

HAND DELIVERED

Malibu Surfing Association

A non-profit organization
Federal Tax ID 95-4459007

POB 2683
Malibu, California
90265-7683 USA

RECEIVED

2009 OCT 8 AM 11 24

msasurfing.org

October 8, 2009

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD
LOS ANGELES REGION

Ms. Rebecca Chou
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Re: Amendment to the Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area dated July 31, 2009



Dear Ms. Chou,

The Malibu Surfing Association (MSA) is one of California's oldest surfing clubs, founded by members of the Malibu community more than 40 years ago. Many of our members are residents of the City of Malibu. We are an all-volunteer organization dedicated to the fellowship of surfing and to the stewardship of our home break, Surfrider Beach.

MSA is a proud member of the Coalition of Surfing Clubs (CSC), an international organization which represents the interests of surfing clubs throughout California and the world. CSC acts as a united voice to address issues related to coastal water quality, beach access, development, and legislative policy. The Coalition represents surfers of all ages and exists for the betterment of the citizenship of the surfer, to improve clean water locally and globally and to promote the sport of surfing.

Both and the CSC place a special value on Malibu Surfrider Beach – the Yosemite of surfing – as an iconic, transcendent surfing location: topping any list of surfing's important beaches. It's the definitive summer beach, where the California lifestyle was defined, packaged, and then sold to the rest of the world. It's the original perfect wave.

Included please find copies of a petition signed by officers of 15 sister CSC surfing clubs, representing more than 1,000 club members as they express their, "concern[ed] about chronic water quality problems at Malibu Surfrider Beach. We sign this as a pledge for clean water at Malibu – to urge all responsible agencies to recognize the value we, and others, place on Surfrider Beach."

Specific comments from the Malibu Surfing Association on the proposed Regional Water Quality Control Board amendment will be sent under separate cover.

Thank you for your consideration of these signed petitions. If you have any questions, please contact me at 818.564.4217.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Blum".

Michael Blum, President
Malibu Surfing Association

Enclosures



PLEDGE FOR CLEAN WATER AT MALIBU SURFRIDER BEACH

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3. Agree to a moratorium on future development in the area until the above projects are completed.

Paul E. Moos

Signature

6-9-09

Date

PAUL E. MOOS

Name

VICE PRESIDENT

Title

ANNAPOLIS SURF CLUB

Organization



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Bruce King
Signature

9/26/09
Date

Bruce King
Name

COALITION Rep.
Title

Big Stick Surfing Association
Organization



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Catherine S. Calkins

Signature

6/12/09

Date

Catherine S. Calkins

Name

Surfing Team
Competition Director

Title

Doheny Longboard Surfing Association

Organization



A PLEDGE FOR CLEAN WATER AT MALIBU SURFRIDER BEACH

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[Signature]
Signature

9/11/09
Date

David CARVALHO
Name

Team Captain
Title

Honolulu Hawaii / HLF
Organization

Hawaii Longboard Federation



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[Handwritten Signature]
Signature

7/16/09
Date

Lorraine F. Schnakenberger
Name

Community Relations Director
Title

La Jolla Shores Surfing Association
Organization



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Doug Robbins
Signature

9.11.09
Date

Doug Robbins
Name

Team CAP
Title

MALIBU Boardwalkers -
Organization



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Dorothy Harris
Signature

6/21/09
Date

Gretchen Harris
Name

Title

Ocean side Longboard Surfing Club
Organization



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Bruce King
Signature

9/21/09
Date

Bruce King
Name

CSC. Rep.
Title

Oxnard Wave Riders
Organization



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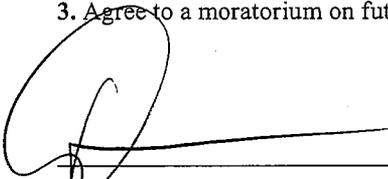
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Signature

9-3-09

Date

Gregory W Lochvau.

Name

PRESIDENT, PEDRO POINT SURF CLUB

Title NORTHWOOD CALIF.

CHAIR, PARKS, BEACHES & RECREATION COMMISSION

Organization CITY OF PLEIENA



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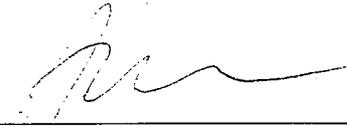
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Signature

6/9/09

Date

Andrew Beck

Name

Co-President

Title

Santa Barbara Surf Club

Organization



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W. Olsen
Signature

8-16-09
Date

Waylon Olsen
Treasurer
Name

Treasurer
Title

Santa Cruz Longboard Union
Organization



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[Handwritten Signature]

Signature

9/11/09

Date

NATHAN CINTAS

Name

Comp. Director

Title

SUNSET CLIFFS SURFING ASSOC.

Organization

619-886-5464



PLEDGE FOR CLEAN WATER AT MALIBU SURFRIDER BEACH

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John M Reinhardt
Signature

7/14/08
Date

John M Reinhardt
Name

Vice President
Title

Swamis Surfing Assoc.
Organization



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Gary D. Baum
Signature

7-14-07
Date

GARY D. BAUM
Name

President
Title

Malibu Surfing Assoc, Inc.
Organization



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JRM Gray
Signature

9/11/09
Date

JAMES R GRAY
Name

BOARD MEMBER (TEAM CAPTAIN)
Title

VENTURA SURF CLUB
Organization



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Signature

6/8/2009

Date

MICHAEL MARIANI

Name

PRESIDENT

Title

VENTURA SURF CLUB

Organization



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Mary Knight
Signature

9-11-09
Date

MARY KNIGHT
Name

PRESIDENT VA. LONGBOARD FEDERATION
Title

VA. LONGBOARD FEDERATION
Organization



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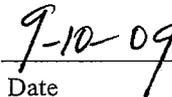
We, the undersigned, are concerned about chronic water quality impairments at Surfrider Beach. We sign this as a pledge for clean water at Malibu – to urge all responsible agencies to recognize the value we, and others, place on Surfrider Beach.

We support the efforts of organizations, agencies, and local/state governments to bring about water quality improvements in Malibu. We ask for the following:

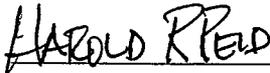
1. Create a comprehensive solution for water treatment that fixes the chronic pollution problems caused by wastewater treatment systems in the Civic Center area, Serra Retreat, and Malibu Colony.
2. Commit to a project schedule (including timetable and funding) for a wastewater treatment / water recycling facility that addresses wastewater sources in the Civic Center, Malibu Colony, Serra Retrea, and adjoining commercial, multi-family areas.
3. Implement a moratorium on large-scale, commercial development in the Civic Center area until the above projects are completed.



Signature



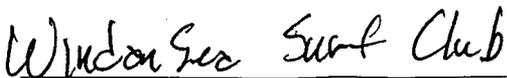
Date



Name



Title



Organization



A PLEDGE FOR CLEAN WATER AT MALIBU SURFRIDER BEACH

Why do we want clean water at Malibu? Isn't the water already clean?

Surfrider Beach is a Yosemite of surfing – iconic, transcendent, and on any list of our sport's history. It's the definitive summer beach. The beach of Dora, Carson, Gidget, and Tubesteak. It's the beach of movie stars and surf stars.

Even without surfing, Surfrider is a resource in its own right: a place where the Chumash lived and later, the Rindges did the same. Yet for its glory and history Surfrider is one of California's most polluted beaches, earning a dubious distinction as a listed coastal health risk.

We, the undersigned, are concerned about chronic water quality impairments at Surfrider Beach. We sign this as a pledge for clean water at Malibu – to urge all responsible agencies to recognize the value we, and others, place on Surfrider Beach.

We support the efforts of organizations, agencies, and local/state governments to bring about water quality improvements in Malibu. We ask for the following:

1. Create a comprehensive solution for water treatment that fixes the chronic pollution problems caused by wastewater treatment systems in the Civic Center area, Serra Retreat, and Malibu Colony.
2. Commit to a project schedule (including timetable and funding) for a wastewater treatment / water recycling facility that addresses wastewater sources in the Civic Center, Malibu Colony, Serra Retrea, and adjoining commercial, multi-family areas.
3. Implement a moratorium on large-scale, commercial development in the Civic Center area until the above projects are completed.

