

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

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

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

VOLUME III
CONTINUED HEARING/PANEL HEARING

MONDAY, JANUARY 22, 2007

1:03 P.M.

Reported by:
Richard A. Friant

BOARD MEMBERS PRESENT

Jeffrey S. Young, Chairperson

Gary C. Shallcross

John H. Hayashi

BOARD MEMBERS RECUSED

Leslie S. Bowker

Monica S. Hunter

BOARD ADVISORS and ASSISTANTS

Michael Thomas, Assistant Executive Director

John Richards, Attorney

Carol Hewitt, Executive Assistant

WATER BOARD PROSECUTION STAFF

Reed Sato, Director, Office of Enforcement

Matt Thompson, Project Manager

Harvey Packard, Division Chief

Sorrel Marks, Project Manager

ALSO PRESENT

Gail McPherson

Shaunna Sullivan, Attorney
Sullivan Associates

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1 P R O C E E D I N G S

2 1:03 p.m.

3 CHAIRPERSON YOUNG: Good afternoon. I'm
4 Jeff Young, Chair of the Central Coast Regional
5 Water Quality Control Board. Today is January
6 22nd; we're in San Luis Obispo for a modified
7 agenda. We're having a panel of the Board convene
8 to hear a few very specific items.

9 AUDIENCE SPEAKER: Would you talk
10 louder, please?

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

13 AUDIENCE SPEAKERS: Yes.

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

16 Ms. Hewitt, would you like to take roll.

17 MS. HEWITT: Thank you. Gary
18 Shallcross.

19 BOARD MEMBER SHALLCROSS: Here.

20 MS. HEWITT: Jeff Young.

21 CHAIRPERSON YOUNG: Here.

22 MS. HEWITT: John Hayashi.

23 BOARD MEMBER HAYASHI: Present.

24 CHAIRPERSON YOUNG: Okay, and, Mr.
25 Thomas, would you like to do introductions for us.

1 MR. THOMAS: Yes. To my right is Carol
2 Hewitt, our Executive Assistant. To my left on
3 the other side of Chairman Young is John Richards,
4 the Board's attorney for this matter.

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

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

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

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

19 MR. THOMAS: Yes, that's correct.

20 CHAIRPERSON YOUNG: Okay, good. Well,
21 before we begin with item number 3, I do have one
22 card here for somebody that wants to speak as soon
23 as possible. We do have public forum, which is
24 agenda item 5. And I guess this card says it's
25 about democracy and she'd like to address the

1 Board.

2 So, if this lady, I take it, would like
3 to come up, identify yourself. I can't entirely
4 read your last name.

5 MS. VAN EKEREN: Van Ekeren.

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

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

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

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

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

24 We are not a bunch of people that need
25 to be taught a lesson, but rather an example of

1 what a democracy should be all about.

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

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

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

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

25 Punishing people at random is terribly

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

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

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

23 Our CSD can come up with a reasonable
24 plan to take care of the pumping of every tank in
25 Los Osos. Please include us in decisions that

1 concern us. After all, we are the ones that will
2 have to pay for our sewer. Is it unreasonable
3 that we should have a say in it? Thank you.

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

6 (Applause.)

7 MS. CASTLE: Jeff?

8 CHAIRPERSON YOUNG: Yes.

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

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

15 CHAIRPERSON YOUNG: Is this about the
16 video?

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

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

23 MS. CASTLE: I also have to leave. Can
24 I just thank the community for paying for the
25 video production services today. The Regional

1 Board Staff was unable to find funding, and so the
2 community has come together to allow us to be
3 here. And I wanted to thank them. Thank you.

4 CHAIRPERSON YOUNG: Okay.

5 (Applause.)

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

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

12 (Pause.)

13 MR. RICHARDS: So at this point --

14 CHAIRPERSON YOUNG: We just go right to
15 number 4.

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

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

20 (Pause.)

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

23 (Off the record.)

24 CHAIRPERSON YOUNG: How we're going to
25 be proceeding today. Today's hearing is a

1 continuation of what we had began and almost
2 completed in December. We had not finished with,
3 I think, maybe four or five individual properties.

4 Some people had asked for a continuance.
5 Others had requested to come on day two, and then
6 they were not able to show up on day two. They
7 had contacted us and we had decided to take all of
8 those people that were not able to get in on that
9 second day, December 15th, and allow them to come
10 in today. That's really what this panel hearing
11 is about today.

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

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

1 meeting.

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

8 Public forum, item number 5, will be our
9 normal public forum where people can address the
10 Board on any item not on the agenda. So, I have a
11 card here that says, "I turned in testimony cards
12 for items 3 and 4. When to comment on that?"
13 There is no time to comment on those individual
14 items, unless you've been called as a witness by
15 one of those individual cease and desist order
16 recipients, because that time period for
17 commenting has already taken place.

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

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

23 CHAIRPERSON YOUNG: Okay.

24 MS. McCOMBS: You're stating that
25 there's not enough people to make a decision --

1 CHAIRPERSON YOUNG: Well, let me explain
2 this. With respect to cease and desist orders,
3 okay, there has to be a minimum of five votes --

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

6 CHAIRPERSON YOUNG: -- by the Board.

7 MS. McCOMBS: Okay.

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

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

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

18 MS. McCOMBS: Yes.

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

22 MS. McCOMBS: Okay.

23 CHAIRPERSON YOUNG: -- and a transcript.
24 However they want to do it, but they have to
25 review everything. And then what'll happen is our

1 vote today or the motion that will be made will
2 either be to -- it'll be for some type of
3 recommendation. And it's not going to be to do
4 anything specifically with the proposed cease and
5 desist orders. That really doesn't happen until
6 the next Board meeting.

7 MS. McCOMBS: Okay.

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

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

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

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

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

22 MS. McCOMBS: Okay, thank you.

23 CHAIRPERSON YOUNG: Okay, --

24 MS. TAYLOR: Mr. Young, what would you
25 have done if you had not had the ATP to televise

1 this through the donations of the community?

2 AUDIENCE CHORUS: Yes, right -- yeah.

3 AUDIENCE SPEAKER: What would they watch
4 then?

5 CHAIRPERSON YOUNG: We have our own
6 reporter and transcript.

7 MS. TAYLOR: Watch.

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

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

19 AUDIENCE SPEAKER: Jeffries.

20 MS. TAYLOR: -- Mr. Jeffries.

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

24 (Pause.)

25 CHAIRPERSON YOUNG: Okay, this is the

1 time and place for a hearing on proposed cease and
2 desist orders against individual dischargers in
3 Los Osos/Baywood prohibition zone.

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

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

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

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

24 (Pause.)

25 CHAIRPERSON YOUNG: Folks, we just have

1 some changes that are made to our standard
2 procedure, and that's what I'm trying to figure
3 out here.

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

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

15 Mr. Moylan; and is your wife here?

16 MR. MOYLAN: She will be.

17 CHAIRPERSON YOUNG: Okay.

18 Whereupon,

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

22 CHAIRPERSON YOUNG: Thank you. The
23 hearing notices notified the parties that they
24 must submit any written comments, a list of
25 witnesses and any exhibits to the Assistant

1 Executive Officer by November 15, 2006. The Water
2 Board received copies of all materials submitted
3 by the deadline.

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

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

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

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

17 CHAIRPERSON YOUNG: And who are those
18 parties?

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

24 So the two designated parties that we're
25 proposing CDO hearings for are the Wilkersons; and

1 that's Charles and Norma Wilkerson; that's order
2 number 1008. And the last one would be order
3 number 1041, Bill Moylan and Beverley De Witt-
4 Moylan.

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

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

11 CHAIRPERSON YOUNG: Are they here today?

12 AUDIENCE SPEAKER: Yes.

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

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

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

25 MR. MARTYN: Mr. Chairman, point of

1 order, please. I saw the public stand up and take
2 an oath of office, but I didn't see everybody in
3 this room also --

4 CHAIRPERSON YOUNG: Sir, --

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

6 CHAIRPERSON YOUNG: -- come up to a
7 microphone and speak.

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

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

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

24 MR. MARTYN: Well, they submit a lot of
25 comments, Mr. Chairman. I've been at these

1 meetings several times that I've seen that, and I
2 think it would only be proper and just and above
3 board, and show the community that these gentlemen
4 are telling the truth, the whole truth and nothing
5 but the truth.

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

8 MR. MARTYN: Thank you.

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

10 MS. McPHERSON: I have a question.

11 CHAIRPERSON YOUNG: Yes.

12 MS. McPHERSON: This has to do --

13 CHAIRPERSON YOUNG: Are you representing
14 somebody today?

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

17 CHAIRPERSON YOUNG: And who is that
18 person?

19 MS. McPHERSON: Larry Kleiger.

20 CHAIRPERSON YOUNG: Who?

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

25 CHAIRPERSON YOUNG: This individual is

1 not one of the 45, is that correct?

2 MS. McPHERSON: He is one of the 45.

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

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

7 CHAIRPERSON YOUNG: Yeah.

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

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

17 MS. McPHERSON: Yes, he did.

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

20 MS. McPHERSON: Correct.

21 CHAIRPERSON YOUNG: Okay.

22 MS. McPHERSON: And there was a list of
23 several that did, and I wasn't sure what the
24 status of that is, since you're not ruling on
25 that.

1 MR. RICHARDS: The status -- there are
2 several people who did not appear at their hearing
3 in December.

4 MS. McPHERSON: For various reason.

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

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

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

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

1 issued.

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

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

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

14 MS. McPHERSON: Thank you very much.

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

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

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

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

25 MR. PACKARD: Mr. Thompson will make our

1 presentation.

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

4 BOARD MEMBER SHALLCROSS: And who are we
5 hearing?

6 CHAIRPERSON YOUNG: He's going to tell
7 us.

8 Okay, go ahead.

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

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

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

25 And before I finish, I want to clarify

1 something in the cease and desist order. In the
2 interim compliance requirement there is the date
3 that now outdated and needs to be corrected. It
4 requires the discharger to provide documentation
5 of their septic system pumping by February 1,
6 2007.

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

11 That is all, thank you.

12 CHAIRPERSON YOUNG: Mr. Packard.

13 MR. PACKARD: That's all.

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

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

21 The first one is in the notice of this
22 hearing that was posted on a corrected notice on
23 the 16th there is a list of documents that have
24 been admitted into evidence. There's a number of
25 documents that are missing that have already been

1 admitted, but they're not reflected in your
2 notice.

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

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

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

16 CHAIRPERSON YOUNG: That's fine.

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

19 CHAIRPERSON YOUNG: It's not.

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

22

23 CHAIRPERSON YOUNG: It's not.

24 MS. SULLIVAN: -- because it's
25 procedural. And with regard to procedures I just

1 want to have an objection on the record that we
2 oppose the fact that there's not a full panel
3 before us, hearing this.

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

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

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

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

24 CHAIRPERSON YOUNG: Well, Ms. Sullivan,
25 perhaps you could kind of help us by telling us

1 how these are relevant, these documents are
2 relevant?

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

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

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

13 CHAIRPERSON YOUNG: The deposition
14 testimony?

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

23 And so the offer of proof and the
24 testimony has already been presented to this
25 Board. These were documents already introduced.

1 CHAIRPERSON YOUNG: Any comment, Mr.
2 Sato?

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

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

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

21 The hearing regulations, I mean the
22 hearing regulations are hearing regulations. I
23 don't know that they're particularly evidence. So
24 that would be something to be addressed as a
25 matter of evidence of not evidence.

1 I think the telephone notes we
2 specifically objected to because they're hearsay;
3 the person, whoever Mary Ellen is, is not here to
4 testify about the veracity of any of those types
5 of statements or documents; and they are, in fact,
6 hearsay. And I do specifically recall objecting
7 to those.

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

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

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

18 MR. SATO: Okay. On the 889 I believe
19 that is something that we did not object to. 890,
20 I don't think that that has anything to do with
21 any relevance to the procedures at hand. I don't
22 recall whether we objected to that document
23 previously or not. If the transcript suggests
24 that it was not admitted, then I'd go with the
25 transcript.

1 I don't even recall that this was
2 something that was introduced specifically by Mr.
3 Allebe, so.

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

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

15 MS. SULLIVAN: Sure.

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

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

20 CHAIRPERSON YOUNG: Okay.

21 MS. SULLIVAN: -- posted recently, if
22 you look at page 367, this is a conversation with
23 Mr. Payne and the Board about concluding the
24 hearing. And there was a suggestion by Mr. Sato
25 to withdraw the evidence. And Mr. Richards says,

1 "I think that in view of the fact that we have
2 allowed the designated parties to rely upon the
3 testimony and documentation provided by other
4 settling parties, that it would not be appropriate
5 to allow the" -- I'm missing my page here -- my
6 line, I'm sorry. Does anyone have the full
7 transcript?

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

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

18 So, when Mr. Sato tried to strike from
19 the record everything that Mr. Payne had put in,
20 all of his documents and everything, and then
21 placed his objections earlier; at the time of the
22 settlement, or the time he said he would --
23 indicated he would settle, the objections were
24 raised and the Board -- Mr. Sato withdrew the
25 objections to all the evidence.

1 So all of the evidence should be coming
2 in. All of Mr. Payne's testimony and all of the
3 documents he referenced, because all of the
4 objections were withdrawn by Mr. Sato.

5 CHAIRPERSON YOUNG: Okay. Mr.
6 Shallcross.

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

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

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

16 MS. SULLIVAN: No.

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

21 BOARD MEMBER SHALLCROSS: Yes.

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

25 BOARD MEMBER SHALLCROSS: Right, because

1 Mr. Sato --

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

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

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

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

25 Obviously if there was an objection and

1 it was ruled on, okay, we have that. But these
2 were not included in the record and they weren't
3 ruled on. And so they need to be included in the
4 record because all objection to them has been
5 withdrawn.

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

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

22 MS. SULLIVAN: Well, the offer of proofs
23 have already been made and the testimony has
24 already been made prior. And the fact of the
25 matter is you don't have in the record any denial

1 of any of these documents. You have a withdrawal
2 of any objection that was made to these documents.

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

5 CHAIRPERSON YOUNG: Well, they were --

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

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

11 MS. SULLIVAN: Okay.

12 MR. PAYNE: I object.

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

15 CHAIRPERSON YOUNG: Sure.

16 MR. SATO: -- I think that the
17 representation by Ms. Sullivan is actually
18 inaccurate. And also, too, if this is something
19 that she wanted to raise, she should have done it
20 by motion. And has not raised this by motion.
21 The time for the hearing has come and gone. If
22 she wants to raise these kinds of objections, she
23 had -- obviously her client had notice of this
24 hearing; had notice of the documents that were
25 proposed to be admitted into evidence.

