



May 13, 2014

Caring for Your Coast

**Gary Jones**  
Acting Director

**Kerry Silverstrom**  
Chief Deputy

**John Kelly**  
Deputy Director

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-2000



Dear Ms. Townsend:

**COMMENTS OF THE COUNTY OF LOS ANGELES  
ON THE RECONSIDERATION OF THE MARINA DEL REY HARBOR  
TOXIC POLLUTANTS TOTAL MAXIMUM DAILY LOAD**

The County of Los Angeles (County) appreciates the opportunity to comment on the proposed amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to revise the Marina del Rey Harbor (MdR Harbor) Toxic Pollutants Total Maximum Daily Load (TMDL). These comments were raised before the Los Angeles Regional Water Quality Control Board (Regional Board). Despite over 200 pages of written comments and further oral testimony during the Regional Board hearing from more than 60 speakers opposing the revisions to the TMDL, the Regional Board made no changes to the proposed Basin Plan amendment. As a result, the County continues to have serious concerns regarding the possibility of successfully implementing the requirements of the TMDL as revised.

MdR Harbor is the largest harbor of its kind in the United States, with over 4,700 boat slips. It is home to world-class recreational amenities enjoyed by over 2 million visitors each year. MdR Harbor has long been considered a jewel of the County, and preserving its environmental health, recreational opportunities, and economic vibrancy is a priority for the County Board of Supervisors. Over the last decade the County has invested over \$23 million to enhance water quality in MdR Harbor. The water quality improvement projects include:

- Constructing three low-flow storm drain diversions for a total cost of approximately \$3 million
- Relining the sewer system surrounding the MdR Harbor for a total cost of approximately \$10 million
- Conducting scientific studies on sediment, PCBs, chlordane, metals, and bacteria, for a total cost of over \$1 million

- Constructing a water circulation system and a storm drain diversion at Mother's Beach for a total cost of approximately \$5 million
- Conducting water quality monitoring since 1984
- Since 2010, conducting monitoring specifically for the TMDL at a cost of approximately \$4 million

The County is currently implementing additional efforts to improve water quality in MdR Harbor. For example, the County is in the process of implementing the following water quality improvement projects:

- Retrofitting five parking lots with bio-swales
- Retrofitting 40 catch basins with screens and baskets to prevent trash from entering MdR Harbor
- Reconfiguring the Oxford Flood Control Basin, which will improve water quality in MdR Harbor
- The Oxford Basin project will be completed in about two years, at a cost of approximately \$12 million
- Developing a public outreach program regarding water quality issues in MdR Harbor to educate the boating community and other users of the harbor
- Developing a County Ordinance for boat cleaning activities to ensure appropriate BMP implementation during hull cleaning, because studies have shown that use of proper BMPs may reduce copper leaching from boats by up to 30 percent
- Working with the boating community to obtain the Clean Marina designation, which is recognized by the State Department of Boating and Waterways and endorsed by the California Coastal Commission
- Seeking grant funding to assist boaters in the transition to non-biocide hull paints
- Initiating scientific studies to accurately assess the copper and sediment impairments
- Developing a watershed management plan to identify control measures to reduce pollutant loading from the upstream watershed to MdR Harbor
- Developing a coordinated water and sediment monitoring program to streamline monitoring in MdR Harbor

The County is committed to enhancing the environment throughout MdR Harbor by working with stakeholders to implement best management practices and reasonable water quality improvements. Indeed, for many years the County has collaborated with the Regional Board and other agencies to implement water quality projects throughout the region including the MdR Harbor. However, it is important that limited public funds

are spent on projects and regulations that are designed in a careful and scientifically supported manner.

Importantly, while the County is aggressively implementing various actions to improve water quality in MdR Harbor, the revisions to the TMDL threaten to distract from the historical and coordinated approach at watershed management. This concern about the proposed Basin Plan amendment, along with other significant issues, is detailed in the attachment. The attachment includes: (1) the County's comments submitted to the Regional Board; (2) the Regional Board's response to the County's comments; (3) an explanation of the reasons why the Regional Board's responses to the comments were inadequate or incorrect and its subsequent failure to modify the proposed Basin Plan amendment was arbitrary and capricious; and (4) the County's recommended modifications to the revised TMDL to address the issues, where appropriate. Many of the County's comments relate to the feasibility of the revised TMDL's compliance schedule and the adequacy of the analysis used to set the compliance targets.

For example, the proposed TMDL revisions include a load allocation that would require an 85 percent reduction in dissolved copper within 10 years; however, there is no evidence in the record to indicate that such reduction is possible within this 10 year period. The County and other commenters have provided evidence that achieving this level of reduction in copper is not possible in part due to the lack of viable alternative (non-biocide) paints on the market and also due to the lack of capacity among existing boat yards to repaint the more than 4,700 boats in MdR Harbor. In a report released on January 30, 2014 (after the close of the comment period but before the hearing before the Regional Board), the Department of Pesticide Regulation (DPR) reported that many of the currently registered antifouling paints need to be reformulated to attain an acceptable leaching rate that would reduce impacts on water quality. DPR also acknowledged that reformulation of these existing paint products "may not be realized for many years due to the timeframes involved in reformulation, relabeling, registration approval, and market distribution."<sup>1</sup>

Not only is the compliance period impossibly short and not supported by the Administrative Record, the science used to set the compliance target for copper is not supported by an appropriate site-specific study. As detailed in the attachment and also raised by many commenters, the target for copper reduction in the water column should be based on an actual site-specific analysis of the bioavailability of copper in MdR Harbor. Such a study, using the Biotic Ligand Model (BLM), could provide a much more valid target.

The Basin Plan amendment also includes a load allocation for legacy sediment to be attained within 15 years; however, there is no evidence in the record to indicate that

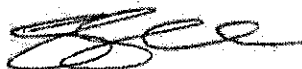
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<sup>1</sup> Regional Board staff was aware of this report at the time of the hearing, (see e.g. Hearing Transcript p. 224), yet the Regional Board failed to account for product unavailability when setting the compliance period.

such a target is achievable in that time. As the Administrative Record reflects, to achieve the target reductions in the sediment, the County will need approximately 25 years (through 2038) to: (1) eliminate new contamination through implementation of the LA MS4 Permit requirements; (2) conduct studies to accurately determine the scope of the contamination; (3) devise a feasible and reasonable remediation method<sup>2</sup>; and (4) conduct the required remediation.

The County looks forward to working with the State Water Resources Control Board and the Regional Board to resolve the deficiencies in the proposed revisions to the TMDL while also continuing to implement water quality improvements in Mdr Harbor. The County requests that the Basin Plan amendment be remanded to the Regional Board so that changes may be made. At a minimum, these changes should include mandatory reopeners to incorporate changes that may result from future scientific studies related to copper and sediment.

Very truly yours,



Gary Jones, Director

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Attachment

c: Rita Robinson, Chief Executive Office  
Judith Fries, Office of County Counsel  
Gail Farber, Department of Public Works  
Samuel Unger, CA Regional Water Quality Control Board

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<sup>2</sup> As is discussed in the attachment, the Regional Board's own CEQA analysis finds a very high risk that such remediation will destroy all life in the marina waters.

**COMMENTS OF THE COUNTY OF LOS ANGELES ON THE RECONSIDERATION OF THE  
MARINA DEL REY HARBOR TOXIC POLLUTANTS TOTAL MAXIMUM DAILY LOAD**

**ATTACHMENT**

Note: The comment numbers below correspond to the comment numbers in the Regional Board's response to comments.

No.	Comment Submitted By The County To Regional Board	Regional Board's Response	Reasons For Inadequacy Of Regional Board's Response	County's Recommendations
<b>Comments Specific To The Requirements Associated With MS4 Discharges</b>				
5.1	<p>The County of Los Angeles appreciates the opportunity to comment on the changes proposed as part of the reconsideration of the Marina del Rey Harbor Toxic Pollutants Total Maximum Daily Load (TMDL). In March 2013, the Marina del Rey Harbor Watershed Group (consisting of the County of Los Angeles, City of Los Angeles, Culver City, and Caltrans) submitted a "White Paper" to the Regional Board recommending a number of changes to the original TMDL based on new information and data collected since the promulgation of the TMDL in 2006. Subsequent to the submission of the White Paper in March, additional concerns emerged in response to the expansion of the geographic area addressed by the TMDL, incorporation of dissolved copper from the paints used on boats moored in the marina, and incorporation of in-harbor sediment. These additional concerns were brought to the Regional Board staff's attention on various occasions. While some of the technical issues raised have been</p>	<p>The Regional Board acknowledges the efforts of stakeholders in implementing the TMDL and meeting their allocations, which include the County's piloting of new storm water sediment capture devices. The Regional Board also appreciates the early and ongoing participation by the County in the TMDL reconsideration. As a result of the County's engagement, the proposed TMDL incorporates numerous suggestions from the County, including an extension to the implementation timeline. Under the existing TMDL, the County must meet waste load allocations by 2016. However, in recognition of the fact that the County will complete its parking lot retrofits by 2017 and the Oxford Basin project by 2015, the proposed TMDL revision includes an extension of the implementation schedule for the MS4 discharges to the back basins until 2018. The area draining to the back basins is 1.42 square miles. In contrast, the urbanized portion of the Los Angeles River is 467 square miles and</p>	<p>As mentioned in the Regional Board's response, the County anticipates completing the parking lot retrofits for the back basins in 2017. Once those retrofits are completed, there will be the need to evaluate their effectiveness. Based on the County's experience with such BMP projects, such evaluation will require 3 to 5 years at a minimum. Furthermore, based on the results of the evaluation, there may be the need to propose additional actions to address remaining issues.</p> <p>With respect to the front basins, given that they were not in the original TMDL, retrofitting the parking lots adjacent to them was not part of the existing plans. Addressing the front basins will require retrofitting the parking lots adjacent to those basins. Sufficient time is needed to plan, fund, and implement the new projects. Additionally, in order to effectively use scarce public resources, the planning and implementation of BMPs for the front basins should wait until the effectiveness of the BMPs for</p>	<p>The County requests that the TMDL compliance date for waste load allocations be set to 2021 for the back basins and to 2025 for the front basins. This would allow the County to use public resources effectively by following logical steps in implementing actions necessary to address stormwater discharges to MdR Harbor.</p>

