



BOARD MEMBERS PRESENT

Jeffrey S. Young, Chairperson

Russell M. Jeffries, Vice Chairperson

Gary C. Shallcross

Daniel M. Press

John H. Hayashi

Leslie S. Bowker (Recused)

Monica S. Hunter (Absent)

BOARD ADVISORS and ASSISTANTS

Michael Thomas, Assistant Executive Director

Carol Hewitt, Executive Assistant

John Richards, Counsel  
State Water Resources Control Board

WATER BOARD PROSECUTION STAFF

Roger Briggs, Executive Officer

Lori Okun, Senior Staff Counsel

Matt Thompson, Project Manager

Sorrel Marks, Project Manager

Allison Millhollen

Harvey Packard

LOS OSOS COMMUNITY SERVICES DISTRICT

Stephen R. Onstot, Attorney  
Gregory M. Murphy, Attorney  
Burke, Williams and Sorensen, LLP

LOS OSOS COMMUNITY SERVICES DISTRICT

Daniel M. Bleskey, Interim General Manager  
Willdan

Lisa Schicker, President, Director

Steven Paige

Daniel Wickham

DESIGNATED PARTIES

William Moylan

Beverley DeWitt-Moylan

Alan Martyn

Robert Shipe

Dustan Mattingly

Lawrence Bishop

Christopher Alabe

Lawrence Kleiger

Bruce Payne

Katherine "Kitty" Thomas

Laurie McCombs

Tim Rochte

Antoinette Payne

Richard Sargent

Donna Kirtley

INTERESTED PARTIES

Joey Racano

INTERESTED PARTIES

Shirley Bianchi

Maria Kelly

Joyce Albright

Ann Calhoun

Keith Wimer

Jim Hensley

Lacey Cooper

Bo Cooper

Dianne Burke

David Duggan

Gewynn Taylor

Assemblyperson Sam Blakeslee

George Taylor

Alon Perlman

Pat Renshaw

Lawson Schaller

Julie Tacker

Anton Vesely

Joe Sparks

James Tkach

Chuck Cesena

Richard Margetson

Marla Jo Bruton

Tom Hollis

INTERESTED PARTIES

Gail McPherson

Elaine Watson

Al Barrow

Barbara Akle

Richard Sadowski

Geri Walsh

Linde Owen

Judy Vick

Carol Cribbs

ALSO PRESENT

Reginald Fagan

Sheila Cinderson

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

Kathy Bouchard, Deputy Counsel  
County of San Luis Obispo

Steve Carnes  
County of San Luis Obispo

Larry Allen  
Air Pollution Control District

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1 LATE AFTERNOON SESSION

2 4:26 p.m.

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

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

11 CHAIRPERSON YOUNG: Right, you're  
12 leaving tonight?

13 MR. MOYLAN: No, Monday.

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

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

18 CHAIRPERSON YOUNG: Right. Okay.

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

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

25 MR. ONSTOT: Today.

1                   CHAIRPERSON YOUNG: I mean can the  
2 expert be here till 10:00? Is the expert one of  
3 your witnesses?

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

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

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

13                   CHAIRPERSON YOUNG: Okay.

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

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

21                   (Parties speaking simultaneously.)

22                   CHAIRPERSON YOUNG: My sense is that we  
23 keep to what we have proposed. And I know that we  
24 will get through the prosecution team's  
25 presentation and yours. Then we can take that

1 expert, and then get into this first group that  
2 we've kind of mentioned. And then we'll see where  
3 we're at at that point. Yeah, we're talking hours  
4 at this point before we get to it.

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

10 (Applause.)

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

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

20 And we're very concerned that it's  
21 unjust, these cease and desist orders, considering  
22 there is not specific science regarding each site,  
23 why these individuals were targeted. To my  
24 knowledge you don't have specific information  
25 regarding each site.

1           And I would propose that there are some  
2 homes that are 50 feet to groundwater that are  
3 likely not polluting the waters of Morro Bay. And  
4 it would be ideal if we could get specific  
5 information and deal with the properties that are,  
6 indeed, causing the biggest problem.

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

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

24           Thank you.

25           CHAIRPERSON YOUNG: Thank you. Okay.

1 Ms. Okun and Mr. Thompson, you have an hour and a  
2 half, is that what we -- an hour? One hour.  
3 Okay. Run this clock up. Mr. Briggs, go ahead.

4 MR. BRIGGS: Thank you, Mr. Chairman.  
5 Mr. Thomas introduced the folks in the front row  
6 here, but to kind of round out the introductions  
7 of the prosecution team, we have several staff who  
8 have worked part time helping out the team, and I  
9 want to make sure that you're aware that they're  
10 all here.

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

18 We also have all contributed to the  
19 presentations that you're going to hear, even  
20 though, of course, we haven't broken it up so that  
21 we're all giving the presentation. But what that  
22 means is that we request that as questions come up  
23 regarding our presentation, that we would use the  
24 person who's best suited to answer the question to  
25 actually provide those answers.

1                   CHAIRPERSON YOUNG: One small detail.  
2                   We haven't sworn anybody in. Where's my readable  
3                   sheet? Okay. Would everybody that is going to  
4                   offer testimony, we've already had interested  
5                   persons speak, but those are not related to the  
6                   specific facts of dischargers.

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

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

15                  ALL: I do.

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

18                  (No response.)

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

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

25                  All right, Mr. Briggs.

1           MR. BRIGGS: Thank you. The names that  
2 I gave you were the truth, so I won't --

3           (Laughter.)

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

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

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

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

23           Los Osos Community Services District  
24 Council has, in fact, recently stated that action  
25 against individual dischargers is more appropriate

1 than action against them.

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

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

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

20 In 1983 this Board adopted a prohibition  
21 of waste discharges from septic system in the most  
22 densely developed area of Los Osos in Baywood  
23 Park, which is now commonly known as the Los Osos  
24 prohibition zone. The blue line on this slide  
25 depicts the boundary of the prohibition zone.

1           The prohibition took effect in 1988 and  
2           remains in effect today. None of the designated  
3           parties have denied that the discharge from their  
4           septic systems violate this prohibition.

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

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

19          This is Los Osos CSD's most recent  
20          isocontour map of nitrate concentrations in  
21          October 2005. Although this data changes slightly  
22          every six months, this figure represents general  
23          conditions in Los Osos. This is difficult to  
24          read, so I've highlighted for you in red the area  
25          where groundwater exceeds the drinking water

1 standard of 10 mg/liter nitrate as nitrogen.

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

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

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

22           Water quality degradation by septic  
23 systems is not limited to nitrate in groundwater.  
24 Shallow groundwater seeps into Morro Bay Estuary  
25 along the approximately two-and-a-half-mile

1 shoreline of the prohibition zone.

2 Analyses of these seeps indicate fecal  
3 coliform bacteria greatly exceeds standards. And  
4 DNA testing of E.coli in these seeps indicates the  
5 greatest source of these bacteria is humans.

6 During wet weather cycles high groundwater causes  
7 septic tank effluent to surface in some areas of  
8 town and drain into the Morro Bay Estuary.

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

13 First and foremost, the proposed cease  
14 and desist orders require property owners and  
15 tenants to cease discharging all waste by January  
16 1, 2010, or 60 days after the availability of a  
17 community sewer system, whichever is sooner.

18 If the community sewer system will be  
19 available by January 1, 2010, the owner or tenant  
20 must submit a statement agreeing to connect to the  
21 community sewer system within 60 days after the  
22 sewage treatment plant becomes available, or  
23 submit a technical report proposing an alternate  
24 method of complying, and monitoring compliance  
25 with the requirement to cease their discharge.

1           If the community sewer system will not  
2           be available by January 2010, the owner or tenant  
3           must submit a technical report proposing alternate  
4           method of complying with the requirement to cease  
5           their discharge.

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

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

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

21          So we would like to study the impacts of  
22          the pumping requirements further before we  
23          recommend you adopt them. So, at this time we're  
24          recommending scale back interim compliance  
25          requirements to pump out the septic system and

1 obtain an inspection report within three months.  
2 And, if necessary, complete recommended repairs to  
3 the septic system by February 1, 2007.

