we went through and decided what would come in. So, perhaps we didn't have the specific order that said we're not -- that we are denying this set of documents. What we did was the opposite, was to lay out what we were admitting into evidence.

So these, and I specifically recall a few of these categories we had deemed to be not relevant to the issues before us. So, if your client is very concerned about some of these documents, then in your presentation you'll have an opportunity to briefly tell us why they should come in, or how they tend to prove or disprove any of the facts or issues in contention.

MR. PAYNE: I can do that right now.

CHAIRPERSON YOUNG: Mr. Payne, you have settled with the Water Board prosecution --

MR. PAYNE: No, I haven't.

MR. RICHARDS: It was my understanding that this matter has been settled.

MR. SATO: Mr. Chairman, may --

CHAIRPERSON YOUNG: Well, anyway, you're not a designated party for today's proceedings,
so.

MR. SATO: Mr. Chairman, may I --

CHAIRPERSON YOUNG: Yes.

MR. SATO: Let me just say that I think that the Board has already ruled on this evidentiary issue. They've stated it very clearly in the notice of continued hearing. I think that the -- anybody else have waived a right to challenge the admission of these documents, to the fact of failing to provide any objection prior to this time about these designated exhibits in exhibit A and exhibit B.

I think it's very clear in the document it says, only the following documents for the designated parties exhibit B were admitted. And it says that very clearly. So I think that that is, in fact, the ruling of the Board. And I think we ought to move on.

CHAIRPERSON YOUNG: All right. Okay,

Ms. Sullivan.

MS. SULLIVAN: Okay. The next group of documents that was produced and introduced at the time was an exhibit B, which was produced timely by the CDO recipients and should be admitted, with the exception of those items already denied on the
When the prosecution made their evidence objections on December 4th they neglected to object to any part of exhibit B. And the Chairman, when you made your ruling on the 4th, you neglected also to reference exhibit B.

In your December 8 ruling you sustained the vast majority of the objections, but you did not address the exhibit B documents. We'd like to make sure that they're all admitted now. And we can make an offer of proof as to those more important documents.

But all of these documents were produced timely and were submitted and were never objected to timely. And still are outstanding issues. Some of them I don't have a clue why you would be objecting to including them in the record.

I would like to defer to Gail McPherson who's much more intimately knowledgeable of these particular documents since she compiled them for your reference, as to making the offer of proof.

And we provided to you a table of what the documents are that are in exhibit B that we're particularly interested in making sure are part of the record.
CHAIRPERSON YOUNG: Do we have a copy of what you've put up on the screen?

MS. SULLIVAN: Sure. We'll give you a copy.

CHAIRPERSON YOUNG: Do you have it?

BOARD MEMBER SHALLCROSS: Where is it?

MS. SULLIVAN: I don't have five copies for you.

CHAIRPERSON YOUNG: Do you have one copy?

MR. SATO: Mr. Chairman, may I state for the record again our objection to this whole procedure? I mean, you have already -- they're apparently referencing exhibit B. You have already ruled on the admissibility of documents in exhibit B as set forth in your notice of continued hearing dated December 28, 2006. I mean --

CHAIRPERSON YOUNG: I don't disagree with you, Mr. Sato. I'm just trying to give them an opportunity to get this out so we can hear what it's about.

MR. SATO: I mean but the way that she's framing it is that there's something that you've failed to do. You've already done that.

CHAIRPERSON YOUNG: Well, I --
MR. SATO: If her argument is that now on behalf of the Wilkersons they would like to submit certain documents for your consideration, that is a different argument than what they have posited before you so far. And that's the basis of my objection.

MS. SULLIVAN: We are submitting these on behalf of Mr. Wilkerson. And they've been submitted before on behalf of all of the parties.

CHAIRPERSON YOUNG: This was your list, Ms. McPherson, right?

MS. McPHERSON: This is the list in total, yes.

CHAIRPERSON YOUNG: Yeah.

BOARD MEMBER SHALLCROSS: We've been through the whole list.

CHAIRPERSON YOUNG: Right. Okay.

MS. SULLIVAN: So would you like us to proceed with an offer of proof?

CHAIRPERSON YOUNG: No, I don't think that'll be necessary. The documents that were admitted were put into the notice. And so not all of exhibit B came in. Only those documents that are numbered in the list and that appear in our notice.
And I can go through this and see again, we've got cases in here. You don't have to have case law attached as an exhibit.

MS. SULLIVAN: There is no case law attached to the exhibits, sir.

MS. McPHERSON: The only ones we are submitting are these on the screen. That's a total list right there. These are the only ones that we're asking about today.

MR. RICHARDS: If they weren't admitted at the time, then they haven't been admitted.

MS. McPHERSON: They may not have even been requested, but the --

MR. RICHARDS: Well, the time for requesting admission of documents was in November.

MS. SULLIVAN: No, they were requested and they were submitted --

MS. McPHERSON: They were submitted in November.

MR. RICHARDS: Yes, and the determination as to whether or not they were admissible was made in December at the hearing.

MS. SULLIVAN: No, you've neglected to make the decision because you didn't realize they were there. The --
MR. RICHARDS: No, --

MS. SULLIVAN: -- December 8th decision did not address exhibit B.

MR. RICHARDS: There was no decision on December 8th.

MS. SULLIVAN: There was a ruling of the Chairman on December 8th, sustaining on all the evidence objections that were made by -- or a majority of the evidence objections.

MR. RICHARDS: And that was further discussed at the hearing on December 14th and 15th. And at that time the determinations were made regarding the admissibility of documents that had been presented by the Community Services District and by Ms. McPherson and all of the designated parties.

And those determinations are incorporated into the current notice.

MS. SULLIVAN: Are you taking the position that Mr. Wilkerson cannot present any documents or any evidence other than the documents already introduced?

MR. RICHARDS: The time for presentation of evidence has passed -- for documentary evidence has passed.
MS. SULLIVAN: But these were produced and already in as documentary evidence on November 15th.

MR. RICHARDS: And their admissibility was ruled on.

MS. SULLIVAN: No. You left it up to admissibility being ruled on as each person burns up their 15 minutes.

MS. McPHERSON: They did it the opposite way.

BOARD MEMBER SHALLCROSS: Well, then we should start the clock.

MR. RICHARDS: Yes.

MR. SATO: Yeah, Mr. Chair, we don't mind, as I said before, if their argument is that they want to introduce these documents as part of Mr. Wilkerson's testimony, if they want to try to do that, that's fine. But it's part of their testimony, and we still reserve the right to object to the relevancy of any of these documents and any other evidentiary objections.

MS. SULLIVAN: What we would like to make really clear is if you're going to deny this, would you please deny them so that we have that on the record that you denied allowing the
transcripts of the hearing in, and these various
items that we have?

CHAIRPERSON YOUNG: This is the ex parte
transcript of the Superior Court case?

MS. SULLIVAN: No. I'm not talking
about 868 --

CHAIRPERSON YOUNG: Well, that's 866.

BOARD MEMBER SHALLCROSS: What are you
talking about, then? Could you make that clear?

MS. McPHERSON: 885.

MS. SULLIVAN: As I said, I will defer
to Gail on that one.

BOARD MEMBER SHALLCROSS: 885 is the
hearing transcript for what date?

MR. SATO: And, Mr. Chair, let me object
again to this procedure that --

BOARD MEMBER SHALLCROSS: Can I just get
-- go ahead. Hold that thought.

CHAIRPERSON YOUNG: It's 866.

MS. McPHERSON: Okay, 885, it jumps to
885.

BOARD MEMBER SHALLCROSS: What
transcript? What date? That doesn't tell us
anything.

MS. SULLIVAN: The hearing transcripts
from April. The April proceedings before you, the transcripts of those. And since you had made a ruling subsequent to that time that the evidence produced by the CDO recipients and designated parties would be allowed and considered, although somehow you would erase from your mind anything that was said by the Prosecution Team.

BOARD MEMBER SHALLCROSS: Mr. Chair, I think we should, you know, deem the ones that were posted as the items that were admissible. Certainly Ms. Sullivan can bring this up on appeal.

CHAIRPERSON YOUNG: Yeah, I --

MS. SULLIVAN: I can if you deny them. Are you going to deny all these?

CHAIRPERSON YOUNG: No, we're going to first let you, through your presentation, tell us which of these are relevant to what specific issues on behalf of your client.

MR. RICHARDS: Mr. Chairman, I would point out that simply with respect to item 885, if that is, in fact, the transcript of the Regional Board proceedings in April on the individual cease and desist orders for Los Osos property owners and residents, that the transcript -- in other words,
the initiation of the proceeding that is
continuing today -- the transcript of that
proceeding is part of the record.

If this is some other transcript of some
other proceeding, then it is not part of the
record, unless the individual seeking to have it
introduced into the record can demonstrate that
it's relevant to one of the issues in the
proceeding.

MS. SULLIVAN: Okay, well, obviously
since we're incorporating by reference all that's
gone on before, it certainly is relevant to my
client's position in the CDO and we want --

MR. RICHARDS: Excuse me, but you can't
just incorporate everything that's gone on before.
The proceedings of the Regional Board with respect
to the issuance of individual cease and desist
orders to property owners and residents of the Los
Osos prohibition zone, those proceedings, the
record of those proceedings includes the
transcript of all the proceedings before the
Board.

It includes the documentation that has
been prepared by the Prosecution Team and their
staff reports and their technical evidence.
It includes the documentation that has
been presented by the various designated parties
to the extent that it has been deemed admissible
by the Board.

And that will be the record.

MR. SATO: May I, Mr. Chairman?

CHAIRPERSON YOUNG: Yes.

MR. SATO: Just -- this process now that
we're engaged in with Ms. McPherson and Ms.
Sullivan, try to talk about things that happened
in the record prior, if they want to make a motion
for reconsideration now would be the time to do
it.

I don't know what Ms. McPherson's role
is right now, because this is the time and the
place for the hearing. We're in the middle of the
hearing on Mr. Wilkerson -- on the Wilkersons. I
don't hear that the Wilkersons are being
represented by anybody but Ms. Sullivan, although
she hasn't introduced herself formally as their
counsel.

I don't know what Ms. McPherson is doing
now in terms of trying to resurrect some issues
related to prior proceedings that have gone on
here. And I think it's highly improper for her to
do this at this point in time.

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: Then I'll remind the Board why I'm asking that we have a record before us. All designated parties who have appeared and have been directed in various orders to incorporate by reference other people's testimony and documents.

We want to incorporate all the documents, all the testimony. We obviously don't have time in 15 minutes to identify each and every document and each and every bit of testimony that we wish to rely. But we do want to have that record before the court when it comes to the time of appeals, so that the court can see what evidence you were relying on when you make your rulings.

So, we want to make sure the record's very clear what we want in the record and what you're refusing to put in the record.

CHAIRPERSON YOUNG: Well, I think you raise a very good point, and that is what documents is the Board going to rely upon when they make their ruling.

There are lots of documents that have
been kind of identified. And the designated
designated
designated parties and the homeowners have not really pointed
pointed
pointed out how they're important to them in their own
cases. And therefore, these are documents that
important to them in their own
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With respect to these documents up here
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in exhibit B, the way I want to handle this is
in exhibit B, the way I want to handle this is
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And it would have been helpful if prior
And it would have been helpful if prior
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done at this point in time. It makes it
done at this point in time. It makes it
difficult.
So, --

MS. SULLIVAN: I haven't found my conversations with Mr. Sato to be very productive, to tell you the truth. So, continuing on. There was some PowerPoint presentations that were made. We want to make sure the record includes all the written PowerPoint presentations in the record; we can submit a copy of those from the prior testimony. The documents that were flashed on the wall that were testified to.

BOARD MEMBER SHALLCROSS: I think, Ms. McPherson, you can sit down.

CHAIRPERSON YOUNG: And those were in which specific --

MS. SULLIVAN: Every single one has had a PowerPoint in those presentations. I can give you a copy of all of those. But they were all before you during the testimony. I just don't know if they're in the record. I want to make sure they're in the record.

MR. SATO: Move to object. The reason why I object is because these were not submitted. To the extent that they were not submitted to the court reporter or before this Board at the time that they were presented, then they were simply a
mechanism by which these people expressed
themselves.

But they were not submitted into the
record. And I don't think you can do that after
the proceeding is over.

CHAIRPERSON YOUNG: Their testimony
would come in, obviously.

MS. SULLIVAN: But if they're looking on
the wall and they're pointing out --

CHAIRPERSON YOUNG: They haven't --

MS. SULLIVAN: -- items on a map, and
they're talking about it, it would be better to
have that in the record so you know what they're
talking about.

CHAIRPERSON YOUNG: Well, I understand
that, but they also testified to what was on the
screen. Did they submit those PowerPoint
presentations --

MS. SULLIVAN: Yes.

CHAIRPERSON YOUNG: -- to the court
reporter?

MS. SULLIVAN: I'm told that they did.

MS. McPHERSON: Not to the court
reporter.

MS. SULLIVAN: Not to the court
BOARD MEMBER SHALLCROSS: You can submit those when your time comes.

MS. SULLIVAN: Okay, I'll submit them again, how about that?

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: Okay. So incorporating by reference everything I'd also like to incorporate by reference --

MR. RICHARDS: Excuse me, just a minute. The time to submit written documentation was in November.

MS. SULLIVAN: Right, I know, but your order says to incorporate by reference documents for the presentation of Mr. Wilkerson, and that's what I'm doing. I just want to make sure that all the records are there for us to incorporate by reference.

MR. SATO: But they needed to be submitted prior to this time, not after this time.

MS. SULLIVAN: They were submitted. Everything I'm talking about has been submitted already.

BOARD MEMBER SHALLCROSS: Well, then you don't have to do that. It's already part of the
record.

MR. RICHARDS: The documentary record has been established.

MS. SULLIVAN: Okay, but what's been considered by this Board and what's been admitted for consideration by this Board.

MR. SATO: Yes, it's been -- the documents have either been admitted or not admitted. And you have an opportunity during your representation of the Wilkersons here today to argue that certain specific documents that have not yet been admitted, or have been denied admission to this point, can be admitted.

You can make that offer of proof at that time in the course of your presentation to the extent that documents that have not been admitted are relevant to your case.

CHAIRPERSON YOUNG: John, but I think what Ms. Sullivan is referring to are the PowerPoint presentations, and those were not submitted by the documentary deadline. I never saw PowerPoint presentations in any of the packets that any individual party's comments --

MR. RICHARDS: Then to the extent that they're preserved in the court reporter's
transcript, that's the record.

CHAIRPERSON YOUNG: That's the record,

yeah. That's right.

MS. SULLIVAN: Moving on, there was a

writ of mandate action that was filed on behalf of

some of the designated parties.

CHAIRPERSON YOUNG: Right.

MS. SULLIVAN: And I would like to

request that that be included in the record, too.

Those are verified pleadings; they're on point;

they address the issues that are before this court

-- I mean this party, and when the court made its

ruling that these -- the court actually said, we

presume the Board's going to consider the

objections you're making in this writ action.

And I want to make sure that you have

considered the issues that were brought up in the

writ action and that this Board does, in fact,

consider and address the issues with the lack of

due process, the Sixth Amendment Constitutional

impairment by not having Mr. Briggs here; all of

the various issues that were brought up.

Has this Board considered any of those

issues as the court presumed that you would before

proceeding?
COMMISSIONER BYRON: I think we've only looked at the issues that were presented to us in the hearing.

CHAIRPERSON YOUNG: The judge didn't --

BOARD MEMBER SHALLCROSS: We haven't looked at other court rulings.

MS. SULLIVAN: So will you accept it into evidence, the whole petition for writ of mandamus at all the pleadings?

MR. RICHARDS: No.

CHAIRPERSON YOUNG: No. The judge --

MS. SULLIVAN: Okay, so you're denying that consideration?

CHAIRPERSON YOUNG: Yes. The --

MR. RICHARDS: No. Excuse me, we are denying --

(Laughter.)

MR. RICHARDS: The Board should not accept into evidence and cannot accept into evidence pleadings in an extraneous case. These are pleadings in a case outside of the jurisdiction of this Board. And those pleadings are not appropriate evidence before the Board.

Pleadings are not evidence.

MS. SULLIVAN: So you will not consider
anything that was brought up before the court?

MR. RICHARDS: The Board will not accept documentation as documentary evidence in this proceeding the pleadings that were presented to some other forum.

MS. SULLIVAN: I'd also like to move into the record the entire appeal to the State Water Resources Control Board that we filed on behalf of CDO recipients that was filed on January 16, 2007, enumerating not less than 94 reasons why the appeal should go forward and why this CDO should be vacated. And I'd like to move that into evidence.

CHAIRPERSON YOUNG: Denied.

MS. SULLIVAN: Okay. And we'd like to also move into the record and incorporate by reference the arguments of Willits Citizens for Environmental Justice and California Citizens for Environmental Justice, which was filed by appeal to the State Water Resources Control Board on January 16, 2007, in opposition to your rulings. Will you consider those?

CHAIRPERSON YOUNG: You're asking us to -- these are pleadings in other cases?

MS. SULLIVAN: No, that's an appeal in
this case of that hearing on December 14th and 15th.

BOARD MEMBER SHALLCROSS: And why are you just bringing that --

MR. RICHARDS: In any event, pleadings are not evidence and therefore these documents will not be accepted into evidence by this Board.

MS. SULLIVAN: It's not a pleading. It's an appeal.

MR. RICHARDS: It is a pleading; it is a petition --

BOARD MEMBER SHALLCROSS: An appeal is a --

MR. RICHARDS: -- it is a petition requesting the State Board to review an action or inaction of the Regional Board; and in that context it is in the nature of a pleading.

