



# CITY OF NEWPORT BEACH WATER QUALITY/COASTAL TIDELANDS COMMITTEE AGENDA

Crystal Cove Conference Room

Thursday, February 2, 2023 - 3:00 PM

## *Water Quality/Coastal Tidelands Committee Members:*

**Council Member Joe Stapleton, Chair**  
**Council Member Brad Avery, Vice Chair**  
**Peter Belden, Member**  
**Curtis Black, Member**  
**Louis Denger, Member**  
**Charles Fancher, Member**  
**Lawrence Houston, Member**  
**Richard McNeil, Member**  
**George Robertson, Member**

## **Staff Members:**

**Jim Houlihan, Deputy Public Works Director/City Engineer**  
**John Kappeler, Senior Engineer**  
**Karen Gallagher, Administrative Assistant**

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The Water Quality/Coastal Tidelands Committee meeting is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Water Quality/Coastal Tidelands Committee agenda be posted at least seventy-two (72) hours in advance of each regular meeting and that the public be allowed to comment on agenda items before the Committee and items not on the agenda but are within the subject matter jurisdiction of the Water Quality/Coastal Tidelands Committee. The Chair may limit public comments to a reasonable amount of time, generally three (3) minutes per person.

The City of Newport Beach's goal is to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, we will attempt to accommodate you in every reasonable manner. Please contact John Kappeler, Water Quality Enforcement Manager, at least forty-eight (48) hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible at (949) 644-3218 or [jkappeler@newportbeachca.gov](mailto:jkappeler@newportbeachca.gov).

## **NOTICE REGARDING PRESENTATIONS REQUIRING USE OF CITY EQUIPMENT**

Any presentation requiring the use of the City of Newport Beach's equipment must be submitted to the Public Works Department 24 hours prior to the scheduled meeting.

- 1) **CALL MEETING TO ORDER**
- 2) **ROLL CALL AND INTRODUCTIONS**
- 3) **PUBLIC COMMENTS ON AGENDA ITEMS (10 min)**

*Public comments are invited on agenda items. Speakers must limit comments to five minutes. Before speaking, we invite, but do not require, you to state your name for the record. The Committee has the discretion to extend or shorten the speakers' time limit on agenda items, provided the time limit adjustment is applied equally to all speakers. As a courtesy, please turn cell phones off or set them in the silent mode.*

- 4) **REVIEW AND APPROVAL OF MINUTES (5 min)**

*Recommendation: Approve minutes as presented*

[WQCT Draft Minutes 11032022](#)

- 5) **CURRENT BUSINESS (55 min)**

(a) Surfrider Foundation/Help Your Harbor Donation (Mark Ward) (15 min)  
Acceptance of a donation in the amount of \$12,415.45 towards the purchase of a new marina trash skimmer for the Rhine Wharf public dock.

(b) Committee Goals/Objectives (Bob Stein) (40 min) Review and status update on the committee's goals and objectives.

Recommendation: Committee Discussion

6) **COMMITTEE ANNOUNCEMENTS OR MATTERS WHICH MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM) (10 min)**

(a) Newport Beach Trash Interceptor Public Outreach Campaign (March 2023)

(b) IRWD Siphon Reservoir Project (March 2023) - Objective 18

(c) Balboa Island Drainage Plan (April 2023) - Objective 12

(d) Total Maximum Daily Load for Copper (Cu) April 2023

7) **PUBLIC COMMENTS ON NON-AGENDA ITEMS (5 min)**

*Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Committee. Speakers must limit comments to three minutes. Before speaking, we invite, but do not require, you to state your name for the record. The Committee has the discretion to extend or shorten the speakers' time limit on non-agenda items, provided the time limit adjustment is applied equally to all speakers. As a courtesy, please turn cell phones off or set them in the silent mode.*

8) **SET NEXT MEETING DATE (5 min)**

*Recommendation: March 2, 2023*

10) **ADJOURNMENT**

**ATTACHMENTS:**

*Bay and Ocean Bacteriological Test Results*

**Date:** October 3, 2022  
**Time:** 3:00 p.m.  
**Location:** Newport Beach Civic Center, Crystal Cove Conference Room  
**Meeting Minutes prepared by:**

