

CALIFORNIA COASTAL COMMISSION

ENERGY, OCEAN RESOURCES AND FEDERAL CONSISTENCY
455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105-2421
VOICE (415) 904-5200



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Tijuana River Pollution Crisis Update

Background

At the conclusion of the October 11, 2023, informational briefing on the Tijuana River Pollution Crisis held by the California Coastal Commission (Commission) in Imperial Beach, several Commissioners identified follow-up questions for the U.S. Environmental Protection Agency (EPA) and U.S. Section of the International Boundary and Water Commission (IBWC). Per the Commission's direction, Commission staff prepared a memorandum with those questions (included as Appendix B to this document) and provided it to relevant staff at EPA and IBWC. On November 7, 2023, EPA and IBWC provided a letter responding to that memorandum. That letter is included as Appendix A to this document.

Appendices

Appendix A – November 7, 2023, Letter to Commission staff from EPA and IBWC

Appendix B – Memorandum for EPA and IBWC with Commissioner Questions from October 11, 2023, Informational Briefing



**International Boundary and Water Commission
United States and Mexico
United States Section**



REGION 9

SAN FRANCISCO, CA 94105

Cassidy Teufel
Deputy Director
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105-2421

Dear Mr. Teufel,

We would like to take this opportunity to thank the California Coastal Commission for taking the time to transcribe and send the questions that would allow the International Boundary and Water Commission, United States Section (USIBWC) and United States Environmental Protection Agency Region 9 (EPA) to better prepare a response.

The following are responses to the questions and comments posed during the meeting in the order they were provided on October 20, 2023:

- Suggestions that Commissioner Giner watch recording from the point that she left and that she come back to the next meeting to answer the questions.

Due to a long-standing commitment regarding Colorado River negotiations with Mexico, an effort that will ultimately benefit the state of California, Commissioner Giner was unable to stay for the entire length of the meeting. However, two USIBWC staff members were able to stay and provided an extensive briefing of the concerns raised during the public comment period. In addition, Commissioner Giner has informed Chair Donne Brownsey that she would be available to attend the next meeting on November 15, 2023, virtually, and has offered to participate in person in subsequent meetings. On November 15, USIBWC in conjunction with several U.S. and Mexican stakeholders is having a symposium on Rio Grande on that day in McAllen Texas, a region facing a serious drought, similar to that being faced on the Colorado River.

- Since the \$300 million was originally allocated, why wasn't all the design-build work done so that the moment the project was funded, the construction would begin?

Prior to design and construction, federal agencies are required to document compliance with the National Environmental Policy Act (NEPA), including compliance with cross-cutting regulations such as the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA). The U.S.-Mexico-Canada Agreement (USMCA) legislation entered into force July 2020. In 2021, EPA commenced early engagement with key partners and in parallel applied the USMCA funds to conduct a feasibility analysis. In 2022, the Draft Programmatic Environmental Impact Statement (PEIS) was published with the Final PEIS issued November 2022. After extensive ESA consultation with federal resource agencies, the NEPA Record of Decision (ROD) was issued in June 2023. Issuance of the ROD allows for design and construction activities to proceed.

In addition, concurrent activities were undertaken to prepare USIBWC for this effort. USIBWC construction staff consisted of only four people for the entire United States-Mexico border and USIBWC recognized that more staffing would be needed to execute a project of this magnitude. Therefore, USIBWC strategically moved towards contracting a program management firm in early 2022 using USIBWC funds. In August 2022, EPA and USIBWC entered into an Interagency Agreement to reimburse USIBWC by providing approximately \$3 million of the USMCA appropriation for the program management work. This was done in parallel with EPA's NEPA compliance process that identified the preferred alternative under the PEIS.

In December 2022, Congress provided an additional authorization for EPA to transfer USMCA funds to USIBWC for design and construction. At this time, the program management contract for pre-design activities had already been solicited and awarded and work had begun. The contract completed the following initial planning and project development work required to get to design and construction: facility assessment and identification of rehabilitation needs; evaluation of the largest possible expansion, evaluation of the best contracting methods for this project, and further development of the estimates for the expansion and rehabilitation. A project of this scope and magnitude for the expansion of an existing treatment plant is extremely complex and requires evaluation and planning to determine the existing conditions and needs to expand the infrastructure.