CHAIRPERSON YOUNG: Ms. Sullivan, isn't that a pleading? Isn't an appeal a pleading?

MS. SULLIVAN: Well, I just don't see it as a judicial action; it's administrative proceeding, yes.

BOARD MEMBER SHALLCROSS: But you consider it evidence?

MS. SULLIVAN: What do I consider
evidence?

BOARD MEMBER SHALLCROSS: Do you consider that document evidence?

MS. SULLIVAN: Yes.

BOARD MEMBER SHALLCROSS: That appeal?

MS. SULLIVAN: Yes.

BOARD MEMBER SHALLCROSS: As evidence?

Okay, you went to a different law school than I did.

MS. SULLIVAN: I'm asking that be considered in the record. And that was what I just asked.

CHAIRPERSON YOUNG: All right.

MS. SULLIVAN: And I guess you're denying that, too.

CHAIRPERSON YOUNG: Yeah, we're denying that, too, right.

MS. SULLIVAN: Okay. Then I guess I'll start with my cross-examination.

CHAIRPERSON YOUNG: Okay.

MR. SATO: Just so it's clear for the record, the Prosecution Team objects to all of these documents that are listed right now on this presentation. We have still not been provided a copy of this, so we object to 866, 871, 883, 885,
887, 901, 906, 912, 919, 927, 940, 941, 942, and others, 946. Anything else? Is there anything else on this PowerPoint presentation -- or this slide? No, okay. Those are our objections. We move to strike all of those.

CHAIRPERSON YOUNG: Okay. We'll wait and see. All right.

All right, Ms. Sullivan, you can cross-examine the Prosecution Team. The clock doesn't run while you're doing this.

MS. SULLIVAN: All right.

CHAIRPERSON YOUNG: Your clock doesn't run while you're doing this.

MS. SULLIVAN: It doesn't run or it does?

MR. PACKARD: Mr. Young, the hearing notice specifies ten minutes for this.

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: Okay. Mr. Thompson, --

CHAIRPERSON YOUNG: What I meant was it doesn't come off her 15 minutes.

MS. SULLIVAN: Mr. Thompson, of the 45 randomly selected CDO recipients, were any of their homes built after 1983?

MR. THOMPSON: I don't know.
MS. SULLIVAN: Did you consider that relevant at all as to when their house was constructed?

MR. SATO: Objection, vague and ambiguous.

CHAIRPERSON YOUNG: Can you answer it?

MR. THOMPSON: No.

MS. SULLIVAN: Okay. Are the County-permitted septic tanks in Los Osos illegal?

MR. SATO: Objection, vague and ambiguous. Calls for a legal conclusion.

(Multiple audience speakers.)

BOARD MEMBER SHALLCROSS: Mr. Sato, use the mike.

MR. SATO: Well, we're sharing a mike.

BOARD MEMBER SHALLCROSS: No, not that one.

CHAIRPERSON YOUNG: He's objecting based on being vague and ambiguous. Can you answer the question, Mr. Thompson?

MR. THOMPSON: The basin plan says that any septic system discharge within the prohibition zone boundary is prohibited.

MS. SULLIVAN: So, did they become illegal in 1983?
MR. SATO: Objection, argumentative; calls for a legal conclusion. These are not evidentiary questions --

AUDIENCE SPEAKER: What?

MS. McPHERSON: We need to hear him.

MR. SATO: Mr. Chairman, these are not evidentiary questions. These are argumentative questions being raised by counsel. And I think that --

(Laughter.)

MR. SATO: -- if she wants to --

CHAIRPERSON YOUNG: Folks, please.

(General audience participation.)

CHAIRPERSON YOUNG: Please, I need to listen to the lawyers.

MR. SATO: They're not evidentiary. If you listen to these questions carefully they're not evidentiary; they're argumentative.

CHAIRPERSON YOUNG: They're asking for his legal opinion.

MR. SATO: Right.

CHAIRPERSON YOUNG: Yeah.

Mr. Thompson, --

MR. SATO: And that's also improper.

MR. RICHARDS: The purpose of cross-
examination is to test the factual credibility of
the witness. And it is not to advocate the
parties' positions. So that the questions should
be directed to the factual basis for the evidence
that the Prosecution Team is presenting.

MS. SULLIVAN: Do you have any evidence
that Mr. Wilkerson's septic tank was not
permitted?

MR. THOMPSON: Not permitted by who?

MS. SULLIVAN: The County.

MR. THOMPSON: No.

MS. SULLIVAN: Do you have evidence
supporting a claim that his septic tank is
illegal?

MR. THOMPSON: To support whose claim?

MS. SULLIVAN: Mr. Wilkerson's.

AUDIENCE SPEAKER: Wasting time.

MR. THOMPSON: Could you restate your
question?

MS. SULLIVAN: Do you have any evidence
that shows that Mr. Wilkerson's septic tank is
illegal?

MR. THOMPSON: I can just say that, you
know, our testimony has been that Mr. Wilkerson's
use of his septic system violates the discharge
prohibition.

MS. SULLIVAN: So is his septic tank illegal?

MR. THOMPSON: I think that calls for a legal conclusion. We've stated the basis for our contention.

MS. SULLIVAN: Do you contend that it is illegal?

MR. THOMPSON: We contend that it violates the basin plan discharge prohibition.

MS. SULLIVAN: Are septic tanks a legal means of handling waste disposal in California?

MR. THOMPSON: Yes.

MS. SULLIVAN: Okay. Do you have any scientific evidence to support any claim that the Wilkersons' septic system is not properly functioning?

MR. SATO: Objection, vague and ambiguous as to the term properly functioning. Maybe she could just tell us what she is trying to get at with this question?

CHAIRPERSON YOUNG: Go ahead, Ms. Sullivan.

MS. SULLIVAN: Do you think Mr. Wilkerson's septic tank is working?
MR. SATO: Same objection.

MR. THOMPSON: It's working in that it's discharging to groundwater.

MS. SULLIVAN: What proof do you have that it's discharging to groundwater?

MR. THOMPSON: A septic system is designed to overflow into a disposal area, which then percolates into the soil and down to groundwater.

MS. SULLIVAN: And do you have any evidence that that's happened on the Wilkerson site?

MR. THOMPSON: Based on my best professional judgment and common sense it's reasonable to assume that the septic tank effluent is soaking into the soil and making its way down to the groundwater.

MS. SULLIVAN: And what is your professional background for that decision?

(Audience members speaking simultaneously.)

MR. SATO: Objection. Mr. Chairman, I'm going to object to these proceedings for right now. I mean we would respectfully request the respect of the audience in this matter. It's
difficult for the court reporter to get an
accurate transcript if other people are talking.
I think it would be fairer for the Prosecution
Team if the audience would resist making any
comments, as much as they would like to, and let
Mr. Thompson simply testify and answer the
questions as best he can.

CHAIRPERSON YOUNG: I would appreciate
it if the audience would please refrain from
making any audible sounds. It's difficult for us
to hear what the attorneys are saying, and
witnesses are saying. Please just keep your
comments to yourselves. I don't want to have to
get into a mode that I've got to start asking
people to step outside. I'd rather not have to
get into that. So, please, contain yourselves.

MS. SULLIVAN: Mr. Chairman, can I ask
you -- sorry --

CHAIRPERSON YOUNG: Hold on one second.

Mr. Shallcross.

BOARD MEMBER SHALLCROSS: Yeah, I don't
know if this helps us, this line of questioning,
at all. I'm not really sure of the relevance.
And Mr. Wilkerson's letter dated November 14th
states: Our property has a functioning septic
system that was approved and permitted by the County."

So, as Mr. Thompson said, a functioning system is made to flow over. We all know how septic tanks work. So, I don't know if that helps you.

MS. SULLIVAN: Mr. Chairman, I would like to know if the time that's lapsed since the objection was made and the discussions, if that's coming off my ten minutes.

CHAIRPERSON YOUNG: No.

MS. SULLIVAN: Okay, great. So the question that was on the table was what is your professional background, Mr. Thompson, that you can render these decisions on the Wilkerson septic tank.

MR. SATO: Objection, asked and answered already.

CHAIRPERSON YOUNG: I'm going to let him answer the question.

MR. THOMPSON: Yeah, I have a bachelors degree in environmental engineering from CalPoly San Luis Obispo, specializing in water pollution control. I am a registered professional civil engineer; and I have been doing this stuff

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intensively for the last five and a half years.

MS. SULLIVAN: And do you have any
evidence that you have compiled by site
investigation or actual testing done on the
Wilkerson property to support any claim of liquid
waste discharges from the Wilkerson home to
groundwater?

MR. THOMPSON: Yes. The Los Osos
Community Services District has a monitoring well
that were representative of shallow groundwater
throughout the prohibition zone. And groundwater
exceeds the drinking water standard throughout the
prohibition zone, including immediately beneath
the Wilkerson's property.

MS. SULLIVAN: How big of a distance is
it between the septic tank on the Wilkerson
property and the aquifer?

MR. THOMPSON: It's probably on the
order of several dozen feet.

MS. SULLIVAN: Okay. I'll jump to
another question in the meantime. So, how much
water do you think -- or how much is being
discharged from the Wilkerson septic tank to the
groundwater?

MR. SATO: Objection, vague and
MR. RICHARDS: Excuse me, what was your objection?

MR. SATO: Vague and ambiguous.

MR. THOMPSON: How much is being -- how much of what?

AUDIENCE SPEAKERS: We can't hear.

Can't hear you. You're telling us to be quiet.

Speak up so we can hear you.

MR. THOMPSON: We don't have, you know, flow measurement on their individual septic system, but it's probably around 100 to 200 gallons per day.

MS. SULLIVAN: And what's the quality of that guesstimate?

MR. THOMPSON: Well, a typical septic tank effluent is full of pathogens and nitrate, probably about 50 mg/liter nitrate as nitrogen based on samples of septic tank effluent throughout the region; pretty typical.

MS. SULLIVAN: What about this septic tank? You did a one investigation, right?

MR. THOMPSON: No, ma'am.

MS. SULLIVAN: Do you even know how many people use this septic tank that's on the
Wilkerson property?

MR. THOMPSON: Well, based on the written materials it's at least two.

MS. SULLIVAN: Okay. Under Water Code section 13243 there's a right to refuse the discharge of waste. How do you define waste?

MR. SATO: Objection, calls for a legal conclusion.

CHAIRPERSON YOUNG: Are you asking him what his definition of waste is or --

MS. SULLIVAN: Yes, I am.

CHAIRPERSON YOUNG: -- what's in the Water Code?

MR. SATO: Objection, relevance.

MS. SULLIVAN: I'm asking him how he defines waste.

MR. THOMPSON: I define waste as it is defined in the California Water Code.

MS. SULLIVAN: And how is that?

MR. THOMPSON: Well, I'd like to have it in front of me, but, you know, it's anything you're discharging.

BOARD MEMBER SHALLCROSS: Yeah, why don't you go ahead and put it up in front of you, and this comes off your time.
MS. SULLIVAN: So is it anything that gets discharged, even if it's clean water? That's waste?

MR. SATO: Objection, calls for a legal conclusion. I'm not going to tell Ms. Sullivan how she could conduct her cross-examination, but I don't know why she's asking Mr. Thompson these particular questions.

MS. SULLIVAN: if you look at the CDO it states that no discharges can be made from the septic tank, or no discharges by Mr. Wilkerson. Are you regulating discharges or are you regulating waste?

MR. THOMPSON: We're regulating discharges of waste.

MS. SULLIVAN: Okay, if it's not waste, then what basis do you have to regulate it?

MR. PACKARD: Can I answer that?

MS. SULLIVAN: No, I would like to have testimony by the witness who is put on the prosecution case list.

CHAIRPERSON YOUNG: Well, it could be anybody from the Prosecution Team --

BOARD MEMBER SHALLCROSS: They both have.
CHAIRPERSON YOUNG: -- who -- their evidence and testimony is really, they are one designated party.

So, if either one of them feels that they're more competent to reply to that, that's really fine as far as we're concerned. Just like if you have a witness who you feel is more competent to answer a question on cross would be fine, also.

Mr. Packard.

MR. PACKARD: What the CDO requires, or what the basin plan prohibition talks about is a discharge prohibition. It doesn't even have the word waste in it, according to the part that's cited in the order. So, that's what prohibited, is the discharge.

MS. SULLIVAN: So it's prohibited to send clean water out into your septic?

MR. SATO: Argumentative; calls for a legal --

CHAIRPERSON YOUNG: It is argumentative.

MS. SULLIVAN: Is that true that your interpretation of discharge means that it prohibits a discharge whether it consists of discharge of waste or not?
MR. THOMPSON: That's my understanding of the prohibition, yes.

MS. SULLIVAN: So what is discharge under your definition in the CDO, cessation of all discharge?

MR. THOMPSON: It would be that the system is no longer hooked up to the waste system of the house.

MS. SULLIVAN: Isn't it true that any communitywide disposal system would be built to discharge clean water to recharge the water basin?

MR. PACKARD: Actually we don't have a design in front of us for a community waste system.

MS. SULLIVAN: Isn't that your goal, to have a recharge of the basin?

MR. PACKARD: It could be a goal; it's not necessarily the primary goal.

MS. SULLIVAN: Isn't one of the water quality objectives include -- doesn't it include recycling of water as a primary objective of the Board? Or of the Regional Board?

MR. PACKARD: It is Board policy to promote recycling of wastewater, yes.

MS. SULLIVAN: Okay. So if a
communitywide system goes in that recycles water
and recharges the basin, won't that be a discharge
that violates your order of ceasing all
discharges?

MR. PACKARD: If we were to have a
system in front of us that we felt would be the
system that's going to improve water quality we'll
ask the Board to grant an exception.

MS. SULLIVAN: So you will look at water
quality? When determining whether there's a
discharge or not?

MR. PACKARD: From a community system,
yes.

MS. SULLIVAN: Doesn't 8313 prohibit any
community or individual discharge?

MR. PACKARD: Yes.

MS. SULLIVAN: Okay, so but a community
system would be okay to discharge, but an
individual one will not? Is that what you're
saying?

MR. PACKARD: If the Board issues a
permit for that community system we would ask the
Board also to grant them an exception to the basin
plan prohibition.

CHAIRPERSON YOUNG: Ms. Sullivan, your
time is up on the cross-examination.

MS. SULLIVAN: Okay.

CHAIRPERSON YOUNG: Okay, you can proceed into your case; you have 15 minutes.

MS. SULLIVAN: Okay. I will make an offer --

CHAIRPERSON YOUNG: Mr. Rocano, would you please put that placard -- actually please take it out of here. Please take it out.

MR. ROCANO: Yes, Mr. Young. How are you? Nice to see you.

CHAIRPERSON YOUNG: Nice to see you.

MR. ROCANO: Morro Bay's nitrates are four times higher than Los Osos'; you guys know that?

(Multiple audience responses.)

MR. ROCANO: This is a joke. It's time for regional planning, you're a regional board.

(Applause.)

CHAIRPERSON YOUNG: Ms. Sullivan, your time is starting now.

MS. SULLIVAN: Okay.

CHAIRPERSON YOUNG: Go ahead.

MS. SULLIVAN: Mr. Wilkerson is with me.

I would like to make an offer of proof to expedite
the process here. I will make an offer of proof that Mr. Wilkerson and his wife, Norma Wilkerson, would testify to their home being built in the 1970s before 8313 was adopted; that they would immediately hook up to a community wastewater system if one was available; they have prepaid the full bond assessment of $3299 as of 2001. We have a receipt that's available.

They had their septic tank last pumped in November of 2006; and the proof of that has been submitted to the Board. It's in good working condition. They're willing to continue pumping every three years and make any necessary repairs. They're willing to vote yes on a prop 218 vote and will give the Board an irrevocable proxy to vote for them.

They will state that this whole process has been extremely costly, not just monetarily but the human toll it has taken on the elderly and everyone in this community. They have spent the money on paying the bond. They have pumped. There's no basis whatsoever for this Board to make any ruling that they have not expended any funds and tried to comply with the Regional Board.

They have been singularly prosecuted and
told that if the system beyond their control is
not financed against their home and completed by
1/1/11 they will have to vacate their home. They
have no means of meeting the mandate to cease
discharges from their home unless they move out,
or the Regional Board lets an onsite, individual
system be built.

The actions of the Board have caused
tremendous stress, aggravation and harassment to
the Wilkersons; and the Wilkersons have no
internet -- another issue that we have asked to be
included on the offer of proof. The Wilkersons do
not have internet access; have never agreed to
accept service by the net, by a web posting, or by
fax. No one is authorized to accept service on
their behalf.

There has been no site-specific testing
by the Regional Board at or near their property;
and no evidence that they've caused any pollution
or waste.

The Board is presuming that they are
adding contaminants, but there's no evidence
that's been presented to show that.

I make an offer of proof that when the
Wilkersons moved here after purchasing the
property in 1986 they contacted the County to make
inquiry as to the prohibition zone. They were
told it was a moratorium that pertained to
additional new homes, not existing homes.

The Wilkersons have not been properly
served with any documents as required by law. The
Board is aware they require service in writing.
To date, they have received from the Regional
Water Quality Control Board these documents. And
I'll make a -- I'd like to make a copy available
to the prosecution. I have an extra set here. I
think the Board may be interested in seeing this.
Want me to bring it up there?

(Pause.)