Ozstar De Jourday
Signature

Sept 12, 2009
Date

OZSTAR DE JOURDAY
Name

COALITION OF SURFERS CLUBS REPRESENTATIVE
Title

Windsor Surf Club
Organization



1444 9th Street
Santa Monica CA 90401

ph 310 451 1550
fax 310 496 1902

info@healthebay.org
www.healthebay.org

October 8, 2009

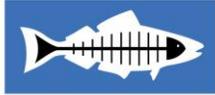
Ms. Tracy Egoscue
Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Re: Amendment to the *Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area* dated July 31, 2009

Dear Ms. Egoscue:

Heal the Bay has a long history of working on water quality issues in the Malibu Creek watershed, Malibu Lagoon and Surfrider Beach. Over the last 20 years, the organization has graded water quality at Malibu beaches as part of its Beach Report Card. Staff members have served on numerous Malibu water quality committees including the Malibu Environmental Review Board for a decade and the Malibu Creek Watershed Committee. Also, our Stream Team monitoring program has collected water quality, habitat and biological data throughout the watershed for a decade. Three staff members (two are former) completed research at Surfrider Beach and in Malibu Creek that was integral to receiving their doctorates in environmental science and engineering from UCLA. In addition, two staff members were co-authors of the Santa Monica Bay epidemiology study in 1995 which included Surfrider Beach, and a staff member will be an author of the most recent Surfrider Beach epidemiology study. In the late nineties, Heal the Bay and others successfully advocated to the Regional Water Board for the cessation of dry weather wastewater discharges to Malibu Creek from April to October in order to improve water quality in the watershed and to decrease the frequency of Malibu Lagoon breaching at Surfrider Beach. Also, Heal the Bay helped author the California Clean Beach Initiative and sits on the Clean Beach Task Force that reviews all beach water quality bond grant applications. A substantial amount of funding for Malibu civic center's dry weather runoff treatment facility came from the CBI. And finally, as a long time vice-chair of the Santa Monica Bay Restoration Commission, Heal the Bay has been instrumental in helping Malibu get funds for water quality projects including Legacy Park and the dry weather runoff treatment facility. Clearly, Heal the Bay has a strong interest in the ecological health of Malibu Creek and Lagoon, and the public health of the over 1.2 million people that enjoy Surfrider Beach every year.

There is great urgency in solving the water quality issues in the Malibu Civic Center area. World-class Surfrider Beach continues to get Ds and Fs on Heal the Bay's Beach Report Card, as wastewater from commercial and residential septic systems in the area leaches into Malibu Creek



Heal the Bay

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Santa Monica CA 90401

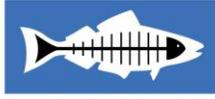
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and Lagoon and then flows into the ocean, and its poor water quality places public health at risk. Malibu Creek and Lagoon are listed on the State's 2006 303(d) List as impaired by numerous pollutants, and TMDLs were adopted five years ago by the USEPA for bacteria and nutrients. Surfrider Beach and Malibu Lagoon's legacy of polluted water has continued unabated for decades. For years, we've participated and commented on the development and implementation of plans and studies, from the 1992 Warshall study to the present. Clearly, Malibu's volunteer efforts to clean up Malibu Lagoon and Surfrider Beach have met with limited success. Yes, there have been improvements in on-site wastewater treatment systems and stormwater ordinances, the Local Coastal Plan, and dry weather runoff treatment, but the bottom line is that Malibu Lagoon and Surfrider Beach are still two of the most polluted receiving waters in the region, if not the state. The public and aquatic life should not have to wait much longer for the promise of clean water. The Regional Board's proposed prohibition of Onsite Wastewater Disposal Systems ("OWDS") in the Civic Center is a long overdue, legally enforceable action that should fulfill the promise of clean water in Malibu.

In general, Heal the Bay strongly supports the draft *Amendment to the Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area* dated July 31, 2009 ("draft prohibition"). It has long been assumed and established that existing OWDS in the Civic Center area are a significant source of nutrients and pathogens to the Creek and Lagoon. The technical memos have provided the information to demonstrate that there are numerous violations of WDRs at OWDS in the civic center. Also, groundwater monitoring data frequently exceeds both drinking water standards and receiving water standards for total coliforms and total nitrogen (nitrate + nitrite, and ammonia). Studies have demonstrated that groundwater is connected to Malibu Creek and Lagoon, and that people who swim at Surfrider Beach when water quality standards are exceeded are far more likely to get sick than those that swim in clean water nearby. Moreover, the addition of discharge to the already over-taxed waste disposal systems and leach fields will lead to further water quality degradation and contribute to violations of water quality standards and TMDL requirements at a time when the City is legally obligated to reduce its nutrient and fecal bacteria contributions. Board staff's technical memos have definitely exceeded the burden to demonstrate that OWDS cause or contribute to water quality standards exceedances and beneficial use impairment in Malibu Lagoon and at Surfrider Beach.

The draft prohibition outlines a reasonable schedule, including interim and final deadlines, for developing and implementing a project to allow for a cease in discharge from existing OWDS in the Civic Center area within 5 years. Due to the pressing nature of the water pollution problems in this area, the draft prohibition appropriately calls for an immediate prohibition on new OWDS. Heal the Bay has long maintained that the city can comprehensively address the bacteria and nutrient problems and meet TMDL requirements by constructing and operating a centralized wastewater treatment plant. Although the city has promised that this is the route they plan to



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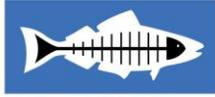
info@healthebay.org
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take in the Civic Center area, there has been no legally binding commitment or significant progress towards this “goal”. The draft prohibition places the city on track for developing such a project.

Although Heal the Bay is very supportive of the draft prohibition, we urge the Regional Board to make two clarifications:

First, the map of the prohibition area designated as “figure 4-xx” should be discussed in more detail in the draft prohibition. Specifically, what is the justification for including Winter Canyon in the prohibition area? In general, this area has a greater depth to groundwater than most of the Civic Center area. Also, the groundwater from the Winter Canyon area does not drain into the nutrient impaired waters of Malibu Creek and Lagoon. Heal the Bay is concerned that a prohibition area that includes Winter Canyon leaves no viable disposal option for treated wastewater in the civic center area. In addition, please provide substantiation for the inclusion of so many of the residents in the Malibu Colony. We are unaware of any beach monitoring data for the Colony between Surfrider Beach and Marie Canyon. Malibu’s previous groundwater studies demonstrated that about 6 or so houses near the western edge of Surfrider Beach drain into the nutrient and fecal bacteria impaired lagoon. Perhaps the houses in the Malibu Colony that do not drain to the lagoon could meet requirements by installing disinfection systems instead of tying into a new sewer in the area. A requirement to either tie into the sewer or install a disinfection system by a date certain (no more than 5 to 8 years) would be acceptable to Heal the Bay. Further, the project geographic scope should also include commercial properties south from the Civic Center on Pacific Coast Highway to at least 21237 Pacific Coast Highway, Malibu. At a minimum, within 5 to 8 years, commercial property OWDSs south of the proposed boundary on PCH should be required to disinfect their wastewater prior to leach field disposal to ensure no bacteria contribution to groundwater and surface water. This is a more cost effective approach to meeting Santa Monica Bay beach bacteria TMDL requirements. The project scope should be modified accordingly.

Second, we are concerned that the draft prohibition allows for new systems to be permitted “...if the discharger can demonstrate, to the satisfaction of the Executive Officer, that reuse, evaporation, and/or transpiration will use 100% of the wastewater generated by activities on a site, will not contribute to a rise in the water table, and will contain and properly handle any brines and/or off specification wastewaters that cannot be reused/discharged in a manner that meets water quality objectives established in the Basin Plan.” How will the Regional Board ensure that there is no discharge of treated effluent from the leach fields or irrigation? The Regional Board needs to provide a clearer definition of a zero discharge facility, including monitoring requirements for water quality and depth to groundwater. Also, the zero discharge facility must perform as designed under all conditions including very wet years with high groundwater levels.



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The scientific facts are clear: dischargers of wastewater in the Civic Center area often fail to meet water quality objectives and they have the reasonable potential to cause or contribute to impairments of existing or potential beneficial uses. Thus we urge the Regional Board to approve this draft prohibition with the clarifications discussed above.

Thank you for your consideration of these comments. If you have any questions, please contact us at 310-451-1500.

Sincerely,

Mark Gold, D. Env.
President

Kirsten James
Water Quality Director



To: City of Malibu
Regional Water Quality Control Board

June 8, 2009

**RE: June 17, 2009 Public Meeting
Wastewater Treatment Systems MOU**

Dear Council Members and Board Members;

President

Heidi Bernard

Treasurer

Roger Gronwald

Vice-President

Barbara Calandra

Vice-President

Sam Sahrai

Vice-President

Tami Semler

Vice-President

Scott Wagenseller

Directors

Jel Heintz

Ed Gillespie

Garrett Gerson

Pam Brady

Ray Craig

Mark Olson

David Reznick

Janet Laird

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Yvette Gilpin

Terence Davis

Franco Simplicio

Rea Miller

Kate Novotny

John Johannessen

CEO

Rebekah Evans

The Malibu Chamber of Commerce represents over 600 small and large businesses in Malibu. Our Mission is to provide leadership, advocacy, communication and promotion for our businesses, city, residents and visitors.

In recent years the Chamber has involved itself in a number of environmental issues. We have worked with the City of Malibu on the drafting and implementation of a Styrofoam ban, co-sponsored with the City and other environmental organizations a number of green building festivals and collaborated with the City on a Green Building ordinance.

At the present time the Chamber and many of its members have seen an increase in wastewater enforcement actions by the Regional Board.

Although most all business owners are very conscious on wastewater requirements, there may be some that are not fully aware of the current regulatory trends and permitting requirements.

