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October 19, 2016

VIA EMAIL & REGULAR MAIL

Dr. Linda Candelaria, PhD  
California Regional Water Quality Control Board, Santa Ana Region  
3737 Main Street, Suite 500  
Riverside, CA. 92501-3348

Re: Basin Plan Amendments to Incorporate Total Maximum Daily Loads for  
Copper & Non-TMDL Action Plans for Other Metals in Newport Bay

Dear Ms. Candelaria:

I have reviewed the proposed regulatory order requiring a reduction in the total maximum daily load, "TMDL", copper in Newport Harbor by 83% from boat hulls within 15 years. First, the proposed reduction is unlawful because it relies on an implementation plan that requires local agencies to take actions that the Legislature has prohibited, (Agriculture Code Section 11501.1, Subdivision (a)), and it attempt to override the authority of the Department of Pesticide Regulation which has the authority to govern copper boat paints.

Second, based upon the research that I have reviewed, it appears that the margin of safety being proposed by the Board is much too large and can't be supported by current science. Other regions of the country are not being saddled with TMDL's anywhere near what it being proposed.

Third, the Board is proposing a requirement that significantly exceeds that mandated by Federal law which means that the State should be responsible for reimbursement of the cost of compliance under the California Constitution.

Fourth, the proposed reduction is unlawful because alternatives to copper anti-fouling paint are not available or effective. As a boat owner, I have tried bottom paints that do not contain copper. The paints only lasted several months where copper anti-fouling paints last two to three years. That

means that the residue in the water from the paints that do not contain copper is ± six times greater than the copper residue. What impact will this residue have on water quality in Newport Harbor if all boats use it?

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Fifth, based on the studies that I have reviewed, the whole of Newport Harbor is not in non-compliance with the proposed copper TMDL, only certain specific areas are non-compliant. I'm sure every harbor, no matter how clean, has specific areas that are non-compliant.

Finally, having had to deal with the California Environmental Quality Act, "CEQA", during my entire career in real estate development, it is my opinion that the Substitute Environmental Document fails to comply with CEQA and is subject to challenge.

I have lived on Newport Harbor for 25 years and have raised two healthy children who spent their childhoods swimming, kayaking and boating in the harbor. As a boater, it is my opinion that the proposed copper TMDL reduction will do more harm than it will do good. As a citizen, I have seen a marked improvement in the water quality in Newport Harbor over the last several years. Let the current policies work. Don't attempt to implement science that isn't necessary, proven or legal. Leave the current copper TMDL's in place.

Respectfully,

William J. Kenney Jr., CLS