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

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

21 As you know, many designated parties  
22 submitted comments and evidence in response to the  
23 proposed cease and desist orders. Our technical  
24 and legal responses to these submittals are  
25 detailed in our written rebuttal dated April 19th,

1 so I'm not going to belabor our responses here.

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

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

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

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

24 Ms. Marks, how many years were you the  
25 Project Manager for Los Osos?

1 MS. MARKS: Sixteen years approximately.

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

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

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

21 So your Board asked that we consult with  
22 independent experts in this area. And we had  
23 independent reviews of this study material from  
24 two experts. And that was presented at a March  
25 1995 hearing. The conclusion of which was that

1 not only did the study not document full  
2 denitrification below the leachfields, but that it  
3 would be exceptionally difficult to do so because  
4 of the way the leaching septic systems moved below  
5 the leachfields.

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

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

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

24 But because they were saturated with  
25 groundwater you couldn't put the lysimeters in to

1       measure what needed to be measured for this  
2       particular test. So, the data was extremely  
3       limited and didn't demonstrate that there was  
4       complete denitrification. And that study is also  
5       in the record.

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

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

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

1 2002.

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

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

14 There's two reasons to wait and do  
15 additional study of these potential impacts before  
16 imposing pumping requirements on any of the  
17 homeowners. The first one is a policy reason.

18 The Air Pollution Control District,  
19 which is the agency charged with protecting air  
20 quality, has raised these concerns; and this is  
21 something that we take very seriously. Their  
22 opinion is that further study is needed, and  
23 whether or not CEQA requires that. We think that  
24 it's appropriate to do that study before taking  
25 any further action.

1           The second reason is that it's important  
2           to the prosecution staff that all similarly  
3           situated dischargers be treated the same. And we  
4           think that in order to insure that the Board does  
5           that, it's necessary to do this air quality study  
6           before imposing any pumping requirements, because  
7           the study may show that mitigation measures are  
8           appropriate to reduce any potential air quality  
9           impacts. And those mitigation measures should be  
10          imposed across the board.

11           In addition, it could be the case that  
12          the conclusion is that there's no air quality  
13          impacts if we issue pumping requirements to 1000  
14          people, but not 4300 people. And in that case, I  
15          think some more thought should go into who those  
16          1000 people should be, or 2000 or whatever it is,  
17          rather than simply imposing pumping requirements  
18          on this first group because they're first. We  
19          think that more information is needed in order to  
20          be able to make a reasoned decision.

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

1 problems.

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

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

18 If the impacts are significant enough  
19 that mitigation measures are necessary but there's  
20 no way for the Board to impose them, one  
21 alternative is to do a focused EIR, and the Board  
22 could made a decision that the water quality  
23 impacts are significant enough that they override  
24 the air quality impacts. And to require as much  
25 mitigation as is feasible, and to move forward

1 with the pumping scheme in any event.

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

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

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

21 Even though prosecution staff wasn't  
22 required to do additional analysis, when we began  
23 receiving comments we did do the analysis that was  
24 in our written submission about the incremental  
25 increase in truck traffic. And concluded

1 initially that there was no evidence that anyone  
2 had presented that there would be significant  
3 impacts. But with the new information we did  
4 decide that that was necessary to study.

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

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

21 But even if we treat these as 4300  
22 separate projects instead of one project, the  
23 Board would have to consider the cumulative  
24 impacts. So I think that you end up in the same  
25 place either way.

1           And in terms of proving the exception to  
2           the exemption, what the challenges are talking  
3           about is that these CEQA categorical exemptions  
4           don't apply if there will be significant adverse  
5           impacts because of unusual circumstances. And you  
6           have to show both prongs of that.

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

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

23          The other type of case basically has to  
24          do with projects where there are circumstances of  
25          those projects differ from the general

1       circumstances of other projects covered by the  
2       same exemption. And those circumstances creating  
3       the environmental risk that doesn't exist for the  
4       general class of exempt projects.

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

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

20                And it is our intention to proceed with  
21       that study and develop a new recommendation,  
22       whether that is to do additional CEQA analysis or  
23       to -- the modeling may show that there won't be  
24       significant impacts and we can come back with that  
25       recommendation. But at this point we just don't

1 know.

2 CHAIRPERSON YOUNG: Could I interrupt  
3 you one second. What would be your anticipated  
4 timeframe for doing a health effect study?

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

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

14 CHAIRPERSON YOUNG: Okay.

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

21 And there's a couple of reasons. The  
22 first is that there is an inspection and repair  
23 requirement. So that will provide some interim  
24 protection in those cases where there are systems  
25 that have problems in addition to the general

1       problem that septic systems are inappropriate in  
2       this area.

3               The next is that it puts individual  
4       dischargers on notice that they're responsible to  
5       comply with this prohibition. Legally that's not  
6       required. Everyone's responsible to know the law  
7       and comply with it, but we have heard in this  
8       process that there are dischargers who thought it  
9       was only up to the CSD to comply with the basin  
10      plan prohibition. And they didn't know that they  
11      were individual dischargers. So, that's another  
12      important benefit of having the cease and desist  
13      orders.

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

21             And finally it provides the Board with  
22      an additional enforcement tool. Since these  
23      discharges are already illegal, the dischargers  
24      are currently subject to penalties for violating  
25      the prohibition. And that would be an alternative

1 that the Board could take now.

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

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

23 The next -- after the CSD presents their  
24 case, the next phase will be for the individual  
25 dischargers to present their evidence and there's

1 a space for the prosecution staff to present site-  
2 specific evidence. And to avoid having to  
3 reiterate this every time, Mr. Thompson did  
4 address it in his presentation. But the basin  
5 plan prohibits all discharges from onsite systems.

6 The way septic systems are designed they  
7 discharge when you use them. There's no sewer  
8 system available in the community. All of these  
9 properties are on septic systems and all the  
10 discharges from the septic systems are violating  
11 the basin plan.

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

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

22 CHAIRPERSON YOUNG: Dr. Press.

23 QUESTIONS BY BOARD

24 BOARD MEMBER PRESS: Yeah, Ms. Okun,  
25 could you explain the date of January 1, 2010? I

1 looked in the revised proposed order and I didn't  
2 see a -- is that related to something else in the  
3 context?

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

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

15 MS. OKUN: No.

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

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

25 But, --

1 BOARD MEMBER PRESS: From A to zed?

2 MS. MARKS: Right, right.

3 BOARD MEMBER PRESS: Thank you.

4 MS. MARKS: Only smaller ones.

5 MS. OKUN: One other thing to keep in

6 mind is that there is still the Tri-W project

7 which has gone through all the permitting and

8 approval process. And one possibility --

9 (Audience speaking simultaneously.)

10 MS. OKUN: -- is that even the CSD or

11 some successor entity would continue that project.

12 And that certainly would be feasible to complete

13 by January of 2010.

14 (Audience speaking simultaneously.)

15 MR. THOMPSON: I'd like to add to that,

16 too, we are --

17 BOARD MEMBER PRESS: Mr. Chair, I can't

18 hear the staff.

19 MR. THOMPSON: Yeah, back to Matt

20 Thompson. We are aware of several wastewater

21 treatment plant upgrades where construction --

22 upgrades, some of them amounting to basically a

23 brand new treatment plant where construction took

24 less than two years.

25 BOARD MEMBER PRESS: Okay. Where you

1 already have the lines in?

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

4 BOARD MEMBER PRESS: Yeah, okay; thank  
5 you.

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

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

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

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

22 MR. THOMPSON: A good point on  
23 clarification. I believe some people don't  
24 realize that septic systems are designed to -- or  
25 excuse me, septic tanks are designed to overflow.

1           A typical household may generate  
2 anywhere between 100 and 300 gallons per day,  
3 depending on how many people live there. A septic  
4 tank is, on the average, between 1000 and 1500  
5 gallons. And basically every time you discharge  
6 wastewater that septic tank is overflowing. And  
7 for all intents and purposes it is constantly  
8 overflowing.