To better understand the current situation some historical perspective is necessary. Almost all of Malibu's commercial properties were built prior to the City's Incorporation in 1991. Typically, these properties were constructed 30-50 years ago in accordance with the codes in effect at that time, which generally did not require a separate wastewater permit from the Regional Board. The standard wastewater system utilized was a septic system. Septic systems have been used successfully for decades. For the most part these systems have perform very well and provide an effective level of treatment.

We all know that there have been many changes since 1991, not only from a regulatory stand point, but also from a scientific and technological prospective; however many small businesses have not always stayed current with these changes. For the most part if there are small businesses or property owners who are out of compliance with the current laws it is likely they are simply unaware of the rules. Their buildings were built with all the needed permits, the wastewater systems adequately dispose of the effluent and they perform the necessary maintenance to meet their systems requirements.

One thing that Malibu businesses do understand is the importance of Malibu as a visitor destination. They know if people start avoiding Malibu beaches because of poor water quality their business will suffer. They also will be quick studies when it comes to the risk their business face by ignoring the current law.

The Malibu Chamber of Commerce wants to be part of the solution. We believe the single most effective thing that can be done is to educate the Malibu business community about all things wastewater. We are here today to ask both the Regional Board and the City of Malibu to join with the Chamber in sponsoring a Wastewater Workshop which would provide Malibu businesses and property owners with detailed information on the following topics:

- (1) What is the law?
- (2) What is the process to come into compliance?
- (3) How do they prepare the necessary information about their wastewater system?
- (4) Wastewater 101 – The basics of wastewater treatment in 2009
- (5) What are the implications to their operations?
- (6) What are the costs associated with modifying their current wastewater systems to meet current codes?

Our goal would be to bring wastewater expertise and experience of our larger members as well as knowledgeable engineers, operators and construction firms with expertise in building wastewater systems to the forum. Combining this with some of your key Staff members who can provide a regulatory prospective of the law and enforcement options, we believe we could take a great leap forward improving things in Malibu. Hopefully, it will reduce the Staff time spent on enforcement actions and likewise will allow local businesses to marshal their scarce resources on coming into compliance and avoid wasting money to defend themselves against potential fines.

As this is step one in a multiple-step process. Once businesses understand the law, everyone will hopefully fall into action and lay the groundwork to take towards resolving this larger problem. Will you join with the Malibu Chamber of Commerce in this effort? We look forward to working with you in a positive way to support our local businesses.

Respectfully,

Rebekah Evans

Rebekah Evans, CEO



Regional Water Quality Resources Control Office
320 W. 4th Street, Ste. 200
Los Angeles, CA 90013
Attn: Board of Directors

October 2, 2009

RE: Wastewater Treatment Systems & STOP the Prohibition in Malibu

Dear Regional Water Quality Board of Directors;

The Malibu Chamber of Commerce represents Malibu with a mission is to provide leadership, advocacy, communication and promotion for our businesses, city, residents and visitors. We represent over 650 small and large businesses in Malibu, as well as 13,000 residents that this proposed 'Prohibition' will affect on November 15, 2009 to be implemented by the Regional Water Quality Control Board.

In recent years the Chamber has involved itself in a number of environmental issues. We have worked with the City of Malibu on the drafting and implementation of a Styrofoam ban, co-sponsored with the City and other environmental organizations a number of green building festivals and collaborated with the City on a Green Building ordinance.

At the present time the Chamber and many of its members have seen an increase in wastewater enforcement actions by the Regional Board, and our concern is that while many of our larger businesses have the knowledge and resources to take appropriate steps to make any necessary corrections to their wastewater systems or how they are maintained, we are concerned that many smaller businesses and property owners do not. Many of Malibu's smaller businesses are simply uninformed about the current requirements for wastewater permitting and the implications for their businesses.

To better understand the current situation some historical perspective is necessary. Almost all of Malibu's commercial properties were built prior to the City's Incorporation in 1991. Typically, these properties were constructed 30-50 years ago in accordance with the codes in effect at that time, which generally did not require a separate wastewater permit from the Regional Board. The standard wastewater system utilized was a septic system. Septic systems have been used successfully for decades. In reality, their main emphasis is on disposal with treatment a lesser level of concern. For the most part these

President

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Treasurer

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Vice-President

Barbara Calandra

Vice-President

Sam Sahrai

Vice-President

Tami Semler

Vice-President

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Directors

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Yvette Gilpin

Terence Davis

Franco Semplicio

Rea Miller

Kate Novotny

John Johannessen

CEO

Rebekah Evans

systems satisfactorily perform the disposal objective and do provide an effective level of treatment.

We all know that there have been many changes since then, not only from a regulatory stand point, but also from a scientific and technological prospective; however many small businesses have not stayed current with these changes. For the most part if there are small businesses or property owners who are out of compliance with the current laws it is likely they are simply unaware of the rules. Their buildings were built with all the needed permits, the wastewater systems adequately dispose of the effluent and they perform the necessary pumping their systems require.

We feel that the California Regional Quality Water Board has proposed a 'Prohibition,' for the Civic Center area without giving time to the businesses and residents to completely understand how to implement needed forms and/or a way for the City of Malibu to meet the list of recommendations of a new 'sewer system.'

One thing that Malibu businesses do understand is the importance of Malibu as a visitor destination. They know if people start avoiding Malibu beaches because of poor water quality their business will suffer. They also will be quick studies when it comes to the risk their business face by ignoring the current law. That is why Malibu is spending huge amounts of dollars on a new 'Storm water reclamation area of land', called 'Legacy Park.'

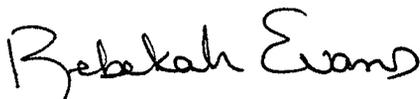
The Malibu Chamber of Commerce wants to be part of the solution. We believe the single most effective thing that can be done is to educate the Malibu business community about all things wastewater not push a prohibition or moratorium on a small community, that doesn't have the funding to make it happen overnight. With this education, it will reduce the Staff time spent on enforcement actions and likewise will allow local businesses to marshal their scarce resources on coming into compliance and avoid wasting money to defend themselves against potential fines.

We request that the RWQCB delay the actions they have deemed necessary of a prohibition, and ask that they 'partner,' with the Malibu community to create a mutual goal for all business and resident within Malibu.

You have a community that feels threatened, scared and not sure of what the next step is. Do you want to support the 'implosion' of a small community that has had to stand up against fires, transportation issues and now a down economy in only the last 3 years? We have to slow things down, and work through them, instead of shutting down this community.

Please stop this prohibition and work with us to make it a community that we can all be proud of. We look forward to working with you in a positive way to support our local businesses and residents of Malibu.

Respectfully,



Rebekah Evans, CEO



Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
Attn: Elizabeth Erickson

RECEIVED
2009 OCT 6 PM 4 40
CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD
LOS ANGELES REGION

October 2, 2009

RE: Wastewater Treatment Systems & Prohibition in Malibu

President

Heidi Bernard

Treasurer

Roger Gronwald

Vice-President

Barbara Calandra

Vice-President

Sam Sahrai

Vice-President

Tami Semler

Vice-President

Scott Wagenseller

Dear Ms. Erickson;

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Directors

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CEO

Rebekah Evans

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The Malibu Chamber of Commerce wants to be part of the solution. We believe the single most effective thing that can be done is to educate the Malibu business community about all things wastewater not push a prohibition or moratorium on a small community, that doesn't have the funding to make it happen overnight. With this education, it will reduce the Staff time spent on enforcement actions and likewise will allow local businesses to marshal their scarce resources on coming into compliance and avoid wasting money to defend themselves against potential fines.

We request that the RWQCB delay the actions they have deemed necessary of a prohibition, and ask that they 'partner,' with the Malibu community to create a mutual goal for all business and resident within Malibu.

You have a community that feels threatened, scared and not sure of what the next step is. We have to slow things down, and work through them, instead of shutting down this community.

Please stop this prohibition and start listening to the community at large? We look forward to working with you in a positive way to support our local businesses and residents of Malibu.

Respectfully,



Rebekah Evans, CEO
Malibu Chamber of Commerce

October 7, 2009

via email: rchou@waterboards.ca.gov

Ms. Rebecca Chou
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Re: Amendment to the *Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area* dated July 31, 2009

Dear Ms. Chou:



The Malibu Surfing Association (MSA) is one of California's oldest surfing clubs, founded by members of the Malibu community more than 40 years ago. Many of our members are residents of the City of Malibu. We are an all-volunteer organization dedicated to the fellowship of surfing and to the stewardship of our home break, Surfrider Beach. We speak on behalf of our members whose views represent those of the surfing community and the 1.6 million visitors to Malibu Surfrider Beach who should be able to use this recreational resource without fear of water-borne illness.

There is great urgency in solving the water quality issues in the Malibu Civic Center area. World-class Surfrider Beach continues to get Ds and Fs on Heal the Bay's Beach Report Card, as wastewater from commercial and residential septic systems in the area leaches into Malibu Creek and Lagoon and then flows into the ocean placing public health at risk. Malibu Creek and Lagoon are listed on the US EPA's 303(d) list as impaired by numerous pollutants, and the TMDL's that have already been adopted for bacteria and nutrients are repeatedly exceeded.

