ADDRESSING SEWAGE TREATMENT IN THE SAN DIEGO - TIJUANA BORDER REGION: IMPLEMENTATION OF TITLE VIII OF PUB. L. 106-457, AS AMENDED

(110–55)

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JULY 10, 2007

Printed for the use of the
Committee on Transportation and Infrastructure

U.S. GOVERNMENT PRINTING OFFICE

36–686 PDF WASHINGTON : 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

JAMES L. OBERSTAR, Minnesota, *Chairman*

NICK J. RAHALL, II, West Virginia
PETER A. DEFAZIO, Oregon
JERRY F. COSTELLO, Illinois
ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
CORRINE BROWN, Florida
BOB FILNER, California
EDDIE BERNICE JOHNSON, Texas
GENE TAYLOR, Mississippi
ELIJAH E. CUMMINGS, Maryland
ELLEN O. TAUSCHER, California
LEONARD L. BOSWELL, Iowa
TIM HOLDEN, Pennsylvania
BRIAN BAIRD, Washington
RICK LARSEN, Washington
MICHAEL E. CAPUANO, Massachusetts
JULIA CARSON, Indiana
TIMOTHY H. BISHOP, New York
MICHAEL H. MICHAUD, Maine
BRIAN HIGGINS, New York
RUSS CARNAHAN, Missouri
JOHN T. SALAZAR, Colorado
GRACE F. NAPOLITANO, California
DANIEL LIPINSKI, Illinois
DORIS O. MATSUI, California
NICK LAMPSON, Texas
ZACHARY T. SPACE, Ohio
MAZIE K. HIRONO, Hawaii
BRUCE L. BRALEY, Iowa
JASON ALTMIRE, Pennsylvania
TIMOTHY J. WALZ, Minnesota
HEATH SHULER, North Carolina
MICHAEL A. ACURI, New York
HARRY E. MITCHELL, Arizona
CHRISTOPHER P. CARNEY, Pennsylvania
JOHN J. HALL, New York
STEVE KAGEN, Wisconsin
STEVE COHEN, Tennessee
JERRY MCNERNEY, California
VACANCY

JOHN L. MICA, Florida
DON YOUNG, Alaska
THOMAS E. PETRI, Wisconsin
HOWARD COBLE, North Carolina
JOHN J. DUNCAN, JR., Tennessee
WAYNE T. GILCHREST, Maryland
VERNON J. EHLERS, Michigan
STEVEN C. LATOURETTE, Ohio
RICHARD H. BAKER, Louisiana
FRANK A. LOBIONDO, New Jersey
JERRY MORAN, Kansas
GARY G. MILLER, California
ROBIN HAYES, North Carolina
HENRY E. BROWN, JR., South Carolina
TIMOTHY V. JOHNSON, Illinois
TODD RUSSELL PLATTS, Pennsylvania
SAM GRAVES, Missouri
BILL SHUSTER, Pennsylvania
JOHN BOOZMAN, Arkansas
SHELLEY MOORE CAPITO, West Virginia
JIM GERLACH, Pennsylvania
MARIO DIAZ-BALART, Florida
CHARLES W. DENT, Pennsylvania
TED POE, Texas
DAVID G. REICHERT, Washington
CONNIE MACK, Florida
JOHN R. 'RANDY' KUHL, JR., New York
LYNN A WESTMORELAND, Georgia
CHARLES W. BOUSTANY, JR., Louisiana
JEAN SCHMIDT, Ohio
CANDICE S. MILLER, Michigan
THELMA D. DRAKE, Virginia
MARY FALLIN, Oklahoma
VERN BUCHANAN, Florida

SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

EDDIE BERNICE JOHNSON, Texas, *Chairwoman*

GENE TAYLOR, Mississippi
BRIAN BAIRD, Washington
DORIS O. MATSUI, California
JERRY F. COSTELLO, Illinois
TIMOTHY H. BISHOP, New York
BRIAN HIGGINS, New York
RUSS CARNAHAN, Missouri
JOHN T. SALAZAR, Colorado
MAZIE K. HIRONO, Hawaii
HEATH SHULER, North Carolina
HARRY E. MITCHELL, Arizaon
JOHN J. HALL, New York
STEVE KAGEN, Wisconsin
JERRY MCNERNEY, California
ELEANOR HOLMES NORTON, District of Columbia
BOB FILNER, California
ELLEN O. TAUSCHER, California
MICHAEL E. CAPUANO, Massachusetts
GRACE F. NAPOLITANO, California
MICHAEL A ARCURI, New York
JAMES L. OBERSTAR, Minnesota
(Ex Officio)

RICHARD H. BAKER, Louisiana
JOHN J. DUNCAN, JR., Tennessee
WAYNE T. GILCHREST, Maryland
VERNON J. EHLERS, Michigan
FRANK A. LOBIONDO, New Jersey
GARY G. MILLER, California
ROBIN HAYES, North Carolina
HENRY E. BROWN, JR., South Carolina
TODD RUSSELL PLATTS, Pennsylvania
BILL SHUSTER, Pennsylvania
JOHN BOOZMAN, Arkansas
CONNIE MACK, Florida
JOHN R. 'RANDY' KUHL, JR., New York
CHARLES W. BOUSTANY, JR., Louisiana
JEAN SCHMIDT, Ohio
CANDICE S. MILLER, Michigan
THELMA D. DRAKE, Virginia
JOHN L. MICA, Florida
(Ex Officio)

CONTENTS

Page

Summary of Subject Matter vi

TESTIMONY

Marin, Carlos, United States Commissioner, International Boundary and Water Commission, United States and Mexico 6
Nastri, Wayne, Regional Administrator, U.S. Environmental Protection Agency, Region 9 6
Simmons, Jim, Managing Partner, Bajagua, LLC 27

PREPARED STATEMENT SUBMITTED BY MEMBERS OF CONGRESS

Boozman, Hon. John, of Arkansas 36
Costello, Hon. Jerry F., of Illinois 40

PREPARED STATEMENTS SUBMITTED BY WITNESSES

Marin, Carlos 41
Nastri, Wayne 48
Simmons, Jim 50

SUBMISSIONS FOR THE RECORD

Simmons, Jim, Managing Partner, Bajagua, LLC, Power Point slide presentation 96
Development Agreement between the United States Section of the International Boundary and Water Commission, United States and Mexico, and Bajagua LLC, submitted by the Subcommittee 109

U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

July 5, 2007

MEMORANDUM

TO: Members of the Committee on Transportation and Infrastructure

FROM: Staff of the Subcommittee on Water Resources and Environment

RE: SUMMARY OF SUBJECT MATTER: Addressing Sewage Treatment in the San Diego – Tijuana Border Region: Implementation of Title VIII of Pub. L. 106-457, as amended.

PURPOSE OF HEARING

On Tuesday, July 10th, at 2:00 p.m., the Subcommittee on Water Resources and Environment is scheduled to meet in 2167 Rayburn House Office Building to receive testimony on sewage treatment in the San Diego – Tijuana border region and implementation of Title VIII of Public Law 106-457, as amended. Testimony is expected from the Commissioner of the United States Section of the International Boundary and Water Commission, a representative of the Environmental Protection Agency ("EPA"), and a representative of local business interests, responsible for providing wastewater treatment services on the San Diego-Tijuana border region.

BACKGROUND

Sewage Issues on the San Diego-Tijuana Border Region:

The San Diego-Tijuana border region's wastewater infrastructure has not kept pace with the area's significant growth. Tijuana, Mexico is situated on elevated terrain compared to the area immediately adjacent to the north in southern San Diego County, California. The Tijuana River drains north into this portion of San Diego and then west to the Pacific Ocean. Since wastewater infrastructure in Tijuana does not exist to treat all of the sewage generated in the Tijuana area, untreated or partially treated sewage emanates from Tijuana and flows into the United States, leading to serious public health, safety, and environmental concerns.

In the Water Quality Act of 1987, Congress authorized the construction of a wastewater treatment facility in San Diego to provide primary or more advanced treatment of municipal sewage and industrial waste from Mexico, including the City of Tijuana. For the United States, the secondary treatment requirements of the Clean Water Act are defined in federal regulations (*see 40 C.F.R. Part 133*) as a numeric effluent quality attainable through treatment that requires greater removal of certain pollutants than primary or advanced primary treatment.

In 1990, the bi-national International Boundary and Water Commission ("the Commission") entered into an international treaty agreement, called Minute 283, that directed the United States and Mexican governments to cooperate on the construction and operation of a secondary treatment facility in the United States with the approximate capacity of 25 million gallons per day.

In carrying out the directive of Minute 283, and in order to achieve some treatment of Mexican wastes as quickly as possible, EPA and the United States section of the Commission agreed to construct the San Diego treatment facility in stages – by first building advanced primary treatment facilities, followed later by secondary treatment facilities. The first stage, the South Bay International Wastewater Treatment Plant ("IWTP") became operational in 1998, but treats only to advanced primary standards. Effluent from the IWTP is discharged three-and-a-half miles off the coast of San Diego through the South Bay Ocean Outfall. However, the Commission remains subject to the legal requirements of the Clean Water Act to treat up to 25 million gallons of effluent per day to at least secondary treatment standards, and has been sued by both the State of California and the Surfrider Foundation for failure to meet these standards.

In order to meet its obligations under the Clean Water Act and Minute 283, the Commission examined several secondary treatment options. The United States section of the Commission originally planned to construct secondary facilities to provide secondary treatment using activated sludge. However, members of the environmental community sued the Commission, objecting to the use of this technology in this circumstance, because it was believed that with existing land and financial constraints, the IWTP could not complete an activated sludge facility sufficient to address its Clean Water Act obligations. Under the settlement of that lawsuit, the Commission and EPA agreed to look at other technologies. In December 1999, EPA and the Commission signed a Record of Decision recommending the construction of secondary treatment ponds at a site adjacent ("the Hofer site") to the current IWTP facility as a preferred treatment alternative to achieve secondary treatment.

Some members of the San Diego region community objected to the construction of secondary treatment ponds at the Hofer site, due to aesthetic concerns. Moreover, additional funding authorization would be necessary to proceed with this project, because in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, Congress set a statutory cap that EPA could spend not more than $239.4 million on both primary and secondary treatment at the IWTP.

In addition, the secondary treatment ponds, if constructed at the Hofer site, would not provide a comprehensive solution to the problem of sewage treatment in the San Diego-Tijuana border region. Currently, approximately 60 to 65 million gallons per day of sewage is generated in Tijuana, Mexico. Twenty-five million gallons per day goes to the IWTP and receives advanced primary treatment. The remainder is sent to a facility in Mexico (the San Antonio de los Buenos Wastewater Treatment Plant), where up to 25 million gallons per day is treated, but much is discharged untreated into the Pacific Ocean, and carried by the currents onto United States beaches. In the space available at the Hofer site of the IWTP, secondary treatment ponds could be constructed that could treat no more than 25 million gallons per day. There is little room to expand the capacity of the plant. The existing Mexican facility has been upgraded but is not currently able to meet the existing need for sewage treatment in Tijuana, nor the increased need expected from future growth in the area (up to an additional 20 million gallons per day by 2023).

The Bajagua Proposal:

In the late 1990s, a group of private investors submitted a proposal, called the "Bajagua proposal," to construct, operate, and maintain and own a private, secondary treatment facility in Mexico to provide additional secondary treatment capacity. Under this proposal, a facility with a capacity of not more than 50 million gallons per day (with the potential for future expansion) would be constructed at a site in Mexico through private investments. The 25 million gallons per day of advanced primary effluent currently being treated at the IWTP would be pumped south to the private facility in Mexico, combined with 25 million gallons per day of wastewater that currently goes untreated, and the combined 50 million gallons per day would be treated to secondary treatment standards. Combined with the expected 25 million gallons per day from the San Antonio de los Buenos Wastewater Treatment Plant, there would be approximately 75 million gallons per day capacity to treat the Tijuana area's sewage needs. This capacity would cover existing demands, and should support additional growth; however, additional capacity would still be needed to address future sewage needs of the region from forecast growth.

The Bajagua proposal also provides for the reclamation of up to 50 million gallons per day of water that could be treated beyond secondary treatment standards for reuse in industrial settings. This would require the construction of additional facilities at the Bajagua site, at private expense, and any reclaimed water not reused would move by gravity back to the IWTP for discharge through the South Bay Ocean Outfall.

Title VIII of Public Law 106-457, the Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000:

In the 106th Congress, the Committee on Transportation and Infrastructure examined the issues surrounding sewage treatment in the San Diego-Tijuana border region, and concluded that a comprehensive solution was needed to address both the partially treated flows from the existing IWTP and the additional capacity needed to address raw sewage emanating from the Tijuana, Mexico region. To achieve this goal, the Committee approved legislation (H.R. 3378, the Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000) that was incorporated into Title VIII of the Estuaries and Clean Waters Act of 2000 (Pub. L. 106-457), enacted on November 7, 2000.

Title VIII of Pub. L. 106-457 authorizes the United States, acting through the United States section of the Commission, to enter into a fee-for-service contract with the owner of a privately-financed secondary treatment facility located in Mexico. The purpose of entering into such contract would be for the United States to provide adequate wastewater treatment along the United States-Mexico border so that untreated or partially-treated sewage from Tijuana no longer flows north into the San Diego, California region. Title VIII of Pub. L. 106-457 authorizes the United States to pay annual contract fees incorporating the costs of developing, financing, constructing, operating and maintaining the wastewater treatment facility in Mexico. The benefits of this alternative include reclaimed water that can provide additional water supply for use in the growing economy of the San Diego-Tijuana border region, and preserving existing potable water supplies for drinking water uses; the ability to treat 50 million gallons per day (above the Hofer site proposal of 25 million gallons per day); and the flexibility to expand the total capacity later, if necessary, to address future growth needs of the region.

To implement this proposal, Title VIII of Pub. L. 106-457 recommended the negotiation of a new Treaty Minute to authorize the Commission to implement a plan for addressing the sewage concerns of the San Diego -Tijuana border region consistent with the Bajagua proposal. Subject to this negotiation and the conclusion of a new (or revised) Treaty Minute, Title VIII of Pub. L. 106-457 directs the Commission to provide secondary treatment capacity for a total of not more than 50 million gallons per day in Mexico of both primary advanced effluent pumped from the IWTP and any additional sewage emanating from the Tijuana River area.

This legislation also directs EPA to develop a comprehensive plan with stakeholder involvement to analyze the long-term secondary treatment needs for the San Diego-Tijuana border region, and to make recommendations for preferred options to provide additional treatment capacity for future flows emanating from the Tijuana River area. If the comprehensive plan includes a recommendation for additional treatment capacity to be provided in Mexico rather than in the United States, Title VIII authorizes the Commission to provide not more than an additional 25 million gallons per day of such capacity in Mexico.

Tijuana River Valley Estuary and Beach Sewage Cleanup Act Amendment (Pub. L. 108-245):

On February 20, 2004, the United States and Mexico approved Treaty Minute 311 to construct a new wastewater treatment facility in Mexico, consistent with Title VIII of Pub. L. 106-457. Under the terms of Treaty Minute 311, the new treatment facility proposal is to replace the earlier proposal for secondary treatment at the IWTP under Treaty Minute 283. In addition, the new treatment facility is to provide additional capacity to treat raw sewage from the Tijuana River area in Mexico. The United States is to pay, subject to the availability of annual appropriations, annual fees for contracted wastewater treatment services. Treaty Minute 311 also specifies numerous other contract terms to be included in the wastewater treatment services contract.

However, before the United States section of the Commission could enter into the contracts necessary to implement the Bajagua proposal, Congress was required to amend Title VIII of Pub. L. 106-457. The Tijuana River Valley Estuary and Beach Sewage Cleanup Act Amendment (Pub. L. 108-245), approved by the Committee on Transportation and Infrastructure, and enacted on November 30, 2004, amended Title VIII of Pub. L. 106-457, to make minor changes to the law to the reflect the negotiation of Treaty Minute 311, as well as provided an updated authorization level ($230 million) to allow for the construction of the wastewater treatment facility. Pub. L. 108-245 also addressed a budgetary scoring concern of the Office of Management and Budget that was contrary to the original intent of the Committee on Transportation and Infrastructure.

The intent of the Committee, when this amendment was enacted, was that it should have created all the authority necessary for the construction of treatment facilities to protect the public and the ecological health of the San Diego region.

Recent Issues:

Following passage of the Tijuana River Valley Estuary and Beach Sewage Cleanup Act Amendment in 2004, the Commission made substantial progress in completing its review of and negotiations for the construction of a treatment facility consistent with the Bajagua proposal.

On July 25, 2005, the United States Section of the Commission, in cooperation with EPA, released a Final Supplemental Environmental Impact Statement ("SEIS") for Clean Water Act Compliance at the South Bay IWTP. This document reviewed several alternatives for achieving compliance with the secondary treatment requirements of the Clean Water Act for the sewage wastes emanating from the San Diego-Tijuana border region. Two of the alternatives reviewed in the SEIS included the proposal to construct a secondary treatment facility at the IWTP (the Hofer site), and the Bajagua proposal.

In addition, on September 30, 2005, the Commission released its Record of Decision on the SEIS, and selected the Bajagua proposal as the most appropriate means for achieving Clean Water Act compliance at the South Bay IWTP. According to the Record of Decision, the selection of the Bajagua proposal was based on numerous factors, including: (1) the potential for the proposal to address the long-term sewage treatment needs of the region, (2) a preliminary review of the technical documents provided by the private investors, (3) the proposal's consistency with Title VIII of Pub. L. 106-457, as amended, (4) the proposal's consistency with Treaty Minute 311, and (5) the ability of the proposal to meet the September 30, 2008 deadline for compliance with the Clean Water Act contained in the Order Setting Compliance Schedule in *People of the State of California ex. rel. the Regional Water Quality Control Board, San Diego Region* v. *Duran et. al. (01-CV-027)* (consolidated with *Surfrider Foundation* v. *Duran*).

Finally, on February 15, 2006, the Commission signed a contract with the private investors supporting the Bajagua proposal for the development of a wastewater treatment plan in Tijuana, Mexico. This contract is consistent with Title VIII of Pub. L. 106-457, as amended, as well as the September 30, 2008 deadline for compliance with the Clean Water Act.

However, in the intervening months, concerns have arisen whether the Bajagua proposal can be constructed to meet the September 2008 deadline.

For example, in the President's budget request for fiscal year 2008, the Administration initiated a new request for $66 million for "construction in the United States of secondary wastewater treatment capability at the South Bay International Wastewater Treatment Plant and which shall become available only after the International Boundary Water Commission determines that negotiations to implement section 804 of P.L. 106-457, as amended, are terminated." This request was counter to the previous actions of the Commission in selecting the Bajagua proposal, and the rejection of the treatment option at the South Bay IWTP (the Hofer site) in the September 30, 2005 SEIS.

In addition, on May 8, 2007, the Commissioner of the United States Section of the Commission, Carlos Marin, suspended all activities towards implementation of the Bajagua project, in light of information that the private investors would need a 5 month extension of the September 2008 compliance deadline to complete the Bajagua proposal. The Commission informed the private investors that an extension could only be granted by an order of the Court.

In a letter dated, April 25, 2007, a representative for the Bajagua proposal expressed concern that the reasons for the proposed 5 month extension were, in part, due to delays caused by the Commission in carrying out its obligations under the contract between the private investors and the Commission.

As of July 2, 2007, the Commission has not made a formal request of the Court to extend the September 2008 deadline suggested by the private investors, it remains uncertain whether the Court would grant such an extension, if requested.

ADDRESSING SEWAGE TREATMENT IN THE SAN DIEGO TIJUANA BORDER REGION: IMPLEMENTATION OF THE TITLE VII OF P.L. 106-457 AS AMENDED

Tuesday, July 10, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:13 p.m., in Room 2167, Rayburn House Office Building, Hon. Eddie Bernice Johnson [Chairwoman of the Subcommittee] Presiding.

Ms. JOHNSON. I call the Subcommittee to order, and I would like to ask unanimous consent that Mr. Bilbray join us up here.

This afternoon, the Subcommittee is meeting to discuss the issue of sewage treatment in the San Diego and the Tijuana border region. Over the years, the Subcommittee has become well aware of the sewage treatment problems faced by the San Diego-Mexico border region. We have also witnessed how the U.S.-Mexico border region has experienced tremendous growth over the past few decades with the cities of San Diego and Tijuana, Mexico, though on opposite sides of the border, growing closer together both physically and economically and linking the faiths of the two cities.

We have also discovered that what happens in one city has had an impact on the other, and this is especially true in the case of the sewage treatment needs of the border region. Unfortunately, the wastewater treatment systems for the City of Tijuana, Mexico have not kept pace with the city's growing population. Untreated sewage flowing from Mexico to the Tijuana River and into the Pacific Ocean has adversely impacted the South Bay communities of San Diego County, the river valley, estuary, and the coastal waters of the United States. These flows continue to pose a serious threat to public health, to the economy and to the environmental region.

To address these problems, this Committee has twice considered and approved legislation sponsored by our colleague, Mr. Filner, and other Members of the San Diego delegation to, once and for all, stem the flowing tide of untreated or partially treated sewage that enters this country every day.

The proposal advocated by Mr. Filner and by his colleagues from the San Diego community is a comprehensive attempt to address both the short-term and the long-term sewage treatment needs of the region, taking into consideration the expectations of continued population growth in the next few decades. Unfortunately, 7 years

after legislation was enacted to implement this proposal, the citizens of the San Diego region continue to wait for a comprehensive solution to this issue and continue to face the likelihood of beach closures and waters contaminated with untreated sewage. Over the years, the Subcommittee has continued to follow implementation of the Tijuana River Valley Estuary and the Beach Sewage Cleanup Act. In fact, this is the second time that this Subcommittee has asked the administration to provide an update on the implementation of the law.

I hope that today's hearing will shed light on why progress seems to be slowed and why concerns have been raised on whether this administration might be changing its position on how best to solve this problem.

I will ask Mr. Boozman for a statement.

Mr. BOOZMAN. Thank you, Madam Chair.

For years, Congress has been trying to address a public health and environmental problem that exists along the U.S.-Mexican border. Raw or partially treated sewage from the Tijuana, Mexico area flows into the United States and ends up on California beaches. In 2000, Congress addressed this problem by authorizing the United States to contract with a facility in Mexico for wastewater treatment services that would meet Clean Water Act standards. That authorization was contained in public law 106-457, the Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000. That law required the United States and Mexico to negotiate a new treaty minute and a contract for wastewater treatment services in the Tijuana, Mexico area. The treaty negotiations were completed in 2004.

However, before a contract for wastewater treatment services could be signed, the Tijuana River Valley Estuary and Beach Sewage Cleanup Act authorization had to be extended and updated. This Committee reported legislation H.R. 4794, which provided the necessary authority. The project in this legislation was not controversial, and the bill was enacted into law in late 2004. It became public law number 108-425.

It is now 7 years after this wastewater treatment project was first authorized. Over these past 7 years, the parties have been working towards implementing the wastewater treatment project seemingly without much controversy. Now, all of a sudden, at this late date, for reasons that have not been well-articulated which we look forward to hearing of today, it appears that certain parties may be looking to fundamentally change the direction of this project. Many are concerned that changing the direction of the project at this late date could mean even further delays in addressing the sewage pollution problems in the San Diego border region.

Today, we have asked for testimony from three of the principal parties involved in this issue—the United States section of the International Boundary and Water Commission, which operates under the foreign policy guidance of the Department of State and represents the United States and boundary water, sanitation, water quality, and flood control issues in the border region with Mexico; the EPA, which is responsible for implementing water quality issues under the Clean Water Act; and the Bajagua Project, LLC, the company that has contracted with the IBWC to provide

wastewater treatment services in the San Diego-Tijuana border region.

We want to hear from the witnesses about the status of implementing the wastewater treatment project authorized by the Tijuana River Valley Estuary and Beach Sewage Cleanup Act in 2000 as amended in 2004, including:

Why is it taking so long to get the project built? What issues stand in the way of completing the project? Why are some looking to fundamentally change the direction of this project at this late date? When can we expect to see the project completed? How much will the project cost by the time it is finally completed? Will the project satisfy all of the region's wastewater and treatment needs and resolve the longstanding sewage pollution problems in the region?

Thank you, Madam Chair.

Ms. JOHNSON. Thank you very much.

The chair now recognizes Congressman Filner.

Mr. FILNER. Thank you, Madam Chair, and I strongly and greatly appreciate this hearing.

What may seem like a parochial issue in this Member's district, I think, is really an international problem. We are dealing, of course, with the Mexico-U.S. border region, severe environmental issues at that border, all across it—water and sewage is one of them—and the solution of this problem can be a model for the way the two countries cooperate or it could be a model for how we continue not to make progress on these very important issues.

When you talked about the previous legislation and my bill, actually, they were very closely coordinated with our colleague's from San Diego, Mr. Bilbray. I think, together, we have now 50 years that we have been up to our neck or sometimes drowning in sewage, and I would ask unanimous consent that he be allowed to sit with the Committee during this hearing.