MS. SULLIVAN: Okay. What I have just
handed the Board is a copy of the entire package
of documents provided to the Wilkersons. I will
make a note for the record and offer of proof that
Mr. Wilkerson is a former Postal Office worker.
An envelope -- I've given you the
documents in the order they were received. First
he received an envelope of various documents that
was postmarked January 27, 2005, which they
received on February 4, 2006.

The next set of documents is a revised
hearing noticed dated February 28, 2006 in an envelope postmarked February 28, 2005, demand that he submit emails and documents to this Board.

The next document is an envelope postmarked April 21, 2005, with another revision of the CDO.

The next document is a letter regarding a briefing scheduled postmarked May 18, 2005.

Now, this was the first certified letter they ever got.

The next document they received was an envelope postmarked July 6, 2005 with some briefs in it.

The next document and envelope postmarked August 4, 2005, -- I hope you're getting the 2005 here; your postmark is wrong on all of your service. This was --

CHAIRPERSON YOUNG: Ms. Sullivan, I'm stopping the clock. Is your point that he was not served by certified mail?

MS. SULLIVAN: No, my point is that your post -- you do not stop -- I mean this Board does not use proofs of service like most people do in the legal system, which is a --

CHAIRPERSON YOUNG: Well, but --
MS. SULLIVAN: -- declaration of penalty of perjury of the mailing. So, --

CHAIRPERSON YOUNG: -- this is an administrative proceeding. Are you --

MS. SULLIVAN: Right. So, --

CHAIRPERSON YOUNG: -- suggesting that --

MS. SULLIVAN: -- what we have --

CHAIRPERSON YOUNG: -- we have to have proofs of service?

MS. SULLIVAN: I am suggesting you either have to have a valid postmark or you have to have a proof of service, yes.

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: And your postmarks are a year in advance.

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: Your postmarks do not reflect the time that things were mailed.

CHAIRPERSON YOUNG: All right, but the fact is --

BOARD MEMBER SHALLCROSS: And if that's all we've got --

CHAIRPERSON YOUNG: -- what you're showing us is that he's received the documents.
MS. SULLIVAN: No. That's -- I'm --

CHAIRPERSON YOUNG: He's not received --

MS. SULLIVAN: No.

CHAIRPERSON YOUNG: -- the documents

that you just presented?

MS. SULLIVAN: I'm not done. If I can,

I only have a few minutes, you know, to put on my

case --

CHAIRPERSON YOUNG: I've stopped the

clock for you --

MS. SULLIVAN: Okay.

CHAIRPERSON YOUNG: -- so that I could

give you some leeway so that I can get some of my

questions answered on this specific topic.

MS. SULLIVAN: But what I'd like to do

is not be interrupted in my presentation, --

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: -- and then you can save

your questions for the ten minutes, and I'll be

happy to answer them in the ten minutes --

MS. SULLIVAN: Okay.

BOARD MEMBER SHALLCROSS: Just let her

go.

MS. SULLIVAN: -- you've got to shoot at

me.
CHAIRPERSON YOUNG: Go ahead.

MS. SULLIVAN: Okay. So with regard to the documents that he received, and I've compiled all of them there, you will not find a notice of hearing for December 14th or 15th. You will find inadequately and improperly postmarked documents that are all dated wrong and there is no document there showing that Mr. Wilkerson or his wife was served with any notice of the hearing that was set for the 14th and 15th.

I will admit there was a document that was postmarked correctly setting this hearing today. But the number of documents that were received until September of 2006, the Regional Board continued to use a postage meter that was dated in 2005.

This causes a tremendous amount of confusion when you don't put notices and people don't know what you're doing, or understand what you're doing.

There was a document that he received by certified/return receipt on August 4, 2005, and postmarked that date, which stated that CDOs were not going to go forward; that the procedures would be outlined in the future. The Wilkersons
understood this document to mean that they were no longer targeted, and that a new drawing would take place to persecute someone else.

You know, you look at the postmark; they get groups of documents because I guess to save postage they just throw a bunch of documents in there. And there's even little stick-on notes in there from Matt Thompson saying, I'm sending you this hard copy of our legal and technical documents because I understand you don't get internet.

The third certified letter arrived with a notice of settlement on January 22, 2006. So, my reason for going through all that rendition was to show that there hasn't been proof of service -- adequate due process or proper service of the documents that were required by this Board's rulings or by the constitution, for that matter.

The Wilkersons have not been afforded due process. They didn't get the required notices or documents through mail. They never got the 14th and 15th notice.

The Wilkersons are very very pro-sewer. They're willing to do and pay what's necessary to get a sewer. They will cooperate; they do
cooperate. There's just no need to issue a CDO.

They cannot build a system for the community and they cannot force the community to vote for a system. If there's another alternative individual system onsite, they'd be happy to put it in if it's feasible.

I'd like to offer all of that into evidence without putting my client through the further ordeal of testifying to all of that. So I would like to move that into evidence.

CHAIRPERSON YOUNG: That's fine, you're saying --

MS. SULLIVAN: Okay.

CHAIRPERSON YOUNG: -- that that's how he would testify if you were to have him testify, correct?

MS. SULLIVAN: Yes.

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: Okay. Now we'd like to go under Evidence Code 776 back to cross. And so I would like to ask further questions of Matt Thomas (sic) with my remaining time.

CHAIRPERSON YOUNG: Your time for cross-examination has run.

MS. SULLIVAN: No. I'm using under
Evidence Code 776, the right to show my case-in-chief by cross-examination.

CHAIRPERSON YOUNG: That would be in a Superior Court case. This is --

MS. SULLIVAN: Oh, I think --

CHAIRPERSON YOUNG: -- an administrative proceeding, and we don't have the same rules that --

MS. SULLIVAN: Well, you've used --

CHAIRPERSON YOUNG: -- you track in Superior Court.

MR. RICHARDS: If she wants to call Matt Thompson and treat him as a hostile witness, she can do so.

CHAIRPERSON YOUNG: Actually, if you want to call him as a witness, that's fine.

MS. SULLIVAN: Pardon?

CHAIRPERSON YOUNG: That's fine. You want to call him as an adverse witness --

MS. SULLIVAN: Yes, I would.

CHAIRPERSON YOUNG: Go ahead.

MS. SULLIVAN: Do you have any proof that you served Mr. Wilkerson with any notice of the December 14th or 15th hearing?

MR. THOMPSON: We sent our mailings by
certified mail with return receipt. Did get those return receipts.

MS. SULLIVAN: How many things did you send by certified/return receipt?

MR. THOMPSON: Look about half a dozen mailings.

MS. SULLIVAN: Okay. Did you ever send the notice of the December 14th and 15th hearing?

MR. THOMPSON: That's the responsibility of the Water Board's advisory team, so, no.

MS. SULLIVAN: Okay. Do you know whether anyone did on behalf of the Advisory Team?

MR. THOMPSON: That's -- no. That's their responsibility.

BOARD MEMBER SHALLCROSS: Can I ask Mr. Thomas a question?

CHAIRPERSON YOUNG: Yes.

BOARD MEMBER SHALLCROSS: Stop the clock, yeah. Did the Wilkersons receive notice of this hearing today?

MS. SULLIVAN: Yes, I testified to that.

CHAIRPERSON YOUNG: Yeah, they contacted us just before the previous hearing, as I recall.

BOARD MEMBER SHALLCROSS: Okay, so it's only the 14th and 15th that they didn't receive?
Or they're claiming they didn't receive, right?

CHAIRPERSON YOUNG: They received notice before the 14th and 15th hearing because I think, if I'm not mistaken, you were going to be possibly you could make the second day's hearing? Was that the request, Mr. Wilkerson, if we didn't hear from you about --

MS. SULLIVAN: Objection. Are you --
you're asking the witness questions?

CHAIRPERSON YOUNG: Yeah, I'm asking Mr. Wilkerson some questions, yes.

MS. SULLIVAN: Okay.

MR. WILKERSON: Could I hear it again, please?

CHAIRPERSON YOUNG: As I recall you had told the Advisory Team, I think Mr. Thomas, that you were going to be, I think, busy on the Thursday; that you were going to try to come in on the Friday.

MR. WILKERSON: No, that's not correct. What I submitted was a letter stating that I was not able to attend the hearing. I became aware of the hearing after I had made plans to go visit, to attend my elderly sister. And I found out about it from another CDO recipient who told me there...
was a hearing that date. I didn't know anything about that.

MS. SULLIVAN: Okay. Do you consider posting notices on the net as a proper notice to designated parties? This is for Mr. Thompson.

MR. THOMPSON: I'm not sending notices. I'm sending the Prosecution Team's written materials. The Advisory Team sends notices, hearing notices.

MS. SULLIVAN: But there are documents that are posted on the website, right?

MR. THOMPSON: Correct. We've been trying to post all of the written submittals that we send people on the document for those people that prefer to look at it electronically.

MS. SULLIVAN: Is everything that's on the website sent to the designated party?

MR. THOMPSON: Most of it, yes. There may have been a couple of the Prosecution Team's mailings that we posted electronically but we sent hard copies to all those designated parties who had indicated to us that they do not have internet access.

MS. SULLIVAN: Did you have any documents that were posted that you didn't serve
on a party?

MR. THOMPSON: Did I have any documents
that were what?

MS. SULLIVAN: Posted on the website
that didn't get mailed to the Wilkersons.

MR. THOMPSON: No. The Wilkersons are
one of those designated parties who indicated
early in this process that they do not have
internet access. And so in my tracking database
every time we posted a document or made available
the document to the designated parties, I made
sure to send a hard copy to the Wilkersons.

MS. SULLIVAN: So did you send a hard
copy of all of the evidence that was produced by
the Regional Water Quality Control Board and all
the evidence produced by the designated parties to
the Wilkersons?

MR. THOMPSON: Are you talking about our
documents?

MS. SULLIVAN: Anything that was posted
on the web.

MR. THOMPSON: There's a whole library
of Prosecution Team's documents that has been
available here for the public review. And for the
convenience of those folks that could not come in,
we decided to scan all of them in and post them on
the internet. It's a very large volume of
documents, probably two banker boxes. We did not
send hard copies of that to the Wilkersons.

MS. SULLIVAN: There is a proposed
finding in the CDO against the Wilkersons that
since 1988 the Wilkersons have incurred little or
not cost to comply with the prohibition. What
have you done to investigate or what evidence do
you have to support that statement?

MR. THOMPSON: Well, in the sense that
other communities have been paying sewer bills for
years, not decades; and you compare that to the
cost of maintaining a septic system, say pumping
out the system every, you know, three to five
years, the cost difference is huge.

MS. SULLIVAN: Anything else? Any other
evidence?

MR. THOMPSON: No, ma'am.

MS. SULLIVAN: Did you do a cost
analysis that's required as a water quality
objective of what you're imposing on this?

MR. THOMPSON: A cost analysis that's
required for a water quality objective?

MS. SULLIVAN: Yes. Well, --
MR. SATO: Objection, lack of foundation.

MS. SULLIVAN: -- have you done any cost analysis of what you're imposing on these people?

MR. THOMPSON: No, ma'am.

MS. SULLIVAN: Have you considered any economic factors in -- which is a water quality objective under 13241 in imposing these CDOs?

MR. SATO: Object to the premise of the question.

CHAIRPERSON YOUNG: If you can answer the question, Mr. Thompson.

MR. THOMPSON: I'm sorry, I'm not -- I don't know 13241.

MS. SULLIVAN: Do you know what economic considerations are?

MR. THOMPSON: Yes.

MS. SULLIVAN: Okay. Have you made any?

MR. THOMPSON: No.

MS. SULLIVAN: Okay. If the vote does not go through on 218, or the County chooses not to proceed with a community system by July 1, 2008, is there an alternative that's available for the Wilkersons that they could install now that would be approved by you? And I don't want to
hear, well, you don't tell us what to do, you just
approve it.

Is there anything that's currently
approvable that would be an individual septic
system that you would allow the Wilkersons to put
on their property today?

MR. SATO: Objection, incomplete
hypothetical. I mean there are -- she's not
describing to you -- she's asking Mr. Thompson
whether or not there's something that he might be
able to look at. And I think that's an unfair
question to be posited to him; is, in fact, a
hypothetical. If she wants to ask a very specific
set of facts and say, would this be something that
might be considered by the Board, that might be a
more proper question.

MS. SULLIVAN: Okay, would --

MR. SATO: Aren't we beyond the 15
minutes at this point in time?

CHAIRPERSON YOUNG: Well, it just ran
out. But I'll give you one last question.

MS. SULLIVAN: Okay. Is a compost
toilet accessible? I mean approvable by this
Board, as an alternative.

MR. THOMPSON: Well, the County of San
Luis Obispo Health Department has indicated that they would not be comfortable with approving a composting toilet.

MS. SULLIVAN: My question was for this Board.

CHAIRPERSON YOUNG: Well, you know, Ms. Sullivan, first of all, the staff makes recommendations to the Board. So if you're asking Mr. Thompson what our Board would do, I don't know that he's going to know the answer to that, because I don't know the answer to that until something's in front of us, no matter what the alternative might be.

MS. SULLIVAN: Well, I'm asking for what could be installed tomorrow. There must be something approved that's an onsite system on an individual system, because that's what you're requiring in the CDO. So I'm asking what is it. What is it that's acceptable to this Board?

MR. SATO: Well, I'd object again that Mr. Thompson cannot testify as to what is acceptable or not acceptable to this Board. To the extent he has any particular views on that, she can ask, but I don't know that that is
relevant to any of these issues.

MS. SULLIVAN: Okay. Is there going to be any rebuttal?

MR. SATO: Their time has expired.

CHAIRPERSON YOUNG: I understand, Mr. Sato.

MS. SULLIVAN: If there's any rebuttal for my witness I'm ready for that, and I'll take my next five minutes.

MR. SATO: We're entitled to cross-examine.

CHAIRPERSON YOUNG: Yes.

MS. SULLIVAN: Yes.

CHAIRPERSON YOUNG: Go ahead, Mr. Sato.

MR. SATO: We just have a couple questions.

CHAIRPERSON YOUNG: You have ten minutes.

MR. SATO: Thank you. Mr. Wilkerson, I think in your offer of proof your counsel said that are pro-sewer, is that correct?

MR. WILKERSON: Yes.

MR. SATO: Can you explain to me -- and could you tell me why you are pro-sewer?

MR. WILKERSON: When I moved here and
bought the property back in 1986 there was a program, I believe, underway to install a sewer system at that time. And I was not living here but I came over and I went to the meeting that they held, I think, downtown at one of the theaters. They explained the system and they explained the benefits of it versus the fact that you would have to have your tank pumped and you would have to worry about overloading it and so forth and so on; things that I knew nothing about.

Since then I just decided that the easiest and fastest way to get this mess behind us would be to get some kind of a treatment system in so that we could all go on with our lives.

MR. SATO: And do you recall what you thought were the benefits of the community sewer system?

MR. WILKERSON: The benefits?

MR. SATO: Yes, the benefits; what you thought were the benefits of --

MS. SULLIVAN: Objection, lack of foundation; doesn't reflect what system you're referring to.

MR. WILKERSON: I'm not sure I understand the question.
MR. SATO: You were just describing that you heard about a sewer system, and that certain benefits were described to you. I was wondering if you'd tell me what those benefits were.

MR. WILKERSON: The biggest benefit that I can recall is at that time that it would have only cost me $11,000 to install it. And I thought that was, at that time, reasonable and was prepared to go forward with it.

MR. SATO: Do you recall whether you thought that there was some other environmental benefit by hooking up to a community sewer system as opposed to utilizing the individual septic tank system?

MR. WILKERSON: I didn't know that much about it, no. I don't know of anything.

MR. SATO: Okay. I believe also in the offer of proof that your attorney offered, that she indicated that if a community sewer system was not available by 2011 that you would have to vacate your home. Do you recall that testimony by your counsel?

MR. WILKERSON: Yes.

MR. SATO: Where did she get that information?
MR. WILKERSON: From me.

MR. SATO: From you.

MR. WILKERSON: If they're going to fine me 5000 or 500 bucks a day, yeah, I'm going to have to move out. Simple as that.

MR. SATO: Okay, so no one told you that you had to vacate your home, is that correct?

MR. WILKERSON: Every communication that I got from the date that has included the information that if something isn't done by, I think I'd call it a drop-dead date or something like that, that we would have to vacate our home or do something else. I didn't have the wherewithal to pay that kind of fines that you people are talking about.

MR. SATO: I want to know specifically whether or not you believe you received any communication from a member of the Regional Board that said that you would have to vacate your home in order to comply with the proposed cease and desist order.

MR. WILKERSON: In the event that the benefits assessment is not approved by the County before July 1, 2008, the discharger --

(Parties speaking simultaneously.)
MR. WILKERSON: -- shall cease all
discharges from the septic system no later than
January 1, 2001, unless the Water Board has
approved an onsite system for discharge from the
site by June 30, 2010.

MR. SATO: So it's your testimony that
that is the provision that caused you to believe
that you have to vacate your home?

MR. WILKERSON: That's not the only
thing; the other information that I'd received,
yes.

MR. SATO: Okay. And aside from that,
then what is the other information that you
received?

The reason I'm asking these questions,
sir, is because we are not aware of any
communication issued by anybody from the State
Board that has talked about anybody having to
leave their homes. And so I'm curious to know why
your testimony is that you have received such a
communication or directive from any member of the
Regional Board Staff.

MR. WILKERSON: When you read something
like this, signed by Michael Thomas, failure to
comply with provisions of this order may subject
the discharger to further enforcement action,
including assessment of civil liability under
sections so forth and so on of the Water Code, and
referral to the Attorney General for injunctive
relief and similar criminal liability, what does
that mean.