The pre-solicitation notice for the design-build project was recently issued on October 20, 2023. Proposals will be solicited in the fall and the link to the pre-solicitation notice is: [SAM.gov](https://www.sam.gov)

- What failed that [the treatment plant expansion] is not currently under construction with the funding being available?

There has not been a failure. EPA and USIBWC completed the environmental review for the expansion project, resulting in their joint ROD in June 2023. As noted above, NEPA prohibits design and construction prior to completion of the environmental review process, in this case culminating in the issuance of the ROD. As outlined in the

response above, USIBWC initiated a pre-design facilities assessment concurrent with the environmental review in order to expedite the design and construction process. The successful review and completion of pre-design activities will allow USIBWC to begin procurement of a design-build project this fall.

- Would a declaration of emergency by the Biden Administration (1) create a process that would speed up the construction project; and (2) will it actually free up additional funds that can be used to build it?

Since NEPA has been completed and project is in the pre-solicitation phase, at this stage in the process, EPA and USIBWC cannot confirm it would speed up the timeline to get to construction.

USIBWC and EPA are unaware if additional funds would result from a declaration of emergency. However, the White House has included \$310 million to USIBWC for the South Bay International Wastewater Treatment Plant (SBIWTP) expansion project in its October 25 request to Congress for additional domestic resources.

- How can [the treatment plant] have been failing in these last few months?

The pipeline break that occurred in July 2022 (refer to slides 3-5 of Commissioner Giner's presentation) resulted in a significant increase of excess flows (flows that are above the designed 25 MGD capacity) to the plant. The plant was not designed to take excess flows over 25 MGD on a consistent basis for months as the plant has been doing, resulting in damage to influent pumps at the headworks and the primary sedimentation tanks. In addition, due to the influent volume, it was impossible to maintain and repair the primary sedimentation tanks which requires emptying one of the five tanks at a time. The headworks were also not properly designed to take the amount of trash, sediment, and debris that the plant receives from Mexico. Excess flows and influx of debris resulting from Tropical Storm Hilary further exacerbated the vulnerabilities resulting in impacts throughout the entire plant.

Be aware that the USIBWC, in consultation with RWQCB, accepted these excess flows to reduce and eliminate transboundary flows in the Tijuana River. USIBWC accepted the additional plant wear and tear and expenses of the excess flows knowing this would reduce the pollution impacting area beaches.

- Where is the budget to maintain the facilities that currently exist? Where is the funding that should be in place for the operation of these facilities that are managed by the USIBWC?

USIBWC has the funding for its preventative maintenance contract of the plant; however, aside from the upgrades to secondary treatment in 2011 and expansion of secondary treatment in 2018, there has not been funding allocated for capital improvements which would allow for life cycle replacement/rehabilitation of the plant. The USIBWC's budget for construction agency-wide (from Brownsville, Texas to San Diego, California) was between \$26-33 million from Fiscal Years 2011-2019. As stated by Commissioner Giner at the October 11 hearing, given the limited funding, only \$4

million was invested in capital repairs for the plant during 2010 – 2020. Infrastructure failures and weather events such as the July 2022 pipeline break and Tropical Storm Hilary accelerated the rehabilitation needs throughout the plant. USIBWC recently initiated a plan to realign \$18 million of its current construction funding, delaying projects border-wide to address the plant's immediate needs.

- Why isn't there any [construction work] happening at the facility?

Please see response on second bullet for design-build work using USMCA funding which requires prior compliance with NEPA.

USIBWC has delayed projects elsewhere along the U.S.-Mexico border, realigning \$18 million of its current funding to resolve the issues resulting from the excess flows due to the July 2022 pipeline break and Tropical Storm Hilary. The construction that has been completed to date includes rehabilitation of two existing influent pumps to get them back in service and electrical work at the headworks after Tropical Storm Hilary. In addition, installation of one pump at Hollister Pump Station has been completed, which allowed the pump station to recommence operations. USIBWC is ordering additional parts to continue construction work and bring the plant back into compliance. Refer also to slides 8 and 12 of Commissioner Giner's presentation.

- What are the things that need to be done [to resolve the pollution issue]?
 - The US treatment plant needs to be repaired, expanded?
 - Mexican treatment plant needs to be addressed?
 - Diversion of Tijuana River?