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	<p>addressed by Regional Board staff with the current draft of the TMDL, major concerns remain that warrant serious consideration. Below is a summary of our key concerns and recommendations.</p> <p><u>Compliance dates for lead, zinc, PCBs, chlordane, and DDTs</u></p> <p>Since the inception of the TMDL in 2006, responsible parties have been developing plans and implementing best management practices (BMPs) to address stormwater discharges to the back basins of the Marina. The continued implementation of originally planned BMPs, in conjunction with the implementation of new projects under the MS4 permit, has created a need for additional time to complete the projects and assess the resulting water quality improvements. The compliance schedule currently proposed in the tentative Basin Plan Amendment for the back basins does not allow sufficient time to reasonably assess the effectiveness of implemented BMPs and propose additional management techniques to address any remaining issues. In addition to addressing stormwater discharges into the back basins, the proposed TMDL has an expanded geographic coverage that includes the front basins of the Marina. Because the original TMDL was limited to the back basins, all plans developed</p>	<p>the Los Angeles River Metals TMDL has an MS4 compliance deadline of 2028.</p> <p>The Marina del Rey Toxic Pollutants TMDL has been in effect since March 13, 2006. The County of Los Angeles has yet to complete implementation of the BMPs proposed in their implementation plan or any other BMPs specifically targeting toxic pollutants to address the impairments. The MS4 permit requires no new additional implementation projects in Marina del Rey as implied by the comment. The portion of the County of Los Angeles that drains to the back basins is 108 acres, or 0.17 square miles, and the County's implementation plan for the back basins includes five parking lot retrofits, which will be completed by 2017. It is not apparent that any new projects are needed to comply with the TMDL. The timeline to achieve the TMDL in the back basins is therefore appropriate. See also responses to comments 02.6 and 03.4. The addition of the front basins has marginally increased the watershed size based on the additional waterbody surface and minor additional drainage within Basins G and H. An additional 95 acres of land drains to the front basins. The compliance schedule was revised to include separate timelines for the front and back basins to provide stakeholders more time for planning</p>	<p>the back basins has been evaluated so that lessons learned from the back basins can guide the design of appropriate actions for the front basins.</p> <p>Further, additional actions by the cities will most likely be needed in the upstream watersheds and they will need time to plan and implement those actions.</p> <p>In summary, the current schedule would not allow for the previously mentioned logical steps to take place.</p>	

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	<p>for the TMDL so far have also been limited to addressing stormwater discharges to the back basins. Addressing the front basins would require similar planning processes that the responsible parties implemented to address the back basins. Therefore, sufficient time should be given to develop and implement plans to address the MS4 discharges into the front basins. In essence, it would be reasonable to treat the addition of the front basins as a "new" TMDL with an analogous compliance schedule. While we acknowledge and support the approach proposed by Regional Board staff of having different timelines for the back and front basins, the time provided is not sufficient to address either of them. For the back basins, we are requesting that the compliance dates for the 50 percent interim and the final targets (except for copper) be extended from 2016 to 2018 and from 2018 to 2021, respectively. For the front basins we are requesting that the compliance dates for the 50 percent interim and the final targets (except for copper) be extended from 2019 to 2021 and from 2021 to 2025, respectively.</p>	<p>and additional flexibility. Under the proposed TMDL revision, MS4 dischargers to the front basins have until 2021 to meet waste load allocations.</p>		
5.2	<p><u>Compliance dates for copper</u></p> <p>Since the adoption of the original TMDL in 2006, Senate Bill 346 (SB 346), which</p>	<p>Regional Board has determined that the deadline for MS4 and Caltrans storm water permittees to meet final copper WLAs is realistic. SB 346 prohibits the</p>	<p>The Regional Board's assertion that "it is possible that brake companies will go directly to low copper (i.e., 0.5% copper by weight) or copper-free brakes</p>	<p>The County requests that the compliance timeline for the copper</p>

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	<p>requires a reduction in copper content in brake pads to five percent (by weight) by 2021 and to 0.5 percent by 2025, was signed into law in 2010. This law is expected to significantly reduce copper loading over time in California's urbanized watersheds and is considered to be a cost-effective way to reduce copper pollution in California waters and achieve copper targets in TMDLs across the State. Recent TMDLs adopted by the Regional Board, such as the Los Cerritos Channel and San Gabriel River Metals TMDLs, have recognized the importance of SB 346 in copper reduction and included a compliance schedule that aligns with the implementation timeline of SB 346. In the March 2013 White Paper submitted to the Regional Board, the County recommended a final compliance date of 2030 for copper. This timeline was proposed taking into consideration the assumption that it would reasonably take at least five years after the final phase out of copper in brake pads for the effect to be observed. It is unreasonable to require implementing expensive BMPs to treat copper while the state has an effective source control program in place, which would eventually address it. The County therefore requests that the final compliance date for copper for MS4 discharges be set to 2030.</p>	<p>sale of vehicle brake pads containing more than 5% copper by weight by 2021 (and more than 0.5% copper by weight by 2025). Although MS4 and Caltrans storm water permittees must meet the WLAs one year after SB 346 prohibits the sale of vehicle brake pads containing more than 5% copper, it is possible that brake companies will go directly to low copper (i.e., 0.5% copper by weight) or copper-free brakes immediately, or achieve the 5% copper by weight requirement before 2021. According to the Brake Pad Partnership, although quantitative information about brake pad copper reductions is not yet available, strong industry attention to low-copper and copper-free brake pads and promotion of these pads by companies already offering them (such as Honeywell, FDP Brake, Williams, Fastmagna.com, Bendix, Phoenix, ALCO, Wilson, Crowe, Aftermarket News, Murphy) provides evidence that implementation is underway and is proceeding in accordance with the process and time frames anticipated by the Brake Pad Partnership. Furthermore, although brake pads may be a contributor of copper in the Marina del Rey Watershed, other sources of metals causing impairment of the watershed include vehicle wear, building materials, pesticides, erosion of paint, and deposition of air emissions from fuel combustion and industrial facilities.</p>	<p>immediately, or achieve the 5% copper by weight requirement before 2021" is not based upon evidence in the Administrative Record. Additionally, given that SB 346 gave brake pad companies until 2025 to manufacture a low copper (0.5% copper) brake pad, there is no guarantee that the brake pad companies will meet the low copper requirement prior to the 2025 deadline..</p> <p>Even under the very idealistic scenario in which low copper brakes might be available by 2021, it would probably take five years or more from then (i.e., approximately 2026) before the copper brakes already on cars got replaced with the new low-copper or copper-free brakes (given the average life span of brakes).</p> <p>The TMDL requires meeting the copper targets and allocations by 2018 for the back basin and by 2021 for the front basins. These timelines are much shorter than the SB 346 schedule for phasing out copper from brakes and, thus may require stakeholders to take unnecessary costly measures to address copper contamination addressed by SB 346.</p> <p>According to the findings of the studies that led to the enactment of SB 346, brake pads account for up to 50 percent of copper load entering waterbodies in urban areas of California. While there</p>	<p>waste load allocations be consistent with the schedule in SB 346 and also consider the life expectancy of copper-containing brakes installed in cars prior to the deadline in SB 346.</p> <p>Accordingly, we request that the TMDL be revised to set compliance for copper in stormwater to 2030.</p> <p>If the State Water Board and Regional Board are not willing to extend the compliance date to meet the present SB 346 schedule, the State Water Board should at least require the Regional Board to reevaluate this timeline through a TMDL re-opener based on the progress of the SB 346 implementation.</p>



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		<p>Thus, responsible parties may not be able to solely rely on the phase-out of copper in brake pads to attain their copper allocations. If responsible parties choose to conduct a special study in the Marina del Rey Watershed to determine the proportion of copper coming from brake pads and/or the contributions of the reduction in copper in brake pads to the reduction of copper in stormwater, the Regional Board can evaluate the impact of SB 346 on TMDL implementation and adjust the schedule if appropriate and necessary.</p>	<p>are other sources of copper in the environment, it was recognized that brake pads are the major sources of copper and, thus, implementation of the SB 346 would significantly curtail copper loadings in stormwater and help attain the water quality standards. While BMPs that would be implemented to address other pollutants would also help address some of the copper in stormwater, it is expected that the remaining copper would be taken care of by the SB 346 efforts. Therefore, aligning the copper compliance time with the SB 346 schedule is needed to avoid unnecessarily redundant measures to address remaining copper loadings.</p>	
5.3	<p><u>The Waste Load Allocations for the Back Basins and Front Basins Should Be Separated</u></p> <p>Due to the addition of the front basins to the TMDL, the Regional Board recalculated the loading capacity and waste load allocations (WLAs) to account for the additional drainage area. While the TMDL provides different compliance timelines for the front and back basins, it maintains a combined WLA for discharges to the front and back basins. Having a combined WLA would make the compliance determination impossible for MS4</p>	<p>The Regional Board disagrees. While the Board acknowledges a degree of uncertainty regarding pollutant migration and loading between the front and back basins in dry and wet-weather, the Basin Plan amendment has provided sufficient flexibility for stakeholders to demonstrate compliance with the allocations in the front and back basins. Multiple compliance options, including a quantitative demonstration that control measures and BMPs are sufficient to achieve the WLAs (such as the "reasonable assurance analysis" approach used in the LA County MS4</p>	<p>Given that the TMDL has different compliance dates for meeting the WLAs for the front and back basins, the TMDL should be clear on what WLAs apply to the stormwater discharges to the back basin versus to the front basin.</p> <p>In the absence of distinction between WLAs for the front and back basins, it would be difficult, if not impossible, to design appropriate BMPs and to evaluate compliance by the respective dates. As matter of practically, BMPs in each part of the watershed should be designed to attain the WLAs assigned to the respective watershed; a lumped</p>	<p>The County requests that the State Water Board reconsider the County's comment based on the clarification provided. The County believes that lumping WLAs together for two waterbodies that have different compliance timelines is technically</p>

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	<p>dischargers. We request that the WLAs for the back basins and the front basins be separated consistent with the compliance timeline.</p>	<p>Permit) are just some of the additional options included in the revised TMDL to provide stakeholders with greater flexibility in implementation and compliance determination. In addition, in incorporating the front basins into the Marina del Rey Harbor Toxic Pollutants TMDL at this time, it is the intent of the Regional Board that the watershed is addressed holistically. Single waste load allocations encompassing the entirety of the harbor align with this approach and will simplify incorporation of waste load allocations into permits. However, stakeholders may also conduct special studies and pilot projects to better inform their implementation planning and BMP optimization. Also, see response to comment 05.1.</p>	<p>WLA would make such practice difficult.</p>	<p>inaccurate and deserves appropriate correction.</p>