1 And, you know, I think this effort by
2 Ms. Sullivan to raise this at the eleventh hour is
3 just another example of the kind of thing that
4 goes on in these proceedings where people don't
5 follow the rules, don't raise the issues early on,
6 don't allow us to have a full airing of these
7 issues --

8 (Multiple audience speakers.)

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

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

15 CHAIRPERSON YOUNG: Yeah.

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

21 MS. SULLIVAN: I don't really want to do
22 that, sir, because that takes too much time to try
23 to introduce these documents. I only have 15
24 minutes. So, I just want to be able to
25 incorporate what's gone on before and the

1 documents that were identified and addressed and
2 presented by other people or produced timely.

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

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

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

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

25 There was a full discussion of the

1 relevance of the documents, of the objections made
2 by the Prosecution Team and so forth. And the
3 Board ruled on the admissibility of those
4 documents at that time. And our notice then
5 reflected those rulings.

6 So, the interchange between Mr. Sato and
7 Mr. Allebe and Mr. Payne simply allowed the
8 documents that had not been ruled inadmissible --

9 CHAIRPERSON YOUNG: Or had not been
10 admitted specifically.

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

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

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

21 MS. SULLIVAN: Or denied them.

22 CHAIRPERSON YOUNG: Yeah. Right, or
23 denied --

24 MS. SULLIVAN: And, of course, I would
25 object to that too as being untimely, but, sure.

1 CHAIRPERSON YOUNG: Well, that's kind of
2 an explanation of what we did before. Was that
3 all the documents were discussed and we went
4 through and decided what would come in. So,
5 perhaps we didn't have the specific order that
6 said we're not -- that we are denying this set of
7 documents. What we did was the opposite, was to
8 lay out what we were admitting into evidence.

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

17 MR. PAYNE: I can do that right now.

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

20 MR. PAYNE: No, I haven't.

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

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

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

1 so.

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

3 CHAIRPERSON YOUNG: Yes.

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

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

19 CHAIRPERSON YOUNG: All right. Okay,
20 Ms. Sullivan.

21 MS. SULLIVAN: Okay. The next group of
22 documents that was produced and introduced at the
23 time was an exhibit B, which was produced timely
24 by the CDO recipients and should be admitted, with
25 the exception of those items already denied on the

1 record.

2 When the prosecution made their evidence
3 objections on December 4th they neglected to
4 object to any part of exhibit B. And the
5 Chairman, when you made your ruling on the 4th,
6 you neglected also to reference exhibit B.

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

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

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

22 And we provided to you a table of what
23 the documents are that are in exhibit B that we're
24 particularly interested in making sure are part of
25 the record.

1 CHAIRPERSON YOUNG: Do we have a copy of
2 what you've put up on the screen?

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

5 CHAIRPERSON YOUNG: Do you have it?

6 BOARD MEMBER SHALLCROSS: Where is it?

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

9 CHAIRPERSON YOUNG: Do you have one
10 copy?

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

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

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

25 CHAIRPERSON YOUNG: Well, I --

1 MR. SATO: If her argument is that now
2 on behalf of the Wilkersons they would like to
3 submit certain documents for your consideration,
4 that is a different argument than what they have
5 posited before you so far. And that's the basis
6 of my objection.

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

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

12 MS. MCPHERSON: This is the list in
13 total, yes.

14 CHAIRPERSON YOUNG: Yeah.

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

17 CHAIRPERSON YOUNG: Right. Okay.

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

20 CHAIRPERSON YOUNG: No, I don't think
21 that'll be necessary. The documents that were
22 admitted were put into the notice. And so not all
23 of exhibit B came in. Only those documents that
24 are numbered in the list and that appear in our
25 notice.

1 And I can go through this and see again,
2 we've got cases in here. You don't have to have
3 case law attached as an exhibit.

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

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

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

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

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

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

18 MS. McPHERSON: They were submitted in
19 November.

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

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

1 MR. RICHARDS: No, --

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

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

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

10 MR. RICHARDS: And that was further
11 discussed at the hearing on December 14th and
12 15th. And at that time the determinations were
13 made regarding the admissibility of documents that
14 had been presented by the Community Services
15 District and by Ms. McPherson and all of the
16 designated parties.

17 And those determinations are
18 incorporated into the current notice.

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

23 MR. RICHARDS: The time for presentation
24 of evidence has passed -- for documentary evidence
25 has passed.

1 MS. SULLIVAN: But these were produced
2 and already in as documentary evidence on November
3 15th.

4 MR. RICHARDS: And their admissibility
5 was ruled on.

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

9 MS. McPHERSON: They did it the opposite
10 way.

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

13 MR. RICHARDS: Yes.

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

22 MS. SULLIVAN: What we would like to
23 make really clear is if you're going to deny this,
24 would you please deny them so that we have that on
25 the record that you denied allowing the

1 transcripts of the hearing in, and these various
2 items that we have?

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

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

7 CHAIRPERSON YOUNG: Well, that's 866.

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

10 MS. McPHERSON: 885.

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

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

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

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

19 CHAIRPERSON YOUNG: It's 866.

20 MS. McPHERSON: Okay, 885, it jumps to
21 885.

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

25 MS. SULLIVAN: The hearing transcripts

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

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

13 CHAIRPERSON YOUNG: Yeah, I --

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

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

20 MR. RICHARDS: Mr. Chairman, I would
21 point out that simply with respect to item 885, if
22 that is, in fact, the transcript of the Regional
23 Board proceedings in April on the individual cease
24 and desist orders for Los Osos property owners and
25 residents, that the transcript -- in other words,

1 the initiation of the proceeding that is
2 continuing today -- the transcript of that
3 proceeding is part of the record.

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

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

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

23 It includes the documentation that has
24 been prepared by the Prosecution Team and their
25 staff reports and their technical evidence.

1 It includes the documentation that has
2 been presented by the various designated parties
3 to the extent that it has been deemed admissible
4 by the Board.

5 And that will be the record.

6 MR. SATO: May I, Mr. Chairman?

7 CHAIRPERSON YOUNG: Yes.

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

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

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

1 do this at this point in time.

2 CHAIRPERSON YOUNG: Okay.

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

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

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

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

25 There are lots of documents that have

1 been kind of identified. And the designated
2 parties and the homeowners have not really pointed
3 out how they're important to them in their own
4 cases. And therefore, these are documents that
5 although that they're in, the Board really didn't
6 rely upon them at all in making their
7 determination.

8 With respect to these documents up here
9 in exhibit B, the way I want to handle this is
10 they were not admitted prior to today. I'll give
11 you the opportunity during your case if you feel
12 that some of these have specific relevance that
13 should qualify them to come in, we'll consider it
14 at that point.

15 But I am going to go with the hearing
16 notice and the documents that we have listed there
17 as being the documents that are in evidence at
18 this point in time.

19 And it would have been helpful if prior
20 to today that you had spoken to Mr. Sato about
21 this, or exchanged a list of these documents -- or
22 exchanged this particular list so you could have
23 worked that out with him instead of having this
24 done at this point in time. It makes it
25 difficult.

1 So, --

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

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

13 CHAIRPERSON YOUNG: And those were in
14 which specific --

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

21 MR. SATO: Move to object. The reason
22 why I object is because these were not submitted.
23 To the extent that they were not submitted to the
24 court reporter or before this Board at the time
25 that they were presented, then they were simply a

1 mechanism by which these people expressed
2 themselves.

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

6 CHAIRPERSON YOUNG: Their testimony
7 would come in, obviously.

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

10 CHAIRPERSON YOUNG: They haven't --

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

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

19 MS. SULLIVAN: Yes.

20 CHAIRPERSON YOUNG: -- to the court
21 reporter?

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

23 MS. McPHERSON: Not to the court
24 reporter.

25 MS. SULLIVAN: Not to the court

1 reporter.

2 BOARD MEMBER SHALLCROSS: You can submit
3 those when your time comes.

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

6 CHAIRPERSON YOUNG: Okay.

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

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

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

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

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

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

1 record.

2 MR. RICHARDS: The documentary record
3 has been established.

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

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

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

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

24 MR. RICHARDS: Then to the extent that
25 they're preserved in the court reporter's

1 transcript, that's the record.

2 CHAIRPERSON YOUNG: That's the record,
3 yeah. That's right.

4 MS. SULLIVAN: Moving on, there was a
5 writ of mandate action that was filed on behalf of
6 some of the designated parties.

7 CHAIRPERSON YOUNG: Right.

8 MS. SULLIVAN: And I would like to
9 request that that be included in the record, too.
10 Those are verified pleadings; they're on point;
11 they address the issues that are before this court
12 -- I mean this party, and when the court made its
13 ruling that these -- the court actually said, we
14 presume the Board's going to consider the
15 objections you're making in this writ action.

16 And I want to make sure that you have
17 considered the issues that were brought up in the
18 writ action and that this Board does, in fact,
19 consider and address the issues with the lack of
20 due process, the Sixth Amendment Constitutional
21 impairment by not having Mr. Briggs here; all of
22 the various issues that were brought up.

23 Has this Board considered any of those
24 issues as the court presumed that you would before
25 proceeding?

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

4 CHAIRPERSON YOUNG: The judge didn't --

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

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

10 MR. RICHARDS: No.

11 CHAIRPERSON YOUNG: No. The judge --

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

14 CHAIRPERSON YOUNG: Yes. The --

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

17 (Laughter.)

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

24 Pleadings are not evidence.

25 MS. SULLIVAN: So you will not consider

1 anything that was brought up before the court?

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

6 MS. SULLIVAN: I'd also like to move
7 into the record the entire appeal to the State
8 Water Resources Control Board that we filed on
9 behalf of CDO recipients that was filed on January
10 16, 2007, enumerating not less than 94 reasons why
11 the appeal should go forward and why this CDO
12 should be vacated. And I'd like to move that into
13 evidence.

14 CHAIRPERSON YOUNG: Denied.

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

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

25 MS. SULLIVAN: No, that's an appeal in

1 this case of that hearing on December 14th and
2 15th.

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

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

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

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

12 BOARD MEMBER SHALLCROSS: An appeal is
13 a --

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

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

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

23 BOARD MEMBER SHALLCROSS: But you
24 consider it evidence?

25 MS. SULLIVAN: What do I consider

1 evidence?

2 BOARD MEMBER SHALLCROSS: Do you
3 consider that document evidence?

4 MS. SULLIVAN: Yes.

5 BOARD MEMBER SHALLCROSS: That appeal?

6 MS. SULLIVAN: Yes.

7 BOARD MEMBER SHALLCROSS: As evidence?
8 Okay, you went to a different law school than I
9 did.

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

13 CHAIRPERSON YOUNG: All right.

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

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

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

20 CHAIRPERSON YOUNG: Okay.

21 MR. SATO: Just so it's clear for the
22 record, the Prosecution Team objects to all of
23 these documents that are listed right now on this
24 presentation. We have still not been provided a
25 copy of this, so we object to 866, 871, 883, 885,

1 887, 901, 906, 912, 919, 927, 940, 941, 942, and
2 others, 946. Anything else? Is there anything
3 else on this PowerPoint presentation -- or this
4 slide? No, okay. Those are our objections. We
5 move to strike all of those.

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

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

11 MS. SULLIVAN: All right.

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

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

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

18 CHAIRPERSON YOUNG: Okay.

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

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

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

25 MR. THOMPSON: I don't know.

1 MS. SULLIVAN: Did you consider that
2 relevant at all as to when their house was
3 constructed?

4 MR. SATO: Objection, vague and
5 ambiguous.

6 CHAIRPERSON YOUNG: Can you answer it?

7 MR. THOMPSON: No.

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

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

12 (Multiple audience speakers.)

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

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

16 BOARD MEMBER SHALLCROSS: No, not that
17 one.

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

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

24 MS. SULLIVAN: So, did they become
25 illegal in 1983?

1 MR. SATO: Objection, argumentative;
2 calls for a legal conclusion. These are not
3 evidentiary questions --

4 AUDIENCE SPEAKER: What?

5 MS. McPHERSON: We need to hear him.

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

10 (Laughter.)

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

12 CHAIRPERSON YOUNG: Folks, please.

13 (General audience participation.)

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

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

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

21 MR. SATO: Right.

22 CHAIRPERSON YOUNG: Yeah.

23 Mr. Thompson, --

24 MR. SATO: And that's also improper.

25 MR. RICHARDS: The purpose of cross-

1 examination is to test the factual credibility of
2 the witness. And it is not to advocate the
3 parties' positions. So that the questions should
4 be directed to the factual basis for the evidence
5 that the Prosecution Team is presenting.

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

9 MR. THOMPSON: Not permitted by who?

10 MS. SULLIVAN: The County.

11 MR. THOMPSON: No.

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

15 MR. THOMPSON: To support whose claim?

16 MS. SULLIVAN: Mr. Wilkerson's.

17 AUDIENCE SPEAKER: Wasting time.

18 MR. THOMPSON: Could you restate your
19 question?

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

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

1 prohibition.

2 MS. SULLIVAN: So is his septic tank
3 illegal?

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

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

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

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

13 MR. THOMPSON: Yes.

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

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

22 CHAIRPERSON YOUNG: Go ahead, Ms.
23 Sullivan.

24 MS. SULLIVAN: Do you think Mr.
25 Wilkerson's septic tank is working?

1 MR. SATO: Same objection.

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

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

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

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

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

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

20 (Audience members speaking
21 simultaneously.)

22 MR. SATO: Objection. Mr. Chairman, I'm
23 going to object to these proceedings for right
24 now. I mean we would respectfully request the
25 respect of the audience in this matter. It's

1 difficult for the court reporter to get an
2 accurate transcript if other people are talking.
3 I think it would be fairer for the Prosecution
4 Team if the audience would resist making any
5 comments, as much as they would like to, and let
6 Mr. Thompson simply testify and answer the
7 questions as best he can.

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

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

19 CHAIRPERSON YOUNG: Hold on one second.
20 Mr. Shallcross.

21 BOARD MEMBER SHALLCROSS: Yeah, I don't
22 know if this helps us, this line of questioning,
23 at all. I'm not really sure of the relevance.
24 And Mr. Wilkerson's letter dated November 14th
25 states: Our property has a functioning septic

1 system that was approved and permitted by the
2 County."