Ms. JOHNSON. Any objections? I hear none.

Mr. FILNER. Thank you, Madam Chair.

This is an issue which has plagued San Diego and our region for 60, almost 70 years probably. We have the Tijuana River that flows north from San Diego—I am sorry—north from Mexico through the City of Tijuana and then through my district, emptying out to the Pacific Ocean. When Tijuana does not have sufficient sewage capacity, all of the sewage that may be dumped in strange places in that city end up in the Tijuana River, again, contaminating our beaches and presenting health problems for our citizens. It took many, many, many years to come to a consensus to build a waste treatment plant on our side of the border, which was authorized at the beginning of the 1990s and which opened up, I guess, around 1997. We broke ground in 1995. Okay. When the plant opened, Madam Chair, it was obsolete.

It treated half of the flows that we needed it to, and it treated it only to what is called the ″advanced primary level″ and was not meeting the secondary levels required by law, but Congress had put a cap on expenditures, and that is as far as they could go, so we were left with the problem of not only doubling the capacity of an already existing plant, but in upgrading the level of treatment. I would say, for almost a decade, we have wrestled with those

questions, and the result were the laws that you indicated which were passed by voice vote in the Congress, that were signed by two presidents—one Democrat and one Republican—and that were supposed to be the law of the land which mandated the building of a secondary treatment facility in Mexico that would be carried out by a private firm and that would bill the United States for treating the sewage. It seemed to us to be an incredibly win, win, win, win, win, win proposal.

Not only would we get the plant built at the levels required by law in the United States, but it would be done in the most environmentally sensitive way that we know about; it would be done in Mexico so as not to take up land for that in the United States, and in fact, it would produce water that could be recycled for Mexico. This is a major problem in both the City of Tijuana, through the State of Baja and in Mexico in general, and this was an incredibly innovative way to deal with that issue. None of the plans that have ever existed in the United States called for the recycling of water to tertiary standards.

So this helps Mexico; it helps the United States, and it would be done over time so that Congress would not be responsible for one major hit in terms of money. IBWC, the International Boundary and Water Commission, was supposed to take charge of that, and it has gone a long way toward making that project, in fact, close to implementation. It decided that it was the environmentally preferred alternative. It gave all of the necessary legal decisions to go ahead, and we thought we were going to, in fact, meet a court-mandated rule in San Diego—a court-mandated provision—that calls for secondary treatment by September of next year.

For some reason—and that is why we are here today—all of that has come to halt. As to what looked like the implementation after more than a decade of the discussion of not only meeting the Clean Water Act standards but of allowing tertiary treatment in Mexico, all of that now is at a standstill, and we are back to where we were maybe before 1990. That is why we are here today, to figure that out and to figure out how to move forward from there.

I appreciate again your allowing us to focus on this issue.

Ms. JOHNSON. Thank you, Mr. Filner.

Pursuant to the unanimous consent request, I recognize Mr. Bilbray for an opening statement.

Mr. BILBRAY. Thank you, Madam Chair, and I appreciate the Committee and the Chair for allowing me to sit with the Committee.

Madam Chair, I no longer have the privilege of representing the southern region of San Diego County, but I do have a history with this, not only as an elected official, but I grew up on the border, as a young man, going down to the beach and seeing the big red signs with ″pollution″ on it, not from Americans but from a foreign government. My involvement with this issue goes back to when I was 25 years old as a new city council member in 1976. In 1980, I, literally, almost went to jail over trying to raise awareness of this issue as a new mayor at 29 years old, saying, ″Where is the EPA? Where is the IBWC? Where is the environmental community? Does anybody care about this working class neighborhood?″

The fact is that, in 1980, we had 42 million gallons of raw sewage pouring onto our beaches in the summer. By 1985, we finally got everybody to the table, and the United States and Mexico negotiated a minute order that basically said, ″Mexico, we know you want to treat your sewage on your side. We have concerns about your discharge issues and their impact on the estuary. So send over your sewage. We will treat it.″ Mexico said, ″Fine, but we want a guaranteed right to always call it back because we want to use this for reclamation.″ In fact, the issue was raised by then Ambassador Gavin, as you will remember, because there was a request for a loan to pump water into Tijuana from the Colorado River, and the big issue was ″What are you going to do with this water when you get it? You cannot handle the sewage you have now.″ That agreement was put together where we said we would treat it, that Mexico would provide the pipes and get it to that location.

Well, then you ended up having the situation of changing technology. Let me sensitize this. Mr. Filner's community is willing to take a sewage treatment plant in their neighborhood to treat another country's sewage. It takes extraordinary political, you know, bravery of the Member from San Diego to do this. What happened was that we saw that there was an alternative to have expandable—we know that 25 mgd is just the first step. You have got to go out beyond that.

In looking at that, the proposal was to use a public-private sector, treat as much of it as possible in Mexico—after all, that is where it was—and on election day, the day I was voted out of office, Bill Clinton signed into law what I authored, with Mr. Filner's coauthorship, to have this public-private partnership signed into law, and frankly, they signed it into law and waited until that day because they were afraid, I am sure, that there might be political benefits to a candidate at that time, but with that aside, it got done. I, actually, worked with and for Bajagua at trying to get the Bush administration to be as involved in this issue as the Clinton administration was because the Clinton administration actually ended up being very supportive.

The foot-dragging that has gone on consistently on this issue is just extraordinary while the beaches are still being closed, and I just have to say that I think that this is an example that a lot of people should look to, the fact that, in the 30 years I have been there and in the 60 years we have had this problem, I have never seen a bureaucrat who has been fired or anybody who has not gotten paid because the sewage problem was not taken care of. At least with the public-private sector, it is an outcome-based environmental strategy. If the sewage is not treated, the company does not get paid, and you know, if the company does not get paid, somebody is going to get fired down through the process. There is a little incentive there to protect the environment. That is what we are looking at here, but now what is being proposed is to go back to 10 years ago to a plan that had been worked out in 1985 and to only go with a 25 mgd and just take care of what is important for the law, not for the environment and, basically, finish this job and walk away from it.

That is my concern, and I think that we have got to really talk about where do we go from here. Everybody understands that 25

mgd does not do the job. We have a moral obligation to protect our people from a foreign government's impact, and that means a lot more than 25 mgd.

So I appreciate the chance to be able to be here. Frankly, my concern is that my children are second generation sewage kids. I do not want my grandchildren to be surfing in Mexican sewage in the next decade and be the third generation. With your help, Madam Chair, we will be able to stop that generational gap, okay?

Thank you.

Ms. JOHNSON. Thank you very much.

We are pleased to have two very distinguished witnesses on our first panel today. First, we have the Honorable Carlos Marin, the Commissioner of the United States section of the International Boundary and Water Commission. Next, we have Mr. Wayne Nastri, the Administrator of Region 9 of the U.S. Environmental Protection Agency.

We are pleased that you were both able to make it this afternoon. Your full statements will be placed into the record, so we ask you, if you will, to try to keep your remarks to a summary of about 5 minutes each. We will continue to proceed in the order in which the witnesses are listed on the call of the hearing.

TESTIMONIES OF CARLOS MARIN, UNITED STATES COMMISSIONER, INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO; AND WAYNE NASTRI, REGIONAL ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 9

Ms. JOHNSON. So, Mr. Marin, you may proceed.

Mr. MARIN. Madam Chairwoman and Members of the Subcommittee, thank you for the opportunity to discuss the U.S. section of the International Boundary and Water Commission's efforts to address the ongoing problem of Tijuana sewage and the particular steps we have taken to implement the Tijuana River Act. I would like to begin by noting a few points.

I am a licensed Professional Engineer and a 27-year career employee of the U.S. International Boundary and Water Commission. I have had firsthand experience in building wastewater treatment plants in Mexico from my days as U.S. Project Manager for the IBWC at a treatment facility in Nuevo Laredo, Mexico. The IBWC has over a century of experience in binational cooperation and is engaged in a number of joint projects. Any binational project undertaken by the IBWC that is located in Mexico is under the jurisdiction of the Mexican section. My authority stops at the border.

Pursuant to the Clean Water Act and international agreements with Mexico and at a cost shared by the U.S. and Mexican governments, the U.S. IBWC has constructed and now operates the South Bay International Wastewater Treatment Plant on the U.S. side of the border off the San Diego coast, and it treats 25 million gallons per day of sewage from the Tijuana area that would otherwise flow untreated into the United States and discharge that effluent in an outfall approximately 3.5 miles into the Pacific Ocean.

Due to the urgent need to provide some level of treatment, operation began in 1997 at the advanced primary level. In late 2000, Congress enacted the public law to provide for the secondary treat-

ment of the effluent in Mexico, if such treatment is not provided in the United States, as well as additional Tijuana sewage flows under a private-public partnership arrangement.

To achieve the objective of the public law, the U.S. IBWC concluded a new agreement with Mexico, completed the final environmental impact statement and issued the Record of Decision, in which was its election of the construction of the treatment facility in Mexico. The U.S. IBWC entered into a development agreement with Bajagua, LLC, on February 14th, 2006, giving the company exclusive rights to pursue the development of the Mexican facility. It should be noted that this is a highly technical and complicated project. The IBWC does not view its role as being limited to that of a conduit or a pass-through of U.S. funding. The IBWC has an international law responsibility to ensure that the project is developed in a viable, effective and professional manner and that all elements are considered with applicable U.S. and Mexican law. It cannot be overemphasized that IBWC is under a court order to achieve full compliance with the Clean Water Act by September 30th, 2008. In light of this legislation, we face possible fines and other sanctions for noncompliance.

A number of tasks remain to be accomplished under the development agreement. Bajagua notified us that it would be unable to meet the May 2nd, 2007 milestone set forth in the development agreement, requesting an extension to the deadline, and they subsequently informed us that it would be unable to achieve compliance of the September 30th, 2008 court-ordered deadline. Fortunately, the administration has begun to consider a contingency plan for achieving compliance. The President's fiscal year 2008 budget requests funding for the U.S. IBWC to begin construction of secondary-level treatment at the existing South Bay facility, which is viewed as a more efficient and less expensive solution.

This agency has worked diligently to advance the public law in both sections of the IBWC and has invested a significant amount of staff time and resources to that effort. However, due to the number of factors that are beyond the U.S. IBWC's control, a permanent solution proves to be evasive. We know much more today about the complexity of implementing this legislation that was passed in 2000. In 2000, we did not know the true costs of the Bajagua Project to the American taxpayers. Yet, today, based on the financial analysis conducted by an independent consultant, we know that the project has the potential of reaching $1 billion over a 20-year period of a sole-source contract. We also do not know how long it will take to make the Mexican facility a reality. I cannot, in all honesty, tell you that, nor can Bajagua. There are many critical steps still pending which require Mexico's full participation, support and concurrence. One cannot predict the alacrity of the Mexican bureaucracy, a bureaucracy we must engage on the Federal, State and local levels and which often changes with each election cycle.

In closing, let me state that our ultimate goal is to afford the citizens of Southern California protection from renegade Mexican sewage and to operate our facility in accordance with U.S. law.

Madam Chair, thank you for the opportunity to testify today. I would be pleased to respond to any questions you or other Members of the Subcommittee may have.

Ms. JOHNSON. Thank you very much.

The Chair now recognizes Mr. Wayne Nastri, Administrator of Region 9, San Francisco.

Mr. NASTRI. Thank you, Madam Chair and Members of the Subcommittee, and Congressman Bilbray.

It gives me great pleasure to be here today before you to describe the efforts the EPA has undertaken to address the issues here in Tijuana-San Diego.

Since the 1930s, raw sewage flowing into the United States has posed a serious threat to public health and to the environment and to the economy of South Bay communities of San Diego. Congress, recognizing this in 1987, passed the Water Quality Act, which authorized and appropriated to EPA $239.4 million to construct a wastewater treatment facility and ocean outfall in Northern San Diego County, and I want to be clear that that $239 million was for the construction of a full secondary treatment facility. That facility was going to treat the sewage from Tijuana, Mexico which would otherwise have been in the United States and have contaminated the Tijuana River, the estuary and our coastal beaches.

With these funds, the EPA provided a grant to the United States International Boundary and Water Commission to construct the South Bay International Wastewater Treatment Plant. The EPA also provided funds to the City of San Diego to construct an ocean outfall that treated and conveyed the water 3.5 miles into the Pacific Ocean. The plant became fully operational in 1999, and it was approached in a phased manner.

In order to expedite treatment of the Tijuana sewage, the first phase was constructed as an advanced primary as an interim measure with the full intention of going to secondary treatment. Secondary treatment is required under Federal law in order to protect human health and the environment, and it was anticipated to be initiated shortly after the primary treatment facility became operational.

In 2000, the EPA had requested of Congress an increase to the spending cap because of cost overruns. Congress, recognizing the cost overruns and other issues, chose an alternative approach with the Estuaries and Clean Waters Act of 2000, the public law 106-457. Under public law 106-457, it requested that the IBWC begin negotiations with Mexico to construct a secondary treatment plant known as the ″public law facility,″ and that would serve to upgrade the South Bay International Wastewater Treatment Plant as well as to treat additional Tijuana sewage.

We have not been a party to the negotiations between the IBWC, Mexico and Bajagua—the company selected to implement the requirements of public law 106-457. Therefore, we are really not in a position to update the Subcommittee on the negotiations or on the specifics of the implementations of public law 106-457. The EPA has responded to requests by both the IBWC and Bajagua, LLC for assistance. In fact, we authorized the IBWC to utilize the remaining grant funds to support the development and the comple-

tion of the 2005 Environmental Impact Statement prepared in accordance with the National and Environmental Policy Act.

The EIS selected the public law facility as the preferred alternative for the secondary treatment component to the South Bay International Wastewater Treatment Plant. Most recently, my office has also provided comments on the requests for the proposal prepared by Bajagua, LLC to design, build and operate a contract for them to complete the public law facility in Mexico. Until secondary treatment is provided, the South Bay International Wastewater Treatment Plant will continue to violate the Clean Water Act, and inadequately treated sewage continues to pollute the waters of Southern California, but all of the news is not bleak. In fact, the performance of the international wastewater treatment plant is exemplary, so let me share some of the good news about that.

It is fully operational at the advanced primary level, and Southern San Diego County is no longer experiencing the effects of daily sewage contamination to the rivers and beaches. The EPA and the IBWC are continually working to optimize the treatment plant to achieve peak operational performance, and we recognize that we must continue our efforts to ensure that the rivers and beaches are free from sewage and contamination year round. We stand ready to work with all agencies and stakeholders to move forward with compliance with the Clean Water Act, including secondary treatment requirements, creating a foundation for a sustainable future for decades to come.

Thank you.

Ms. JOHNSON. Thank you very much.

The Chair now recognizes Mr. Filner for the first round of questions, and you may take this seat.

Mr. FILNER. [Presiding.] You know how much I tried to get out of this particular assignment, right?

Thank you for being here, and thank you for being involved with this issue for so long. I am sure, like Mr. Bilbray and myself, you feel like there has been too much sewage for too long, and you would like to get out of it.

Let me just ask Mr. Marin: You signed a Supplemental Environmental Impact Statement that said the so-called ″Bajagua Project″ was the preferred alternative. You signed, I guess, the Record of Decision, and you signed documents giving Bajagua the authority to go out to bid on contracts. We have met many, many times over the last number of years since you have been both the acting and the permanent commissioner, and you told me—and we worked on that assumption—that you were aggressively implementing the laws that were passed in the attempt to solve these problems.

In all of that time, you never mentioned once that you were looking for another alternative, and all of a sudden, $66 million appears in the President's budget. Money does not appear like that out of nothing. I did not request it. Mr. Bilbray did not request it. Nobody in Congress requested it. How did that money get in there, and how long have you been working on this situation when, supposedly, we were trying to implement the public laws from 2000 and 2004?

Mr. MARIN. Sir, in response to your question, I can tell you that the U.S. section, in combination with the Mexican section, has put

a lot of resources and a lot of time and a lot of financial resources into trying to get the public law requirements adhered to and, you know, executed.

One of the things, again, as you mentioned, is I did sign the Record of Decision selecting the Bajagua Project as the preferred alternative, but that was based on the requirements that Bajagua had already advanced its project. Yet, they had already selected a site, and they had already done some design and so forth. That would be the only way that the court-ordered date would be met. It is a September 30th, 2008. Unfortunately, things change as time goes on.

The project is no longer at the same site as was proposed. There is no design prepared at this moment. Again, there was a conceptual design that was proposed, and so far, that has cost—again, it is a factor in which maybe the decision has been to change, and right now, I cannot say that we are changing course. We might be pursuing two different alternatives.

As to the $66 million budget, I can tell you that there was a very tedious effort by several Federal agencies that were involved to see how this project could be implemented. First of all, in the development agreement, too, there was a May 2nd date that needed to be complied with. There were a lot of requirements that had to be met by Bajagua on that date. That was not complied with, and so that date was also in the President's budget. So, once the President's budget was implemented and the date came about, then the alternative plan was there in order to proceed in order to meet the clean water standards. The only alternative was what was originally planned and designed back in the 1990s. The design of the secondary treatment plant was completed at the time. Again, unfortunately, the funding was not there to construct it. So that was based on the reviews that we conducted. That was the only option that we had in order to be able to meet the clean water requirements for——

Mr. FILNER. Did you ask for the $66 million?

Mr. MARIN. No, sir. That was, again, the administration's——

Mr. FILNER. Who asked for it? I mean, money does not just appear.

Mr. MARIN. We provided—how do you say—the technical background as to how much it would cost, and again, the budget, the $66 million, was basically a consensus of Federal agencies that this would be the best approach to take since we could not, again——

Mr. FILNER. If you pursued that approach, would you meet the court-ordered deadline?

Mr. MARIN. No, sir.

Mr. FILNER. Okay. So there is no way, apparently, that we are going to meet the 2008 court-mandated deadline?

Mr. MARIN. Not at this point.

Mr. FILNER. So since neither alternative—why have you stopped working on the first alternative, which you said was environmentally the most preferred, which you said was the best? In fact, if you read all of the supporting documents, you ripped apart this alternative of secondary treatment in the United States. You ripped it apart in your document. So why didn't you keep pursuing the first alternative?

Mr. MARIN. Again, we provided, or, by letter, I requested that we suspend our agreement with Bajagua in order, again, to be able to review the situation as it is now. Again, there was no compliance to the development agreement.

Mr. FILNER. That is not true. They missed a deadline.

Mr. MARIN. They missed several deadlines.

Mr. FILNER. But they made several, right?

Mr. MARIN. They did, but there are very few, and I can tell you the critical ones were not met.

Mr. FILNER. And did you have any possible role in delaying that?

Mr. MARIN. Sir, there is a lot—again, this is an international project, and there are a lot of factors that influence what is happening there. It is not something——

Mr. FILNER. Including your not being able to go to meetings, including your taking too long to——

Mr. MARIN. No. I am sorry, but I know Bajagua, and again, I mentioned in the previous meeting that they had put together a list of areas in which we, according to them, had delayed, but I can tell you we can spend all afternoon contradicting every single one of those.

Mr. FILNER. You just said you know how difficult and complex the negotiations are, and then you are saying that, oh, well, they did not respond. So you recognize how difficult it is. We are just very upset that you did not put all of your resources into trying to make that happen since we passed two laws in this Congress to do that, and I mean that was very upsetting to those of us who have tried for so long, and you are seemingly going back to a proposal which was rejected a decade ago which may take another decade to come to fruition.

Remember, the first plant that is there took more than a decade, I think, Brian, to get into action, and it was obsolete when it was open. So we are trying to get all around that.

I am going to come back to you, Commissioner, and also to you, Mr. Nastri, but I will yield to my friend from Arkansas, Mr. Boozman.

Mr. BOOZMAN. Thank you, Mr. Chairman.

I guess I am confused about this. We have a situation where, in the past, we have had, you know, a lot of effluent coming from Mexico. The Tijuana area has grown in the last 10 years.You know, we had a partial solution that treated 25 million; is that right? Now, probably, what is it? What is the total effluent now, 75 million or 70 million?

Mr. NASTRI. In terms of the treatment——

Mr. BOOZMAN. As far as the amount that needs to be treated that is coming out of the—so I guess my point is that we have got a much worse situation now than we did 10 years ago even though we have had a partial solution.

I do not understand how your solution—and I really do not know your solution, Mr. Marin. I do not see how that addresses that at all.

The other thing, Mr. Nastri, is that you said that it is good news that we do not have these spikes and stuff, but because it is just phase 1 coming out of the treatment plant, if you tested that water,

it does not meet the EPA standards because of phase 2's not being there, does it?

Mr. NASTRI. It does not meet the secondary standards, Congressman.

Mr. BOOZMAN. So all that means is that the reality is, when you walk down the beach, you do not see the visible feces and stuff like that, but you have still got the dissolved crud in the water that is there all the time. In fact, to me, that is even more dangerous because at least when you see the stuff, you know, if you are out there, you realize there is a danger there.

Mr. NASTRI. I can understand your perspective, but the fact of the matter is that, when you look at the water quality standards now as opposed to 10 years ago, we are much better off today than we were 10 years ago when we did not have the facility operational.

Mr. BOOZMAN. Do you agree with his solution?

Mr. MARIN. Do I agree?

Mr. BOOZMAN. No. Does Mr. Nastri?

Mr. Nastri, as to the EPA, do you support what they are trying to do?

Mr. NASTRI. What we support is getting secondary facilities constructed, and we support getting it done in the most expeditious way possible. I think you are right.

Mr. BOOZMAN. Are you concerned about the other 50 million or 35 million, whatever it is, that is not being addressed at all?

Mr. NASTRI. The issue that you are raising addresses future capacity, and there are a number of plants that are about to be on line or are about to be constructed or are about to actually be completed and become operational through loans developed and acquired by Mexico through the Japanese banks, and there are other facilities that will address that capacity. So will we need that capacity right away? No. Will we need that capacity in 2015? Yes. Will we need that capacity in 2023? Yes, but right now, because the plant is in violation, our primary goal is to get the plant in compliance, and so our goal is to do it in the most expeditious way.

As you and the Members of the Committee have noted, it has been 7 years, and we seem to be no closer to secondary treatment than we had been 7 years ago. So, when you ask me as a representative of EPA what our opinion is, I am going to tell you that I want to respond in a way that gives me the most assurance, and the only way that I have that assurance is if it is something that we, as an agency, have control over. The U.S. EPA does not have control over the construction in Mexico.

Mr. BOOZMAN. But as a plan, I mean as far as looking at plans, if you could snap your fingers and know that, you know, the proposed thing in Mexico is actually done and is going to be constructed, that is a much better plan as far as solving the whole problem than just getting the secondary, isn't it?

Mr. NASTRI. The Bajagua plant, as described to me earlier today, in going to secondary and tertiary treatment and utilizing more of the water is certainly a better approach, and that was the basis for the preferred environmental approach described in the EIS. It is that you are actually treating more to a higher standard as opposed to 25 million within the IWTP.

Mr. BOOZMAN. As to what you are trying to do, Mr. Marin, do you have the legal authority to do that? I mean, is there statutory authority in place now? The legislation that we passed seems to be different than what you are doing. Do you have the legal authority to even do this?

Mr. MARIN. The public law, sir, identifies that, if there is no other alternative in the United States, that secondary can be considered or that other alternative can be considered in the United States even at the same time as the Bajagua Project.

If I could add to what Mr. Nastri here has said on the water deliveries or on the quantity of water that is available in Mexico, right now, we are treating 25 million gallons a day of sewage at our plant, again, to advanced primary standards. Mexico also has a lagoon system in which they are treating 25 million gallons a day, and that was upgraded 2, 3 years ago.

What I can say is that there are about 8 million to 12 million gallons of raw sewage going into the Pacific Ocean about 6 miles south of the border. Again, as Mr. Nastri has mentioned, there are two plants under construction using the Japanese credit, the Japanese credit plans. Those will be treating sewage to secondary, and they also will be aligned later in 2008. So, right now, the way it is seen is that there is enough capacity to treat the sewage that is being generated in Mexico. There is no renegade sewage in the Tijuana River, and there are, yes, occasional discharges in some of water, but we also have facilities to capture those and put them back in our plant.

Mr. BOOZMAN. One last thing, Mr. Chairman, if you will indulge me.

So is your problem in not doing what Congress has asked you to do in the sense of what we have put in legislatively? Is it with the plan or is it with Bajagua? Is it the implementation of the plan with the company that was selected?

Mr. MARIN. Well, I think, sir, again, there are several factors right now that are, I guess, preventing the continuation or at least the advancement of the Bajagua Project. It is not—I do not have anything——

Mr. BOOZMAN. Like I said, do you have a problem with what we have legislatively asked you to do?

Mr. MARIN. No, sir.

Mr. BOOZMAN. Do you disagree with that or do you disagree with the group that is trying to——

Mr. MARIN. No, sir. I just am looking to see what is the most efficient and effective way of getting secondary to our plant to be meeting the secondary requirements and, therefore, to alleviate the court-ordered deadlines and sanctions that may come.