**Comments Specific To The Requirements Associated With Boat Hull Paints**

<p><b>5.6</b></p>	<p><u>The Load Allocation for Dissolved Copper Is Unrealistic and Should Be Removed</u></p> <p>The proposed Basin Plan Amendment includes a load allocation that would require an 85 percent reduction in dissolved copper and indicates that compliance with that requirement can be demonstrated by showing that 85 percent of the boats in the harbor are using non-copper hull paints. However, at this time, there is neither a viable</p>	<p>The dissolved copper impairment must be addressed to comply with the Federal Clean Water Act and implementing regulations. Based on the source analysis and linkage analysis, the major source of dissolved copper in the harbor is copper from boat paint; therefore, this load allocation must be assigned to achieve the TMDL. The Regional Board finds that the proposed revision is timely and does not agree that the process has been rushed. The original TMDL, effective March 22,</p>	<p>In its response, the Regional Board stated that alternative antifouling paints are available and that they have been tested in Shelter Island Yacht Basin (SIYB). While it is true that there have been some studies of the specific conditions in SIYB, the results of those studies have not proven the availability of "viable" non-copper based paints, nor has there been a demonstration that any results in SIYB are applicable to MdR Harbor. Many questions about the durability, maintenance, requirements,</p>	<p>The County requests that any action to require paint conversion be dealt with at statewide level. Such approach would encourage paint manufacturers to develop a viable alternative paints.</p>
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	<p>alternative (non-copper) paint nor similar requirements imposed on other marinas/harbors in the region. Imposing mandatory hull paint replacement when there is no viable alternative paint, there is no similar requirement in other local marinas/harbors, there is no statewide requirement for non-copper paint, and there is no current State or Federal law that requires the sole production and use of copper-free boat hull paints, is an unreasonable and arbitrary action that would unnecessarily impair the efficient management of the Marina del Rey Harbor. Instead of prematurely including a load allocation for dissolved copper and an associated mandatory load reduction, a statewide effort to address the issue of copper-based anti-fouling boat hull paints should be pursued. The California Legislature has recently attempted to pass legislation to address copper in hull paints, and the State of Washington has successfully done so. The County is willing to work with the Regional Board and other stakeholders on a statewide effort, and if legislation is enacted, the TMDL could be reopened to incorporate reasonable allocations and timelines in light of any new statewide copper paint requirement.</p>	<p>2006, included discussion of a potential copper water column impairment in the Staff Report and required monitoring and study to clarify the existence and extent of such an impairment. The results of this work, carried out over 6 years, require listing Marina del Rey Harbor as impaired by copper in the water column and the required revision of the TMDL is the appropriate time to implement a TMDL for copper in the water column. Regional Board Staff began meeting with interested parties to discuss potential revisions to the TMDL based on the results of the studies in 2012. Once an approach had been finalized with the input of various scientists, public agency representatives, NGOs, and municipal and County staff, the Regional Board began outreach efforts to the boating community, beginning with a meeting with dockmasters and lessees prior to releasing the TMDL for public comments, and following up with direct mailings to boat owners during the comment period. Alternative antifouling paint options are available and have been tested in Shelter Island Yacht Basin (SIYB). It is anticipated that additional paint options will become available during the implementation of this TMDL. The Port of San Diego has shared results of studies and made paint recommendations available to the public on their website:<a href="http://www.portofsandiego.org/e">http://www.portofsandiego.org/e</a></p>	<p>environmental safety, and costs of alternative paints are still unanswered. Further, the current results of attempted paint conversions of boats in SIYB demonstrate a very low rate of conversions. After 8 years of an aggressive program, less than 100 boats in SIYB have been converted.</p> <p>Scientific knowledge about and practical experience with alternative (non-copper) paints is in its infancy, and further studies are needed before a viable alternative is available on the market. In its memorandum released on January 30, 2014 (after the close of the comment period but before the hearing), the Department of Pesticide Regulation (DPR) indicated that many of the currently registered antifouling paints need to be reformulated to attain an acceptable leaching rate that would reduce impact on water quality. DPR also acknowledged that reformulation of these existing products "may not be realized for many years due to the timeframes involved in reformulation, relabeling, registration approval, and market distribution." (see DPR memo p.6) Thus, the TMDL amendment would improperly prohibit the use of antifouling paints currently approved by the State while requiring the use reformulated paints, which do not yet exist in many instances. Regional Board staff was aware of this report at the time of the hearing, since they referenced it (see</p>	

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		<p>nvironment/copper-reductionprogram.html. Additional information to aid in selecting an alternative hull paint and on integrated pest management can be found through the University of California website: <a href="http://ucanr.org/sites/coast/">http://ucanr.org/sites/coast/</a>. Additionally, see comment 04.5</p>	<p>e.g. Hearing Transcript p. 224)<sup>1</sup>.          Additionally, the unavailability of "viable" non-copper paints was testified at the Regional Board hearing by many commenters, including the boatyard owners in MdR Harbor. Mr. Schem (a boatyard owner) testified:   <i>"...[T]here are no viable biocide-free paints currently available on the market. I'm going to repeat that. There are no alternatives that are biocide-free currently on the market. Making the assumption that they will be developed once these regulations are adopted is a very convenient hope, but it's not an alternative that currently exists."</i>          Hearing Transcript p. 258.           This unavailability of viable paints was confirmed at the hearing by the owner of the other boat yard in the marina, Simon Landt:   <i>"I agree with everything that my fellow boatyard operator Greg Schem said. I'd also like to bring up that I did contact the boatyard managers in San Diego at Shelter Island Marine, and also Nielsen's at the request of the Water</i> </p>	

<sup>1</sup> Because it is unclear whether this memorandum is a part of the administrative record, the County hereby requests that it be included; a copy of this memorandum is attached as "Exhibit 1".

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			<p><i>Board staff and talked with those managers there. And I just want to reiterate with Greg Schem said, that there are no viable copper-free, biocide-free paints currently available for the use on the bottom of the boats if this TMDL is changed." Hearing Transcript p.281.</i></p> <p>Additionally, one of the paint manufacturers testified that the current non-biocide paints were not useable by the average recreational boater:</p> <p><i>"MR. SZAFRANSKI: Thank you, Chair Stringer, Members of the Board. I'm Frank Szafranski with international paint. We're manufacturers of anti-fouling paints, copper-free paints and biocide-free paints. And I've been around biocide-free paints a lot over the last 20 years of my career. I'm sorry, I disagree with some of the data that you've been presented. I have not seen these paints go ten years. They're difficult to -- they're expensive to buy. They're difficult to apply. They're difficult to maintain and expensive to maintain. And the way boaters use their boats, these paints are a little bit tender. And when a log hits them, a fishing line cuts them, there's repairs that are needed to be made. Any boater who is actively</i></p>	

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			<p><i>boating is not going to get ten years out of those coatings. We're the manufacturer. I get it. We like it. It's really great for commercial freighters, which is what it was designed for. And they cite just tremendous fuel savings as a result of it. But for boaters here in Marina del Rey and for the recreational boater I general, I'm not sure that this is the product to use. Thank you."</i></p> <p>Hearing Transcript pp. 285-286.</p> <p>The Regional Board failed to cite to or include any evidence to support its statement that "It is anticipated that additional paint options will become available during the implementation of this TMDL." The testimony of Mr. Schem, other commentators at the hearing, and the DPR Report all contradict the Regional Board's statement.</p>	
5.7	<p><u>The Loading Capacity of the Harbor for Dissolved Copper is Significantly Underestimated</u></p> <p>In calculating the loading capacity of the Marina del Rey Harbor for dissolved copper, staff assumed a water surface area of 1,200,000 m (or 296.5 acres). This area is much lower than the actual surface area of the Marina del Rey Harbor water as covered by the TMDL.</p>	<p>The receiving water area utilized in the proposed TMDL revision relies on watershed areas reported in the Draft – Technical Memorandum: PLOAD Model for Marina del Rey Harbor. The reported value for receiving water area is the basis for the original TMDL and is appropriate for continued use in the TMDL. Potential changes in the definition of watershed area are beyond the scope of the current TMDL revision.</p>	<p>It is undisputed that the Technical Memorandum, created in 2002 by USEPA and Regional Board at the time of the development of the original TMDL, reported an incorrect water surface area for MdR Harbor. This error should be corrected.</p> <p>In this instance, the Regional Board's calculation error has a significant impact. The error may have increased</p>	<p>The County respectfully requests that the State Water Board direct the Regional Board to correct this technical error and associated TMDL allocations.</p>

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	<p>By lowering the area, the loading capacity of the harbor for dissolved copper was grossly underestimated by about 20 percent. The area used in calculating the loading capacity should be consistent with the water surface area being addressed by the TMDL, which is the entire Marina del Rey Harbor. Our estimate indicates that this area should be 403 acres. We request that the TMDL be revised to use the correct water surface area of 403 acres in calculating loading capacity; and the load allocation for dissolved copper should be revised accordingly.</p>		<p>the required copper reduction approximately by 20 percent. This means, instead of 85 percent reduction, it would be only about 70 percent reduction that may be needed if the error is corrected.</p> <p>Accordingly, we respectfully disagree with Regional Board's response that such action is "<i>beyond the scope</i>" of the current TMDL re-opener. It is both illogical and legally erroneous to hold that correcting a technical error in the TMDL is considered "<i>beyond the scope</i>" of the TMDL re-opener while at the same time the re-opener was used to extensively expand the TMDL to include additional pollutants, water-bodies, and sources.</p>	
5.8	<p><u>The Conversion of Boat Hull Paint From a Biocide-Based Paint to a Non-Biocide Based Paint May Create Unintended Environmental Consequences</u></p> <p>In recent years, invasive species increasingly have become a major threat to aquatic ecosystems including Santa Monica Bay and Marina del Rey Harbor. One common mechanism of transport of aquatic invasive species is through boat travel. Traditionally, copper-based hull paints have been used as a biocide to prevent the transport of invasive species from one waterbody to another. While the</p>	<p>The SED acknowledges that increased growth of fouling organisms and invasive species could result from the switch from copper based anti-fouling paint. The SED identifies mitigation measures to address that potential impact. The SED properly identifies hull cleaning practices as one potential mitigation measure for potential impacts related to invasive species. (See Chapter 6.2.2, pp. 61-76). In addition, the SED includes a statement of overriding considerations which states that in view of the entire record supporting the TMDL, the specific economic, legal, social, technological,</p>	<p>In its response, the Regional Board referenced the Substitute Environmental Document and the assertion therein that "...<i>hull cleaning practices [are] one potential mitigation measure for potential impacts related to invasive species.</i>" This recommendation by the Regional Board is surprising given that the Regional Board has previously cited hull cleaning as a major cause of enhanced copper leaching from paints, There is no guarantee that alternative paints are free of water quality impacts under frequent cleaning. Therefore, the Regional Board's recommendation of enhanced hull cleaning to control</p>	<p>Once again, the County would like to request that the unintended environmental consequences of the TMDL be further evaluated, along with the site specific objective study of dissolved copper addressed elsewhere in these comments, before the implementation of copper limits,</p>