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

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

11 CHAIRPERSON YOUNG: No.

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

17 MR. SATO: Objection, asked and answered
18 already.

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

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

1 intensively for the last five and a half years.

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

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

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

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

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

25 MR. SATO: Objection, vague and

1 ambiguous.

2 MR. RICHARDS: Excuse me, what was your
3 objection?

4 MR. SATO: Vague and ambiguous.

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

7 AUDIENCE SPEAKERS: We can't hear.
8 Can't hear you. You're telling us to be quiet.
9 Speak up so we can hear you.

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

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

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

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

23 MR. THOMPSON: No, ma'am.

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

1 Wilkerson property?

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

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

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

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

11 MS. SULLIVAN: Yes, I am.

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

14 MR. SATO: Objection, relevance.

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

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

19 MS. SULLIVAN: And how is that?

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

23 BOARD MEMBER SHALLCROSS: Yeah, why
24 don't you go ahead and put it up in front of you,
25 and this comes off your time.

1 MS. SULLIVAN: So is it anything that
2 gets discharged, even if it's clean water? That's
3 waste?

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

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

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

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

18 MR. PACKARD: Can I answer that?

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

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

24 BOARD MEMBER SHALLCROSS: They both
25 have.

1 CHAIRPERSON YOUNG: -- who -- their
2 evidence and testimony is really, they are one
3 designated party.

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

10 Mr. Packard.

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

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

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

21 CHAIRPERSON YOUNG: It is argumentative.

22 MS. SULLIVAN: Is that true that your
23 interpretation of discharge means that it
24 prohibits a discharge whether it consists of
25 discharge of waste or not?

1 MR. THOMPSON: That's my understanding
2 of the prohibition, yes.

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

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

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

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

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

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

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

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

25 MS. SULLIVAN: Okay. So if a

1 communitywide system goes in that recycles water
2 and recharges the basin, won't that be a discharge
3 that violates your order of ceasing all
4 discharges?

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

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

12 MR. PACKARD: From a community system,
13 yes.

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

16 MR. PACKARD: Yes.

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

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

25 CHAIRPERSON YOUNG: Ms. Sullivan, your

1 time is up on the cross-examination.

2 MS. SULLIVAN: Okay.

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

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

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

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

12 CHAIRPERSON YOUNG: Nice to see you.

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

16 (Multiple audience responses.)

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

19 (Applause.)

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

22 MS. SULLIVAN: Okay.

23 CHAIRPERSON YOUNG: Go ahead.

24 MS. SULLIVAN: Mr. Wilkerson is with me.
25 I would like to make an offer of proof to expedite

1 the process here. I will make an offer of proof
2 that Mr. Wilkerson and his wife, Norma Wilkerson,
3 would testify to their home being built in the
4 1970s before 8313 was adopted; that they would
5 immediately hook up to a community wastewater
6 system if one was available; they have prepaid the
7 full bond assessment of \$3299 as of 2001. We have
8 a receipt that's available.

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

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

25 They have been singularly prosecuted and

1 told that if the system beyond their control is
2 not financed against their home and completed by
3 1/1/11 they will have to vacate their home. They
4 have no means of meeting the mandate to cease
5 discharges from their home unless they move out,
6 or the Regional Board lets an onsite, individual
7 system be built.

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

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

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

24 I make an offer of proof that when the
25 Wilkersons moved here after purchasing the

1 property in 1986 they contacted the County to make
2 inquiry as to the prohibition zone. They were
3 told it was a moratorium that pertained to
4 additional new homes, not existing homes.

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

14 (Pause.)

15 MS. SULLIVAN: Okay. What I have just
16 handed the Board is a copy of the entire package
17 of documents provided to the Wilkersons. I will
18 make a note for the record and offer of proof that
19 Mr. Wilkerson is a former Postal Office worker.

20 An envelope -- I've given you the
21 documents in the order they were received. First
22 he received an envelope of various documents that
23 was postmarked January 27, 2005, which they
24 received on February 4, 2006.

25 The next set of documents is a revised

1 hearing noticed dated February 28, 2006 in an
2 envelope postmarked February 28, 2005, demand that
3 he submit emails and documents to this Board.

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

7 The next document is a letter regarding
8 a briefing scheduled postmarked May 18, 2005.
9 Now, this was the first certified letter they ever
10 got.

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

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

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

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

25 CHAIRPERSON YOUNG: Well, but --

1 MS. SULLIVAN: -- declaration of penalty
2 of perjury of the mailing. So, --

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

5 MS. SULLIVAN: Right. So, --

6 CHAIRPERSON YOUNG: -- suggesting
7 that --

8 MS. SULLIVAN: -- what we have --

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

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

14 CHAIRPERSON YOUNG: Okay.

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

17 CHAIRPERSON YOUNG: Okay.

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

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

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

24 CHAIRPERSON YOUNG: -- what you're
25 showing us is that he's received the documents.

1 MS. SULLIVAN: No. That's -- I'm --

2 CHAIRPERSON YOUNG: He's not received --

3 MS. SULLIVAN: No.

4 CHAIRPERSON YOUNG: -- the documents
5 that you just presented?

6 MS. SULLIVAN: I'm not done. If I can,
7 I only have a few minutes, you know, to put on my
8 case --

9 CHAIRPERSON YOUNG: I've stopped the
10 clock for you --

11 MS. SULLIVAN: Okay.

12 CHAIRPERSON YOUNG: -- so that I could
13 give you some leeway so that I can get some of my
14 questions answered on this specific topic.

15 MS. SULLIVAN: But what I'd like to do
16 is not be interrupted in my presentation, --

17 CHAIRPERSON YOUNG: Okay.

18 MS. SULLIVAN: -- and then you can save
19 your questions for the ten minutes, and I'll be
20 happy to answer them in the ten minutes --

21 MS. SULLIVAN: Okay.

22 BOARD MEMBER SHALLCROSS: Just let her
23 go.

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

1 CHAIRPERSON YOUNG: Go ahead.

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

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

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

21 There was a document that he received by
22 certified/return receipt on August 4, 2005, and
23 postmarked that date, which stated that CDOs were
24 not going to go forward; that the procedures would
25 be outlined in the future. The Wilkersons

1 understood this document to mean that they were no
2 longer targeted, and that a new drawing would take
3 place to persecute someone else.

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

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

19 The Wilkersons have not been afforded
20 due process. They didn't get the required notices
21 or documents through mail. They never got the
22 14th and 15th notice.

23 The Wilkersons are very very pro-sewer.
24 They're willing to do and pay what's necessary to
25 get a sewer. They will cooperate; they do

1 cooperate. There's just no need to issue a CDO.

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

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

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

13 MS. SULLIVAN: Okay.

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

17 MS. SULLIVAN: Yes.

18 CHAIRPERSON YOUNG: Okay.

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

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

25 MS. SULLIVAN: No. I'm using under

1 Evidence Code 776, the right to show my case-in-
2 chief by cross-examination.

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

5 MS. SULLIVAN: Oh, I think --

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

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

10 CHAIRPERSON YOUNG: -- you track in
11 Superior Court.

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

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

17 MS. SULLIVAN: Pardon?

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

20 MS. SULLIVAN: Yes, I would.

21 CHAIRPERSON YOUNG: Go ahead.

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

25 MR. THOMPSON: We sent our mailings by

1 certified mail with return receipt. Did get those
2 return receipts.

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

5 MR. THOMPSON: Look about half a dozen
6 mailings.

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

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

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

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

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

17 CHAIRPERSON YOUNG: Yes.

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

21 MS. SULLIVAN: Yes, I testified to that.

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

24 BOARD MEMBER SHALLCROSS: Okay, so it's
25 only the 14th and 15th that they didn't receive?

1 Or they're claiming they didn't receive, right?

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

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

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

12 MS. SULLIVAN: Okay.

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

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

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

1 was a hearing that date. I didn't know anything
2 about that.

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

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

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

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

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

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

24 MS. SULLIVAN: Did you have any
25 documents that were posted that you didn't serve

1 on a party?

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

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

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

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

18 MR. THOMPSON: Are you talking about our
19 documents?

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

22 MR. THOMPSON: There's a whole library
23 of Prosecution Team's documents that has been
24 available here for the public review. And for the
25 convenience of those folks that could not come in,

1 we decided to scan all of them in and post them on
2 the internet. It's a very large volume of
3 documents, probably two banker boxes. We did not
4 send hard copies of that to the Wilkersons.

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

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

17 MS. SULLIVAN: Anything else? Any other
18 evidence?

19 MR. THOMPSON: No, ma'am.

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

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

25 MS. SULLIVAN: Yes. Well, --

1 MR. SATO: Objection, lack of
2 foundation.

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

5 MR. THOMPSON: No, ma'am.

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

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

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

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

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

17 MR. THOMPSON: Yes.

18 MS. SULLIVAN: Okay. Have you made any?

19 MR. THOMPSON: No.

20 MS. SULLIVAN: Okay. If the vote does
21 not go through on 218, or the County chooses not
22 to proceed with a community system by July 1,
23 2008, is there an alternative that's available for
24 the Wilkersons that they could install now that
25 would be approved by you? And I don't want to

1 hear, well, you don't tell us what to do, you just
2 approve it.

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

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

17 MS. SULLIVAN: Okay, would --

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

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

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

25 MR. THOMPSON: Well, the County of San

1 Luis Obispo Health Department has indicated that
2 they would not be comfortable with approving a
3 composting toilet.

4 MS. SULLIVAN: My question was for this
5 Board.

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

14 MS. SULLIVAN: Well, I'm asking for what
15 could be installed tomorrow. There must be
16 something approved that's an onsite system on an
17 individual system, because that's what you're
18 requiring in the CDO. So I'm asking what is it.

19 What is it that's acceptable to this
20 Board?

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

1 relevant to any of these issues.

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

4 MR. SATO: Their time has expired.

5 CHAIRPERSON YOUNG: I understand, Mr.
6 Sato.

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

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

12 CHAIRPERSON YOUNG: Yes.

13 MS. SULLIVAN: Yes.

14 CHAIRPERSON YOUNG: Go ahead, Mr. Sato.

15 MR. SATO: We just have a couple
16 questions.

17 CHAIRPERSON YOUNG: You have ten
18 minutes.

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

22 MR. WILKERSON: Yes.

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

25 MR. WILKERSON: When I moved here and

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

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

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

18 MR. WILKERSON: The benefits?

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

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

24 MR. WILKERSON: I'm not sure I
25 understand the question.

1 MR. SATO: You were just describing that
2 you heard about a sewer system, and that certain
3 benefits were described to you. I was wondering
4 if you'd tell me what those benefits were.

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

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

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

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

23 MR. WILKERSON: Yes.

24 MR. SATO: Where did she get that
25 information?

1 MR. WILKERSON: From me.

2 MR. SATO: From you.

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

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

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

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

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

25 (Parties speaking simultaneously.)

1 MR. WILKERSON: -- shall cease all
2 discharges from the septic system no later than
3 January 1, 2001, unless the Water Board has
4 approved an onsite system for discharge from the
5 site by June 30, 2010.

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

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

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

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

23 MR. WILKERSON: When you read something
24 like this, signed by Michael Thomas, failure to
25 comply with provisions of this order may subject

1 the discharger to further enforcement action,
2 including assessment of civil liability under
3 sections so forth and so on of the Water Code, and
4 referral to the Attorney General for injunctive
5 relief and similar criminal liability, what does
6 that mean.

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

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

16 (Audience participation.)

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

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

1 letters that I received.

2 MR. SATO: Thank you. No further
3 questions.

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

6 MR. SATO: No, we have no rebuttal.

7 CHAIRPERSON YOUNG: Okay. Ms. Sullivan.

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

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

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

17 CHAIRPERSON YOUNG: Okay.

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

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

23 MS. SULLIVAN: Okay, so five minutes.
24 Mr. Sato, this question's for you. Do you contend
25 that the Regional Board has the ability to cause

1 14,000 people to vacate their homes in order to
2 comply with the prohibition of discharges?

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

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

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

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

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

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

23 MS. SULLIVAN: Do you contend that you
24 could force Mr. Wilkerson to vacate his premises
25 as of -- under this CDO as of 2011 if a sewer is

1 not constructed?

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

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

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

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

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

18 CHAIRPERSON YOUNG: Can you be more
19 specific?

20 MS. SULLIVAN: Pardon?

21 CHAIRPERSON YOUNG: Can you be more
22 specific?

23 MS. SULLIVAN: Okay. There's
24 infrastructure that's involved in constructing a
25 communitywide system, right?

1 MR. THOMPSON: Yes, ma'am.

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

5 MR. THOMPSON: Construction, two to
6 three years.

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

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

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

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

18 MS. SULLIVAN: Are there any --

19 MR. THOMPSON: They run in parallel.

20 MS. SULLIVAN: Are there any that you're
21 aware of that were actually constructed in four
22 years or less of this magnitude, of building all
23 the infrastructure and starting from starting from
24 scratch and going through permitting and post-
25 commission jurisdiction? And it's already been

1 designed, you know, designing it, everything. Do
2 you think that's possible to be done in four
3 years?

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

6 CHAIRPERSON YOUNG: Can you answer?

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

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

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

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

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

21 MS. SULLIVAN: I'll withdraw the
22 question.

23 MR. THOMPSON: -- is very fast.

24 MS. SULLIVAN: I'm going to withdraw the
25 question.

1 MR. THOMPSON: It's the planning and --

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

4 MR. THOMPSON: Okay.

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

7 MR. SATO: Objection, argumentative.

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

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

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

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

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

1 And that is not a correct representation --

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

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

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

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

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

22 MS. SULLIVAN: Okay.

23 CHAIRPERSON YOUNG: Okay, --

24 MS. SULLIVAN: I want to put an
25 objection on the record, too, that there's just

1 insufficient time for someone to put on a defense
2 before they have an order of this magnitude and of
3 this drastic nature imposed against them and their
4 property. And 15 minutes is just insufficient.
5 It's not going to work.

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

8 MR. SATO: Could Mr. Packard --

9 CHAIRPERSON YOUNG: Okay.

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

12 CHAIRPERSON YOUNG: Okay.

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

18 MR. SATO: I think --

19 MR. PACKARD: Not according to my
20 notice.

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

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

1 then.