Mr. BOOZMAN. Okay. Thank you, Mr. Chairman.

Mr. FILNER. Mr. Boozman, I would ask unanimous consent to give Mr. Bilbray a chance to ask some questions of these witnesses. So ordered.

Mr. BILBRAY. Thank you, Mr. Chairman.

Commissioner, you said there is no renegade flows going into Tijuana. Are you willing to go down there now to wade in the Tijuana River with me?

Mr. MARIN. Yes, sir. I had photos taken yesterday that show that there is nothing there.

Mr. BILBRAY. You are saying that, right now in the flood-controlled channel, there is no pollution?

Mr. MARIN. Yes, sir.

Mr. BILBRAY. I will make a call over to the county health department, and I will love to see them verify that.

Mr. MARIN. I will meet you there, sir.

Mr. BILBRAY. So it has got no flows going through it now?

Mr. MARIN. I do not think so. No. We operate that plant when there are flows coming across.

Mr. BILBRAY. The interceptives?

Mr. MARIN. Yes, sir.

Mr. BILBRAY. Gull Canyon has no problems?

Mr. MARIN. No, sir.

Mr. BILBRAY. In fact, I will have my staff give the county a call to see what the latest numbers are on the Tijuana River. The fact is—what was your estimate in 1995 of building the total plant, secondary and primary?

Mr. MARIN. I am not familiar——

Mr. BILBRAY. Okay. What was your estimate of building a 25-mgd primary?

Mr. MARIN. Right now?

Mr. BILBRAY. What was it in 1995?

Mr. MARIN. I do not have that figure, sir.

Mr. BILBRAY. How much over were you? Do you know how much you were over?

Mr. MARIN. No, sir. Let me just put it this way.

Even though I have a 27-year career with the boundary commission, that project was not under my authority.

Mr. BILBRAY. So you have no idea what the original projections were for the construction of the existing IBWC project?

Mr. MARIN. No, sir. I was building another wastewater treatment plant at that time.

Mr. BILBRAY. Do you have any idea now what you are projecting the 25-mgd secondary is going to be?

Mr. MARIN. $94 million.

Mr. BILBRAY. $94 million. That will treat 25 mgd to secondary?

Mr. MARIN. Yes, sir.

Mr. BILBRAY. Previously treated?

Mr. MARIN. Yes.

Mr. BILBRAY. So the problem I have here is that you do not have the numbers as to how much you underestimated your original projections. So I have got your projections now. I have no way of judging how much farther over you are going to go, but we all know it was grossly underestimated in the previous first stage of construction.

Will you agree with that?

Mr. MARIN. Yes, sir.

Mr. BILBRAY. Okay. Do you see where there is a little credibility problem here?

Mr. MARIN. Well, again, if I may add, we also had this estimate from Montgomery Watson, which is also one of the 40 top engineering firms in the United States.

Mr. BILBRAY. I understand that. The difference is——

Mr. FILNER. Those are private firms that you are trusting. Very interesting.

Mr. MARIN. I believe Bajagua is doing the same thing, sir.

Mr. BILBRAY. And that is fine. The fact is that history has proven that, when you build it on the border with all of the problems that we have along the border with floods and with the fact of an uncontrolled situation along the border, there are a lot of unforeseen things.

Mr. MARIN. Correct.

Mr. BILBRAY. Okay. So the record of the in-house operation of IBWC has been less than stellar. It has been frustrating, okay? I understand both sides. This is 25 mgd to go to secondary.

What is the next step? Where do we go? Are we finished with this treatment issue? In other words—well, let me just back up and say this. Has there ever been enough capacity in the Tijuana region for treating sewage?

Mr. NASTRI. Not to my knowledge.

Mr. BILBRAY. Has there ever been a plant that has come on line as to its original projection on ″time″?

Mr. NASTRI. I am not aware of any within Tijuana.

Mr. BILBRAY. Okay. I am only saying this because those who have worked on this know that it has always been over budget, that it has always been late on ″time″ and that it was not just because it is a bureaucracy; it is because we are working across the border.

The trouble, as I am looking here, is that you are taking timelines and projections based on scenarios that are not justified by the record of the agency that is executing it or as to the location, and I am not just saying the agency. It is a tough environment. Those of us who work in binational issues understand it is a different world. Frankly, that is why we are more comfortable with the concept of, if you do not get the sewage treated, you do not get paid. I would love to be able to challenge the Commission with let us do this 25 mgd on the basis that you only get paid after, that you get the Federal money and the taxpayers' money after you start treating the sewage, and that is the challenge that we are getting into. So we have never been on time. We have never had enough capacity. Now you are telling me they are going to be on time, and we will have plenty of capacity.

Mr. NASTRI. Congressman, you have asked me questions specific to Tijuana, and as I mentioned earlier, the EPA had a cap placed on spending for upgrading wastewater treatment facilities within the Tijuana area. I can provide you examples of where, in fact, we have been on time, where we have been on budget within Mexico, and I can point to my colleague——

Mr. BILBRAY. Has it applied in Tijuana?

Mr. NASTRI. As it applies to Tijuana, again, because of the restriction on the spending cap, the EPA has not been able to move forward.

Mr. BILBRAY. Well, first of all, I had a question of if the spending cap were after you had overruns or before you had overruns?

Mr. NASTRI. It was after.

Mr. BILBRAY. Okay. See, that is what I mean. It was a reaction. All you have got to say is—Tijuana is the fastest growing region in Mexico. In fact, it is probably the fastest growing region in North America, but you have got a whole dynamic there that you can try to apply certain areas to, but this is one of them that we get into.

What is the IBWC's plan for the next phase? Are you going to be coming to this Congress, to this Committee, asking for funding for the next 25 mgd up to secondary, Mr. Commissioner?

Mr. MARIN. Again, right now, in the President's budget, it calls for $66 million. I know the House has removed that wording from the budget, but the Senate has put it back in.

Mr. BILBRAY. Commissioner, I am not saying that.

EPA, you can answer this, too.

Are we saying, ″We do not need any more treatment. We are not going to expand the IBWC plant at all anymore″?

Mr. MARIN. No. We will expand the plant to secondary.

Mr. BILBRAY. Okay, to secondary, but you are not going to increase the volume of treatment at that site anymore?

Mr. MARIN. No, sir. No. Well, no. Excuse me.

That plant—with the program that we are implementing, it can expand the plant immediately to 50 mgd and then ultimately for 100 mgd.

Mr. BILBRAY. What I am saying is—here is my question to you. Are you willing to tell this Committee now, ″look, once we get this done next year, we are going to be coming with″——

Mr. MARIN. No. No, sir. I do not think—again, the flows are not there in Mexico.

Mr. BILBRAY. So, in other words, what you are saying is——

Mr. MARIN. Mexico can take care of their own——

Mr. BILBRAY. —and what you are telling this Committee is that there is no longer going to be a problem after this year with Tijuana sewage?

Mr. MARIN. Maybe not for many years.

Mr. BILBRAY. You honestly believe that we will not have to worry about that? The people at Pearl Beach and the people in San Diego have now been assured by their government not to worry about it, that Mexico is taking care of all of the problems and that we do not need to make any more of an effort?

Mr. MARIN. We will work, Congressman, to take care of the issues with Mexico if things—again, right now, our agreement is to take care of the 25 mgd from Mexico.

Mr. BILBRAY. Let me say this publicly just in closing, Mr. Commissioner. I did not support the original proposal to treat sewage in the United States. I liked the idea that Mexico had a treatment facility in their country and that it was not in our neighborhoods, and most Americans would agree that it is much better that Mexico treats their sewage in their neighborhoods and not in ours, so I am not arguing with that, but then the Commission, in working with the EPA, fought tooth and nail to get Mexico to allow the sewage to be treated in the United States. Bob Filner's district was allowed the privilege of hosting a foreign country's treatment facility.

Finally, I agreed to that. We went with it. We passed a law in 2000 that I authored and that Bob cosponsored. The President of

the United States had a chance to veto that bill on Election Day in 2000. He did not. The executive branch signed it. I will be very frank with you.

My opinion is that the people who are working under you have spent every day since 2000 to de facto veto that legislation and to obstruct the implementation even though it was explicit in how it should be executed. The bureaucracy is vetoing a duly passed piece of legislation, and I see this as a major violation of the separation of powers. I do not see anywhere in the Constitution that the executive branch gets a second shot at vetoing a bill. That is what I see has happened. When you introduce an amendment to finance a whole different project without even talking to the people about where you are going and how you are doing it, I mean the whole illusion was we are moving; we are moving; we are moving, and all at once, it shows up in the budget. It does not happen overnight. I think Mr. Filner is right on that. I have just got to tell you that I think you guys have done everything you can since 2000 to make sure it does not happen, and the project is still not done.

I yield back, Mr. Chairman.

Mr. MARIN. I seriously disagree with your statement, sir.

Mr. NASTRI. I certainly disagree with that, that EPA has fought to oppose this project. In fact, we have tried to be expeditious in our response in providing assistance to both Bajagua and to the IBWC.

Mr. BILBRAY. My question is would either one of you support the concept of a public-private partnership——

Mr. NASTRI. I do not know enough to have a position on that particular matter, sir. With regard to public-private partnerships, I am a big proponent of those. In fact, we have done many, addressing primarily air quality issues, not only within San Diego-Tijuana, not only within California, but in fact, we have developed a model that has been used throughout the Nation. So I am a big proponent of public-private partnerships.

Mr. BILBRAY. I just think it is so much more the nature of bureaucracy to do what you are used to, and you are used to contracting with a private company to build a project but not to operate it and to be responsible for the outcome. Frankly, as a victim, as somebody who grew up as a victim of the lack of government action, I have a lot more faith in a contractor's being held accountable, because he will not get his money. You guys get paid no matter if the sewage flows or not. That is our biggest problem. All of us get paid if the sewage flows or not. Frankly, I would love to see us all a little sensitized, and if we have got to use contracting as a way to sensitize that—I did it at the county; I did it at the city—then I think that those of us in the Federal Government ought to be brave enough to try new things.

Thank you very much, Mr. Chairman, and I appreciate it, and I know it is a frustrating situation, but it is something that we are all going to have to be held accountable for.

Mr. FILNER. Thank you, Mr. Bilbray. I think your characterization of a de facto veto of two pieces of legislation is accurate.

Commissioner Marin, I was shocked that you did not know how much the secondary treatment will cost. If you listened to Mr. Nastri's testimony, he puts it at $239 million, and I think we have

heard that that was $100 million under budget, which is why it could not be constructed, the full secondary.

I know both Mr. Bilbray and I, who are in the area almost daily when we are home, find it very difficult to believe your statements, Commissioner Marin, about the lack of problems and to believe your written testimony, Mr. Nastri, which you did not repeat, I noticed, in your oral statement that Southern San Diego County is no longer experiencing the effects of daily sewage contamination to their rivers and beaches. That is an amazing statement. I mean, I will join you and Mr. Bilbray and Commissioner Marin and step foot in that or I will dare you to do it.

I mean, do you find that statement just completely out of touch with reality, Mr. Bilbray?

Mr. BILBRAY. Well, I was out there 3 weeks ago, riding horses along there, and it was flowing 3 weeks ago.

Mr. FILNER. Where do you get that information? You say it is no longer experiencing the effects of daily sewage contamination on rivers and beaches. Who told you that or how do you know that?

Mr. NASTRI. We collect the information. I think I was trying to make the distinction, Congressman, with all due respect, between wet weather flows and dry weather flows and what it is we are trying to accomplish. We are not saying that there will be no sewage ever. We are saying that, under dry weather conditions, we will collect the sewage——

Mr. FILNER. That is not what you said here.

Mr. NASTRI. What I said was——

Mr. FILNER. There is nothing about—oh, in dry weather. You said the treatment plant is no longer experiencing the effects of daily sewage contamination in its rivers and on its beaches.

Mr. NASTRI. That is true.

Mr. FILNER. You are absolutely wrong.

Mr. BILBRAY. Would the gentleman yield?

Mr. FILNER. Yes.

Mr. BILBRAY. Okay. Now we are using wordsmithing. Will you admit that? Will you admit that?

Mr. NASTRI. I made the distinction that there are different conditions——

Mr. BILBRAY. Wait a minute. When the red sign goes up telling the kids ″stay out of the water,″ when the red sign goes up and says ″this water is not safe to touch,″ is there a caveat saying ″wet weather″ or ″dry weather″?

Mr. NASTRI. The signs usually go up in wet weather conditions, sir.

Mr. BILBRAY. And the point being that, if we do not keep our beaches open, the kids do not give a damn if it is dry or wet weather. The fact is, if you do not have the capacity—you are using the caveat ″we have capacity for dry weather.″ Excuse me. Historically, dry weather has never been a problem there. Historically, the wet weather has always been a problem. So what you are doing is ignoring the true problem, the tough problem. That is wet weather flow. Are we going to go to Boston and tell Boston that they do not have to have sewer overflow systems? Will the center just talk about San Francisco? We require it as a minimum standard throughout this country, but what you are saying is the standard

for those who live along the border is only dry weather, not wet weather.

Will you admit this: If we do not have capacity for wet weather, we have not solved the problem? Will you admit that?

Mr. NASTRI. We have not solved the full problem caused by Mexico. Within the United States, we are addressing both the wet weather and the dry weather flows as you suggest. The issue about the authority, though, to address what EPA can do——

Mr. FILNER. As the administrator for the 9th district, I find your statement so out of touch with reality. I have trouble with, you know, listening to anything you have to say. Let me ask you three things. Let me make three points quickly.

I think the whole point was, when you made your statement—and we have it on the record—about control, you want control, and you did not have it on this project, so you were prepared to scuttle it. That is what you want. It has nothing to do with the court order or anything; it was control, and that is in your own words. So I find that incredible. That is the definition of ″bureaucrat.″ That is all you are concerned with. I will tell you that you are focused on dealing with the law that your 25 million gallons per day will be turned to secondary. You are not an environmentalist if you can say that you have done your job and that that is what you are going to do. You are going to upgrade this to secondary. We have done our job.

What about the 50 million gallons? What about recycling? What about the sludge that is there? This is not the best solution, and you know damn well it is not. This is a solution to meet the purely technical, legal situation with no regard for the well-being of our constituents or of the environment because, if you were concerned about that, you would not testify like this. You would say, ″Look, I will fulfill the 25 million gallons secondary, but I will also then figure out how to do tertiary like Bajagua does. I will figure out how to do 59 million gallons like Bajagua does. I will figure out how to recycle the water like Bajagua does.″ All you say is ″I want control, and I am going to meet the law, and we are going to leave it at the completely obsolete standard of 25 million gallons per day.″ I mean I find that disgraceful for an administrator of the EPA, and you said—by the way, I will give you a chance to answer.

You said this is the most expeditious way to get that secondary. I want you to say that again on the record when you know that the Congressman from the district is going to fight that appropriation every step of the way. Do you know how easy it is to give away $66 million as opposed to getting it? I am going to fight that. The people will go to court about your process, your activated sludge process. They will go to court on many different grounds, and you will never see the light of day of that project.

Mr. FILNER. Do you now say it is the most expeditious way to get there.

Mr. NASTRI. Congressman, thank you for giving me a chance to respond to your comments. First, as a regional administrator of the USEPA, I uphold the law. We will do that.

Mr. FILNER. The law.

Mr. NASTRI. We will do that. When you ask me what is the best way to do it, I say give it to me, give it to EPA, we will take care of it, we will get it done.

Mr. FILNER. The Congress said a different way. We told you what the way was. We passed two laws.

Mr. NASTRI. We have complied and provided assistance necessary. You asked a question today what will it take and I am trying to give you my honest answer to that.

With regard to meeting the law, absolutely we will do whatever is necessary within the authority granted to us certainly by Congress and others.

The challenge though, sir, and the challenge which we have met, is working with Border 2012 Commission. It is working with Mexico to just the very questions that you asked us. It is working with Mexico to find ways where we don't have the authority to get them to do things that otherwise wouldn't be done. It is working along the entire U.S. border. It is working——

Mr. FILNER. It is not working. I live there.

Mr. NASTRI. Sir, we don't have the authority to move forward in such a manner. That is why we are using those partnerships——

Mr. FILNER. You are not solving 59 million gallons a day, you are solving 25 and you are doing it in a way which is not necessarily environmental sensitive and does not recycle the sewage. Why is that a better way? The claim is the Bajagua Project does meet the law, right? The secondary treatment, if it was implemented, it would meet the law?

Mr. NASTRI. Yes, it would.

Mr. FILNER. They are closer to meeting the deadline than this—I learned a new word, ″chimera″—of a secondary edition—because we are going to fight that. We have a Republican, we have a Democrat, anybody who wants to give away $60 million will be pretty well aware of what we think, and we will be at those conference committees and everywhere and you ain't going to get it.

It is not even the question of that. It is a question that you have come up with an alternative. Actually we mandated one knowing that alternative. It was found to be not sufficient, another one was pointed out—regardless of your statements that you assisted. I think if we had court testimony on it, we would have testimony on how EPA and IBWC resisted the implementation of that law since it was passed. And you would be looking for a way not to do it, and there has been one reason and you said it, control.

Mr. NASTRI. Congressman, I said control because if that is how you asked to us proceed we would do so. We have provided assistance, technical resources, and we will continue to do so. If you asked if we have a preference, I have no preference on whether it is Bajagua, through a national wastewater treatment plant. The preference we have now does come into compliance. The preference is that we work in partnership with Mexico, with all the stakeholders, to come up with a way that is acceptable.

Part of the challenge here is to take the history from the last 10, 15 years and learn from it. I can tell you when I came into this position the financial management of the border fund is something that caused me great concern. We permitted a number——

Mr. FILNER. I don't give a damn about that. We are talking about treatment of sewage from Mexico today and how we are going to get them to comply with the law and comply with the environment.

I will call on Mr. Boozman.

Mr. BOOZMAN. Thank you, Mr. Chairman. I am not emotionally in this thing in the sense of I didn't grow up in San Diego. I live in Arkansas in the center of the country. I have been on the Committee since 2001, on Water Resources the entire time and on Transportation. I think you do agree that the intent of the law in 2000, and then I tweaked the law in 2004, really wasn't a direction that is different than what you are taking now.

And for somebody who tries to get things done, goes through the process, it is very irritating to do those things and then not have the agencies carry it out. And I really see that that is what is happening, and I think you would agree that we are hearing it. We are the ones who did it, Mr. Filner is on the Committee, Ms. Johnson, we agree our intent was not to do what you are doing now.

On the other hand, I am willing to listen if you are telling me that because the Japanese are going to build treatment plants, we are not going to have a problem in a few years. I will listen, but you are going to have to give me evidence that that is the case.

Right now I am a little confused. I have an excellent relationship with EPA. In Arkansas we have a lot of rivers and streams and enjoy working with you guys, but things are a little tougher, it seems, with the standard as far as getting rid of the phase 1 stuff and feeling like everything is okay now. I understand you want to get to phase 2 to bring it into compliance that way, but you are still not dealing with—you have as big a problem now because of the growth of Tijuana and the surrounding region as you did when we started this thing 10 years ago.

Is that not right?

Mr. NASTRI. I said we have a big problem, and I certainly hope I didn't convey that we were resting on our laurels with the advanced primary because we certainly agree and I thought I acknowledged that the outfall is continuing to discharge in a manner that is not in compliance with the Clean Water Act. It is in violation and posing a risk to the health of our nearby populations, to the community, to the beaches, to the rivers, absolutely, and that is why EPA has provided funding and is doing everything they can to move this project forward.

As I mentioned before, we are not party to the negotiations with the IBWC, we are not party to negotiation with Bajagua. We are providing resources when asked. And I would ask if you are aware of any type of incidence where EPA has delayed or hindered, make me aware of it, because I am not aware of such issues.

Mr. BOOZMAN. I guess my point is we have a problem and so the Committee, they scratch their heads and the staff and the Members, and we look at this and say well, we have this problem, let's come up with a solution that gets you your secondary into compliance and then it also treats the other because of the growth of the city on the other side and then especially keeping it on the other side which—so we are going to treat that too. We come up with that solution. That to me is a good solution. What we are talking about is backing off and doing the second phase of that, which for me again is not the legislative intent of what we were trying to do.

Is that not right? Isn't the better solution to the problem the one that we came up with? If we can get—and this is a separate issue that we are going to talk about in a little bit, but if we can get the

companies to get the thing built the way that we want to get it done.

Mr. NASTRI. I think your intent as you describe it, had it been met in the way that it was desired, the answer to your question would be yes, but the challenge has been as the commissioner has described. Here is where I get to the issues of control. I can control what my agency does, I can control what my staff does, I can't control what other agencies do or do not do.

So having said that, what we rely on are people making schedules, people meeting commitments. If those commitments and schedules haven't been met for whatever reason, and I will not comment, they just haven't been met, the issue is do we have confidence and can it be done.

Mr. BOOZMAN. Thank you, sir.

Mr. NASTRI. Sure.

Mr. BOOZMAN. We went for years trying to work out the treatment or whatever. What does Mexico think about this? Do they mind us pulling the plug or do they want us to pull the plug on this?

Mr. MARIN. Let me tell you Mexico supports the Bajagua Project. It would be dumb for them not to do it. It is a free project——

Mr. BOOZMAN. Are we having any kind of legal obligation with them?

Mr. MARIN. Normally it is a 50/50 split. That is what we would do with Mexican projects. I believe that is in the 1944 treaty. This one is a whole free project to Mexico.

Mr. BOOZMAN. You negotiated it. Somebody did.

Mr. MARIN. Yes, we were joined with Mexico to build this plant.

Mr. BOOZMAN. You came up with an assignment. I guess my question was when we came up and signed it do we have a legal obligation or an oral obligation to do our treaty? I don't understand.

Mr. MARIN. Let me say Mexico has already paid the U.S. for secondary treatment of their sewerage. They paid us when the first plant was constructed, and of course our agreement with them was this plant would go to secondary and they paid us in advance. In fact they made their last installment this year. Right now it is an obligation to the U.S. to provide secondary—again Mexico——

Mr. BOOZMAN. That is another obligation that we haven't talked about. So we have that obligation sounds like, but do we have an obligation either by treaty or by a moral obligation? Since we spent a lot of time working on an agreement and both sides signed the paper, are we bound to doing what we said we would do?

Mr. MARIN. Not necessarily. We will work together to get the project done, but there is no definite and specific commitment that this project had to be done.

Mr. BOOZMAN. What I would like to do, Mr. Chairman, with your permission, is we have several questions that we would like to submit to the witnesses. I yield back.

Mr. FILNER. Yes.

Mr. BOOZMAN. Thank you.

Mr. FILNER. Before I call Mr. Bilbray, you said you had to have confidence in the agencies you deal with. That is the problem here. We have a problem because the IBWC didn't fulfill its original com-

mitment of building a 25 million gallon per day facility that would treat at secondary standards. Why deal with IBWC if you can't trust them?

Mr. Bilbray.

Mr. BILBRAY. I guess I want to come back and visit this issue of where we are going, because problem is I don't see us going beyond, I see an abandonment of a long-term agenda.

I would like to ask EPA, how many beach closings have occurred because of the lack of secondary treatment at the outfall?

Mr. NASTRI. I don't have the exact number. I can get that to you, sir.

Mr. BILBRAY. Well, let me say I would—you may want to ask your staff about that.

Mr. NASTRI. I absolutely will.

Mr. BILBRAY. Because my information from the county of San Diego, which does the testing, zero, zero, that the health risk of not going to secondary to that today is zero. You want to guess what percentage of the closures in that area was because of wet weather flow?

Mr. NASTRI. Yes, I would say probably 100 percent.

Mr. BILBRAY. Can we agree that the public health threat here is wet weather flow and so from the EPA's point of view, separate from these guys, wet weather is the end all? If you ignore wet weather—let's pull up our tent, except for what you said, and I understand what you said. My concern is that the law is sufficient, it is not enough to do just the law. In this situation where you want to take your kids into that water the secondary is not what is going to threaten their lives. My kids are recommended to have hepatitis A and B inoculation because of exposure from a foreign government lack of action and the lack of action of our government, and that is why I am coming back down to this issue. We can't walk away, you are not going to be done with this, ladies and gentlemen, until you take care of wet whether flow, and there are a few of us who will go to our grave dragging this back up.

Commissioner, in 2001, within months of the passage of the legislation, you had staffers who weren't under your supervisor at the time, but were actively working within the coalition, saying there is no accountability if we have a private contractor implement. And they publicly stated, and in private discussions would be there, they didn't want to do this project.

Now, you think about what I feel like working my entire life in this, finally getting all the players together, he will take up treatment plant in his district, we will get the money for you, we have everything together, and you have somebody who says, Congressman, I don't care what you guys do, we are not going to do it, we are not here to serve the law, we are not going to follow the congressional mandate, we are insulated from that.