Except for the clarifications noted below, MSA wholeheartedly supports the draft *Amendment to the Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties to Prohibit On-site Wastewater Disposal Systems ("OWDS") in the Malibu Civic Center Area* dated July 31, 2009 ("draft prohibition"). It is now established beyond doubt that existing OWDS in the Civic Center area are a major source of nutrient and pathogenic pollution of Malibu Creek and Lagoon. Moreover, the addition of any discharge to this already over-taxed area of the watershed will lead to further water quality degradation and continue to contribute to ongoing violations of water quality standards and TMDL requirements.

Staff's recommended draft prohibition outlines a reasonable schedule, including interim and final deadlines, for developing and implementing a project to allow for a cessation in discharge from existing OWDS in the Civic Center area within 5 years. Due to the pressing nature of the water pollution problems in this area, the draft prohibition appropriately calls for an immediate prohibition on new OWDS. All stakeholders agree that the City can comprehensively address the bacteria and nutrient problems and meet TMDL requirements by constructing and operating a centralized wastewater treatment plant. Although the City has "promised" that this is the route they plan to take in the Civic Center area, there has been no legally binding commitment nor has the City made any significant progress toward this "goal". The City has not chosen a site,



Re: Amendment to the *Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties* to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area dated July 31, 2009

developed a funding strategy, or approved a design since its 1991 incorporation. In fact, they currently question whether there is even a wastewater quality issue. We agree with staff's recommendation that a prohibition is the only alternative to force the City to develop and implement a wastewater solution.

MSA would urge the Regional Board to consider two clarifications:

The prohibition's geographic boundary should be expanded to include commercial properties east from the Civic Center area on Pacific Coast Highway to 22333 Pacific Coast Highway, Malibu. At a minimum commercial OWDS east of the expanded boundary on Pacific Coast Highway should be required to disinfect their wastewater prior to leach field dispersal ensuring no bacteria contribution to groundwater and surface water. The project scope should be modified accordingly.

Second, we are concerned that the draft prohibition allows for new systems to be permitted "... if the discharger can demonstrate, to the satisfaction of the Executive Officer, that reuse, evaporation, and/or transpiration will use 100% of the wastewater generated by activities on a site, will not contribute to a rise in the water table, and will contain and properly handle any brines and/or off specification wastewaters that cannot be reused/discharged in a manner that meets water quality objectives established in the Basin Plan." How will the Regional Board ensure that there is no discharge of treated effluent from the leach fields or irrigation? Beyond this, the City has repeatedly demonstrated its unwillingness or ability to enforce permits in the Civic Center.

The scientific facts are indisputable: dischargers of wastewater in the Civic Center area fail to meet water quality standards and contribute to significant impairments of water quality. We urge the Regional Board to approve this draft prohibition with the clarifications set forth.

Thank you for your consideration of our comments. If you have any questions, please contact me at 818.564.4217.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Blum".

Michael Blum,
President
Malibu Surfing Association

A handwritten signature in blue ink, appearing to read "Joseph S. Melchione".

Joseph S. Melchione
Chairman, Environmental Committee
Malibu Surfing Association

MB/JSM/so

Ms. Rebecca Chou
Los Angeles Regional Water Quality Control Board
October 7, 2009
Page 3



Re: Amendment to the *Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties* to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area dated July 31, 2009

cc: Tracy Egoscue, Executive Officer
Los Angeles Regional Water Quality Control Board
(via email: tegoscue@waterboards.ca.gov)

HAND DELIVERED

Malibu Surfing Association

A non-profit organization
Federal Tax ID 95-4459007

POB 2683
Malibu, California
90265-7683 USA

RECEIVED

2009 OCT 8 AM 11 24

msasurfing.org

October 8, 2009

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD
LOS ANGELES REGION

Ms. Rebecca Chou
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Re: Amendment to the Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area dated July 31, 2009



Dear Ms. Chou,

The Malibu Surfing Association (MSA) is one of California's oldest surfing clubs, founded by members of the Malibu community more than 40 years ago. Many of our members are residents of the City of Malibu. We are an all-volunteer organization dedicated to the fellowship of surfing and to the stewardship of our home break, Surfrider Beach.

MSA is a proud member of the Coalition of Surfing Clubs (CSC), an international organization which represents the interests of surfing clubs throughout California and the world. CSC acts as a united voice to address issues related to coastal water quality, beach access, development, and legislative policy. The Coalition represents surfers of all ages and exists for the betterment of the citizenship of the surfer, to improve clean water locally and globally and to promote the sport of surfing.

Both and the CSC place a special value on Malibu Surfrider Beach – the Yosemite of surfing – as an iconic, transcendent surfing location: topping any list of surfing's important beaches. It's the definitive summer beach, where the California lifestyle was defined, packaged, and then sold to the rest of the world. It's the original perfect wave.

Included please find copies of a petition signed by officers of 15 sister CSC surfing clubs, representing more than 1,000 club members as they express their, "concern[ed] about chronic water quality problems at Malibu Surfrider Beach. We sign this as a pledge for clean water at Malibu – to urge all responsible agencies to recognize the value we, and others, place on Surfrider Beach."

Specific comments from the Malibu Surfing Association on the proposed Regional Water Quality Control Board amendment will be sent under separate cover.

Thank you for your consideration of these signed petitions. If you have any questions, please contact me at 818.564.4217.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Blum".

Michael Blum, President
Malibu Surfing Association

Enclosures



PLEDGE FOR CLEAN WATER AT MALIBU SURFRIDER BEACH

Why do we want clean water at Malibu? Isn't the water already clean?

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Yet for it's glory and history Surfrider is one of California's most polluted beaches, earning a dubious distinction as a listed coastal health risk.

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3. Agree to a moratorium on future development in the area until the above projects are completed.

Paul E. Moos

Signature

6-9-09

Date

PAUL E. MOOS

Name

VICE PRESIDENT

Title

ANNAPOLIS SURF CLUB

Organization



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3. Implement a moratorium on large-scale, commercial development in the Civic Center area until the above projects are completed.

Bruce King
Signature

9/26/05
Date

Bruce King
Name

COALITION REP.
Title

Big Sur Surfing Association
Organization



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Catherine S. Calkins

Signature

6/12/09

Date

Catherine S. Calkins

Name

Surfing Team
Competition Director

Title

Doheny Longboard Surfing Association

Organization



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David Carvalho
Signature

9/11/09
Date

David Carvalho
Name

Team Captain
Title

Honolulu Hawaii / HLF
Organization

Hawaii Longboard Federation



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Lorraine F. Schmalenberger
Signature

7/16/09
Date

Lorraine F. Schmalenberger
Name

Community Relations Director
Title

La Jolla Shores Surfing Association
Organization



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Doug Robbins
Signature

9.11.09
Date

Doug Robbins
Name

Team CAP
Title

Malibu Boardwalkers -
Organization



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Dutcha Harris
Signature

6/21/09
Date

Gretchen Harris
Name

Title

Ocean side Longboard Surfing Club
Organization



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Bruce King
Signature

9/24/09
Date

Bruce King
Name

CSC. Rep.
Title

Oceans Water Riders
Organization



PLEDGE FOR CLEAN WATER AT MALIBU SURFRIDER BEACH

Why do we want clean water at Malibu? Isn't the water already clean?

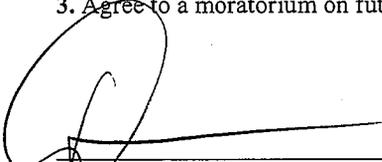
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Signature

9-3-09

Date

Gregory W Cochran

Name

PRESIDENT, PEDRO POINT SURF CLUB

Title NORTH RIZZO CALIF.

CHAIR, PARKS, BEACHES & RECREATION Commission

Organization CITY OF PUEBLICA



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Signature

6/9/09

Date

Andrew Beck

Name

Co-President

Title

Santa Barbara Surf Club

Organization



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Wick
Signature

8-16-09
Date

Waylon Olsen
~~Treasurer~~
Name

Treasurer
Title

Santa Cruz Longboard Union
Organization



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[Handwritten Signature]

Signature

9/11/09

Date

NATHAN CINTAS

Name

Comp. Director

Title

SUNSET CLIFFS SURFING ASSOC.

Organization

619-886-5464



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John M Reinhardt
Signature

7/14/09
Date

John M Reinhardt
Name

Vice President
Title

Swamis Surfing Assoc
Organization



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Gary J. Baum
Signature

7-14-07
Date

GARY J. BAUM
Name

President
Title

Swami's Surfing Assoc, Inc.
Organization



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JR Gray
Signature

9/11/09
Date

JAMES R GRAY
Name

BOARD MEMBER (TEAM CAPTAIN)
Title

VENTURA SURF CLUB
Organization



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Signature

6/8/2009

Date

MICHAEL MARIANI

Name

PRESIDENT

Title

VENTURA SURF CLUB

Organization



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Mary Knight
Signature

9-11-09
Date

MARY KNIGHT
Name

PRESIDENT VA. LONGBOARD FEDERATION
Title

VA. LONGBOARD FEDERATION
Organization



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1. Create a comprehensive solution for water treatment that fixes the chronic pollution problems caused by wastewater treatment systems in the Civic Center area, Serra Retreat, and Malibu Colony.
2. Commit to a project schedule (including timetable and funding) for a wastewater treatment / water recycling facility that addresses wastewater sources in the Civic Center, Malibu Colony, Serra Retrea, and adjoining commercial, multi-family areas.
3. Implement a moratorium on large-scale, commercial development in the Civic Center area until the above projects are completed.



