

May 12, 2014



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor, Sacramento, CA 95814
(By Federal Express and)

Delivered via Email: commentletters@waterboards.ca.gov

And to:

Felicia Marcus, Chair
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, California 95814

Delivered via Email: felicia.marcus@waterboards.ca.gov

Re: Comment Letter - Marina del Rey Harbor Toxic Pollutants TMDL

Dear Ms. Townsend and Ms. Marcus:

I am the President of the California Yacht Club ("Club") in Marina del Rey, writing on behalf of the Club and our membership, which includes over 1000 members and 400 boat slip occupants.

This letter is to comment on the Final Basin Plan Amendment ("Amendment") that was revised by the Los Angeles Regional Water Quality Control Board ("Regional Board") on February 6, 2014. While we support efforts to improve the water quality in the Marina del Rey harbor, we and other stakeholders have raised serious objections to the TMDL Amendment as currently drafted. I previously wrote to the Regional Board on January 27, 2014 voicing a number of objections and I spoke at the Regional Board's meeting on February 6, 2014.

My time to speak before the Regional Board was limited to one minute, and because of the time restriction I was not able to make a number of objections that I wanted to make. Furthermore, the Board's responses to several concerns that were raised are inadequate and/or factually incorrect, as noted in my letter, in my statement at the meeting, and in other opposition comments and statements that were submitted.

I am again writing today to address the issue of "responsible parties" designation. The Amendment as currently written improperly designates anchorages and boat owners as "responsible parties" for the load allocations for discharges of dissolved copper (Final Basin Plan Amendment, p. 10). This should not be in the TMDL Amendment because the TMDL

Amendment, itself, is not the appropriate place for the Regional Board to assign liability for discharges.

Our legal counsel advises that the California Third District Court of Appeal, the US Ninth Circuit Court of Appeal, and the US Environmental Protection Agency have all insisted that a TMDL is merely a technical document designed to inform further administrative actions. See *City of Arcadia v. State Water Res. Control Bd.* (Cal App. 4th 2006); *Pronsolino v. Nastri*, (9th Cir. 2002); and 40 C.F.R. §130.2(i). Therefore, designating responsible parties in the TMDL Amendment is both improper and unlawful.

I am therefore asking the State Water Resources Control Board (the "State Board") to reject the proposed TMDL Amendment in its current form. I further request that the State Board direct the removal of all wording in the TMDL Amendment that assigns responsibility and allocates liability to individual anchorages and boat owners.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven K. Hathaway", with a long horizontal line extending to the right.

Steven K. Hathaway
President