And you know the problem with the commission because it is a hybrid formed in the 1840s, basically not under the supervision of anybody, has created a mindset that basically has been insulated from political reality. And now you have a situation where you have mid management people telling Congressmen and telling the public, we don't care what the law is, we don't have to do it, we don't like it. That is the kind of thing why I am outraged, that is

why I am sitting up here on this dais. It is not my Committee, it is not even my district, but it is my country that says the executive branch is not supposed to be not above the law, they should be executing the law. I don't see where we go with this thing if you play with that.

I still come back to every cent that is wasted, every cent not spent as effective as possible, I say this to EPA, every cent not drained to protect the value is an act against the environment because that is a cent that could have been used somewhere else. My concern is here, if we are going to treat 25 mgd to secondary for $1.75 instead of $1.05, that is an act against the environment for us to sit and just say, don't worry, we will find the money somewhere else, we will find more money. That is why I am saying you will pay the price and fulfill the law, but you are not going move the agenda for protecting the environment. And no one passed the Clean Water Act ever thinking it would hurt the environment and never assumed that we would waste money and not be as the most effective as we can. We will go another 25 mgds, Commissioner, the wet weather flows will be brought up.

Is the State Department willing to close the border for every day that the beaches are closed, are you willing to shut the port of entry? No. Why not? Is Mexico more important than tourism on the beach of Coronado?

There is a real double standard here, but it is not important enough to you to do those kind of things. That is why I say it will come down the pike. I will do everything I can while I am in Congress and if it means shutting off and eliminating the privilege of crossing the border to protect our environment, I will be willing to do it, but wet weather flows are important, they are the ones going out there, and that is one of the threats, that is what is closing our beaches.

Mr. NASTRI. Congressman, I agree that the wet weather flows are a big challenge, but even if we proceed in the Bajagua format, that still will not address the wet weather flows.

Mr. BILBRAY. So you agree that Mexico is part of the Minute order, Commissioner, why we are giving them such a deal on treatment? We give them a great deal on treatment, they are supposed to focus on the wet weather flow, they are supposed to put it in pipes, which will increase the volume that we need to treat. So that is my concern. If you take the existing flows, you have to remember we have to project, we don't know what the wet weather flows would be. For us to say we don't need anymore at this time is not viable, it is not responsible. If they do their job, our job will increase substantially but the environment will benefit.

That is why I get mad. I was there when we negotiated, Mexico was supposed to put it in a pipe and we are supposed to make sure it doesn't pollute the ocean. They will do their part. The trouble is I don't think we will be doing ours.

Mr. FILNER. Let me make one more point. When I first heard about the Bajagua proposal, the thing that intrigued me the most was the recycling the water. The government of Mexico, the State of Baja, the City of Tijuana all are desperate for water. I understand there are discussions about the Colorado River distribution because Mexico is a party to that and both your agencies I suspect

will be involved in dealing with the allocation of water resources. It seems to me to undermine a project for producing 50,000 mgd of reclaimed water is harmful to the future of water resources in the whole Colorado Basin, let alone southern California.

Why wouldn't you be jumping on that? I don't understand it, a million gallons a day of reclaimed water in an area desperate for water, why can't you help on that? Do you have any other plans to give us reclaimed water?

Mr. MARIN. Sir, that reclaimed water is not for U.S. beneficial use.

Mr. FILNER. I said give it to Mexico so we don't have to worry about Mexico's claim anywhere else.

Mr. MARIN. There is an issue on the Colorado River and California location, California has been reduced to the 4.4 plan, 5.42. That is water that is seeping from the canal into Mexico——

Mr. FILNER. What are you doing to help the region with more water? I just don't—you should be jumping on this thing with everything that you have got. You could leave office by saying you made sure the region had 50,000 gallons more where you don't have to worry about the Mexico and regional thing.

Mr. MARIN. Sir.

Mr. FILNER. Do you have any other plan?

Mr. MARIN. To provide the Colorado River water to the U.S. system to Tijuana.

Mr. FILNER. How much is that?

Mr. MARIN. It depends on——

Mr. FILNER. How much is it?

Mr. MARIN. There is other——

Mr. FILNER. How does that compare to 50 million?

Mr. MARIN. It is not U.S. water, it is Mexico water. We are concerned about the U.S.

Mr. FILNER. We are treating the sewage, which is what your job is and claiming and making sure our neighbor to the south has resources. And you are saying that is not our job.

Mr. NASTRI. Make sure the water quality standards are being met.

Mr. FILNER. That is why we are getting upset, because of the kind of bureaucratic answers we are getting here. Your job is to fulfill the law, our job is to help the region.

Mr. BOOZMAN. Thank you. One thing real quick, when will the court hear the matter of extending the deadline, the September 2008? And what is the IBWC, what are you guys going to argue when you go to court?

Mr. MARIN. Sir, that request was filed this morning. It was sent by the Justice Department to our regional control order or the judge—I am not familiar exactly who it was sent to, but it has been filed and we will request an extension for construction of the plant. When we get a response, that is a different issue.

Mr. BOOZMAN. And the argument?

Mr. MARIN. Again that there will be right now pursuing dual course secondary to the U.S. and the Bajagua Project. Basically the extension is to be able to mediate one of those two deadlines.

Mr. FILNER. Which deadline are you trying to meet with that?

Mr. MARIN. 2008—the request that we are fighting is for an extension of time, to be able to construct our plant or finish the Bajagua——

Mr. FILNER. What date is that?

Mr. MARIN. March, 2010.

Mr. FILNER. You think you are going to build—even Mr. Nastri is looking at you with some incredulity. March 2009?

Mr. MARIN. 2010.

Mr. FILNER. You don't have any money yet. You are claiming the environmental lift thing has been done but it ain't because it is a new project. You haven't dealt with the Congressional problems and lawsuits and you will do it by——

Mr. MARIN. Based on the EPA and CEQ the environmentalists have prepared.

Mr. FILNER. I wished you worked on the other one as much as this one. I am sorry.

One more question.

Mr. BILBRAY. Originally, there was a little thing called litigation between Surfrider and Sierra Club. Has Sierra Club, Surfrider and the judge, I guess Judge Rooster, have they signed off on going to activate sludge, now going back to the original, have they assured you they have no problems with you now going back?

Mr. MARIN. The lawsuit that was filed, sir, was a lawsuit to request that the IBWC consider other alternatives, it was not to say they would not accept activated sludge. There was an additional decision in 1999 that clarified that situation. We would have to go back again to update those requirements.

Mr. BILBRAY. In other words, you would have to—you agreed to give priority to the ponding over the activated sludge. So you would have to go back and renegotiate that with those parties and that judge or you show them that you fulfilled your requirement?

Mr. MARIN. Yes, sir.

Mr. BILBRAY. So we would go back to where we were 10 years ago?

Mr. MARIN. The issue about not being able to use it——

Mr. BILBRAY. Activated sludge, and you don't to worry about lawsuits?

Mr. MARIN. As far as the decision a few years after that.

Mr. BILBRAY. Yes. The Sierra Club and Surfrider have told you they are okay with activated sludge now, they changed their position.

Mr. MARIN. I haven't read the documents recently to tell you yes or no. I know the decision is made that we did what the lawsuit required, for us to go look at different alternatives in order to address the issue there.

Mr. BILBRAY. I would strongly ask you to go back and touch base with those litigations to see if they changed their position. As far as I know, Mr. Chairman, there is no change at all in their positions.

Mr. FILNER. We thank you, Mr. Marin and Mr. Nastri, for your presence, and we thank you for helping us to understand the situation.

Mr. MARIN. If I may, Congressman Filner, I have some photos taken on July 16 of the river, it is basically dry, if you want pictures.

Mr. FILNER. That is because of all your efforts? What is that supposed to prove?

Mr. MARIN. The Congressman was saying there are flows in the system.

Mr. FILNER. Have you pictures of all the——

Mr. MARIN. This is Tijuana.

Mr. FILNER. He asked about——

Mr. MARIN. We have facilities at those sites.

Mr. BILBRAY. Next time why don't you send someone to the Hollister Street Bridge and test the water at the Hollister Street Bridge, and I challenge you to wade in the water at the Hollister Street Bridge.

Mr. MARIN. It wouldn't be the first time.

Mr. FILNER. It may be the last.

Mr. BILBRAY. I assure you——

Mr. FILNER. Anything additional to submit we would be happy to argue with you right now.

The second panel will please join us. Representing the Bajagua firm, we have Jim Simmons, who is Managing Partner.

You have the floor.

TESTIMONY OF JIM SIMMONS, MANAGING PARTNER, BAJAGUA, LLC

Mr. SIMMONS. Thank you. Thank you, Mr. Chairman. My name is Jim Simmons. I am the Managing Partner of the Bajagua Project and a principal in the project. I have provided you today with written testimony which you all have in your possession, and I decided not to represent that testimony after listening to the process that has gone on here today. I will say this, and I think it is extremely important for us to try to characterize what we are trying to accomplish here.

Mr. FILNER. Just for a second, is Commissioner Marin or Mr. Nastri in the room?

VOICE. They left.

Mr. FILNER. They left. They don't want to hear this testimony? Just for the record, they left before your testimony. Thank you.

Mr. SIMMONS. I certainly hope they come back.

We find ourselves at a historical moment, it is also a little bit hysterical. I think we are at a point now where we have come full circle with a public project partnership put in place by Congress twice and asked to move forward with the project on the border to bring together a process that will bring several things for the United States and several things for the country of Mexico.

Mr. Chairman, as you are so painfully aware, Mexico has been brought to the table to negotiate from a fairly weak position over the years, has looked to the United States to try to resolve issues they don't consider their problem. They don't have a sewage problem in the City of Tijuana, they have a water problem. The objective put on the table and brought forward was a proposal to create value, to create a commodity so that the City of Tijuana, the State of Baja and the country of Mexico can look at that and say it is

incumbent to make use of this commodity and develop our neighborhoods based on clean water. We have a mechanism to develop clean facilities where we have something we can sell.

Up to this point in the history of this project, and I look back to remind all of you on February 27th, 1944, that was 5 days after I was born, this treaty was put in place to resolve this issue. I would love to see this resolved before I am passed from this planet.

I think it is a question now of how do we bring together the final steps of this process. We have put a huge amount of information before you and in front of the IBWC and others that says if we work together we come up with a facility that produces 59 million gallons today of secondary treated water, right now that is what is being charged in Mexico 5 million gallons, not one single drop is being treated to secondary standards, whether it comes out of San Antonio, Buenos Aires, whether it comes out of ITP, none is being treated to a secondary level. When we get our plant on-line everything we produce will be a minimum of secondary. We will provide the beginning of a process in Mexico where they will have a commodity that they desperately need. It is a process by which they will eventually be self-sufficient in their treatment. It is the only mechanism available to the United States to get out from under this long-term burden of paying for sewage across the border.

Under the plan that the Commissioner has proposed to you to take 25 million gallons a day and treat that, that is an ongoing process under the treaty. There is no way out. This Congress will be asked for the next 100 years to pay for that 25 million gallons a day. Under our process it comes to an end in 25 years, the plan is paid for. There is a tertiary facility in place who has the financial ability to take over the process, and this country will finally step back and take a deep breath and say finally I am not paying for the treatment of Mexico sewage.

It is a concept that when we proposed it to Congress it was passed unanimously twice, because what happens here is that I and my partners will step up with a checkbook and we will write a check for the entire amount of money that it takes for the project, we will not ask the Congress for one dime. At the end of the day I will come to you and say I am now producing secondary treatment water, and I would like to you pay me for the production of that water. And you will test it, you will say yes, sir, you have produced it, and we agree we will pay you for that. As long as you do that, we will continue to pay you for it.

We have assumed the risk and appropriations, we have a bank that has financed us, all of the pieces are in place.

I realize I am over my 5 minutes, I really could go on for a long, long time. I will defer to questions on this process.

But in conclusion let me say this, we are virtually at the gate, we have identified the site in Mexico, we are currently working on the site. We have been given rights-of-way on the top of the berm to put the pipelines, which saves us from breaking streets and spending extra money to put pipelines in streets.

We have been given a concession for the reuse of the water for 20 years. That is the economic engine that runs the entire process. Give me that economic engine and I will turn this into something that makes sense for you, the United States, to Mexico, and we will

finally see an end to this problem, because instead of sewage being something that runs on beaches, it will be something that Mexico will seek to capture to bring the economic value back which they desperately need.

I thank you for your time and attention. I will answer any questions I can and elaborate on anything I have said. Thank you.

Mr. FILNER. Thank you, Mr. Simmons. If the IBWC was cooperating with you, when could you have a plant open that would meet the requirements of the scenario?

Mr. SIMMONS. The Clean Water Act implementation of the process we believe we could be in the ground up and tested and fully operational in 25 months.

Mr. FILNER. From the time——

Mr. SIMMONS. From the time they tell me to go. That could be today if they would tell me that.

Mr. FILNER. All right. For the record, Administrator Nastri and Commissioner Marin just walked in, so maybe you should answer my question again.

Mr. FILNER. I asked, assuming there was cooperation from the IBWC since we already have the EPA cooperation, could you open a plant that implemented or was in compliance with the Clean Water Act?

Mr. SIMMONS. We believe we could open it 25 months from the time the restriction is lifted on us to move forward and we met with our three qualified bidders. That is the schedule they have given me. It would take 6 months to put all the filing negotiation in place and sign a contract, 19 months to build the plant. There are some mechanisms to shorten that. I have gone over those mechanisms with the Commissioner and those mechanisms involve while we are negotiating in that 6-1/2 month period, Bajagua itself could begin site preparation, we could look at ordering the pipe now in the beginning of the process rather than waiting for the orders to come after the contract is signed. There are several other mechanisms that may shorten the time 3, 4, 5 months.

What we are looking for is an opportunity to put this in the ground. On the outside if I am set free to move forward and get full cooperation from the IBWC and the agencies involved, I will have it in the ground in 25 months. I have not been threatened with a lawsuit and don't have the same difficulties in front of me in terms of finding money from Congress. I will come to you and ask you to consider paying me until 2009. That would only be for the first few months.

Mr. FILNER. So when Mr. Nastri said he was interested in the most expeditious way of complying with the law, would you say your way would be a way to do that?

Mr. SIMMONS. Absolutely.

Mr. BOOZMAN. Initially, again we enacted a couple laws, this didn't appear to be very controversial, you went through the process and got as far as you got and now you are having troubles. Why is that? How have you gotten crossways with the administration?

Mr. SIMMONS. Well, I think there is a lawsuit hanging over the IBWC and they certainly don't want to be an agency sanctioned by the court for not complying with the Clean Water Act. And I think, as the Commissioner put very clearly, this is a complicated project

that involves two national governments, two state governments, and several city governments, and his fear is putting all those pieces together in a timely way will be more difficult than he can deal with. Therefore, he wants to have a plan that will take him to his objective of not being sanctioned by the court in order to resolve that sole issue, to make sure he is not sanctioned by the court, and therefore in the process lose the vision and the ability to see past that and to treat into the future and to create this mechanism that will allow this reclaimed water to become a reality.

I think that that fear is unfounded. If I get the same effort and cooperation into helping me with Mexico and things on the other side of the border that he has convinced you to put the $66 million toward, we will make it work. We are virtually at the door of doing that. I have three qualified bidders. Within 2 weeks I could have an RFP in their hands and they could be out to bid and we could go into construction within 6 months.

Mr. BOOZMAN. So I guess everyone agrees, as you said and as we had testimony earlier, it is a complicated situation in getting these things done. So you don't feel like your timetable is overly optimistic?

Mr. SIMMONS. I don't feel as though my timetable is overly optimistic, and I didn't feel that my previous timetable was overly optimistic had I been given the level of cooperation I believe I should have gotten. At this point there are——

Mr. BOOZMAN. Where do you think you haven't gotten the cooperation specifically?

Mr. SIMMONS. I think that the International Air and Water Commission could have made a significantly bigger effort to help us work through the problems in Mexico. They started off by telling us we couldn't deal with Mexico without them being present, and then it was extremely difficult to make them present. So we have essentially abandoned that position and we have gone on to work with Mexico on our own and we have been very successful.

I recognize that providing documentation for everything I will say to you right now, that is important and we will do that. We have convinced Mexico and, as the Commissioner said, Mexico ultimately would be rather stupid if they didn't take this process forward, but they have made an investment here. He made it clear they already paid for secondary, it wasn't clear it had to be secondary to the United States. They already made the payment, it can be in their country. He also made it clear that Mexico needs the water and they understand that implicitly. It is also very important that when I walk across the border in a public-private partnership that we do that together and make ourselves available to each other in a more expedient manner than we previously have.

My contention is if we can find a mechanism to motivate each other to work closely together, we will accomplish this and get it done. And I am pleading with the IBWC and the EPA and with this Congress to help us do that.

The reason I am pleading is because again it is a historic process that needs to succeed so that when this border has a fundamental change and how it moves forward treating infrastructure and water

and how we share the Colorado River and how we do business with Mexico, this is an extremely important component.

I would welcome the participation of Region 9 EPA in the process along with IBWC as a fresh breath to come to the table and help the differences be worked out. Help us work with Mexico. There is significant strength in that approach, and I would welcome that. We need to break through the barrier and make this process go forward.

Mr. BOOZMAN. Thank you, Mr. Chairman.

Mr. FILNER. Mr. Bilbray?

Mr. BILBRAY. Mr. Simmons, I am trying to look where do we go from here. If instead of going to using our money on site in the Tijuana Valley for secondary and the next allocation to look for is to expand the IBWC project to 50 million, another 25 million, could you handle, are you going to be on line to handle that next 25 million by the time we can complete an expanded facility?

Mr. SIMMONS. Yes, our capacity will be at 59 million in the initial stage of construction.

Mr. BILBRAY. My argument is this, my frustration is everybody saying, don't let him do that, whatever, and I would like everybody doing their part, but don't try to do it all. I think the big one right now is to start planning now for expanding the existing facility, do what it can do and get you working on doing the secondary, the reclamation. Let me tell you, Bob's community, it will be tough selling another 25 mgd in his community let alone going to some of the other stuff we have talked about.

My question is the original proposal for Mexico was to go with the plant on the Alamar, not far from where you are proposing a plant. The United States negotiators, A-5, Mexico City raised the issue that there was no control over the quality of the waste that was going to be disposed of in the Alamar and thus into Tijuana. That was Mexico's original plan.

In lieu of that you asked, or offered, let us treat it, you give us—in fact the money Mexico paid was supposedly exactly what they were projecting for their costs, saying we will build it in our country and by building it in our country we have some enforcement.

The assumption at that time was there is no way to have any control over the quality of the treatment unless we have it in the United States. If you were treating in Mexico, what would be the way for us to make sure that the quality of the treatment was up to the standards that we require, not Mexican secondary, but U.S. secondary, what would help you or your payments or what would be the hammer for us to make sure, do we have any enforcement capability to make that you treat the sewage that comes up to secondary and then no sub-treated effluent is coming back down that outfall?

Mr. SIMMONS. Mr. Bilbray, I can tell you that this Committee in the formulation of the law both times foresaw that that could be a problem and put in a mechanism that is the ultimate control; that is, the quality of that flow, that specifically states that if we don't meet U.S. discharge standards with both the Clean Water Act and the California Ocean Plan that we will not get paid. It is simply direct to the pocketbook. It was a mechanism put in place by this Committee.

Mr. BILBRAY. What do you think the results would be to the operator or the manager of that plant if they stopped getting payments from the Federal Government because that manager wasn't treating the sewage to a proper level?

Mr. SIMMONS. Obviously the management would be changed, the company would be changed. You have several involvements here, not only the U.S. Government has a stake in this, but the bank and bondholders, you have the principals who have to put up $30 million of its own money to build the plant. The monitoring in the process to make sure the standards are reached is going to be significant.

Mr. BILBRAY. What you have proposed is that we can fulfill the outcome base concerns, that was the reason for siting originally in the United States, but because you have the lack of civil service protection there is a possibility of even more accountability that unlike this happening with our in-house government operation somebody doesn't get the sewage treated, somebody is going it lose their job?

Mr. SIMMONS. Correct. I think most importantly, Congressman, is that the original concept of asking Mexico to allow us to control this was there are absolutely no sanctions that the U.S. Government can place upon the Mexican government if they don't perform, and that was the wisdom that this Committee applied to this law that said, look, we will tie it to the pocketbook of the private company; if that private company does not perform, they will not get paid.

So I think it is a new twist in the process that provides a mechanism of control, an ultimate one in my view, and it also gives an opportunity for this facility to rise to a point where it treats to way above secondary and keeps the water in Mexico. So the amount of discharge along with the quality of the discharge is improved.

Mr. BILBRAY. Thank you very much, Mr. Chairman. And I think the issue was that we never trusted anything in Mexico because we always assumed it to be a government-operated facility and there was no way for us to be putative or to have an enforcement handle on Mexico, but the argument that if you have a private company that is getting paid a fee for service, you get a denied fee because the service was not fulfilling, something we have not been able to do with other projects.

Thank you very much.

Mr. FILNER. If I recall, you have an engineering background.

Mr. SIMMONS. I have—no, I have a planning background.

Mr. FILNER. Planning.

Until today when we had earlier meetings with Senator Feinstein and others, I guess I had not realized how far the thinking or how far back 10 years of thinking had gone for the $66 million, which I guess is to build an activated sludge system, the additional not sewage capacity, but technical capacity, to treat to secondary standards and your deal as far as I could see.

Aside from that, what problems are in line with that alternative? Why is that good or bad for this Nation?

Mr. SIMMONS. I think if you look at what it costs to put that in place to simply treat only the 25 million gallons for secondary and if you look at the costs per thousand gallons treated, it is signifi-

cantly greater than the overall cost per thousand gallons to go to a 59 million capacity.

In the process of keeping up with the growth in the Tijuana region, which is prolific, if one must plan ahead, at least 5 or 6 years out, we are planning out 17, 18 years trying to put it ahead of where it is today. If this facility is built on the U.S. side of the border and it has to go through the process that it needs to go through there, we are still looking at some spikes. If there are failures and problems with this, it doesn't have the buffering capacity that the Bajagua facility has and the potential for continued contamination on the border exists and it is not a good expenditure of U.S. funds to address that simple one-step solution to provide the 25 and ignore the rest. The 25 million gallons is an important component, it provides the basis upon which the whole 59 can be built.

Mr. FILNER. And as far as the process itself, the activated sludge, what is your sense of that as——

Mr. SIMMONS. All of the facilities are activated sludge in one sense or another, it is a group of bugs that eat the sewage. When you get a toxic spike, significant numbers of them die. The facility that is being proposed on the U.S. side is a facility that uses clarifiers and other mechanisms to provide the treatment. It is a relatively small community of biologic effort and so when you get a toxic spike that small community of microbes is killed relatively easily and so you end up with a whole system that goes down rather than a portion of the system. The mechanism that we have intended to put in place was specifically designed to deal with the fact that Mexico has not been successful nor very successful in dealing with their toxic spikes, with their pretreatment program, and our system has a very big buffer.

I can give you a very good analogy. If you have a teaspoon of cream and you drop it in a cup of coffee it turns lighter. If you drop that same teaspoon in a swimming pool, you don't see it. It isn't quite that dramatic. We planned over the years to be sure if the toxic situation doesn't get resolved in Tijuana, and at this point it is not resolved, that we would have a buffering capacity to deal with it, and I think that is why we proceeded the way we have.

I will add this. We are in what we call a design/build mechanism for building. Under the design/build, the designer has the ability to make changes in what we proposed as our conceptual project. Those changes have to relate to two things, he can do it cheaper and prove to us and to the IBWC that he is doing it with proven technology so we don't end up with a situation where someone has invented something in their garage and they can sell it to us for $15 and it doesn't work. We focus only on the ponds as the preferred alternative. It is a very safe alternative. It does work and it will provide the buffer we need to prevent that kind of discharge.

The reason we don't want the discharges to get out of context with the law, if we don't stay within the law we don't get paid, so we are buffering to prevent that.

Mr. FILNER. Aside from political or funding issues, which I raised with the earlier panel, cost effectiveness, the capacity, the technology, the specific technology, and the inability to reuse the water, it is an inferior kind of plant.

Mr. SIMMONS. Absolutely. I think the only reason there is any fear to move forward with a Mexican facility is that the U.S. has an inherent difficulty believing Mexico can be controlled in a way that can be productive for the United States or completely controlled, and that is the reason we provide this bridge between the public and the private sectors that is based on two things. It is based on private funds providing the first steps of making sure this thing works and then the Congress simply paying for a service. It also provides a bridge that brings to Mexico the one thing that has always been missing in these dealings with Mexico, and that is they now have a valuable commodity that they want to protect and preserve. Without that, before that they were simply dealing with a problem, now they are dealing with actually making money and increasing their ability to provide water to their citizens. It is a huge step in the right direction for Mexico.

Mr. FILNER. On behalf of Mr. Bilbray, are you sure no illegal microbes won't be able to cross, right?

Mr. SIMMONS. That is correct. We have them identified, so we can pick them up.

Mr. FILNER. Last chance?