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	<p>elimination of copper-based hull paints might improve water quality in the long run, such measures might create the unintended and undesirable consequence of increasing the spread of invasive species. In this regard, Regional Board's own draft Substitute Environmental Document prepared for the TMDL states (p. 75):</p> <p>"Increased growth of fouling organisms could occur as a result of boat owners switching from copper-based antifouling paints to alternative coatings, which may prove to be less effective. An increase in abundance and species diversity of fouling organisms on a boat previously moored in a different location could lead to the transport of invasive species into the Marina del Rey Harbor Waters. Certain invasive species have been known to cause disruptions in ecosystems..."</p> <p>Further, studies<sup>1</sup> have shown that biofilms that would grow on boats, which the copper paint is intended to prevent, could be a reservoir for bacteria. Given thousands of boats in the Marina, the replacement of biocide paint with non-biocide paint could aggravate the bacteria problem in the water. Such potential environmental harm would make this TMDL improperly in conflict with the Coastal Act's specific mandates to protect such environments. In light of these concerns, it would be</p>	<p>and other benefits of the proposed TMDL outweigh the unavoidable adverse environmental effects, and that such adverse environmental effects are acceptable under the circumstances.</p> <p>The Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL has been effective since 2004. The bacteria TMDL addresses microbial sources of pollution to Marina del Rey Harbor. Additionally, the use of copper antifouling paints to control potential disease vectors is not an approved use of such products by the Department of Pesticide Regulations; nor is there evidence that this is an effective means of disease control.</p>	<p>invasive species may negate the very purpose of the TMDL. In fact, stakeholders are considering the possibility of reducing hull cleaning as tool to reduce copper leaching.</p> <p>Further, the Regional Board's assertion that "...the benefits of the proposed TMDL outweigh the unavoidable adverse environmental effects, and that such adverse environmental effects are acceptable under the circumstances " is neither substantiated by evidence nor will it be acceptable to other environmental permitting authorities, such as the California Coastal Commission and the California Department of Fish and Wildlife.</p> <p>Further, the Regional Board's suggestion of hull cleaning to prevent the introduction of invasive species is illogical. In order for that process to work, the cleaning would have to take place in open waters <i>before</i> a boat enters MdR Harbor. Otherwise, the exact risk of the boat carrying in the invasive species occurs. Yet, the Regional Board offers no explanation of how such open water cleaning could occur, and the County is unable to conceive of any way to practically and safely perform such a practice.</p>	<p>which effectively require the use of a paint system of dubious environmental value. Any provisions, which would effectively require the conversion to non-copper based paints, should only be implemented after viable alternatives that would address the competing environmental issues are developed and available on the market.</p>



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	<p>premature to require the replacement of the hull paints at this time; such requirement should only be adopted after viable product alternatives are available that would address the competing environmental issues described above.</p>			
5.9	<p><u>The Dissolved Copper Targets are Overly Stringent and Not Substantiated by Science</u></p> <p>Dissolved copper can exist as a variety of inorganic and organic chemical species. Research shows that the bioavailability of copper as a toxicant in water is determined by the concentration of free inorganic species, and not the total dissolved copper or the organically complexed species. The presence of copper binding organic matter in water minimizes copper toxicity despite high concentrations of dissolved copper. For example, studies conducted for San Francisco Bay concluded that most of the dissolved copper in the bay exists in harmless form - bound to organic ligands, which effectively buffer their availability to organisms. The findings of the studies resulted in the development of site-specific dissolved copper criteria for the Bay by the San Francisco Regional Board to provide a more appropriate and less stringent standard, which eventually led to the removal of copper</p>	<p>See response to comments 04.4 and 05.6.</p> <p>The California Toxics Rule criteria for copper in saltwater are based on dissolved copper concentrations. A site-specific study may be conducted in Marina del Rey Harbor to investigate the potential effects on toxicity of copper complexation by organic ligands. In the absence of such a study, CTR criteria are the appropriate water quality standards for dissolved copper in Marina del Rey Harbor.</p>	<p>There is a significant body of evidence that suggests that the current CTR-based standard for marine waters is overly protective of the intended beneficial uses, warranting the need to conduct a site-specific study. While the County recognizes the need for developing site-specific objectives for MdR Harbor and is willing to conduct such study, it is inappropriate to set a target before this study is complete.</p> <p>The need and importance of site-specific-objectives for MdR Harbor was expressed in the written and oral comments by many commenters, including the County. Even the Regional Board's Executive Director recognized the development of site-specific-objectives could adjust the targets. (see Hearing Transcript p. 321)</p> <p>In this regard, the County has urged the USEPA to expedite the completion of the BLM model, which can be used for development of the site-specific criteria that is more realistic for MdR Harbor.</p>	<p>The County is in the process of conducting a special study to determine the appropriate dissolved copper targets for the harbor water. The County requests that the Regional Board work collaboratively on this study and commit to consider the results of the study once completed.</p> <p>The County also requests that the dissolved copper targets in the revised TMDL either be removed, pending completion of the copper site-specific study (at</p>

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	<p>from the 303(d) list. As a result, the copper criterion currently applicable to the San Francisco Bay is 6.9 µg/L. In contrast, the Marina del Rey Harbor TMDL proposes a copper criterion of 3.1 µg/L. We believe that this is overly protective and warrants the development of site-specific criteria for Marina del Rey Harbor using appropriate scientific tools, such as the Biotic Ligand Model (BLM). We urge the Regional Board to delay adoption of the proposed TMDL until a site-specific study can be completed, or otherwise include appropriate re-opener language in the TMDL to consider the result of a site-specific study.</p>			<p>which time the TMDL can be re-opened to include appropriate dissolved copper targets), or the compliance period for meeting such targets be sufficiently extended to allow for: (1) the performance of the site-specific study; and (2) the development of viable alternative paints, as discussed above.</p> <p>Alternatively, if the State or Regional Board is unwilling to make such changes at this time, the revised TMDL should include an express provision that the TMDL will be re-opened <i>to revise the dissolved copper targets and load allocations upon the completion of the copper site-specific objectives study.</i></p>

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5.10	<p>The Proposed Timeline is Unachievable</p> <p>As currently proposed, the TMDL requires the conversion of boat hull paints to non-copper paints for 85% percent of boats in the Marina by 2024. With over 4,500 boats in Marina del Rey Harbor, this would require approximately 4,000 boats to adopt a non-copper based hull paint within the next 10 years to comply with the TMDL. In contrast, Shelter Island Yacht Basin, which holds approximately 2,200 boats and was used as a model to develop the Marina del Rey Harbor dissolved copper TMDL, provides a 17-year compliance schedule to achieve its 76% dissolved copper load reduction target. The 10-year timeline is literally impossible to meet. It requires repainting over 400 boats a year, which is unachievable for many reasons. First, it will take many years for boat owners to be educated about any new requirements and willing to convert their paints, especially given the significant questions remaining concerning the cost, durability, and maintenance of non-copper based paints. Behavioral changes needed in the boating community to embrace alternative paints take time. As an example, it took more than 6 years (2007-2013) to convert fewer than 30 boats in Shelter Island Yacht Basin. Second, the boat yards at Marina del Rey have limited</p>	<p>See response to comment 04.3. The Regional Board disagrees that the ten-year schedule is impossible to meet. Furthermore, it is not appropriate to multiply the Shelter Island Yacht Basin TMDL implementation schedule by two in order to determine an implementation schedule for Marina del Rey. First, boaters in Marina del Rey have known about the environmental effects of copper-based hull paints for years due to outreach efforts in Marina del Rey as well information about the TMDLs in Shelter Island and Newport Bay that has been shared throughout the boating community. Second, during development of the proposed TMDL revision, Regional Board staff met with the two boatyard owners in Marina del Rey who estimated that it would take about 10 years to convert <i>all</i> of the boats in the marina (i.e., 5300, not 4500 boats) to non-copper paint if both boatyards in the Marina were working at full capacity. Third, the proposed TMDL revision contains a schedule and a plan to develop an enforceable regulatory mechanism to implement the load allocations. In contrast, the Shelter Island TMDL implementation has been entirely voluntary. Thus, it is expected that implementation in Marina del Rey Harbor will occur more quickly than in Shelter Island. Finally, as is stated in the comment letter, boats using copper-based paint typically have to be painted</p>	<p>There is no evidence in the record to indicate that 85% reduction in dissolved copper can be achieved in 10 years. The County and other commenters have provided evidence that achieving this level of reduction in copper is not possible in part due to the lack of a "viable" alternative (non-biocide) paint on the market. The Regional Board completely ignored the obvious impact of product unavailability in setting such a short compliance period. See the County's further responses for item 05.6 above.</p> <p>Moreover, Regional Board staff has stated that they based the TMDL's 10-year compliance timeline on estimates from the owners of the two boatyards in MdR Harbor that their theoretical maximum capacity to replace boat paint with a non-biocide paint would be 500 boats per year. However, as demonstrated in the County's comments to the Regional Board, and as fully supported by those same boatyard owners, that theoretical maximum is impossible to achieve in the real world, since those same boatyards are already at near capacity performing normal boat maintenance and other activities, which will have to continue to be performed even during attempts to convert boats to non-biocide paint. As the County's prior comments demonstrated, the real world potential for boat conversions is far</p>	<p>The County requests that the compliance timeline for the dissolved copper be set to a minimum of 36 years or 2048.</p> <p>This timeline is determined based on the following considerations:</p> <ul style="list-style-type: none"> <li>(i) the boatyards in MdR Harbor have indicated that they could strip and paint about 150 boats per year. At this rate, full conversion would take over 31 years for the over 4,700 boats in the harbor;</li> <li>(ii) an evaluation period of at least 5 years for evaluating alternative paints and educating boaters.</li> </ul>