Comprehensive solutions in Mexico and the United States are required to address the public health and environmental concerns caused by transboundary flows into the United States. The items noted above are part of the needs that have been identified under initial feasibility studies and incorporated into Minute 328. This includes an 18 MGD wastewater facility at San Antonio de Los Buenos in Tijuana and collector improvements and pump station repairs in Mexico, among others. In the U.S., as noted previously the priority project is expansion of the existing SBIWTP from 25 MGD to 50 MGD. These improvements are expected to reduce the amount of raw sewage entering the Pacific Ocean by 90 percent.

The existing Tijuana River diversion, PB-CILA, is located in Mexico and was upgraded to 35 MGD in 2021. The final NEPA analysis for the USMCA allows for commencement of design and construction of an Advanced Primary Treatment Plant (AFTP) in the U.S. that would treat up to 35 MGD of river water diverted from PB-CILA and conveyed to the AFTP. However, the AFTP project is not currently funded, and available USMCA funds are being prioritized for the expansion of the SBIWTP.

Once FY2024 funds are authorized, USIBWC will initiate the study of the Tijuana River diversion project identified in the ROD. This study would conduct the required analysis for additional infrastructure to divert additional flow out of the Tijuana River.

- [Please provide] a clear report stating what needs to be done, what has been done to date, the timeline, the money that exists today, the money that is needed, [and the process for obtaining that funding]

Information requested for the plant expansion that is currently available has been included within Commissioner Giner's presentation. Refer to slides 15 and 16 for funding and plan information for the expansion. The project currently exceeds funding availability by \$310 million +/- 30%. To ensure a competitive bidding process that maximizes the impact of available funding, USIBWC cannot provide additional detailed information about expected costs and timelines for the procurement of design and construction of the rehabilitation/expansion since the procurement tender will be issued in the coming weeks.

As noted previously, the White House has included \$310 million to USIBWC for the SBIWTP expansion project in its October 25, 2023 request to Congress for additional domestic resources.

The timeline to get the SBIWTP into compliance due to impacts from excess flows from the July 2022 pipeline break and Tropical Storm Hilary is 9-12 months. This work is ongoing and is a separate effort from the expansion work.

*Updates can also be found on the following EPA website:
[USMCA Tijuana River Watershed | US EPA](#)*

- If there had been a federal emergency declaration, would this have streamlined the process (i.e., waive NEPA analysis, alternatives analysis)?

Since NEPA has been completed and project is in the pre-solicitation phase, at this stage, it would not speed up the process to get to construction. In the hypothetical scenario where a federal emergency was declared, EPA would be required to comply with the Code of Federal Regulations (CFR) Section 6.210 which addresses the NEPA process during "Emergency Circumstances." These regulations state in part that the EPA NEPA Official should consult with the Council on Environmental Quality (CEQ) about alternative arrangements at the earliest opportunity. This section further states that actions taken without applying the typical NEPA process "will be limited to actions necessary to control the immediate impacts of the emergency; other actions remain subject to the environmental review process."

- Question for Commissioner Giner (and/or EPA Region 9) regarding the sufficiency of the comprehensive infrastructure solution. Assuming [the projects in the PEIS] get funded and implemented, [are they] designed to meet the current capacity demands and/or [would they also meet] future needs? How will [this] be addressed as the population increases on both sides of the border?
 - Projections of population increases should be included in the plan
 - The impacts of sea level rise and climate change (e.g., increase rainfall) to this facility also should be included.

- [We need to] understand the existing infrastructure, storm intake, since we know as storm pipes deteriorate, they take in more storm water, etc.

As noted previously, the plan is to expand the treatment capacity of the plant from 25 MGD to 50 MGD with a peak capacity of 75 MGD (allowing the plant to treat peaks in the volume of water entering the plant), based on funding availability. Anaerobic digestion is not included. This expansion is expected to reduce the volume of untreated sewage entering the Pacific Ocean by 90%.

Regarding population increases over time, the initial planning efforts for the USMCA project involved the development of feasibility studies which considered population growth. The feasibility analysis was based in part on the Baseline Conditions Summary (November 2021) that accounted for the anticipated population growth in Tijuana through the year 2050. The projects addressed in the feasibility analysis considered how well each project would accommodate Tijuana's growing population.