We thank you, Mr. Simmons, we thank——

Mr. SIMMONS. Mr. Chairman, one more statement. I have with me today a letter to Senator Feinstein that is from the Imperial Valley Irrigation District. As you know, they are the guys who are directly involved with relining of the canal and providing water to San Diego and the cross border issues, and they are writing to say they are very much in favor of the Bajagua Project going forward, providing this extremely valuable resource to the City of Tijuana.

Mr. FILNER. Thank you for joining us——

Mr. BILBRAY. I want to thank you very much. I appreciate that. Let me say, both the EPA and the IBWC, thank you for coming this far out east. I am in a grumpy mood because I had to give up a day of surfing in my district to talk about pollution problems in someoneelse's district, at a plant in somebody else's district, and a problem from someone else's country. I think this is what the system is supposed to do, and this is why we have oversight. Let me tell what you a pleasure it was to surf where the water was clean, warm, and the surf was good. I hope people can enjoy their water the way I have enjoyed mine.

Mr. FILNER. We have I think been helped today. Everybody wants an expeditious compliance with Clean Water Act in terms of the water that is now being dumped in the ocean that does not meet those standards. We want to meet those standards, as was said, expeditiously, but we also want it cost effectively in a way—again, I hasn't known any of you people before you came with the proposal and what I found very important about it, cooperation between Mexico and the United States, water for a desperate nation, the ability to treat what we foresee as capacity in the future.

Mr. FILNER. That is all very important. I was disappointed to have our commissioner and administrator define the issue in such narrow terms that we will miss an opportunity to do these broader things. And I think if I gave Mr. Nastri a choice to look back and say, ″Yes, I got a 25-million-gallon-per-day plant in compliance with the Clean Water Act″ versus ″Wow, we got 59 million gallons

a day treated in a more environmental way, a more cost-effective way, and gave water to Mexico,″ I think the legacy that you would prefer would be the latter. And I think we have that opportunity, and whether he wants it or not, we are going to give him the chance to have that legacy.

Thank you so much. This meeting is adjourned.

[Whereupon, at 4:15 p.m., the Subcommittee was adjourned.]

Boozman

OPENING STATEMENT

HEARING ON "ADDRESSING SEWAGE TREATMENT IN THE SAN DIEGO-TIJUANA BORDER REGION: IMPLEMENTATION OF TITLE VII OF P.L. 106-457, AS AMENDED"

July 10, 2007

- FOR YEARS, CONGRESS HAS BEEN TRYING TO ADDRESS A PUBLIC HEALTH AND ENVIRONMENTAL PROBLEM THAT EXISTS ALONG THE U.S.-MEXICAN BORDER.

- RAW OR PARTIALLY TREATED SEWAGE FROM THE TIJUANA, MEXICO AREA FLOWS INTO THE UNITED STATES AND ENDS UP ON CALIFORNIA BEACHES.

- IN 2000, CONGRESS ADDRESSED THIS PROBLEM BY AUTHORIZING THE UNITED STATES TO CONTRACT WITH A FACILITY IN MEXICO FOR WASTEWATER TREATMENT SERVICES THAT WOULD MEET CLEAN WATER ACT STANDARDS.

- THAT AUTHORIZATION WAS CONTAINED IN P.L. 106-457, THE "TIJUANA RIVER VALLEY ESTUARY AND BEACH SEWAGE CLEANUP ACT OF 2000."

- THAT LAW REQUIRED THE UNITED STATES AND MEXICO TO NEGOTIATE A NEW TREATY MINUTE AND A CONTRACT FOR WASTEWATER TREATMENT SERVICES IN THE TIJUANA, MEXICO AREA.

- THE TREATY NEGOTIATIONS WERE COMPLETED IN 2004.

- HOWEVER, BEFORE A CONTRACT FOR WASTEWATER TREATMENT SERVICES COULD BE SIGNED, "THE TIJUANA RIVER VALLEY ESTUARY AND BEACH SEWAGE CLEANUP ACT" AUTHORIZATION HAD TO BE EXTENDED AND UPDATED.

- THIS COMMITTEE REPORTED LEGISLATION, H.R. 4794, WHICH PROVIDED THE NECESSARY AUTHORITY.

- THE PROJECT AND THIS LEGISLATION WERE NOT CONTROVERSIAL, AND THE BILL WAS ENACTED INTO LAW IN LATE 2004. (IT BECAME PUBLIC LAW NO. 108-425.)

- IT IS NOW SEVEN YEARS AFTER THIS WASTEWATER TREATMENT PROJECT WAS FIRST AUTHORIZED.

- OVER THESE PAST SEVEN YEARS, THE PARTIES HAVE BEEN WORKING TOWARDS IMPLEMENTING THE WASTEWATER TREATMENT PROJECT, SEEMINGLY WITHOUT MUCH CONTROVERSY.

- NOW, ALL OF A SUDDEN, AT THIS LATE DATE, FOR REASONS THAT HAVE NOT BEEN WELL ARTICULATED, IT APPEARS THAT CERTAIN PARTIES MAY BE LOOKING TO FUNDAMENTALLY CHANGE THE DIRECTION OF THIS PROJECT.

- MANY ARE CONCERNED THAT CHANGING THE DIRECTION OF THE PROJECT AT THIS LATE DATE COULD MEAN EVEN FURTHER DELAYS IN ADDRESSING THE SEWAGE POLLUTION PROBLEMS IN THE SAN DIEGO-

TIJUANA BORDER REGION.

- TODAY WE HAVE ASKED FOR TESTIMONY FROM THREE OF THE PRINCIPAL PARTIES INVOLVED IN THIS ISSUE:

  - THE UNITED STATES SECTION OF THE INTERNATIONAL BOUNDARY AND WATER COMMISSION (IBWC), WHICH OPERATES UNDER THE FOREIGN POLICY GUIDANCE OF THE DEPARTMENT OF STATE, AND REPRESENTS THE UNITED STATES IN BOUNDARY, WATER, SANITATION, WATER QUALITY, AND FLOOD CONTROL ISSUES IN THE BORDER REGION WITH MEXICO;

  - THE ENVIRONMENTAL PROTECTION AGENCY, WHICH IS RESPONSIBLE FOR IMPLEMENTING WATER QUALITY ISSUES UNDER THE CLEAN WATER ACT; AND

  - THE BAJAGUA PROJECT, LLC, THE COMPANY THAT HAS CONTRACTED WITH THE IBWC TO PROVIDE WASTEWATER TREATMENT SERVICES IN THE SAN DIEGO-TIJUANA BORDER REGION.

- WE WANT TO HEAR FROM THE WITNESSES ABOUT THE STATUS OF IMPLEMENTING THE WASTEWATER TREATMENT PROJECT AUTHORIZED BY THE "TIJUANA RIVER VALLEY ESTUARY AND BEACH SEWAGE CLEANUP ACT" IN 2000, AS AMENDED IN 2004, INCLUDING:

  - WHY IS IT TAKING SO LONG TO GET THE PROJECT BUILT;

  - WHAT ISSUES STAND IN THE WAY OF COMPLETING

THE PROJECT;

- WHY ARE SOME LOOKING TO FUNDAMENTALLY CHANGE THE DIRECTION OF THIS PROJECT AT THIS LATE DATE;

- WHEN CAN WE EXPECT TO SEE THE PROJECT COMPLETED;

- HOW MUCH WILL THE PROJECT COST BY THE TIME IT IS FINALLY COMPLETED; AND

- WILL THE PROJECT SATISFY ALL OF THE REGION'S WASTEWATER TREATMENT NEEDS AND RESOLVE THE LONG-STANDING SEWAGE POLLUTION PROBLEMS IN THE REGION?

STATEMENT OF
THE HONORABLE JERRY F. COSTELLO
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
HEARING ON ADDRESSING SEWAGE TREATMENT IN THE SAN DIEGO – TIJUANA BORDER REGION: IMPLEMENTATION OF TITLE VIII OF PL 106-457, AS AMENDED
TUESDAY, JULY 10, 2007

Thank you, Madame Chairwoman for holding this hearing on the sewage treatment issues in the San Diego – Tijuana Border Region.

Madame Chairwoman, this Subcommittee has a history of oversight on the health of the San Diego – Tijuana Border Region. The Subcommittee has held previous hearings and has passed legislation to address water quality to protect public health and safety and the environment.

I am well aware of the history surrounding this project and the concerns from all sides with continued delays.

Madame Chairwoman, significant challenges remain in our efforts to restore and protect our nation's waters, particularly in the San Diego – Tijuana region. I am pleased that this Subcommittee will explore these issues.

I welcome the witnesses here today, and look forward to their testimony.

Testimony of Carlos Marin
United States Commissioner

International Boundary and Water Commission
United States and Mexico

Before the
Committee on Transportation and Infrastructure
Subcommittee on Water Resources and the Environment
July 10, 2007

Madame Chairwoman, Members of the Subcommittee, thank you for the opportunity to come before you today. I am pleased to have the opportunity to discuss with you the U.S. Section of the International Boundary and Water Commission's efforts to address the on-going problem of sewage from the Tijuana area of Mexico that flows into the United States causing environmental damage and harm to the public health of this region and in particular our efforts to implement the Tijuana River Valley Estuary and Beach Cleanup Act of 2000 ("Tijuana River Act"), 22 U.S.C. §§ 277d-43 et seq., Title VIII of Pub. L. 106-457 (Nov. 7, 2000).

I was honored to be appointed United States Commissioner to the International Boundary and Water Commission, United States and Mexico, by President Bush in December of 2006. I am a licensed professional engineer and a 27-year career employee of the U.S. Section of the International Boundary and Water Commission (USIBWC). I served as the Acting U.S. IBWC Commissioner for fifteen months prior to my appointment and as Deputy Commissioner and as the Principal Engineer of the Operations Department. Prior to assuming executive level responsibilities, I held a number of positions at USIBWC, but most importantly for the purposes of this hearing, I was the U.S. Project Manager that oversaw the construction of the IBWC's International Wastewater Treatment Plant in Nuevo Laredo, Tamaulipas, Mexico from 1990 to 1994, in which capacity I gained first hand experience in dealing with issues relating to the construction of a wastewater treatment facility in Mexico.

The International Boundary and Water Commission (IBWC) has over a century of experience in bi-national cooperation and partnership. We trace our roots to the temporary boundary commissions established by the Treaty of Guadalupe Hidalgo, the Gadsden Treaty and an 1882 Convention to survey, mark and map the new international boundary between the United States and Mexico. The International Boundary Commission (IBC), our direct predecessor, was established in 1889 to apply rules established by the United States and Mexico for determining the location of their shared boundary when tracts of land were transferred from one bank of the river to the other due to changes in the bed of the Rio Grande and Colorado River and to settle any differences that might arise concerning the

boundary line. The IBC prepared the hydrological studies that formed the basis for the first water allocation treaty between the United States and Mexico in 1906 and the second water allocation treaty in 1944, under which the IBC became known as the IBWC. Today, under various boundary and water treaties in force between the United States and Mexico, the IBWC exercises jurisdiction over the 1,278 miles of Rio Grande and Colorado River water and the 674 miles of land boundary that form the border between the United States and Mexico and over works located upon the common boundary. To clarify one common misperception, it should be noted that each Section of the Commission retains jurisdiction over that portion of shared works that are located within the limits of its respective territory. That means that any bi-national project undertaken by the IBWC that is located in Mexico is under the jurisdiction of the Mexican Section. My authorities stop at the border.

The IBWC is charged with applying U.S.-Mexico boundary and water treaties and the U.S. and Mexican Commissioners are responsible for developing joint recommendations to the two governments for resolution of current and anticipated boundary and water problems. The IBWC is engaged in a number of joint cooperative activities, including: demarcation of the land boundary, ports of entry and international bridges; preservation of the river boundary; operation and maintenance of international flood control projects and associated diversion dams; operation and maintenance of international storage dams and associated hydro-electric power generation plants; determination and accounting for national ownership of the waters of the Rio Grande and Colorado River; construction, operation and maintenance of three wastewater treatment facilities; ownership of three international bridges in the El Paso/Ciudad Juarez area; investigations and studies, including water quality monitoring and data exchange; and approval of all plans for new international bridges, border crossings, and pipe and power lines that cross the international boundary.

Providing timely and efficient secondary treatment level for sewage emanating from the Tijuana River area in Mexico is a top priority for the USIBWC. The IBWC has been addressing the issue of Tijuana sewage flows since the 1930s. At present, untreated sewage that flows north from Tijuana into San Diego is a combination of fugitive sewage flows from unsewered areas of Tijuana and sewage released from the existing Tijuana sewage collection and conveyance system during system breakdowns. Over the past 65 years, as the population of Tijuana has increased from 5,000 residents to over one million people, so has the magnitude and complexity of these transboundary sewage flows. In the 1930s, 1960s and 1980s, the IBWC developed joint cooperation projects for control of untreated sewage from Tijuana, including improvements to the sewage infrastructure in Tijuana and the construction of defensive works in the United States to capture sewage flows or spills from Mexico.

Beginning in 1987, the USIBWC developed a partnership with the City of San Diego, County of San Diego, the State of California and the U.S. Environmental Protection Agency (EPA) that resulted in a determination that this long-standing problem would best be resolved with construction of a treatment plant in San Diego, near the border, that would provide secondary treatment to Tijuana sewage that flows untreated into the United States and at a

cost shared by the U.S. and Mexican Governments. The United States was selected as the location for the plant because Mexico's proposal to build a plant in Mexico in the Rio Alamar area would not provide treatment acceptable to U.S. secondary standards, would not provide defensive works against fugitive raw sewage flows crossing the boundary into the United States, and the effluent from the proposed plant in Mexico would damage the Tijuana Estuarine Sanctuary, a salt water estuary located in the United States, just north of the South Bay location.

On this basis, the United States and Mexico concluded an international agreement in 1990, IBWC Minute No. 283, for the construction of an international treatment plant that would treat an initial 25 million gallons per day (mgd) of sewage from Tijuana to the secondary treatment standards and discharge that effluent in an outfall approximately 3.5 miles into the Pacific Ocean. Under the international agreement, the United States would cover the construction and operations and maintenance costs up-front and Mexico would reimburse the United States in an amount equivalent to what Mexico's costs would have been to construct and operate the proposed Rio Alamar Plant. The United States Government was authorized by the Congress to construct the international plant in Section 510 of the Water Quality Act of 1987, which also authorized the EPA to make grants to the USIBWC and other entities for the construction of the plant and other necessary works to provide treatment of municipal sewage and industrial waste from Mexico.

The United States and Mexico agreed that the construction would be in phases, recognizing that some 13 mgd of untreated Mexican sewage crossing the boundary threatened the health of inhabitants and the beaches in San Diego. Due to the urgent need to provide some level of treatment, a first module was placed in operation in 1997 to provide treatment for up to 25 mgd of Tijuana sewage to the advanced primary level. The United States and Mexico concluded the international agreement for the specific Mexican cost reimbursement in April 16, 1997. The South Bay plant became fully operational in 1999 with treated effluent being discharged through the South Bay Ocean Outfall.

The Government of Mexico contributed $16.8 million toward construction of the South Bay plant and currently contributes $1.1 million toward the annual operation and maintenance costs. P.L 102-389 of September 25, 1992 capped funding to EPA for the South Bay facility, the South Bay Ocean Outfall, and related infrastructure at $239.4 million. Of that amount, $233.3 million has been obligated to date. $89.3 million was expended by the City of San Diego and the Corps of Engineers to construct the South Bay Ocean Outfall; $9.9 million was expended by the Corps of Engineers for environmental work and $133.1 million was expended by the USIBWC for costs associated with the construction of the South Bay plant, related infrastructure and optimization efforts. Congress has denied requests from the EPA and USIBWC to raise the cap on EPA funding to allow for completion of secondary treatment at the South Bay facility.

Rather, in late 2000 Congress enacted legislation, the Tijuana River Valley Estuary and Beach Cleanup Act of 2000 ("Tijuana River Act"), 22 U.S.C. §§ 277d-43 et seq., Title VIII of Pub. L. 106-457 (Nov. 7, 2000), hereinafter the "Public Law", which requested the Secretary of State to negotiate a new agreement with Mexico to provide for secondary treatment of that effluent in Mexico, if such treatment is not provided in the United States, as well as treatment for additional sewage flows, to be determined by a Comprehensive Plan that would identify Tijuana's long-term treatment needs, under a public-private partnership arrangement.

While the USIBWC was seeking to implement the Public Law, the State of California filed suit in U.S. District Court for the Southern District of California over the failure of the advanced primary plant to meet the standards of the Clean Water Act and its discharge permit. The Court eventually ruled in late 2004 that the USIBWC must come into compliance with the Clean Water Act by no later than September 30, 2008.

The USIBWC reached agreement with its Mexican counterpart on a new Minute, IBWC Minute 311, on February 20, 2004 to achieve the objectives of the Public Law. Minute 311 provided a framework for the construction, operation and maintenance of a 59 mgd secondary wastewater treatment facility in Mexico that incorporates participation by a private service provider under an operating lease contract.

On July 22, 2005 the USIBWC completed a Final Supplemental Environmental Impact Statement and on September 30, 2005 issued a Record of Decision in which it selected the project proposed by Bajagua LLC ("Bajagua") for the construction of secondary wastewater treatment facilities in Mexico. The USIBWC selected the Bajagua Project primarily because it was thought that Bajagua's preliminary planning, studies and site identification would allow for construction of a facility for the treatment of the South Bay effluent consistent with the deadlines set forth in the Court Order. In addition, Bajagua was chosen over alternatives for building secondary facilities in the United States because of funding constraints associated with EPA's appropriation of Section 510 monies. On February 14, 2006, after extensive negotiations, the USIBWC entered into a Development Agreement with Bajagua giving the company exclusive rights to pursue development of the Mexican facility.

The proposed Bajagua project would treat 25 mgd of the advanced primary effluent from the South Bay facility and an additional 34 mgd, which is the volume identified by the Tijuana Master Plan, issued by the Tijuana local utility in 2003, as meeting Tijuana's projected sewage treatment need in 2023. Were the Mexican facility envisioned by the Public Law to come on line in 2008, currently available information indicates that it would only be treating the 25 mgd from the South Bay plant. According to the Tijuana Master Plan, existing Tijuana wastewater facilities and new Mexican plants, if they were to come on line in 2008 as scheduled, would actually provide Mexico with excess capacity.

One of the attractive features of building a wastewater treatment facility in Mexico is the opportunity for reclaimed water and offsetting the costs of the facility through the sale of this water. The United States and Mexico incorporated this feature in IBWC Minute 311, which provides that payments to the service provider would be offset by credits that reflected an agreed upon percentage of payments received by Mexico through the sale of water treated by the facility. Under the Mexican Constitution, all water in Mexico is federally owned and it is the Government of Mexico that would retain ownership of the effluent produced by the Mexican facility. IBWC Minute 311 also provides that the compensation must be mutually agreed upon by the U.S. and Mexican Governments through the IBWC. The Minute states that "in no instance will the service provider be authorized to decide on the fate or use of the Tijuana, Baja California wastewater, treated or untreated. This decision will be made solely by the Government of Mexico."

It should be noted that this is a highly technical and complicated project that breaks new ground for IBWC in the inclusion of a private partner. Neither Section of the IBWC views its role in this process as being limited to that of a conduit or a pass through for U.S. funding. The IBWC has an international law responsibility through its treaty obligation to ensure that the project is developed in a viable and effective manner and that all elements are consistent with applicable U.S. and Mexican law and regulations. This means that both the U.S. and Mexican Sections of IBWC have devoted extensive amount of staff time and resources to move this project forward.

Under the Development Agreement, Bajagua agreed to pursue required permits, acquisition of rights to real estate and other prerequisites necessary to enter into a construction contract for secondary wastewater treatment facilities in Mexico. Consistent with the Court Order, the Development Agreement required the new treatment facilities to be operating in conformance with the U.S. Clean Water Act requirements by September 30, 2008; it also established interim milestones. Under the Development Agreement, Bajagua agreed to achieve some of those milestones by September 12, 2006 (i.e.: to obtain all of the rights to purchase real estate in Mexico; to acquire rights-of-way in Mexico and the United States necessary for the project facilities; and to make all reasonable efforts to obtain a new discharge permit from the San Diego Regional Water Quality Control Board for discharge of the effluent from the Mexican facilities into the South Bay Ocean Outfall). The Development Agreement also required Bajagua to meet additional milestones by May 2, 2007 (i.e.: to secure necessary authorization to treat wastewater in Mexico; to secure all debt and equity financing necessary to construct project facilities and ancillary costs with all funds deposited into a trust account; and to execute a design-build-operate subcontract).

A number of tasks remain to be accomplished under the Development Agreement. In February of 2007, Bajagua notified us that it would be unable to meet the May 2, 2007 milestones set forth in the Development Agreement. In response USIBWC requested information so that we could evaluate whether it remained possible to comply with the

September 30, 2008 compliance deadline. On April 25, 2007, Bajagua notified the USIBWC that Bajagua would be unable to complete a facility in Mexico in time to achieve compliance with the Clean Water Act by September 30, 2008, and stated that a five-month extension of the compliance deadline would be necessary. Because USIBWC is without authority to extend the deadline set forth in the Court Order, USIBWC has sought information from Bajagua to support its request for an extension. The Development Agreement entered into with Bajagua provided that any schedule for completion of project facilities, including milestone dates not in conformance with the Court Order would be subject to approval by the Court. On May 8, 2007, the USIBWC notified Bajagua that it was suspending all activities under the Development Agreement until the Court amends its order or grants other relief.

It can not be over emphasized that USIBWC is under a time-line established by the U.S. District Court for the Southern District of California that orders the USIBWC to achieve full compliance of the South Bay facility with the Clean Water Act by September 30, 2008. Under the Court Order, USIBWC was to have commenced construction by September 15, 2006. We are now nine months past that date and not close to beginning construction. In light of the pending litigation, USIBWC faces possible fines and other sanctions.

Fortunately, the Administration adopted a contingency plan for achieving compliance. The President's FY 2008 budget request sought funding for the USIBWC to begin construction of secondary wastewater capability at the existing South Bay facility, which is viewed as a more efficient and less expensive solution. The estimated 20-year cost is $263 million versus an estimated $742 million for a 20-year lease-contract to build the facility in Mexico pursuant to P.L. 106-457. Building secondary facilities in the United States would also have the following advantages:

- USIBWC would have direct oversight and control of the project during all phases of construction and operation and maintenance;
- USIBWC owns the land necessary for expansion of the existing plant up to 100 mgd;
- a final design has already been prepared for the option, compatible with the existing treatment process and requiring only minimal updating to current design standards;
- secondary treatment in the United States is provided for in existing IBWC Minute;
- no additional site preparation, environmental mitigation or other permits or approvals are required; and
- construction and operation of a secondary treatment in the United States would not be subject to the laws of another country.

The USIBWC has been trying to achieve compliance with the Clean Water Act for ten years and has been trying to implement the Public Law by undertaking the construction of treatment facilities in Mexico under a public/private partnership for seven years; however, due to a number of factors that are beyond the USIBWC's control, a permanent solution has

proved to be elusive. This agency has worked diligently to carry out the Public Law and invested a significant amount of time and resources to that effort.

Madame Chairwoman and members of the Subcommittee, we know much more today about the complexities of implementing this legislation than when it was passed in 2000. In 2000 we did not know the true cost of the Bajagua project to the American taxpayer and yet today based on a financial analysis conducted by an independent consultant, we know that this project has the potential to approach almost $1 billion over a twenty-year period of a sole-source contract. We also do not know how long it will take to make this Mexican facility a reality. I can not in all honesty tell you that; nor can Bajagua tell you that. There are many critical steps still pending, which require Mexico's full participation, support and concurrence. One can not predict the alacrity of the Mexican bureaucracy, a bureaucracy we must engage on the Federal, State and local levels and which often changes with each election cycle.

In closing, let me state that our ultimate goals are only to complete what we started in the 1930s, which is to afford the citizens of Southern California protection from renegade Mexican sewage flows, comply with the Court's Order, operate our facility in accordance with U.S. law, enhance the environment shared by two nations, and answer the charge imposed upon the IBWC by the 1944 Water Treaty between the United States and Mexico to give priority attention to border sanitation issues.

Madame Chairwoman, thank you for the opportunity to testify today. I would be pleased to respond to any questions you or other members of the Subcommittee may have.

Testimony of Wayne Nastri
Regional Administrator
U.S. Environmental Protection Agency - Region 9

Before the
Committee on Transportation and Infrastructure
Subcommittee on Water Resources and Environment
July 10, 2007

Madam Chairwoman, members of the Subcommittee, thank you for the opportunity to come before you today. As the Regional Administrator for Region 9 of the U.S. Environmental Protection Agency, I am responsible for protecting the public health and the environment in Arizona, California, Nevada, Hawaii, the Pacific Islands and the 147 federally recognized tribes in the Pacific Southwest. I am pleased to have the occasion to discuss with you the EPA's ongoing efforts to address sanitation concerns in the Tijuana River Valley.

Since the 1930's, raw sewage flowing into the United States from Mexico has posed a serious threat to the public health, environment, and economy of the South Bay communities of San Diego.