MR. SATO: Well, to you, did that
indicate -- so you, based upon receiving that
communication you felt that that was somebody that
was asking you to vacate your home?

MR. WILKERSON: It's what I would have
to call a "Catch 22". I cannot build a sewer
system for the entire community. If I can't do
that, and I can't satisfy the requirements of the
Board, what other alternative is there?

(Audience participation.)

MR. SATO: And so, just want to make
sure then, so it would be your testimony that you
haven't gotten anything from the Regional Board
Staff indicating that you would have to vacate
your home? The words vacate your home is not
contained in any communication you've received
from the Regional Board Staff, is that correct?

MR. WILKERSON: Not that I recall; it's
a conclusion I came to after reading all of the
letters that I received.

MR. SATO: Thank you. No further questions.

CHAIRPERSON YOUNG: Okay. Any rebuttal
testimony? Mr. Sato, Mr. Packard?

MR. SATO: No, we have no rebuttal.


MS. SULLIVAN: Okay, I'll use my rebuttal time by asking further questions of the prosecution team.

CHAIRPERSON YOUNG: And how much time do we have on rebuttal? I'll give you five minutes. Rebuttal time is actually included, I think, in your presentation, that 15 minutes.

MS. SULLIVAN: No, it actually is not according to your notice.

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: You're very specific in your notice.

CHAIRPERSON YOUNG: There. Five minutes, Ms. Sullivan, which is what I was offering to you. Okay, five minutes.

MS. SULLIVAN: Okay, so five minutes.

Mr. Sato, this question's for you. Do you contend that the Regional Board has the ability to cause
14,000 people to vacate their homes in order to comply with the prohibition of discharges?

MR. SATO: Do I contend? Could you repeat the question, please?

MS. SULLIVAN: Can I ask the court reporter to do that by any chance? No?

Do you contend that the Regional Board has the authority and the power to cause 14,000 people to leave their homes as of 1/1/11 if the community system is not constructed by that time?

MR. SATO: I believe that the Regional Board is constrained by law as to what types of remedies that they can order for any specific violation of the Water Code.

MS. SULLIVAN: But is one of those remedies forcing people to vacate their homes to meet your prohibition requiring cessation of discharge?

MR. SATO: I think the law addresses the issue of practicalities and probabilities. And I'm not sure how or when those kinds of issues would come up in this type of a situation.

MS. SULLIVAN: Do you contend that you could force Mr. Wilkerson to vacate his premises as of -- under this CDO as of 2011 if a sewer is
not constructed?

MR. SATO: I don't contend I can do
anything vis-a-vis Mr. Wilkerson.

MS. SULLIVAN: Do you contend the Regional Board could?

MR. SATO: I think I answered that question already. There are certain powers that are granted to the Regional Board by the Water Code. I think it's provided for by law; it's a legal question.

MS. SULLIVAN: And this one's for Mr. Thompson. Are you aware of a single sewer project of the magnitude that's being proposed here being constructed in four years?

MR. SATO: Objection, vague and ambiguous. I don't know what sewer project is being proposed here means.

CHAIRPERSON YOUNG: Can you be more specific?

MS. SULLIVAN: Pardon?

CHAIRPERSON YOUNG: Can you be more specific?

MS. SULLIVAN: Okay. There's infrastructure that's involved in constructing a communitywide system, right?
MR. THOMPSON: Yes, ma'am.

MS. SULLIVAN: How long does it take to build that infrastructure for a community the size of Los Osos?

MR. THOMPSON: Construction, two to three years.

MS. SULLIVAN: And what do you base that on?

MR. THOMPSON: Well, one, we met with the National Water Research Institute and UC Davis Professor, retired Professor George Tchobonoglous. That was his best estimate.

MS. SULLIVAN: How about the treatment system? How long do you think it will take for the treatment system to be constructed?

MR. THOMPSON: That would be included in that two to three years.

MS. SULLIVAN: Are there any --

MR. THOMPSON: They run in parallel.

MS. SULLIVAN: Are there any that you're aware of that were actually constructed in four years or less of this magnitude, of building all the infrastructure and starting from scratch and going through permitting and post-commission jurisdiction? And it's already been
designed, you know, designing it, everything. Do you think that's possible to be done in four years?

MR. SATO: Objection, vague and ambiguous, compound.

CHAIRPERSON YOUNG: Can you answer?

MR. THOMPSON: Well, yeah, I mean I don't think we're starting from scratch; I mean you can build upon what's already been done. But, yeah, I believe it can be done.

MS. SULLIVAN: And what do you base that belief on?

MR. THOMPSON: Well, I've been involved in a lot of wastewater project, --

MS. SULLIVAN: Have any been completed in four years or less?

MR. THOMPSON: Well, it depends on what part of the project you're talking about. You constantly refer to construction. The construction phase --

MS. SULLIVAN: I'll withdraw the question.

MR. THOMPSON: -- is very fast.

MS. SULLIVAN: I'm going to withdraw the question.
MR. THOMPSON: It's the planning and --

CHAIRPERSON YOUNG: She's withdrawn the question. She withdrew the question.

MR. THOMPSON: Okay.

MS. SULLIVAN: Why do you think CDOs are the appropriate remedy here?

MR. SATO: Objection, argumentative.

CHAIRPERSON YOUNG: It's irrelevant, also. Sustained.

MS. SULLIVAN: It's the only question we're allowed to ask under your notice. It's the only issue we can address is are these an adequate remedy. That's what your notice says. Certainly I can ask the question why you think this is an adequate remedy.

BOARD MEMBER SHALLCROSS: I think what the notice means is that are the provisions of the CDO adequate; not whether a CDO in and of itself is adequate.

MS. SULLIVAN: Okay. Do you think the provisions of this CDO requiring all cessation of all discharges by 1/1/11 is the proper remedy here?

MR. SATO: Objection, misstates -- the CDO is clear on its face as to what it states.

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And that is not a correct representation --

CHAIRPERSON YOUNG: And, Ms. Sullivan, the inference I take from that is that the staff is suggesting that this is the proper enforcement mechanism. Otherwise they wouldn't have put it forth.

MS. SULLIVAN: Okay. Why? Why do you think it's a proper enforcement mechanism? Or more proper than anything else?

MR. THOMPSON: Well, I think that -- go ahead.

MR. SATO: The proper enforcement mechanism is called for by the circumstances that the Prosecution Team has faced. And it has looked at a variety of options that were available by the Water Code statute. It has recommended this particular one for consideration by the -- for adoption by this hearing panel, and ultimately by the Regional Board.

CHAIRPERSON YOUNG: That was the last question; you've run out of time on your rebuttal.

MS. SULLIVAN: Okay.

CHAIRPERSON YOUNG: Okay, --

MS. SULLIVAN: I want to put an objection on the record, too, that there's just
insufficient time for someone to put on a defense
before they have an order of this magnitude and of
this drastic nature imposed against them and their
property. And 15 minutes is just insufficient.

It's not going to work.

CHAIRPERSON YOUNG: Okay. Mr. Sato,
closing arguments.

MR. SATO: Could Mr. Packard --

CHAIRPERSON YOUNG: Okay.

MR. PACKARD: Actually I think the
hearing notice lets the designated party go first.

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: Actually I would prefer
to go in the order of the presentation required in
the notice. I believe closing is first with the
designated party. I mean, I'm sorry, the
prosecution.

MR. SATO: I think --

MR. PACKARD: Not according to my
notice.

CHAIRPERSON YOUNG: The notice says the
individuals named in the proposed CDO go first.
That's sub (g); and then (h) is the Water Board
Prosecution Team closing.

MS. SULLIVAN: Okay, I'll leap into it
then.

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: On behalf of the Wilkersons, the Moylans and all the other people who have been subjected to this brutal, mean-spirited process I ask that you stop.

Nothing is going to be gained by persecuting the individuals in Los Osos. You're so much better off working with the County; finding the source money to implement a communitywide system which the residents and the property owners support.

This type of process not only is unconstitutional and undemocratic, but it creates such ill will. If anything is going to hurt the 218 vote, it's a selective persecution of individuals. And it causes alienation even for those who fully support protecting our waters.

I mean I'm a pro-sewer person. And I am so appalled by this process that these people are undergoing, and what it will do is it's going to create a process where everyone's going to focus their energies on you and the naysayers will focus on why we don't need a sewer, and just jeopardizing the whole 218 process.
Furthermore, the CDO seems to require that these property owners put an individual onsite system if the system -- I mean if the vote fails. And yet there's no onsite system that's available. And the Board and the staff, they don't have any solution.

If this is an attempt to just force a vote, that's what it appears to be, a scare tactic to force people to vote a certain way on 218. And the fact of the matter is people want the sewer system. This isn't the way to get it.

It's caused so much division, even division amongst family members before this Board. I mean it's very very sad to watch the tapes and what this is doing to people in our community and our families. And it's causing so much friction.

Aside from the emotions and the inequities, it doesn't seem to be furthering any goal of this Board to have a CDO issued. It's not going to help clean up the water. Prior testimony showed that it hasn't. It's not going to be anything Mr. Wilkerson can do to solve the problem. He can vote, but his vote's not going to change the course of action here. As I said, he'll give you his proxy.
It doesn't even matter under your interpretation of the 8313 if it's clean water being discharged or wastewater. I submit that under the Water Code you may have the ability to cease discharges of waste, but I don't see anything in there that authorizes expansion of ceasing discharges period. And even a community system's got to discharge into the -- recharge to the basin. That's a necessary element. So there's going to have to be discharge, regardless of what 8313 says.

It appears that there hasn't been any update of the water plan, even though it's required on a triennial basis. It hasn't happened since 1994. You've got an antique water basin plan that was crafted by Mr. Briggs who isn't here to even testify. And you have 8313 being interpreted by you today in a fashion that nothing at that time indicates was ever contemplated, would ever be expanded to this.

And with regard to 8313, under the Water Code at the time, under 13330 at the time 8314 was adopted, it required that a person could challenge the enforcement of rule or regulation of the Board at the time it's being enforced against them. And
it is now that time. It's now ripe for review.

And yet, this Board says we're not going
to entertain any discussion about the prohibition
zone, whether it's correct or incorrect, or how to
interpret it. And that is crucial. You can't
enforce an order unless the party that it's being
enforced against can object to it. And that was
allowed under the process. That was available and
under due process.

You have presented no evidence to
support that this targeted individual, Mr. -- or
individuals, the Wilkersons, are violating
anything. And you've shown failure to even serve
them with a minimum of documents that would be
required. They never got notice of the hearing.
I submitted into evidence, and I moved that into
evidence, that complete package that I supplied
you with all the inappropriate postmarks, which
are a curious thing.

We also object to using as evidence that
I've heard in other prosecutions that the fact
that someone would not sign a settlement order,
which was really a cleanup and abatement order, is
evidence that a CDO should issue against them.

I wanted to ask some questions about the
difference between the CDO and the cleanup and 
abatement order, but it's curious to me how you 
can have the same drop-dead date of 1/1/11, which 
I think may go down in infamy, almost as infamous 
as 9/11 in this community, how you can have this 
drop-dead date that people are to stop doing 
something they have no control over. That's just 
not reasonable, and I don't think a court's going 
to uphold it.

With regard to the cleanup and abatement 
orders, it would be curious to see what the Board 
comes up with since they now have the ability to 
go on someone's property and clean it up and abate 
what they perceive as a nuisance; and charge and 
lien the property owner automatically, all without 
a hearing, what are they going to do? What's this 
Board anticipating that it's going to do to 
utilize the cleanup and abatement order it has 
gotten from some people under the guise of being a 
settlement offer?

I would like to know why this CDO with 
the drop-dead date is necessary. It would seem to 
me it would be much more proper to have a work 
plan proposal or something. I mean, the three 
years for cleanup and doing your pumping, that is
great. That is the first really good moved I think this Board has considered.

But to couple it with the extreme sanctions of criminal and civil and fines and have to leave your home if you want to avoid those, even if the word vacate isn't there, the word is certainly there that you must cease discharge. There's so much more I would love to say, but I would like to incorporate all of the 94 reasons I put in the appeal that's currently pending. And I object to so many of the procedural things that have occurred here. There hasn't been one subpoena that's issued, that's been requested by any designated party. There has been a complete change of process over and over again.

The author of all of this, 83 -- I mean of the basin plan and all of this process, isn't even here to be testifying, and was not made available for a deposition.

And I just request this Board reconsider what you're doing to this community. Thank you.

CHAIRPERSON YOUNG: Okay, thank you.

Mr. Sato or Mr. Packard.

MR. PACKARD: Thank you. As to the
first issue before the Board, it's clear that the
Wilkersons have a septic system on the property
described in the cease and desist order, and they
are, in fact, discharging in violation of the
basin plan prohibition.

I probably don't need to remind the
Board of the long history that we're talking about
here and all the various enforcement actions that
have been taken over the years. But as we've
stated in the past, there still is no wastewater
system, community wastewater system in Los Osos.
And these individual discharges are ultimately the
responsibility of the owners and residences of the
prohibition zone.

So we do think that this cease and
desist order is the appropriate remedy. And with
the modification mentioned by Mr. Thomas on page
5, we recommend that the Board adopt the cease and
desist order for the Wilkersons.

CHAIRPERSON YOUNG: Okay. The issue
before the Board is -- before this panel is what
type of recommendation to make to the full Board.

The question I have for Mr. Thomas is in
how notice has been given out. There was some
testimony that the Prosecution Team doesn't submit
that, but the --

AUDIENCE SPEAKER: Louder.

CHAIRPERSON YOUNG: -- but that the --

(Multiple Audience Speakers.)

CHAIRPERSON YOUNG: My question is for Mr. Thomas, in how people were given notice of the hearings. Because there was some testimony that Mr. Thompson was not giving notice, as part of the Prosecution Team. I think he said that the Advisory Team was doing that. And I would like Mr. Thomas to clarify how notice has been given.

MR. THOMAS: Yes, we send out the notices for hearings --

CHAIRPERSON YOUNG: And that means you, not Mr. Thompson?

MR. THOMAS: Correct. There's the Prosecution Team and Advisory Team. The Advisory Team sends out the notices for the hearings. And the notices go to all the interested parties and the designated parties by regular mail. They're sent to email addresses for those people who have given us email addresses. And they're posted online.

CHAIRPERSON YOUNG: And are they mailed to everybody regardless of whether they get it by
internet?

MR. THOMAS: Yes.

CHAIRPERSON YOUNG: Okay. Have you had any returned, the first class postage ones returned to you?

MR. THOMAS: I can't say how many we had returned. I do think there have been returns. I think there are, and Mr. Thompson may be able to speak to this, but I think we do get regular returns from certain designated parties.

CHAIRPERSON YOUNG: Okay. As far as Mr. Wilkerson goes, have any of the mailings to his address been returned?

MR. THOMAS: Not to my knowledge.

CHAIRPERSON YOUNG: Okay. All right. Mr. Shallcross, Mr. Hayashi?

BOARD MEMBER SHALLCROSS: One question.

CHAIRPERSON YOUNG: Go ahead, Mr. Hayashi.

BOARD MEMBER HAYASHI: There was evidence brought in, they said that the postmark was a year behind the date that you received it. How could that be? They just marked it that, a year later?

BOARD MEMBER SHALLCROSS: It was a year
earlier.

CHAIRPERSON YOUNG: Yeah, go ahead, Mr. Thomas.

MR. THOMAS: I've looked through the documents that Ms. Sullivan has submitted. And, yes, there are postmarks that are a year in arrears. And on some of the documents the postmark is correct, it's 2006. And others it's 2005. I can't explain that.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER SHALLCROSS: Is Mr. Wilkerson claiming that he didn't get them in a timely fashion?

MS. SULLIVAN: Yes.

BOARD MEMBER SHALLCROSS: Based on the earlier postmark?

MS. SULLIVAN: No, based upon -- I'm sorry, based upon that compiling a group of documents and sending them, and him receiving it after the fact, or after what was required.

For example, there was a notice that went out that was dated December 1. And it was mailed December 11th. And the people received it on the 13th of December. And it required them to do something by December 12th. That was a
problem. And that was something --

BOARD MEMBER SHALLCROSS: And how was

that resolved?

MS. SULLIVAN: It wasn't.

BOARD MEMBER SHALLCROSS: What was

required by December 12th?

MS. SULLIVAN: That they explain,

produce documents with regard to the Chairman's

ruling on objections. There were some objections

that were made on December 8th, and he said that

they could submit further documents, but nobody

got the notice until after the deadline had run.

BOARD MEMBER SHALLCROSS: Nobody got the

notice?

MS. SULLIVAN: Well, no one I know of

got the notice. I swear, I don't --

BOARD MEMBER SHALLCROSS: We're talking

about Mr. Wilkerson.

MS. SULLIVAN: Mr. Wilkerson didn't get

it. It was postmarked the 11th.

BOARD MEMBER SHALLCROSS: Who are you

representing? Other people right now, or Mr.

Wilkerson? I'm confused.

MS. SULLIVAN: Well, actually I

represent Mr. Wilkerson right now.
BOARD MEMBER SHALLCROSS: Okay, thanks.

Let's just talk about Mr. Wilkerson.

MS. SULLIVAN: Okay.

BOARD MEMBER SHALLCROSS: Okay, so he didn't get that?

MS. SULLIVAN: No, he didn't.

BOARD MEMBER SHALLCROSS: Okay, and did he get the notice for this hearing?

MS. SULLIVAN: Yes.

BOARD MEMBER SHALLCROSS: In a timely fashion?

MS. SULLIVAN: I said that, yes.