**1. Call meeting to order**

The meeting was called to order at 3:01 p.m. by Chair Duffield

**2. Roll Call and Introductions**

**Committee Members Present:**

Councilmember/Chair Duffy Duffield - PRESENT  
Peter Belden - PRESENT  
Louis Denger - PRESENT  
Charles Fancher - PRESENT  
Tom Houston - PRESENT  
George Robertson - PRESENT

**Committee Members Absent:**

Councilmember/Vice Chair Noah Blom  
Curtis Black  
Richard McNeil

**Guests Present:**

Nancy Gardner, Orange Coast River Park - PRESENT  
George Hylkema - PRESENT  
Nancy Scarbrough, Resident - PRESENT  
Jon Wadsworth, Surfrider Foundation - PRESENT

**Staff Present:**

Karen Gallagher, Administrative Assistant - PRESENT  
John Kappeler, Senior Engineer - PRESENT

**3. Public Comment on Agenda Items**

None

**4. Review and approval of minutes (5 min)**

Motion. Committee Member Tom Houston moved to approve the minutes as presented; Committee Member Charles Fancher seconded; motion approved unanimously.

**5. Current Business (50 min)**

- (a) Committee Goals/Objectives (Bob Stein) (10 min) Review and status update on the committee's goals and objectives.

**Recommendation: Committee Discussion**

Assistant City Engineer Bob Stein reported Big Canyon 3 Project is moving forward. He advised that 80% is located on California Department of Fish and Wildlife (CDFW) property and 20% is on City land. He noted it will be the final leg of the Big Canyon area and includes the mosquito breeding area next to Back Bay Drive. He reported Newport Bay Conservancy will receive \$5 million for construction and noted construction could start in fall 2023.

Assistant City Engineer Stein reported that contaminants from San Diego Creek and Delhi Channel get caught in the Dunes Lagoon area and noted it has become the focus of a special study being conducted by the County of Orange. He advised there are always exceedances in Newport Dunes and noted that while the County is looking at all the sources of contamination, the study is focused on the storm drain system. He provided a map to the committee and described the area. He explained that when the diversion is on the bacteria in the lagoon drops.

Senior Engineer John Kappeler explained that when the diversion is on the posting drop.

Assistant City Engineer Stein advised explained the Continuous Deflection Separation (CDS) Unit is a great collector of trash but also a great breeder of bacteria. He explained the real concern is that the fecal indicator bacteria can come from numerous sources but the real concern is when it comes from human sources. He explained there is another human-specific marker (HF183) which helps identify the human source viruses being introduced in the storm drain system. He reported the County has been measuring HF183 for the last 5 or 6 weeks to see if there is any correlation between the hits of bacteria in the bay and the hits through the storm drain system.

Nancy Gardner inquired if there are any homeless encampments in the area.

Assistant City Engineer Stein reported there are not any but recalled smelling urine on the downstream side of Jamboree Road. He reported measurements will be taken for another year but does not anticipate the cause coming from a human source.

Ms. Gardner inquired if there are any benefits for the City if after 1 year there are no hits for human sources.

Assistant City Engineer Stein advised at the 1-year mark the City can ask the County to discontinue investigating the City's storm drain because they will be able to safely determine that the contaminants are coming from the Delhi Channel. He reiterated that the City knows where it is coming from but the County refuses to investigate.

Committee Member George Robertson requested clarification regarding who "they" is referring to in this discussion.

Assistant City Engineer Stein advised he is referring to the County of Orange and noted they are also looking at Abalone Street and 15th Street Beach which he knows will not result in any findings.

There was no further action taken on this item

- (b) Newport Harbor Vessel Pump-out Program (John Kappeler) (15 min) Committee approval to send a letter to the State of California's Division of Boating and Waterways on the effectiveness of the "particle separator".

**Recommendation: Committee Review/Approval**

Chair Duffield advised that he and George Hylkema worked together on the Mooring Association and noted he has been a valuable asset to the mooring fields. He reported Mr. Hylkema designed a device that filters out the debris and eliminates pump failure.

Mr. Hylkema described how the Particle Separator works. He explained it is a peristaltic pump and atmospheric pressure moves the substance through the hose. He advised that users have used the pumps to also pump out their bilges and that is where harmful debris can be introduced and cause the system to fail. He explained that if one screw enters the pump it will destroy the hose inside with a replacement hose costing roughly \$1,200 plus labor.