In the Water Quality Act of 1987 and subsequent appropriations, Congress authorized and appropriated $239.4 million to the EPA to construct a wastewater treatment plant and ocean outfall in southern San Diego County. The purpose of the plant was to treat sewage from Tijuana, Mexico which would otherwise enter the United States and contaminate the Tijuana River, estuary, and coastal beaches.

With these funds, the EPA provided a grant to the United States International Boundary and Water Commission, or IBWC, to construct the South Bay International Wastewater Treatment Plant. The EPA also provided grant funds to the City of San Diego to construct the South Bay Ocean Outfall, a pipeline conveying treated wastewater 3.5 miles out into the Pacific Ocean.

The South Bay International Wastewater Treatment Plant became fully operational in 1999. To expedite treatment of the Tijuana sewage, the South Bay International Wastewater Treatment Plant was built, as an interim measure, as an advanced primary treatment facility. A second phase of the treatment plant, as required by federal law and regulations and to protect public health and the environment, was anticipated to be initiated shortly after the primary treatment facilities became operational.

In 2000, EPA approached Congress requesting an increase to the spending cap to the South Bay International Wastewater Treatment Plant project to construct the second phase of treatment. Congress opted for an alternative approach with the Estuaries and

Clean Waters Act of 2000, Public Law 106-457. The Public Law requested that the IBWC begin negotiations with Mexico to construct a secondary treatment plant -- known as the Public Law facility -- in Mexico. The Public Law facility would serve to upgrade the South Bay International Wastewater Treatment Plant, as well as to treat additional Tijuana sewage.

The EPA has not been a party to the negotiations between the IBWC, Mexico, and Bajagua LLC, the company selected to implement the requirements of Public Law 106-457. Therefore, the EPA is not in a position to update the Subcommittee on these negotiations or the specifics of the implementation of Public Law 106-457.

The EPA has readily responded to the requests by the IBWC and Bajagua LLC for assistance. We authorized the IBWC to use remaining grant funds to support the development and completion of IBWC's 2005 Environmental Impact Statement or EIS prepared in accordance with the National Environmental Policy Act. This EIS selected the Public Law facility as the preferred alternative for the secondary treatment component to the South Bay International Wastewater Treatment Plant. Most recently, my regional office provided detailed comments on the draft Request for Proposal prepared by Bajagua LLC to select a design, build, and operate contracting firm to complete the Public Law facility in Mexico.

Until secondary treatment is provided, the South Bay International Wastewater Treatment Plant is in violation of the Clean Water Act and inadequately treated sewage continues to pollute the waters in Southern California. But let me also share with you some good news about the performance of the South Bay International Wastewater Treatment Plant. The treatment plant is fully operational at the advanced primary level and southern San Diego County is no longer experiencing the effects of daily sewage contamination to their rivers and beaches. The EPA and U.S. IBWC are continually working to optimize the U.S. treatment plant to achieve peak operational performance. We also recognize that we must continue our efforts to ensure that rivers and beaches in this area are free from sewage contamination year round.

EPA stands ready to work with all agencies and stakeholders to move forward with compliance with the Clean Water Act, including secondary treatment requirements, creating a foundation for sustainable infrastructure for decades to come.

Testimony of Jim Simmons
Subcommittee on Water Resources and Environment
U.S. House of Representatives * Tuesday, July 10, 2007

Bajagua, LLC
160 Industrial Street, Suite 200, San Marcos, CA 92078
(760) 471-2365

Madam Chair, members of the Committee. Thank you for the opportunity to appear before you today to discuss a matter of vital importance to the San Diego/Tijuana border region. My name is Jim Simmons, and I am managing partner for the Bajagua project, a public-private partnership dedicated to resolve a decades-old public health and pollution problem that has plagued both the United States and Mexico.

It is with deep regret that a critical need exists for me to appear before you here today. I say that because my associates and I hoped by now to be under construction on a history-making binational endeavor authorized by Congress and the President on two previous occasions that would mark a major step forward in addressing infrastructure and pollution challenges in the border region.

Under the authority of Public Law 106-457, we have been working diligently for more than 7 years to implement the will of Congress and Minute 311 of an international treaty that authorizes the construction and operation of new sewage treatment facilities on the U.S.-Mexican border. Bajagua was analyzed amongst other alternatives, including the one now being revisited by the US IBWC, and was selected as the "preferred alternative" certified in the Record of Decision following the Supplemental Environmental Impact Statement, which included significant environmental and public review. I should note that, unlike the alternative being pressed by the US IBWC, not one letter of opposition

was received regarding this decision, and no lawsuit was threatened or filed against the SEIS or the ROD.

This plan was selected above all others to correct 1) the current non-compliance with the Clean Water Act of IBWC's existing South Bay International Wastewater Treatment Plant, which currently is under federal court order to comply with NPDES permit standards by September 2008; 2) address the sanitation needs of the region with a 20 year horizon and 3) provide critically needed new water supplies by means of reclaiming and reusing the water for the region, bringing more industrial development and new jobs to the area.

All of this preparatory work, including extensive preliminary engineering work, preliminary designs, numerous hydraulic, geotechnical and other field studies, the preparation of bid documents and the qualification of contractors to build and operate the Bajagua project has been privately funded to date by Bajagua LLP, with no taxpayer money expended. Furthermore, Bajagua will fund the engineering, construction and operation of the project until we deliver treated water that meets all applicable standards of both the U.S. and Mexico. Then, and only then, would we be reimbursed incrementally for our costs, plus a reasonable profit over a twenty-year period. It is important to understand that the real profit in this project, is not in the contract to treat the sewage. The modest percentage memorialized in our development agreement with the US IBWC is far less than most Americans expect to see out of their 401k's. In fact, any real profits for our company would lie far down the road, if and when we can attract sales of reclaimed industrial water treated to a higher standard – all of which will require more

completely private investment, on our nickel and at our risk, without reimbursement from the U.S. taxpayer.

I regret to report that the objective we have pursued has been repeatedly frustrated, hindered and delayed by bureaucratic obstruction in the U.S. Section of the International Boundary and Water Commission that is directly in conflict with the expressed will of Congress and the agency's own environmental analysis approving the project. We can provide full documentation that those delays have been caused primarily by the agency itself -- we believe purposeful delays -- to enable it to propose a project that will be entirely dependent upon the U.S. taxpayer for both its construction cost and its cost of operation.

One specific example to demonstrate the agency's true intentions is the statement by the US IBWC's in house legal counsel who said at a meeting with Bajagua that the legislation adopted by Congress and signed into law to clean up the Tijuana River was "bad public policy" and that "no one with any common sense supports it." It is statements like this that make it quite clear that the agency was only paying lip service to the law, and was actively undermining our efforts to complete the Bajagua project.

Another example of efforts to obstruct the timely completion of this project were again the work of Commission's in house counsel. During a briefing to IBWC by our financial lender, the Commission's counsel repeatedly sought to discourage this particular institution from participating in the project based on unrealistic claims of financial uncertainty surrounding the project. It was only after our financial institution abruptly insisted numerous times that it was fully aware of every element of the financial

risk and obligations and yet was still eager to participate in this project that the Commission's counsel reluctantly discontinued this line of harassment.

On May 8 of this year, the U.S. Section unilaterally suspended any work on the Bajagua project, without prior notice, so that it can pursue its own alternative project.

The US IBWC's proposed alternative project has previously been reviewed and rejected. Because the merits of the Bajagua project are so superior to those the U.S. Section is now promoting, we believe the appropriate response is to redouble all efforts to move this project forward, and we are doing so independent of the USIBWC.

The Bajagua project makes sense for the San Diego/Tijuana border. It will more than double the current volume of sewage treated by the South Bay International Wastewater Treatment Plant – and treat it to the higher standard demanded by law -- a standard that the US IBWC's South Bay Plant has never achieved from the day it opened. We thereby can help bring about cleaner San Diego bay waters and cleaner California beaches and help restore the estuaries that have been left to die.

But that is only part of our goal. The other part lies in our goal to turn the volume of partially or untreated sewage that currently pollutes southern California into critically needed new supplies of reclaimed water. And therein lies the great difference between the Bajagua project and the discredited alternative that has been resurrected by the USIBWC.

It is reclaimed water, available only through the construction of the Bajagua project that offers new hope to all involved. First of all, it is the sale of reclaimed water that offers the opportunity for the U.S. government to obtain part of its money back from Mexico. The law that authorized the project required the reimbursement of the cost to

treat the water to secondary for any water we sell for reuse in Mexico. The foresight of Congress was the assure the US taxpayers that while Mexico does not have the money to deal with its own problems, the resale of reclaimed water could provide a revenue source to offset the US taxpayers' contributions.

It is the availability of new supplies of reclaimed water that can also allow several other agencies and jurisdictions in the region to address their water management challenges. There is no need to describe here the challenges of water supply in that arid part of North America. From the water deficit issues in the delivery of Colorado River water to the lining of the All-American Canal and the resulting concerns in Mexicali, it is clear that Bajagua presents an opportunity to address multiple problems.

It is unfortunate as we meet here today that the USIBWC has the narrow view to put millions more taxpayer dollars into a failed project – a project so inadequate that since the day it opened it has been in violation of the Clean Water Act. Despite a court order, USIBWC continues to drag its feet implementing the will of Congress. Instead, the agency is providing incomplete and misleading information about its alternative. Because of its unwillingness to address this problem, the only way USIBWC can comply with the court order is to shut down its existing plant. I suggest this is not an option any reasonable person would consider.

The information the US IBWC is providing to the Congress in support of their position needs to be scrutinized. First, they have said they need $66 million to build their alternative, being 25 mgd of secondary sewage treatment adjacent to the existing plant in San Diego. In reality, and they admitted this to your staff, they need closer to $100 million, and that estimate has yet to be reviewed by the GAO or OMB. Our own experts

say the cost could be much higher. The remaining portion of the cost they say they plan to request from Mexico. Unfortunately, the trial balloon was already floated and Mexico has already told them they do not have the money and cannot participate. In a recent meeting with numerous Congressional staffers, US IBWC Commissioner Carlos Marin said he was told by administration officials to stick with the lower number to avoid "sticker shock" and to return for the remaining $30+ million in the FY09 appropriations cycle. This is the same manipulative behavior that halted the construction of the existing IBWC plant in the early 1990s and is the reason why the San Diego region holds the agency in such disdain for the 70 plus years we've been dealing with the cross-border sewage related health crisis.

On the other hand, Bajagua offers to help resolve this decades old problem. It will treat the US EPA's determined 59 mgd of sewage being generated in Tijuana and flowing across the border. The plant will be build and paid for by private sector dollars, and repaid over 20 years when and only when the testing of the sewage demonstrates it meets Clean Water Act discharge standards. In addition, the plant provides a source of money to repay this cost through the sale of reclaimed water, with the additional proceeds providing a source of infrastructure money to the City of Tijuana to aid in plumbing parts of the city that currently have none. Bajagua also provides new supplies of water for an arid region all at no public expense. It is the reclaimed water portion of the plant that also provides that "light at the end of the tunnel" for US taxpayers, in that after the 20 year contract expires, the plant should be fully self-sustained. This is in stark contrast to

the US IBWC's proposed alternative that will subjugate US taxpayers to forever pay the burden of treating Mexico's sewage.

Bajagua LLC has invested nearly a decade of effort and tens of millions of dollars in pursuing this environmentally sound, international cooperative solution to a decades old pollution problem. We have the commitments for private financing the of project, we have three highly qualified international firms ready to bid to build and operate the project, and we have the commitments from Mexico to support the project with necessary concessions for land and for the water. But we need your help at this critical stage.

We ask for your support to say "no" to any further approval of public funds to pursue the failed, so-called "alternative" project by USIBWC. And we respectfully ask Congress for new stewardship of this project – an agency or authority with the vision, competence and will to successfully complete this project with all of its promises.

Once again, we appreciate the opportunity to be heard on this important public health and economic development issue. We hope that the committee will remember that the Bajagua solution offers a win-win for the people of the border region of both the U.S. and Mexico. US IBWC's lack of leadership means more failure and delay, a continued public health and pollution crisis, and potentially more cost to the taxpayers.

Thank you for this opportunity. I stand ready to respond to any questions you might have.

###

June 10, 2007

List of items presented to the T&I Subcommittee on Water Resources and Environment Hearing on "Addressing Sewage Treatment in the San Diego – Tijuana Border Region: Implementation of TTLE VII of P.L. 106-457, as Amended"

---

1. Jim Simmons testimony
2. PowerPoint presentation Bajagua Presentation - T&I Water Resources and Environment Subcommittee Jul 10, 2007
3. T&I Committee Hearing Project Progress Book
4. Misinformation issues regarding IBWC's request for funding for a project to treat 25 mgd of sewage at the South Bay International Wastewater Treatment Plant (IWTP)
5. Letter from Bajagua stating readiness of the RFP documents and requesting approval to release
6. Letter from the USIBWC denying Bajagua the ability to conduct business with Mexico unless through the USIBWC protocol.
7. Letter from Bajagua rebutting allegations of not meeting Development Agreement deadlines

Jim Simmons
Bajagua, LLC
160 Industrial Street, Suite 200, San Marcos, CA 92078
(760) 471-2365

Minute 311 Sanitation Plant (Bajagua) Project Completion Progress Book

bajagua project, LLC

Jim Simmons, Managing Member

160 Industrial St. Suite 200 San Marcos, CA 92078 • Bus. 760.471.2365 • Fax 760.471.2383
www.bajagua.com

Table of Contents

Tab 1 Executive Summary

Tab 2 Project Financing

A) *Letter from Citigroup providing assurance it will to issue the necessary funds for construction of the project*

Tab 3 CONAGUA's Letters of Support

A) *Letter from CNA (water agency for Mexico) providing assurance that it will issue a "concession" for the land to Bajagua (9/7/06).*

B) *Letter from CNA asserting the "Vital Importance" of the Bajagua Project for Mexico (3/16/07.)*

Tab 4 City of Tijuana's Project for the "Vergel" Zone

A) *Projected City of Tijuana development of the Alamar River area consisting of the eco-channeling of the Alamar River, construction of a roadway and a linear-park, and inclusion of the Bajagua project.*

Tab 5 Clippings from the Mexican Press

A) *La Forntera Newspaper – **Zamorano (CESPT) The Future of Water has Hopes in Privatization -"There is a start-up project, by the name of Bajagua which has been deemed "completely feasible" by the experts".***

B) *El Mexicano Newspaper – **Carmelo Zavala Centro Industrial de Gestión Ambiental (CIGA) – US Cancels Bajagua Project – "The cancelation of the Bajagua International Project for Water Treatment by the US is an unfortunate setback for the enhancement of the environment because it was going to allow the treatment of all the sewage in Tijuana".***

Tab 1 Executive Summary

Tab 2 Project Financing

A letter outlining the commitment of Citigroup to provide the debt financing necessary to construct the project. In addition, a copy of the presentation given to the IBWC to further document Citigroup's dedication to fund the project and Citigroup's clear understanding of the risks associated with the appropriation of funds from the Congress of the United States is attached.

The summary of the Bank's ability to fund the debt is that they are fully engaged in coordinating the financial and legal documentation to ensure funds are available to the design, build, operate contractor (DBO) at the start of construction. The Bank has made it clear that they have accomplished similar funding requirement many, many times and are familiar and comfortable with the risks associated with a federal lease purchase financing.

Tab 3 CONAGUA's Letters of Support

The attached letters from CONAGUA provide a clear indication that the Government of Mexico considers this a "keystone" project in the development of its sewer and water reuse infrastructure for the next decades.

Tab 4 City of Tijuana's Project for the "Vergel" Zone

This provides a conceptual layout of the project the City of Tijuana has planned for the area where the Bajagua project will be located. The larger project will consist of the channeling of the Alamar River in the "Vergel" zone, the construction of a roadway to connect Boulevard Cardenas at the Westside of the zone with boulevard Clouthier (also known as "Gata Bronco) to the west with a "Via Rapida" roadway on the south side of the site and the construction of a "Linear-Park. Bajagua has been working with the City of Tijuana to ensure the compatibility of our project with theirs.

The attached letter from the Planning office of the City of Tijuana states that the City has agreed to the location of the Bajagua facilities in the zone known as "Vergel."

Tab 5 Clippings from the Mexican Press

Two contemporary press articles from the Mexican press are provided to demonstrate the commitment from Mexican authorities to support the Bajagua Project.

The first article quotes Mr. Jose Guadalupe Zamorano Ramirez, who is the Director of the Comisión Estatal de Servicios Públicos (CESPT – the state agency that runs the wastewater system in the City of Tijuana), and the Comisión Estatal de Aguas (the state arm of the Comision Nacional de Aguas which is the agency in charge of wate resources at the Mexican Federal level) stating:. ***"There is a start-up project, by the name of Bajagua which has been deemed "completely feasible" by the experts".***

The other article reported on the IBWC's recent "suspension" of the project and quotes Mr. Carmelo Zavala from the "Centro Industrial de Gestión Ambiental" (CIGA – a non-governmental environment watchdog group) who said ***"The cancellation of the Bajagua International Project for Water Treatment by the US is an unfortunate setback for the enhancement of the environment because it was going to allow the treatment of all the sewage in Tijuana"***

STUDIES

Land Survey

The survey to determine the boundaries of the site and right-of-way for the project have been completed. This document is required for the request for land and water use concessions in Mexico. Additionally, this document will be provided as part of the Request for Proposal (RFP) documents to be presented to the project bidders.

Land topography

These mapping surveys to determine land topography for the site and right-of-way for the project have been completed. This document is required as part of the Request for Proposal (RFP) documents to be presented to the project bidders.

Geotechnical Study

The following geotechnical reports have been concluded:

1) Geotechnical Soil Study Report concluded that soils on the site are suitable for the project,

(2) Environmental Assessment Report that has identified the debris and soils in the project footprint that may need to be removed, and

(3) a Memorandum of Preliminary Geotechnical Feasibility of Supporting Pipelines on the Tijuana River Channel Berm which has concluded that the Tijuana River berm can support the conveyance pipelines for the project. These

documents also will be provided as part of the RFP to project bidders.

Sewage Flow Study

Completed a commissioned study to measure sewage flow rates in Tijuana, including in those areas where the discharges do not enter the existing system, but flow to the watercourses directly. The report allows us to more accurately identify the quantity and location of flows, which will allow for a better design of the secondary treatment facility.

Tab 2 Project Financing

A) Letter from Citigroup providing assurance it will issue the necessary funds for construction of the project

B) Citigroup Financing Presentation to USIBWC

Carlos Marin
Commissioner
International Boundary and Water Commission
4171 North Mesa Street, Suite C 100
El Paso TX 79902

Dear Commissioner Marin:

As you know, Citigroup Global Markets Inc. ("Citi") is serving as financial arranger and placement agent for Bajagua LLC (the "Company") in connection with the issuance of senior project bonds ("Senior Bonds") for the Bajagua Wastewater Project (the "Project"). On April 3, 2007, we provided a letter to the Company expressing our confidence in our ability to place the Senior Bonds. I understand the Company has shared that letter with you.

As part of the due diligence we have carried out to date, we have reviewed the draft of the Fee-for-Services Contract (the "Contract") dated March 4, 2007 between the USIBWC and the Company. We have noted among the provisions of the draft Contract the fact that USIBWC's obligation to make payments under the Contract are subject to the availability of appropriated funds from the United States Government, and that USIBWC has rights, pursuant to Section 10.7 of the Contract, to terminate the Contract without liability for payment of a cancellation fee. We have taken these provisions into account in reaching the conclusions described in our April 7 letter to the Company.

I appreciate the time your staff spent with my colleague, David Livingstone, during the meeting last week in El Paso to discuss our views of the financing. I hope his presentation was helpful in describing the capital markets financing process which we believe will provide the most cost-effective financing solution for the Project. All of us on the Citi team look forward to working with you, your staff and the Company over the coming months to bring the Project to a successful financial close.

Sincerely,

Michael T. Gomez
Director

cc: Susan Daniel, IBWC
James Simmons, Bajagua LLC

Tab 3 CONAGUA's Letters of Support

A) *Letter from CNA (water agency for Mexico) providing assurance that it will issue a "concession" for the land to Bajagua (9/7/06).*

B) *Letter from CNA asserting the "Vital Importance" of the Bajagua Project for Mexico (3/16/07.)*

SECRETARÍA DE MEDIO AMBIENTE Y RECURSOS NATURALES

COMISIÓN NACIONAL DEL AGUA
SUBDIRECCIÓN GENERAL DE INFRAESTRUCTURA HIDRÁULICA URBANA

Oficio No. BOO.03.- 00142

México, D.F., a 07 de septiembre de 2006.

ING. ARTURO HERRERA SOLIS
COMISIONADO DE LA SECCION MEXICANA DE LA CILA MEX/EUA
P R E S E N T E .

Me refiero a su atento oficio Núm. CEU 01187/06 de fecha 30 de agosto de 2006, para informarle que:

El Gobierno de México está de acuerdo en la ubicación de la planta de tratamiento en el sitio "El Vergel". Asimismo, que el proyecto integral de saneamiento debe contemplar los colectores necesarios que hagan llegar los 1470 l/s adicionales y los bombeos a que haya lugar, en el entendido que el financiamiento del proyecto será con cargo al Gobierno Estadounidense conforme al Acta 311.

En lo que respecta al emisor que permite enviar el efluente tratado hacia el sitio "El Florido" tomamos nota de que el Gobierno de los Estados Unidos seguirá explorando el financiamiento para la construcción de dicha infraestructura.

En cuanto al diseño del formato y mecanismo para emitir convocatoria a empresas que tengan interés en participar en el desarrollo del proyecto, no tenemos objeción en que la Sección Mexicana de la CILA, lo lleve a cabo, lo cual permitirá a la parte estadounidense responsable del financiamiento identificar el flujo de los recursos financieros para asegurar su construcción conforme a lo establecido en el Acta 311.

Finalmente, expreso a Usted que no existe inconveniente para que las gestiones y tramites relativos, a la obtención, en su caso, de derechos de vía y ocupación de zona federal que el proyecto requiera, en sus componentes de emisores, estaciones de rebombeo y planta de tratamiento, se realicen por parte de la persona que la sección mexicana de la CILA se sirva designar, en el entendido de que el Gobierno de EUA cubrirá los costos que de ello se deriven.

A T E N T A M E N T E
EL SUBDIRECTOR GENERAL

ING. JESÚS CAMPOS LÓPEZ

C.c.p.- Lic. Cristóbal Jaime Jáquez.- Director General de la Comisión Nacional del Agua.- Para su conocimiento.- Presente.

c.c.p. Expediente
Minutario

September 7, 2006

Ing. Arturo Herrera Solis
Commissioner for Mexican Section of the IBWC

In response to your letter with reference no CEU 01187/06 dated August 30, 2006, the following is provided:

The government of Mexico agrees with the sitting of the treatment plant at the location known as "El Vergel". Providing that the project as described considers the collection and pumping requirements necessary to deliver the additional 1,470 l/s (34 mgd) and with the understanding that the US Government will be in charge of financing the works in accordance with Minute 311.

With respect to the pipeline to deliver the treated effluent to the "El Florido" site, we hereby note that the US Government will continue to explore the possibilities of financing the construction for such infrastructure.

In regards to the format and process to advertise the procurement of the project to firms interested in participating in its development, we have no objection in allowing the Mexican Section of the IBWC to conduct the procedure, allowing the US section, responsible for the project financing, to identify the resources necessary to ensure the construction of the Project in accordance with the requirements of Minute 311.

Finally, I would like to convey that there are no objections, for a person designated by the Mexican Section of the IBWC to execute the necessary activities for the obtainment, as necessary, for Rights-of-Way and use of federal lands that may be required by the Project, such as pipelines, pumping stations and the treatment plant; with the understanding that the US Government of the will pay for all associated costs.

Yours truly,

Ing. Jesus Campos Lopez
Subdirector, CONAGUA

CONAGUA
Comisión Nacional del Agua

SUBDIRECCIÓN GENERAL DE ADMINISTRACIÓN DEL AGUA
OFICIO No. BOO.02. 0097

México, D.F., a. 16 MAR 2007

ING. J. ARTURO HERRERA SOLÍS
COMISIONADO MEXICANO DE LA COMISIÓN INTERNACIONAL DE LÍMITES Y AGUAS ENTRE MÉXICO Y LOS ESTADOS UNIDOS
Av. Universidad 2180, Zona del Chamizal
Cd. Juarez, Chihuahua, C.P. 32310
P R E S E N T E

Estimado Ing. Herrera:

Nos referimos a las diversas conversaciones sostenidas con relación a la ejecución del Proyecto para la construcción de las instalaciones de tratamiento de aguas residuales de la ciudad de Tijuana, Baja California, en el marco del Acta 311 de la Comisión Internacional de Límites y Aguas.

Sobre el particular, nos permitimos manifestar a usted la viabilidad de dicho proyecto. Además le externamos el gran interés que tiene la Comisión Nacional del Agua en la ejecución del proyecto de tratamiento de aguas residuales en dicha entidad y la posibilidad de que se otorguen las concesiones correspondientes para el mismo, siempre y cuando se cumplan con los requisitos, términos y condiciones previstos en la legislación mexicana.

