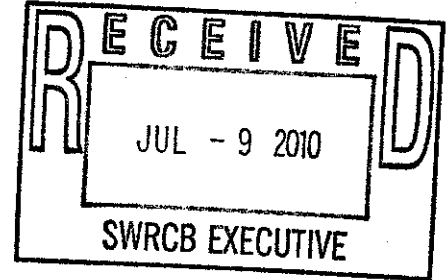


MALIBU BAY COMPANY

July 9, 2010

Via Email & Express Mail

State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
Attn: Jeanine Townsend



Re: Comment Letter – Malibu Septic Prohibition

Dear Jeanine,

Malibu Bay Company is pleased to provide comments for your consideration on the Proposed Basin Plan Amendment to Prohibit On-Site Wastewater Disposal Systems in the Malibu Civic Center [MCC] which was adopted by the Los Angeles Regional Water Quality Control Board [RWQCB] last November. **We oppose the Proposed Prohibition in its present form because it is not based on substantial evidence and is the product of a flawed public process. We urge the State Board to refer the Prohibition back to the RWQCB so it can fully consider the City of Malibu's Community-Based Wastewater Treatment Solution which we believe is the optimum solution to the water quality issues in the MCC.**

We have had a long commitment to water quality issues in Malibu and believe that having clean water at Malibu's beaches is critical for Malibu to remain a vibrant community. While we can't support the Prohibition adopted by the RWQCB, we believe it is essential for significant changes to be made in the way wastewater is handled in the MCC. We look forward to continuing a collaborative relationship with the State and Regional Boards, as well as other key stakeholders to further the goal of clean water in Malibu.

Since the RWQCB's adoption of the Prohibition, the City of Malibu has continued to make progress towards significantly improving water quality in the MCC. Work on Legacy Park is continuing on schedule. Upon completion in the fall of this year, this major storm water treatment facility will treat 100% of the MCC runoff which should make major improvements in water quality.

The City has also moved forward on a number of other initiatives designed to make a MCC wastewater plant a reality. Completion of several new important scientific studies has helped clarify the sources of pollution in the MCC. This new scientific information has enabled the City

to tailor its Civic Center sewer system so that it eliminates water quality risks to the Malibu Lagoon and Surfrider Beach while achieving the strong community support necessary for the formation of an assessment district. The City is holding periodic meetings with all stakeholders to educate the Community about water quality issues in the MCC and the City's progress towards a Civic Center sewer. These efforts by the City are helping to build support for a MCC wastewater plant. Most major property owners in the area to be served by the City's wastewater plant have provided letters to the City supporting the formation of an Assessment District that is essential to finance the plant. They have also sought and received a "*willing seller*" letter from us for our Winter Canyon Wastewater Treatment Plant [WCWTP], which is the preferred location for the MCC wastewater plant.

It is important to contrast the steps the City has taken to make a municipal wastewater plant in the MCC a reality with the tragic example of Los Osos, where *decades* after a similar Prohibition was adopted, there is still no municipal wastewater solution for that Community. We believe that the Prohibition enacted by the Los Angeles Regional Board is seriously flawed and has a high risk of repeating the Los Osos debacle. The broad extent of the Prohibition's boundary raises important unanswered questions about whether or not there are feasible disposal options for all of the treated wastewater or if there is sufficient Community support for an Assessment District encompassing the Prohibition's present boundaries. The City's plan, however, has strong Community support, will clean up the beach and lagoon and is feasible to complete in a timely manner.

The Prohibition adopted by the Los Angeles Regional Board is the result of a defective public process. An exemption for "zero discharge" systems needs to be included in the Prohibition.

Malibu Bay Company and other members of the Public were prevented from commenting on the removal of an exemption for "*zero discharge*" wastewater systems. An exemption was included in the July 31st draft Prohibition but was removed in the Staff's Oct 21st draft Prohibition, two weeks after the October 8th close of the formal Comment Period, preventing the Public from providing comments on this material change. In addition, we were prevented from providing meaningful testimony on the Prohibition at the Nov. 5, 2009 Public Hearing because our testimony was limited to only one minute.