BOARD MEMBER SHALLCROSS: Okay, thanks.

CHAIRPERSON YOUNG: Ms. Sullivan, as I look at Mr. Wilkerson's and I think Mr. Wilkerson is also on this, their email -- it looks like either it's an email or a fax; maybe an email that was faxed, dated November 14th, I don't see any of his -- of these issues raised in his letter.

MS. SULLIVAN: I don't know; you'll have to show me what you're talking about. I'm not sure what you're talking about.

CHAIRPERSON YOUNG: Well, they're in our package. We have a letter from the Wilkersons.

Have you seen it?
MS. SULLIVAN: If you want to show it to me I'll be happy to take a look at it.

CHAIRPERSON YOUNG: Well, it's handwritten by them. It's three pages.

MS. SULLIVAN: Do you want to ask me questions on it? Do you want to ask Mr. Wilkerson some questions?

CHAIRPERSON YOUNG: I mean it's kind of my question is to you, as their attorney, I don't see any mention in their letter of these objections that you're now raising.

MS. SULLIVAN: Well, that's because we can object at this hearing, right? And that's what we're doing.

CHAIRPERSON YOUNG: You can object --

MS. SULLIVAN: This is testimony to object to this.

CHAIRPERSON YOUNG: Yes, but at the time he wrote this there was no mention of any of these issues about getting proper notice, not getting documents, things of that nature.

MS. SULLIVAN: I can't speak to that unless you show it to me, sir.

CHAIRPERSON YOUNG: Mr. Wilkerson, do you have a copy of the letter that you wrote?
Have you shared it with your attorney?

MR. WILKERSON: I'm not sure which one you're talking about.

MS. SULLIVAN: I'd object to that; it calls for a communication between attorney/client.

CHAIRPERSON YOUNG: It was sent to us.

BOARD MEMBER SHALLCROSS: It's not attorney/client.

CHAIRPERSON YOUNG: So it's been publicly disclosed.

MS. SULLIVAN: But you just asked the question of what he had shared with me.

CHAIRPERSON YOUNG: Okay.

(Pause.)

MS. SULLIVAN: Okay, what is the question, sir?

CHAIRPERSON YOUNG: Well, I was curious as to why, first of all, this is dated November 14. So, it was a timely submission before the December hearing. So, he did get notice of the December hearing, I take it. Right, the December 14th and 15th hearing?

MS. SULLIVAN: Well, I think the burden is on the Board to prove that he got service. You know, as far as timely service --
CHAIRPERSON YOUNG: They have. We have this document in front of us, and I'm asking Mr. Wilkerson and you --

MS. SULLIVAN: It just wasn't necessary that someone put forth all of their testimony and all of their objections, especially when the CDO was changing constantly, as of November 14th or November 15th.

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: And I don't think you can presume that since it wasn't mentioned that he did have proper service. I think the burden's on the Board.

CHAIRPERSON YOUNG: Okay, well, it's apparent to me by the date of his letter, November 14th, which was prior to the deadline for submission of written testimony and documents for the December 14th and 15th dates, --

MS. SULLIVAN: Actually you had a order that went out on September 7th, I believe, that said that date. Earlier. And then when the Prosecution Team didn't get their documents on time, you moved it because they failed to get their documents in on -- in accordance with the order a couple times.
So I believe that was an earlier order before even back to before the November hearing that got rescheduled when the prosecution failed to get their documents in.

So, I don't believe that November 15th date first showed up in a notice of hearing for December 14th and 15th. I may be wrong, but I think that date come in earlier based upon the September 7th notice.

CHAIRPERSON YOUNG: But he did have notice of the December 14th dates.

MS. SULLIVAN: I think it's November 15th, but --

CHAIRPERSON YOUNG: Okay.

MS. SULLIVAN: -- apparently he got something in to you by that time.

CHAIRPERSON YOUNG: Right, okay.

MS. SULLIVAN: I don't think that's --
CHAIRPERSON YOUNG: And he responded to it, because this appears to be his written submission.

MS. SULLIVAN: Yes, we will submit this is his written submission.

CHAIRPERSON YOUNG: Okay, right.

MS. SULLIVAN: But it's not the
submission of everything he was going to argue.

CHAIRPERSON YOUNG: Right. Okay. Any
more Board discussion or panel discussion about
this? Mr. Shallcross, any thoughts? Mr. Hayashi?
No?

The only thing I would say, and I've
read through everything that's been submitted to
us, including all of the CDO recipients, I mean I
understand that the homeowners, you know, have a
concern and an issue, and I think it's a valid
one, that they think that the Prosecution Team
should be proving their case based on direct
evidence that there is a pollutant in the septic
tank effluent that's migrating through the
discharge zone and making its way into
groundwater. And then there's testing that shows
that the groundwater levels of contaminant is
rising as a direct result of that individual
property owner.

I understand that that's what the CDO
recipients, proposed CDO recipient, would like us
to take as the burden of proof in this. I don't
take the case as requiring that level of proof.

First of all, the 8313 is written just
as a flat prohibition on discharges from onsite
disposal systems. And the circumstantial evidence that the Prosecution Team has put forth I find to be sufficient to make the causation linkage. And that is that for decades there have been levels of nitrates in the groundwater beneath the highest densities of septic tank owners. And that there is evidence of problematic septic tank systems.

And frequently circumstantial evidence is a much more powerful way of proving a case than having direct evidence. I would not expect the Prosecution Team to have to go out and test 4500 individual septic tanks and do individual studies to show that an impact was being directly made by that discharger.

And the reason for that is because of the way the prohibition language was written, itself. And that is that any discharge would be a violation of the prohibition. And that's really what's before us.

As far as when a challenge could be brought against 8313, those are legal arguments that you can take up on appeal with the State Board, or with the Superior Court. Those are regulations that go into law when they're proposed, and now is not the time or the place to
challenge them.

So, as far as I'm concerned, the recommendation that we should be making to the full Board would be to adopt the proposed CDO and have it issued.

Mr. Shallcross.

BOARD MEMBER SHALLCROSS: Yeah. There's another sort of misunderstanding that time and time again comes up in the recipients' documents. And I think unfortunately it gets confused with the whole issue of the prohibition because one of the requirements of the cease and desist order is to have the septic tank checked.

And the problem with the prohibition zone is not that there are septic tanks necessarily that aren't working. Even if they all worked, septic tanks create nitrate that goes into the ground. That's just the nature of what they do. Even a perfect working septic tank is discharging nitrate.

The problem in the prohibition zone is there is a large number of people living there in a small area. And that's what's causing the problem. Septic tanks are perfectly fine when you're up in the mountains, but in a small area
each person is adding to that problem, whether your septic tank is working or not.

So, I just want to clear this up. And that's why I think the order is no discharges because you can't discharge from a septic tank and not put nitrates into the groundwater.

So, I'm going to have to go with just the plain facts of, yes, he's violating the prohibition, the order. And so I'm going to have to recommend the cease and desist order.

CHAIRPERSON YOUNG: Mr. Hayashi.

BOARD MEMBER HAYASHI: I will concur. I agree that if you discharge through the septic tank it's a discharge. And I would have to move to make the same recommendation.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER SHALLCROSS: I'll move that we recommend issuance of the cease and desist order in the case of the Wilkersons.

CHAIRPERSON YOUNG: Okay, to the full Board?

BOARD MEMBER SHALLCROSS: To the full Board.

CHAIRPERSON YOUNG: The five-member Board.
BOARD MEMBER SHALLCROSS: However many, yes.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER HAYASHI: I'll second.

CHAIRPERSON YOUNG: Okay. All those in favor?

(Ayes.)

CHAIRPERSON YOUNG: Any opposed? So that motion will carry.

All right, let's take a ten-minute break and then we'll go with Mr. Moylan and Mrs. De Witt-Moylan.

(Brief recess.)

CHAIRPERSON YOUNG: Okay, let's resume our meeting. Okay, Mrs. De Witt-Moylan, were you here when we had the witnesses take the oath?

MS. De WITT-MOYLAN: No, I haven't taken the oath yet.

CHAIRPERSON YOUNG: Okay. Would you please raise your right hand and repeat after me.

Whereupon,

BEVERLEY De WITT-MOYLAN was called as a witness herein, and after first having been duly sworn, was examined and testified as follows:

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
CHAIRPERSON YOUNG: Okay, thank you.

All right.

MS. De WITT-MOYLAN: Mr. Young, I

just --

THE REPORTER: Excuse me, can you please

state your name and spell your name --

MS. De WITT-MOYLAN: Yes.

THE REPORTER: -- for the record, please.

MS. De WITT-MOYLAN: Yes, my name is

Beverley, B-e-v-e-r-l-e-y, De Witt, D-e space

W-i-t-t, hyphen Moylan, M-o-y-l-a-n. And it's Ms.

De Witt-Moylan; my husband's last name is not De

Witt-Moylan. Thank you.

I want to mention, Mr. Young, --

CHAIRPERSON YOUNG: Yes.

MS. De WITT-MOYLAN: -- that on January

8th I sent a note to Mr. Thomas at 8:30 p.m., an

email saying, I have procedural objections which I

need to enter into the record. In the agenda for

the January 22nd hearing I did not find a time set

aside for this. Will time be set aside for

procedural objections --

CHAIRPERSON YOUNG: Right now.

MS. De WITT-MOYLAN: -- on January 21st.

Okay.
CHAIRPERSON YOUNG: Go ahead.

MS. De WITT-MOYLAN: Because I got the message back saying that I would have that opportunity. And my husband has objections, also. Thank you.

CHAIRPERSON YOUNG: And just so we are clear with how we are going to handle this individual matter, you'll have 15 minutes --

MS. De WITT-MOYLAN: Yes.

CHAIRPERSON YOUNG: -- to put on your case, you know, jointly, one of you, put your witnesses on, it really doesn't matter. Everyone is being treated the same as --

MS. De WITT-MOYLAN: Yes.

COMMISSIONER BYRON: -- respect --

MS. De WITT-MOYLAN: Yes, we understand.

CHAIRPERSON YOUNG: Okay.

MR. MOYLAN: I'd like to say something. Now, these are not on the -- the procedural objections are separate from everything else, right?

CHAIRPERSON YOUNG: This is not going against your time --

MR. MOYLAN: Okay, thank you.

CHAIRPERSON YOUNG: -- for the
presentation of evidence. These are procedural objections that you wish to put on the record.

MS. De WITT-MOYLAN: I object that a subhearing abridges our right to equal protection.
I object that we are being treated differently from all other proposed CDO recipients whose cases were heard and voted on by a quorum on December 15, 2006.

I object that when we are referred to as defendants, then the property is not the defendant, and each of us is --

BOARD MEMBER SHALLCROSS: Should we be ruling on these? If she's going to read a list of objections, --

MS. De WITT-MOYLAN: I have objections and I was told I could read them.

BOARD MEMBER SHALLCROSS: Just a second. I think it might be better if you ruled on each objection. Because if she reads 25 or 30 objections, then she's going to have to read them over again for you to actually rule. Or are you not going to rule?

CHAIRPERSON YOUNG: Do you have them in writing? Have you submitted them? I know that --

MR. MOYLAN: But we want to read them.
CHAIRPERSON YOUNG: -- in your previous submissions you have lists of objections.

MS. De WITT-MOYLAN: Yes, these are --

MR. MOYLAN: These are different.

MS. De WITT-MOYLAN: Excuse me, these are different.

CHAIRPERSON YOUNG: Okay, do you have a copy?

MS. De WITT-MOYLAN: I do.

BOARD MEMBER SHALLCROSS: I think we need to then, she reads an objection; we ask Mr. Sato; and you rule on it. Or are you going to rule on them as a whole?

CHAIRPERSON YOUNG: Hang on a second. How many do you have, Ms. De Witt-Moylan?

MS. De WITT-MOYLAN: Probably about 20.

CHAIRPERSON YOUNG: About 20, okay.

MS. De WITT-MOYLAN: They won’t take very long --

MR. MOYLAN: And I have about 20.

CHAIRPERSON YOUNG: Are they the same?

MS. De WITT-MOYLAN: No.

MR. MOYLAN: No.

CHAIRPERSON YOUNG: Okay. Do you have a copy of them?
MR. MOYLAN: Yeah, you can have it after
I'm done reading it.

CHAIRPERSON YOUNG: Okay. Ms. De Witt-Moylan, do you have a copy of yours?

MS. De WITT-MOYLAN: I do, it's right here.

CHAIRPERSON YOUNG: Okay. Do you have a copy to give to Mr. Sato?

MS. De WITT-MOYLAN: Yes.

MR. MOYLAN: Not until we're done reading them.

CHAIRPERSON YOUNG: Okay. Well, why don't we go through them one by one.

MS. De WITT-MOYLAN: Okay, thank you.

CHAIRPERSON YOUNG: Go ahead, start over with the first one.

MS. De WITT-MOYLAN: Thank you. I object that a subhearing abridges our right to equal protection.

I object that we are being treated --

CHAIRPERSON YOUNG: Okay --

MR. MOYLAN: One at a time.

CHAIRPERSON YOUNG: -- you know what, I think some of these, Gary, really they're more like statements.
BOARD MEMBER SHALLCROSS: They're not objections --

CHAIRPERSON YOUNG: I think they're --

BOARD MEMBER SHALLCROSS: They're not objections you're going to rule on?

CHAIRPERSON YOUNG: Yeah, there's --

BOARD MEMBER SHALLCROSS: Okay, then fine.

CHAIRPERSON YOUNG: Yeah. There's so much in the law clearly allows us to have subpanels hear testimony and make recommendations, so go ahead, let's --

MS. De WITT-MOYLAN: I object that we are being treated differently from all other proposed CDO recipients whose cases were heard and voted on by a quorum on December 15, 2006.

CHAIRPERSON YOUNG: Okay, do you understand that we are not voting on issuing a cease and desist order today?

MS. De WITT-MOYLAN: Yes, I realize that; and that's why I feel that we're being treated differently. Because you're only making a recommendation to two other people who will then just take your recommendation or not. But how are you going to convey the content of the hearing to
those people so that they can make a valid
judgment, themselves?

CHAIRPERSON YOUNG: Okay, go ahead.

MS. De WITT-MOYLAN: Thank you. I
object that when we are referred to as defendants
then the property is not the defendant and each of
us is entitled to 15 minutes of testimony.

I object that any part of the record
which I might use for appeal has been severely
limited by the attack on my due process right to
have sufficient time to be heard.

I object that SWRCB lawyer, Ms. Helen
Arens' assertion on page 2 of her objection
request to quash and opposition to ex parte
application of petitioners for issuance of
alternative writ of mandate of December 8, 2006,
in reference to my request for a continuance
constitutes a deliberate distortion and a warped
description of the facts.

I object to Chairman Young's repeating
to the Board Ms. Arens' false portrayal of my
request for a continuance, having already received
the 20-page document I submitted at his request to
provide substantial justification for a
continuance.
I object to Mr. Young's deliberately disrespectful reference to my name near the close of the December 15, 2006 hearing. Particularly given that I was not present.

I object that after ignoring me for months by omitting my name on any and all correspondence only in very recent months has my name been included in RWQCB correspondence. And when it is included, staff consistently renders it incorrectly.

I object that cases have not been heard in the random order of the CDO selection, which the Board said indicated their efforts toward fair treatment of all defendants.

I object that the use of alphabetical order, as the order of presentation, instead of the random order of the cease and desist order numbers discriminates against individuals who share the same cease and desist order number, but do not share the same last name. And constitutes yet another example of de facto gender discrimination by this Board.

I object that simply by our position in the order of presentation we are prevented from incorporating by reference all testimony presented
by all defendants.

I object to Chairman Young's statement on December 15, 2006, following the testimony of defendant number 1034 and prior to the decision regarding the issuance of her cease and desist order that defendants had not taken responsibility for their circumstances.

I object that the Chairman in the above context indicated that the way we vote had something to do with our circumstances.

I object that after an entire year no other recipients of proposed cease and desist orders have been targeted, violating our right to equal protection under the law.

I object that the Water Board has attenuated the CDO hearings well beyond what a reasonable person would consider an acceptable disruption of the lives of private citizens who are not accused of any criminal activity.

I object that the RWQCB continues to fail in its duty to extend due process to all citizens of the prohibition zone by failing to provide notice to them that they reside illegally in the prohibition zone.

I object to the secrecy of this
enforcement action by singling out randomly,
without observers, 45 of almost 5000 households;
and by failing to reveal a master plan for enforcement.

I object to this Board's failure to provide a comprehensive explanation of the phrase, reasonable progress, in reference to the Los Osos wastewater treatment facility beyond its requirement of passage of a 218 vote by June 2008.

I object, as a taxpayer, to the waste of government funds in salaries, expense accounts, and infrastructure to conduct a protracted government proceeding that has already gone on for a year with no master plan, no framework, no exit strategy and no end in sight, against a statistically insignificant number of citizens chosen as subjects in a reprehensible experiment, all at taxpayer expense.

I object that my participation in these hearings directly affects my future retirement income. I object that Roger Briggs is not present at this hearing to allow us to face our accuser.

I object that this agency has engaged in public waste by failing to utilize mediation. I object that the settlement agreement was
negotiated in secret among two proposed cease and
desist order recipients and Mr. Sato; and is,
therefore, essentially a limited agreement meeting
the needs of those three individuals.

I object to the prosecutor's statement
that cooperative dischargers are those, and only
those, who signed the prosecution's settlement
agreement.

I object that the cease and desist order
proceeding has been, from inception to culmination
here today, a sordid example of government
ineptitude and abuse of power.