2 CHAIRPERSON YOUNG: Okay.

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

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

13 This type of process not only is
14 unconstitutional and undemocratic, but it creates
15 such ill will. If anything is going to hurt the
16 218 vote, it's a selective persecution of
17 individuals. And it causes alienation even for
18 those who fully support protecting our waters.

19 I mean I'm a pro-sewer person. And I am
20 so appalled by this process that these people are
21 undergoing, and what it will do is it's going to
22 create a process where everyone's going to focus
23 their energies on you and the naysayers will focus
24 on why we don't need a sewer, and just
25 jeopardizing the whole 218 process.

1 Furthermore, the CDO seems to require
2 that these property owners put an individual
3 onsite system if the system -- I mean if the vote
4 fails. And yet there's no onsite system that's
5 available. And the Board and the staff, they
6 don't have any solution.

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

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

17 Aside from the emotions and the
18 inequities, it doesn't seem to be furthering any
19 goal of this Board to have a CDO issued. It's not
20 going to help clean up the water. Prior testimony
21 showed that it hasn't. It's not going to be
22 anything Mr. Wilkerson can do to solve the
23 problem. He can vote, but his vote's not going to
24 change the course of action here. As I said,
25 he'll give you his proxy.

1 It doesn't even matter under your
2 interpretation of the 8313 if it's clean water
3 being discharged or wastewater. I submit that
4 under the Water Code you may have the ability to
5 cease discharges of waste, but I don't see
6 anything in there that authorizes expansion of
7 ceasing discharges period. And even a community
8 system's got to discharge into the -- recharge to
9 the basin. That's a necessary element. So
10 there's going to have to be discharge, regardless
11 of what 8313 says.

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

21 And with regard to 8313, under the Water
22 Code at the time, under 13330 at the time 8314 was
23 adopted, it required that a person could challenge
24 the enforcement of rule or regulation of the Board
25 at the time it's being enforced against them. And

1 it is now that time. It's now ripe for review.

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

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

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

25 I wanted to ask some questions about the

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

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

21 I would like to know why this CDO with
22 the drop-dead date is necessary. It would seem to
23 me it would be much more proper to have a work
24 plan proposal or something. I mean, the three
25 years for cleanup and doing your pumping, that is

1 great. That is the first really good moved I
2 think this Board has considered.

3 But to couple it with the extreme
4 sanctions of criminal and civil and fines and have
5 to leave your home if you want to avoid those,
6 even if the word vacate isn't there, the word is
7 certainly there that you must cease discharge.

8 There's so much more I would love to
9 say, but I would like to incorporate all of the 94
10 reasons I put in the appeal that's currently
11 pending. And I object to so many of the
12 procedural things that have occurred here. There
13 hasn't been one subpoena that's issued, that's
14 been requested by any designated party. There has
15 been a complete change of process over and over
16 again.

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

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

23 CHAIRPERSON YOUNG: Okay, thank you.
24 Mr. Sato or Mr. Packard.

25 MR. PACKARD: Thank you. As to the

1 first issue before the Board, it's clear that the
2 Wilkersons have a septic system on the property
3 described in the cease and desist order, and they
4 are, in fact, discharging in violation of the
5 basin plan prohibition.

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

15 So we do think that this cease and
16 desist order is the appropriate remedy. And with
17 the modification mentioned by Mr. Thomas on page
18 5, we recommend that the Board adopt the cease and
19 desist order for the Wilkersons.

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

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

1 that, but the --

2 AUDIENCE SPEAKER: Louder.

3 CHAIRPERSON YOUNG: -- but that the --

4 (Multiple Audience Speakers.)

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

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

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

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

24 CHAIRPERSON YOUNG: And are they mailed
25 to everybody regardless of whether they get it by

1 internet?

2 MR. THOMAS: Yes.

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

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

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

14 MR. THOMAS: Not to my knowledge.

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

17 BOARD MEMBER SHALLCROSS: One question.

18 CHAIRPERSON YOUNG: Go ahead, Mr.
19 Hayashi.

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

25 BOARD MEMBER SHALLCROSS: It was a year

1 earlier.

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

4 MR. THOMAS: I've looked through the
5 documents that Ms. Sullivan has submitted. And,
6 yes, there are postmarks that are a year in
7 arrears. And on some of the documents the
8 postmark is correct, it's 2006. And others it's
9 2005. I can't explain that.

10 CHAIRPERSON YOUNG: Okay.

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

14 MS. SULLIVAN: Yes.

15 BOARD MEMBER SHALLCROSS: Based on the
16 earlier postmark?

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

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

1 problem. And that was something --

2 BOARD MEMBER SHALLCROSS: And how was
3 that resolved?

4 MS. SULLIVAN: It wasn't.

5 BOARD MEMBER SHALLCROSS: What was
6 required by December 12th?

7 MS. SULLIVAN: That they explain,
8 produce documents with regard to the Chairman's
9 ruling on objections. There were some objections
10 that were made on December 8th, and he said that
11 they could submit further documents, but nobody
12 got the notice until after the deadline had run.

13 BOARD MEMBER SHALLCROSS: Nobody got the
14 notice?

15 MS. SULLIVAN: Well, no one I know of
16 got the notice. I swear, I don't --

17 BOARD MEMBER SHALLCROSS: We're talking
18 about Mr. Wilkerson.

19 MS. SULLIVAN: Mr. Wilkerson didn't get
20 it. It was postmarked the 11th.

21 BOARD MEMBER SHALLCROSS: Who are you
22 representing? Other people right now, or Mr.
23 Wilkerson? I'm confused.

24 MS. SULLIVAN: Well, actually I
25 represent Mr. Wilkerson right now.

1 BOARD MEMBER SHALLCROSS: Okay, thanks.

2 Let's just talk about Mr. Wilkerson.

3 MS. SULLIVAN: Okay.

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

6 MS. SULLIVAN: No, he didn't.

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

9 MS. SULLIVAN: Yes.

10 BOARD MEMBER SHALLCROSS: In a timely
11 fashion?

12 MS. SULLIVAN: I said that, yes.

13 BOARD MEMBER SHALLCROSS: Okay, thanks.

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

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

23 CHAIRPERSON YOUNG: Well, they're in our
24 package. We have a letter from the Wilkersons.
25 Have you seen it?

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

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

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

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

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

15 CHAIRPERSON YOUNG: You can object --

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

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

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

24 CHAIRPERSON YOUNG: Mr. Wilkerson, do
25 you have a copy of the letter that you wrote?

1 Have you shared it with your attorney?

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

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

6 CHAIRPERSON YOUNG: It was sent to us.

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

9 CHAIRPERSON YOUNG: So it's been
10 publicly disclosed.

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

13 CHAIRPERSON YOUNG: Okay.

14 (Pause.)

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

17 CHAIRPERSON YOUNG: Well, I was curious
18 as to why, first of all, this is dated November
19 14. So, it was a timely submission before the
20 December hearing. So, he did get notice of the
21 December hearing, I take it. Right, the December
22 14th and 15th hearing?

23 MS. SULLIVAN: Well, I think the burden
24 is on the Board to prove that he got service. You
25 know, as far as timely service --

1 CHAIRPERSON YOUNG: They have. We have
2 this document in front of us, and I'm asking Mr.
3 Wilkerson and you --

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

9 CHAIRPERSON YOUNG: Okay.

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

14 CHAIRPERSON YOUNG: Okay, well, it's
15 apparent to me by the date of his letter, November
16 14th, which was prior to the deadline for
17 submission of written testimony and documents for
18 the December 14th and 15th dates, --

19 MS. SULLIVAN: Actually you had a order
20 that went out on September 7th, I believe, that
21 said that date. Earlier. And then when the
22 Prosecution Team didn't get their documents on
23 time, you moved it because they failed to get
24 their documents in on -- in accordance with the
25 order a couple times.

1 So I believe that was an earlier order
2 before even back to before the November hearing
3 that got rescheduled when the prosecution failed
4 to get their documents in.

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

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

12 MS. SULLIVAN: I think it's November
13 15th, but --

14 CHAIRPERSON YOUNG: Okay.

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

17 CHAIRPERSON YOUNG: Right, okay.

18 MS. SULLIVAN: I don't think that's --

19 CHAIRPERSON YOUNG: And he responded to
20 it, because this appears to be his written
21 submission.

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

24 CHAIRPERSON YOUNG: Okay, right.

25 MS. SULLIVAN: But it's not the

1 submission of everything he was going to argue.

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

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

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

24 First of all, the 8313 is written just
25 as a flat prohibition on discharges from onsite

1 disposal systems. And the circumstantial evidence
2 that the Prosecution Team has put forth I find to
3 be sufficient to make the causation linkage. And
4 that is that for decades there have been levels of
5 nitrates in the groundwater beneath the highest
6 densities of septic tank owners. And that there
7 is evidence of problematic septic tank systems.

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

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

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

1 challenge them.

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

6 Mr. Shallcross.

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

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

21 The problem in the prohibition zone is
22 there is a large number of people living there in
23 a small area. And that's what's causing the
24 problem. Septic tanks are perfectly fine when
25 you're up in the mountains, but in a small area

1 each person is adding to that problem, whether
2 your septic tank is working or not.

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

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

11 CHAIRPERSON YOUNG: Mr. Hayashi.

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

16 CHAIRPERSON YOUNG: Okay.

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

20 CHAIRPERSON YOUNG: Okay, to the full
21 Board?

22 BOARD MEMBER SHALLCROSS: To the full
23 Board.

24 CHAIRPERSON YOUNG: The five-member
25 Board.

1 BOARD MEMBER SHALLCROSS: However many,
2 yes.

3 CHAIRPERSON YOUNG: Okay.

4 BOARD MEMBER HAYASHI: I'll second.

5 CHAIRPERSON YOUNG: Okay. All those in
6 favor?

7 (Ayes.)

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

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

13 (Brief recess.)

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

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

19 CHAIRPERSON YOUNG: Okay. Would you
20 please raise your right hand and repeat after me.
21 Whereupon,

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

1 CHAIRPERSON YOUNG: Okay, thank you.

2 All right.

3 MS. De WITT-MOYLAN: Mr. Young, I
4 just --

5 THE REPORTER: Excuse me, can you please
6 state your name and spell your name --

7 MS. De WITT-MOYLAN: Yes.

8 THE REPORTER: -- for the record, please.

9 MS. De WITT-MOYLAN: Yes, my name is
10 Beverley, B-e-v-e-r-l-e-y, De Witt, D-e space
11 W-i-t-t, hyphen Moylan, M-o-y-l-a-n. And it's Ms.
12 De Witt-Moylan; my husband's last name is not De
13 Witt-Moylan. Thank you.

14 I want to mention, Mr. Young, --

15 CHAIRPERSON YOUNG: Yes.

16 MS. De WITT-MOYLAN: -- that on January
17 8th I sent a note to Mr. Thomas at 8:30 p.m., an
18 email saying, I have procedural objections which I
19 need to enter into the record. In the agenda for
20 the January 22nd hearing I did not find a time set
21 aside for this. Will time be set aside for
22 procedural objections --

23 CHAIRPERSON YOUNG: Right now.

24 MS. De WITT-MOYLAN: -- on January 21st.
25 Okay.

1 CHAIRPERSON YOUNG: Go ahead.

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

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

9 MS. De WITT-MOYLAN: Yes.

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

14 MS. De WITT-MOYLAN: Yes.

15 COMMISSIONER BYRON: -- respect --

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

17 CHAIRPERSON YOUNG: Okay.

18 MR. MOYLAN: I'd like to say something.

19 Now, these are not on the -- the procedural
20 objections are separate from everything else,
21 right?

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

24 MR. MOYLAN: Okay, thank you.

25 CHAIRPERSON YOUNG: -- for the

1 presentation of evidence. These are procedural
2 objections that you wish to put on the record.

3 MS. De WITT-MOYLAN: I object that a
4 subhearing abridges our right to equal protection.
5 I object that we are being treated differently
6 from all other proposed CDO recipients whose cases
7 were heard and voted on by a quorum on December
8 15, 2006.

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

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

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

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

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

25 MR. MOYLAN: But we want to read them.

1 CHAIRPERSON YOUNG: -- in your previous
2 submissions you have lists of objections.

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

4 MR. MOYLAN: These are different.

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

7 CHAIRPERSON YOUNG: Okay, do you have a
8 copy?

9 MS. De WITT-MOYLAN: I do.

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

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

16 MS. De WITT-MOYLAN: Probably about 20.

17 CHAIRPERSON YOUNG: About 20, okay.

18 MS. De WITT-MOYLAN: They won't take
19 very long --

20 MR. MOYLAN: And I have about 20.

21 CHAIRPERSON YOUNG: Are they the same?

22 MS. De WITT-MOYLAN: No.

23 MR. MOYLAN: No.

24 CHAIRPERSON YOUNG: Okay. Do you have a
25 copy of them?

1 MR. MOYLAN: Yeah, you can have it after
2 I'm done reading it.

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

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

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

9 MS. De WITT-MOYLAN: Yes.

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

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

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

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

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

20 I object that we are being treated --

21 CHAIRPERSON YOUNG: Okay --

22 MR. MOYLAN: One at a time.

23 CHAIRPERSON YOUNG: -- you know what, I
24 think some of these, Gary, really they're more
25 like statements.

1 BOARD MEMBER SHALLCROSS: They're not
2 objections --

3 CHAIRPERSON YOUNG: I think they're --

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

6 CHAIRPERSON YOUNG: Yeah, there's --

7 BOARD MEMBER SHALLCROSS: Okay, then
8 fine.

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

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

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

20 MS. De WITT-MOYLAN: Yes, I realize
21 that; and that's why I feel that we're being
22 treated differently. Because you're only making a
23 recommendation to two other people who will then
24 just take your recommendation or not. But how are
25 you going to convey the content of the hearing to

1 those people so that they can make a valid
2 judgment, themselves?

3 CHAIRPERSON YOUNG: Okay, go ahead.

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

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

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

20 I object to Chairman Young's repeating
21 to the Board Ms. Arens' false portrayal of my
22 request for a continuance, having already received
23 the 20-page document I submitted at his request to
24 provide substantial justification for a
25 continuance.

1 I object to Mr. Young's deliberately
2 disrespectful reference to my name near the close
3 of the December 15, 2006 hearing. Particularly
4 given that I was not present.

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

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

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

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

1 by all defendants.

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

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

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

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

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

25 I object to the secrecy of this

1 enforcement action by singling out randomly,
2 without observers, 45 of almost 5000 households;
3 and by failing to reveal a master plan for
4 enforcement.