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

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

14           BOARD MEMBER SHALLCROSS: Yeah, just a  
15 little clarification. Lori, did you say that the  
16 2010 date was based on statements by the Community  
17 Services District?

18           MS. OKUN: Yes.

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

21           MS. OKUN: Yes.

22           BOARD MEMBER SHALLCROSS: Thanks.

23           CHAIRPERSON YOUNG: And when were those  
24 statements made?

25           MR. BRIGGS: Roger Briggs. I think they

1 were made -- can you hear me all right?

2 CHAIRPERSON YOUNG: Yes.

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

5 (Audience speaking simultaneously.)

6 MR. BRIGGS: Okay. Is that better?

7 AUDIENCE SPEAKERS: Yes.

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

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

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

24 MR. BRIGGS: The first one was from the  
25 meeting that we had and I participated in.

1 CHAIRPERSON YOUNG: Okay.

2 MR. BRIGGS: So, I participated in --

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

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

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

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

15 CHAIRPERSON YOUNG: Bleskey, okay. Go  
16 on.

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

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

24 BOARD MEMBER HAYASHI: How were they  
25 figuring to expedite permitting on new sites?

1                   MR. BRIGGS: How was the CSD expecting  
2 to expedite permitting?

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

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

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

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

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

1                   BOARD MEMBER SHALLCROSS: I have one  
2 more quick question.

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

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

9                   MR. THOMPSON: Yes.

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

12                  MR. THOMPSON: Definitely, yes.

13                  BOARD MEMBER SHALLCROSS: Okay, thanks.

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

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

21                  The wastewater generated is discharged  
22 to the septic tank where the heavy solids and  
23 floating solids are removed before the clarified  
24 water overflows into a disposal field which is  
25 typically a leachfield or in cases where you don't

1 have a lot of space, a seepage pit or leach-bed.

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

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

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

9 CHAIRPERSON YOUNG: Sure.

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

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

22 And in sandy soil there's no matrix for  
23 the -- micro-organisms that cause denitrification  
24 to -- there's nothing there for them. And so it  
25 just moves down through the soil column.

1                   CHAIRPERSON YOUNG: Is there sandy soil  
2 throughout and above the clay aquatard?

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

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

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

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

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

15                  MS. OKUN: Yes.

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

19                  MS. OKUN: Well, saying that something's  
20 illegal is always a legal opinion. But the basin  
21 plan states that any discharges from septic  
22 systems, it says onsite sewage systems, within the  
23 prohibition zone, are prohibited. So any  
24 discharges within the prohibition zone from an  
25 onsite system is illegal, in my opinion.

1           MR. THOMAS: In order for that to become  
2 a fact, instead of a legal opinion, wouldn't that  
3 require an action by the Board, a determination by  
4 the Board to that effect?

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

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

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

14          CHAIRPERSON YOUNG: Sure.

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

23                 Also, I want to clarify that in septic  
24 tanks that nitrogen is a highly soluble -- there  
25 are not significant amounts of nitrogen removed

1 with the solid waste in the wastewater. And so  
2 the nitrogen essentially passes right through the  
3 septic tank into the disposal field.

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

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

14 (Audience speaking simultaneously.)

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

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

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

25 MR. THOMPSON: We are prepared to,

1           although we don't believe it's necessary.

2                   CHAIRPERSON YOUNG:   Okay.  Mr. Jeffries.

3                   BOARD MEMBER JEFFRIES:  Yes, Mr.

4   Chairman, --

5                   CHAIRPERSON YOUNG:  Go ahead.

6                   BOARD MEMBER JEFFRIES:  Mr. Thompson, --

7   mike is on -- can you hear me?  Barely.

8                   Can you tell me what the average lot

9   size is in the prohibition zone?

10                  MR. THOMPSON:  Order 8313 had a finding

11   that said the average lot size was 6600 square

12   feet.

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

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

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

23                  MR. THOMPSON:  In Los Osos they have  
24   fast percolating soil, sandy soil.  And so they  
25   can get away with a seepage pit that's as shallow

1 as 15 feet. But it can vary anywhere from 15 to,  
2 you know, 50 feet, depending on what kind of  
3 equipment they used to install it.

4 BOARD MEMBER JEFFRIES: Okay, thank you.

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

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

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

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

22 MR. ONSTOT: Thank you.

23 CHAIRPERSON YOUNG: And then the  
24 individual cease and desist order recipients,  
25 you're going to have time, also, to come up and to

1 ask questions of the prosecution staff team. So,  
2 let the CSD go first.

3 MR. ONSTOT: Thank you.

4 CROSS-EXAMINATION

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

7 MR. THOMPSON: Water Resource Control  
8 Engineer.

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

11 MR. THOMPSON: CalPoly, San Luis Obispo.

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

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

16 MR. ONSTOT: Anything else?

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

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

23 MR. THOMPSON: April 1997 as a  
24 volunteer.

25 MR. ONSTOT: At what point in time did

1 the prosecution staff decide to pursue enforcement  
2 action against the septic tank owners and  
3 operators?

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

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

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

16 (Audience speaking simultaneously.)

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

20 MR. THOMPSON: I don't recall whether it  
21 was in a meeting with management or whether it was  
22 through an email. Because I don't remember  
23 anything in writing, I think it might have been  
24 through verbal communication, internal verbal  
25 communications.

1 MR. ONSTOT: And when was that?

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

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

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

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

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

15 MR. ONSTOT: Fair enough. Who is?

16 MR. THOMPSON: That would be Roger  
17 Briggs.

18 MR. ONSTOT: Okay.

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

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

24 CHAIRPERSON YOUNG: Let's do witness by  
25 witness, just to --

1 MR. ONSTOT: Okay.

2 CHAIRPERSON YOUNG: -- make it clean.

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

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

7 MR. THOMPSON: Yes.

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

10 MR. THOMPSON: We did an inhouse  
11 analysis of the -- let's see, this, again, is a  
12 better question for Roger Briggs. But I can  
13 answer it. According to our information there are  
14 4993 residences in the prohibition zone. There  
15 are 466 in the Bayridge Estates, which has a  
16 community system, which is already subject to a  
17 cease and desist order. So you would subtract  
18 that from 4993. And there are 74 residences in  
19 Vista del Oro, which also has a community system.  
20 So you would subtract that.

21 There are 122 residences in the Bayview  
22 Heights, which are excluded. And there are  
23 another 47 in the Martin tract, which is also  
24 excluded. Which amounts to 4284 septic systems.  
25 Again, that is our best estimate.

1           MR. ONSTOT: And of those 4284 septic  
2 systems how many owners and operators have been  
3 targeted for enforcement?

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

5           MR. ONSTOT: All.

6           MR. THOMPSON: All.

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

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

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

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

17           MR. THOMPSON: Fifty, 50 properties.

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

21           MR. THOMPSON: Correct.

22           MR. ONSTOT: What happened to the other  
23 five?

24           MR. THOMPSON: The five we learned,  
25 after issuing the initial round of cease and

1 desist orders, either -- there was one of them  
2 that lived in Monarch Grove, which has a sewer  
3 system, and so they are not subject to the basin  
4 plan prohibition.

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

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

16           MR. THOMPSON: Could you restate your  
17 question?

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

24           MR. ONSTOT: Well, because I just now  
25 established that the prosecution staff did not do

1       their homework in selecting the people for  
2       prosecuting cease and desist orders, and as we go  
3       further we'll find out a lot with regards to the  
4       actual selection process. Which ultimately leads  
5       to a conclusion that there's a lack of evidence  
6       with regards to the basis upon which the  
7       prosecution team is pursuing these 45 cease and  
8       desist orders.

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

14              Everything else around whether there's  
15       50 or 300 or over what timeframe, in my view, is  
16       not relevant to whether these 45 are discharging  
17       in violation of the basin plan prohibition. So --

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

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

23              MR. ONSTOT: Okay, I will --

24              CHAIRPERSON YOUNG: And the testimony,  
25       sir, that I heard so far, and it's this testimony

1       you can challenge. The staff's testimony is as  
2       long as the septic tanks are in use that that, in  
3       and of itself, is a violation. That's their  
4       position.

