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Subj: Opposition To Proposed Amendment to the Los Angeles Regional Basin Plan To Revise the Total Maximum Daily Loads for Marina del Rey Toxic Pollutants

I own a boat anchored in Marina del Rey and am opposed to the proposed TMDL Amendment by the Los Angeles Regional Water Quality Control Board (LA Board) for the reasons stated in this letter, and one additional common sense one. If you don't want boats in California painted with copper-based bottom paint, then introduce legislation to ban its sale. Over time, you won't have to worry about it anymore. Don't punish boaters who broke no laws with a money grab thinly veiled as a moral high-ground. It's not good for political longevity. That said...

The following points were raised by interested parties in opposition to the proposed amendment in comment letters that were sent to the LA Board (including, but not limited to, those by Alston & Bird and the County of Los Angeles) and at the Los Angeles Regional Water Quality Control Board's February 6, 2014 meeting. The Board's responses are inadequate or factually incorrect, as noted herein and in opposition comments and statements by others.

**1. The LA Board Failed to Give Adequate Notice**

Although I may have been on the LA Board's mailing list to receive notice of the proposed TMDL, I don't recall seeing it and I certainly would not have realized the importance of the notice because it referenced only "technical changes" to the TMDL. There was never any warning in the notice about the onerous burdens that would be placed on boaters, such as naming us as "Responsible Parties" and thus liable for copper pollution in the Marina.

This is a fundamental denial of due process rights by the LA Board.

**2. It is Illegal for the LA Board to Designate Boaters as Responsible Parties for Copper Pollution**

The LA Board is not authorized by State or federal law to designate individual boaters (so called "non-point sources") as responsible for copper pollutants in the Marina in a TMDL Amendment. The LA Board overstepped its authority and is inviting litigation if this goes forward.

**3. The LA Board Did Not Do a Thorough Scientific Analysis**

The LA Board failed to do site specific sampling and analysis of the water at different sites in Marina del Rey to determine actual copper levels. They also failed to consider Marina del Rey's unique characteristics as a man-made pleasure boat harbor. They failed to consider that copper binds to the considerable amount of organic matter in the marina, which renders it

harmless. They also failed to do a meaningful environmental analysis of the impact from invasive species that will result from eliminating copper biocide paints.

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#### **4. The LA Board's Economic Analysis is Deeply Flawed**

The LA Board greatly underestimated the negative economic impact of its regulation on boaters, anchorages and the local business community. Boats in Marina del Rey are stripped maybe every 20-40 years, definitely not every 7-10 years as the LA Board claims. They seriously underestimate the lifecycle costs to apply and maintain non-biocide paints, which our local boatyard experts estimate to be at least \$65,000 on average over 10 years. The Board says that its "unlikely" for boaters to leave Marina del Rey because of the new regulation. They are wrong. Would I seriously consider leaving the marina instead of staying, incurring these costs and facing legal liability? Absolutely.

#### **5. Compliance Is Infeasible**

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A 10 year deadline imposed by the Board for compliance is practically impossible to meet and much more aggressive than what was implemented in San Diego's Shelter Island, a significantly smaller body of water with much fewer boats. Our two local boatyards do not have the capacity to strip and apply non-biocide paints to all boats within 10 years. Many boaters simply will not switch to non-biocide paints that are more expensive, of unproven durability, and require more frequent cleaning.

In conclusion, the LA Board took too many shortcuts to get to the result they had preordained. They violated the due process rights of stakeholders, skimped on science, did an incomplete economic analysis and overstepped their authority.

I formally request that the State Board reject the TMDL Amendment as currently drafted and to send it back to the LA Board for further study and meaningful consultation with stakeholders.

Sincerely,

Shane Hutton

Marina Del Rey Resident

Copy to:

Concerned Citizens of Marina del Rey

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