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

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

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

23 I object that this agency has engaged in
24 public waste by failing to utilize mediation. I
25 object that the settlement agreement was

1 negotiated in secret among two proposed cease and
2 desist order recipients and Mr. Sato; and is,
3 therefore, essentially a limited agreement meeting
4 the needs of those three individuals.

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

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

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

17 Thank you.

18 CHAIRPERSON YOUNG: Okay. Mr. Moylan.

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

21 CHAIRPERSON YOUNG: Yes.

22 MR. SATO: -- if I could make a
23 suggestion. You know, I thought that what you
24 were going to entertain here right now were going
25 to be procedural objections raised by Mr. Moylan

1 and Ms. De Witt-Moylan. But what I hear from them
2 is really argument, opening statements, closing
3 statements, a lot of things that I think would
4 otherwise go to their regular testimony.

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

11 MR. MOYLAN: I object.

12 (Laughter.)

13 MR. MOYLAN: Vague and discriminatory.

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

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

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

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

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

25 Some of these are not -- they're just

1 statements of his opinion. These are not truly
2 procedural objections that we're going to do
3 anything about. So, go ahead, Mr. Moylan.

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

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

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

10 I object to the process of notifying
11 just 45 property owners at random for a town of
12 14,000 people who are, for the vast majority,
13 still ignorant of what a cease and desist order
14 is.

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

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

25 I object to the Water Board knowingly

1 plodding forth with the CDO process while
2 possessing the knowledge that this same process is
3 harming many people, physically and emotionally.

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

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

19 I object that after requesting a
20 continuance in a timely, professional and
21 courteous manner on four different occasions, and
22 after quickly responding with a detailed 20-page
23 report of why we could not make the hearing on
24 December 14th and 15th, 2006, we were still denied
25 a continuance with no explanation.

1 I object, and when asked by me directly
2 in person on December 11, 2006, for a definition
3 of the term substantial justification in regard to
4 a continuance the Assistant Executive Officer
5 could only state, I don't know. I object that the
6 Assistant Executive Officer, to whom we were told
7 to bring our questions, does not know what would
8 constitute, in the RWQCB's own words, substantial
9 justification for a continuance.

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

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

21 I object to the lack of due process such
22 as repeated delays in Water Board notices and
23 postings that as often as not missed the deadlines
24 for those same notices and postings that the Water
25 Board, itself, established.

1 I object to the lack of properly served
2 notices in the mail -- and I can give you a copy
3 of all of those notices. I will do that after I
4 finish -- such as inaccurate postage metering and
5 gender discrimination by not having my wife's name
6 on most of the postal notices.

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

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

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

21 I object to the duress of this entire
22 proceeding and to the extreme duress of this year-
23 long procedure. I object to the lack of due
24 process by the severe time restrictions placed
25 upon my wife and me.

1 And I just thought of one more
2 objection. And I object that you cannot issue a
3 settlement agreement to somebody who's suffering
4 duress, but you can issue a CDO to somebody who's
5 suffering duress.

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

16 CHAIRPERSON YOUNG: Denied.

17 MR. MOYLAN: That's what I figured.
18 This is a request, Mr. Chair, and we may not need
19 all of that time.

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

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

25 CHAIRPERSON YOUNG: I don't recall.

1 MR. MOYLAN: Well, we are.

2 CHAIRPERSON YOUNG: Denied.

3 MR. MOYLAN: Thank you.

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

6 MR. SATO: Mr. Thompson will begin.

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

9 MR. THOMPSON: Bill Moylan and Beverley
10 De Witt-Moylan live here at 1516 17th Street,
11 within the prohibition zone. They, in fact,
12 submitted a septic tank pumping invoice dated June
13 3, 2006, demonstrating they have a septic system.

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

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

24 That's all for now.

25 CHAIRPERSON YOUNG: Okay. You have ten

1 minutes for cross-examination of --

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

3 CHAIRPERSON YOUNG: -- of the
4 Prosecution Team.

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

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

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

14 MR. THOMPSON: No.

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

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

22 MR. MOYLAN: You said you didn't have
23 any site-specific evidence for my property; that
24 all the evidence that the Board had was from test
25 wells?

1 MR. THOMPSON: Well, I think I've
2 explained --

3 MR. MOYLAN: That's okay, I'm going to
4 go to the next question. Mr. Thompson, are you
5 aware of the Glenn Stillman affidavit in August of
6 2001 that states that the test wells were illegal
7 wells? Are you aware of that?

8 MR. THOMPSON: Yeah, I'm aware of that.

9 MR. MOYLAN: Okay. Mr. Packard, with
10 horses passing gallons of urine every day in your
11 test well impact the nitrate readings of that test
12 well, if the well was not sealed properly?

13 MR. PACKARD: Potentially.

14 MR. MOYLAN: Mr. Packard, are you aware
15 that the well nearest my home, it's on 18th and
16 Pismo Streets, sits on property that was a horse
17 boarding farm until -- the late 1970s until 2005?

18 MR. PACKARD: No.

19 MR. MOYLAN: Well, it was. Mr.
20 Thompson, does the Water Board have any evidence
21 that my effluent is reaching the waters of the
22 state? That is a yes or no question.

23 MR. SATO: Objection, that's vague
24 and --

25 MR. MOYLAN: It's not vague, no.

1 MR. SATO: -- and ambiguous.

2 MR. MOYLAN: Do you have any evidence
3 that the waters, or that my effluent is reaching
4 the waters of the state?

5 MR. THOMPSON: Your septic system is
6 designed to discharge wastewater --

7 MR. MOYLAN: Do you have --

8 MR. THOMPSON: -- into the soil and --

9 MR. MOYLAN: Please --

10 MR. THOMPSON: -- and the groundwater.

11 MR. MOYLAN: Mr. Chair, I believe I'm
12 getting a hostile witness.

13 (Laughter.)

14 CHAIRPERSON YOUNG: He's attempting to
15 answer your question; you can follow up --

16 MR. MOYLAN: It's pretty simple; it's a
17 yes or no. Do you have any evidence that the
18 effluent from my septic system is reaching the
19 waters of the state?

20 MR. THOMPSON: In the sense that --

21 MR. MOYLAN: Stop the clock.

22 MR. THOMPSON: The hydrogeologist --
23 well, there's a lot of evidence, Bill, that I --

24 MR. MOYLAN: Well, do you have any
25 evidence --

1 (Parties speaking simultaneously.)

2 MR. THOMPSON: -- if you would allow me
3 to answer it. But it's indirect evidence,
4 okay, --

5 MR. MOYLAN: Okay, that's good enough.
6 You don't have to give me any more answers. At
7 least not for that one.

8 Mr. Packard, did the Water Board attempt
9 to notify all of the homes in the prohibition zone
10 about the so-called violation of using their
11 septic systems?

12 MR. PACKARD: Yes.

13 MR. MOYLAN: When did you do that?

14 MR. PACKARD: In May of 2002.

15 MR. MOYLAN: You notified all the homes
16 in the prohibition zone that they were in
17 violation?

18 MR. PACKARD: We sent mailings to all
19 the property owners, that's correct.

20 (Audience participation.)

21 MR. MOYLAN: I -- 4500 homes?

22 MR. PACKARD: Yes.

23 (Audience participation.)

24 CHAIRPERSON YOUNG: Folks, please, keep
25 it down. We want to hear what they have to say;

1 and I don't want comments from the audience.

2 MR. MOYLAN: Mr. Packard, was any
3 attempt made to send me an informal notice of any
4 so-called violation?

5 MR. PACKARD: None other than that 2002
6 mailing.

7 MR. MOYLAN: I don't remember any 2002
8 mailing, myself. But, anyway, Mr. Packard, you
9 and Matt Thompson me with the Mortaras and me on
10 August 29, 2006, didn't you?

11 MR. PACKARD: I'll take your word on the
12 date, but, yeah, we did meet.

13 MR. MOYLAN: Okay. Is it true, Mr.
14 Packard, that at that meeting I asked you to
15 please these CDO hearings?

16 MR. PACKARD: I don't recall the exact
17 wording, but perhaps you did.

18 MR. MOYLAN: Oh, I recall the exact
19 wording, and I will show you it, because I wrote
20 it down right after the meeting. I did ask you to
21 stop the CDO hearings.

22 Mr. Packard, do you remember what you
23 told me in answer to my request to please stop the
24 CDO hearings?

25 MR. PACKARD: Not word-for-word or

1 exactly, no.

2 MR. MOYLAN: Isn't it true, Mr. Packard,
3 that you told me, and I quote, "We are going to
4 proceed with this prosecution"?

5 MR. PACKARD: I don't recall the exact
6 words.

7 MR. MOYLAN: Those were your exact
8 words. There's a signed affidavit by the Mortaras
9 and me, and it's in our evidence.

10 Okay, you did say --

11 MR. SATO: Let me just interject an
12 objection here. That, in fact, is not what is in
13 your evidence, Mr. Moylan. You have a different
14 statement attributed to Mr. Packard.

15 MR. MOYLAN: What's that statement?

16 MR. SATO: It's in your evidence
17 package.

18 MR. MOYLAN: You didn't state in my
19 evidence pack -- anyway, this is getting beyond
20 it. You didn't state that, all you said was you
21 don't believe that there was any ex parte
22 communication. And I didn't accuse you of any ex
23 parte communication.

24 But, anyway, let's go on here. Isn't it
25 true that I said you don't have to do this, do

1 you? As far as issuing proposed CDOs.

2 MR. PACKARD: Sounds about right.

3 MR. MOYLAN: Mr. Packard, isn't it true
4 then I then said -- wait a minute. Mr. Packard,
5 did you then reply we have been instructed to go
6 forward with this prosecution?

7 MR. PACKARD: I don't know if I said
8 that.

9 MR. MOYLAN: You did. Isn't it true
10 that I then said, wait a minute. Mr. Packard,
11 isn't it true that I then said to you, who has
12 told you to continue with these proposed CDOs?

13 MR. PACKARD: Something like that.

14 MR. MOYLAN: Yes. Isn't it true, Mr.
15 Packard, that you then told me, and I quote, "the
16 Chair of the Board"?

17 MR. PACKARD: Okay.

18 MR. MOYLAN: Okay. Mr. Packard, after
19 receiving instructions from Mr. Young did you feel
20 compelled to continue with proposed CDOs?

21 MR. SATO: Objection, misstates his
22 prior testimony.

23 MR. MOYLAN: Let's see, I just said that
24 he had been instructed by the Chair. So I'm
25 asking, after the Chair instructed you, did you

1 feel compelled to proceed with these CDOs?

2 MR. PACKARD: Actually you said continue
3 in the directions that are -- the instructions
4 from the Chairman occurred long before the CDOs
5 were issued, or proposed.

6 MR. MOYLAN: Well, I have it all written
7 down and the Mortara's have signed the affidavit
8 saying that you told me and them that you were
9 instructed by the Chair to proceed with these
10 CDOs.

11 MR. PACKARD: Right. And what I was
12 referring to is the discussion the Board had in
13 December '05, I believe, at the hearing for --

14 AUDIENCE SPEAKER: Microphone.

15 MR. MOYLAN: Okay, that's okay.

16 MR. PACKARD: But then --

17 MR. MOYLAN: -- You don't have to go
18 into any depth, in any long explanation.

19 Mr. Packard, --

20 MR. SATO: Objection. You can't ask a
21 question and then not allow a witness to complete
22 the answer.

23 MR. MOYLAN: He's giving testimony; I
24 just want an answer --

25 MR. SATO: Well, that's what he's

1 supposed to be doing. You're asking him a
2 question.

3 MR. MOYLAN: Okay.

4 CHAIRPERSON YOUNG: I would like him to
5 finish his answer.

6 MR. MOYLAN: Okay.

7 MR. PACKARD: I was referring to a
8 discussion that the Board had at the penalty
9 hearing when it said that they expected staff to
10 bring some sort of enforcement action. That's all
11 I was referring to.

12 MR. MOYLAN: Mr. Packard, isn't it true
13 that the reason we are here today is because of a
14 failed sewer project at the Tri-W site in Los
15 Osos?

16 MR. PACKARD: Among other things.

17 MR. MOYLAN: Mr. Packard, are you
18 familiar with section 13416 of the California
19 Water Code that says a public agency must hold a
20 proposition election with more than 50 percent of
21 votes cast in favor of such proposition before it
22 can enter into a contract with the State Board
23 before a construction loan will be granted?

24 MR. PACKARD: No.

25 MR. MOYLAN: That's exactly what it

1 says. I can get it for you. Want me to get it
2 for you and --

3 CHAIRPERSON YOUNG: Mr. Moylan, actually
4 if you're going to testify, then I'm going to
5 start deducting this from your 15 minutes. Okay?
6 Just ask him questions.

7 MR. MOYLAN: Okay. Mr. Packard, is it
8 true that the loan given for the failed Tri-W
9 sewer project was given by the State Water Board
10 illegally because there was no prop 218 vote for
11 the construction of that loan? For the
12 construction loan.

13 MR. SATO: Objection, lack of foundation
14 for Mr. Packard to opine about anything that the
15 State Board did.

16 MR. MOYLAN: Wasn't that loan an illegal
17 loan and --

18 CHAIRPERSON YOUNG: Sustained.
19 Sustained.

20 MR. MOYLAN: Okay. Was that loan an
21 illegal loan?

22 MR. PACKARD: I don't know.

23 MR. MOYLAN: Mr. Packard, knowing that
24 the CDO recipients have suffered physically and
25 mentally, will you please stop this process and

1 consider other more meaningful methods to clean up
2 the groundwater?

3 MR. PACKARD: I plan on continuing this
4 process today.

5 MR. MOYLAN: Knowing that people are
6 physically and mentally sick because of this
7 process? You're going to continue knowing that
8 people are sick?

9 MR. PACKARD: I'm taking the course of
10 action I think is best and appropriate at this
11 time.

12 MR. MOYLAN: Mr. Thompson, on April 28,
13 2006, at the hearing, when we said what happens if
14 there's no sewer project by January 1, 2010,
15 didn't you say you'll have to vacate the premises?

16 MR. THOMPSON: Yeah, I guess I hadn't
17 thought it out.

18 MR. MOYLAN: Thank you very much.

19 (Applause.)

20 CHAIRPERSON YOUNG: Folks, I'm going to
21 remind you the last time, any more demonstrations
22 and I'm just going to ask the room to vacate
23 except for the proposed cease and desist order
24 recipients and other designated parties.

