



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

August 22, 2018

Linda Candelaria, PhD
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 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 conducted 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 Draft Basin Plan Amendment to incorporate the Newport Bay Copper (Cu) TMDLs, and Non-TMDL Action Plans for Zinc (Zn), Mercury (Hg), Arsenic (As) and Chromium (Cr) along with the associated documents and have the following comments:

The proposed timeline for compliance is too long. The draft TMDL includes a twelve-year timeline for compliance. This is arbitrary and not supported by facts. The 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 a ten-year timeline for Newport Bay is appropriate. The 2018 Supplemental Staff Report states, "the City estimated the boat count to be 4,470, but this number does not include empty slips or smaller boats. (Coastkeeper estimates were somewhat higher than 5,000 boats/slips.)" (pg. 10, sect 7.2) This boat count is essentially identical to that of Marina Del Rey. In a November 6, 2015, Regional Board Response to Comments to Coastkeeper, the Regional Board justified a longer timeline for the Newport Bay TMDL on an estimated boat count of 10,000. Therefore, the argument that Newport has a significantly greater number of boats compared to Marina Del Rey is erroneous and a TMDL of ten-years is not only appropriate, but necessary for Newport Bay's health.

Also, the ten-year TMDL should begin from the date of its adoption by the Regional Board. TMDL history in Orange County has shown that longer timelines result in longer delays in implementation. The argument that action will occur as soon as possible but no later than the compliance date has been repeatedly disproven. There is no requirement to use a compliance date that corresponds to approval of the TMDL by the USEPA. Voluntary compliance measures ended in 2012, without success. Since that time, the development of this TMDL has dragged on for six years, during which, NO PROGRESS has been made in reducing copper concentrations in Newport Bay. Allowing a twelve year timeline, plus two years of waiting for additional approvals in addition to the six year delay in developing the TMDL, results in a twenty year TMDL. This is unacceptable! 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 have effective timeline of ten years or less.

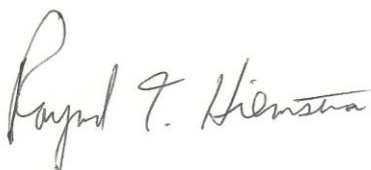
It is important the TMDL recognize that Upper Newport Bay is designated both as a State Marine Conservation Area as well as an Ecological Reserve. The 2016 staff report mentions "The Upper Bay estuary contains a State Ecological reserve in the upper half with habitat designated for sensitive species ..." (pg. 8) However, there is no mention of Upper Newport Bay designation as a State Marine Conservation Area (SMCA). This is a significant issue since the boundary of the SMCA includes the entire Upper Bay, including the Newport Dunes and De Anza marina. The Ecological Reserve does not. The October 16, 2012, Supplemental Environmental Document for State Board Resolution 2012-0056 states "... 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 Porter Cologne would be responsible for developing and adopting more stringent permits or discharge conditions, including prohibitions within these areas." The Marine Protected Area designations were created due to the critical ecological functions of the Upper Bay and its significance to the state and local community. State Marine Conservation Areas need to be prioritized. The SMCA 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.

In the November 6th 2015 Regional Board Response to Comments to Coastkeeper the Regional Board suggested that because the bay is tidally influenced "...it is likely that at least some of the copper in the Upper Bay comes from boats in the Lower Bay". There is no data provided to support this suggestion. We do know that a model of bacteria transport by Everest Engineering¹ suggests that it takes twelve days for water from the Newport Dunes area to flush out of the bay, and it takes up to 30 days for water in the upper reaches of the bay to flush. Copper from boat bottom paints is an ongoing significant threat to the SMCA. The Regional Board can and should require copper concentrations in the upper bay come into compliance in an expedited timeframe to protect the SMCA and Ecological Reserve.

The TMDL should also include monitoring requirements for metals or biocides found in alternatives to traditional copper bottom paints. This will ensure that the transition away from copper paints does not result in a new threat to the bay from other biocides.

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 Coastkeeper

1. <https://www.newportbeachca.gov/home/showdocument?id=9179>