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

10               MR. ONSTOT: Okay.

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

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

25               And we should be allowed to cross -- I'm

1 not asking Mr. Thompson anything outside the scope  
2 of what he testified to on direct.

3 CHAIRPERSON YOUNG: Well, he said that  
4 they randomly picked 50 people.

5 MR. ONSTOT: Right, that --

6 CHAIRPERSON YOUNG: And you don't  
7 believe it was random?

8 MR. ONSTOT: Then I will -- may I pursue  
9 that line?

10 CHAIRPERSON YOUNG: Yes.

11 MR. ONSTOT: Mr. Thompson, you said that  
12 50 people were selected at random. Could you  
13 describe the process in as much detail as you are  
14 able, as to how these 50 people before the Board  
15 today, or 45, excuse me, were selected?

16 MR. THOMPSON: Sure, I'd be glad to. We  
17 started with a list of all properties in Los Osos  
18 provided by the County Tax Assessor. At the time  
19 we were relying on help from California  
20 Environmental Protection Agency. And they culled  
21 out a subset of the County Assessor's list for  
22 those in the prohibition zone. They basically  
23 compared Assessor's parcel numbers to the  
24 prohibition zone boundaries.

25 And then we took that list of that

1 subset of properties in the prohibition zone and  
2 we applied -- and that was in a Microsoft Access  
3 Database format. And there were a certain number.  
4 At the time the California Environmental  
5 Protection Agency was still culling out properties  
6 along the boundaries, and so I think it was in the  
7 neighborhood of 35 to 4000 properties, -- 3500 to  
8 4000 properties, excuse me.

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

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

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

24           I then sorted that Microsoft Access  
25 database based on the numerical order of those

1 random numbers and we picked the first 50. That's  
2 how we did it.

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

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

10 (Audience speaking simultaneously.)

11 MR. ONSTOT: Thank you. If you can put  
12 up your slide again with regards to the nitrate  
13 levels in the prohibition zone.

14 What process did you use to correlate  
15 these numbers here with the septic systems?

16 CHAIRPERSON YOUNG: Which septic system?  
17 Can you --

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

22 MR. THOMPSON: Yeah, I understand your  
23 question. You can see there on the map, this is a  
24 map provided by the Los Osos CSD, and it's very  
25 hard to see because it's very small, but you can

1 see there that there, you know, squares indicating  
2 improved properties, okay. And this is, you know,  
3 the grid street pattern.

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

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

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

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

25 There is a very clear correlation

1 between the area of greatest septic system density  
2 and highest nitrate concentrations.

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

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

11 MR. THOMPSON: We know that all of the  
12 45 properties are located within the prohibition  
13 zone; they violate the basin plan prohibition.  
14 Therefore, subject to cease and desist orders. We  
15 did not visit the properties.

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

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

22 BOARD MEMBER PRESS: Mr. Chairman.

23 CHAIRPERSON YOUNG: Yes, Dr. Press.

24 BOARD MEMBER PRESS: I don't think that  
25 Mr. Onstot has established the relevance of this

1 cross-examination along the lines that you  
2 suggested, so I don't know where this is going.  
3 And do you intend to allow this type of cross-  
4 examining all night? Just wondering.

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

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

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

14 MR. ONSTOT: Correct.

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

17 MR. ONSTOT: Not at this time.

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

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

21 No.

22 CHAIRPERSON YOUNG: Okay. All right.  
23 Any of the designated individual property owners?  
24 Mr. Shipe.

25 MR. SHIPE: Yes.

1           CHAIRPERSON YOUNG: Come first.

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

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

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

13          MR. SHIPE: Yes, the order --

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

16          MR. SHIPE: Oh.

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

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

23                 And I wanted to address that slide that  
24 you guys showed that said Why CDOs now. And said  
25 because they would allow the prosecution and this

1 Board to inspect and repair, to notify dischargers  
2 and what was that other one, provide a date  
3 certain to provide alternative if community sewer  
4 is not available, and you can enforce by  
5 injunction.

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

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

10 (Audience speaking simultaneously.)

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

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

15 (Pause.)

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

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

23 MR. SHIPE: Absolutely.

24 MR. RICHARDS: Whether or not those  
25 mechanisms would be chosen --

1           MR. SHIPE: I understand that, but the  
2 first line at the top says: Why issue CDOs now.  
3 And so they are using those examples as specific  
4 reasons why to issue CDOs.

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

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

11          MR. THOMPSON: Yes, please.

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

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

20          MR. SHIPE: Okay, thank you. And then  
21 now under that last line, under can enforce  
22 injunctions, you described yourself as a water  
23 quality enforcement procedures expert to me,  
24 correct? This was what you were really good in,  
25 and so you understand the skill. I just want to

1 make sure before I start asking questions on it.

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

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

6 CHAIRPERSON YOUNG: When?

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

11 CHAIRPERSON YOUNG: Okay.

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

17 I'm familiar with water quality  
18 enforcement procedures.

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

23 MR. THOMPSON: I can tell the difference  
24 between cooperative dischargers and recalcitrant  
25 dischargers if that's what you're asking.

1           MR. SHIPE: Okay, well, but I'm just --  
2           because I've been studying the water quality  
3           enforcement procedures and it's a term that I  
4           found in there several times. And so I just  
5           wanted to, before I started asking you questions  
6           on it, I wanted to make sure you understood what  
7           those were.

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

15          MR. THOMPSON: Is that a question?

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

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

20          MR. SHIPE: Okay. By using some of  
21          those other measures that may be available, would  
22          that allow the prosecution staff to determine  
23          cooperative dischargers and recalcitrant violators  
24          so that the Board that we're in front of today can  
25          deal only with the recalcitrant violators and

1 allow cooperative dischargers to have inspection  
2 and repair, to put us on notice and to give us a  
3 date to provide an alternative if a community  
4 sewer is not available?

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

7 MR. SHIPE: Okay.

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

11 MR. SHIPE: Okay, I --

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

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

19 My point was --

20 MR. RICHARDS: Mr. Shipe.

21 MR. SHIPE: Yes.

22 MR. RICHARDS: You will have an  
23 opportunity during your presentation to rebut any  
24 testimony and assertions and argument and  
25 positions that the prosecution team has made.

1                   The purpose of cross-examination is to  
2                   test the credibility and knowledge of the  
3                   witnesses who have testified. And that's the  
4                   purpose of the cross-examination. It is not to  
5                   give you an opportunity to --

6                   CHAIRPERSON YOUNG: Testify.

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

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

13                  CHAIRPERSON YOUNG: So, you're --

14                  MR. SHIPE: Yes.

15                  CHAIRPERSON YOUNG: -- testifying.

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

19                  CHAIRPERSON YOUNG: Okay, thank you.

20                  All right, Mr. Martyn.

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

1 CHAIRPERSON YOUNG: That's fine.

2 MR. MARTYN: Thank you very much.

3 CHAIRPERSON YOUNG: That's fine.

4 MS. McPHERSON: A couple of --

5 BOARD MEMBER SHALLCROSS: It's important  
6 that we know who she's speaking -- is she speaking  
7 on behalf of --

8 MS. McPHERSON: I'm speaking -- Allen  
9 Martyn.

10 CHAIRPERSON YOUNG: On Mr. Martyn.

11 BOARD MEMBER SHALLCROSS: Just Mr.  
12 Martyn?

13 CHAIRPERSON YOUNG: Yeah.

14 BOARD MEMBER SHALLCROSS: Because I know  
15 she's representing a bunch of people. Just wanted  
16 to make that clear.

17 CHAIRPERSON YOUNG: Yeah, and I --

18 MR. RICHARDS: Is that correct, Ms.  
19 McPherson, that you are at this point representing  
20 -- you're presenting the questions that Mr. Martyn  
21 has prepared for you?