California faces critical water shortages and it is essential that water recycling be implemented. In fact, State Water policy mandates that recycling be encouraged. Not only do these systems promote water recycling but, by definition, "*zero discharge*" systems do not impact groundwater quality in the MCC. That fact has subsequently been acknowledged by the RWQCB who recently approved a permit for a "*zero discharge*" system in the MCC for the La Paz project.

This approval contradicts Staff's justification for their removal of the "zero discharge" exemption which said:

"Staff has eliminated this exemption, which was in the July 31st draft, after reviewing public comments. All of the comments, taken together, demonstrate the difficulty of proposing an exemption for "zero discharge" projects that will make progress towards the objective of restoring beneficial uses of water quality, due to design and operational constraints." [Response to Comments - #129]

As noted in our October 8, 2009 Comment Letter, Malibu Bay Company was preparing an application for a vacant Civic Center property that included a "zero discharge" On-Site Wastewater Treatment Facility. Removal of this exemption discourages and delays water recycling in the MCC and we believe is contrary to established State water policies. Malibu Bay Company and other members of the public who support the inclusion of the "zero discharge" exemption had no opportunity to comment on the Staff's removal of this substantive provision. Clearly, the RWQCB now does not support their reason for the removal of this exemption. The Prohibition should be referred back to the RWQCB for reconsideration to allow public comment, provide the RWQCB an opportunity to rethink the removal of the exemption in light of recent approvals and to preempt legal challenges.

The Administrative Record provided by the RWOCB is incomplete.

In response to Malibu Bay Company's October 8, 2009 Comment Letter, we were contacted by several members of the Board's Staff seeking clarifications and additional information about the operation of our WCWTP. Through a series of e-mails, phone calls and an additional letter, a great deal of supplemental information was provided to Staff which is not part of the Administrative Record. The WCWTP is cited numerous times in several Technical Reports as an important reason for the inclusion of the Winter Canyon aquifer in the boundaries of the Prohibition. Attached is a copy of my October 30, 2009 letter to Wendy Phillips which was not provided to the RWQCB for their consideration.

There is a lack of substantial evidence that the Winter Canyon Drainage [WCD] should be included within the boundaries of the Prohibition.

As outlined in our October 8, 2009 Comment Letter and the October 30, 2009 letter noted above, the RWQCB has not provided substantial evidence to justify the inclusion of the WCD in the boundaries of the Prohibition. The Staff's Response to Comments simply ignores the evidence provided, substitutes its "... professional judgment ..." for facts we provided or inappropriately cites facts from other groundwater aquifers as justification for the inclusion the WCD in the Prohibition.

The WCWTP, operated on our behalf by Integrated Performance Consultants [IPC], has not had a poor record of compliance with the RWQCB's Waste Discharge Requirements [WDR]. Subsequent to the Response to Comments by Staff, they acknowledged that many of the alleged violations for alleged late submission of Quarterly Reports were "minor" violations. IPC's detailed October 4, 2009 letter documents the plant's exemplary record of compliance with the requirements of its WDR.

There is no evidence provided to support that wastewater disposal *in the WCD* contributes to any exceedance of Pathogens or Nitrogen limits for Water Contact Recreation. Staff acknowledged that, "... *there is not a beach monitoring station at the mouth of Winter Canyon*" and therefore, no evidence of violations of water quality standards in the ocean from wastewater discharges in Winter Canyon. Instead Staff states it "... *believes that pathogens in groundwater impair Amarillo beach...*" [Response to Comments, #126]. Staff did not dispute or comment on the current test results for four, upgradient groundwater wells closest to the ocean at the mouth of the WCD which were included with our October 8th Comment Letter. These test results show that there is no bacterial impact from wastewater disposal in the WCD which impacts the groundwater and contributes to any violations of the Pathogens or Nitrogen Limits for Water Contact Recreation in the ocean.

IPC, on behalf of Malibu Bay Company, also provided Staff with detailed supplemental data which documents that the volume of wastewater disposal from the WCWTP has shown a decrease not an increase as was indicated in Technical Memo #5. Staff acknowledges that it was unable "... *to reconcile discrepancies...*" in their assumed flow volumes which are based on their "... *best professional judgment...*," not facts. In addition, the wastewater flows from the only other significant wastewater plant in Winter Canyon, the Malibu WPCP, showed decrease in flows of over 775,000 gallons, a -7.5% reduction between 2007 and 2008 [TM5-14]. Instead, Staff goes on to conclude that:

"...even when the Colony Plaza is eliminated from the analysis, an increasing waste flow trend for the Malibu Civic Center area still remains." [Supplement to Response 29 Waste Flow Trends].