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	<p>capacity and could not handle 400 boats a year even under ideal conditions where the boat yards' time is fully devoted solely to paint conversions. Of course, the boat yards cannot devote all of their time to new conversions, since much of that time will be spent with maintenance of the existing boats. For example, boats typically have to be repainted every 1-3 years, meaning that much of the boat yard's capacity would be devoted to the re-painting. Third, given the significant additional costs of conversion, financial incentives, such as State grants, need to be in place to encourage boat owners to convert their paints, and such a process would take many years before they are available to the boaters. For example, it took approximately 5 years to obtain a State grant for the Shelter Island Yacht Basin. Considering the fact that Marina del Rey Harbor holds more than twice as many boats as Shelter Island Yacht Basin and requires more copper reduction than is required for Shelter Island Yacht Basin, the timeline needed to implement a copper reduction program in Marina del Rey Harbor should be more than twice the timeline provided for Shelter Island Yacht Basin. This warrants a compliance timeline of 2050 for Marina del Rey Harbor. We request that the Regional Board take this into consideration and provide an appropriate timeline.</p>	<p>every 1-3 years. Paint conversions to non-toxic paints, which often have a longer lifespan, can be aligned with regular boat re-paintings, to reduce costs and improve efficiency.</p>	<p>below even 400 boats per year. This has a dramatic impact on the minimum period needed to perform the required conversions.</p> <p>For example, if the real world maximum capacity is only 300 boats per year, converting the over 4,700 boats in MdR Harbor would take almost 16 years. If the true capacity number is only 150 boats per year (which the evidence indicates is the true figure), full conversion would take over 31 years, even if a viable paint alternative was available which, as discussed above, it is not. The testimony at the hearing from the boat yard owners validated this 30 year plus figure. Boat yard owner, Greg Schem, testified:</p> <p><i>"Even if every boater wanted to switch to biocide [sic] paint it would take the two boatyards in Marina del Rey 30 to 50 years to strip and repaint them as the capacity does not exist on top of our current workload. In addition, the yards would have to invest in expensive infrastructure in order to create the required climate-controlled environments, acquire the necessary AQMD permits, and modify their travel list to work with these types of extreme slippery paints."</i> Hearing Transcript p.</p>	

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			<p>259. This was confirmed at the hearing by the owner of the other boat yard in the marina, Simon Landt. Hearing Transcript p.281.</p> <p>It is critical that a timeline be set by taking into consideration the realities on the ground.</p>	
5.11	<p><u>Imposing Hull Paint Conversion on Individual Boaters Would Have Significant Economic Impact on Marina del Rey</u></p> <p>The economic costs of imposing the paint requirement on the individual boaters would be, in some cases, prohibitive, and could cause an economically devastating flight of boats from Marina del Rey to other local marinas, which would not have these costly requirements. Unlike conventional repainting, converting the boats to non-copper based paints generally requires that all of the old coating be stripped from the hull. The Marina del Rey boat yards have reported that the cost of stripping paint from the hull of a standard 35 foot boat is between \$6,000 and \$7,000. In addition, assuming that each boater is also required to obtain a discharge permit, as has been indicated by the Regional Board staff, the 2013-2014 Water Board Fee List states a minimum</p>	<p>See response to comments 02.9 and 04.5</p> <p>The Regional Board is sensitive to the concerns of small boaters and/or lower income boaters in Marina del Rey Harbor. It is anticipated that grant funding, similar to that obtained to cover stripping costs for boaters in Shelter Island Yacht Basin, will be obtained to reduce the financial burden on Marina del Rey boaters as they convert to more environmentally friendly hull paints. The Regional Board supports efforts to design these grants such that a larger percentage of costs are covered for smaller boats, where the cost conversion may represent a larger percentage of the overall cost of owning and operating a boat in Marina del Rey Harbor. In addition, the timing of the implementation schedule for the TMDL is such that it is expected that stripping of hull paint will be required during the boat's normal course of operation and maintenance at some point prior to the</p>	<p>Despite the availability of grant funding, the Shelter Island Yacht Basin program has failed to convert a large number of boats to non-copper paints. The most recent report on the Port of San Diego's website states that only 30 boats have taken advantage of the hull repainting grant program. Similarly, the City of Newport Beach has also commented that, even with grants, "...boaters were not interested in changing paints to unknown and possibly less effective alternatives."</p> <p>Further, the Regional Board's assertion that stripping and repainting a boat hull is part of the normal course of operation and maintenance over a ten year period is at odds with what has been reported by the Marina del Rey boat yard owners. They have reported that it is not uncommon for boats to go 20 years of longer without having their paint stripped off. See, e.g. testimony from</p>	<p>The County requests that the compliance timeline for the dissolved copper be set to a minimum of 36 years or 2048.</p> <p>This timeline is determined based on the following considerations:  (i) the boatyards in MdR Harbor have indicated that they could strip and paint about 150 boats per year. At this rate, full conversion would take over 31 years for the over 4,700 boats in the harbor;  (ii) an evaluation period of at least 5 years for evaluating</p>

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	<p>fee of an additional \$1,094. This may well be prohibitive to many recreational boaters, which is in direct contravention of the policies of the California Coastal Commission's mandate to encourage lower cost recreational boater opportunities. See, e.g. Section 30213 of the Coastal Act. Since the proposed TMDL applies only to Marina del Rey and not to other local marinas, it puts Marina Del Rey at a significant disadvantage to other operational marinas throughout the region. Boaters will see a major financial incentive to avoid these new costly regulations by simply moving to another local marina. Given that Marina del Rey already has a vacancy rate in excess of 15%, Marina del Rey will be unable to easily replace those departing boaters, leading to significant economic losses to the County and the entire Marina del Rey community. This problem would be eliminated if such regulations were to be applied at the State level to all marinas.</p>	<p>compliance deadline required by the TMDL. By covering much of this cost through grant funding, boaters may in fact spend less to re-paint their boat with an alternative paint than had they re-painted with copper based paint. Depending on paint selection, more frequent hull cleaning may be required which would result in an increased cost to boaters. Los Angeles Waterkeeper (LAW) has been using a non-copper based hull paint on their boat in Marina del Rey Harbor since 2009. This boat is in frequent use, thus ideal for the type of copper free paint applied, and LAW has been able to terminate hull cleaning entirely.</p>	<p>boat yard owner, Greg Schem, at the hearing:</p> <p><i>"Since these [non-copper] paints are much more delicate it is likely they will not last as long as traditional paints. Boat bottoms will need to be newly stripped in order to apply biocide-free paints. As a typical boat is stripped only about every 20 to 30 years, not 7 to 10..."</i> Hearing Transcript p. 259. This was confirmed at the hearing by the owner of the other boat yard in the marina, Simon Landt. Hearing Transcript p.281.</p> <p>As noted by the Regional Board's comments, the Los Angeles Waterkeeper boat "is in frequent use". LAW has stated that they typically take their boat out three times a week. This is far more frequent than the typical Marina del Rey pleasure boater, and allows less time for fouling organisms to attach to the hull. Thus, while a non-copper paint may be sufficient in such a frequent use scenario, the utility is far less certain for the typical boat in the Marina.</p>	<p>alternative paints and educating boaters.</p>
5.12	<p><u>Addressing Copper Contamination from Antifouling Paints Requires a Statewide Regulation, Not a Local Regulation</u></p>	<p>See comment 04.5</p> <p>Low copper paints may aid in achieving the TMDL as an interim step. This</p>	<p>While we are encouraged to hear that the effort by the DPR would help address water quality impacts emanating from boat paints, we are</p>	<p>We urge that DPR's efforts be taken into account in setting the TMDL</p>

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	<p>Marina del Rey is neither the only harbor in California nor the only harbor with boats painted with copper hull paints. Boats move from one marina to another throughout the region and the State, indicating that the marinas are interlinked and boats from one marina will have an impact on other marinas when it comes to copper leaching from hull paints. Therefore, any effort to address copper paints should be dealt with holistically at the State level. It's unfair and ineffective to impose a regulation that would apply only to one or two marinas. The most effective way to address copper hull paints is to control the source, i.e., to prohibit the manufacturing, sale, and application of copper paints throughout the California similar to the prohibition enacted for vehicle brake pads. The State of Washington has followed a similar track and enacted laws that would address brake pads as well as hull paints. In California, the effort to address copper-based hull paints at the state-wide level is underway through the Department of Pesticide Regulation (DPR). In fact, newly passed State legislation (AB 425) requires the DPR to "<i>determine a leach rate for copper-based antifouling paint used on recreational vessels and to make recommendations for appropriate mitigation measures that may be</i></p>	<p>approach will begin the process of reducing the discharge of copper into the harbor may be particularly useful as an interim step in progressing towards the use of non-copper hull paints. The Department of Pesticide Regulations is currently tasked with determining an acceptable leach rate of copper from antifouling paints that will not result in the exceedance of water quality standards (California law AB 425). Results of this effort may aid in meeting the TMDL.</p>	<p>concerned that the TMDL timeline, as currently proposed by the Regional Board, does not take into account the timeline for the DPR process.</p> <p>In its report released on January 30, 2014 (after the close of the comment period but before the hearing), the Department of Pesticide Regulation (DPR) indicated that many of the currently registered antifouling paints need to be reformulated to attain an acceptable leaching rate that would reduce impact on water quality. DPR also acknowledged that reformulation of these existing products "<i>may not be realized for many years due to the timeframes involved in reformulation, relabeling, registration approval, and market distribution.</i>" Thus, the TMDL amendment would improperly prohibit the use of antifouling paints currently approved by the State while requiring the use of reformulated paints, which do not yet exist in many instances. Regional Board staff was aware of this report at the time of the hearing, since they referenced it (see e.g. Hearing Transcript p. 224)<sup>2</sup></p> <p>As we have indicated before, the best way to address water quality impacts from hull paints is through source control, which requires reformulation of</p>	<p>requirements and timelines.</p> <p>We also request that the following re-opener language be added to the TMDL:</p> <p><i>The Regional Board will re-open the TMDL to revise the implementation schedule based on the time it would take DPR to complete paint reformulation.</i></p>

<sup>2</sup> Since the Regional Board failed to incorporate this report into the administrative record, the County attached that report to this comments as "Exhibit 1" and respectfully requests that the administrative record be supplemented accordingly.