22 MS. McPHERSON: Yes, yes.

23 MS. OKUN: I have a procedural question.  
24 Since the individual dischargers will have an  
25 opportunity for cross-examination during the

1 individual presentations, if they're just asking  
2 questions on behalf of themselves is this the  
3 appropriate point to be doing that?

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

11 MS. OKUN: Thank you.

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

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

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

1 82 pumps a day.

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

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

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

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

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

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

16 MR. THOMPSON: Lane County?

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

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

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

1 witness list?

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

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

8 CHAIRPERSON YOUNG: Not at this time.

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

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

15 MS. McPHERSON: Okay.

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

19 MS. McPHERSON: Okay.

20 CHAIRPERSON YOUNG: Next question.

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

25 CHAIRPERSON YOUNG: Okay, you're not

1 going to testify, Ms. McPherson. You can ask  
2 questions.

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

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

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

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

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

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

22 (Audience speaking simultaneously.)

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

1 proposing a method of complying.

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

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

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

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

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

17 (Audience speaking simultaneously.)

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

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

25 MS. McPHERSON: Are we in violation of

1 the Safe Drinking Water Act?

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

5 (Audience speaking simultaneously.)

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

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

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

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

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

25 MS. McPHERSON: Yeah. We were curious

1 because Mr. Payne and Mr. Alabe are next-door  
2 neighbors, and the statistical probability, are  
3 you aware of that coincidence?

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

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

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

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

23 MR. THOMPSON: Oh, you're referring to  
24 the septic system installer. He said that -- I  
25 said how many of the leachfields that you've

1 installed or repaired in Los Osos are leachfields,  
2 clearly meaning dispersal fields. And he said,  
3 well, -- I said is it like, what, eight or nine  
4 out of ten. And he said, well, no, you'd have to  
5 count it out of 100. And he said because of the  
6 density of septic systems in Los Osos, that 99 out  
7 of 100 are either leach-beds or seepage pits.

8 MS. MCPHERSON: Thank you.

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

12 MS. THOMAS: My name is Kitty Thomas.

13 CHAIRPERSON YOUNG: Okay.

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

15 CHAIRPERSON YOUNG: Okay.

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

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

21 MS. THOMAS: Pardon?

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

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

25 One, when the original prohibition was

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

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

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

9 CHAIRPERSON YOUNG: That's fine.

10 MS. THOMAS: Do you know?

11 MR. THOMPSON: I don't know.

12 MS. THOMAS: Okay, is that for both?

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

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

22 (Audience speaking simultaneously.)

23 MS. THOMAS: I am a California licensed  
24 realtor. And that is not any information that is  
25 given to us --

1 MR. RICHARDS: Excuse me, this is not  
2 your opportunity to testify here.

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

4 MR. RICHARDS: You may ask them  
5 questions --

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

8 CHAIRPERSON YOUNG: All right.

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

22 MS. OKUN: What was the question?

23 MS. THOMAS: Well, as the CSD and the  
24 Regional Quality Board are the two forces that are  
25 conducting this, and is affecting Los Osos. So

1       these are the two sources that prospective  
2       homeowners in Los Osos go to for information.

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

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

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

13              CHAIRPERSON YOUNG: Okay.

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

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

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

19              CHAIRPERSON YOUNG: Okay. All right.

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

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

25              UNIDENTIFIED SPEAKER: Thank you. Not

1 to belabor the point, Mr. Thompson, and I  
2 appreciate the several hard years you put in at  
3 CalPoly.

4 (Laughter.)

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

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

21 UNIDENTIFIED SPEAKER: Could you try and  
22 quantify it? In other words did you have 50 units  
23 of sewer-type treatment classes and 5 units of  
24 septic system? Or can you give me some type of,  
25 just to help me understand, just some type of

1        quantification? Your best estimate. I  
2        understand.

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

5                (Laughter.)

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

8                MR. THOMPSON: I don't know.

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

12               UNIDENTIFIED SPEAKER: Best estimate.

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

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

18               MR. THOMPSON: None.

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

24               MR. THOMPSON: Correct.

25               UNIDENTIFIED SPEAKER: Okay, thank you.

1 During your presentation, and if I may ask, also,  
2 you had a slide that said the CDOs were  
3 appropriate, and it listed some items. And I  
4 wonder if we might be able to see that slide  
5 again?

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

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

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

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

23 MR. THOMPSON: I believe the prohibition  
24 zone boundary is appropriate because of the very  
25 strong correlation between nitrate concentrations

1 in groundwater and the prohibition zone boundary.

2 UNIDENTIFIED SPEAKER: Thank you.

3 MR. RICHARDS: Mr. Chairman.

4 CHAIRPERSON YOUNG: Yes.

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

8 AUDIENCE SPEAKER: Speak into the mike.

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

19 CHAIRPERSON YOUNG: Okay.

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

23 CHAIRPERSON YOUNG: Okay.

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

1 appreciate it.

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

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

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

19 MS. MARKS: Maybe I could answer this  
20 because Mr. Thompson didn't mention the Black and  
21 Veatch study. There's a huge number of studies on  
22 Los Osos in general, but the information we've  
23 presented here in this groundwater data is from  
24 the recent groundwater monitoring from the CSD.  
25 So that's what this data is.

1 UNIDENTIFIED SPEAKER: Okay, thank you.  
2 I'm going to skip a couple questions. I would  
3 like to ask of this slide there, and it's simply,  
4 the caption, Why issue the CDOs now. And I would  
5 ask the panel here if they had given thought to  
6 issuing orders other than cease and desist orders  
7 before we came to this point in time today.

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

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

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

21 MR. RICHARDS: Mr. Chairman, --

22 CHAIRPERSON YOUNG: Yes.

23 MR. RICHARDS: -- let me perhaps guide  
24 the designated parties in their cross-examination.  
25 This slide presents recommendations and rationale

1       that the prosecution staff is urging the Board to  
2       take a particular action for these reasons, among  
3       others.

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

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

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

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

21              UNIDENTIFIED SPEAKER:  Thank you, Mr.  
22      Richards.

23              CHAIRPERSON YOUNG:  Okay.

24              UNIDENTIFIED SPEAKER:  One last  
25      question?

1 CHAIRPERSON YOUNG: Sure.

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

5 MS. OKUN: Asked and answered.

6 CHAIRPERSON YOUNG: Well, I think he --

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

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

12 UNIDENTIFIED SPEAKER: There is --

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

16 AUDIENCE SPEAKERS: Yes.

17 CHAIRPERSON YOUNG: Okay, all right.

18 Then we don't have to ask any more questions,  
19 because I understand that that's the inference  
20 that you want us to take from this.

21 But I don't know what else he can do or  
22 any witness can do with this testimony. He's  
23 described a randomized way that they came up with  
24 these 50, and then 45 properties. You guys can  
25 make the point that you think there was intent

1 here; that the 45 or the 50 were targeted; and  
2 we'll listen to that.

3 But we can spend a lot of time on  
4 tangents. It's not going to be fruitful to us.  
5 So, he told you what program he actually had.  
6 Now, do you want his computer?

7 UNIDENTIFIED SPEAKER: No.

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

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

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

18 UNIDENTIFIED SPEAKER: Okay.

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

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

25 UNIDENTIFIED SPEAKER: Thank you for

1 your time.

2 CHAIRPERSON YOUNG: Sure. Okay. Mr.  
3 Moylan.

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

5 CHAIRPERSON YOUNG: Yeah.

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

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

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

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

20 MR. MOYLAN: She went --

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

24 MR. MOYLAN: Okay, well, she made a  
25 statement --

1 CHAIRPERSON YOUNG: -- of his witnesses.

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

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

6 CHAIRPERSON YOUNG: Okay. Okay.

7 (Laughter.)

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

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

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

25 MR. MOYLAN: When will it be appropriate

1 for me to cross-examine you, Lori?

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

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

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

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

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

13 MR. MOYLAN: Okay, okay, okay, okay.  
14 All right. We got one shot down. Let me ask the  
15 next question.

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

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

1 living on a shoestring.

