
State Water Resources Control Board

NOTICE OF AVAILABILITY FOR PUBLIC COMMENT ON THE AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE SANTA ANA RIVER BASIN TO INCORPORATE TOTAL MAXIMUM DAILY LOADS FOR COPPER IN NEWPORT BAY, ORANGE COUNTY, CALIFORNIA

NOTICE IS HEREBY GIVEN THAT the State Water Resources Control Board (“State Water Board”) is seeking written public comments on the Santa Ana Regional Water Quality Control Board’s (“Santa Ana Water Board”) final amendment to the Water Quality Control Plan for the Santa Ana River Basin to incorporate Total Maximum Daily Loads (“TMDLs”) for copper in Newport Bay (“Basin Plan amendment” or “Copper TMDLs”).

BACKGROUND

On December 2, 2022, the Santa Ana Water Board adopted [Resolution No. R8-2022-0012](#), approving an amendment to the Water Quality Control Plan for the Santa Ana River Basin (“Basin Plan”) to incorporate TMDLs for copper in Newport Bay. The Copper TMDLs would supersede the United States Environmental Protection Agency’s (“USEPA”) technical TMDLs for copper that were established as part of the TMDLs for toxic pollutants in the San Diego Creek/Newport Bay Watershed in 2002. Both Upper and Lower Newport Bay continue to exceed the California Toxics Rule (“CTR”) chronic and acute criteria (3.1 and 4.8 µg/L, respectively) for dissolved copper in salt water. The largest source of copper to Newport Bay is discharges from copper antifouling paints (“AFPs”) on boats (both recreational and commercial vessels) from passive leaching and underwater hull cleaning. The Copper TMDLs include dissolved copper targets (CTR criteria for copper) and a sediment numeric target (Effects Range Low, ERL, of 34 µg/g dry weight), as well as an alternative sediment target that may be used instead of the sediment numeric target. The alternative target is based on the triad approach (sediment chemistry, toxicity, and benthic community health) of the State Water Board’s Water Quality Control Plan for Enclosed Bays and Estuaries of California – Sediment Quality Provisions.

The Copper TMDLs would require a 60% reduction in copper discharges from copper AFPs on boats. The 60% reduction is to occur within 12 years of the effective date of the Copper TMDLs, with a phased approach that requires a 20% reduction in 4 years, 40% reduction in 8 years, and 60% reduction in 12 years. The Copper TMDLs would include a provision that if the CTR criterion of 3.1 µg/L is met before the 60% reduction is achieved, no further reduction is required. The schedule allows time for the implementation of strategies such as best management practices (BMPs), diver certification programs and diver/boater education programs. The schedule also provides

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

time for conversions from copper AFPs to lower leach rate copper AFPs or alternative AFPs during routine maintenance of boat hulls.

The parties responsible for implementing the proposed Copper TMDLs include the City of Newport Beach, County of Orange, marina owners/operators, underwater hull cleaners, and private and commercial boat owners/operators. However, the Santa Ana Water Board expects that the primary trustees in Newport Bay granted sovereign tidelands and submerged lands in trust—the City of Newport Beach and County of Orange—will take the lead on developing and implementing plans to reduce copper in the bay.

DOCUMENT AVAILABILITY

A link to electronic copies of the Basin Plan amendment and supporting documents are available on the Santa Ana Water Board's website at:

https://www.waterboards.ca.gov/santaana/water_issues/programs/tmdl/tmdl_metals.htm
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Alternatively, a copy of the Basin Plan amendment can also be received by mail or electronic mail by contacting Terri Reeder at (951) 782-4995 or by e-mail at terri.reeder@waterboards.ca.gov.

INSTRUCTIONS FOR SUBMITTING WRITTEN COMMENTS

Persons interested in the Basin Plan amendment are encouraged to submit comments electronically. Comment letters must be received **by 12:00 noon on July 17, 2023**. Comment letters received after that deadline will not be accepted unless the State Water Board determines otherwise.

Address comments to Courtney Tyler, Clerk to the State Water Board. Please indicate in the subject line: **“Comment Letter – Amendment to Incorporate Copper TMDLs for Newport Bay”**.

Written comments may be submitted electronically in pdf format (if less than 15 megabytes in total size) to the Board Clerk via e-mail at commentletters@waterboards.ca.gov. If the file is greater than 15 megabytes in size, then the written comments may be submitted by fax at (916) 341-5620.

Alternatively, comments may be submitted by hand delivery or mail to:

Courtney Tyler, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor, Sacramento, CA 95814-0100 (hand delivery)
P.O. Box 100, Sacramento, CA 95812-2000 (mail)

Couriers delivering written comments must check in with lobby security personnel, who can contact Courtney Tyler at (916) 341-5611.

REQUIREMENTS FOR SUBMITTING COMMENTS

In accordance with California Code of Regulations, title 23, section 3779, subdivision (f), the State Water Board may refuse to accept any comment that does not satisfy all of the following requirements:

1. Comments must specifically address the final version of the Basin Plan amendment adopted by the Santa Ana Water Board.
2. If the Santa Ana Water Board previously responded to a similar or identical comment, the commenter must explain why and in what manner the commenter believes each of the responses provided by the Santa Ana Water Board to each comment was inadequate or incorrect.
3. The commenter also must include either a statement that each of the comments was timely raised before the Santa Ana Water Board, or an explanation of why the commenter was unable to raise the specific comment before the Santa Ana Water Board.

POTENTIAL FUTURE CHANGES TO THE NOTICED ITEMS

Any change to the information noticed above will be provided via the Santa Ana Water Board's e-mail distribution list. Any person desiring to receive future notices must subscribe to the list serve e-mail distribution list by accessing the following e-mail list subscription form:

https://www.waterboards.ca.gov/resources/email_subscriptions/reg8_subscribe.html

To subscribe, select the Santa Ana Water Board's Basin Planning and TMDL Orange County lists.

ADDITIONAL INFORMATION

Please direct questions about this notice to Terri Reeder, Senior Engineering Geologist, at (951) 782-4995, or by e-mail at terri.reeder@waterboards.ca.gov.

Date June 16, 2023

Courtney Tyler
Courtney Tyler
Clerk to the Board