25 Okay, we'll now go to your 15 minutes to

1 put on your own evidence.

2 MS. De WITT-MOYLAN: Mr. Young.

3 CHAIRPERSON YOUNG: Yes.

4 MS. De WITT-MOYLAN: I am going to be
5 doing that part.

6 CHAIRPERSON YOUNG: Okay.

7 MS. De WITT-MOYLAN: I plan to use the
8 entire 15 minutes, and so I would ask your
9 indulgence to please, if you have any questions or
10 objections, to hold them until the end so that I
11 have all the time I need.

12 CHAIRPERSON YOUNG: Okay, that's fine.

13 MS. De WITT-MOYLAN: Thank you.

14 CHAIRPERSON YOUNG: However, if the
15 Prosecution Team has an objection --

16 MS. De WITT-MOYLAN: Yes.

17 CHAIRPERSON YOUNG: -- to the testimony,
18 then that will interrupt --

19 MS. De WITT-MOYLAN: Okay.

20 CHAIRPERSON YOUNG: -- the flow of your
21 presentation.

22 MS. De WITT-MOYLAN: And will that --
23 you will stop the clock for that? If he objects?

24 CHAIRPERSON YOUNG: Usually not, no.

25 COMMISSIONER BYRON: Well, how can a

1 person have their --

2 CHAIRPERSON YOUNG: We'll see what
3 happens.

4 MS. De WITT-MOYLAN: Thank you.

5 CHAIRPERSON YOUNG: If it becomes long,
6 then I will stop the clock.

7 MS. De WITT-MOYLAN: Okay.

8 BOARD MEMBER SHALLCROSS: Can I just
9 interject --

10 MS. De WITT-MOYLAN: Because I need -- I
11 need all my 15 minutes.

12 CHAIRPERSON YOUNG: I understand.

13 BOARD MEMBER SHALLCROSS: I agree, but I
14 think the Board always has an opportunity to ask
15 questions at anytime. And I think if we do, then
16 the clock will be stopped.

17 MS. De WITT-MOYLAN: Thank you, all
18 right.

19 BOARD MEMBER SHALLCROSS: Yeah.

20 MS. De WITT-MOYLAN: Thank you, Mr.
21 Shallcross.

22 CHAIRPERSON YOUNG: Okay, go ahead.

23 MS. De WITT-MOYLAN: We who reside at
24 1516 17th Street in Los Osos, California, are not
25 guilty of polluting the waters of the State of

1 California. In fact, we have done everything
2 within our power to protect the waters of the
3 state, including pumping our septic tank within
4 the last three years; paying a regular sewer
5 assessment; and signing the settlement proposed by
6 Sullivan and Associates which indicates that we
7 will hook up to a wastewater treatment facility
8 when one is available.

9 We have submitted documentation in
10 evidence to that effect. And we would give you
11 our proxy for the 218 vote, as well.

12 The prosecution, however, has presented
13 no credible testimony or evidence to the contrary.
14 I incorporate by reference every shred of futile
15 prior evidence and testimony and all the
16 objections presented thus far. I incorporate by
17 reference all the heartache and all the tears shed
18 in this room and throughout the whole year of this
19 tragedy.

20 I incorporate by reference all the
21 confusion, all the consternation, all the
22 sleepless nights, all the fear, all the
23 desperation, all the grief, all the excruciating
24 indignation, all the numb disbelief, all the
25 humiliation, all the physical, mental and

1 emotional distress and all the time lost, never to
2 be retrieved, brought before this Board.

3 I incorporate by reference all the
4 trembling hands, all the shaky voices, all the
5 thumping hearts, all the tight throats, all the
6 shallow breathing, all the constricted chests, all
7 the high blood pressure, all the heart conditions
8 and all the recurring medical consequences of this
9 proceeding thus far.

10 I incorporate by reference all the
11 health costs, all the health lost, never to be
12 recovered.

13 I incorporate by reference the horrified
14 paralysis, the persistent nausea, all the pain and
15 all the anguish in the bodies of each member of
16 the 45 families randomly selected for this
17 senseless, relentless, ruthless progression of
18 this Board as though by a kind of reptilian
19 programming to a single inexorable goal.

20 I incorporate by reference all the
21 profound trauma, all the deep emotional wounds,
22 all the hopelessness and all the duress that have
23 come before this Board in the course of these
24 proceedings.

25 I incorporate by reference all the

1 damage wrought to families, to marriages and to
2 the children of the Los Osos 45 by the actions of
3 this Board of unelected, appointees and employees.

4 I incorporate by reference all the lives
5 changed forever. I incorporate by reference all
6 the logic, all the reason, all the wisdom, all the
7 determination, all the courage and all the trust
8 in the authority of our constitutional rights that
9 brave defendants have brought before this Board
10 thus far.

11 I incorporate by reference all the truth
12 spoken to power in this room up to this point. I
13 incorporate by reference all the simple, sensible
14 solutions brought before this Board and rejected
15 in the course of this proceeding.

16 I incorporate by reference the supremacy
17 of right over wrong. The power of integrity over
18 intimidation, and the force of facts over
19 fabrication, manipulation and prevarication.

20 I incorporate by reference all the
21 common sense, all the ingenuity, all the
22 compassion and all the dignity of ordinary, hard-
23 working people in the face of a cynical,
24 hypocritical regulatory body bent on using with
25 impunity its authority to harass, stalk and break

1 unsuspecting law-abiding citizens to bend their
2 political will.

3 I incorporate the suggestion by
4 prosecution staff that we need to rally the
5 citizens. That we need to rally the citizens to
6 save our homes. I incorporate by reference the
7 self-serving lecture by Chairman Young on December
8 15th as though chastising some corporation's board
9 of directors for failing to develop a unifying
10 vision statement linking our voting record to our
11 predicament.

12 I incorporate by reference Chairman
13 Young's inability to explain when this Board has
14 ever taken responsibility for its actions. I
15 incorporate by reference this Board's impotent
16 hand-wringing, bemoaning the conflict between
17 hearts and heads in deciding the identical pre-
18 determined outcomes of each case when they,
19 themselves, had set the scope of this prosecution
20 and the range of our defense.

21 If this cease and desist order is merely
22 a tactic to wake up a town, it is a failure. We
23 meet prohibition zone residents every week who do
24 not know what a CDO is.

25 A government regulatory body that

1 singles out a tiny group of citizens in an
2 irresponsible, ineffectual, disgraceful experiment
3 simply to put a town on notice has exceeded the
4 bounds of common decency and humanity. We reject
5 the notion that the RWQCB is legally constrained
6 by the narrow, self-imposed boundaries of this
7 proceeding from doing the right thing.

8 Perhaps you believe that you are right.
9 But you have an obligation to do right. This
10 prosecution team had a duty to Los Osos. This
11 Board had a duty to Los Osos. The costs have been
12 enormous for 45 families. The future costs to Los
13 Osos are incalculable.

14 The Prosecution Team and the Chairman
15 defend the notion that property is not at stake in
16 this action brought against us. Yet not a single
17 approved method of compliance, short of vacating
18 the premises, is available to us. Our property is
19 at stake in this CDO enforcement action. Already
20 targeted by this prosecution are at least four
21 special educators. I am familiar with six others
22 who also live in the prohibition zone.

23 Well, alone, are ten highly qualified
24 individuals with specialized degrees and training,
25 who live in homes with septic systems fully

1 permitted by San Luis Obispo County. How many
2 other educators and support personnel who work
3 with children inside and outside Los Osos have
4 been affected already by this CDO enforcement.
5 And how many more await CDOs.

6 If the RWQCB decrees in 2011 that Los
7 Osos has failed to make reasonable progress toward
8 a wastewater treatment facility, and we all must
9 cease discharging, how many will be forced to
10 vacate the premises? Where will we go when we
11 vacate the premises? Who will replace us? I
12 don't know. But the RWQCB should know.

13 How many children, able-bodied and
14 disabled, live in the prohibition zone in homes
15 with septic systems fully permitted by San Luis
16 Obispo County? I do not know, but the RWQCB must
17 know how many children will be forced to vacate
18 the premises in 2011 if it decides that we are not
19 making reasonable progress toward installation of
20 a wastewater treatment facility. Where will they
21 go? Who will shelter and protect them? Who will
22 take their places?

23 I don't know how many health care
24 practitioners, health care support personnel and
25 caregivers live in the prohibition zone, in homes

1 with septic systems fully permitted by San Luis
2 Obispo County, but the RWQCB should know. What
3 will happen to health care in this County in 2011
4 if the RWQCB decides that Los Osos has failed to
5 make reasonable progress toward a wastewater
6 treatment facility? And these health care workers
7 who work in all parts of the County must vacate
8 the premises, where will they go? Who will
9 replace them?

10 How many fragile, elderly and disabled
11 people live in the prohibition zone? When they
12 must vacate the premises, where will they go? How
13 many thousands of workers, business owners,
14 professionals, retirees, working students and
15 people from all walks of life who contribute to
16 the infrastructure of this entire County, who live
17 in homes in the prohibition zone with septic tanks
18 fully permitted by San Luis Obispo County must
19 walk away in 2011 if the RWQCB determines that Los
20 Osos has failed to make reasonable progress toward
21 a wastewater treatment facility? I don't know how
22 many, but the RWQCB should know. Where will they
23 go?

24 Who will replace all these citizens who
25 helped weave the fabric of community in San Luis

1 Obispo County? If you cannot answer these
2 questions about the outcome of your 2011 deadline
3 you have no authority to destroy an entire
4 community.

5 Senator Susan Collins of Maine said the
6 first obligation of government is to protect our
7 people. When raw sewage flowed through the
8 streets of New Orleans, the result of gross
9 government ineptitude, neglect, abuse and failure
10 to act following Hurricane Katrina, Senator
11 Collins did not place the responsibility on the
12 citizens for that health and safety disaster. She
13 held the government accountable.

14 Citizens across this country
15 demonstrated on November 7, 2006, that they no
16 longer support public officials who with cynical
17 impunity use blame, coverups, obfuscation,
18 baseless detention and prosecution of innocent
19 citizens and protestations of moral authority to
20 mask a broad range of incompetence, malfeasance,
21 and failures.

22 We have been on call to the Water Board
23 for eight days short of a year. Throughout this
24 time whenever a conflict with the Board's
25 tentatively scheduled business has arisen, we have

1 had to modify our plans. We have been forced to
2 justify our personal business and professional
3 responsibilities like convicted felons on parole.

4 This interference with the lives of law-
5 abiding private citizens over this span of time is
6 abusive and unconscionable. Sitting here today
7 are the very individuals we trusted to maintain
8 the waters of the state for our protection. They
9 accuse us of not fulfilling our obligation to keep
10 the waters of the state clean.

11 These same individuals argue today that
12 simply by living in the prohibition zone we, along
13 with thousands of others, have recklessly,
14 knowingly and wilfully polluted the basin for
15 years.

16 We expect you, as public servants, to
17 maintain a clean water supply to insure that we
18 may live confidently, safely and comfortably in
19 our community. We expect you to have the
20 expertise, experience and judgment to work with
21 local governments, to make wise and prudent use of
22 public funds. And to do what is necessary to
23 protect those you serve. We expect you to do it
24 well enough that we don't have to think about it.

25 That is what infrastructure means. That

1 we entrust public servants with managing the
2 network that supports our community so that we may
3 go about the business of our lives.

4 Board Members have demonstrated
5 repeatedly that they have the power to vote only
6 yes to support the Prosecution Team. You do,
7 however, have the power to stop being helpless
8 pawns of this Prosecution Team. You have the
9 power to require that this Prosecution Team make
10 wise and prudent use of public funds. You have
11 the power to throw this case out.

12 You have the power to require the
13 Prosecution Team to follow this agency's own
14 regulations for levels of enforcement and
15 environmental justice. You have the power to
16 broaden the parameters of this case to include a
17 re-examination of the basin plan. You have the
18 power to make certain that the actions you have
19 brought and plan to bring today will, to the best
20 of your ability, promote the highest level of
21 benefit for the waters of the state, while
22 protecting the welfare of all the people of the
23 state.

24 Does any one of you dare to admit that
25 when your heart is in conflict with your head

1 something is fundamentally wrong? Examine the
2 parameters you, yourselves, have set for this
3 case. Ask yourselves if the core of this case is
4 to protect the people. Ask yourselves if Roger
5 Briggs, whose absence is the most imposing
6 presence in this room today, brought you this case
7 because he wanted to protect the people, or
8 because he wanted to punish the people.

9 Ask yourselves if this case is truly
10 about improving lives by improving water quality;
11 or if it is simply about winning, no matter the
12 human expense.

13 You have the power to affect profoundly
14 the lives of thousands of families in the
15 prohibition zone of Los Osos. With that power
16 comes grave responsibility. As public servants
17 you have the power, the duty to abandon this
18 adversarial posture and to cultivate a cooperative
19 relationship with the citizens of Los Osos,
20 dedicated to resolution instead of retribution.

21 You have the power to abandon your
22 allegiance to making a point at all costs. You
23 have the power to make a difference. You have the
24 obligation to protect the people. The first
25 obligation of government is to protect the people.

1 I reserve further comments for my
2 rebuttal and closing arguments.

3 CHAIRPERSON YOUNG: Okay. You have 46
4 seconds left. Mr. Sato, Mr. Packard, cross-
5 examination of Ms. De Witt-Moylan or Mr. Moylan?
6 No? Okay.

7 Do you have any rebuttal testimony?

8 MR. PACKARD: Mr. Thompson has a few.

9 CHAIRPERSON YOUNG: Okay.

10 MR. THOMPSON: First, I want to be
11 clear --

12 CHAIRPERSON YOUNG: Hold on one second;
13 we have ten minutes for that? Five minutes. Go
14 ahead.

15 MR. THOMPSON: Thank you. The proposed
16 cease and desist order is clear that as long as
17 the process contemplated by Assembly 2701 is
18 moving forward there is no specific due date to
19 cease discharging. That due date is only
20 triggered if the County cannot get its benefit
21 assessment approved by July 1, 2008, or if there's
22 a material cessation of work on the project.

23 Even if construction of the project
24 extends beyond January 1, 2011, as long as the
25 County is making progress on the project, there is

1 no due date to end discharge.

2 But, if that due date is triggered, then
3 that does not mean to vacate the premises. There
4 are other ways to cease a septic system discharge.

5 (Audience participation.)

