



3151 Airway Avenue, Suite F-110
Costa Mesa, CA 92626
Phone 714-850-1965
Fax 714-850-1592
www.Coastkeeper.org

September 23, 2014

VIA ELECTRONIC MAIL

Linda Candelaria Ph.D.
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

Re: Comments on Newport Bay Copper TMDL Project Summary

Dear Dr. Candelaria,

Orange County Coastkeeper (“Coastkeeper”) is a nonprofit clean water organization with the mission to protect and promote sustainable water resources that are swimmable, drinkable, fishable and sustainable. We have been working to improve all aspects of water quality in Newport Bay since our inception in 1999. During that time we have specifically focused on copper in Newport Bay as a serious issue and advocated for reductions in copper inputs to the bay from all sources. We have assisted in developing data on copper concentrations in Newport Bay and ran a four year state funded program to educate boaters on the issue and encourage them to voluntarily switch to using non-biocide boat bottom paints. We have also worked with stakeholders statewide to develop the science, policies, legislation and educational materials needed to address this issue. We have reviewed the Project Summary for Protecting Newport Bay by Reducing Copper (and other Metals) and have the following comments:

The proposed timeline for compliance is too long. The project summary proposes a fifteen year timeline for compliance. This is unnecessarily long. The recently approved Marina Del Rey Copper TMDL has a ten year timeline, the Shelter Island Copper TMDL has a ten year timeline (after a five year voluntary compliance period) and ten years is long enough for Newport Bay. Copper paint is replaced at an interval of three years. A ten year time period means that there are three opportunities for the average boater to switch to alternative boat bottom paints. Even using a five year operational life for copper bottom paint means that every boat in Newport Bay will replace its bottom paint twice in a ten year time frame. The fact is that alternatives to copper boat bottom paint and the boatyard capacity to apply them exist now. The TMDL being developed should not have more than a ten year time frame.

The graphic in the TMDL project summary shows the compliance deadline for the TMDL will begin after the approval of the TMDL by the California Office of Administrative Law. This is unnecessary and adds delay to the implementation of the TMDL and confusion over the actual compliance deadlines. The TMDL being developed should include a specific start date, reporting deadlines and an end date as in the Marina Del Rey TMDL.

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It is important that the TMDL recognize that Upper Newport Bay is designated both as a State Marine Conservation Area and Ecological Reserve. These designations were created because of the critical ecological functions of the Upper Bay and its significance to the state and local community. It needs and deserves the highest level of protection from all forms of pollution. The TMDL being developed should specifically address this issue and the boats in the upper bay should be prioritized for copper reduction activities.

The Non TMDL Action Plan for zinc should be developed along with the Copper TMDL. Zinc is a component of many alternative boat bottom paints and it is likely that these paints will be used as an interim measure as more non-biocide boat bottom paints are developed. Zinc is already found at elevated levels in sediment and fish tissue in Newport Bay. The Non TMDL Action Plan for zinc should work with the Copper TMDL to insure zinc concentrations to not increase as a result of the use of alternative boat bottom paints.

The TMDL should clearly show the use of the best available science for the development of compliance standards. While there is ample evidence of the impacts of copper to marine life, there remains confusion about the use of various methods to determine the appropriate compliance standard for Newport Bay. The TMDL development process should include a thorough and well documented discussion of the various alternatives available for the development of the TMDL compliance standard and why the resulting standard was used.

In conclusion Coastkeeper supports the immediate development of a Copper TMDL and Non TMDL Action Plan for Zinc that includes a date specific start and end with a ten year timeframe. We also support an expedited compliance schedule for the Upper Bay in recognition of its status as a Marine Protected Area. As always, Coastkeeper supports the use of the best available science to determine the compliance requirements for this or any regulatory activity.

Thank You,

A handwritten signature in black ink that reads "Raymond G. Hiemstra". The signature is written in a cursive, flowing style.

Raymond Hiemstra
Associate Director
Orange County Costkeeper