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

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

10 (Audience speaking simultaneously.)

11 CHAIRPERSON YOUNG: Please.

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

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

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

23 MR. MOYLAN: Thank you.

24 CHAIRPERSON YOUNG: Okay, thank you.

25 Ma'am, can you tell us who you are?

1 MS. McCOMBS: Laurie McCombs.

2 CHAIRPERSON YOUNG: Okay. Go ahead.

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

5 CHAIRPERSON YOUNG: And to --

6 MS. McCOMBS: To Matt.

7 CHAIRPERSON YOUNG: Okay.

8 MR. THOMPSON: Since when?

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

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

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

18 MR. THOMPSON: No, ma'am.

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

21 CHAIRPERSON YOUNG: Of what, ma'am?

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

24 MR. THOMPSON: No, I just --

25 CHAIRPERSON YOUNG: I need to make sure

1 I understand the question. Do you mean other than  
2 the \$275 to \$400 per trip?

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

5 CHAIRPERSON YOUNG: Okay.

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

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

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

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

22 MS. McCOMBS: When was this  
23 conversation?

24 MR. THOMPSON: This was in late January  
25 2006. I'd have to check my notes to get the exact

1 date.

2 MS. McCOMBS: And what did they say the  
3 capacity was?

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

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

11 MS. McCOMBS: Um-hum.

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

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

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

22 MS. McCOMBS: Thank you.

23 CHAIRPERSON YOUNG: Okay, thank you.

24 MR. ALABE: Chris Alabe, CDO number 19.

25 CHAIRPERSON YOUNG: Okay.

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

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

9           CHAIRPERSON YOUNG: I'm not going to  
10 allow any questions into this, how they chose the  
11 50 that they did. It's not relevant to what  
12 issues are before the Board. We've heard they  
13 used a computer program to do it.

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

15          CHAIRPERSON YOUNG: Well, --

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

18          CHAIRPERSON YOUNG: I don't --

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

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

23          MR. ALABE: And were there any  
24 witnesses?

25          CHAIRPERSON YOUNG: Well, --

1 MS. OKUN: He can answer that question.

2 MR. THOMPSON: Yes, there was a witness.  
3 I had a staff member, Allison Millhollen, look  
4 over my back as I did it.

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

7 (Laughter.)

8 (Audience speaking simultaneously.)

9 CHAIRPERSON YOUNG: Okay. And your  
10 name, sir?

11 MR. MATTINGLY: Mr. Mattingly once  
12 again.

13 CHAIRPERSON YOUNG: Okay.

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

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

20 MR. THOMPSON: No.

21 MR. MATTINGLY: Okay. Also, you  
22 expressed that you had spoken with a pumping  
23 expertise, or a septic pump guy. What  
24 certification or expertise by certifications did  
25 you get from him before receiving this

1 information? Did you check his credentials?

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

8 MR. MATTINGLY: By who?

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

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

14 MR. THOMPSON: I don't know.

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

24 MR. THOMPSON: Did I --

25 MR. MATTINGLY: Did you --

1 (Parties speaking simultaneously.)

2 MR. THOMPSON: -- no, no --

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

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

10 CHAIRPERSON YOUNG: Okay, Mr. --

11 MR. MATTINGLY: -- one person.

12 CHAIRPERSON YOUNG: Okay, --

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

16 CHAIRPERSON YOUNG: Okay, do --

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

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

21 MR. THOMPSON: Yeah, I mean I know  
22 there's Al's, which is located in Los Osos and  
23 does a lot of work there. But I presume that most  
24 of the other major companies also do work in Los  
25 Osos.

1 CHAIRPERSON YOUNG: Okay, well, --

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

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

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

11 MS. OKUN: Objection, relevance.

12 MR. MATTINGLY: Relevance is --

13 CHAIRPERSON YOUNG: He can answer --

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

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

24 MR. MATTINGLY: It was the 99 percent of  
25 leachfields and the pit. I'm sure you could look

1 into the transcripts of what was said earlier.

2 Unless you want me to do it for you.

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

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

11 CHAIRPERSON YOUNG: No. He said he  
12 spoke --

13 MR. MATTINGLY: You took his word?

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

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

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

21 MR. MATTINGLY: Actually, Al does  
22 install --

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

25 MR. MATTINGLY: -- septic systems --

1 CHAIRPERSON YOUNG: -- opportunity when  
2 it's your time to put on all --

3 MR. MATTINGLY: Okay, next question.

4 CHAIRPERSON YOUNG: -- this testimony.  
5 Excuse me, Board Member Shallcross.

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

10 CHAIRPERSON YOUNG: Leach-bed. Leach-  
11 bed.

12 MR. THOMPSON: Leach-bed.

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

17 MR. THOMPSON: No, sir.

18 MR. MATTINGLY: Was there

19 (Parties speaking simultaneously.)

20 UNIDENTIFIED SPEAKER: Can you just wait  
21 your turn?

22 MR. MATTINGLY: Okay, excuse me. Sure.

23 BOARD MEMBER SHALLCROSS: So, what's the  
24 distinction? I mean why were you bringing that  
25 up? What does it matter whether 99 percent are

1 leachfields or 99 percent are -- I mean, why is  
2 this an issue?

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

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

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

10 (Audience speaking simultaneously.)

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

13 CHAIRPERSON YOUNG: A seepage pit --

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

24 MR. THOMPSON: No, sir.

25 BOARD MEMBER SHALLCROSS: Okay, thank

1 you. So I'm really wondering what the relevancy  
2 of all this is.

3 CHAIRPERSON YOUNG: Well, --

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

7 CHAIRPERSON YOUNG: All right, next  
8 question.

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

11 CHAIRPERSON YOUNG: Next question.

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

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

25 And as far as your second question,

1       you're asking where there's the most vadose zone.  
2       And to my knowledge the groundwater flow roughly  
3       mimics topography. And I can get you more  
4       detailed information, but this area is the more  
5       elevated part of town. And I presume that it has  
6       the --

7               MR. MATTINGLY: The highest vadose zone.

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

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

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

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

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

20              MR. MATTINGLY: Have you come to my  
21       house to look at my illegal discharging septic to  
22       see if it was placed, since I do live in the  
23       highest vadose zone, which I've been notified is  
24       the most likely place in all of Los Osos for a  
25       septic system to work.

1                   BOARD MEMBER PRESS: Mr. Chair, didn't  
2 you rule on the relevancy of the discharge to  
3 the -- being in the prohibition zone? I mean, --

4                   CHAIRPERSON YOUNG: I did. I am --

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

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

10                  MR. MATTINGLY: This is also --

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

15                  MR. MATTINGLY: Your worries.

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

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

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

22                  MR. MATTINGLY: -- when this --

23                  CHAIRPERSON YOUNG: -- a little  
24 concerned that --

25                  MR. MATTINGLY: Okay, what I wanted --

1                   CHAIRPERSON YOUNG:  -- it's missing  
2 something critical.

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

13                   CHAIRPERSON YOUNG:  Okay, please make  
14 your point.

15                   (Laughter.)

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

19                   CHAIRPERSON YOUNG:  All right, sir, --

20                   MR. MATTINGLY:  -- look into that --

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

23                   (Applause.)

24                   MR. MATTINGLY:  Oh, you're out of here.  
25 Officer.

1 (Laughter.)

2 CHAIRPERSON YOUNG: So, no more  
3 questions about that.

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

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

9 MR. MATTINGLY: Thank you, sir.

10 CHAIRPERSON YOUNG: Thank you.

11 (Applause.)

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

14 MR. MATTINGLY: One more --

15 MS. OKUN: -- that misstates the  
16 testimony.

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

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

22 MR. MATTINGLY: He's a witness.

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

25 CHAIRPERSON YOUNG: No, he does quite

1 well, actually. You're an interested person, not  
2 a designated party --

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

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

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

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

12 MR. DUGGAN: Yes.

13 CHAIRPERSON YOUNG: No. Next, please.

14 MR. ROCHTE: Mr. Chairman, --

15 CHAIRPERSON YOUNG: Yes.

16 MR. ROCHTE: -- my name is Tim Rochte.

17 I'm CDO 1015. And I have a couple of questions.

18 I have been a resident of Los Osos for over 25

19 years, and I've been doing a fair amount of

20 research on the water quality issue out there.