Subsequently, the USMCA NEPA analysis accounted for Tijuana's projected population growth as well. The Final PEIS on P. 3-92 indicates that the, "population of Tijuana is currently estimated to be 1.6 million and is growing at a rate of approximately 2.5 percent per year. However, this may be an underrepresentation of population due to the high numbers of unregulated tenants in Tijuana who do not hold legal land titles or who are not likely listed in official population statistics." The PEIS analysis accounts for population throughout the chapter addressing the environmental consequences of the USMCA Project.

- We need to stress, to the degree that we can, that there needs to be [secure] funding going forward for ongoing maintenance [of expanded and upgraded infrastructure]

USIBWC has been working within the Administration on potential funding for future years to address maintenance needs. The design will include an estimate of the operation and maintenance and capital expenditures needed to properly maintain the expanded plant. This will be shared with the Administration through the budget process and included in USIBWC's Asset Management System currently under development.

- Have there been any studies on the impacts of wildlife from this pollution? i.e., heavy metals, lots of bacteria entering the food web? Bioaccumulation seen in top predators, then possibly in people?

The City of San Diego under contract with the USIBWC, performs ocean monitoring to include water quality, kelp bed monitoring, fish tissue analyses, and remote sensing analyses per the NPDES permits for the South Bay Ocean Outfall (SBOO) and the Point Loma Ocean Outfall (PLOO). Their reports consistently state there is no evidence of contaminant accumulation in PLOO or SBOO fish that could be associated with wastewater discharge from either outfall, which is consistent with historical findings. Further, this is consistent with other studies done to assess the bioaccumulation of fish off the coast of San Diego.

Additionally, some metals and other contaminants that appear in detectable concentrations are highly variable and dependent on migration habits that could be sourced from any waters, physiology, life history of the species, and natural background levels of parameters in the water. Assessments of contaminant loading in San Diego offshore sediments have revealed no evidence to indicate that the PLOO or SBOO are major sources of pollutants in the region.

The biennial reports containing this information and the data used for the assessment is available on the City of San Diego website at:

<https://www.sandiego.gov/public-utilities/sustainability/ocean-monitoring/reports/annual-report-archives>

In addition, as part of the NEPA compliance process for the USMCA Project, EPA/USIBWC completed a formal Section 7 ESA consultation with NMFS. The Biological Assessment prepared in support of that consultation process describes the baseline conditions in the affected marine environment, and is available here: [USMCA NMFS BA](#)

- *What is the full breadth of potential funding opportunities [particularly in light of the federal administration’s focus on Environmental Justice and equity]?
The increase in estimated costs were not known until June 2023, after the Administration’s budget request for FY24 was submitted to Congress. USIBWC and EPA have worked to fully inform the Administration and legislators of the needs beyond existing funding and took note of the President’s October 25 request for \$310 million in additional funding for the SBIWTP rehabilitation and expansion project as part of the domestic supplemental funding request. The additional funds would allow faster completion of the construction. If the supplemental funding is not appropriated, the procurement of the project will proceed with a phased approach for the expansion to a 50 MGD plant with a peaking capacity of 75 MGD. Anaerobic digestion is not included.
EPA previously investigated the potential to apply Environmental Justice funds, available under the Inflation Reduction Act, to the design and construction of the planned USMCA Project facilities. However, as a federal agency, the USIBWC is not an eligible entity to receive such funds which is limited by the legislation to organizations such as non-government organizations and tribal entities. EPA has determined that an act of Congress would be required to allow USIBWC to receive Environmental Justice Funds.*
- *In relation to the contractors doing the [past] maintenance work [that has been shown to be inadequate], will it be the same contractors doing the [treatment plant upgrades and expansion] work associated with the \$300 million, and is there trust within the USIBWC that they will get better outcomes for the resources that will be spent?*

The future Design and Construction for the plant rehabilitation and expansion will be solicited and will be a separate contract than the current maintenance contract. Firms will be selected based on their proposals.