The City has purchased five Particle Separators from him and has had no pump failures since they have been installed. He provided handouts with images of debris that has gone through the pump. He displayed the housing for the committee to view and displayed the Particle Separator which uses standard PVC plumbing pipes. He noted it is very durable. He advised when it is first installed he maintains them weekly and then monthly thereafter.

Committee Member Chuck Fancher inquired if the Particle Separator is a 100% capture device.

Mr. Hylkema noted that he is unsure if it is 100% capture but advised that debris that damages the pumps consistently gets captured. He advised he has installed clear PVC and tested the system so he has a video of the debris being captured.

Chair Duffield noted as an inventor himself it is very easy to over-invent something and make it very complicated. He advised the Particle Separator has no moving parts, uses very simple materials, and does the job. He noted its simplicity is phenomenal. He thanked Mr. Hylkema for inventing the device and saving the City thousands of dollars.

Senior Engineer Kappeler reported the City spent up to \$30,000 per year maintaining the pumps. He advised there have been no failures since the Particle Separator has been installed. He noted that State Inspectors also inspect the pumps and have requested the Committee send a letter to the State explaining how the Particle Separator works. He advised the item is to approve the submittal of a letter to the State of California's Division of Boating and Waterways on the effectiveness of the "Particle Separator".

Ms. Gardner inquired if this can be used to capture bilge waste.

Senior Engineer Kappeler explained it cannot be advertised for that type of use because if there is fuel in the bilge it becomes an issue with the Sanitation District. He explained the Particle Separator is a device to keep the pump out stations working.

Ms. Gardner inquired if something like this was available to pump the bilge separately. He advised it would be approximately \$300,000 to build a bilge pump out.

Ms. Gardner inquired if the Particle Separator was installed on the pump out in the Harbor. Senior Engineer Kappeler advised the pump out is owned by the County and they did not want to use the Particle Separator. He noted additional sites and the State is now interested in the device.

Motion. Committee Member Fancher moved to submit the letter to the State of California's Division of Boating and Waterways on the effectiveness of the "particle separator"; Committee Member Robertson seconded; motion approved unanimously

Committee Member Louis Denger inquired if PVC will be used long-term on the Particle Separator. Assistant City Engineer Stein advised the problem does not seem to be with the PVC. Mr. Hylkema advised PVC is recognized worldwide for water pressure.

- (c) Newport Beach/Bay Water Quality Sampling (Peter Belden) (15 min) Update on a proposed pilot program to perform additional water quality sampling after rain events.

**Recommendation: Committee Discussion/Approval**

Committee Member Peter Belden reported that after a measurable rain event (0.2”), the OC Health Care Agency advises beachgoers to avoid contact with the ocean and bay for at least 72 hours. He explained this guidance is based on assumptions of water quality, rather than test results that identify the presence of bacteria. He advised the current testing method takes 1 to 3 days to produce results. He noted water testing is conducted on a schedule and the City gets dinged on the Water Quality report. He presented an example of a Rain Advisory in Effect announcement on OC Health. He explained it does not provide much guidance on when beachgoers can go back into the water.

Committee Member Belden recommends using qPCR testing which provides test results in hours, not days. He reported San Diego County replaced the old culture-based testing with qPCR testing in May 2022. He explained it is a more accurate method of testing. He presented a video of San Diego County’s success story with qPCR Testing.

Committee Member Belden proposed 1-year test pilot that will include current testing sites. He explained that after a rain event samplers will collect samples at 6:00 a.m. and deliver them to the lab by 8:00 a.m. He noted by noon the test results will be available and can be used to disseminate the information to the pertinent channels. He advised there is some benefit to selecting the 5 currently tested sites for comparison purposes. He reported the tests cost \$70 per test and the total cost for the 1-year pilot would be approximately \$2,450.

Committee Member Tom Houston inquired if this is a different test or if a different organization conducting the testing. Committee Member Belden reported visiting the Back Bay Science Center on Shellmaker Island to discuss qPCR Testing and see how it is done.

Committee Member Belden reported the goal of this pilot is to help reduce the number of posting days in the Water Quality Report. He advised if testing is done the right away, the City will not get dinged on the report.

Committee Member Fancher noted this is a tremendous public service and inquired about what is needed to implement the pilot. Chair Duffield advised the pilot simply needs approval from the Committee.