21 I have a question about the governmental

22 accountability. And I understand from the

23 testimony given this morning that the prohibition

24 zone was established in 1983, and went into effect

25 in 1988. My understanding further is if the

1 County permitted an additional 1000-plus septic  
2 tanks out there -- is that correct? I believe  
3 that's correct -- why was it that the Water Board  
4 did not issue CDOs at that time?

5 (Applause.)

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

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

15 MR. BRIGGS: I'll --

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

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

22 CHAIRPERSON YOUNG: Okay.

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

25 CHAIRPERSON YOUNG: And how is that

1 relevant to what's before us?

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

4 CHAIRPERSON YOUNG: Right.

5 MR. ROCHTE: -- were --

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

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

10 CHAIRPERSON YOUNG: -- to be developed.

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

14 CHAIRPERSON YOUNG: Okay.

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

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

22 MR. ROCHTE: Thank you.

23 CHAIRPERSON YOUNG: Go ahead.

24 MS. MARKS: Was the question why didn't  
25 we issue cease and desist -- or why didn't the

1 Board issue cease and desist orders?

2 MR. ROCHTE: Correct.

3 MS. MARKS: They did.

4 MR. ROCHTE: They did in '88?

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

7 MR. ROCHTE: Thank you for clarifying  
8 that. Why didn't it get to this point back then,  
9 then? Why are we only getting to this now, some  
10 20 years later?

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

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

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

18 MR. ROCHTE: Exactly, right.

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

21 MR. ROCHTE: When there was an  
22 established --

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

25 MR. ROCHTE: Okay. All right, well,, --

1                   CHAIRPERSON YOUNG: That's the  
2 testimony.

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

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

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

12                   CHAIRPERSON YOUNG: In terms of what?

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

16                   CHAIRPERSON YOUNG: In terms of what?  
17 With respect to what issues, --

18                   MR. ROCHTE: In terms of --

19                   CHAIRPERSON YOUNG: -- whether people  
20 are discharging --

21                   MR. ROCHTE: -- why are --

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

24                   MR. ROCHTE: Why are they now only  
25 getting around to this level of CDOs?

1 CHAIRPERSON YOUNG: Well, --

2 MR. ROCHE: Okay, I'll continue. I  
3 have just a couple more questions.

4 CHAIRPERSON YOUNG: Go ahead.

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

8 MR. THOMPSON: No, sir.

9 MR. ROCHE: Did you research the number  
10 of septic tank pumpers?

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

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

18 MS. OKUN: Objection, that misstates his  
19 testimony.

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

22 Mr. Chair, my point is, and I'll bring  
23 it back in my later testimony, is that there is a  
24 very weak level of research being done by the  
25 staff. And there's too much at stake in the

1 community for this to be allowed. Thank you.

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

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

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

15 And when I spoke with Al's Septic, he  
16 stated specifically that septic tanks were not made to  
17 be that way.

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

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

24 CHAIRPERSON YOUNG: Well, I'm --

25 MS. PAYNE: The question is, does

1 frequent pumping of septic tanks destroy the  
2 septic tank?

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

6 MR. THOMPSON: To my knowledge, no.

7 CHAIRPERSON YOUNG: Okay.

8 MS. PAYNE: Now, can I disagree?

9 Because of what I know --

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

14 Okay, --

15 MR. MOYLAN: I have two other questions.

16 CHAIRPERSON YOUNG: -- have you already  
17 asked questions?

18 MR. MOYLAN: Yeah, but I --

19 CHAIRPERSON YOUNG: Okay, --

20 MR. MOYLAN: -- got so excited --

21 CHAIRPERSON YOUNG: Well, I know, and

22 I'm --

23 (Laughter.)

24 CHAIRPERSON YOUNG: Sir, are you waiting  
25 to ask questions, also? Please come forward. I

1 want to take everyone first who has not had an  
2 opportunity.

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

5 CHAIRPERSON YOUNG: Yes.

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

9 CHAIRPERSON YOUNG: It's a question,  
10 right?

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

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

1 District in 2003.

2 That was a -- the effluent from the  
3 septic tank would have to achieve total nitrogen -  
4 - excuse me, a long-term average total nitrogen,  
5 probably a monthly average of 7 mg/liter, and a  
6 short-term requirement of a daily maximum of 10  
7 mg/liter.

8 MR. BISHOP: So you're saying that it is  
9 acceptable to have a discharge of 7 mg/liter?

10 MR. THOMPSON: Absolutely not. All  
11 septic system discharges are prohibited. That is  
12 something we were considering as an alternative to  
13 septic tank pumping requirements to reduce  
14 pollutant loading in the interim. It was to  
15 satisfy the interim compliance requirement of the  
16 cease and desist order.

17 MR. BISHOP: Well, at the time you told  
18 us that if we could get it down to 7 we could  
19 probably avoid pumping.

20 My next question is the groundwater to  
21 the septic tank distance to the ground, what is  
22 acceptable?

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

25 MR. BISHOP: No, it's one of the --

1 CHAIRPERSON YOUNG: -- we've all --

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

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

8 MR. BISHOP: Okay.

9 CHAIRPERSON YOUNG: So, --

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

15 This is --

16 CHAIRPERSON YOUNG: In Los Osos?

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

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

21 MR. BISHOP: This is why they said --

22 CHAIRPERSON YOUNG: No, --

23 MR. BISHOP: -- that outside the  
24 prohibition zone was acceptable. We have the same  
25 ground level, ground inside and out.

1                   CHAIRPERSON YOUNG: Yeah, but that's a  
2 different standard, okay. And we don't have -- I  
3 don't see any evidence being presented that there  
4 are high nitrate levels in groundwater elsewhere.

5                   (Audience speaking simultaneously.)

6                   CHAIRPERSON YOUNG: Okay.

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

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

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

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

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

24                   CHAIRPERSON YOUNG: -- if you're going  
25 to testify you can do that later --

1                   MR. BISHOP: I think he's misleading the  
2 Board --

3                   CHAIRPERSON YOUNG: Okay, --

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

6                   CHAIRPERSON YOUNG: Okay, and when it's  
7 your opportunity then you can give us the  
8 information that you think we should be  
9 considering, or that discredits their testimony.

10                   So, you can ask him questions about it,  
11 but don't get into the testimony, your own  
12 testimony.

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

15                   CHAIRPERSON YOUNG: Well, he said he  
16 had --

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

19                   CHAIRPERSON YOUNG: The actual data,  
20 okay.

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

23                   MR. THOMPSON: This is the most recent  
24 data we have. And as I testified it represents  
25 general conditions in Los Osos. I have, again,

1 all septic system dischargers in the prohibition  
2 zone are prohibited. And I simply intended to  
3 summarize that, the water quality impacts. And  
4 the most recent data is the most appropriate way  
5 to do that.

6 MR. BISHOP: Okay, thank you.

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

10 MR. THOMPSON: I think the --

11 CHAIRPERSON YOUNG: I saw the date 2005  
12 somewhere.

13 MR. THOMPSON: It was taken in October  
14 2005; there's something like 26 wells. And I  
15 think the monitoring event takes a few days.