- Request for information on impacts to recreationally, economically important estuarine species such as fish and, in extension, resource users (Tribes, fishermen)

Please refer to the response above regarding the prior consultation with NMFS and the link to the technical report below (Biological Assessment), which details the existing marine environment and the resulting impacts that are anticipated from implementation of the USMCA core projects: [USMCA NMFS BA](#)

Along with the work on SBIWTP discussed during the presentations, USIBWC and EPA are continuously meeting with government officials, legislators, and state and local partners in the United States and in Mexico to ensure that all works as defined under Minute 328 continue to progress in a timely fashion to achieve the 90% reduction in untreated wastewater flows to the Pacific Ocean. We appreciate the invitation from the California Coastal Commission to brief on the coordinated efforts by USIBWC and EPA in implementing solutions to the transboundary flows that are significantly impacting the local community.

Sincerely,



Dr. Maria Elena Giner, P.E.
Commissioner
U.S. Section IBWC

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Cheree Peterson
Deputy Regional Administrator
EPA Region 9

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455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105-2421
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**MEMORANDUM**

FROM: Cassidy Teufel, Deputy Director, California Coastal Commission

TO: Dr. Maria-Elena Giner, Commissioner, U.S. Section of the International Boundary and Water Commission
Charee Peterson, Deputy Regional Administrator, U.S. Environmental Protection Agency, Region 9

SUBJECT: Commissioner Questions and Requests from October 11, 2023, Informational Briefing on the Trans-boundary Pollution Crisis in the Tijuana River and Tijuana River Valley

DATE: October 20, 2023

The following questions and requests for information were made by the identified California Coastal Commissioners during the October 11, 2023, informational briefing and directed to be shared with Commissioner Maria-Elena Giner and Deputy Regional Administrator Charee Peterson so that written responses could be provided in a timely manner.

Lt. Gov. Eleni Kounalakis

- Suggests that Commissioner Giner watch the recording from the point she left so she could hear the public comments and presentations
- Suggests that her questions for Commissioner Giner be provided to her in writing and Commissioner Giner can come back to the next meeting to answer the questions
- Questions for Commissioner Giner:
 - Since the \$300 million was originally allocated, why wasn't all the design-build work done so that the moment the project was funded, the construction would begin? What failed that [the treatment plant expansion] is not currently under construction with the funding being available?
 - Would a declaration of emergency by the Biden Administration (1) create a process that would speed up the construction project; and (2) will it actually free up additional funds that can be used to build it?

- How can [the treatment plant] have been failing in these last few months? Where is the budget to maintain the facilities that currently exist? Where is the funding that should be in place for the operation of these facilities that are managed by the IBWC?

Vice Chair Hart

- Why isn't there any [construction work] happening at the facility?
- What are the things that need to be done [to resolve the pollution issue]?
 - The US treatment plant needs to be repaired, expanded?
 - Mexican treatment plant needs to be addressed?
 - Diversion of Tijuana River?
- [Please provide] a clear report stating what needs to be done, what has been done to date, the timeline, the money that exists today, the money that is needed, [and the process for obtaining that funding]
- If there had been a federal emergency declaration, would this have streamlined the process (i.e., waive NEPA analysis, alternatives analysis)?

Commissioner Rice

- Question for Commissioner Giner (and/or EPA Region 9) regarding the sufficiency of the comprehensive infrastructure solution. Assuming [the projects in the PEIS] get funded and implemented, [are they] designed to meet the current capacity demands and/or [would they also meet] future needs? How will [this] be addressed as the population increases on both sides of the border?
 - Projections of population increases should be included in the plan
 - The impacts of sea level rise and climate change (e.g., increase rainfall) to this facility also should be included.
 - [We need to] understand the existing infrastructure, storm intake, since we know as storm pipes deteriorate, they take in more storm water, etc.
- We need to stress, to the degree that we can, that there needs to be [secure] funding going forward for ongoing maintenance [of expanded and upgraded infrastructure]

Commissioner Cummings

- Have there been any studies on the impacts of wildlife from this pollution? I.e., heavy metals, lots of bacteria entering the food web? Bioaccumulation seen in top predators, then possibly in people?

Commissioner Turnbull-Sanders

- What is the full breadth of potential funding opportunities [particularly in light of the federal administration's focus on Environmental Justice and equity]?

Commissioner Wilson

- In relation to the contractors doing the [past] maintenance work [that has been shown to be inadequate], will it be the same contractors doing the [treatment plant upgrades and expansion] work associated with the \$300 million, and is there trust within the IBWC that they will get better outcomes for the resources that will be spent?
- Request for information on impacts to recreationally, economically important estuarine species such as fish and, in extension, resource users (Tribes, fishermen)