Este proyecto lo consideramos de gran trascendencia y relevancia para nuestro país, por lo que estamos en la mejor disposición de apoyarlo.

Sin otro particular, reciba un cordial saludo.

A T E N T A M E N T E
EL SUBDIRECTOR GENERAL

LIC. ROBERTO ANAYA MORENO

c.c.p. Ing. José Luis Luege Tamargo.- Director General de la CONAGUA.- Para su conocimiento.
RAM/MVDP/07

March 16, 2007

Ing. Arturo Herrera Solis
Commissioner, Mexican Section of the IBWC
Avenida Universidad 2180, Zona del Chamizal
Ciudad Juárez, Chihuahua, México C.P. 32310

Dear Commissioner Herrera,

We make reference to various conversations regarding the execution of the project to construct a water treatment facility in the City of Tijuana as delineated by Minute 311 form the International Water and Boundary Commission.

In reference to that project, we would like to express our support its execution. Additionally we like to express the great interest the "Comisión Nacional del Agua" (CONAGUA) has for this project in Tijuana and, provided that a petition is made within the requirements of the law, our interest in providing an approval for such a concession.

We consider this a "keystone" project for our country and therefore are willing to provide it with our full support.

Sincerely,

Lic. Roberto Anaya Moreo, Subdirector of CONAGUA

Tab 4

City of Tijuana's Project for the "Vergel" Zone

A) *Projected City of Tijuana development of the Alamar River area consisting of the eco-channeling of the Alamar River, construction of a roadway and a linear-park, and inclusion of the Bajagua project.*

B) *Letter from Instituto Municipal de Planeación (IMPLAN – the City of Tijuana's Planning Agency) providing zoning for the area known as "Vergel" in the Alamar River basin for the construction of the Bajagua Project.*

OFICIO
Dependencia: INSTITUTO MUNICIPAL DE PLANEACION
Dirección
Sección:
Número de Oficio: DIR/ SN/2006
Expediente:
Anexos: El que se indica

Para que estés bien y de buenos

Tijuana, B.C., 21 de Julio de 2006
"2006, Año del Bicentenario del Natalicio del Benemérito de las Américas, Don Benito Juárez García"

Arq. Enrique Landa
Empresa Bajagua
P R E S E N T E

Anteponiendo un cordial saludo, por medio de la presente le informo en base a su solicitud presentada ante este Instituto, de la evaluación de los sitios posibles para la localización de una planta de tratamiento secundario para aguas residuales. Se recomienda de manera preliminar dos zonas que pueden ser compatibles dentro de la zona del alamar.

- El denominado vergel km 0+000 al 3+000.
- El denominado matamoros del km 6+000 al 10+205.

CONSIDERANDOS:

Que la ciudad de Tijuana a través de la Secretaría de Desarrollo Urbano del XVIII Ayuntamiento promueve el desarrollo urbano integral de la zona del alamar en seguimiento al los lineamientos estratégicos del Plan Municipal de Desarrollo de Tijuana 2002-2007 y al tercer nivel de las estrategias del PDUCPT 2002-2025 donde se considera una vialidad de impacto regional de 11 km. de longitud con una sección de 5 carriles por sentido, el encauzamiento Ecohidrológico del arroyo por medio del cual se diseñará un parque lineal utilizando las zonas de inundación.

Por lo anteriormente expuesto:

a) Se le solicitará la parte proporcional de las obras de infraestructura correspondientes a los frentes del polígono en base al proyecto del ayuntamiento.

b) Adicionalmente, al proyecto del ayuntamiento se propone la incorporación de instalaciones educativas para el conocimiento del reuso de agua y con ello generar una cultura del agua en los niños y la población en general.

IMPlan
Blvd. Cuauhtémoc No. 2340 Col. Revolución, C.P. 22400. Tijuana, B. C. México
Tel. (664) 6 86 6248 al 53 Fax. (664) 6 86 6245 http://www.tijuana.gob.mx/implan.html

OFICIO
Dependencia: INSTITUTO MUNICIPAL DE PLANEACION
Sección: Dirección
Número de Oficio: DIR/ 9N/2006
Expediente:
Asunto: El que se indica

H. XVIII AYUNTAMIENTO

Para que estés bien y de buenas

c) Considerando como base que el diseño de la planta de tratamiento un sistema anaeróbico, no de lagunas de oxidación, que no genere olores y responda a las normas oficiales aplicables en materia de protección al medio ambiente y de calidad del agua.

d) La empresa a su cargo se compromete a desarrollar los estudios técnicos de prefactibilidad, estudio de impacto urbano y ambiental de acuerdo a lo estipulado por la SEMANART y la normatividad en la materia correspondiente a los 3 niveles de gobierno.

Lo anterior con fundamento en los artículos 115 fracciones I y II de la Constitución Política de los Estados Unidos Mexicano, 79 y 82 apartado A, fracción II inciso a) de la Constitución Política del Estado Libre y Soberano de Baja California ; 3 y 7 , fracciones III y IV de la Ley de Régimen Municipal para el estado de Baja California, el artículo 11 fracciones III, XVIII, XXI y XXV, 117,141, 202, 235, 236 y 237 de la Ley de Desarrollo Urbano del Estado de Baja California, artículos 6 fracciones I y III, 19, 21, y 24 del Reglamento para la Protección al Ambiente para el Municipio de Tijuana, B.C, así como el artículo tercero puntos 1º, 12 y 17 del Acuerdo de Creación del Instituto Municipal de Planeación publicado en el Periódico Oficial del Estado el 28 de Diciembre de 1998.

Sin otro particular, reciba un cordial saludo y quedo de Usted.

A TENTAMENTE
INSTITUTO MUNICIPAL DE PLANEACIÓN

MTRA. ANA ELENA ESPINOZA LOPEZ
Directora General

IMPlan RECIBIDO 21 JUL 2006 INSTITUTO MUNICIPAL DE PLANEACION TIJUANA, B. C.

C.c.p. Arq. Fernando Zamora Rubio.- Secretario de Desarrollo Urbano del XVIII Ayuntamiento de Tijuana
C.c.p. Archivo
AEEL/hme

IMPlan
Blvd. Cuauhtémoc No. 2340 Col. Revolución, C.P. 22400. Tijuana, B. C. México
Tel. (664) 6 86 6248 al 53 Fax. (664) 6 86 6245 http://www.tijuana.gob.mx/implan.html

Tijuana, July 21, 2006

Arq. Enrique Landa
Bajagua Project

With warm regards I hereby inform you of your decision regarding your request for sitting a secondary treatment water treatment plant. We recommend, preliminarily, the following two zones that may be compatible for this use within the "Alamar River area:

- A site called "El Vergel" Km. 0.000 to 3+000
- A site called "Matamoros" Km. 6+000 to 10.205

Whereas

The City of Tijuana, through the Office of the Secretary of Urban design for the XVIII City Council desires to promote the development of the "Alamar" zone in accordance with the strategic planning of the Municipal Zoning Plan for the City of Tijuana for 2002 through 2007 and the third strategic level of the PDUCPT 2002-2005, which call for an 11 Km. roadway of national importance with 5 lanes each-way, the Eco-channeling of the river and a lineal park which will be designed along the channel utilizing the floodable areas of the zone.

Therefore,

a) Provide the construction of the City's project in proportion to the size of the proposed project [by Bajagua].
b) Additionally, the City's project envisions to incorporate educational facilities for public education regarding the benefits of re-use and to develop a "culture" of water for the inhabitants [of the City] and its growing population.
c) That the water treatment plant will be designed using an anaerobic treatment system and not oxidation lagoons method which will not generate odors and will be in accordance with applicable environmental and water quality requirements.
d) [Bajagua] will provide the necessary technical studies to determine the projects viability, Environmental and Urban Development Impact Statements(s) in accordance with SEMERNAT requirements and any applicable local, state or federal laws.

All of the above in accordance with articles 115, subsections 1 and 2 of the Mexican Constitution, section A, 79 and 92, subsection II, a) of the Constitution of the State of Baja California; sections 3 and 7 subsections III,XVIII, XXI, and XXV, 117, 141, 202, 235, 236 and 237; ..... [and other cited references].

Sincerely,

Ana Elene Espinoza López, Director IMPLAN

Tijuana, Baja California Mexico
SIMBOLOGIA
AFECTACIONES ZONA FEDERAL
AFECTACIONES VIA RAPIDA
VIA RAPIDA ALAMAR
ZONA FEDERAL
CANALIZACION ARROYO ALAMAR
ASENTAMIENTOS IRREGULARES
ACCESOS VEHICULARES (SINGLE POINT)
VIALIDAD PRIMARIA
VIALIDAD PRIMARIA
VIALIDAD PROPUESTA
Jorge Hank Rhon
Presidente Municipal
Andres Garza Chavez
Secretario de Gobierno
Fernando Zamora Rubio
Secretario de Desarrollo Urbano
Ana Elena Espinoza Lopez
Dir. del Instituto Municipal de Planeacion
PLANO DE AFECTACIONES
PRIMERA SECCION
AF-01
FECHA
ARCHIVO
ESCALA
01

Tab 5

Clippings from the Mexican Press

A) *La Forntera Newspaper* – ***Zamorano (CESPT) The Future of Water has Hopes in Privatization -"There is a start-up project, by the name of Bajagua which has been deemed "completely feasible" by the experts".***

B) *El Mexicano Newspaper* – ***Carmelo Zavala Centro Industrial de Gestión Ambiental (CIGA) – US Cancels Bajagua Project – "The cancelation of the Bajagua International Project for Water Treatment by the US is an unfortunate setback for the enhancement of the environment because it was going to allow the treatment of all the sewage in Tijuana".***

IDENTIDAD Y EXPRESIÓN DE TIJUANA

FRONTERA

No. 2762 • Año VIII • 112 páginas • 6 secciones • Local $10.00 • Dominical y revista: $12.00 • San Diego: $1.00 dólar www.frontera.in.w Viernes 23 de marzo del 2007, Tijuana, B.C.

INTERESA A EMPRESAS EXTRANJERAS INVERTIR

Ven en privatización futuro para el agua

Ya existe un primer proyecto de arranque, de nombre Bajagua, que ya ha sido estudiado por expertos y es totalmente viable

Por Daniel Salinas

El único futuro posible del agua en Baja California es la privatización de proyectos de reutilización, tratamiento y desalación, y ya hay empresas estadounidenses interesadas en invertir, dijo José Guadalupe Zamorano Ramírez, director de la Cespt y ex director de la Comisión Estatal del Agua.

Zamorano explicó que bajo este nuevo esquema, la Comisión Estatal de Servicios Públicos y la Comisión Estatal del Agua se vuelven únicamente rectores, mientras que una empresa privada se encarga de la distribución, conducción y tratamiento del agua, aunque por desgracia no hay empresarios mexicanos interesados, pero sí en cambio algunos extranjeros.

Un primer proyecto de arranque que ya existe, cuyo nombre es Bajagua, ya ha sido estudiado por expertos y es totalmente viable, señaló Zamorano.

El problema es que los proyectos de reutilización no se pueden ejecutar con dinero público, pues no hay recursos, por lo que se requiere necesariamente inversión privada y hasta ahora todas las propuestas que han llegado son estadounidenses.

"Hay gente interesada que ya se han acercado a platicar; el proyecto Bajagua, por ejemplo, es un proyectazo, una planta de tratamiento a nivel terciario para recolectar toda el agua de Tijuana, más de 3 mil metros por segundo, y que esa agua se venda a quien la quiera comprar", dijo Zamorano Ramírez.

"¿Qué ganamos? Ganamos muchísimo y ganamos todos; no generamos costos, al contrario, vamos a cobrar por entregar esa agua, desafortunadamente no hay empresarios mexicanos que vean el potencial económico del agua tratada, los norteamericanos lo ven muy seriamente", añadió.

A FUTURO

- **Nombre del proyecto inicial:** Bajagua
- **Tecnología:** Desalación y reutilización
- **Costo:** 140 millones de pesos
- **Metros cúbicos de agua disponibles para BC:** 270 millones
- **Metros cúbicos disponibles para Tijuana:** 110 millones
- **Dotación del proyecto:** 250 litros por segundo
- **Ahorro de agua:** 2 mil 500 millones de pesos en 20 años

El agua no tendrá dueño

El funcionario dijo que no se trata de una privatización del líquido, sino de los servicios de tratamiento, ya sea desalación o reutilización y en su caso la distribución y venta de esta misma agua a particulares.

"El agua nunca va a ser de un privado, la concesión es el tratamiento, la potabilización, la distribución, pero el líquido es de la comisión, pero tú como privado puedes distribuir, conducir, tratar y cobrar bajo un esquema normativo y yo comisión me convierto sólo en rector", señaló Zamorano.

"Venderla con redes de distribución a quien la quiera comprar, no nada más en la vivienda, sino en la parte industrial; mientras no tengamos agua para ofrecer se va a detener el desarrollo", agregó.

El proyecto Bajagua, explicó, cuesta 140 millones de pesos y se puede ejecutar con apoyo de Banobras, y la idea es que sea punta de lanza para impulsar otros proyectos de inversión privada.

Por su parte, el diputado Luis Rodolfo Enríquez dijo que a nivel legislativo se debe trabajar en las reformas necesarias para garantizar el abasto de agua a las generaciones futuras.

Si los métodos tradicionales han dejado de ser útiles, se deben impulsar nuevas formas de tratamiento y los legisladores deben sensibilizarse con el tema, señaló Enríquez.

SIDUE

Descartan los tandeos

Redacción/FRONTERA
TIJUANA, B.C. (PM)

El secretario de Infraestructura y Desarrollo Urbano del Estado, Arturo Espinosa Jaramillo, dijo que el Gobierno del Estado, en ningún momento prevé el suministro de agua por períodos de tiempo para Tijuana-Rosarito.

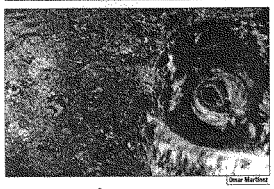
Agregó que la secretaría a su cargo ha estado dando seguimiento a todo el proceso de necesidad de agua y se han tomado las medidas necesarias previamente.

En cuanto a la ampliación del acueducto, dijo que primero se logró el recurso federal que solventa el 40% de la inversión fondo perdido, para luego licitar la aplicación de estos recursos.

"En estos momentos el fallo de licitación no tiene ninguna situación que impida la continuación de los trabajos que ya iniciaron con la fabricación de la tubería, equipo para el bombeo de agua así como la aplicación del proyecto ejecutivo", dijo.

Espinosa Jaramillo informó que la obra física inicia en 30 días, lo que la necesidad de agua de Tijuana estará cubierta hasta el año 2018; incluso ya se ha iniciado la obra física complementaria para que Tijuana y Rosarito reciban este recurso extra.

El titular de Sidue dijo que así el Estado cumple con esta necesidad pública sin que exista posibilidad de escasez.



Oscar Martínez

Siempre DE VUELTA A CASA

Las lagunas Ojo de Liebre y San Ignacio reciben cada año a su visitante más distinguida: La ballena gris, que todos los inviernos llega para dar continuidad a su especie

Tijuana... Pág. 17

año se realizó durante
cabo en Austin, Texas

Informática... Pág. 14

Teléfonos I ESTILO

Hoy en día es un complemento de la decoración del hogar

Casa y Estilo

STA DEL "NARCO"

Recibe amenazas, desvela Calderón

Es lamentable, señala Carmelo Zavala

Cancela EU proyecto Bajagua

Iba a cubrir al 100 por ciento el tratamiento de aguas residuales

José Israel IBARRA GONZÁLEZ/el mexicano

TIJUANA.- La cancelación del proyecto internacional de tratamiento de aguas residuales Bajagua por parte de Estados Unidos es un lamentable retroceso para el cuidado del medio ambiente de la región, debido a que iba permitir el saneamiento de la ciudad en un 100 por ciento, pero ahora ya no será posible, expresó José Carmelo Zavala Álvarez, director del Centro Industrial de Gestión Ambiental (CIGA).

Señaló que la planta la promovió la empresa Bajagua y estaba negociada con la Comisión Internacional de Límites y Aguas (CILA); era un proyecto viejo que permitiría empatar la infraestructura hidráulica de San Diego-Tijuana como una continuación a la planta de Estados Unidos que trata agua mexicanas.

> Esta planta de 3 litros cúbicos por segundo estaría del lado mexicano y la ubicación esperada sería cerca del Cañón del Alamar

Comentó que es una lástima la cancelación porque los recursos iban a ser de Estados Unidos, sin embargo, ahora ya se perdió el proyecto de 600 millones de dólares: "Esta planta de 3 litros cúbicos por segundo estaría del lado mexicano y la ubicación esperada era cerca del Cañón del Alamar".

Dio a conocer que el vecino país del Norte lo canceló porque la empresa americana no tuvo los avances que se necesitaban, debido a que la planta debía estar lista para el 2008 y en mayo haber comenzado, lo que no se logró.

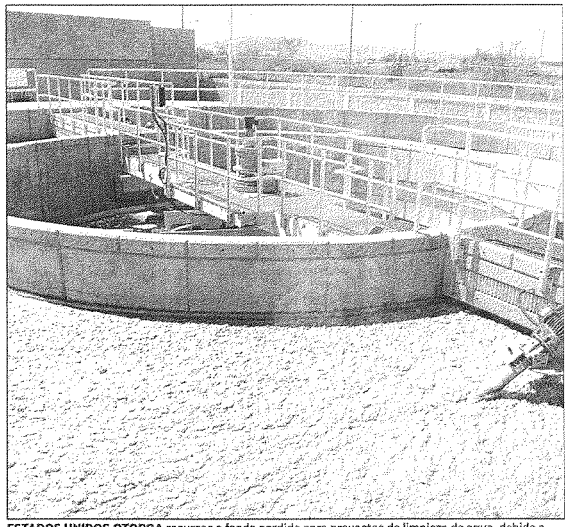
"Esta planta era de 3 metros cúbicos de tratamiento de aguas residuales y la expectativa del lado mexicano era que Tijuana hubiera podido cubrir el 100 por ciento de sus aguas residuales", dijo.

Señaló que ahora se tendrán que gestionar otra vez recursos y construir otras plantas para poder cumplir con la expectativa del proyecto de Bajagua: "en el país sólo se trata la tercera parte de las aguas residuales y en Tijuana andamos tal vez por las dos terceras partes, pero esta planta iba cubrir la demanda de tratamiento hasta el 2025".

Dijo que a Estados Unidos otorga recursos a fondo perdido porque siempre le interesa que Tijuana trate bien sus aguas, debido a que se comparte la cuenca hídrica y la contaminación de México les llega a ellos.

Dio a conocer que la EPA paga 40 millones de dólares a Tijuana para que se cambien las tuberías de drenaje colapsadas, porque la cuenca drena hacia Imperial Beach completa.

LA CANCELACIÓN DEL proyecto de tratamiento de aguas residuales Bajagua fue considerado como un lamentable retroceso para Tijuana, porque iba a permitir cubrir la demanda de tratamiento al 100 por ciento.



ESTADOS UNIDOS OTORGA recursos a fondo perdido para proyectos de limpieza de agua, debido a que los desechos de Tijuana llegan a través de la cuenca hídrica a Imperial Beach.

bajagua project, LLC

May 1, 2007

Mr. Steve S. Smullen, Acting Principal Engineer
International Boundary and Water Commission
The Commons, Building C, Suite 100
4171 N. Mesa Street
El Paso, TX 79902

Mr. Carlos Pena, Special Projects Engineer
International Boundary and Water Commission
The Commons, Building C, Suite 100
4171 N. Mesa Street
El Paso, TX 79902

Re: Comments on the Request For Proposals for the Bajagua Facility

Gentlemen:

This letter once again requests that the USIBWC provide Bajagua with comments on the draft Request for Proposals (RFP). An English-language version of the RFP originally was provided to the USIBWC for review in three volumes on February 7th, 14th, and 28th 2007, respectively. Comments from the USIBWC then were reviewed and incorporated by Bajagua into a three-volume, Spanish-language version of the RFP. The three translated volumes of the RFP were sent to the USIBWC on March 13th, and March 30th, and April 12th to be forwarded to the Bi-National Technical Committee (BTC) for review.

Despite repeated requests, Bajagua still has not received the USIBWC's final comments on Volumes 1, 2 or 3 of the RFP. Until Bajagua receives final comments on the RFP, it cannot send the RFP to the chosen contractors for preparation of bids to construct the wastewater treatment facility, so the failure of the IBWC to review the RFP is delaying the project, and negatively impacting the project start-up date.

Bajagua had planned to release the RFP for bidding, at the latest, by May 14, 2007. To meet that date, however, Bajagua needed to receive comments from the IBWC by April 30, 2007, and even then, it planned to work overtime to release the RFP by that date. Bajagua still will attempt to keep that schedule, but each day that it does not receive comments makes it more difficult to do so.

160 Industrial St. Suite 200 San Marcos, CA 92078 • Bus. 760.471.2365 • Fax 760.471.2383
www.bajagua.com

Please contact me as soon as you receive this letter to inform me of the status of the RFP review, what the IBWC is and can do to obtain input from the relevant BTC members, and to provide me with an estimate when comments on all three volumes will be delivered to Bajagua. Bajagua appreciates your efforts in resolving this issue, and if there is anything that we can do to help, please let me know.

Sincerely,

Albert P. Rechany
Director of Operations

AR\mkk

cc: Mr. Enrique Landa
Mr. Jim Simmons
John J. Lormon, Esq.
Craig Sapin, Esq.
Carlos Marin, Commissioner, USIBWC
Susan Daniel, Legal Advisor, USIBWC

bajagua project, LLC

Misinformation issues regarding IBWC's request for funding for a project to treat 25 mgd of sewage at the South Bay International Wastewater Treatment Plant (IWTP)

The U.S. Section of the International Boundary and Water Commission (USIBWC) has requested funding for a project that it claims will be a back up to the Bajagua proposal. The IBWC's project fails to equal Bajagua in many criteria. Importantly the IBWC proposal is limited to 25 million gallons per day (mgd) of treatment, where current demand exceeds 50mgd.

Compliance
The IBWC proposal addresses the problem as understood 17 years ago. It ignores Tijuana's 2003 Master Plan. The Bajagua Project addresses current issues (Minute 311), with 59mgd capacity as selected by the Tijuana 2003 Master Plan. IBWC's proposal will be undersized and obsolete on the first day of operation. The Bajagua Project will provide full compliance, with expansion capability from day one of commercial operation.

Capacity
The IBWC proposal provides less than half the capacity (25mgd) of the Bajagua project (59mgd).

Readiness of Design
The design of the IBWC proposal is little more than conceptual, and represents a resurrection of a project reviewed in three NEPA studies, and identified in the 2005 Final Supplemental Environmental Impact Statement (SEIS) as "Activated Sludge Secondary Treatment", "Alternative 5 Option B" (Alternative 5B). This 13 year old proposal was first offered for consideration in 1994 and has not been reviewed for constructability and applicability of the technology to the present day. A review of the project as proposed can take 12 to 18 months. The project is NOT ready for immediate delivery.

Applicability of Project to Present Issues
The IBWC proposal treats a maximum of 25mgd. Bajagua is designed for not less than 59mgd of treatment. The technology behind the IBWC proposal was evaluated three times under NEPA, and was never selected as the preferred alternative. The IWTP has continuously violated the acute toxicity levels of its permit. The IBWC proposal can be rendered inoperative from acute toxicity. Bajagua will not be subject to toxic upset that will render it inoperative.

Delays
The IBWC has indefinitely suspended Bajagua unilaterally, effectively blocking any possibility that the project can progress. The IBWC is holding Bajagua hostage in order to manipulate the outcome of non-performance. There is no justification for IBWC's suspension of Bajagua. Every day of delay compounds both the cost and timing of project implementation.

Site preparation, environmental issues, permits and approvals
The NEPA review (July 2005 SEIS) considered "Activated Sludge Secondary Treatment", Alternative 5B, concluding in the Record of Decision (ROD, September, 2005) that the Bajagua Project was superior to Alternative 5B. Notable was the ROD's recognition that legal challenges to the proposal had rendered Alternative 5B infeasible to complete as designed because "...that alternative was subject to a legal challenge and USIBWC resolved the litigation by agreeing to reexamine the alternatives available to

160 Industrial St. Suite 200 San Marcos, CA 92078 • Bus. 760.471.2365 • Fax 760.471.2383
www.bajagua.com

complete the secondary treatment component of the SBIWTP." That reexamination resulted in the September 2005 ROD selecting Bajagua.

