

Your Letterhead

California Regional Water Quality Control Board
Los Angeles Region
ATTN: Man Voong
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Los Angeles, CA 90013

Via Email May 7, 2012 losangeles@waterboards.ca.gov

Members of the Board,

Subject: Comment Letter – Bacteria TMDLs Revisions
 Malibu Creek and Santa Monica Bay Beaches

I write as a long time resident of Malibu but I offer my comments based upon my time serving the residents as Mayor and Councilmember when the bacteria regulations were adopted in 2002 (Santa Monica Bay Beaches) and 2004 (Malibu Creek) and the immediate third-party litigation began almost the day after the Executive Officer at the time filed the Notice of Violation to our City when the schedules were not met for zero bacteria exceedances in summer dry weather. Malibu had and has an aggressive clean water program and devotes a substantial portion of its budget to natural resource protection. Malibu will never be able to meet this limit no matter how much time passes or how much money is spent. The Regional Water Quality Control Board did not follow the terms in the Basin Plan Amendment to enforce actions on all responsible agencies. In the case of Malibu Lagoon and Surfrider Beach, the natural source exclusion process outlined was abandoned. For years, the municipalities in the Malibu Creek watershed jurisdiction begged Regional Board staff to enforce the conditions of the Basin Plan but were ignored. As a member of the public, I want assurances that this will not continue.

Attachment A to Malibu Creek Bacteria TMDL Resolution NO. 2004-019R states, "The California Department of Parks and Recreation (State Parks), as the owner of the Malibu Lagoon and Malibu Creek State Park, is the responsible agency for these properties. However, since the reference watershed approach used in the developing this TMDL is intended to make allowances for natural sources, State Parks is only responsible for: conducting a study of bacteria loadings from birds in Malibu Lagoon, water quality monitoring, and compliance with load allocations applicable to anthropogenic sources on State Parks property (e. g. onsite wastewater treatment systems)." State Parks never attempted to do any of the required actions.

Completing these specific actions is not a matter of money, it is simply a matter of will. Since 2004, State Parks has been allocated millions of dollars of State bond money to complete studies and designs for the restoration of Malibu Lagoon. State Parks, the State and Los Angeles Regional Board and the California Coastal Commission were all

gatekeepers that could have pointed out that all of the studies failed to meet the specific terms of the Basin Plan requirements. The State Water Board was the source of some of the funding, the Regional Board and Commission had power through the permit process. State Parks excluded any water quality analysis related to bacteria in the project studies and impacts analysis for the design of the project. State Parks did not participate in the cooperative compliance monitoring to meet bacteria objectives in Malibu Creek and Lagoon and Surfrider Beach. Physical changes in the Lagoon are anthropogenic activities that have elevated bacteria in this very compromised and poorly functioning lagoon. Instead, State Parks used bond money to limit their bird study to nesting and not to perform census during heavy months of migration when fecal loads to the Lagoon are extraordinary. State Parks used bond money to study the hydrological impacts of their proposed plan but the water quality monitoring plan has extremely limited analysis of the impacts of State Parks actions on natural bacteria loadings subsequent to the major overhaul of the western channels. State Parks could have used the bond money to rule out bacteria impacts from the old onsite wastewater treatment systems at the Adamson house or illegal camping. All anthropogenic sources (not just the one example cited in the Basin Plan) should have been done and there was plenty of money in hand to do it. State Parks, instead, specifically excluded the impact of bacteria loadings on any of the project analysis. They did this because there was no enforcement by the RWQCB of the Basin Plan requirements.

In 2004, the Southern California Coastal Water Research Project published Sediments as Non-Point Source of Nutrients to Malibu Lagoon, California, USA, Sutula et al. Researchers observed that the primary cause of Malibu Lagoon degradation was the fact that State Parks constructed three channels in the western Lagoon perpendicular to the main creek flows in 1983 that entrap fine sediment resulting in impairments to clean water and aquatic life. Scientists also attribute elevated bacteria in lagoons to the abundance of fine sediments and elevated nutrients.

State Park has not conducted the study to determine bacteria loadings from birds, performed any water quality monitoring to rule out a potential failing OWTS at the Adamson House, impacts from portable potties at the Lagoon or impacts from illegal campers using natural vegetation as their toilet along the creek. The physical changes to the Malibu Lagoon created by State Parks in 1983 have resulted in impacts to water quality and aquatic life and probably elevated bacteria. State Parks is proposing to increase the size of Malibu Lagoon, alter the circulation patterns, tidal/lagoon interchange and increase areas of bird habitat. All of the proposed anthropogenic alterations will result in changes to the loading of regulated constituents in Malibu Lagoon and at Surfrider Beach. State Parks remains the responsible agency and so far, the RWQCB continues to look the other way.

The bacteria regulations are not being met by municipalities, in part, because the regulations are selectively applied and all responsible agencies are not being included or held accountable to the Clean Water Act.

Sincerely,

Sharon Barovsky