Signature

9-10-09

Date

HAROLD R PED

Name

Treasurer

Title

Windsor Sea Surf Club

Organization



A PLEDGE FOR CLEAN WATER AT MALIBU SURFRIDER BEACH

Why do we want clean water at Malibu? Isn't the water already clean?

Surfrider Beach is a Yosemite of surfing – iconic, transcendent, and on any list of our sport's history. It's the definitive summer beach. The beach of Dora, Carson, Gidget, and Tubesteak. It's the beach of movie stars and surf stars.

Even without surfing, Surfrider is a resource in its own right: a place where the Chumash lived and later, the Rindges did the same. Yet for it's glory and history Surfrider is one of California's most polluted beaches, earning a dubious distinction as a listed coastal health risk.

We, the undersigned, are concerned about chronic water quality impairments at Surfrider Beach. We sign this as a pledge for clean water at Malibu – to urge all responsible agencies to recognize the value we, and others, place on Surfrider Beach.

We support the efforts of organizations, agencies, and local/state governments to bring about water quality improvements in Malibu. We ask for the following:

1. Create a comprehensive solution for water treatment that fixes the chronic pollution problems caused by wastewater treatment systems in the Civic Center area, Serra Retreat, and Malibu Colony.
2. Commit to a project schedule (including timetable and funding) for a wastewater treatment / water recycling facility that addresses wastewater sources in the Civic Center, Malibu Colony, Serra Retrea, and adjoining commercial, multi-family areas.
3. Implement a moratorium on large-scale, commercial development in the Civic Center area until the above projects are completed.

Ozstar De Jourday

Signature

Sept 12, 2009

Date

OZSTAR DE JOURDAY

Name

COALITION OF SURFERS CLUBS REPRESENTATIVE

Title

Wardman Surf Club

Organization



October 8, 2009.

Dr. Rebecca Chou
Groundwater Permitting Unit
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

RE: Los Angeles Basin Plan Amendment to Prohibit On-Site Wastewater Disposal Systems (“OWDS”) in the Malibu Civic Center Area

The Santa Monica Baykeeper (“Baykeeper”) supports the Los Angeles Regional Water Quality Control Board’s (“Regional Board”) decision to amend the Basin Plan to prohibit OWDS in the Malibu Civic Center area.

In recognition of the impact of OWDS on the water quality of Malibu Creek, Malibu Lagoon and Malibu beaches, the Regional Board directed staff in December 1998 to develop a prohibition of OWDS for the Civic Center area. This idea was later abandoned and in the next decade the water quality degradation of these waters persisted unabated resulting in ever-increasing violations of water quality objectives and unsafe levels of pollution.

To protect the waters located in one of the most famous coastal areas of the Los Angeles Region, the Regional Board must prohibit wastewater discharge in the Malibu Civic Center area. This approach is mandated by the law and is supported by the facts and scientific evidence. The Regional Board should adopt the long-overdue prohibition on OWDS in the Malibu Civic Center area subject to the revisions discussed in sections III through IV of our letter.

I. The California Water Code and the Clean Water Act Mandate the Prohibition of OWDS in the Civic Center Area

The Clean Water Act was passed with the goal “to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.” 33 U.S.C. §1251 (a). These Congressional policies are attained through various Clean Water Act programs, including the National Pollutant Discharge Elimination System (33 U.S.C. § 1342), the dredge and fill permitting program (33 U.S.C. § 1344), the establishment of effluent limitations (33 U.S.C. § 1311) and total maximum daily loads (“TMDLs”) to protect impaired waters (33 U.S.C. § 1313(d)). TMDLs are established for water bodies which cannot meet state water quality standards despite the imposition of technology-based limits required by section 301 of the Clean Water Act. 33 U.S.C. § 1313 (d). These waters are commonly referred to as “impaired waters.”

The Regional Board and the EPA have established TMDLs for the following impaired water bodies in the Malibu Civic Center area: a Nutrient TMDL for Malibu Creek and Malibu Lagoon, a Santa Monica Bay Beaches TMDL for Malibu Beaches and a Malibu Creek and Lagoon Bacteria TMDL. Regional Board Resolution No. 02-004 (Santa Monica Bay Beaches Bacteria TMDL); Regional Board Resolution No. 2004-019R (Malibu Creek and Lagoon Bacteria TMDL); U.S. EPA TMDL for Nutrients Malibu Creek Watershed.

The Water Code was similarly adopted to ensure California waters are restored and protected from degradation. Wat. Code § 13000. The code requires that the “quality of all the waters of the state shall be protected for use and enjoyment by the people of the state.” *Id.* Moreover, the “activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable.” *Id.* Responsibility for water quality control rests with the state and regional water boards who must “conform to and implement the policies” of the Water Code . *Id.*, § 13001. To achieve the goals of the Water Code, regional water boards are required “to formulate and adopt water quality control plans for all areas within the region.” *Id.*, § 13240. Clearly, under the Water Code, the Regional Board must ensure that the Basin Plan, which is Los Angeles Region water quality control plan, protects the quality of waters in the region.

As amply demonstrated by the persistent violations of water quality objectives and TMDLs and the continued impairment of the Malibu Civic Center area groundwater caused in part by septic effluent discharges, the policies and mandates of the Clean Water Act and the Water Code have been consistently violated for more than a decade.

The Malibu Creek, Malibu Lagoon and Malibu beaches TMDLs are consistently violated by the discharge of wastewater from OWDS which reaches the waterbodies through shallow groundwater. Draft Technical Staff Report, *Technical Memorandum #3: Pathogens in Wastewater that are in Hydraulic Connection with Beaches Represent a Source of Impairment for Water Contact Recreation* (“Technical Memorandum #3”), at T3-8—T3-16; Draft Technical Staff Report, *Technical Memorandum #4: Nitrogen Loads from Wastewater Flowing to Malibu Lagoon are a Significant Source of Impairment to Aquatic Life* (“Technical Memorandum #4), at T4-15.

Further, despite the Waste Discharge Requirements (“WDRs”) issued by the Regional Board to Civic Center area dischargers, the violations of effluent limits and effluent flows imposed on dischargers to protect the quality of ground and surface waters in the Civic Center area continue. Draft Technical Staff Report, *Technical Memorandum #1: Dischargers Have Poor Records of Compliance with Regional Board* (“Technical Memorandum #1). Clearly, as a regulatory tool, the WDRs have failed to achieve the Water Code’s mandate to regulate all “activities and factors which may affect the quality of waters of the state ... to attain the highest water quality which is reasonable.” Wat. Code § 13000. The section 13269 waiver for smaller OWDS which was administered by the City of Malibu under the 2004 Memorandum of

Understanding (“MOU”) with the Regional Board has also failed to adequately regulate subsurface wastewater discharges.¹

Given the clear mandate of sections 13000 and 13240 of the Water Code, the Regional Board is required to institute more stringent regulations and amend the Basin Plan to comply with the directive to protect water quality to the highest level. Wat. Code §§ 13001 (the Regional Board must exercise its authority to control water quality in a manner that conforms to and implements the policies of the Water Code). The regulatory mechanism provided by the Water Code is a prohibition on subsurface discharges as proposed in the draft Basin Plan amendment prohibiting OWDS in the Civic Center area. Wat. Code § 13243. To meet its obligations under the Water Code, the Regional Board has no other alternative but to institute the proposed prohibition.

II. The Proposed Prohibition of OWDS in the Malibu Civic Center Area Complies with the Law and Is Amply Supported By Substantial Evidence

The California Water Code (“Water Code”) authorizes a Regional Board to “specify [in a Basin Plan] certain ... areas where the discharge of waste ... will not be permitted.” Wat. Code § 13243. The determination to prohibit subsurface disposal “shall be supported by substantial evidence in the record that discharge of waste from such disposal systems will result in violation of water quality objectives, will impair present or future beneficial uses of water, will cause pollution, nuisance, or contamination, or will unreasonably degrade the quality of any waters of the state.” *Id.* § 13280.

As demonstrated by the Draft Technical Staff Report and the five technical memoranda, the requirements of section 13280 were thoroughly satisfied and the proposed Basin Plan amendment prohibiting OWDS in the Malibu Civic Center area is supported by substantial evidence.² Consequently, the Regional Board should adopt the prohibition with the revisions discussed in Sections III through IV of this letter.

¹ As discussed in Baykeeper’s previous comment letter on the proposed termination of the Malibu MOU with the Regional Board, the City of Malibu has failed to comply with the majority of its obligations under the MOU, including the requirement to adopt ordinances requiring upgrades of OWDS contributing to bacterial and nitrogen impairment in Malibu Creek, Malibu Lagoon and Malibu beaches.

² The documentation supporting the proposed Basin Plan amendment also complies with the requirements of sections 13281 and 13283 of the Water Code.