6 MR. THOMPSON: That's all.

7 MR. PACKARD: I'd just like to further
8 clarify that the Board, itself, decides any
9 penalties for any violations of the order, not the
10 Prosecution Team.

11 CHAIRPERSON YOUNG: Any other --

12 MR. PACKARD: That's all.

13 CHAIRPERSON YOUNG: -- rebuttal
14 testimony? Okay. Cross-examination of the
15 rebuttal testimony only.

16 MR. MOYLAN: Rebuttal testimony?

17 CHAIRPERSON YOUNG: Yeah, of the
18 rebuttal testimony.

19 MR. MOYLAN: I do have a rebuttal
20 argument.

21 CHAIRPERSON YOUNG: No. Argument comes
22 at the end. This is the time for your opportunity
23 to cross-examine based on the rebuttal testimony.

24 MS. De WITT-MOYLAN: I have a question
25 for Mr. Thompson.

1 CHAIRPERSON YOUNG: It's cross-
2 examination. You can ask questions of the
3 Prosecution Team based on the evidence they just
4 put into the record.

5 (Pause.)

6 CHAIRPERSON YOUNG: Okay.

7 BOARD MEMBER SHALLCROSS: No, it's just
8 rebuttal testimony.

9 CHAIRPERSON YOUNG: It's just rebuttal
10 testimony. So, go ahead, you can --

11 MS. De WITT-MOYLAN: It is not cross-
12 examination?

13 CHAIRPERSON YOUNG: That's right.

14 MS. De WITT-MOYLAN: Okay. Well, one of
15 the things that I would like to say in response to
16 Mr. Thompson's comments is --

17 AUDIENCE SPEAKER: Can't hear. Louder.

18 MS. De WITT-MOYLAN: Sorry. One of the
19 things I would like to say in response to Mr.
20 Thompson's comments is that so far we don't have a
21 definition of reasonable progress. So, how can we
22 put confidence in your good will?

23 You know, that's something that, you
24 know, we're left with. Well, you're telling us
25 you'll be nice to us and don't worry because

1 things will go along okay unless they don't. And
2 if they don't, well, there are other remedies to
3 vacating the premises. Except you have not been
4 able to produce one.

5 CHAIRPERSON YOUNG: Further rebuttal
6 testimony?

7 MR. MOYLAN: Can you hold the time for a
8 minute until I get organized? It'll take me about
9 ten seconds.

10 (Pause.)

11 MR. MOYLAN: Okay. I'd like to address
12 the specious logic of the Water Board. For those
13 of you who don't know what specious means, it
14 means that it sounds good, but it's actually bad.

15 The burden of proof lies with the Water
16 Board, as stated in the California Evidence Code
17 section 520, which states --

18 CHAIRPERSON YOUNG: Mr. Moylan, is this
19 rebuttal testimony or is it argument? You're
20 going to have a chance to give us your argument on
21 the whole case --

22 BOARD MEMBER SHALLCROSS: He already
23 gave it.

24 CHAIRPERSON YOUNG: Ms. De Witt-Moylan,
25 that was the extent of your --

1 MS. De WITT-MOYLAN: That was my --

2 CHAIRPERSON YOUNG: -- rebuttal

3 testimony?

4 MR. MOYLAN: That was her testimony.

5 CHAIRPERSON YOUNG: Okay. So we're

6 beginning your closing argument?

7 MR. MOYLAN: No. I'm reserving my

8 rebuttal time for --

9 CHAIRPERSON YOUNG: You have --

10 MR. MOYLAN: -- a logical argument.

11 CHAIRPERSON YOUNG: Well, the argument

12 comes later. You have about three and a half

13 minutes more to give rebuttal testimony. It's

14 evidence, and it's based --

15 MR. MOYLAN: Okay, okay, okay, --

16 CHAIRPERSON YOUNG: It's -- rebuttal is

17 to rebut what the Prosecution Team --

18 MR. MOYLAN: Okay, it has to do with

19 establishing a zone.

20 CHAIRPERSON YOUNG: That's not proper

21 right now.

22 BOARD MEMBER SHALLCROSS: Explain what

23 rebuttal is.

24 CHAIRPERSON YOUNG: Rebuttal is to rebut

25 what they just said, the two of them, Mr. Thompson

1 and Mr. Packard.

2 MR. MOYLAN: They didn't say much. I
3 don't have an --

4 CHAIRPERSON YOUNG: Then it shouldn't
5 take you long. If you don't have any rebuttal
6 testimony, that's fine. We can then move on.
7 You'll have an opportunity to argue whatever you
8 want to argue.

9 MR. MOYLAN: Well, I reserve this time;
10 I want that time added onto our closing
11 statements.

12 CHAIRPERSON YOUNG: It's not going to
13 be. You --

14 MR. MOYLAN: Why not?

15 CHAIRPERSON YOUNG: Because it's not
16 going to be, Mr. Moylan. You don't have to be
17 argumentative with me about it. You can use the
18 time for rebuttal testimony. You've told me you
19 want to get into closing arguments, so why don't
20 we move ahead to that. How much time do we have?

21 MS. De WITT-MOYLAN: Can we add the
22 three minutes onto the closing?

23 CHAIRPERSON YOUNG: You don't have any
24 time limit on closing, so go ahead --

25 MR. MOYLAN: Okay.

1 MS. De WITT-MOYLAN: Good, all right.

2

3 CHAIRPERSON YOUNG: -- and let's --

4 MR. MOYLAN: Okay.

5 CHAIRPERSON YOUNG: -- let's start that
6 right now.

7 MS. De WITT-MOYLAN: All right. Well,
8 then I'm going to begin, then my husband will
9 finish.

10 CHAIRPERSON YOUNG: Okay, go ahead.

11 MS. De WITT-MOYLAN: My closing argument
12 has specifically to do with the settlement
13 agreement statement, and why we did not sign it.

14 You've portrayed -- I'm speaking to Mr.
15 Sato right now -- you've portrayed those who sign
16 your settlement agreement as compliant. Which, by
17 default, renders those of us who choose not to
18 sign as noncompliant.

19 We believe it is possible to choose not
20 to sign and to be compliant. We have already
21 demonstrated our compliance. This is why we
22 choose not to sign, in the reasons that follow.

23 The settlement agreement was developed
24 by one or two citizens with Mr. Sato, essentially
25 to assist those particular citizens to avoid the

1 unintended consequences of a CDO.

2 That this settlement agreement does not
3 carry with it those three letters, CDO, is its
4 only advantage. By signing this statement
5 citizens give up their right to appeal based on a
6 bad promise of future consideration and special
7 treatment when the drop-dead date comes, and they
8 must cease all discharges.

9 This settlement agreement is
10 unattractive because it is a CAO without the
11 letters, and retains the January 1, 2011 drop-dead
12 date.

13 Negotiations for this agreement were
14 begun in secret without input from other citizens.
15 When an agreement was worked out, a few citizens
16 were informed that they could attend an
17 informational meeting.

18 In the intervening months since Mr.
19 Shipe proposed negotiating a settlement for
20 himself, which was later offered to others,
21 citizens have begun to approach the one-year mark
22 in the CDO process. Many are old, tired, sick,
23 occupied with family and personal
24 responsibilities. Many need to resume the normal
25 conduct of their lives. For that reason some of

1 the former CDO recipients have signed your
2 settlement agreement.

3 Please do not flatter yourself, Mr.
4 Sato, that this settlement agreement appears so
5 attractive that the smart people have signed while
6 only the most incorrigible, recalcitrant
7 dischargers reject it. It is no agreement. Its
8 negotiation was never authorized by me nor entered
9 into with my consent on my behalf.

10 I have not spoken to one person who says
11 they signed because they thought your settlement
12 was fair and just. This is what I know.

13 People have signed your settlement
14 agreement because this process has gone on much
15 too long. Some defendants are elderly and need to
16 move into assisted living. Others need to be able
17 to sell their houses so that they may complete
18 plans for their own lives.

19 Settlers have many reasons for signing.
20 But I have heard no one say that they signed
21 because they thought the settlement agreement was
22 worthwhile.

23 The reasons I've heard cover this span.
24 Their family life is disintegrating; they have
25 lost touch with children who have begun having

1 problems in school; their marriages are
2 threatened; they cannot focus at work or at
3 school.

4 Their health is impaired and
5 deteriorating; they are physically unable to go
6 on; they see no hope against the unfettered power
7 of this agency; they simply do not have the
8 emotional stamina to continue to fight for their
9 rights anymore, no matter how bad they think your
10 agreement is. They simply cannot take it anymore.

11 Do not flatter yourself, Mr. Sato, that
12 you have brought the Los Osos 45 to the table.
13 What you have accomplished is the gathering of an
14 anguished, distraught, harassed, desolate,
15 desperate collection of people, isolated
16 deliberately from their community by being singled
17 out in a tiny group from the entire population of
18 the prohibition zone ghetto.

19 You rejected the possibility of
20 negotiating a better agreement that many of us had
21 developed with counsel. You, who believe in
22 settlement, determined that it was better to go
23 forward with the hearings than to work out a
24 better settlement that we could all sign, and
25 avoid the enormous cost and waste engendered by

1 the hearing for which we had waited most of a year
2 that had now to be rushed into; a hearing which
3 this Board cannot even afford to pay AGP Video to
4 broadcast and record.

5 Following your failure, the worn out
6 assemblage with whom I am familiar have dragged
7 themselves to your table because they believe they
8 have no other choices. If this is not duress,
9 then I do not know the definition.

10 To demonstrate our good will and
11 cooperation we have already agreed to, signed, and
12 submitted as evidence the settlement agreement
13 developed by Shaunna Sullivan; the aborted
14 agreement, which you stated you did not have time
15 to finish because you, who believe in settlement,
16 had these hearings to attend.

17 We believe in settlement. No one is
18 more motivated than we are to reach a settlement,
19 to get you out of our lives, out of our home, out
20 of our heads. On January 30, 2006, the RWQCB
21 moved in with us. We have not had a moment alone
22 since. You crowd our dinner table; you sleep
23 between us; you meet us in the shower; you sit
24 with us as we spend sleepless nights staring at
25 just one more document.

1 We believe in settlement. We believe in
2 fairness. We believe in justice. We believe in
3 humanity. We believe in truthfulness and
4 disclosure. This current settlement agreement is
5 ample evidence that the Prosecution Team, which
6 developed it, and the Board, which approved it,
7 failed to understand any of those concepts.

8 This settlement agreement is a triumph
9 of expediency over justice.

10 MR. MOYLAN: The burden of proof lies
11 with the Water Board as stated in California
12 Evidence Code section 520, which states: The
13 party claiming that a person is guilty of crime or
14 wrongdoing has the burden of proof on that issue."

15 Everyone in Los Osos and everyone in
16 this room knows that not every septic tank in the
17 prohibition zone contributes to the degradation of
18 the state's water. And yet the Water Board uses
19 specious logic to prove its point.

20 Here is the Water Board's specious
21 logic: A) septic systems in the Los Osos
22 prohibition zone pollute the state's water. B)
23 William and Beverley live in the prohibition zone
24 and they have a septic system. C) Therefore,
25 William and Beverley's septic system pollutes the

1 state's water.

2 Any logician will tell you that you
3 cannot conclude that William and Beverley's septic
4 is polluting because the premise that septic
5 systems in Los Osos pollute is erroneous. Not all
6 septic systems in the prohibition zone pollute.
7 And I believe that my septic system does not
8 pollute the state's water.

9 Any governing body can create an
10 arbitrary zone. The mere creation of a zone does
11 not make it legitimate. For argument's sake, I
12 will create a zone where degradation is occurring.
13 This zone is the table that the Members of the
14 Water Board are sitting at. And I will call it
15 the Board zone.

16 This zone is being degraded because
17 there are coffee stains on the table and there are
18 indentations on the edge of the table. Not only
19 that, I declare that anyone sitting at this table
20 is responsible for the degradation of the table.
21 Since the Members of the Water Board are seated in
22 the Board zone, they are all in violation.

23 Now, if you do not want to be in
24 violation you must provide me with evidence that
25 you are not in violation. But how can you do

1 that? Since you are sitting there. Therefore,
2 you must stop sitting at that table if you do not
3 want to be in violation.

4 You see, Members, you can provide me
5 with evidence that sitting at that table is
6 harmless, or that you are very careful with your
7 coffee, or that you have never dented the ends of
8 the table, or that you have no other table to sit
9 at, or that other people sit at the table longer
10 than you do.

11 It does not matter what you say, if you
12 are sitting at the table you are guilty. It does
13 not matter that I have no direct evidence that
14 you, as an individual, are damaging the table. I
15 do not have to prove anything because you are in
16 violation of sitting there.

17 What does matter is that you are in the
18 Board zone. Ergo, you are in violation. I don't
19 have to prove anything because I have created a
20 zone. Science does not matter; logic does not
21 matter; reason does not matter; and proof does not
22 matter. What a beautiful concept, but specious.

23 If the premise for creating a zone is
24 erroneous then whatever conclusion follows the
25 premise is also erroneous. The premise that the

1 Water Board is using is that all septic systems in
2 the prohibition zone are polluting. And that
3 premise is erroneous.

4 And now, -- do you have a closing
5 statement? You read it? Okay.

6 I could talk about how our due process
7 has been deliberately restricted so we could not
8 mount a complete defense. I could talk about the
9 Water Board, how the Water Board has spurned the
10 California Evidence Code, or how the Water Board
11 has no site-specific evidence for our home.

12 I could talk about the infringement of
13 the Eighth and Fourteenth Amendments of the United
14 States Constitution that this Board exhibits. I
15 could mention the subtle and not-so subtle
16 arrogance displayed by the Water Board and how
17 unbecoming that behavior is. I could talk about
18 the repeated gender discrimination in this
19 proceeding.

20 I could talk about these matters, but I
21 would be wasting my time, for the Water Board
22 Staff and certain Board Members have freely
23 exhibits their disdain for the defendants, no
24 matter how eloquent or truthful or compelling the
25 defendant's testimony.

1 I could talk about how science does not
2 matter with the Water Board, for Dr. Wickham's
3 expert scientific testimony was dismissed by Mr.
4 Briggs, who said, we don't agree with Dr.
5 Wickham's opinions.

6 Mr. Cleath's expert testimony on
7 December 15th which said that pumping every septic
8 tank in Los Osos would not lower the nitrates in
9 the aquifer was also dismissed. The Board has
10 decided that every homeowner in the prohibition
11 zone will pump regardless of the need. Logic does
12 not matter for we have seen how logic for the
13 boundaries of the prohibition zone is nonexistent
14 and arbitrary.