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	<p><i>implemented to protect aquatic environments from the effects of exposure to that paint if it is registered as a pesticide." We believe that the State is on the right track and any efforts to address copper paints should be directed towards supporting the DPR effort.</i></p>		<p>the paints, as DPR is currently pursuing.</p>	
<b>Comments Specific To The Requirements Associated With In-Harbor Sediment</b>				
<p><b>5.14</b></p>	<p><u>The Compliance Date Should Be Extended</u></p> <p>A successful execution of a contaminated sediment management plan to attain the in-harbor sediment load allocation depends on such factors as availability of sediment disposal sites and logistics to relocate the boats currently residing in the harbor during sediment removal. Furthermore, external pollutant sources must be fully controlled before any remediation of contaminated sediment is initiated to avoid recontamination of the harbor sediment. Following the successful management of MS4 sources, the TMDL should provide sufficient time to analyze the sediment condition and develop an appropriate plan of action. In particular, potential attenuation of contaminants through natural degradation should be tested (see the</p>	<p>The Regional Board disagrees. The original TMDL requires Cleanup and Abatement Orders to address toxicity hotspots within in-harbor contaminated sediments to be promptly issued as a result of data submitted pursuant to the TMDL. Responsible parties completed a Sediment Characterization Study in 2008 indicating that sediment impairments are not confined to hotspots but rather are pervasive throughout harbor sediments. To allow time for planning efforts and to ensure that sources of toxic pollutants to the harbor are controlled prior to remediation, The Regional Board has proposed replacing the requirement to issue Cleanup and Abatement Orders with Load Allocations for in-harbor sediments and an implementation schedule to meet the Load Allocations. The Regional Board finds this approach reasonable and has based the</p>	<p>The County continues to believe that the 2029 timeline was set arbitrarily. As the largest harbor of its kind in the United States, MdR Harbor is very complex and there is no evidence in the record to indicate that the TMDL's allocations for this harbor can be achieved within the proposed timeframe.</p> <p>On the other hand, the County has informed the Regional Board that it will need approximately 25 years (through 2038) to: (1) allow the elimination of new contamination through the MS4; (2) conduct studies to determine the true scope of the contamination; (3) devise a remediation method that will work but will not close the entire marina for years or kill off all flora and fauna in the marina<sup>3</sup>; and (4) implement the required remediation.</p>	<p>The County requests that the compliance date for the in-harbor sediment be set to 2038 to allow sufficient time to plan, evaluate, and take appropriate measures.</p> <p>The 2038 (or 25 years) timeline is proposed based on the following considerations, with some of the activities taking place in parallel: (a) About 10 years (2014-24) for studies and MS4 implementation.</p>

<sup>3</sup> Even the Regional Board's own environmental analysis finds a very high risk that such remediation will destroy all life in the marina waters.



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	<p>comment below). Sediment removal, capping, or other costly means of remediation should be considered only after other more cost effective alternatives (such as natural attenuation) have been exhausted. Specifically, after external sources have been addressed, a study should be conducted to assess the condition of the sediment over time. Based on the results of the study, a contaminated sediment management plan could then be prepared to determine the best approach to address any remaining issues in the sediment. Given the complex nature of Marina del Rey Harbor and the process that a project of this magnitude would require, the actual implementation of the sediment remediation would need to follow a phased approach which could take more than 10 years to complete after the sediment management plan is in place. Given this necessary sequence of actions, the final compliance schedule for in-harbor sediment should be set to 2038.</p>	<p>implementation schedule on allowing approximately one year to dredge each basin in the Marina (this timeline was based on previous local dredging efforts). The timeline of 2029 presumes planning efforts will begin early in the implementation schedule of the TMDL and that the beginning phase of remediation may coincide with monitoring to ensure all sources are controlled. Based on early discussions with the County of Los Angeles, Department of Public Works during TMDL development language has been included in the proposed TMDL to allow flexibility: "The TMDL may be reconsidered to revise the implementation schedule in order to ensure that pollutant sources are controlled and a suitable location for contaminated sediment disposal is available prior to remediation of contaminated sediments if the County has made a good faith effort to plan, fund, and permit sediment remediation activities." Thus, there will be an opportunity to revise the sediment remediation schedule if warranted. See response to comment 05.15 regarding natural attenuation. Also see response to comment 05.1.</p>	<p>With too short of a schedule, there will not be time to evaluate cost-effective and environmental friendly approaches; instead much more drastic, expensive, and ineffective measures will be required. The Regional Board's comment that "The timeline of 2029 presumes planning efforts will begin early in the implementation schedule of the TMDL and that the beginning phase of remediation may coincide with monitoring to ensure all sources are controlled" demonstrates that the Regional Board intends that the County immediately start with drastic measures before a determination is made as to the true scope of the measures required. It should be noted that Regional Board's own estimation of the sediment remediation is in the order of \$150 million. Before embarking on such massive project the County should be given sufficient time to study and evaluate all available alternatives.</p>	<p>This involves participation in the State's effort for SQO Part 2, the completion of monitoring and studies to assess the extent of sediment contamination, implementation of the Oxford Basin project, and implementation of MS4 related BMPs. (b) About 5 (2022-2026) years for developing a sediment management plan. This involves evaluation of sediment remedial options, identification of sediment placement sites, and preparation of sediment management plan. (c) About 5 years (2025-29) for design and permitting. This involves securing funds, obtaining environmental</p>

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				permits, and developing engineering design. (d) About 9 years (2030-38) for sediment remediation. This involves evaluating natural degradation and sediment removal as needed.
5.15	<p><u>Natural Attenuation Should Be Given a Chance in Reducing Legacy Pollutants</u></p> <p>Contaminants in sediments are known to undergo degradation overtime through natural bio-chemical processes. Natural processes have proven to play a key role in remediating contaminated soil and sediments. In particular, this can be an effective alternative once the external sources of the contamination have been addressed. An example where natural degradation is playing a vital role is the case of the superfund site at Palos Verdes Shelf, the largest DDT and PCBs deposit site in the nation. Recent surveys of the site have shown that both DDT and PCBs are disappearing at a faster rate than expected, and the EPA is currently reconsidering the implementation of a sediment remediation project, which would cost tens of millions of dollars.</p>	<p>The rate and amount of attenuation occurring at the Palos Verdes (PV) Shelf is less than certain. U.S. EPA is currently in the process of conducting additional sediment and tissue sampling at the PV Shelf to further study the current conditions and potentially assess background degradation and sediment migration from the site due to the steep slope. In addition, deposition of clean sediment at the PV Shelf may have served to reduce the re-suspension and limit the amount of bioavailable PCBs and DDT. It would be premature to attribute lower levels of PCBs and DDTs at PV Shelf strictly to pollutant degradation and natural attenuation, especially when USEPA voiced uncertainty. As such, disregarding the unique conditions of the PV Shelf and application of that principle to Marina del Rey Harbor may not be valid. Marina del Rey Harbor</p>	<p>While the County understands that USEPA is conducting additional analysis, the fact is that sediment sampling conducted in 2009 indicated that 90% of the PCBs and DDT contamination previously reported for Palos Verdes Shelf (PVS) had disappeared. As a result, USEPA suspended its plan for remediation of the site.</p> <p>Even under the original USEPA plan to remediate PVS, the intention was to only cap certain locations (hot spots) of the contaminated area and to let natural attenuation take care of the remaining role. USEPA estimated it would take about 22-30 years for the contaminants to fully degrade to acceptable levels after the capping was completed.</p> <p>Therefore, despite what the outcome of the USEPA's additional analysis entails</p>	<p>The County requests that sufficient time be given to allow evaluating the role of natural attenuation prior to taking complex and expensive sediment removal action.</p>

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	<p>Most of the contaminants of concern in Marina del Rey Harbor, such as PCBs, DDT, and chlordane are legacy pollutants with no or little current contributions from the watersheds. In addition, existing sources of metals (copper, lead, and zinc) in the watershed will be addressed as required by the proposed TMDL in the next 8 years. Once these external sources have been addressed, sufficient time should be provided to assess the effectiveness of natural attenuation before upwards of hundreds of millions of tax dollars are spent on sediment removal or capping. Accordingly, we request the Regional Board provide the flexibility and needed time to test this cost-effective approach.</p>	<p>shares limited similarities to a large and dynamic system like the PV Shelf, which experiences greater degrees of sediment erosion, transport, and migration due to its unique topographical features. The relatively shallow depth of Marina del Rey Harbor lends itself to greater disturbance and resulting re-suspension given the proximity of bottom sediments to the surface as well as the high amount of disturbance associated with one of the largest private craft marinas in southern California. The Marina is a relatively enclosed and static system with flat sediment beds not lending itself to transport of bulk sediment out of the harbor, which is exacerbated by the fact that the wider harbor with the exception of the entrance channel is seldom if ever dredged.</p>	<p>for PVS, it would be necessary to allow time to evaluate the potential for natural attenuation in MdR Harbor as the USEPA did for PVS. Given the high cost of sediment remediation for the entire MdR harbor and the environmental damage that such remediation will cause (as recognized by the Regional Board's own substitute environmental documents), any approach, which may result in lower costs and smaller environmental impacts should not be dismissed in a perfunctory fashion.</p>	
5.17	<p><u>Inconsistence in Setting of Targets for Bioaccumulative Pollutants</u></p> <p>In setting fish tissue associated sediment targets for PCBs in Marina del Rey Harbor, the Regional Board relied heavily on a bioaccumulative study conducted in San Francisco Bay. Given the site-specific nature of this study, its applicability to Marina del Rey Harbor is questionable. The finding of this single study, from outside the Los Angeles region, should not be used to set TMDL</p>	<p>The Regional Board disagrees. Use of the revised total PCB sediment target based on the food web bioaccumulation model is consistent with previously adopted toxic pollutant TMDLs in the region, including the Los Angeles and Long Beach Harbors Toxic and Metals TMDLs and the Ballona Creek Estuary Toxic Pollutants TMDL. If monitoring data or special studies indicate that load and waste load allocations will be attained, but fish tissue targets may not be achieved, the Regional Board shall</p>	<p>Currently, California has no fish-based sediment criteria. However, the State is working on establishing one through what is referred as SQO Part 2. The State is expected to complete this effort in the next two to three years.</p> <p>In the absence of State standards for fish-based sediment objectives, simply establishing a TMDL target based on an arbitrary number obtained from a study conducted elsewhere is inappropriate.</p>	<p>The County requests that ERL-based target be maintained for PCBs until the State completes the development of sediment criteria applicable to fish. Appropriate revisions to the TMDL can be made through a</p>

