



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

October 16, 2016

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

Re: Comments on Draft Newport Bay Copper TMDL and Non TMDL Action Plans

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 draft TMDL includes a fifteen year timeline for compliance. This is unnecessary. 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. Newport Bay has already tried voluntary compliance, and the development of this TMDL has dragged on for four years, during which NO PROGRESS has been made in reducing copper in Newport Bay. TMDL history in Orange County has shown that longer timelines result on longer delays in implementation. The argument that action will occur as soon as possible but no later than the compliance date has been disproved over and over again. Copper bottom 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 draft TMDL compliance deadline 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

September 23, 2015

Page 2 of 2

include a specific start date using the adoption date of the TMDL along with date specific reporting deadlines and an end date as in the Marina Del Rey TMDL.

It is important that the TMDL recognize that Upper Newport Bay is designated both as a State Marine Conservation Area as well as a Ecological Reserve. The draft TMDL continues to ignore the State Marine Conservation Area (SMCA) designation for Upper Newport Bay. This is a significant issue since the boundary of the SMCA includes the entire Upper Bay including the Newport Dunes and De Anza marinas, the Ecological Reserve does not. The October 16 2012 Supplemental Environmental Document for State Board Resolution 2012-0056 states that "... marine water quality would play a role in the success of MPAs." In section 5.7.2 it states "If these newly designated MPAs require additional protection from potential impacts associated with degraded water quality, the State and Regional Water Boards under the authority of PorterCologne would be responsible for developing and adopting more stringent permits or discharge conditions, including prohibitions within these areas. It is clear that the Regional Board does have a responsibility to recognize Marine Protected Areas and protect water quality within them. The Marine Protected Area designation 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 should specifically address this issue and the boats in the upper bay should be prioritized for copper reduction activities within six years.

The Non TMDL Action Plans implementation schedules and the Action Plans themselves should include specific dates for compliance. The activities detailed in the Actions Plans must be completed within the TMDL timeframe. The existing lack of any date specific deadline for the creation or completion of the Action Plans will result in unnecessary delays in their creation and a unlimited time period for their completion. The Non TMDL Action Plan for zinc should specifically work with the Copper TMDL to insure zinc concentrations to not increase as a result of the use of alternative boat bottom paints.

In conclusion Coastkeeper supports the immediate implementation of a Copper TMDL and Non TMDL Action Plans for Zinc, Mercury, Arsenic and Chromium that includes a date specific start and end with a ten year timeframe. We also support an expedited six year compliance schedule for the Upper Bay in recognition of its status as a State Marine Conservation 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,



Raymond Hiemstra
Associate Director
Orange County Costkeeper