Committee Member Belden reported that the benefits to residents and visitors will receive same-day test results and guidance on entering the water, potentially reducing the number of Posting Days for Newport Beach on the Orange County Health Care Agency Annual Water Quality Report.

Committee Member Houston inquired about what is now different. Committee Member Belden explained the old test was culture-based and the new test is on the DNA molecular level.

Committee Member Fancher inquired how the testing will be funded. Senior Engineer Kappeler if the committee approves it, he and Assistant City Engineer Stein will go to Public Works or the City Council for funding.

Jon Wadsworth expressed support for the pilot but encouraged the pilot to include a site that could potentially get dinged for comparison purposes.

Senior Engineer Kappeler explained OC Health errs on the side of public health and while they could still issue a 3-day warning they could also quickly reopen those beaches based on the rapid test results.

Committee Member Fancher inquired if any labor requirements were being added by piloting this program. Senior Engineer Kappeler reported he and Committee Member Belden will be running the samples to the lab so no labor costs will be incurred.

Committee Member Fancher inquired how the program becomes permanent. Senior Engineer Kappeler recommended conducting the 1-year pilot and then assessing it when completed.

Committee Member Belden made a motion to approve the recommendation for funding a proposed pilot program to perform additional water quality sampling after rain events; Committee Member Fancher seconded; motion approved unanimously

Committee Member Denger recommended using the same location but perhaps the focus on the coastal sites. He recommended 19th Street (Bay) and add a dirtier ocean beach.

Chair Duffield opened public comments.

Jon Wadsworth recommended testing right by the river mouth.

Chair Duffield closed the public hearing.

The Committee discussed testing locations. Orange Street, 52nd Street, 38t Street, 19th Street (Bay), and the river mouth were selected for testing.

Motion. Committee Member Belden made a motion to approve the recommendation for funding a proposed pilot program to perform additional water quality sampling after rain events; Committee Member Fancher seconded; motion approved unanimously

- (d) Lower Newport Bay Copper TMDL Hearing (John Kappeler) (20 min) Update on the status of the draft Copper TMDL for Newport Bay, and the Santa Ana Regional Water Quality Control Board hearing scheduled for Friday, December 2, 2022.

**Recommendation: Committee Discussion**

Senior Engineer Kappeler reported that copper boat paint in Newport Bay has been a concern of the Santa Ana Regional Water Quality Control Board for over 14 years. He advised the Total Maximum Daily Load for Copper is 3.1 parts per billion which have never been enforced by the Board. He noted they want to replace that TMDL with a new one on December 2nd at their meeting in Anaheim. He reported he requested they hold their meeting in Newport Beach because this is where the boating community resides but they declined.

Senior Engineer Kappeler reported the City put together a fact sheet that talks about what the TDML means, what the regulations should be, and the City's thoughts on the matter. He explained that boat owners can legally purchase copper boat paint and paint their boats. He advised the Department of Pesticide Regulation (DPR) has deemed it legal. He explained the Water Quality Control Board is stating that there is a problem if the TMDL is over the limit. He noted that the City

does not agree with the problem although he acknowledged the City is over the TMDL limit.

Senior Engineer Kappeler reported the City has partnered with the Department of the Pesticide Regulation to sample approximately 46 sites in the Bay. He advised 5 sites tested at 4, but all other sites tested below the maximum levels the last time the testing was conducted in 2019. He noted the City is below average but the Water Quality Control Board does not agree and is requesting remediation. He advised the City respectfully does not agree with the science.

Senior Engineer Kappeler advised the Water Quality Control Board's counterpoint to the City is that there is a state Toxicity Criteria Rule that they are required to enforce. He advised the Water Quality Control Board has never adopted the new TMDL but believes they will at the next meeting. He noted the City is still partnering with DPR and but the City's stance is that they are close enough to the maximum levels. He advised DPR needs 5 to 6 years of data to determine the impact of the boat paint that changed 2 years ago.

Senior Engineer Kappeler reported the City of Marina Del Ray requires all boat owners to submit paperwork for permits along with paying for a new permit. He encouraged the boater community to attend the meeting via Zoom as it will have a tremendous regulatory impact on the community.

Ms. Gardner inquired if tissue samples have been conducted. Senior Engineer Kappeler reported they have not been conducted since 2016.

Senior Engineer Kappeler encouraged the boater community to attend this meeting. He advised they will be conducting community outreach and providing the fact sheet to the boater community.

