



May 12, 2014

Chairwoman Marcus and Board Members

State Water Resources Control Board

1001 I Street

Sacramento, CA 95814

Via email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov); [Jeanine.Townsend@waterboards.ca.gov](mailto:Jeanine.Townsend@waterboards.ca.gov)

**Re: Comments on the Proposed State Water Board Approval of the Amendment to the Water Quality Control Plan for the Los Angeles Region to Revise the Marina Del Rey Harbor Toxic Pollutant Total Maximum Daily Load**

Dear Chairwoman Marcus and Board Members:

On behalf of Heal the Bay and Los Angeles Waterkeeper, we submit the following comments on the proposed State Water Board approval of amendments to the Water Quality Control Plan for the Los Angeles Region (“Basin Plan”) to revise the Marina del Rey Harbor Toxic Pollutant Total Maximum Daily Load (“Mdr TMDL”). We appreciate the opportunity to provide these comments.

In general, Heal the Bay and Waterkeeper supports the Mdr TMDL adopted by the Los Angeles Regional Water Quality Control Board on February 6, 2014 (Resolution No. R14-004). We believe the implementation of the TMDL will lead to improvements in the waterway and ultimately lead to water quality standards attainment.

In particular, we strongly support the inclusion of dissolved copper water column load allocations in the Mdr TMDL. Marina del Rey Harbor is the largest recreational marina in the County and has been identified as the one of the most toxic recreational harbors in California. The Toxicant Identification Evaluation (TIE) study conducted for California marinas concluded that copper is the likely cause of toxicity in marina waters.<sup>1</sup> In addition, available water quality data and modeling demonstrate that leaching of antifouling copper paint from boats is the leading source of copper. Thus, it is imperative the Mdr TMDL include a load allocation for dissolved copper from copper-based boat hull paints. Further, the 10-year dissolved copper load allocation implementation schedule set forth in the TMDL is realistic and achievable for boat owners; it follows boat hull maintenance schedules and gives boat owners adequate time to comply with Mdr TMDL requirements. To reduce copper impairments in the Marina del Rey Harbor, the State Water Board should approve the TMDL with dissolved copper load allocations and the dissolved copper implementation schedule adopted by the Los Angeles Regional Water Quality Control Board on February 6, 2014.

In addition, we support the expansion of geographic extent and inclusion of in-harbor load allocations for metals and organic compounds in sediments in the Mdr TMDL. Studies completed following the 2005 adoption of the Mdr TMDL indicate water column and sediment impairments throughout Marina del Rey Harbor. Data collected indicates impairments are not solely confined to the back basins (Basins D, E, and F) or hotspots as previously perceived, but also extend to the front basins (Basins A, B, C, G, and H). Moreover, the inclusion of in-harbor sediment load allocations ensures timely action to remediate or remove impaired sediment is taken by Los Angeles County. To attain sediment quality objectives in all reaches of Marina del Rey Harbor, the State Water Board should approve the Mdr TMDL as adopted by the Regional Board.

<sup>1</sup> Singhasemanon, N., Pyatt, E. and Bacey, J. 2009. MONITORING FOR INDICATORS OF ANTIFOULING PAINT POLLUTION IN CALIFORNIA MARINAS. Report of the Department of Pesticide Regulation, California Environmental Protection Agency.



Although we are supportive of the Mdr TMDL adopted by the Regional Board on February 6, 2014, we believe that certain aspects of the TMDL should be revised to better protect the waters of Marina del Rey Harbor. Specifically, the Mdr TMDL incorporates a new alternative compliance mechanism allowing dischargers to demonstrate compliance with waste load allocations by providing “quantitative demonstrations that control measures and best management practices will achieve” waste load allocations and water quality-based effluent limits consistent with the TMDL’s implementation schedule and implementing these BMPs and control measures subject to Executive Officer approval. We feel this proposed compliance mechanism is improper and unjustified and should be removed. The act of installing BMPs and implementing programs cannot be used as a measure for compliance with water quality standards, effluent limits, and TMDLs. Providing quantitative demonstrations of BMP effectiveness and/or installation of Regional Board-approved BMPs does not ensure that TMDL waste load allocations and water quality-based effluent limits are actually met. Further, the implementation of these BMPs and control measures in itself is insufficient to show water quality-based effluent limits and waste load allocations are met. The “reasonable assurance analysis” conducted under the LA MS4 Permit and endorsed by the Regional Board as evident in the Response to Comments on the Draft Mdr TMDL does not meet the requirements of the EPA 2002 and 2010 guidance on incorporation of TMDL waste load allocations into storm water NPDES permits. See NRDC, Los Angeles Waterkeeper and Heal the Bay Petition to the State Board for Review of the 2012 Los Angeles County MS4 Permit at 28-31.

Additionally, we believe a numeric target for toxicity and an associated waste load allocation should be included in the Mdr TMDL. To meet narrative objectives set forth in the Basin Plan for toxicity, the Mdr TMDL should include a numeric target for toxicity, similar to that seen in the Calleguas Creek Watershed Toxicity TMDL.

In conclusion, we believe the Marina del Rey Harbor Toxic Pollutant Total Maximum Daily Load adopted by the Regional Board is a step in the right direction to improve water quality in the Marina del Rey Harbor. The inclusion of load allocations for dissolved copper, in-harbor sediment load allocations for metals and organics, as well as the expansion of geographic extent will help protect beneficial uses in the Harbor. However, we feel the TMDL could be strengthened by removing the new alternative compliance mechanism for waste load allocations and adding a numeric target for toxicity.

Thank you for this opportunity to provide comments. If you have any questions or would like to discuss any of these comments, please feel free to contact Heal the Bay at (310) 451-1500 or Los Angeles Waterkeeper at (310) 394-6162.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter Shellenbarger".

Peter Shellenbarger, MESM  
Science and Policy Analyst, Water Quality  
Heal the Bay

A handwritten signature in cursive script, appearing to read "Kirsten James".

Kirsten James, MESM  
Science and Policy Director, Water Quality  
Heal the Bay

A handwritten signature in cursive script, appearing to read "Tatiana K. Gaur".

Tatiana Gaur  
Senior Attorney  
Los Angeles Waterkeeper