1. Continued OWDS Discharges Will Violate Water Quality Objectives, Impair Present or Future Beneficial Uses, Cause Pollution And Will Unreasonably Degrade Water Quality

As already discussed, the Malibu Creek, Malibu Lagoon and Malibu beaches, including Surfrider are impaired waters with imposed TMDLs. Under the Basin Plan, the beneficial uses of these waters include: Water Contact Recreation: Non-Water Contact Recreation: Marine Habitat; Wildlife Habitat; Wetland Habitat; Spawning, Reproduction, and/or Early Development; Rare, Threatened, or Endangered Species Habitat. Basin Plan at 2-10, 2-19.

The groundwater in the Civic Center area has the following beneficial uses: Municipal and Domestic Supply (Potential), Industrial Process and Service Supply, and Agricultural Supply. Basin Plan at 2-17. The water quality objectives for groundwater can be found in Title 22 of the California Code of Regulations and the Basin Plan.

A. Existing OWDS Discharges Contribute to Violation of Water Quality Objectives

As evident from the most recent Notices of Violations sent to Malibu Civic Center dischargers in April 2009, the dischargers have consistently violated the nutrient and pathogen effluent limits and effluent flows required by their WDR. Technical Memorandum #1, at T1-3—T1-4. In fact, even the most recently permitted discharger in the area, the Malibu Lumber Yard, violated its WDRs immediately upon commencing discharge by exceeding its effluent limits for nitrogen, phosphorus and coliform. Regional Board Notice of Violation to Malibu Lumber Yard (June 15, 2009), at 1-2.

In addition, the City of Malibu has failed to institute nearly all of the programs which were required under the 2004 MOU with the Regional Board to ensure that smaller commercial and residential OWDS do not violate water quality objectives.³ As a result, the majority of the small OWDS in the area covered by the proposed prohibition do not provide advanced treatment. Moreover, the wastewater discharges of these residential and commercial OWDS continue to be unregulated and consequently their impact on water quality in the Malibu Creek, Malibu Lagoon, the beaches and the groundwater is potentially disastrous.

³ The MOU required Malibu to: draft and recommend for adoption by City Council ordinances mandating advanced treatment and disinfection by all OWDS within the six-month time-of-travel zone of the City's bacterial contributory areas by September 17, 2006; draft and recommend to City Council for adoption an ordinance requiring septic systems within the Malibu Lagoon contributory area to provide secondary treatment with denitrification and disinfection by September 17, 2007; establish denitrification standards for residential areas within the contributory area by September 17, 2006; draft and recommend for adoption ordinances establishing registration criteria and programs for all associated disciplines of OWDS installation and management by September 17, 2008. MOU, at 5-6. The City has failed to comply with these requirements.

The violations of effluent limits and the lack of regulation of the OWDS covered by the 2004 MOU translate into violations of water quality objectives and drinking water standards and impair beneficial uses.

Analysis of 2002-2009 groundwater sampling data from 47 wells in the Civic Center Area showed that Maximum Contaminant Levels (“MCLs”) for nitrogen, total coliform, fecal coliform and ammonia were exceeded frequently. Draft Technical Staff Report, *Technical Memorandum #2: Pathogens and Nitrogen in Wastewater Impair Underlying Groundwater as a Potential Source of Drinking Water* (“Technical Memorandum #2”), at T2-4. The 47 wells were either designated monitoring wells pursuant to WDRs issued by the Regional Board or were identified by the 2004 Stone Report. *Id.*

Similarly, OWDS discharges which exceed effluent limits or effluent flows reaches Malibu Lagoon and Malibu Creek where it contributes to exceedances of the Nutrient TMDL loading limit and impairs beneficial uses of Malibu Creek and Malibu Lagoon. Technical Memorandum #4, at T4-9—T4-15. In fact beginning in June 2009 a large scale fish die off (including large numbers of federally endangered steelhead trout) occurred in Malibu Creek. Attachment A (Preliminary Results of Rapid Response to the Malibu Fish Decline Event by RCDSMM). 188 steelhead trout were observed, down from a total of 1,300 counted in October 2008. *Id.* This die off can be largely attributed to extremely low levels of dissolved oxygen believed to be caused by decomposing algae which has created a thick layer of anaerobic muck on the bottom of Malibu Creek. *Id.*; Attachment B (muck photographs from July 2009). Dissolved oxygen levels have dropped as low as 0.5 mg/l in Malibu Creek. Attachment A. A similar large scale fish die off in Malibu Creek occurred in the summer of 2006. The 2006 fish kill was also attributed to low dissolved oxygen and high water temperatures.

Finally, because pathogens discharged from existing OWDS are in hydraulic connection with beaches adjacent to the Malibu Civic Center area, OWDS contribute to violation of the Santa Monica Bay Beaches Bacteria TMDL at Surfrider Beach, Carbon Beach and Amarillo Beach. Technical Memorandum #3, at T3-2—T3-26.

Clearly, the discharges from existing septic systems in the Malibu Civic Center area contribute to violations of water quality objectives and TMDLs and contribute to impairment of beneficial uses.

B. Without a Prohibition on OWDS in the Civic Center Area the Impairment of Beneficial Uses and Violations of Water Quality Objectives Will Continue

That existing permitted dischargers routinely violate effluent limits for nutrients and pathogens is of particular significance for several reasons. First, the violations show that the WDRs are insufficient to ensure that water quality objectives in the groundwater and the Nutrient and Bacteria TMDLs for Malibu Creek, Malibu Lagoon and Surfrider Beach, Carbon Beach and Amarillo Beach will be met. Second, because even the Malibu Lumber Yard OWDS, ostensibly

considered a “state-of-the-art” system, violates its effluent limits, it is clear that advanced treatment OWDS cannot ensure water quality is protected.

Continued violations are certain to occur also because small commercial and residential septic systems in the proposed prohibition area are unregulated and do not provide an advanced level of treatment to ensure water quality objectives are met.

Finally, the increased need for septic waste hauling discussed in Technical Memorandum #5 provide further evidence that continued OWDS discharges will exacerbate the current water quality problems and show that OWDS are not the lasting solution this area requires.

2. The Proposed Basin Plan Amendment Is Supported by Substantial Evidence

The five technical memoranda to the technical staff report prepared by Regional Board staff clearly show that the proposed Basin Plan prohibition on OWDS in the Malibu Civic Center area is supported by substantial evidence.

To draft the Basin Plan amendment, Regional Board staff reviewed 224 monitoring reports submitted by 20 dischargers in the Malibu Civic Center area in between 2004 and 2008. Technical Memorandum #1, at T1-1—T1-3. Staff also analyzed 671 samples from 47 groundwater wells in the Civic Center area sampled between 2002 and 2009. Technical Memorandum #2, at T2-4. To evaluate nitrogen loading from Civic Center area OWDS, staff inventoried all residential and commercial properties in the area, used actual flow data from self-monitoring reports and relied on previous US EPA and other technical studies. Technical Memorandum # 4, at T4-2, T4-6. Finally, Regional Board staff reviewed and analyzed all previous technical studies of the Malibu Civic Center area and analyzed thousands of samples to reach the conclusion that pathogens in wastewaters discharged in the Civic Center area impair Surfrider Beach, Carbon Beach and Amarillo Beach. Technical Memorandum #3, at T3-25, T3-17—T3-23.

In light of this extensive review and analysis, the City of Malibu’s insistence that the Regional Board should not adopt the proposed Basin Plan amendment is entirely unwarranted. As explained by Regional Board staff at the October 1 workshop and in the technical memoranda, none of the ongoing studies will change the conclusion that OWDS contribute to violation of water quality standards and impairment of beneficial uses.

For all of the above reasons, the proposed Basin Plan amendment is required by the Clean Water Act, the California Water Code, it is supported by substantial evidence and should be adopted with the revisions discussed below.

III. The Proposed Prohibition on OWDS Should Be Expanded to Include the Dense Multi-Family and Commercial Area Between Malibu Pier and Carbon Beach.

This area should be covered by the Basin Plan amendment because it is densely developed with multi-family and commercial properties (hotels, restaurants and office buildings) which produce large volumes of wastewater effluent. In addition, several of the commercial dischargers, such as Casa Malibu Hotel, Malibu Beach Club apartments, Malibu Beach Inn among others, have recently received Notice of Violations or 13260 directives showing that violations of effluent limits and water quality objectives are presently occurring. Finally, the proximity of this area to Surfrider Beach and Carbon Beach, both with imposed TMDLs to protect recreational water contact uses, make it virtually certain that wastewater discharges from OWDS in this area contribute to current TMDL violations and impairment of beneficial uses.⁴

Including this area in the Basin Plan amendment will be a prudent and necessary step to protect beneficial uses and public health and comply with the mandates of the Clean Water Act and the Water Code.