Committee Member Houston recalled that bottom boat paint used to last for years. He advised that it now needs to be painted every year or every other year to keep it clean.

Committee Member Fancher commented that the State adopts the new TMDL and the local agencies have no choice but to enforce it. He inquired if there has been any outreach going to the Harbor Commission.

Senior Engineer Kappeler reported the City Attorney's Office is working on investigating the legality of this issue. He explained boats are registered just like vehicles are registered at the Department of Motor Vehicles (DMV).

Committee Member Fancher inquired if there are any alternatives to copper-based paint. Chair Duffield advised there is not one yet.

Senior Engineer Kappeler reported that an additional problem is the leach rate from the paint. He explained that commercial boats are exempt from the rule.

Committee Member Fancher inquired if there is a solution to this problem. Chair Duffield inquired about the result of the copper. Ms. Gardner reported the City has been asking for the result of the copper impact for years.

Senior Engineer Kappeler reported the City has offered to partner with DPR and provided possible solutions which were rejected.

Ms. Gardner inquired if the City conducted copper testing on the storm drains. Senior Engineer Kappeler confirmed testing was conducted but the scientists have determined the issue is coming



from the boats.

Chair Duffield reported this was his last meeting with the Committee and unfortunately would need to leave early due to a prior engagement. Committee Member Houston continued the meeting in his absence.

Senior Engineer Kappeler advised he is looking for help to get this information out to the boater community. He advised the shipyards, Mooring Association, and the Harbor Commission can all get the word out to the boating community. Nancy Scarbrough recommended informing yacht clubs in the area.

Committee Member Fancher noted this is a real conundrum for the boating community.

Committee Member Denger if the samples that exceeded the TMDL made sense to staff. Senior Engineer Kappeler explained the State Board is looking at a 10% exceedance.

Committee Member Denger suggested the City inquire if the Water Quality Control Board would consider forestalling action until after 2023.

Committee Member Fancher noted the cost of compliance will need to get into the City's budget. Senior Engineer Kappeler confirmed this could add several million dollars to the City's budget quickly.

Committee Member Fancher inquired if the Harbor Commission should be the public face on this. Senior Engineer Kappeler advised the best defense is for the public to attend the meeting.

Committee Member Belden inquired if Senior Engineer Kappeler could send the information out to the group. He encouraged residents to write personal letters and not use a City form letter.

Senior Engineer Kappeler explained this has been an ongoing issue since 2010.

Mr. Hylkema noted that it would be almost impossible to establish that it was his boat that was causing the problem based on a water sample. Mr. Hylkema encouraged the boater community to attend the meeting.

There was no further action taken on this item.

#### **On-Going Business (5 min)**

- (a) Bay and Ocean Bacteriological Test Results (John Kappeler) (5 min) Review and discussion of recent water quality test results within Newport Bay and along the ocean shoreline.

#### **Recommendation: Receive and File**

Senior Engineer Kappeler reported 35 locations are tested every Monday. He explained there were a few exceedances but nothing to worry about. He advised the Dunes Diversion is back on so the water looks good. He reported the ocean beaches have been clean as can be for a long period.

Committee Member Houston commended all those involved for doing an outstanding job in minimizing the problems.

The item was received and filed.

**7) Committee Announcements on Matters which Members would like placed on a future agenda for discussion, action, or report (Non-Discussion Item) (5 min)**

- (a) Newport Beach Trash Interceptor Public Outreach Campaign (November)
- (b) IRWD Siphon Reservoir Project (Fall 2022) – Objective 18
- (c) Balboa Island Drainage Plan (Winter 2022) – Objective 12

Senior Engineer Kappeler reported the Trash Interceptor campaign will begin in February and will include naming the wheel and establishing social media outreach.

Committee Member Houston noted this Committee has been an amazing experience and noted the City is receiving great value in identifying and resolving problems within the City.

Senior Engineer Kappeler reported the rapid testing is likely to get funding and he and Committee Member Belden will report back at the February meeting.

Committee Member Fancher inquired about agendizing a future item to discuss recycling water.

**8) Public Comments on Non-Agenda Items (10 min)**

None

**9) Set Next Meeting Date (5 min)**

Recommendation: February 2, 2023

**10) Adjournment**

The meeting was adjourned at 4:06 p.m.

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Vice Chair / Noah Blom