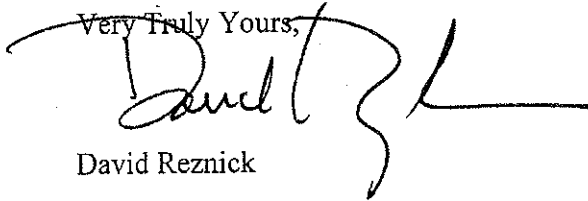
This conclusion is based on the flow volumes from dischargers not located in the WCD. It is inappropriate to use data from separate groundwater aquifers to justify the inclusion of the WCD within the Prohibition boundaries when, in fact, the wastewater flows to Winter Canyon have decreased.

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The Prohibition was adopted by the RWQCB as a result of a flawed public process and the inclusion of the WDC is not supported by substantial evidence. The MCC does need sewers and a Prohibition based on the boundaries proposed by the City of Malibu is appropriate. The State Board should refer the Prohibition back to the RWQCB for further consideration.

Please let us know if we can provide any additional information.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "David Reznick", with a long horizontal flourish extending to the right.

David Reznick

DR:ss
Attachment

cc: Jim Thorsen, City of Malibu

MALIBU BAY COMPANY

October 30, 2009

Via E-mail & Regular Mail

Wendy Phillips
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Re: **Comment Letter** --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

Dear Wendy:

I want to thank you for the opportunity to respond to Staff's questions about my October 8th Comment Letter. Based on your phone call, we have carefully studied your revised Technical Memorandums and had follow up conversations with several Staff members.

Staff has raised questions regarding the effluent volumes for 2004, 2005 and 2006 at our Winter Canyon Wastewater Treatment Plant [WCWTP] that we presented in our October 8, 2009 Comment Letter. You have cited what you believe are "discrepancies" in the data we submitted, specifically, the relationship of the potable water use and reported effluent volume. Because of these questions, you have ignored the actual volumes and instead, continue to rely on the estimates made by Staff for the effluent volumes for 2004, 2005 and 2006. Your reliance on your estimates causes you to reach the inaccurate conclusion that effluent flows to the WCWTP have increased substantially between 2004 and 2008. This is not the case.

For 2005, you questioned why the actual potable water bills were essentially identical to the effluent volumes. We have carefully reviewed the water bills from the project and discovered that although the effluent volumes were accurate, the 2005 potable water volume we reported did not include the usage from three businesses located east of Webb Way. Inclusion of the water bills for 23648 PCH, 23656 PCH and 23670 PCH brings the actual potable water use for 2005 to 12,803,730 gallons. We appreciate the opportunity to correct this data.

For 2004, you have raised the opposite issue (i.e., why the potable water use was significantly larger than effluent volume). The large gap was due to a larger than normal

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quantity of landscape irrigation. During 2004, we experienced significant leakage problems with our irrigation system which, when coupled with poor diligence by our landscape contractor, lead to a large spike in the amount of irrigation water used. After making extensive repairs to the irrigation system and replacing the landscape maintenance company, the problem was eliminated.

It is important to note that the effluent volumes we submitted for 2004, 2005 and the first three quarters for 2006 are the actual numbers from our pump station. We only included the data on potable water use as additional evidence to corroborate the flow volumes contained in IPC's October 4, 2009 report.

Additionally, it is still not clear what methodology or evidence Staff used to arrive at the waste flow estimates shown in Technical Memorandum #5 for the WCWTP. For 2006, your footnotes indicate you have annualized the Fourth Quarter volumes we reported. Use of this methodology is appropriate only if the quarterly waste flows are approximately equal during the entire calendar year. It is a well known fact, which is substantiated by our quarterly reports for 2007, 2008 and 2009, that there are significant seasonal fluctuations in wastewater flows. Millions of people visit Malibu during the warm weather creating large increases in the size of the wastewater generated during the summer. Your methodology simply fails to account for the increased impact of the summer visitor traffic in Malibu. You therefore significantly underestimate the waste flows for 2006. You have not challenged the actual waste flows shown in IPC's October 4, 2009 report or indicated why annualization of the Fourth Quarter volumes is appropriate.