Finally, I object to the completely
arbitrary, capricious and abusive disregard for
our civil rights as demonstrated in all of the
above actions of the RWQCB.

Thank you.

CHAIRPERSON YOUNG: Okay. Mr. Moylan.

MR. SATO: Before Mr. Moylan starts, Mr.
Chairman, --

CHAIRPERSON YOUNG: Yes.

MR. SATO: -- if I could make a
suggestion. You know, I thought that what you
were going to entertain here right now were going
to be procedural objections raised by Mr. Moylan
and Ms. De Witt-Moylan. But what I hear from them is really argument, opening statements, closing statements, a lot of things that I think would otherwise go to their regular testimony.

So, I would ask the Board to perhaps limit, if the Moylans perhaps would give us a list of what they were going to raise beforehand, so that we know that these are, in fact, legitimate procedural issues as opposed to substantive arguments that they want to present to the Board.

MR. MOYLAN: I object.

(Laughter.)

MR. MOYLAN: Vague and discriminatory.

CHAIRPERSON YOUNG: I think we'll just let him --

MR. MOYLAN: We've been on this for a year --

CHAIRPERSON YOUNG: Excuse me, Mr. Moylan. Hold on.

MR. MOYLAN: We've been on for a year.

CHAIRPERSON YOUNG: Excuse me. I think it's just easier and more efficient to let him, you know, take his time and go ahead and tell us what he wants to tell us.

Some of these are not -- they're just
statements of his opinion. These are not truly
procedural objections that we're going to do
anything about. So, go ahead, Mr. Moylan.

MR. MOYLAN: Thank you. I object to the
CDO process of notifying just --

THE REPORTER: Excuse me, could you
state your name for the record, please.

MR. MOYLAN: My name is William R. Moylan; spelled M-o-y-l-a-n.

I object to the process of notifying
just 45 property owners at random for a town of
14,000 people who are, for the vast majority,
still ignorant of what a cease and desist order
is.

I object to the CDO process in
particular. For each of the 45 families that have
been dragged through this process over a 12-month
period.

I object that the Water Board has known
for months that this prolonged hearing process has
demonstrably hurt these very few families, while
leaving the rest of the town free to lead their
lives without impediments; a clear example of
unequal protection under the law.

I object to the Water Board knowingly
plodding forth with the CDO process while possessing the knowledge that this same process is harming many people, physically and emotionally.

I object to the cavalier nonchalant attitude of the Water Board during these past proceedings while defendants have wept openly, while defendants have had to go home due to the physical side effects of stress; and while defendants nervously presented their cases in a sincere and truthful way.

I object to the lack of due process.

That's a good one. I object to the lack of due process such as fixing of this proceeding by using only two physical properties of address and possession of a septic tank to argue their case, while leaving out the crucial element of evidence of actual pollution of the state's waters by any individual home.

I object that after requesting a continuance in a timely, professional and courteous manner on four different occasions, and after quickly responding with a detailed 20-page report of why we could not make the hearing on December 14th and 15th, 2006, we were still denied a continuance with no explanation.
I object, and when asked by me directly in person on December 11, 2006, for a definition of the term substantial justification in regard to a continuance the Assistant Executive Officer could only state, I don't know. I object that the Assistant Executive Officer, to whom we were told to bring our questions, does not know what would constitute, in the RWQCB's own words, substantial justification for a continuance.

I object that the Board has not, to date, provided any guidelines for defendants to meet the criteria for substantial justification for a continuance of their hearings.

I object to the lack of due process such as repeated statements in notices and hearings that the prohibition zone is not to be challenged, even though the boundaries of the prohibition zone were drawn arbitrarily and unscientifically, leaving out the parts of town in which the most influential and wealthy people live.

I object to the lack of due process such as repeated delays in Water Board notices and postings that as often as not missed the deadlines for those same notices and postings that the Water Board, itself, established.
I object to the lack of properly served notices in the mail -- and I can give you a copy of all of those notices. I will do that after I finish -- such as inaccurate postage metering and gender discrimination by not having my wife's name on most of the postal notices.

I object that the Chair of the Board has changed the rules repeatedly over this year-long debacle.

I object that not one CDO recipient was spared from receiving a CDO or having to sign a settlement agreement, a document that is really neither a settlement nor an agreement, where each party, and by that I mean everybody involved, agrees and benefits from a settlement.

I object that the overwhelming number of objections that the prosecution staff has stated have been sustained; while the overwhelming number of objections of the defendants have simply been noted.

I object to the duress of this entire proceeding and to the extreme duress of this year-long procedure. I object to the lack of due process by the severe time restrictions placed upon my wife and me.
And I just thought of one more objection. And I object that you cannot issue a settlement agreement to somebody who's suffering duress, but you can issue a CDO to somebody who's suffering duress.

And I have one request for the Board. We are two people, my wife and I, who have labored on our defense over the course of a year. Since the Chair, himself, said due process involves notification and the right to be heard, we request a doubling of our time in all phases of this hearing so all of our evidence and testimony can actually be heard. This comes to a total of 70 minutes, which is what we want and feel that we need.

CHAIRPERSON YOUNG: Denied.

MR. MOYLAN: That's what I figured.

This is a request, Mr. Chair, and we may not need all of that time.

CHAIRPERSON YOUNG: You'll have 15 minutes just like every other proposed CDO recipient.

MR. MOYLAN: Has any other asked for extra time?

CHAIRPERSON YOUNG: I don't recall.
MR. MOYLAN: Well, we are.

CHAIRPERSON YOUNG: Denied.

MR. MOYLAN: Thank you.

CHAIRPERSON YOUNG: Okay. Mr. Sato, is the Prosecution Team --

MR. SATO: Mr. Thompson will begin.

CHAIRPERSON YOUNG: Okay. We'll start your 15-minute clock.

MR. THOMPSON: Bill Moylan and Beverley De Witt-Moylan live here at 1516 17th Street, within the prohibition zone. They, in fact, submitted a septic tank pumping invoice dated June 3, 2006, demonstrating they have a septic system.

The invoice states that the septic tank is equipped with an effluent pump to help force liquids to the leach area.

Based on this evidence we believe that the Moylans own and operate a septic system, and therefore violate the basin plan prohibition. Therefore, are subject to the cease and desist order. And we recommend adoption of the cease and desist order number 1041 with the same changes we discussed for the previous parties.

That's all for now.

CHAIRPERSON YOUNG: Okay. You have ten
minutes for cross-examination of --

MR. MOYLAN: Okay, I'd like to --

CHAIRPERSON YOUNG: -- of the Prosecution Team.

MR. MOYLAN: -- object to the statement that we have a pump. We do have a pump; it doesn't force anything; it just sends it to our backyard which is slightly uphill --

CHAIRPERSON YOUNG: Okay, this is the time for cross-examination, which means you can ask questions of the Prosecution Team.

MR. MOYLAN: Mr. Thompson, do you have any site-specific evidence for my property?

MR. THOMPSON: No.

MR. MOYLAN: Mr. Thompson, isn't it true that you told me last April on a phone call that nitrate figures from test wells in Los Osos were used for the creation of the prohibition zone and the eventual issuance of CDOs?

MR. THOMPSON: Those wells were used to develop the prohibition zone, that's correct.

MR. MOYLAN: You said you didn't have any site-specific evidence for my property; that all the evidence that the Board had was from test wells?
MR. THOMPSON: Well, I think I've explained --

MR. MOYLAN: That's okay, I'm going to go to the next question. Mr. Thompson, are you aware of the Glenn Stillman affidavit in August of 2001 that states that the test wells were illegal wells? Are you aware of that?

MR. THOMPSON: Yeah, I'm aware of that.

MR. MOYLAN: Okay. Mr. Packard, with horses passing gallons of urine every day in your test well impact the nitrate readings of that test well, if the well was not sealed properly?

MR. PACKARD: Potentially.

MR. MOYLAN: Mr. Packard, are you aware that the well nearest my home, it's on 18th and Pismo Streets, sits on property that was a horse boarding farm until -- the late 1970s until 2005?

MR. PACKARD: No.

MR. MOYLAN: Well, it was. Mr. Thompson, does the Water Board have any evidence that my effluent is reaching the waters of the state? That is a yes or no question.

MR. SATO: Objection, that's vague and --

MR. MOYLAN: It's not vague, no.
MR. SATO: -- and ambiguous.

MR. MOYLAN: Do you have any evidence that the waters, or that my effluent is reaching the waters of the state?

MR. THOMPSON: Your septic system is designed to discharge wastewater --

MR. MOYLAN: Do you have --

MR. THOMPSON: -- into the soil and --

MR. MOYLAN: Please --

MR. THOMPSON: -- and the groundwater.

MR. MOYLAN: Mr. Chair, I believe I'm getting a hostile witness.

(Laughter.)

CHAIRPERSON YOUNG: He's attempting to answer your question; you can follow up --

MR. MOYLAN: It's pretty simple; it's a yes or no. Do you have any evidence that the effluent from my septic system is reaching the waters of the state?

MR. THOMPSON: In the sense that --

MR. MOYLAN: Stop the clock.

MR. THOMPSON: The hydrogeologist -- well, there's a lot of evidence, Bill, that I --

MR. MOYLAN: Well, do you have any evidence --
(Parties speaking simultaneously.)

MR. THOMPSON: -- if you would allow me to answer it. But it's indirect evidence, okay, --

MR. MOYLAN: Okay, that's good enough. You don't have to give me any more answers. At least not for that one.

Mr. Packard, did the Water Board attempt to notify all of the homes in the prohibition zone about the so-called violation of using their septic systems?

MR. PACKARD: Yes.

MR. MOYLAN: When did you do that?

MR. PACKARD: In May of 2002.

MR. MOYLAN: You notified all the homes in the prohibition zone that they were in violation?

MR. PACKARD: We sent mailings to all the property owners, that's correct.

(Audience participation.)

MR. MOYLAN: I -- 4500 homes?

MR. PACKARD: Yes.

(Audience participation.)

CHAIRPERSON YOUNG: Folks, please, keep it down. We want to hear what they have to say;
and I don't want comments from the audience.

MR. MOYLAN: Mr. Packard, was any attempt made to send me an informal notice of any so-called violation?

MR. PACKARD: None other than that 2002 mailing.

MR. MOYLAN: I don't remember any 2002 mailing, myself. But, anyway, Mr. Packard, you and Matt Thompson me with the Mortaras and me on August 29, 2006, didn't you?

MR. PACKARD: I'll take your word on the date, but, yeah, we did meet.

MR. MOYLAN: Okay. Is it true, Mr. Packard, that at that meeting I asked you to please these CDO hearings?

MR. PACKARD: I don't recall the exact wording, but perhaps you did.

MR. MOYLAN: Oh, I recall the exact wording, and I will show you it, because I wrote it down right after the meeting. I did ask you to stop the CDO hearings.

Mr. Packard, do you remember what you told me in answer to my request to please stop the CDO hearings?

MR. PACKARD: Not word-for-word or
exactly, no.

MR. MOYLAN: Isn't it true, Mr. Packard, that you told me, and I quote, "We are going to proceed with this prosecution"?

MR. PACKARD: I don't recall the exact words.

MR. MOYLAN: Those were your exact words. There's a signed affidavit by the Mortaras and me, and it's in our evidence.

Okay, you did say --

MR. SATO: Let me just interject an objection here. That, in fact, is not what is in your evidence, Mr. Moylan. You have a different statement attributed to Mr. Packard.

MR. MOYLAN: What's that statement?

MR. SATO: It's in your evidence package.

MR. MOYLAN: You didn't state in my evidence pack -- anyway, this is getting beyond it. You didn't state that, all you said was you don't believe there was any ex parte communication. And I didn't accuse you of any ex parte communication.

But, anyway, let's go on here. Isn't it true that I said you don't have to do this, do
you? As far as issuing proposed CDOs.

MR. PACKARD: Sounds about right.

MR. MOYLAN: Mr. Packard, isn't it true

then I then said -- wait a minute. Mr. Packard,
derid you then reply we have been instructed to go
forward with this prosecution?

MR. PACKARD: I don't know if I said

that.

MR. MOYLAN: You did. Isn't it true

that I then said, wait a minute. Mr. Packard,
isn't it true that I then said to you, who has
told you to continue with these proposed CDOs?

MR. PACKARD: Something like that.

MR. MOYLAN: Yes. Isn't it true, Mr.

Packard, that you then told me, and I quote, "the
Chair of the Board"?

MR. PACKARD: Okay.

MR. MOYLAN: Okay. Mr. Packard, after

receiving instructions from Mr. Young did you feel
compelled to continue with proposed CDOs?

MR. SATO: Objection, misstates his

prior testimony.

MR. MOYLAN: Let's see, I just said that

he had been instructed by the Chair. So I'm

asking, after the Chair instructed you, did you
feel compelled to proceed with these CDOs?

MR. PACKARD: Actually you said continue
in the directions that are -- the instructions
from the Chairman occurred long before the CDOs
were issued, or proposed.

MR. MOYLAN: Well, I have it all written
down and the Mortara's have signed the affidavit
saying that you told me and them that you were
instructed by the Chair to proceed with these
CDOs.

MR. PACKARD: Right. And what I was
referring to is the discussion the Board had in
December '05, I believe, at the hearing for --

AUDIENCE SPEAKER: Microphone.

MR. MOYLAN: Okay, that's okay.

MR. PACKARD: But then --

MR. MOYLAN: -- You don't have to go
into any depth, in any long explanation.

Mr. Packard, --

MR. SATO: Objection. You can't ask a
question and then not allow a witness to complete
the answer.

MR. MOYLAN: He's giving testimony; I
just want an answer --

MR. SATO: Well, that's what he's
supposed to be doing. You're asking him a
question.

MR. MOYLAN: Okay.

CHAIRPERSON YOUNG: I would like him to
finish his answer.

MR. MOYLAN: Okay.

MR. PACKARD: I was referring to a
discussion that the Board had at the penalty
hearing when it said that they expected staff to
bring some sort of enforcement action. That's all
I was referring to.

MR. MOYLAN: Mr. Packard, isn't it true
that the reason we are here today is because of a
failed sewer project at the Tri-W site in Los
Osos?

MR. PACKARD: Among other things.

MR. MOYLAN: Mr. Packard, are you
familiar with section 13416 of the California
Water Code that says a public agency must hold a
proposition election with more than 50 percent of
votes case in favor of such proposition before it
can enter into a contract with the State Board
before a construction loan will be granted?

MR. PACKARD: No.

MR. MOYLAN: That's exactly what it
says. I can get it for you. Want me to get it
for you and --

CHAIRPERSON YOUNG: Mr. Moylan, actually
if you're going to testify, then I'm going to
start deducting this from your 15 minutes. Okay?
Just ask him questions.

MR. MOYLAN: Okay. Mr. Packard, is it
true that the loan given for the failed Tri-W
sewer project was given by the State Water Board
illegally because there was no prop 218 vote for
the construction of that loan? For the
construction loan.

MR. SATO: Objection, lack of foundation
for Mr. Packard to opine about anything that the
State Board did.

MR. MOYLAN: Wasn't that loan an illegal
loan and --

CHAIRPERSON YOUNG: Sustained.
Sustained.

MR. MOYLAN: Okay. Was that loan an
illegal loan?

MR. PACKARD: I don't know.

MR. MOYLAN: Mr. Packard, knowing that
the CDO recipients have suffered physically and
mentally, will you please stop this process and
consider other more meaningful methods to clean up the groundwater?

MR. PACKARD: I plan on continuing this process today.

MR. MOYLAN: Knowing that people are physically and mentally sick because of this process? You're going to continue knowing that people are sick?

MR. PACKARD: I'm taking the course of action I think is best and appropriate at this time.

MR. MOYLAN: Mr. Thompson, on April 28, 2006, at the hearing, when we said what happens if there's no sewer project by January 1, 2010, didn't you say you'll have to vacate the premises?

MR. THOMPSON: Yeah, I guess I hadn't thought it out.

MR. MOYLAN: Thank you very much.

(Appause.)

CHAIRPERSON YOUNG: Folks, I'm going to remind you the last time, any more demonstrations and I'm just going to ask the room to vacate except for the proposed cease and desist order recipients and other designated parties.

Okay, we'll now go to your 15 minutes to
put on your own evidence.

MS. De WITT-MOYLAN: Mr. Young.

CHAIRPERSON YOUNG: Yes.

MS. De WITT-MOYLAN: I am going to be doing that part.

CHAIRPERSON YOUNG: Okay.

MS. De WITT-MOYLAN: I plan to use the entire 15 minutes, and so I would ask your indulgence to please, if you have any questions or objections, to hold them until the end so that I have all the time I need.

CHAIRPERSON YOUNG: Okay, that's fine.

MS. De WITT-MOYLAN: Thank you.

CHAIRPERSON YOUNG: However, if the Prosecution Team has an objection --

MS. De WITT-MOYLAN: Yes.

CHAIRPERSON YOUNG: -- to the testimony, then that will interrupt --

MS. De WITT-MOYLAN: Okay.

CHAIRPERSON YOUNG: -- the flow of your presentation.

MS. De WITT-MOYLAN: And will that -- you will stop the clock for that? If he objects?

CHAIRPERSON YOUNG: Usually not, no.

COMMISSIONER BYRON: Well, how can a
person have their --

CHAIRPERSON YOUNG: We'll see what happens.

MS. De WITT-MOYLAN: Thank you.

CHAIRPERSON YOUNG: If it becomes long, then I will stop the clock.

MS. De WITT-MOYLAN: Okay.