IV. The “Zero Discharge” Exception Should Be Eliminated or Revised to Require No Discharge of Wastewater Effluent During the Winter Months (October-April)

As demonstrated by the recent WDR violations by the Malibu Lumber Yard, “zero discharge” systems cannot ensure that effluent limits are met in the Civic Center area. A true “zero discharge” system will only apply enough water and nutrients that can be fully uptaken by the vegetation on the project site without one drop of discharge connecting to groundwater. While the goal of designing such systems is admirable, in reality “zero discharge” systems are not currently possible without setting aside large amounts of property for irrigation and evapotranspiration.

To ensure that a purported “zero discharge” system functions anywhere close to its intended admirable objective, the Regional Board should prohibit such systems from discharging during the winter months of April through October and require that any “zero discharge” systems have adequate storage capability to ensure that no discharge occurs in winter. This provides the Regional Board with at least a reasonable assurance that water quality in the proposed prohibition area will be protected.

⁴ A map listing the types of land uses and demonstrating density of development along with exact locations of properties with NOV's or 13260 directive is attached to this letter as Attachment C.

V. The Basin Plan Amendment Should Prohibit New Development Until the Malibu Civic Center Groundwater Is Cleaned

As demonstrated by numerous technical studies and the technical memoranda in support of the prohibition on OWDS, the groundwater in the Civic Center area is heavily polluted and connects to the Malibu Creek, Malibu Lagoon and adjacent beaches. Any increases in effluent discharges to groundwater, which will likely occur once the wastewater treatment plant is operational and effluent is dispersed, will push existing and historical groundwater pollution to these waterbodies. This will result in violations of water quality objectives and continued impairment of beneficial uses.

It is imperative that the existing and historical groundwater pollution be cleaned up. Additionally, it is critical to establish adequate dispersal areas that do not concentrate large volumes of treated wastewater forcing groundwater flows toward Malibu Creek, Malibu Lagoon and the beaches.

The Basin Plan amendment should prohibit any new development until the above requirements are met and it is clearly established that the prohibition area has the capacity to accommodate additional wastewater effluent.

VI. The Basin Plan Amendment Should Provide a Compliance Schedule With Milestones To Establish That Progress Toward Water Quality Improvement Is Made

Currently, the Basin Plan amendment gives Malibu five years to come into compliance with the prohibition on OWDS. The proposed amendment also provides a schedule of interim and final deadlines.

Given the well-documented long-standing problems of the Civic Center area and the City of Malibu's failure to address these problems, we believe this schedule should contain concrete milestones to achieve progress towards water quality standards.

The schedule should be revised as follows:

- The wastewater treatment plant should be built and operational and the Civic Center Area, Winter Canyon and the Malibu Colony areas should be connected by October 1, 2012.
- The area east along PCH to Carbon Beach (see attached map) should be connected to the operational wastewater treatment plant by October 1, 2013.
- Serra Retreat will be connected to the wastewater treatment plant by October 1, 2014.

VII. Conclusion

The proposed Basin Plan amendment prohibiting OWDS in the Malibu Civic Center area is necessary to protect water quality and to ensure compliance with the Clean Water Act and the Water Code. The proposed amendment is supported by substantial evidence and should be adopted with the revisions described above.

We appreciate the opportunity to provide comments on this important Basin Plan amendment.

Sincerely,

Tatiana K. Gaur

Tatiana Gaur, Esq.
Staff Attorney
Santa Monica Baykeeper



Mark Abramson
Director Watershed Programs
Santa Monica Baykeeper

ATTACHMENT A

Preliminary results of Rapid Response to the Malibu Fish Decline Event

July 28 – 18 August 2009

Compiled by Rosi Dagit, RCDSMM

BACKGROUND

In 2006, all the visible aquatic life in Malibu Creek between Ridge Dam and Malibu Lagoon died over a three-month period. High water temperatures may be the final factor, combined with reduced dissolved oxygen, low flows, abundant algal growth and the presence of decomposing algae and diatoms that covered the substrate. Unfortunately, agency response to the three-month decline of trout was very slow in 2006, and many of the toxicity tests were done after the fact.

We have detailed observations and results of subsequent tests that were conducted, but ultimately the lack of timely information on dissolved oxygen made it impossible to reach any defensible conclusions about what caused the die-off. The toxicology tests were all done 1-2 months after the die-off and so it is possible that any toxins or pathogens present had disappeared by that time.

A significant effort was made to develop a rapid response protocol should this ever happen again (Dagit, Adams and Drill 2009). Three years later, we are observing similar conditions and low number of endangered *O. mykiss*, and have promptly initiated the effort to obtain relevant toxicology, bacteria, and muck samples.

Collecting and analyzing this suite of water quality and quantity parameters now while the event is in progress will provide a more detailed picture of the conditions. With this information in hand, managers can make more informed decisions on how best to prevent the continued die-off of all the fish, especially the endangered *O. mykiss*.

CURRENT CONDITIONS

SNORKEL SURVEY OBSERVATIONS

During snorkel surveys conducted 28-29 July 2009, conditions of low flow, high water temperatures (24°C), and abundant distribution of decaying periphyton (diatoms and algae) referred to as the "Malibu muck" were observed. There were carcasses of dead crayfish littering the substrate. Only 188 trout were observed, down from a total of 1,300 counted in October 2008.

Snorkel surveys were repeated on 17-18 August 2009. The muck conditions continue to expand, and dead crayfish were observed. Two dead *O. mykiss* were found and collected. The 175mm (7 inch) fork length trout found upstream of the Start Pool was severely decomposed. Fin clip and scale samples were collected but it was not possible to get otoliths. The second 390 mm (16 inch) trout was found on the bottom of the Big Wide

Pool and in better condition. Fin clip and scale samples have been collected and the carcass frozen.

Trout with pale yellow patches and abraded scales were also observed. None of the trout were bright yellow as they were in 2006.

FLOW

Flow is recorded at the Los Angeles County Gage (F-130-R) and Tapia is required to release water to maintain a minimum of 2.5 cubic feet per second (cfs) at the gage as part of the operating permit with National Marine Fisheries. The level had dropped below that the week of 20-26 July, and thus there was a release pulse during 27-29 July. Presently the level back up above 2.5 cfs and the release has been discontinued at this time.

HUMAN BACTERIAL CONTAMINATION

The tertiary sewage treatment plant that discharges into Malibu Creek about a mile upstream of Ringe Dam has a direct pipeline located along the road shoulder that transports raw sewage from Pepperdine University to the Tapia Treatment Plant. This line is currently undergoing repair for small leaks. In order to rule out sewage contamination, the human bacterioides tests were deemed appropriate. Additional fecal and total coliform, E. coli and Enterococcus tests were also done by Heal the Bay, Dr. Rich Ambrose and Dr. Jed Fuhrman. We are still waiting for the results of the bacterioides tests.

Table 1. Bacteria Test Results (courtesy of Heal the Bay and Dr. Ambrose)

Location	Date tested	Enterococcus	E. coli	Total Coliform
Start Pool	8/4/09	97	<10	24916
Lunch Pool	8/4/09	<10	21	>24916
HTB Site 15 Stream gage below Tapia	8/2/09	292	31	>24916
UCLA site below Start Pool	7/09	74	<10	>24000

Note: Limits for E. coli are 400 and Enterococcus 104

TEMPERATURE AND DISSOLVED OXYGEN

Continuously recording HOB0 thermometers were installed in the water at the Start Pool, Lunch Pool, Grimmer Pool and Dam pool. An additional hobo was installed to capture air temperature at the Lunch Pool.

Two continuously recording data probes (Troll 9500 and YSI 6600) have been installed in Start Pool and Lunch Pool thanks to incredible efforts by Sean Anderson (CSUCI), Susan Teel and her assistants (NPS), Pablo Bryant (SDSU), Sean Bergquist and Jack

Topel (SMBRC), Richard Sherman (Topanga Underground), Sandra Murcia, Steve Williams, Delmar Lathers and Jayni Shuman, (RCDSMM).

The first download was obtained on Monday 17 August for the first week. Temperatures have been cooler for the past several weeks following the heat spell in mid-July. Sean, Pablo and Sandra are working out the kinks of downloading and calibrating the two sondes so that we are sure that any variability is real and not an artifact of the probes. It has taken a great deal of time and energy to install, maintain and manage these probes, all of which has thus far been volunteer effort.

Table 2. Range of Temperature and Dissolved Oxygen between 11-17 August 2009

Location	Dates	Temp Range °C	Dissolved O ² mg/l Range
Start Pool	7/30 – 8/17/09	18.2 –21.7	0.5 - 9
Lunch Pool	8/11 – 8/17/09	18.8 –21.5	6 - 8

OTHER WATER QUALITY PARAMETERS MEASURED

Samples looking for eutrophication related toxins (domoic acid, microcystin), nutrient tests, total carbon dioxide, sulfur and chlorophyll were taken and we await results.

TOXICITY STUDIES

Samples were collected from the Start Pool and Lunch Pool on 4 August 2009. A total of 26 gallons of water and two liters of sediment were air shipped to the UC Davis Aquatic Toxicology Lab, thanks to the strength of the Topanga Stream Team volunteers, and funding provided by Sup. Zev Yaroslavsky and Trout Unlimited. Eighteen people spent the whole morning shuttling the samples in backpacks full of ice out of the creek. It was hard work!