16 CHAIRPERSON YOUNG: And how many data  
17 points are there?

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

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

22 MR. THOMPSON: Actually, they're --

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

25 MR. THOMPSON: See this box right here?

1 That represents the result from the well that is  
2 right next to it.

3 CHAIRPERSON YOUNG: Okay.

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

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

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

10 CHAIRPERSON YOUNG: Okay.

11 MR. THOMPSON: -- 14.

12 CHAIRPERSON YOUNG: So that is the data?

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

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

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

20 CHAIRPERSON YOUNG: Well, --

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

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

24 MR. BISHOP: -- there's some major thing  
25 happening there.

1 CHAIRPERSON YOUNG: -- opportunity to  
2 address this, thank you. Okay. Go ahead, sir.

3 UNIDENTIFIED SPEAKER (Redacted): CDO  
4 1043.

5 CHAIRPERSON YOUNG: And your name, sir?

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

8 CHAIRPERSON YOUNG: Okay.

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

12 CHAIRPERSON YOUNG: You can ask her  
13 anything you want.

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

23 MS. OKUN: I don't mind answering.

24 CHAIRPERSON YOUNG: Go ahead.

25 MS. OKUN: We think it's important that

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

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

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

24 MS. OKUN: I object to the question.

25 That was not anything I testified to, and it's --

1 I'm not a witness.

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

5 CHAIRPERSON YOUNG: Okay.

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

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

14 MS. OKUN: Yes.

15 UNIDENTIFIED SPEAKER: Thank you.

16 That's all --

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

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

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

25 UNIDENTIFIED SPEAKER: Yes.

1 CHAIRPERSON YOUNG: -- her legal opinion  
2 it would require a subsequent hearing.

3 UNIDENTIFIED SPEAKER: Thank you.

4 CHAIRPERSON YOUNG: Okay. All right,  
5 Mr. Moylan, you have --

6 MR. MOYLAN: Two questions.

7 CHAIRPERSON YOUNG: -- two questions.

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

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

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

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

22 And she said, well, you need to get the  
23 community together. And the question that I had  
24 after that was, well, they've already canceled --  
25 I said, what are our options. And you said well,

1 you do have that Tri-W site. You guys voted.

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

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

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

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

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

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

17 MR. MOYLAN: It's relevant to --

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

20 AUDIENCE SPEAKER: It's not.

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

23 MR. MOYLAN: Okay, -- I guess that  
24 answers my question. I do have one for Matt. You  
25 just recently said in testimony that it's plain to

1 see that pumping the tanks will clean up the  
2 groundwater. And yet the biology teacher that  
3 spoke here earlier this evening said that it takes  
4 decades to clean up an aquifer the size that we  
5 have, decades.

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

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

10 MR. MOYLAN: What did you say?

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

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

17 MR. THOMPSON: If you reduce --

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

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

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

25 MR. MOYLAN: Okay, it's an opinion,

1 thank you.

2 CHAIRPERSON YOUNG: Okay.

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

9 CHAIRPERSON YOUNG: Pollutant loading.

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

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

16 MR. SARGENT: Yes.

17 CHAIRPERSON YOUNG: Okay.

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

25 CHAIRPERSON YOUNG: Well, Mr. Sargent,

1 the point we are at now in this proceeding is that  
2 these witnesses are asking questions of staff.  
3 So, you're free to ask questions.

4 MR. SARGENT: Okay.

5 CHAIRPERSON YOUNG: You want to pose  
6 that to --

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

9 CHAIRPERSON YOUNG: If he's a --

10 MR. SARGENT: -- are welcome --

11 CHAIRPERSON YOUNG: If --

12 MR. SARGENT: -- to answer --

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

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

22 CHAIRPERSON YOUNG: Okay.

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

25 MR. THOMPSON: Yeah, I mean we know that

1 most of the nitrogen loading comes from the urea,  
2 you know. And you can't really reduce nitrogen  
3 loading without reducing black water discharge.  
4 Grey water has some nitrogen in it.

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

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

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

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

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

24 CHAIRPERSON YOUNG: Well, I think that  
25 we can probably accommodate that, given the time

1 it is, and given that your last name begins with  
2 M.

3 MR. MARTYN: Right.

4 CHAIRPERSON YOUNG: Okay?

5 MR. MARTYN: Thank you very much.

6 CHAIRPERSON YOUNG: All right.

7 MR. MARTYN: Thank you for the  
8 consideration.

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

14 MR. MARTYN: Well, whenever it does --

15 CHAIRPERSON YOUNG: Whenever it does.

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

18 CHAIRPERSON YOUNG: Okay. All right.

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

21 CHAIRPERSON YOUNG: You've already asked  
22 questions.

23 MR. SHIPE: Yes.

24 CHAIRPERSON YOUNG: Only one question,  
25 one more; that's it.

1           MR. SHIPE: Okay. Then I'll ask this  
2 one. Mr. Thompson, you testified that it will  
3 reduce the nitrate loading. So, will it or won't  
4 it clean up the groundwater? Will the pumping  
5 program clean up the groundwater, since that was  
6 what was misstated before?

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

10          MR. SHIPE: That was not the question.

11          MR. THOMPSON: -- the groundwater.

12          MR. SHIPE: That was not the question.  
13 The question was regarding the pumping program,  
14 will the pumping program clean up the groundwater?

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

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

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

24          MR. SHIPE: So, the answer is no?

25          CHAIRPERSON YOUNG: That's not what he

1 just testified to. He gave you an explanation. I  
2 know you'd like a yes or a no, --

3 MR. SHIPE: Okay.

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

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

15 CHAIRPERSON YOUNG: Mr. Richards.

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

18 CHAIRPERSON YOUNG: Well, apparently --

19 MR. SHIPE: Okay, thank you.

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

23 MR. SHIPE: Yes.

24 CHAIRPERSON YOUNG: -- at this rate of  
25 pumping. Is that what you intended, Mr. Thompson,

1 by that comment?

2 MR. THOMPSON: Yes.

3 CHAIRPERSON YOUNG: Okay.

4 MR. SHIPE: I believe he also said no.

5 CHAIRPERSON YOUNG: Okay, well, you --

6 MR. SHIPE: Okay, okay.

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

9 MR. SHIPE: Okay.

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

13 Mr. Payne.

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

17 (Laughter.)

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

24 The thing I'd like to know, could you  
25 put up that picture of the septic tank and the

1 leachfields that you have, please?

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

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

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

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

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

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

25 MR. THOMPSON: Well, first of all, the

1 siting and design criteria for septic systems is  
2 established in our basin plan. It's pretty  
3 cookbook.

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

7 MR. PAYNE: Howard Kolb?

8 MR. THOMPSON: Yes, sir.

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

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

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

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

1 groundwater by using pumping.

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

4 MR. PAYNE: Oh, that's --

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

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

9 (Laughter.)

10 MR. PAYNE: Basically, but --

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

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

21 MR. PAYNE: Okay. Basically they gave  
22 us pictures of a vadose zone and the fact that  
23 with enough vadose zone it denitrified before it  
24 got to groundwater. And we can't really use a  
25 cookbook thing to cover all of Los Osos.

1                   We're built on sand dunes, there, sir.

2                   MR. THOMPSON:   And that's --

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

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

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

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

13                  MR. THOMPSON:   No, sir.

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

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

19                  (Laughter.)

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

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

25                  UNIDENTIFIED SPEAKER:   We're going to do

1 to dinner.

2 CHAIRPERSON YOUNG: Well, do you have an  
3 appetite?

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

5 CHAIRPERSON YOUNG: You do? Okay.

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

8 CHAIRPERSON YOUNG: Okay. All right.  
9 Mr. Jeffries is giving his stern look, so I'm not  
10 about to --

11 MR. MATTINGLY: Excuse me, sir.

12 CHAIRPERSON YOUNG: Yes.

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

16 CHAIRPERSON YOUNG: Go right now.

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

20 CHAIRPERSON YOUNG: Of course.

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

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

25 MR. MATTINGLY: Okay.

1                   CHAIRPERSON YOUNG: Okay, and I think  
2 the few that --

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

6                   CHAIRPERSON YOUNG: Okay, --

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

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

14                  MR. MATTINGLY: Thank you, sir.

15                  CHAIRPERSON YOUNG: Okay?

16                  MR. MATTINGLY: Thank you.

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

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

24                  CHAIRPERSON YOUNG: Carol, what are we  
25 doing?

1 (Parties speaking simultaneously.)

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

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

11 Okay, so, 7:45.

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

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## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Central Coast Regional Water Quality Control Board Meeting; that it was thereafter transcribed into typewriting.

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

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