Staff has estimated the waste flows for 2004 and 2005 at 5,000,000 gallons. The footnotes found in Appendix A to Technical Memorandum #5 present the following explanation for these estimates:

"Malibu Colony Plaza

2004: No waste flow data was available until the Q3 of 2006, therefore based on available data from 2006, 2007, and 2008, annual waste flow is estimated to be 5 million gallons.

2005: No waste flow data was available until the Q3 of 2006, therefore based on available data from 2006, 2007, and 2008, annual waste flow is estimated to be 5 million gallons."

Since these footnotes do not provide any justification or significant evidence for the estimated waste flows, I contacted the author of Technical Memorandum #5 by e-mail and subsequently, by telephone. Staff was not able to provide any basis for their estimates other than to say that "*We used our judgment.*" Judgment is important but when proposing to make significant changes in the Basin Plan, this judgment must be

based on significant evidence. Staff has not provided any evidence for the estimated waste flows it has made for the WCWTP. The estimated waste flows shown in Appendix A for the WCWTP are not accurate and significantly underestimate the flow volumes for 2004, 2005 and 2006.

Technical Memorandum #5 reaches the conclusion that, *"Waste flow volumes have been steadily increasing..."* It is incorrect to apply this conclusion to Winter Canyon where actual waste flows have been declining. In fact, the waste flows from the WCWTP have actually shown a declining trend.

In addition, the data presented in Appendix A in Technical Memorandum #5 for other dischargers in Winter Canyon also show either a stable or declining trend of waste flow. The largest single discharger in Winter Canyon, Malibu WPCP, shows a fairly consistent level of flow, an average of approximately 10,500,000 gallons from 2004 through 2008. The highest flow levels, 11,584,000 gallons in 2007, are based on an estimate since actual data for the entire year is apparently not available. The other dischargers referenced, HRL [2004 flows – 1,389,829 gallons vs. 2008 flows – 923,572 gallons] and Public Works Road Maintenance Yard No. 326 [2004 flows – 123,218 gallons vs. 2008 flows – 91,919 gallons] also show declines in waste flows. In short, there is no evidence that the waste flows in Winter Canyon are increasing and in fact, they appear to be declining.

We also note that the volumes of "Annual Total Hauled" for the WCWTP presented in Appendix A of Technical Memorandum #5 have not been corrected. IPC's October 4, 2009 report, attached to our October 8, 2009 Comment Letter presents a table outlining the correct volumes of hauling as contained in our quarterly reports. The only explanation cited for why Staff's numbers differ from our quarterly reports is in the footnote in Appendix A which indicates that estimates were made for 2006 "...Q4: Hauled volume estimated to be the same as Q3." Perhaps this confusion was created because we changed the Plant Operator, concurrent with the start of the new treatment system after the third quarter of 2006. Therefore, the report for the Fourth Quarter of 2006 was submitted by IPC, not Bio-Solutions, who reported the hauling volumes for the first three quarters of 2006. Finally, there is no explanation for why the hauling volumes in Appendix A for 2004 and 2008 differ from the data contained in our quarterly reports for the respective periods.

We also disagree that the correct hauling volumes leads to the conclusion, *"...that waste is being hauled off-site for disposal to prevent OWDS failure, and not as part of regular septic system maintenance."* While Staff's conclusion is one possible reason for hauling, and this may indeed be the case for some dischargers, this is not the case for the WCWTP. Detailed reasons for the hauling from WCWTP can be found in IPC's October 4, 2009 report.

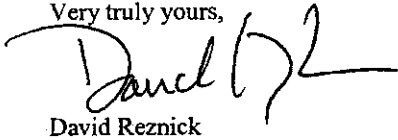
Wendy Phillips
October 30, 2009
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In summation, we find no significant evidence that there is any justification for including Winter Canyon within the boundaries of the *Proposed* Prohibition.

We appreciate the opportunity to respond to your questions and to present these additional clarifications and comments.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "David Reznick", with a stylized flourish extending to the right.

David Reznick

cc: Dr. Rebecca Chou
Dionisia Rodriguez
Jim Thorsen, City of Malibu