The three tests performed were:

96 hour High Volume Fish test on juvenile rainbow trout: 100% survival

Notes from Marie Stillway (ATL): *The Rainbow Trout (RBT) test was conducted at 12°C, as RBT is a cold water fish species.*

This species can be sensitive to ammonia; however ammonia-nitrogen levels were measured in-house at ATL and both sites came up with 0.03 mg/L NH₃-N. I would need a little more time to calculate the un-ionized ammonia levels from this, but I can say that in general these ammonia-nitrogen levels are pretty low/normal and I don't really think that ammonia was a factor.

Pyrethroid pesticides tend to be more toxic at colder temperatures, but with the survival as it was, I don't think they played a major role in what you're seeing at the sites, based off of the RBT test, but I should say that since RBT is such a large fish, it would need

higher concentrations of a toxicant (like a pyrethroid) to see an effect. But your chemical analysis results will tell you in more detail what's in the water.

10 day invertebrate test (*Hyalella azteca*): Negligible mortality

Notes from Marie Stillway (ATL): *The Hyalella water column test was conducted at 23°C. Let me preface this with saying that we haven't had a chance to apply statistical analyses to this test or the sediment test, but I can give you the draft raw data.*

*Ave Control Survival: 98% Ave Control Weight: 0.053 g
Ave Start Pool Survival: 100% Ave Start Pool Weight: 0.091 g
Ave Lunch Pool Survival: 97% Ave Lunch Pool Weight: 0.079 g.*

Overall survival was excellent, and your two ambient sites had greater average weight when compared to the control, which is typical as ambient waters tend to have more natural nutrients, which are bio-available than synthetic control water. There was measurable difference in growth when compared to animals at the start of the test, which indicate that the animals in the test grew throughout the duration of the test.

Hyalella have proven to be more sensitive an indicator species than Ceriodaphnia dubia to toxicants, so these results lead me to believe that what happened at your sites may not have been chemical-related (or, it could be a chemical with an extremely quick rate of degradation), at least with the water.

10 day invertebrate sediment test:

Notes from Marie Stillway (ATL): *Hyalella sediment tests are also conducted at 23°C. Sediments from the sites are tested using synthetic control water (same as that used in the water column test) as the overlying water.*

Again, no statistical analyses have been conducted, as this test came down yesterday, but here is the raw data.

*Ave Control Survival: 93% Ave Control Weight: 0.073 g
Ave Start Pool Survival: 96% Ave Start Pool Weight: 0.070 g
Ave Lunch Pool Survival: 87.5% Ave Lunch Pool Weight: 0.081 g*

Overall, survival was good. There was a bit of reduced survival in the Lunch Pool site, but I don't think it is enough of a difference to be considered statistically significant, and as you can see, average survival for that site was close to 90%. Again, there was a measurable difference in growth when compared to the animals at the start of the test, so these test animals also grew larger during the test.

Given the survival of the sediment test, I think we can probably rule out anything that might bind to the sediments. In my experience, sediment toxicity usually, when present, is pretty potent.

Some other information:

Dissolved oxygen levels were stable throughout all of the tests. I had initial concerns about the DO levels dropping in the RBT test, but they held steady at 12 and 23°C. If you experienced low DO levels while in the field, you could probably make a case for your problem being a) environmental conditions, b) your halocarbon hypothesis, or c) a combination of both.

Hardness measurements:

Lunch Pool: 916 mg/L as CaCO₃

Start Pool: 884 mg/L as CaCO₃

Alkalinity measurements:

Lunch Pool: 278 mg/L as CaCO₃

Start Pool: 274 mg/L as CaCO₃

--For the species we tested with, EPA likes to use moderately hard water. Their definition of moderately hard water is water that has a hardness of between 80-100 mg/L, and an alkalinity of 57-64 mg/L, and that's what we follow when making our synthetic control water. I would consider your waters to fall under EPA's "Very Hard" water (hardness of 280-320, alkalinity between 225-245). This shouldn't have an impact on the fish like you're seeing, unless this is a sudden significant change in overall water conditions than what the fish are used to. But I don't know enough to comment on whether this is a direct result of what your fish are exhibiting with the off color and yellow patches.

Turbidity measurements:

Lunch Pool: 6.95 NTU

Start Pool: 1.61 NTU

--Overall I consider these turbidity measurements to be pretty low. There have been instances where we see pathogen related toxicity (PRT) in ambient samples that have high sediment, low flow and low DO. But usually there is some sort of indication of fungal growth on the fish (it doesn't seem like the yellow patches the fish are exhibiting fall under that category), and like I mentioned previously, the DO measurements in the water remained stable, and your turbidity measurements are fairly low, so you can rule that possibility out.

With this preliminary data in mind, I'm thinking that your toxicant may not be a typical chemical and could instead be biological/environmental conditions. In our lab we typically work with chemicals such as heavy metals, pesticides, herbicides, ammonia, pH, DO, salinity, etc, and based on our results, I don't think we're seeing these types of chemicals, since based on the mass mortality you're experiencing in the field, something should be showing up likewise in our tests, and we're not even seeing any sub-lethal endpoint reductions. However, it could be something entirely different; I wouldn't rule out that possibility entirely. I would be most interested in hearing the results of all your

chemical analysis data, hopefully that will give you an idea of what you're working with.

I apologize that all this data is still draft, but based on the results I believe the signals are fairly clear. "

This is really important information and tells us that whatever is killing the fish and crayfish is not detectable by the water toxicology tests.

This narrows our focus to concentrate on other possible factors such as:

- a) environmental conditions (elevated temp, limited DO, or combo of both);
- b) release of a quickly dissipating toxin/chemical from decomposing muck (the halocarbon hypothesis);
- c) some combination of all of the above;
- d) there could be toxin's present in sublethal amounts such that the cumulative stress of sublethal toxin levels AND elevated temperature might be the cause of the observed morbidity/mortality.

MUCK EXAMINATION

Muck was collected on 29 July 2009 and analysis by Dr. Robert Sheath (CSUSM) and Dr. Danutta Bennet and Dr. Tom Dudley (UCSB) indicate that the suite of species is typical of fresh water streams that are nutrient enriched. Dominant species observed included: *Enteromorpha flexuosa*, *Closterium acerosum*, *Beggiatoa sp.*, *Pleurosira laevis*, *Melosira varians*, *Cymbella cf aspera* and *Rhopalodia cf. tenuissima*. None of these species are particularly toxic, however it appears that the abundant filamentous diatom *Pleurosira* and *Enteromorpha* have been shown to produce volatile halocarbons when exposed to high temperatures (Field and Sierra 2003). It is possible that natural chlorination also is playing a role in the lethal conditions as well.

Below is a list of the halocarbons that we would like to look for in Malibu creek water. Thus far I have not found a lab that can do these tests. We may not need to test for everything.

trichloromethane (CHCl₃= chloroform),
trichloroethene (C₂HCl₃= trichloroethylene),
tetrachloroethane (C₂Cl₄= perchloroethylene),
tribromomethane (CHBr₃= bromoform),
dibromomethane (CH₂Br₂),
chlorodibromomethane (CHClBr₂),
bromochloromethane (CH₂BrCl),
bromodichloromethane (CHCl₂Br),
diiodomethane (CH₂I₂),
iodomethane (CHI₃),
iodoethane (C₂H₅I),
chloriodomethane (CH₂ClI),

1-iodopropane (C₃H₇I),
2-iodopropane (isoC₃H₇I),
1-iodobutane (C₄H₉I)
2-iodobutane.

LIVE CAR EXPERIMENT

In addition to the water quality parameters and toxicology, the Technical Advisory Committee recommended that if die-off conditions returned, it made sense to set up live cars with sterile, triploid hatchery trout to observe their response to the conditions in the creek. There are numerous technical issues that need to be resolved in order to set this all up. To date, neither NOAA-NMFS or CDFG have come forward to implement this recommendation.

UPSTREAM CONDITIONS

Our snorkel survey team observed similar conditions of muck distribution, dead crayfish and few sunfish, carp or catfish in the 500 meters upstream of the dam.

Mark Abramson and Stan Glowicki visited several locations between Malibu Lake and the stream gage below Tapia. They observed some dead crayfish near the gage and some muck. The Rock Pool in Malibu Creek State Park looked ok despite low water level and lots of algae. The pools below Malibu Dam were a nasty fluorescent green color and smelled really bad.

Malibu Lake had a fish die off during the past 3-4 weeks and have had extremely low DO levels (around 3 mg.l). The lake was treated on 8/8/09 with chelated copper (Sepro) to control algae. No further treatments have taken place.

FUNDING

We have none! Our Sea Grant emergency request was turned down. This entire effort has been completed thus far with contributions totaling \$1,700 from Sup. Yaroslavsky, Trout Unlimited and SMBRC. This covers the out of pocket expenses for equipment but does not cover any time for the staff needed to maintain and monitor the probes. The RCDSMM has contributed over \$2,000 of volunteer staff time to this effort thus far.

Thanks to assistance from Heal the Bay and the Coastal Conservancy, we hope to be able to cover the \$5,000 cost for the toxicology and bacteriodes tests.