15 Reason also gets short shrift from the
16 Water Board, because the reason for having the
17 prohibition zone in the first place was based on
18 nitrate test results from illegal wells, as stated
19 in evidence submitted by Bruce and Antoinette
20 Payne, and posted on November 17, 2006.

21 So, what does matter? What does matter
22 is that the health of the original 45 proposed CDO
23 recipients has failed over the past year. What
24 does matter is that Bruce Payne was blinded in his
25 right eye from the stress of this CDO process, as

1 verified by his eye doctor.

2 What does matter is that John Mortara
3 was rushed to the hospital three times in January
4 and February last year from the stress of this CDO
5 process and has since had a pacemaker implanted in
6 his chest.

7 What does matter is that Allan Martyn,
8 sitting right over there, has had to have his
9 blood pressure and diabetes constantly monitored
10 in the year 2006 from the stress of this process.

11 I hope you're looking at me because I'm
12 looking at you. And what does matter is that my
13 wife has had to have infusions every eight weeks
14 to tame her autoimmune disease that resurged from
15 stress of this process. An autoimmune disease
16 that was in remission nearly a full year before
17 this first Water Board notice arrived.

18 If I'm getting loud, that's okay. These
19 infusions, which cost \$7600 each, are needed so
20 she can lead a mostly normal life. Now, pay
21 attention, please. What does matter is that the
22 Water Board has been asked to stop this process
23 many times by others and me over this last year,
24 and has ignored our pleadings.

25 What does matter is that members of the

1 Water Board Prosecution Team were informed many
2 times last year, many times, that people were
3 suffering physically, emotionally and spiritually
4 from the CDO process, and that the Water Board had
5 an obligation to help the people of Los Osos and
6 not hurt them. And those pleadings were ignored.

7 What does matter is that suggestions on
8 how to inform the entire Los Osos community
9 without hurting the community were offered by me
10 and others. And that these suggestions were
11 disregarded.

12 What matters now is that these CDOs are
13 rescinded now. That no more are issued and that a
14 community outreach program is initiated by the
15 Water Board now. What matters now is that no more
16 people have to suffer from high blood pressure, or
17 surgical procedures directly related to stress, or
18 that autoimmune diseases of possible future CDO
19 recipients are not activated by the threat of
20 \$1000- or \$5000-a-day fines.

21 What matters now is that this Water
22 Board realizes that the health and safety of
23 innocent citizens are not just related to clean
24 water, but to how well governing bodies relate to
25 the people they represent.

1 What matters now is that clean water and
2 good relations can both be achieved if the Water
3 Board wills it. What matters now is that the
4 Water Board stops issuing these CDOs and exhibits
5 the courage to work with the people of Los Osos
6 and not against them.

7 What matters now is that the Water Board
8 thinks about how their future actions could
9 benefit the people of Los Osos; and then act in a
10 beneficial way.

11 And that is all I have.

12 CHAIRPERSON YOUNG: Okay, thank you.
13 Mr. Sato, closing arguments.

14 AUDIENCE SPEAKER: Right on, brother.

15 (Multiple audience speakers.)

16 MR. MOYLAN: And I want to thank
17 everybody who has come to support me; Bev and me
18 and the other CDO recipients, some of these people
19 have CDOs, themselves, some are just interested
20 parties, and I want you to know that I love all of
21 you and I appreciate your coming here.

22 MS. De WITT-MOYLAN: And I'd also like
23 to say that this proceeding would not have been
24 televised if we had not discovered that the Water
25 Board did not have the money to televise them.

1 They have the money for the hearings, but not to
2 televise the hearings.

3 And so Bill and I made a contribution of
4 \$250 so that we could have our hearing televised.
5 We found a person to give us a grant to help us to
6 have our hearing televised. We asked for
7 donations from people in the community to help us
8 to have our hearing televised. AGP Video is
9 underwriting the rest of the cost to have this
10 hearing televised.

11 And I would please ask anyone who is at
12 this proceeding today, and anyone who is watching
13 on tv or in the future who sees reruns of this, to
14 please send a donation to AGP Video to commend
15 them for their dedication to public service.

16 Thank you.

17 MR. MOYLAN: I have one more thing to
18 say.

19 I poured my heart out to you; every word
20 of it was true. I don't know if every word that
21 you've spoken is true, perhaps it is. But I want
22 you to consider, seriously consider that this
23 could do much more harm, and that you could get
24 exactly the results you don't want if you continue
25 along this line.

1 And I also ask you not to consider
2 passing judgment on me today; that you consult
3 among yourselves, because I really don't want to
4 hear your comments about our testimony.

5 And I think I'd like to go home now.
6 Thank you.

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

9 MR. SATO: We have a couple of comments.
10 First of all, let me just say that with regard to
11 the settlement, there's lots of things to talk
12 about in terms of how people settle, why they
13 settle, why the Prosecution Team puts together a
14 particular settlement proposal.

15 I think when I presented that agreement
16 to you folks before, I told you that we had made a
17 strong effort to try to consider the needs of the
18 community. At the same time we also had to
19 consider the needs of the Prosecution Team and
20 ultimately the things that we thought that this
21 Board would accept as an appropriate settlement.

22 I also want to say that this settlement
23 didn't come about as a result of just the efforts
24 of two individuals. And it seems like there's
25 some effort to try to discredit people who tried

1 to work with the Prosecution Team to try to reach
2 some kind of resolution for those folks.

3 I can say that the settlement agreement
4 that we ultimately drafted and took to you for
5 approval had included comments from a number of
6 people, not just two individuals. It had comments
7 also from a number of people who have actually
8 appeared and testified before you today. So, it
9 is a document that was a result of a broad range
10 of different comments and inputs. And so I don't
11 want two people to be disparaged as a result of
12 our efforts to try to provide an alternate
13 resolution to these cease and desist orders.

14 And I think Matt will have the remainder
15 of our closing.

16 MS. De WITT-MOYLAN: Could I make a
17 comment regarding that?

18 CHAIRPERSON YOUNG: No. You've had --
19 Ms. De Witt-Moylan, you've had your time. This is
20 now the --

21 MS. De WITT-MOYLAN: Thank you.

22 CHAIRPERSON YOUNG: -- Prosecution
23 Team's time.

24 MR. THOMPSON: Yeah, I'd just like to
25 point out that the studies and monitoring data

1 supporting the propriety of the prohibition zone
2 are discussed in the Prosecution Team's written
3 materials. We know that it's not at issue before
4 you today.

5 There's also discussion there of why the
6 Los Osos CSD's monitoring wells appropriately
7 represent groundwater conditions.

8 The Moylans have not submitted any
9 evidence to answer the question that is before you
10 today, which is whether they are violating the
11 basin plan prohibition. They have not submitted
12 any evidence that they do not have a septic system
13 discharge.

14 We therefore recommend adoption of their
15 cease and desist order number 1041. Thank you.

16 CHAIRPERSON YOUNG: Okay. Any further
17 closing arguments? No? Okay.

18 All right, that concludes the testimony
19 portion. Mr. Shallcross, Mr. Hayashi. Mr.
20 Hayashi.

21 BOARD MEMBER HAYASHI: You know, I have
22 a question. There were some pretty big
23 allegations made that we're the Board and we can
24 fix this problem. But I just need maybe a little
25 bit of help in history here.

1 Why was the County's plan to put the
2 sewer treatment plant outside the town turned down
3 and changed to go to -- to be moved into the city,
4 into the town, and build the water treatment plant
5 there? Just the --

6 MS. MARKS: Might I answer that?

7 CHAIRPERSON YOUNG: Well, I --

8 BOARD MEMBER SHALLCROSS: That's okay,
9 yeah.

10 MS. MARKS: The County's wastewater
11 facility in 1997 was not formally turned down. It
12 was going through the coastal development permit
13 process with the Coastal Commission, and had been
14 a field there. And it was -- that process was
15 strung out over several years during which time
16 the community formed their new form of government,
17 their representative CSD.

18 And at the time the push was very strong
19 to pick an alternative wastewater facility and put
20 it at the Tri-W site.

21 BOARD MEMBER HAYASHI: So basically it
22 was the CSD, which was the vote of the people, to
23 move it into town?

24 MS. MARKS: Yes.

25 AUDIENCE SPEAKER: That's not accurate.

1 (Multiple audience speakers.)

2 BOARD MEMBER HAYASHI: That's all I
3 wanted to know.

4 (Multiple audience speakers.)

5 CHAIRPERSON YOUNG: Mr. Shallcross.

6 BOARD MEMBER SHALLCROSS: Yeah, I
7 think --

8 AUDIENCE SPEAKER: Lisa, say something.

9 BOARD MEMBER SHALLCROSS: Pardon me?
10 Did you have something to say?

11 I think the issue before us is pretty
12 cut and dried, unfortunately. I think if we were
13 looking at the equities here, certainly Ms. De
14 Witt-Moylan and Mr. Moylan have raised a lot of
15 good issues that --

16 (Audience participation.)

17 BOARD MEMBER SHALLCROSS: -- that we
18 could look at, if we were looking at equities.
19 This is almost like a strict liability case.
20 There's a prohibition zone; the legality of that
21 prohibition zone is not before us. We're asked to
22 decide is the person in the prohibition zone --
23 two questions: Do they live in the prohibition
24 zone or do they own property there. And are they
25 discharging.

1 And unfortunately, the answer is yes.
2 And I think it's unfortunate that we're not
3 looking at a lot of these other issues, the
4 equities especially. But there you are. That's
5 the issues before us, and that's what we have to
6 rule on.

7 MR. SHIPE: You misstated the two
8 questions.

9 CHAIRPERSON YOUNG: Okay.

10 MR. SHIPE: Those aren't the two
11 questions.

12 CHAIRPERSON YOUNG: Anything else, Mr.
13 Hayashi?

14 MR. SHIPE: It's two different
15 questions.

16 BOARD MEMBER HAYASHI: No, I concur. I
17 concur with that.

18 MR. SHIPE: Those aren't the two
19 questions.

20 CHAIRPERSON YOUNG: All right.

21 BOARD MEMBER SHALLCROSS: Do you have a
22 problem?

23 MR. SHIPE: Yes. The two questions.
24 Could I --

25 CHAIRPERSON YOUNG: Do you have a

1 question, Mr. Shallcross, for Mr. Shipe?

2 BOARD MEMBER SHALLCROSS: Mr. Shipe is
3 trying to argue or say something, I don't --

4 MR. SHIPE: No. No, I'm just -- the two
5 questions that you asked are not the two questions
6 before the Board.

7 BOARD MEMBER SHALLCROSS: Oh, well,
8 elucidate for me.

9 MR. SHIPE: The two questions that are
10 before the Board are, are you discharging in
11 violation of the discharge prohibition; and is the
12 CDO or the -- what's the word I'm looking for --
13 is the CDO appropriate. And I think their
14 comments go --

15 BOARD MEMBER SHALLCROSS: Right, so
16 that's --

17 MR. SHIPE: -- to the appropriateness.

18 BOARD MEMBER SHALLCROSS: That's the
19 third issue, right. Thank you for that.

20 MR. SHIPE: No problem.

21 CHAIRPERSON YOUNG: Okay. Well, they
22 were both very eloquent and very passionate and
23 determined. I give both Mr. Moylan and Ms. De
24 Witt-Moylan a lot of credit for their passion. I
25 stopped making notes at some point because so much

1 of what they testified to I think they're taking
2 completely out of context.

3 (Laughter.)

4 CHAIRPERSON YOUNG: And are putting --
5 attempting to put things in issue that really
6 aren't at issue. You know, Mr. Shallcross, I
7 don't see the need to get into the equities of
8 everything going on.

9 BOARD MEMBER SHALLCROSS: I don't
10 either.

11 CHAIRPERSON YOUNG: People misunderstand
12 what the role of the Regional Water Quality
13 Control Board is. And they continually attempt to
14 draw us into their inability to move forward with
15 a treatment facility. And it's nothing that we
16 are --

17 (Audience participation.)

18 CHAIRPERSON YOUNG: Excuse me,
19 please. -- are mandated or authorized to get
20 involved in. They elected a Community Services
21 District and they were completely incapable of
22 moving forward with a treatment plant.

23 There are a lot of inequities going on.
24 But this Board is incapable and unauthorized to
25 delve into those types of issues that have been

1 created in this community. We deal with water
2 quality protection. We're not here to protect
3 people from themselves and their poor choices.

4 Anyway, if I have a motion on the
5 recommendation I will entertain it right now.

6 BOARD MEMBER SHALLCROSS: I'll move we
7 issue the -- I'll move that we recommend to the
8 full Board, issuance.

9 CHAIRPERSON YOUNG: Okay.

10 BOARD MEMBER HAYASHI: I'll second it.

11 CHAIRPERSON YOUNG: Okay. All those in
12 favor?

13 (Ayes.)

14 CHAIRPERSON YOUNG: All right.

15 Recommendation motion passes.

16 Okay, we have public forum.

17 MS. De WITT-MOYLAN: Excuse me, Mr.
18 Young. As the person who's just been adjudged
19 guilty, do I -- can I just make a statement?

20 CHAIRPERSON YOUNG: You have not been
21 adjudged guilty, Ms. De Witt-Moylan.

22 BOARD MEMBER SHALLCROSS: It hasn't been
23 issued.

24 CHAIRPERSON YOUNG: Okay? We have made
25 a recommendation to the full five-Member Board to

1 issue the cease and desist order.

2 MS. De WITT-MOYLAN: Okay. I wanted to
3 say that the complaint about our testimony; in
4 response to that, our testimony was about
5 environmental justice and levels of enforcement.
6 Thank you. That's all.

7 CHAIRPERSON YOUNG: All right, let's go
8 to -- do you need a break or we'll have public
9 forum? Public forum.

10 We're going to go to public forum. And
11 we'll take speaker cards. The reason for public
12 forum is to address matters not on the agenda.
13 Not on the agenda. Do you have cards?

14 (Pause.)

15 CHAIRPERSON YOUNG: Okay, folks, we're
16 going to take a ten-minute break and come back and
17 start public forum.

18 (Whereupon, at 5:07 p.m., the hearing
19 was adjourned.)

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CERTIFICATE OF REPORTER

I, RICHARD A. FRIANT, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Central Coast Regional Water Quality Control Board Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of February, 2007.