BOARD MEMBER SHALLCROSS: Can I just interject --

MS. De WITT-MOYLAN: Because I need -- I need all my 15 minutes.

CHAIRPERSON YOUNG: I understand.

BOARD MEMBER SHALLCROSS: I agree, but I think the Board always has an opportunity to ask questions at anytime. And I think if we do, then the clock will be stopped.

MS. De WITT-MOYLAN: Thank you, all right.

BOARD MEMBER SHALLCROSS: Yeah.

MS. De WITT-MOYLAN: Thank you, Mr. Shallcross.

CHAIRPERSON YOUNG: Okay, go ahead.

MS. De WITT-MOYLAN: We who reside at 1516 17th Street in Los Osos, California, are not guilty of polluting the waters of the State of
California. In fact, we have done everything within our power to protect the waters of the state, including pumping our septic tank within the last three years; paying a regular sewer assessment; and signing the settlement proposed by Sullivan and Associates which indicates that we will hook up to a wastewater treatment facility when one is available.

We have submitted documentation in evidence to that effect. And we would give you our proxy for the 218 vote, as well.

The prosecution, however, has presented no credible testimony or evidence to the contrary. I incorporate by reference every shred of futile prior evidence and testimony and all the objections presented thus far. I incorporate by reference all the heartache and all the tears shed in this room and throughout the whole year of this tragedy.

I incorporate by reference all the confusion, all the consternation, all the sleepless nights, all the fear, all the desperation, all the grief, all the excruciating indignation, all the numb disbelief, all the humiliation, all the physical, mental and
emotional distress and all the time lost, never to be retrieved, brought before this Board.

I incorporate by reference all the trembling hands, all the shaky voices, all the thumping hearts, all the tight throats, all the shallow breathing, all the constricted chests, all the high blood pressure, all the heart conditions and all the recurring medical consequences of this proceeding thus far.

I incorporate by reference all the health costs, all the health lost, never to be recovered.

I incorporate by reference the horrified paralysis, the persistent nausea, all the pain and all the anguish in the bodies of each member of the 45 families randomly selected for this senseless, relentless, ruthless progression of this Board as though by a kind of reptilian programming to a single inexorable goal.

I incorporate by reference all the profound trauma, all the deep emotional wounds, all the hopelessness and all the duress that have come before this Board in the course of these proceedings.

I incorporate by reference all the
damage wrought to families, to marriages and to
the children of the Los Osos 45 by the actions of
this Board of unelected, appointees and employees.

I incorporate by reference all the lives
changed forever. I incorporate by reference all
the logic, all the reason, all the wisdom, all the
determination, all the courage and all the trust
in the authority of our constitutional rights that
brave defendants have brought before this Board
thus far.

I incorporate by reference all the truth
spoken to power in this room up to this point. I
incorporate by reference all the simple, sensible
solutions brought before this Board and rejected
in the course of this proceeding.

I incorporate by reference the supremacy
of right over wrong. The power of integrity over
intimidation, and the force of facts over
fabrication, manipulation and prevarication.

I incorporate by reference all the
common sense, all the ingenuity, all the
compassion and all the dignity of ordinary, hard-
working people in the face of a cynical,
hypocritical regulatory body bent on using with
impunity its authority to harass, stalk and break
unsuspecting law-abiding citizens to bend their political will.

I incorporate the suggestion by prosecution staff that we need to rally the citizens. That we need to rally the citizens to save our homes. I incorporate by reference the self-serving lecture by Chairman Young on December 15th as though chastising some corporation's board of directors for failing to develop a unifying vision statement linking our voting record to our predicament.

I incorporate by reference Chairman Young's inability to explain when this Board has ever taken responsibility for its actions. I incorporate by reference this Board's impotent hand-wringing, bemoaning the conflict between hearts and heads in deciding the identical pre-determined outcomes of each case when they, themselves, had set the scope of this prosecution and the range of our defense.

If this cease and desist order is merely a tactic to wake up a town, it is a failure. We meet prohibition zone residents every week who do not know what a CDO is.

A government regulatory body that
singles out a tiny group of citizens in an
irresponsible, ineffectual, disgraceful experiment
simply to put a town on notice has exceeded the
bounds of common decency and humanity. We reject
the notion that the RWQCB is legally constrained
by the narrow, self-imposed boundaries of this
proceeding from doing the right thing.

Perhaps you believe that you are right.
But you have an obligation to do right. This
prosecution team had a duty to Los Osos. This
Board had a duty to Los Osos. The costs have been
enormous for 45 families. The future costs to Los
Osos are incalculable.

The Prosecution Team and the Chairman
defend the notion that property is not at stake in
this action brought against us. Yet not a single
approved method of compliance, short of vacating
the premises, is available to us. Our property is
at stake in this CDO enforcement action. Already
targeted by this prosecution are at least four
special educators. I am familiar with six others
who also live in the prohibition zone.

Well, alone, are ten highly qualified
individuals with specialized degrees and training,
who live in homes with septic systems fully
permitted by San Luis Obispo County. How many other educators and support personnel who work with children inside and outside Los Osos have been affected already by this CDO enforcement. And how many more await CDOs.

If the RWQCB decrees in 2011 that Los Osos has failed to make reasonable progress toward a wastewater treatment facility, and we all must cease discharging, how many will be forced to vacate the premises? Where will be go when we vacate the premises? Who will replace us? I don't know. But the RWQCB should know.

How many children, able-bodied and disabled, live in the prohibition zone in homes with septic systems fully permitted by San Luis Obispo County? I do not know, but the RWQCB must know how many children will be forced to vacate the premises in 2011 if it decides that we are not making reasonable progress toward installation of a wastewater treatment facility. Where will they go? Who will shelter and protect them? Who will take their places?

I don't know how many health care practitioners, health care support personnel and caregivers live in the prohibition zone, in homes.
with septic systems fully permitted by San Luis Obispo County, but the RWQCB should know. What will happen to health care in this County in 2011 if the RWQCB decides that Los Osos has failed to make reasonable progress toward a wastewater treatment facility? And these health care workers who work in all parts of the County must vacate the premises, where will they go? Who will replace them?

How many fragile, elderly and disabled people live in the prohibition zone? When they must vacate the premises, where will they go? How many thousands of workers, business owners, professionals, retirees, working students and people from all walks of life who contribute to the infrastructure of this entire County, who live in homes in the prohibition zone with septic tanks fully permitted by San Luis Obispo County must walk away in 2011 if the RWQCB determines that Los Osos has failed to make reasonable progress toward a wastewater treatment facility? I don't know how many, but the RWQCB should know. Where will they go?

Who will replace all these citizens who helped weave the fabric of community in San Luis
Obispo County? If you cannot answer these
questions about the outcome of your 2011 deadline
you have no authority to destroy an entire
community.

Senator Susan Collins of Maine said the
first obligation of government is to protect our
people. When raw sewage flowed through the
streets of New Orleans, the result of gross
government ineptitude, neglect, abuse and failure
to act following Hurricane Katrina, Senator
Collins did not place the responsibility on the
citizens for that health and safety disaster. She
held the government accountable.

Citizens across this country
demonstrated on November 7, 2006, that they no
longer support public officials who with cynical
impunity use blame, coverups, obfuscation,
baseless detention and prosecution of innocent
citizens and protestations of moral authority to
mask a broad range of incompetence, malfeasance,
and failures.

We have been on call to the Water Board
for eight days short of a year. Throughout this
time whenever a conflict with the Board's
tentatively scheduled business has arisen, we have
had to modify our plans. We have been forced to justify our personal business and professional responsibilities like convicted felons on parole.

This interference with the lives of law-abiding private citizens over this span of time is abusive and unconscionable. Sitting here today are the very individuals we trusted to maintain the waters of the state for our protection. They accuse us of not fulfilling our obligation to keep the waters of the state clean.

These same individuals argue today that simply by living in the prohibition zone we, along with thousands of others, have recklessly, knowingly and wilfully polluted the basin for years.

We expect you, as public servants, to maintain a clean water supply to insure that we may live confidently, safely and comfortably in our community. We expect you to have the expertise, experience and judgment to work with local governments, to make wise and prudent use of public funds. And to do what is necessary to protect those you serve. We expect you to do it well enough that we don't have to think about it.

That is what infrastructure means. That
we entrust public servants with managing the network that supports our community so that we may go about the business of our lives.

Board Members have demonstrated repeatedly that they have the power to vote only yes to support the Prosecution Team. You do, however, have the power to stop being helpless pawns of this Prosecution Team. You have the power to require that this Prosecution Team make wise and prudent use of public funds. You have the power to throw this case out.

You have the power to require the Prosecution Team to follow this agency’s own regulations for levels of enforcement and environmental justice. You have the power to broaden the parameters of this case to include a re-examination of the basin plan. You have the power to make certain that the actions you have brought and plan to bring today will, to the best of your ability, promote the highest level of benefit for the waters of the state, while protecting the welfare of all the people of the state.

Does any one of you dare to admit that when your heart is in conflict with your head
something is fundamentally wrong? Examine the
parameters you, yourselves, have set for this
case. Ask yourselves if the core of this case is
to protect the people. As yourselves if Roger
Briggs, whose absence is the most imposing
presence in this room today, brought you this case
because he wanted to protect the people, or
because he wanted to punish the people.

Ask yourselves if this case is truly
about improving lives by improving water quality;
or if it is simply about winning, no matter the
human expense.

You have the power to affect profoundly
the lives of thousands of families in the
prohibition zone of Los Osos. With that power
comes grave responsibility. As public servants
you have the power, the duty to abandon this
adversarial posture and to cultivate a cooperative
relationship with the citizens of Los Osos,
dedicated to resolution instead of retribution.

You have the power to abandon your
allegiance to making a point at all costs. You
have the power to make a difference. You have the
obligation to protect the people. The first
obligation of government is to protect the people.
I reserve further comments for my
rebuttal and closing arguments.

CHAIRPERSON YOUNG: Okay. You have 46
seconds left. Mr. Sato, Mr. Packard, cross-
examination of Ms. De Witt-Moylan or Mr. Moylan?

No? Okay.

Do you have any rebuttal testimony?

MR. PACKARD: Mr. Thompson has a few.

CHAIRPERSON YOUNG: Okay.

MR. THOMPSON: First, I want to be

clear --

CHAIRPERSON YOUNG: Hold on one second;
we have ten minutes for that? Five minutes. Go
ahead.

MR. THOMPSON: Thank you. The proposed
cease and desist order is clear that as long as
the process contemplated by Assembly 2701 is
moving forward there is no specific due date to
cease discharging. That due date is only
triggered if the County cannot get its benefit
assessment approved by July 1, 2008, or if there's
a material cessation of work on the project.

Even if construction of the project
extends beyond January 1, 2011, as long as the
County is making progress on the project, there is
no due date to end discharge.

But, if that due date is triggered, then
that does not mean to vacate the premises. There
are other ways to cease a septic system discharge.

(Audience participation.)

MR. THOMPSON: That's all.

MR. PACKARD: I'd just like to further
clarify that the Board, itself, decides any
penalties for any violations of the order, not the
Prosecution Team.

CHAIRPERSON YOUNG: Any other --

MR. PACKARD: That's all.

CHAIRPERSON YOUNG: -- rebuttal
testimony? Okay. Cross-examination of the
rebuttal testimony only.

MR. MOYLAN: Rebuttal testimony?

CHAIRPERSON YOUNG: Yeah, of the
rebuttal testimony.

MR. MOYLAN: I do have a rebuttal
argument.

CHAIRPERSON YOUNG: No. Argument comes
at the end. This is the time for your opportunity
to cross-examine based on the rebuttal testimony.

MS. De WITT-MOYLAN: I have a question
for Mr. Thompson.
CHAIRPERSON YOUNG: It's cross-

examination. You can ask questions of the

Prosecution Team based on the evidence they just

put into the record.

(Pause.)

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER SHALLCROSS: No, it's just

rebuttal testimony.

CHAIRPERSON YOUNG: It's just rebuttal

testimony. So, go ahead, you can --

MS. De WITT-MOYLAN: It is not cross-

examination?

CHAIRPERSON YOUNG: That's right.

MS. De WITT-MOYLAN: Okay. Well, one of

the things that I would like to say in response to

Mr. Thompson's comments is --

AUDIENCE SPEAKER: Can't hear. Louder.

MS. De WITT-MOYLAN: Sorry. One of the

things I would like to say in response to Mr.

Thompson's comments is that so far we don't have a

definition of reasonable progress. So, how can we

put confidence in your good will?

You know, that's something that, you

know, we're left with. Well, you're telling us

you'll be nice to us and don't worry because
things will go along okay unless they don't. And if they don't, well, there are other remedies to vacating the premises. Except you have not been able to produce one.

CHAIRPERSON YOUNG: Further rebuttal testimony?

MR. MOYLAN: Can you hold the time for a minute until I get organized? It'll take me about ten seconds.

(Pause.)

MR. MOYLAN: Okay. I'd like to address the specious logic of the Water Board. For those of you who don't know what specious means, it means that it sounds good, but it's actually bad.

The burden of proof lies with the Water Board, as stated in the California Evidence Code section 520, which states --

CHAIRPERSON YOUNG: Mr. Moylan, is this rebuttal testimony or is it argument? You're going to have a chance to give us your argument on the whole case --

BOARD MEMBER SHALLCROSS: He already gave it.

CHAIRPERSON YOUNG: Ms. De Witt-Moylan, that was the extent of your --
MS. De WITT-MOYLAN: That was my --

CHAIRPERSON YOUNG: -- rebuttal testimony?

MR. MOYLAN: That was her testimony.

CHAIRPERSON YOUNG: Okay. So we're beginning your closing argument?

MR. MOYLAN: No. I'm reserving my rebuttal time for --

CHAIRPERSON YOUNG: You have --

MR. MOYLAN: -- a logical argument.

CHAIRPERSON YOUNG: Well, the argument comes later. You have about three and a half minutes more to give rebuttal testimony. It's evidence, and it's based --

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

CHAIRPERSON YOUNG: It's -- rebuttal is to rebut what the Prosecution Team --

MR. MOYLAN: Okay, it has to do with establishing a zone.

CHAIRPERSON YOUNG: That's not proper right now.

BOARD MEMBER SHALLCROSS: Explain what rebuttal is.

CHAIRPERSON YOUNG: Rebuttal is to rebut what they just said, the two of them, Mr. Thompson
and Mr. Packard.

MR. MOYLAN: They didn't say much. I don't have an --

CHAIRPERSON YOUNG: Then it shouldn't take you long. If you don't have any rebuttal testimony, that's fine. We can then move on. You'll have an opportunity to argue whatever you want to argue.

MR. MOYLAN: Well, I reserve this time; I want that time added onto our closing statements.

CHAIRPERSON YOUNG: It's not going to be. You --

MR. MOYLAN: Why not?

CHAIRPERSON YOUNG: Because it's not going to be, Mr. Moylan. You don't have to be argumentative with me about it. You can use the time for rebuttal testimony. You've told me you want to get into closing arguments, so why don't we move ahead to that. How much time do we have?

MS. De WITT-MOYLAN: Can we add the three minutes onto the closing?

CHAIRPERSON YOUNG: You don't have any time limit on closing, so go ahead --

MR. MOYLAN: Okay.
MS. De WITT-MOYLAN: Good, all right.

CHAIRPERSON YOUNG: -- and let's --

MR. MOYLAN: Okay.

CHAIRPERSON YOUNG: -- let's start that right now.

MS. De WITT-MOYLAN: All right. Well, then I'm going to begin, then my husband will finish.

CHAIRPERSON YOUNG: Okay, go ahead.

MS. De WITT-MOYLAN: My closing argument has specifically to do with the settlement agreement statement, and why we did not sign it.

You've portrayed -- I'm speaking to Mr. Sato right now -- you've portrayed those who sign your settlement agreement as compliant. Which, by default, renders those of us who choose not to sign as noncompliant.

We believe it is possible to choose not to sign and to be compliant. We have already demonstrated our compliance. This is why we choose not to sign, in the reasons that follow.

The settlement agreement was developed by one or two citizens with Mr. Sato, essentially to assist those particular citizens to avoid the
unintended consequences of a CDO.

That this settlement agreement does not carry with it those three letters, CDO, is its only advantage. By signing this statement, citizens give up their right to appeal based on a bad promise of future consideration and special treatment when the drop-dead date comes, and they must cease all discharges.

This settlement agreement is unattractive because it is a CAO without the letters, and retains the January 1, 2011 drop-dead date.

Negotiations for this agreement were begun in secret without input from other citizens. When an agreement was worked out, a few citizens were informed that they could attend an informational meeting.

In the intervening months since Mr. Shipe proposed negotiating a settlement for himself, which was later offered to others, citizens have begun to approach the one-year mark in the CDO process. Many are old, tired, sick, occupied with family and personal responsibilities. Many need to resume the normal conduct of their lives. For that reason some of
the former CDO recipients have signed your
settlement agreement.

Please do not flatter yourself, Mr. Sato, that this settlement agreement appears so
attractive that the smart people have signed while
only the most incorrigible, recalcitrant
dischargers reject it. It is no agreement. Its
negotiation was never authorized by me nor entered
into with my consent on my behalf.

I have not spoken to one person who says
they signed because they thought your settlement
was fair and just. This is what I know.

People have signed your settlement
agreement because this process has gone on much
too long. Some defendants are elderly and need to
move into assisted living. Others need to be able
to sell their houses so that they may complete
plans for their own lives.

Settlers have many reasons for signing.

But I have heard no one say that they signed
because they thought the settlement agreement was
worthwhile.