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	<p>targets unless corroborated by similar studies from Southern California. Similar to the dissolved copper target issue discussed above, the fish-based targets for bioaccumulative pollutants should also be established through a site-specific study conducted for Marina del Rey Harbor. Moreover, there should be consistency in setting targets for all bioaccumulatives pollutants of concern in the TMDL, including PCBs, DDT, and chlordane. While DDT and chlordane sediment targets are now set based on National Oceanic and Atmospheric Administration's effects-range-low (ERL) values, PCB targets are proposed based on the bioaccumulative study as discussed above. The State Water Resources Control Board is currently working on SQO Part 2, which would establish fish tissue based sediment objectives. We recommend that ERL-based targets should be maintained for all pollutants until either the State adopts the SQO Part 2 or site-specific bioaccumulative study is completed for Marina del Rey Harbor.</p>	<p>reconsider the TMDL to modify the waste load and load allocations to ensure that the fish tissue targets are attained.</p>	<p>It is critical that proper science be used to establish appropriate targets for Mdr Harbor.</p>	<p>reopening of the TMDL upon the adoption of SQO Part 2.</p>
5.18	<p><u>The County Should Not be Held Solely Responsible For Any Future Recontamination of the Sediment</u></p> <p>The proposed Basin Plan Amendment requires the County, as owner and operator of Marina del Rey Harbor, to</p>	<p>The Regional Board disagrees. Potential recontamination may be contributed from a County-owned area of the watershed. The proposed language would inappropriately remove responsibility from the County for such an impairment.</p>	<p>As currently proposed, the responsibility for remediating the sediment contamination in Mdr Harbor is solely assigned to the County. Of great concern is that once the existing sediment is remediated by the County, there could be potential recontamination</p>	<p>With the added clarification and understanding, the County requests once again that the following language be added to the</p>

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	<p>bear the heavy burden of remediating the sediment in the Marina del Rey Harbor despite the fact that those contaminated sediments originated from the watershed, which drains lands that are under the jurisdiction of not only the County but also various cities. Once the sediment has been remediated, the County should not be responsible for future recontamination of the sediment in the harbor as result of upstream discharges. We request that the following language be added to the implementation section of the TMDL.</p> <p><i>After remediation activities of the in-harbor sediment are complete, if the harbor is recontaminated as a result of continued discharge of contaminants from the surrounding watershed, additional remediation activities in the harbor shall be the responsibility of upstream dischargers.</i></p>		<p>due to continuous input from the watershed. In the event that contaminated sediment discharges from the watershed result in a re-contamination of the sediment in the harbor after initial remediation is completed, it would be unfair for the County alone to bear the responsibility of a future secondary remediation of re-contaminated sediment. The County's reference to "upstream dischargers" in the County's prior comment was meant to <i>include</i> the County. What the County intended for the comment to say is that the responsibility of cleaning re-contaminated sediment should be borne by all upstream jurisdictions and other responsible parties, including the City of Los Angeles, Culver City, Caltrans, and the County. This request is consistent with the approach used in the Machado Lake Toxics TMDL, which was adopted by the Regional Board in 2010 and subsequently approved by the State Water Board and USEPA.</p>	<p>TMDL:</p> <p><i>After remediation activities of the existing in-harbor sediment are complete, if the harbor is recontaminated as a result of continued discharge of contaminants from the surrounding watershed, additional remediation activities in the harbor shall be the responsibility of all upstream dischargers.</i></p>

**Comment Specific To The Substitute Environmental Document**

5.19	<p><u>The Regional Board's draft Substitute Environmental Document for the proposed TMDL ("CEQA Report") is inadequate and does not support the adoption of the draft revised TMDL.</u></p> <p>The CEQA Report is required, among other things, to identify the reasonably</p>	<p>The comment is incorrect. The Regional Board shall not adopt or approve a project that would cause significant adverse impacts if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact that the project may</p>	<p>The Regional Board's response contains several factual and legal inaccuracies and is internally contradictory.</p> <p>The Regional Board states that less impactful alternatives "are not feasible because they would allow toxic</p>	<p>The County respectfully requests that the State Board reject the Regional Board's Substitute Environmental Document and</p>
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	<p>foreseeable environmental impacts of the reasonably foreseeable methods of compliance (Pub. Res. Code §21159(a)(1)) and to identify reasonably foreseeable <i>feasible</i> mitigation measures (Pub. Res. Code §21159(a)(2)). The CEQA Report also must disclose why an agency approved a project if significant environmental impacts are involved. (Cal. Code Regs., tit. 14 §15002(a).) It is not sufficient to simply list potential mitigation measures, a decision making agency is prohibited from approving a project for which significant environmental effects have been identified unless it makes specific findings about alternatives and mitigation measures. (Pub. Res. Code § 21081; <i>Mountain Lion Foundation v. Fish &amp; Game Com.</i>, 16 Cal. 4th 1 05, 134 (Cal. 1997); see also <i>Environmental Council v. Board of Supervisors</i> (1982) 135 Cal. App. 3d 428, 439.) The public agency bears the burden of affirmatively demonstrating that, notwithstanding a project's impact on the environment, the agency's approval of the proposed project followed meaningful consideration of alternatives and mitigation measures. <i>Mountain Lion Foundation, supra</i> (citing <i>City of Poway v. City of San Diego</i> (1984) 155 Cal. App. 3d 1037, 1046.) The CEQA Report does not adequately evaluate whether its proposed mitigation measures for either</p>	<p>have on the environment (23 CCR § 3780). The SED analyzes alternatives to the proposed project in Chapter 4, and concludes that Alternatives 2 and 3 are not feasible because they would allow toxic impairment of the waters in Marina Del Rey Harbor to continue, in contradiction of the project purpose. The SED addresses the feasibility of mitigation measures to lessen the environmental impacts of the project in Chapters 6.2 and 7. The feasibility of mitigation measures for various methods of compliance will also be analyzed at the project level through independent environmental review. The Staff Report also provides information about the costs of alternative means of compliance in Chapters 4.10 and 5. The SED addresses the feasibility of mitigation measures to lessen the environmental impacts of the project in Chapters 6.2 and 7. The feasibility of mitigation measures for various methods of compliance will also be analyzed at the project level through independent environmental review (Pub. Res. C. § 21159.2) which is beyond the scope of analysis that the Regional Board is required to take (Pub. Res. C. § 21159(d)). The Regional Board has analyzed the reasonably foreseeable environmental impacts of the TMDL as an overall program, and reasonably foreseeable environmental impacts of the foreseeable methods of complying with the TMDL. The SED</p>	<p>impairment of the waters in Marina Del Rey Harbor to continue, in contradiction of the project purpose." Yet, the Regional Board is merely assuming its own conclusion – that its extremely low limits for sediment contamination will prevent more environmental damage than will be caused by a full dredging or capping of the harbor sediment. However, the Regional Board has neither conducted nor presented any analysis to demonstrate that the benefit of the project outweigh the environmental costs. In essence, the Regional Board has assumed as a given that any amount of environmental harm, no matter how massive, is justified. As is discussed in the above comments, this is not a case where the clear undisputed science demonstrates a severe level of contamination that must be remediated. Instead, this is a situation where there has been only preliminary, non-site specific analysis, and more studies are needed to determine the true extent and scope of the problem.</p> <p>The Regional Board states that "The SED addresses the feasibility of mitigation measures to lessen the environmental impacts of the project in Chapters 6.2 and 7." However, the only mention of feasibility is the statement in Chapter 6.2 that "These agencies have the ability to implement these mitigation measures, can and should implement</p>	<p>remand the revised TMDL back the Regional Board to correct the deficiencies.</p>

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	<p>remediation of the harbor sediments or dissolved copper are feasible, and does not meaningfully evaluate alternatives. Instead of analysis, all the CEQA Report states on the subject of whether the proposed mitigation measures are feasible is, "foreseeable environmental impacts from methods of compliance are well known, as are feasible mitigation measures." (CEQA Report, p. 17, §4.2.) This is not substantive analysis.</p> <p>The CEQA Report recognizes that there are severe potential environmental impacts to its implementation alternatives for both copper and sediment. The Report identifies more than 50 categories of potentially significant environmental impact (See CEQA Checklist, Report pp. 28-34.) The CEQA report fails to provide adequate analysis for any of these categories. For example, the CEQA report recognizes potentially significant impacts on native plant life caused by the replacement of copper-based antifouling paints: "Increased growth of fouling organisms could occur as a result of boat owners switching from copper-based antifouling paints to alternative coatings, <i>which may prove to be less effective</i>. An increase in abundance and species diversity of fouling organisms on a boat previously moored in a different location could lead to the transport of invasive species into</p>	<p>properly identifies the use of alternatives to copper based antifouling paints to avoid potentially significant impacts to plant life. The SED states, "At present, there are a number of available alternatives that have been demonstrated to be both nontoxic in nature and effective at reducing fouling growth. Examples include silicone hull coatings and hard smooth epoxy hull coatings, combined with more frequent underwater hull cleaning." The reference and support for this statement is included in the TMDL staff report (see section 4.10.2 and 5), which is part of the SED. The SED also properly identifies hull cleaning practices as one potential mitigation measure for potential impacts related to invasive species. The quoted text in this comment does not reflect the entire analysis of the potential impacts and mitigation measures to existing fish or wildlife habitat from dredging or capping. The analysis under this impact also states "also see 'Plant.' 2 a, b, and c" and these sections of the SED contain much more extensive discussion. Potential impacts to animal life and associated mitigation measures are also discussed in the previous "animal life" sections of the SED. For example, mitigation measures that are identified in the SED to lessen impacts to plant and animal life due to dredging include proper project modeling, siting, and planning. These mitigation</p>	<p>these mitigation measures, and are required under CEQA to implement mitigation measures unless mitigation measures are deemed infeasible through specific considerations." This sentence, which is repeated many times in the chapter, is obviously not an analysis of or finding of feasibility. In fact, it is just the opposite – a recognition that there may not be feasible mitigation measures.</p> <p>The Regional Board's response is internally contradictory in that it attempts to demonstrate the limited impact of dredging or capping of sediments by explaining that MdR is a particularly fragile ecosystem, more likely to be damaged by such activities: "in fact, the relatively shallow depths in Marina del Rey Harbor lend themselves to greater disturbance and resulting re-suspension given the proximity of bottom sediments to the surface and the high amount of disturbance associated with one of the largest private craft marinas in southern California. The Marina is a relatively enclosed and static system, with flat sediment beds, not lending itself to transport of sediment out of the harbor." See SED p.107.</p>	

