

Marina del Rey Lessees Association

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May 12, 2014

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Delivered via email: commentletters@waterboards.ca.gov

Comment Letter – Marina del Rey Harbor Toxic Pollutants TMDL

Dear Ms. Clark:

The Marina del Rey Lessees Association represents the leaseholders of anchorages, residential, commercial, marine and visitor-serving properties in unincorporated Marina del Rey. The members of the Association operate their businesses under long-term leases with the County of Los Angeles. Our businesses are directly affected by the decisions of the County Board of Supervisors and the California Coastal Commission, in addition to other local and state agencies.

The Association requests the State Water Resources Control Board to remand the TMDL Amendment for Marina del Rey Harbor adopted on February 6, 2014 to the Los Angeles Regional Water Quality Control Board (RWQCB) for additional study and cooperation with the County of Los Angeles and local stakeholders. The Regional Board adopted a resolution which was based upon flawed science and failed to consider a realistic implementation plan.

Marina del Rey Harbor, the largest man-made marina in the United States, was constructed fifty years ago in order to provide recreational boating opportunities for the residents of Los Angeles County. Marina del Rey has developed over time with a variety of supporting uses, including many restaurants and hotels that draw visitors and tourists to enjoy our water-oriented community.

In recognition that the highest land use in Marina del Rey is devoted to recreational boating, the Association supports the mission of the California Coastal Act to provide access to the water, through the development of first-class anchorages and increased shoreline access. These important uses, mandated by the California Coastal Commission, are placed in jeopardy by the adoption of the proposed TMDL Amendment that has established targets for the reduction of copper which are impossible to achieve.

The members of our Association, and the boaters in our anchorages, support multiple efforts to improve water quality in the Marina. Our anchorages operate under Coastal Development Permits, including Best Management Practices, issued by the California Coastal Commission. The Association agrees that an environmentally sound harbor is an important goal, and believes that realistic measures can be taken to that end. We are proud of our stewardship of this vital County asset as well as of the environment, and our goal is to work with the State Water Resources Control Board and the Regional Water Quality Control Board to establish a realistic TMDL.

Several members of the Association, our counsel and many boaters in our anchorages attended the RWCQB hearing on February 6, 2014 and testified on many of the issues raised in this letter. Unfortunately, as the RWCQB considered the TMDL, it was readily apparent that the Board members and staff failed to consider our concerns about the flawed science, the impracticality of the proposed regulations, unlawful designations, and severe economic consequences to affected parties. As a result, we take strong issue with the resolution passed by the RWQCB in early February. Several critically important issues were raised to the RWQCB when it considered the TMDL, and many of these items remain unaddressed in the resolution now before the State Water Resources Control Board:

The proposed standard for dissolved copper is not based on site-specific conditions and data. The United States Environmental Protection Agency has initiated the development of the Biotic Ligand Model (BLM) for marine waters, and we encourage the State and Regional Water Boards to incorporate the BLM into TMDL and Basin Plan Amendments. Regulators should rely on the most up-to-date scientific approaches and information to develop consistent and appropriate water quality standards that are protective while also recognizing the site-specific conditions within impaired areas. The RWCQB action also overlooked the many contentious scientific issues which led to the California Legislature's abandonment of pursuit of a ban on the use of copper-based paints in San Diego.

The Shelter Island Yacht Basin in San Diego was granted 17 years to achieve a 76% reduction in copper in the water column. After 8 years, San Diego has failed to achieve any meaningful reduction in copper. The Regional Board has set an unrealistic and unattainable target of an 85% reduction in copper in Marina del Rey in the much shorter time frame of 10 years, for a marina that has twice as many boats as San Diego. Based on an extensive review by the major boatyards in the marina and our own analysis, we anticipate that compliance with this 85% reduction target, based on several factors, would require an implementation period of 25 to 30 years for a marina as large as Marina del Rey Harbor. The Shelter Island experience is a clear indication that the regulatory mandate and the deadline for compliance imposed on Marina del Rey is completely infeasible.

The Regional Water Board did not consider the impossibility of meeting compliance deadlines and ignored the failings of the TMDL Amendment in San Diego. The scientific modeling is plainly deficient, especially when the Los Angeles Regional Water Board's scientific analysis is contrasted to the study released by the Department of Pesticide Regulation (DPR) on this same subject matter subsequent to the RWCQB hearing and decision. At a minimum, the State Water Board should remand the TMDL Amendment to the RWCQB for methodical consideration of the DPR report and analysis.

The Regional Water Board conducted thoroughly inadequate economic analysis of the costs of compliance of the copper load allocations for discharges by boats in the Marina. The 3-page economic analysis report, short on study and justifications for its conclusions, was posted on the Board's website only the day before the hearing, allowing insufficient time for review and rebuttal. At the very least, the Regional Water Board should be required to conduct a complete economic analysis which also involves discussions with the stakeholders, including the County of Los Angeles, the anchorages and members of the boating community.

The most egregious deficiency of the TMDL Amendment is the unprecedented designation of private entities as "responsible parties." The burden to be imposed on anchorages and individual boaters constitutes a potential financial burden that is extraordinary and far-reaching in scope. No other TMDL adopted by the Los Angeles Regional Water Board has ever included this type of provision. Anchorages are not a source of pollution and the nature of their operations does not contribute to impairment of the waters. There is no statutory or judicial authority under either federal or California law that recognizes a load allocation in a TMDL as retroactively and prospectively creating, by itself, joint liability for non-point sources. The TMDL Amendment is an unauthorized and unlawful means to assign legal responsibility to a non-point source.

Despite recognizing urban storm water as a substantial source of copper, the Regional Board's resolution does not sufficiently address the non-paint sources of urban storm water. Instead, the solution to address toxic pollutants is to simply impose unreasonable burdens on boaters and anchorages, notwithstanding evidence that other sources of pollution have impaired the Marina del Rey Harbor. This approach is unfair and will not achieve the water quality standards desired by the TMDL Amendment.

Marina del Rey Harbor is still recovering from the Great Recession. Vacancies in boat slips remain high for the smaller boats, those 35 feet and under in size. The regulations proposed on boaters will further depress the small boating community. Anchorages in Marina del Rey are required by the California Coastal Commission to maintain at least 59% of their wet slips for boats 35 feet and under in length.ⁱ Accordingly, small boaters are most affected by the regulations, which will be very expensive for the small boaters. The Regional Board's

economic analysis erroneously claimed that boaters will strip their boats every 7 to 10 years, leading to the misleading conclusion that the repainting of boats with non-copper paint would not be an extraordinary burden. This premise is entirely false as most small boats are rarely stripped except for 20 to 40 years, if ever. Additionally, the regulations would require more costly non-biocide paints, more frequent hull cleanings, and compliance with other regulatory procedures, including possible registration of a Waste Discharge Permit at a cost of \$1,094.

We expect the State Water Resources Control Board will have additional important comments to consider that indicate how the Regional Board's TMDL and Basin Plan Amendment is deficient in its analysis, faulty in its recommendations and unrealistic in its compliance deadlines.

The Association urges the State Board to not adopt this resolution in its current form and to send it back to the RWQCB with the understanding that a collaborative process among diverse stakeholders will produce a more realistic plan for improved water quality in Marina del Rey. As the members of the Association are invested in the success of the Marina and the desire to improve our water quality, we are ready to work with the Regional Board and the County to achieve an implementation that can succeed.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "David O. Levine" followed by a stylized flourish.

David O. Levine
President

ⁱ Marina del Rey Land Use Plan, certified by the California Coastal Commission on February 8, 2012, page 3-2.