The reasons I've heard cover this span.

Their family life is disintegrating; they have
lost touch with children who have begun having
problems in school; their marriages are threatened; they cannot focus at work or at school.

Their health is impaired and deteriorating; they are physically unable to go on; they see no hope against the unfettered power of this agency; they simply do not have the emotional stamina to continue to fight for their rights anymore, no matter how bad they think your agreement is. They simply cannot take it anymore.

Do not flatter yourself, Mr. Sato, that you have brought the Los Osos 45 to the table. What you have accomplished is the gathering of an anguished, distraught, harassed, desolate, desperate collection of people, isolated deliberately from their community by being singled out in a tiny group from the entire population of the prohibition zone ghetto.

You rejected the possibility of negotiating a better agreement that many of us had developed with counsel. You, who believe in settlement, determined that it was better to go forward with the hearings than to work out a better settlement that we could all sign, and avoid the enormous cost and waste engendered by
the hearing for which we had waited most of a year
that had now to be rushed into; a hearing which
this Board cannot even afford to pay AGP Video to
broadcast and record.

Following your failure, the worn out
assemblage with whom I am familiar have dragged
themselves to your table because they believe they
have no other choices. If this is not duress,
then I do not know the definition.

To demonstrate our good will and
cooperation we have already agreed to, signed, and
submitted as evidence the settlement agreement
developed by Shaunna Sullivan; the aborted
agreement, which you stated you did not have time
to finish because you, who believe in settlement,
had these hearings to attend.

We believe in settlement. No one is
more motivated than we are to reach a settlement,
to get you out of our lives, out of our home, out
of our heads. On January 30, 2006, the RWQCB
moved in with us. We have not had a moment alone
since. You crowd our dinner table; you sleep
between us; you meet us in the shower; you sit
with us as we spend sleepless nights staring at
just one more document.
We believe in settlement. We believe in fairness. We believe in justice. We believe in humanity. We believe in truthfulness and disclosure. This current settlement agreement is ample evidence that the Prosecution Team, which developed it, and the Board, which approved it, failed to understand any of those concepts.

This settlement agreement is a triumph of expediency over justice.

MR. MOYLAN: The burden of proof lies with the Water Board as stated in California Evidence Code section 520, which states: The party claiming that a person is guilty of crime or wrongdoing has the burden of proof on that issue."

Everyone in Los Osos and everyone in this room knows that not every septic tank in the prohibition zone contributes to the degradation of the state's water. And yet the Water Board uses specious logic to prove its point.

Here is the Water Board's specious logic: A) septic systems in the Los Osos prohibition zone pollute the state's water. B) William and Beverley live in the prohibition zone and they have a septic system. C) Therefore, William and Beverley's septic system pollutes the
state's water.

Any logician will tell you that you cannot conclude that William and Beverley's septic is polling because the premise that septic systems in Los Osos pollute is erroneous. Not all septic systems in the prohibition zone pollute. And I believe that my septic system does not pollute the state's water.

Any governing body can create an arbitrary zone. The mere creation of a zone does not make it legitimate. For argument's sake, I will create a zone where degradation is occurring. This zone is the table that the Members of the Water Board are sitting at. And I will call it the Board zone.

This zone is being degraded because there are coffee stains on the table and there are indentations on the edge of the table. Not only that, I declare that anyone sitting at this table is responsible for the degradation of the table. Since the Members of the Water Board are seated in the Board zone, they are all in violation.

Now, if you do not want to be in violation you must provide me with evidence that you are not in violation. But how can you do
that? Since you are sitting there. Therefore, you must stop sitting at that table if you do not want to be in violation.

You see, Members, you can provide me with evidence that sitting at that table is harmless, or that you are very careful with your coffee, or that you have never dented the ends of the table, or that you have no other table to sit at, or that other people sit at the table longer than you do.

It does not matter what you say, if you are sitting at the table you are guilty. It does not matter that I have no direct evidence that you, as an individual, are damaging the table. I do not have to prove anything because you are in violation of sitting there.

What does matter is that you are in the Board zone. Ergo, you are in violation. I don't have to prove anything because I have created a zone. Science does not matter; logic does not matter; reason does not matter; and proof does not matter. What a beautiful concept, but specious.

If the premise for creating a zone is erroneous then whatever conclusion follows the premise is also erroneous. The premise that the
Water Board is using is that all septic systems in the prohibition zone are polluting. And that premise is erroneous.

And now, -- do you have a closing statement? You read it? Okay.

I could talk about how our due process has been deliberately restricted so we could not mount a complete defense. I could talk about the Water Board, how the Water Board has spurned the California Evidence Code, or how the Water Board has no site-specific evidence for our home.

I could talk about the infringement of the Eighth and Fourteenth Amendments of the United States Constitution that this Board exhibits. I could mention the subtle and not-so subtle arrogance displayed by the Water Board and how unbecoming that behavior is. I could talk about the repeated gender discrimination in this proceeding.

I could talk about these matters, but I would be wasting my time, for the Water Board Staff and certain Board Members have freely exhibits their disdain for the defendants, no matter how eloquent or truthful or compelling the defendant's testimony.
I could talk about how science does not matter with the Water Board, for Dr. Wickham's expert scientific testimony was dismissed by Mr. Briggs, who said, we don't agree with Dr. Wickham's opinions.

Mr. Cleath's expert testimony on December 15th which said that pumping every septic tank in Los Osos would not lower the nitrates in the aquifer was also dismissed. The Board has decided that every homeowner in the prohibition zone will pump regardless of the need. Logic does not matter for we have seen how logic for the boundaries of the prohibition zone is nonexistent and arbitrary.

Reason also gets short shrift from the Water Board, because the reason for having the prohibition zone in the first place was based on nitrate test results from illegal wells, as stated in evidence submitted by Bruce and Antoinette Payne, and posted on November 17, 2006.

So, what does matter? What does matter is that the health of the original 45 proposed CDO recipients has failed over the past year. What does matter is that Bruce Payne was blinded in his right eye from the stress of this CDO process, as
verified by his eye doctor.

What does matter is that John Mortara
was rushed to the hospital three times in January
and February last year from the stress of this CDO
process and has since had a pacemaker implanted in
his chest.

What does matter is that Allan Martyn,
sitting right over there, has had to have his
blood pressure and diabetes constantly monitored
in the year 2006 from the stress of this process.

I hope you're looking at me because I'm
looking at you. And what does matter is that my
wife has had to have infusions every eight weeks
to tame her autoimmune disease that resurfaced from
stress of this process. An autoimmune disease
that was in remission nearly a full year before
this first Water Board notice arrived.

If I'm getting loud, that's okay. These
infusions, which cost $7600 each, are needed so
she can lead a mostly normal life. Now, pay
attention, please. What does matter is that the
Water Board has been asked to stop this process
many times by others and me over this last year,
and has ignored our pleadings.

What does matter is that members of the
Water Board Prosecution Team were informed many
times last year, many times, that people were
suffering physically, emotionally and spiritually
from the CDO process, and that the Water Board had
an obligation to help the people of Los Osos and
not hurt them. And those pleadings were ignored.

What does matter is that suggestions on
how to inform the entire Los Osos community
without hurting the community were offered by me
and others. And that these suggestions were
disregarded.

What matters now is that these CDOs are
rescinded now. That no more are issued and that a
community outreach program is initiated by the
Water Board now. What matters now is that no more
people have to suffer from high blood pressure, or
surgical procedures directly related to stress, or
that autoimmune diseases of possible future CDO
recipients are not activated by the threat of
$1000- or $5000-a-day fines.

What matters now is that this Water
Board realizes that the health and safety of
innocent citizens are not just related to clean
water, but to how well governing bodies relate to
the people they represent.
What matters now is that clean water and good relations can both be achieved if the Water Board wills it. What matters now is that the Water Board stops issuing these CDOs and exhibits the courage to work with the people of Los Osos and not against them.

What matters now is that the Water Board thinks about how their future actions could benefit the people of Los Osos; and then act in a beneficial way.

And that is all I have.

CHAIRPERSON YOUNG: Okay, thank you.

Mr. Sato, closing arguments.

AUDIENCE SPEAKER: Right on, brother.

(Multiple audience speakers.)

MR. MOYLAN: And I want to thank everybody who has come to support me; Bev and me and the other CDO recipients, some of these people have CDOs, themselves, some are just interested parties, and I want you to know that I love all of you and I appreciate your coming here.

MS. De WITT-MOYLAN: And I'd also like to say that this proceeding would not have been televised if we had not discovered that the Water Board did not have the money to televise them.
They have the money for the hearings, but not to televise the hearings.

And so Bill and I made a contribution of $250 so that we could have our hearing televised. We found a person to give us a grant to help us to have our hearing televised. We asked for donations from people in the community to help us to have our hearing televised. AGP Video is underwriting the rest of the cost to have this hearing televised.

And I would please ask anyone who is at this proceeding today, and anyone who is watching on tv or in the future who sees reruns of this, to please send a donation to AGP Video to commend them for their dedication to public service.

Thank you.

MR. MOYLAN: I have one more thing to say.

I poured my heart out to you; every word of it was true. I don't know if every word that you've spoken is true, perhaps it is. But I want you to consider, seriously consider that this could do much more harm, and that you could get exactly the results you don't want if you continue along this line.
And I also ask you not to consider passing judgment on me today; that you consult among yourselves, because I really don't want to hear your comments about our testimony.

And I think I'd like to go home now.

Thank you.

CHAIRPERSON YOUNG: Okay. Mr. Sato,
closing arguments.

MR. SATO: We have a couple of comments. First of all, let me just say that with regard to the settlement, there's lots of things to talk about in terms of how people settle, why they settle, why the Prosecution Team puts together a particular settlement proposal.

I think when I presented that agreement to you folks before, I told you that we had made a strong effort to try to consider the needs of the community. At the same time we also had to consider the needs of the Prosecution Team and ultimately the things that we thought that this Board would accept as an appropriate settlement.

I also want to say that this settlement didn't come about as a result of just the efforts of two individuals. And it seems like there's some effort to try to discredit people who tried
to work with the Prosecution Team to try to reach some kind of resolution for those folks.

I can say that the settlement agreement that we ultimately drafted and took to you for approval had included comments from a number of people, not just two individuals. It had comments also from a number of people who have actually appeared and testified before you today. So, it is a document that was a result of a broad range of different comments and inputs. And so I don't want two people to be disparaged as a result of our efforts to try to provide an alternate resolution to these cease and desist orders.

And I think Matt will have the remainder of our closing.

MS. De WITT-MOYLAN: Could I make a comment regarding that?

CHAIRPERSON YOUNG: No. You've had --

Ms. De Witt-Moylan, you've had your time. This is now the --

MS. De WITT-MOYLAN: Thank you.

CHAIRPERSON YOUNG: -- Prosecution Team's time.

MR. THOMPSON: Yeah, I'd just like to point out that the studies and monitoring data
supporting the propriety of the prohibition zone
are discussed in the Prosecution Team's written
materials. We know that it's not at issue before
you today.

There's also discussion there of why the
Los Osos CSD's monitoring wells appropriately
represent groundwater conditions.

The Moylans have not submitted any
evidence to answer the question that is before you
today, which is whether they are violating the
basin plan prohibition. They have not submitted
any evidence that they do not have a septic system
discharge.

We therefore recommend adoption of their
cease and desist order number 1041. Thank you.

CHAIRPERSON YOUNG: Okay. Any further

All right, that concludes the testimony
portion. Mr. Shallcross, Mr. Hayashi. Mr.
Hayashi.

BOARD MEMBER HAYASHI: You know, I have
a question. There were some pretty big
allegations made that we're the Board and we can
fix this problem. But I just need maybe a little
bit of help in history here.
Why was the County's plan to put the sewer treatment plant outside the town turned down and changed to go to -- to be moved into the city, into the town, and build the water treatment plant there? Just the --

MS. MARKS: Might I answer that?

CHAIRPERSON YOUNG: Well, I --

BOARD MEMBER SHALLCROSS: That's okay, yeah.

MS. MARKS: The County's wastewater facility in 1997 was not formally turned down. It was going through the coastal development permit process with the Coastal Commission, and had been a field there. And it was -- that process was strung out over several years during which time the community formed their new form of government, their representative CSD.

And at the time the push was very strong to pick an alternative wastewater facility and put it at the Tri-W site.

BOARD MEMBER HAYASHI: So basically it was the CSD, which was the vote of the people, to move it into town?

MS. MARKS: Yes.

AUDIENCE SPEAKER: That's not accurate.
(Multiple audience speakers.)

BOARD MEMBER HAYASHI: That's all I wanted to know.

(Multiple audience speakers.)

CHAIRPERSON YOUNG: Mr. Shallcross.

BOARD MEMBER SHALLCROSS: Yeah, I think --

AUDIENCE SPEAKER: Lisa, say something.

BOARD MEMBER SHALLCROSS: Pardon me?

Did you have something to say?

I think the issue before us is pretty cut and dried, unfortunately. I think if we were looking at the equities here, certainly Ms. De Witt-Moylan and Mr. Moylan have raised a lot of good issues that --

(Audience participation.)

BOARD MEMBER SHALLCROSS: -- that we could look at, if we were looking at equities. This is almost like a strict liability case. There's a prohibition zone; the legality of that prohibition zone is not before us. We're asked to decide is the person in the prohibition zone -- two questions: Do they live in the prohibition zone or do they own property there. And are they discharging.

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And unfortunately, the answer is yes.
And I think it's unfortunate that we're not looking at a lot of these other issues, the equities especially. But there you are. That's the issues before us, and that's what we have to rule on.

MR. SHIPE: You misstated the two questions.

CHAIRPERSON YOUNG: Okay.

MR. SHIPE: Those aren't the two questions.

CHAIRPERSON YOUNG: Anything else, Mr. Hayashi?

MR. SHIPE: It's two different questions.

BOARD MEMBER HAYASHI: No, I concur. I concur with that.

MR. SHIPE: Those aren't the two questions.

CHAIRPERSON YOUNG: All right.

BOARD MEMBER SHALLCROSS: Do you have a problem?

MR. SHIPE: Yes. The two questions. Could I --

CHAIRPERSON YOUNG: Do you have a
question, Mr. Shallcross, for Mr. Shipe?

BOARD MEMBER SHALLCROSS: Mr. Shipe is trying to argue or say something, I don't --

MR. SHIPE: No. No, I'm just -- the two questions that you asked are not the two questions before the Board.

BOARD MEMBER SHALLCROSS: Oh, well, elucidate for me.

MR. SHIPE: The two questions that are before the Board are, are you discharging in violation of the discharge prohibition; and is the CDO or the -- what's the word I'm looking for -- is the CDO appropriate. And I think their comments go --

BOARD MEMBER SHALLCROSS: Right, so that's --

MR. SHIPE: -- to the appropriateness.

BOARD MEMBER SHALLCROSS: That's the third issue, right. Thank you for that.

MR. SHIPE: No problem.

CHAIRPERSON YOUNG: Okay. Well, they were both very eloquent and very passionate and determined. I give both Mr. Moylan and Ms. De Witt-Moylan a lot of credit for their passion. I stopped making notes at some point because so much
of what they testified to I think they're taking completely out of context.

(Laughter.)

CHAIRPERSON YOUNG: And are putting -- attempting to put things in issue that really aren't at issue. You know, Mr. Shallcross, I don't see the need to get into the equities of everything going on.

BOARD MEMBER SHALLCROSS: I don't either.

CHAIRPERSON YOUNG: People misunderstand what the role of the Regional Water Quality Control Board is. And they continually attempt to draw us into their inability to move forward with a treatment facility. And it's nothing that we are --

(Audience participation.)

CHAIRPERSON YOUNG: Excuse me, please. -- are mandated or authorized to get involved in. They elected a Community Services District and they were completely incapable of moving forward with a treatment plant.

There are a lot of inequities going on. But this Board is incapable and unauthorized to delve into those types of issues that have been
created in this community. We deal with water
quality protection. We're not here to protect
people from themselves and their poor choices.

Anyway, if I have a motion on the
recommendation I will entertain it right now.

BOARD MEMBER SHALLCROSS: I'll move we
issue the -- I'll move that we recommend to the
full Board, issuance.

CHAIRPERSON YOUNG: Okay.

BOARD MEMBER HAYASHI: I'll second it.

CHAIRPERSON YOUNG: Okay. All those in
favor?

(Ayes.)

CHAIRPERSON YOUNG: All right.

Recommendation motion passes.

Okay, we have public forum.

MS. De WITT-MOYLAN: Excuse me, Mr.

Young. As the person who's just been adjudged
guilty, do I -- can I just make a statement?

CHAIRPERSON YOUNG: You have not been
adjudged guilty, Ms. De Witt-Moylan.

BOARD MEMBER SHALLCROSS: It hasn't been
issued.

CHAIRPERSON YOUNG: Okay? We have made
a recommendation to the full five-Member Board to
issue the cease and desist order.

MS. De WITT-MOYLAN: Okay. I wanted to say that the complaint about our testimony; in response to that, our testimony was about environmental justice and levels of enforcement.

Thank you. That's all.

CHAIRPERSON YOUNG: All right, let's go to -- do you need a break or we'll have public forum? Public forum.

We're going to go to public forum. And we'll take speaker cards. The reason for public forum is to address matters not on the agenda. Not on the agenda. Do you have cards?

(Pause.)

CHAIRPERSON YOUNG: Okay, folks, we're going to take a ten-minute break and come back and start public forum.

(Whereupon, at 5:07 p.m., the hearing was adjourned.)

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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 5th day of February, 2007.

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