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	<p>the Marina del Rey Harbor Waters. Certain invasive species have been known to cause disruptions in ecosystems by a variety of mechanisms, such as through competition with native biota for food and resources. The natural community, if one exists in the Marina del Rey Harbor, could be negatively affected by the introduction and establishment of invasive species." <i>Id.</i>, p. 61 (emphasis added.) Despite acknowledging that alternative coatings "may be less effective", and the harm that could bring, the Report nevertheless then states, without any reference or support, that, "At present, there are a number of available alternatives that have been demonstrated to be both nontoxic in nature and effective at reducing fouling growth." <i>Id.</i> This does not constitute the required meaningful evaluation of alternatives. This is further demonstrated in the same paragraph of the Report, when it states the hope that market will ultimately create more viable alternatives, "Additionally, the formal mandate for copper load reduction in this TMDL Basin Plan amendment will in and of itself increase the market demand for innovative solutions including nontoxic, effective hull coatings. This in turn will create greater market demand for the development of new products." This is hope, not evaluation of feasible alternatives. It is not based on any</p>	<p>measures might include limiting the extent and duration of dredging; conducting dredging in portions and phases to allow species to reestablish, recover, and propagate; and using sediment curtains to reduce sediment migration to habitat adjacent to a current dredge site. Furthermore, the SED examined worst case impacts due to dredging, when in fact, the relatively shallow depths in Marina del Rey Harbor lend themselves to greater disturbance and resulting re-suspension given the proximity of bottom sediments to the surface and the high amount of disturbance associated with one of the largest private craft marinas in southern California. The Marina is a relatively enclosed and static system, with flat sediment beds, not lending itself to transport of sediment out of the harbor. This is exacerbated by the fact that the wider harbor with the exception of the entrance channel is seldom if ever dredged. Therefore, the impacts from dredging are likely to be limited and temporary.</p>		



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	<p>factual analysis. Another alternative stated in this same paragraph is that "underwater hull cleaning should be performed particularly on vessels prior to leaving an area known or suspected to support species that could become invasive if brought into the Marina del Rey Harbor Waters." No explanation is provided as to how such a requirement would be implemented or enforced, especially when the "area known or suspected to support species that could become invasive" is outside the jurisdiction of the County or the Regional Board. As another example, as to whether the remediation of the sediments through dredging would result in deterioration of existing fish or wildlife habitat, the CEQA Report states: "Dredging or capping would increase suspended sediment in the vicinity of dredging activity, increasing turbidity of the water. This would reduce water clarity in the Harbor, which would result in the deterioration of existing fish or wildlife habitat. The increased turbidity would affect survival of phytoplankton and zooplankton, which form the prey basis for many of the wildlife, fish, and bird species in the Harbor. Dredging processes would disrupt activities of wildlife in the Harbor, and the presence of the pipeline and barge, as well as tugboat and barge movements, would affect biological resources in the Harbor for the duration of the dredging. Noise,</p>			

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	<p>human disturbance, and mechanical barriers from equipment and boats, all would affect wildlife, fish, and birds in the harbors. Some sediment in the Harbor contains toxic compounds that, when suspended, could affect water quality, which in turn could affect existing fish or wildlife habitat." (CEQA Report, p.75.) However, despite identifying these significant adverse impacts, the Report fails to provide any consideration of alternatives and mitigation measures, much less meaningful ones, as required.</p>			

**Comments Specific To Multiple Components Of The Proposed Revised TMDL**

<p><b>5.21</b></p>	<p><u>Lead TMDL and Associated Requirements Should Be Removed from the Front Basins</u></p> <p>As acknowledged in the draft TMDL staff report (p. 10-11 and 21), the front basins of the Marina have not been found to be impaired due to lead. Existing data for the front basins show that there are zero exceedances of the lead criterion out of total 24 samples collected over the last decade. However, staff incorporated the numeric target for lead into the compliance requirements for the front basins, citing the need to holistically address the entire watershed. While separate efforts may not need to be implemented to reduce lead concentrations in the front</p>	<p>The proposed TMDL addresses all constituents on a watershed basis. To ensure continuity within the TMDL as well as to address the watershed holistically, it is appropriate to apply the numeric target for lead in sediment to the entirety of Marina del Rey Harbor.</p>	<p>The County respectfully disagrees with Regional Board's response for many reasons. First, addressing a watershed holistically should not necessarily require developing a TMDL for a waterbody that is not impaired. For example, if data shows that only one reach of a river is impaired for a certain constituent, a TMDL can be developed to address that particular reach and not the entire network of streams in the watershed. It is the County's understanding that this has been the case for the TMDLs developed in the Los Angeles Region as well as across the State. Second, if the Regional Board's intention is to monitor lead in MdR Harbor, then that objective can be accomplished through the receiving</p>	<p>The County requests the removal of lead allocations and associated requirements from the TMDL.</p>
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	<p>basins of the Marina because the efforts that would be implemented for other pollutants would address lead as well, including waste load allocations in a TMDL for a non-impairment is inappropriate. The TMDL should be revised to remove the waste load allocation for lead associated with sediment in the front basins.</p>		<p>water monitoring being conducted as part of the MS4 permit without requiring a more expensive monitoring program for a constituent that is not of concern at this time.</p> <p>The County continues to believe that lead associated allocations and requirements for the front basins of the harbor are inappropriate and should be removed from the TMDL.</p>	
5.22	<p><u>Future re-opener dates should be added</u></p> <p>As the science and policy behind stormwater and sediment quality management evolve and new data is collected through the TMDL monitoring program, it is important to re-evaluate the TMDL periodically. For instance, the completion of the stressor identification study in December 2016 as required by the proposed Basin Plan Amendment is a milestone potentially worthy of a re-opener. While the proposed Basin Plan Amendment includes a discussion of a future reconsideration (p. 12), it does not include a specific date for when that reconsideration would take place. While reconsideration can take place any time, it is helpful to specify a date so that necessary information and data can be gathered toward that target. Given the complexity of this TMDL, more than</p>	<p>See response to comment 03.7</p> <p>The TMDL can be reconsidered at any time. Setting a specific date for such a reconsideration is premature at this time as the appropriate timing of a potential revision is unknown at this time. Should a revision of the TMDL be necessary, scheduling will be determined by the Regional Board with the input of stakeholders. Should revisions to the TMDL be necessary to incorporate Part II of the EBE Plan, a reconsideration of the Marina del Rey Harbor Toxic Pollutants TMDL will logically follow or coincide with revision of the Harbors Toxics TMDL and the Ballona Creek Estuary Toxic Pollutants TMDL.</p>	<p>With the understanding that the Regional Board is willing to re-consider the TMDL at <i>any time</i>, the County would like to suggest that the existing re-opener language pertaining to the in-harbor sediment be expanded to be broad enough to consider any of the pertinent issues in the TMDL as new information is gained.</p> <p>The re-opener language in the TMDL, as currently written, only allows re-evaluation of the final compliance timeline for in-harbor sediment. In addition to the potential re-consideration of the timeline, other elements in the TMDL, including TMDL load allocations and monitoring programs, should also be open to re-evaluation and revision during a re-opener. The County expects that new information will potentially be available in the near future that would warrant the need to re-open the TMDL.</p>	<p>The County requests that the existing TMDL re-opener language for sediment be broadened enough to address all technical and compliance schedule issues in the TMDL that might arise. The County recommends the following revision to the proposed re-opener language for in-harbor sediment (with underlines indicating additions and strikethroughs indicating</p>

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	<p>one reopener is needed. We request that future TMDL re-opener dates of 2018 and 2024 be set in the TMDL schedule. Also, we recommend revising the reconsideration language on page 12 of the tentative Basin Plan Amendment as follows (with the underlines indicating additions and strikethroughs indicating deletions):</p> <p>The TMDL may be reconsidered to revise (a). the implementation schedule in order to ensure that pollutant sources are controlled and a suitable location for contaminated sediment disposal is available prior to remediation of contaminated sediments if the <del>county</del> <u>responsible parties</u> have made a good faith effort to plan, fund, and permit sediment remediation activities; and (b) the waste <u>load and load allocations and monitoring programs based on the findings of new studies</u> and data.</p>		<p>First, the State Water Board is working on SQO Part 2, which will establish sediment objectives for indirect effects. The State is expected to complete this in the next two to three years. Second, the stakeholders are required to complete a stressor identification study by December 2016, which will provide valuable information on the causes of sediment toxicity and benthic disturbance in the harbor. Third, further information will be obtained on the bio-degradability of the contaminants of concern based on the studies being conducted in the Palos Verdes Shelf area by the USEPA.</p> <p>Consideration of each of the pieces of information just described would help improve the TMDL, both scientifically and also from a technical basis. The County believes that the findings of these studies should be taken into account and, up on completion, should trigger a TMDL re-opener.</p>	<p>deletions):</p> <p><i>The TMDL may be reconsidered to revise <u>(a)</u> the implementation schedule in order to ensure that pollutant sources are controlled and a suitable location for contaminated sediment disposal is available prior to remediation of contaminated sediments if the <del>county</del> <u>responsible parties have made a good faith effort to plan, fund, and permit sediment remediation activities; and (b) the waste load allocations and load allocations and monitoring programs based on the findings of new studies and data.</u></i></p>