Legal Issues and Status of the Standing Record of Decision

The proposed alternative by the USIBWC is a previously reviewed and bypassed as a viable alternative to solve the present problem. A secondary process for the existing plant, which was first proposed in 1994, raised a question of how effectively the proposed plant would be in handling the highly toxic chemicals in the Mexican sewage flows. Several groups strongly contend that a "ponding system," in which the waste is treated via natural biological decomposition, would be more effective, cheaper and environmentally friendly than the "mechanical" system now being defended.
In July 1995, the Sierra Club, Surfrider Foundation, Chaparral Greens and Lori Saldaña filed a lawsuit to compel consideration of the ponding system alternative.
As presented the project has not been updated to address the issues brought over by the lawsuit and therefore the alternative is incomplete, shortsighted and lacks support.

Capital Cost Distortion
The IBWC grossly understated its proposal costs' while overstating Bajagua's. A true cost analysis of the plant must include all the elements needed for its total design, permitting, construction, and operation. IBWC has chosen, however, to only show the cost of the EXPANSION without including the first phase which has already been constructed.
Bajagua will treat 236% more sewage than the IBWC proposal, yet it has been projected to cost about the same as the cost for the secondary portion addition to the present plant. Additionally, IBWC's costs stated for O&M show only the cost of operation without taking into consideration the present costs to operate the primary train of the existing plant, and ignores the inclusion of debt service.

Financing
The IBWC proposal is dependent on both US appropriations AND a 1/3 contribution from Mexico. The 1994 version of the IBWC project required a 7% contribution from Mexico. The present proposal requires a 33% contribution from Mexico. The likelihood of realizing this necessary foreign component is unknown, however, a historical view should be considered.
Bajagua is a private/public partnership requiring no appropriations or government funding from either country for implementation. Bajagua amortizes the cost of construction ($180 m) over the 20 years of operations.

Future Budgetary Allocations
The IBWC proposal fails to point out that their project will require the INDEFINITE budgetary support of the US government to provide treatment to the Mexican sewage forever. In its best case the US will continue to pay two thirds of the cost of the project (capital and O&M costs) as it is presently stated. It is doubtful that the Mexican government, whose contributory status for this project remains in doubt for the capital investment alone, will participate in the daily operation and maintenance of the plant should it ever materialize.

Cost Recovery
The Bajagua Project will not only treat the present and projected Tijuana sewage through additional capacity availability, but most importantly, it will treat this matter innovatively to eliminate the need for the continual US financial support of the Mexican sewage treatment challenges. It will provide the capability of REUSE OF WATER. In doing so it converts the treatment of sewage to be simply discharged it into the ocean into a VALUABLE COMMODITY for reuse that has tremendous significance for the future development of the Baja California region. The Mexican government has already recognized Bajagua as a keystone project which is of "*...transcendental importance for [Mexico]...*" in the development of the water infrastructure in Tijuana, B.C.
As indicated in the Development Agreement with the IBWC, "*... the United States will receive a portion of the revenue produced by [water reuse] sales.*" It is conceivable that enough revenues may be generated as the result of reuse water sales as to considerably offset, and possibly mitigate in its entirety, the cost

of the US contract for the Bajagua Project. The direct impact to the US budget will result in the elimination of the cost for treatment of sewage that ends up polluting the beaches along the southern San Diego coastline while ensuring that uninterrupted treatment is in fact provided by Mexico, free from US taxpayers burden.
At the end of the 20 year operations envisioned in the present Development Agreement, the plant will potentially become self sufficient through revenues generated from water reuse sales to allow Mexico to operate it. At this point Mexico will be able to derive enough profits to guarantee its future operation.

CONCLUSIONS
IBWC has distorted key project differentiators regarding:

- Capital Costs
  - Understates IBWC costs
  - Overstates Bajagua costs
- Capacity
  - 25mgd IBWC proposal inconsistent with Tijuana Master Plan
  - 59mgd Bajagua consistent with Tijuana Master Plan
- O&M Costs
  - IBWC proposal understates or ignores costs
  - IBWC overstates Bajagua costs
- Water Quality
  - IBWC falls short of addressing discharge permit and current demand
  - Bajagua addresses permit, and current and future demand
- Time
  - IBWC proposal requires 8 years optimistically to complete
  - Bajagua is in the bidding process
- Financing
  - IBWC relies on additional US appropriations and foreign contributions
  - Bajagua can be completed independent of any government funding

For clarity, consider the unit life-cycle costs of the projects.

In 2007 dollars:
IBWC = $21.99/gallon of treated sewage

Bajagua = $11.49/gallon of treated sewage

Prepared by Jim Simmons, Bajagua Project, LLC, Managing Member

bajagua project, LLC

May 1, 2007

Mr. Steve S. Smullen, Acting Principal Engineer
International Boundary and Water Commission
The Commons, Building C, Suite 100
4171 N. Mesa Street
El Paso, TX 79902

Mr. Carlos Pena, Special Projects Engineer
International Boundary and Water Commission
The Commons, Building C, Suite 100
4171 N. Mesa Street
El Paso, TX 79902

Re: Comments on the Request For Proposals for the Bajagua Facility

Gentlemen:

This letter once again requests that the USIBWC provide Bajagua with comments on the draft Request for Proposals (RFP). An English-language version of the RFP originally was provided to the USIBWC for review in three volumes on February 7th, 14th, and 28th 2007, respectively. Comments from the USIBWC then were reviewed and incorporated by Bajagua into a three-volume, Spanish-language version of the RFP. The three translated volumes of the RFP were sent to the USIBWC on March 13th, and March 30th, and April 12th to be forwarded to the Bi-National Technical Committee (BTC) for review.

Despite repeated requests, Bajagua still has not received the USIBWC's final comments on Volumes 1, 2 or 3 of the RFP. Until Bajagua receives final comments on the RFP, it cannot send the RFP to the chosen contractors for preparation of bids to construct the wastewater treatment facility, so the failure of the IBWC to review the RFP is delaying the project, and negatively impacting the project start-up date.

Bajagua had planned to release the RFP for bidding, at the latest, by May 14, 2007. To meet that date, however, Bajagua needed to receive comments from the IBWC by April 30, 2007, and even then, it planned to work overtime to release the RFP by that date. Bajagua still will attempt to keep that schedule, but each day that it does not receive comments makes it more difficult to do so.

160 Industrial St. Suite 200 San Marcos, CA 92078 • Bus. 760.471.2365 • Fax 760.471.2383
www.bajagua.com

Please contact me as soon as you receive this letter to inform me of the status of the RFP review, what the IBWC is and can do to obtain input from the relevant BTC members, and to provide me with an estimate when comments on all three volumes will be delivered to Bajagua. Bajagua appreciates your efforts in resolving this issue, and if there is anything that we can do to help, please let me know.

Sincerely,

Albert P. Rechany
Director of Operations

AR\mkk

cc: Mr. Enrique Landa
Mr. Jim Simmons
John J. Lormon, Esq.
Craig Sapin, Esq.
Carlos Marin, Commissioner, USIBWC
Susan Daniel, Legal Advisor, USIBWC

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

March 31, 2006

Mr. Jim Simmons
Bajagua LLC
160 Industrial Street, Suite 200
San Marcos CA 92078

Dear Jim:

We are in the process of scheduling the April bi-national meeting of the International Boundary and Water Commission, United States and Mexico regarding the implementation of Minute 311. Representatives of Bajagua LLC are invited to attend along with Bajagua's Mexican advisors. The meeting is to be held on Monday April 24, 2006, in Tijuana, Baja California, Mexico; details as to the time and location of the meeting will be provided to you shortly. A tour of the proposed site of the Bajagua Project facility will take place after the bi-national meeting.

At the meeting in April both the United States and Mexican Sections will be stressing the importance of having IBWC representation in all meetings with government officials in both countries in order to facilitate the project in accordance with both United States and Mexican laws. As standard operating procedure, please include us in any meeting you have with government officials regarding this project.

Mexico has advised us in discussions on March 10, 2006, that review of the draft Fee for Services document was not possible in a short time frame and requested an extension of the March 31, 2006 date for finalizing the document. We will be working on establishing a new date based on Mexico's input. Mexico will be ready to discuss the draft Fee for Services Agreement and standard operating procedures in Mexico for the project at the bi-national meeting in April.

Additionally, please provide us with an updated Critical Path Management (CPM) schedule in both electronic and hard copy formats as required by the Development Agreement. Thank you for your efforts in this matter. Please let me know if you have any questions or concerns.

Sincerely,

Carlos Mann
Acting Commissioner
USIBWC

The Commons, Building C, Suite 310 • 4171 N. Mesa Street • El Paso, Texas 79902
(915) 832-4100 • (FAX) (915) 832-4190 • http://www.ibwc.state.gov

bajagua project, LLC

April 25, 2007

Carlos Marin P. F., Commissioner
U.S. International Boundary and Water Commission
The Commons, Building C, Suite 100
4171 N. Mesa Street
El Paso, TX 79902

Re: Response to Letter of April 6, 2007

Dear Commissioner Marin:

As promised in our letter to you dated April 11, 2007, this letter further addresses the issues raised in your letter to me dated April 6, 2007. That April 6th letter requested additional information from Bajagua to support its request that the USIBWC agree to extend certain milestone dates in the Development Agreement by five months. That request was first made by Bajagua in my letter to you dated February 20, 2007. USIBWC's April 6th letter requested that Bajagua provide relevant and current information describing (1) why the extension is necessary, and (2) the activities that Bajagua will undertake and complete during the extension period.

The April 6th letter also asked for additional information (1) to resolve some questions regarding the status of project activities; (2) on the status of land concessions from the Government of Mexico (GOM) and the ownership of the land necessary to construct the project, (3) on financing for the project; and (4) on Bajagua's discussions with the GOM concerning the expansion of the wastewater treatment facility's capacity to 75 million gallons per day (MGD). While we believe that our April 11th letter and the presentation provided to the USIBWC by Citigroup on April 18, 2007, adequately explained these issues, this letter further addresses each those issues.

I. Bajagua's Request For a Five-Month Extension To Complete Tasks Under the Development Agreement is Required Because of the Significant Delays Caused by the USIBWC.

Recent letters from the USIBWC have requested information from Bajagua to support its request for an extension of time to select and contract with a Design, Build and Operate (DBO) contractor to complete construction of the wastewater treatment plant (WWTP) in Mexico. The reasons for Bajagua's request were described in detail in my February 20th letter to you, and they are discussed in even greater detail below. As the USIBWC has been aware throughout this

160 Industrial St. Suite 200 San Marcos, CA 92078 • Bus. 760.471.2365 • Fax 760.471.2383
www.bajagua.com

process, Bajagua's ability to complete required activities under the Development Agreement requires the good faith efforts of the USIBWC in performing its obligations under the Development Agreement and in cooperating with Bajagua as needed. Not only did the USIBWC delay the execution of the Development Agreement itself by 57 days, but as set out below the USIBWC has not performed as required by the Development Agreement, and these delays provide the basis for Bajagua's requested extension.

A. Delays in Negotiating the Fee-for-Services Agreement.

For example, Section 4.1 of the Development Agreement requires that the USIBWC negotiate in good faith with Bajagua the terms and conditions of a Fee-for-Services (FFS) Agreement by March 31, 2006. Bajagua provided a FFS Agreement to the USIBWC on March 10, 2006, to which the USIBWC provided initial and additional comments on March 31, 2006, and April 14, 2006.

Although Bajagua believed that the parties had resolved all issues related to the FFS Agreement during a telephone call on April 24, 2006, the USIBWC did not respond for 10 months to Bajagua's repeated requests to complete the Agreement. Then, on February 14, 2007, nearly 11 months after the FFS Agreement was required to be completed, the USIBWC sent even more comments on the FFS Agreement, again raising issues that had been resolved. Bajagua again responded promptly to the USIBWC on February 23, 2007, but the most-recent response from the USIBWC on April 18, 2007, reopens a number of previously resolved issues. This timeline shows that the USIBWC's actions and inaction have delayed execution of the FFS Agreement by 397 days. As you know, agreement on terms of a FFS Agreement is a prerequisite to Bajagua's issuing an RFP and completing its financial arrangements. USIBWC's unwarranted delay in competing the FFS Agreement alone justifies Bajagua's request for additional time.

B. Delays in Completing the Request for Qualifications.

On February 28, 2006, Bajagua sent the USIBWC a draft Request for Qualifications (RFQ) for it to review as required by the Development Agreement, but the USIBWC did not complete its review until October 18, 2006, nearly eight months later. The requirement in the Development Agreement that the Bi-National Technical Committee (BTC) also review the RFQ, further delayed the process, and not until November 30, 2006, did the USIBWC consent to the publication of the RFQ. The inaction of the USIBWC and the BTC resulted in an almost eight-month delay, which also provides sufficient reason alone for Bajagua's requested extension of time.

C. Delays in Approving A Site for the WWTP.

The process of selecting a site for the WWTP in Mexico also delayed Bajagua's ability to meet milestone dates in the Development Agreement. Soon after the Development Agreement

was signed in February of 2006, Bajagua submitted a number of potential sites where the facility might be located to the USIBWC and the BTC for review and approval as required by the Development Agreement. But, the required approval was not provided to Bajagua until November of 2006, nearly 11 months later. Until the USIBWC agreed on a site, Bajagua could not begin focused discussions with the GOM regarding land concessions. This delay directly affected Bajagua's ability to conduct a survey and other field studies on the site and to prepare the Request for Proposal (RFP) for the project for the selected bidders to consider. As with other delays, this 11 month delay provides requisite support for the Bajagua request for a time extension.

D. Delays in Reviewing the Request for Proposals.

The Development Agreement also requires that the USIBWC and the BTC review and approve the RFP. Because the RFP is a large document, Bajagua attempted to expedite the RFP review process by providing the USIBWC with each of the three volumes of the RFP for review as they were completed. The three volumes were submitted to the USIBWC for review on February 7th, 14th and 28th of 2007, respectively, with final approval from the USIBWC on all the volumes occurring on March 19, 2007. As the USIBWC approved each volume, Bajagua translated that volume into Spanish, and provided both English and Spanish versions to the BTC for its review.

Although the BTC's review took three to four weeks longer than expected, Bajagua provided the BTC's comments on Volumes 1 and 2 to the USIBWC for review on March 26th and April 12th, respectively, but still has not received a response from the USIBWC. Bajagua hopes to receive the BTC's comments on Volume 3 by the end of April, at which time it will provide that volume to the USIBWC as well. If Bajagua receives these comments by April 30th, it will be able to work overtime to prepare and issue the RFP by May 14, 2007. Again, the delay in completing the RFP process has not been Bajagua's fault.

E. The Cumulative Delays Have Been Substantial.

Even discounting the lengthy delays caused by the USIBWC during the negotiation of the Development Agreement, the facts show that the project has been delayed for more than one year by the actions and/or inaction of the USIBWC. As you know, delays caused by the USIBWC or the BTC, such as those discussed above, are defined as "Uncontrollable Circumstances" under the Development Agreement. That entitles Bajagua to a one-year extension at least, but it is only seeking five months. Bajagua is dedicated to making up the extra time through its own efforts and those of the DBO contractor.

While Bajagua will continue to respond to the USIBWC's requests for specific information on the status of the project, nevertheless the USIBWC's review of Bajagua's request for an extension of the milestone dates must be completed and decided in light of the delays

discussed above. The remainder of this letter addresses the specific issues raised by the USIBWC in its April 6th letter, and in your follow-up letter dated April 17, 2006.

II. Further Responses to Issues Raised in the April 6, 2007, Letter.

A. Questions Regarding the Scheduling of Activities.

The April 6th letter questioned whether the Performance Schedule included with Bajagua's April 2, 2007 submission confirmed that Bajagua's activities during the next five months will ensure that necessary milestones for the project can be met. The April 6th letter also questioned whether some of the tasks identified as having been completed in the Performance Schedule actually had been completed. This section addresses both of those issues.

First, it should be noted that the Performance Schedule reflects Bajagua's best estimate as to when ongoing activities will be completed. The Performance Schedule is a useful tool for tracking performance and anticipating delays. The schedule is regularly updated to ensure that all parties are aware of ongoing activities. Bajagua acknowledges that the schedule provided to the USIBWC with the April 2, 2007, letter had not been updated to show the estimated completion dates for the field studies (geotechnical, survey, flow measurement and floodplain studies), the electrical supply study, and the sludge disposal study. These field studies will be completed by April 30, 2007, with final reports to provided within two weeks of that date. That schedule will allow the field studies to be included in the RFP. In addition, the survey of the site was completed on April 23, 2007, and a copy will be provided to the USIBWC under a separate cover.

The fact that these studies are only now being completed reflects the fact that the selection of a site for the WWTP was delayed for a many months by the USIBWC. Bajagua was prepared to engage consultants to conduct these studies as early as May of 2006, but it could not do so because Bajagua had not received approval of the site to be studied. The studies began in late February and early March of this year, and the two-month turnaround is evidence of Bajagua's efforts and commitment to keep the project on schedule.

B. Land Concessions and Ownership of the Project Lands and Rights-of-Way.

During the Citigroup presentation to the USIBWC in El Paso on April 18, 2007, and in telephone call with me on April 24th, you acknowledged that Commissioner Herrera had confirmed to you both verbally and officially in writing, that the GOM will issue concessions to Bajagua for (1) the land where the WWTP will be located, (2) the rights-of-way for pipelines, and (3) the use of the water. You indicated that Commissioner Herrera will be sending you an additional letter confirming those facts. Since the project will be located on Federal land, GOM will make the land and right-of-way directly available to Bajagua de Mexico, and the costs of the

land, improvements, permits and fees will be incorporated into the capital, not the operational, budget. Bajagua believes that its original budget, expressed in the Development Agreement, includes these costs.

Based on your statements, Bajagua believes that the USIBWC no longer has questions regarding the GOM concessions or the ownership of the land necessary for the project. Bajagua request that you send a summary of Commissioner Herrera's letter concerning the concessions confirming our conclusions. Also, Bajagua will provide a copy of the survey of the WWTP site to the USIBWC.

C. Citigroup Has Agreed to Finance the Project.

As stated in the April 11th letter, Bajagua believes that the representations from Citigroup regarding its interest in financing the project sufficiently addressed the USIBWC's concerns with this issue raised in the April 6th letter. Citigroup confirmed its intent to provide financing during a presentation to the USIBWC by Citigroup personnel from its New York offices on April 18, 2007, in El Paso.

During the El Paso meeting, Attorney Daniels repeatedly asked the Citigroup representatives whether they had reviewed pertinent documents and truly intended to finance the project. In each case, they assured her that they had reviewed the relevant laws and documents, had offered comments on the RFP, and were comfortable with the public/private aspects of the project. Citigroup has agreed to provide the USIBWC with another letter again confirming its intention to provide funding for the project.

Your April 6th letter also questioned whether the FFS Agreement "will be acceptable" to Citigroup. As noted above, Bajagua is still waiting for the USIBWC to complete its review of the FFS Agreement, a review that is more than one year overdue. While Citigroup is comfortable with the interim versions of the FFS Agreement that it has reviewed, Bajagua is still waiting for the USIBWC to finish commenting on the Agreement.

D. The Ultimate Capacity of the Wastewater Treatment Facility.

The April 6th letter also requested information on "what commitments, representations and/or communications Bajagua or any of its representatives has had with the Mexican government entities regarding the increase of the Minute 311 sanitation project plant from a 59 MGD plant to 75 MGD plant." As you have indicated, Commissioner Herrera has confirmed to you that the GOM will not seek to have the WWTP constructed to achieve 75 MGD capacity. Commissioner Herrera has agreed to send you a letter confirming the GOM's position, and we request that you provide a summary of that letter to Bajagua.

Likewise, Bajagua has stated that the RFP will request proposals to construct a 59 MGD facility only, using a modular plant design that will allow construction and operation of a

25 MGD plant prior to final completion of the full 59 MGD capacity. Designing the plant in this fashion both makes it easier for Bajagua to complete construction of enough capacity to achieve secondary treatment standards as near as possible to the October 2008 deadline and then to expand the plant to the 59 MGD level. Any future expansions to address the increased amount of wastewater that will be generated as the Tijuana area grows would have to be discussed at a later date.

5. Reimbursement of Costs Incurred by Bajagua Prior to the Execution of the Fee-For-Services Agreement

As Bajagua pointed out in its April 11th letter, certain expenses Bajagua currently is incurring are reimbursable once the FFS Agreement is executed. These costs are defined as "Gross Construction Costs" on page seven of the Development Agreement "Term Sheet" because the costs being incurred by Bajagua include costs for permitting, land acquisition, subcontractor procurement and other costs to expedite completion of the project within the allowable time frames. As you know, Bajagua has discussed options for conducting some preliminary work prior to the award of the construction contract to efficiently utilize the time required for the bidders to assess and respond to the RFP. Such costs are related to the project and are reimbursable. This merely reflects the fact that the parties have agreed that costs incurred by Bajagua prior to the execution of the FFS Agreement would be reimbursed to Bajagua once the FFS Agreement was signed.

III. Issues Concerning the GOM's Contribution to the Project.

Although the issue of the GOM's contribution to the project was not addressed in you recent letters, the issue has been raised recently in various forums, and we believe that the matter should be clarified. We trust that this discussion removes the misconception that the GOM is bearing none of the costs and receiving all of the benefits of the Bajagua project.

As you know, the United States Government has spent hundreds of millions of dollars attempting to resolve the cross-border pollution issues present in the Tijuana area. Because of the limited success, Congress embraced a Public/Private Partnership approach to the issue, which was reflected in the passage of Public Law 106-457. The important provision of that law for this discussion is the one that provides as a rebate to the United States Government a percentage of the funds expended to treat wastewater to secondary standards, if the treated water is subsequently sold for reuse at a profit.

Under this Public Law provision, Bajagua and the GOM will sell treated water to Mexican users through a joint venture between Bajagua and the appropriate Mexican government agency. Users of the treated water will pay the joint venture, which will then pay the United States Government a percentage of the profits as a rebate. Because the GOM owns the treated water, the rebate is a mechanism for the GOM to pay for part of the cost of the WWTP

and, more importantly, these sales allow the WWTP to be economically self sufficient at the end of the 20-year FFS Agreement. The conditions necessary to implement the rebate system will be negotiated among Bajagua, the GOM, and the United States Government during the WWTP bidding process as provided in Treaty Minute 311.

We trust that this discussion dispels the misconception of some members of the public and the IBWC that the GOM is not paying for any of the project. When combined with the fact that the WWTP significantly benefits the ocean waters and the public health of the United States, the project's benefits to the United States are clear. Furthermore, it is these benefits that reflect the Congressional intent in the passage of the public law.

IV. Conclusion

Provided that the USIBWC honors and significantly improves its performance of the obligations under the Development Agreement, the WWTP can be completed and operating by February of 2009, which we believe is well within the expected timeframe for a large project that straddles the international border. As we have discussed, there may be creative ways to complete the project before that time, but even creative methods will require that Bajagua have the full and good faith cooperation of the USIBWC and the BTC during the next few critical months when the RFP will be issued and awarded, in completing the review and approval of the FFS Agreement and DBO Contract, and in initiating all steps necessary to implement a subsequent Minute consistent with Section IV of Minute No. 311.

As we stated in our previous meeting, we need to concentrate in the issuance of the RFP and the conclusion of the Fee for Services Agreements, this project can be a success only with the cooperation of all parties. If the project fails due to lack of cooperation, that failure that will be shared by all the parties, and would be a significant defeat for the environment and public health on the boarder. We trust that the efforts all the parties have expended will lead to successful completion of the project.

Sincerely,

Jim Simmons
Managing Member
Bajagua, LLC.

bajagua project, LLC

May 9, 2007

Carlos Marin P. F., Commissioner
U.S. International Boundary and Water Commission
The Commons, Building C, Suite 100
4171 N. Mesa Street
El Paso, TX 79902

Dear Commissioner:

On May 8, 2007, you wrote to me purporting to "suspend all activities under the Development Agreement" between the USIBWC and Bajagua, LLC because Bajagua will be unable to complete the wastewater treatment project by September 30, 2008, the date set by the United States District Court for the USIBWC to comply with the requirements of the Clean Water Act.

Bajagua agrees that the USIBWC is without authority to unilaterally extend the deadline in the Court's Order. USIBWC also, however, is without authority to "suspend" performance of the Development Agreement for an indeterminate time. The Development Agreement provides USIBWC with no such right, and neither the authorizing legislation nor Minute 311 mention the September 30, 2008 date or authorize the USIBWC to suspend performance of the project on the grounds stated in your letter. Furthermore, Bajagua has not stated categorically it cannot meet the Court deadline, only that we believe it is prudent to inform the Court of the possible delay of up to five months. We have clearly committed to working with the successful DBO bidder to accelerate the schedule to meet or come closer to the Court deadline. Your action yesterday now will likely make that impossible. You have therefore caused the very result you should be trying to avoid.

Bajagua believes that the Court Order reflects the Court's expectation that USIBWC will work diligently to address the continuing violations of the Clean Water Act from the South Bay treatment plant as rapidly as possible. It is inconceivable to us that you would believe that what the Court would like you to do is stop progress on the project that without question is most likely to solve the pollution problem in the shortest period of time, even if not by the mandated date. How it helps San Diego or the U.S. Government to suspend work rather than expedite work is beyond us and I think it will be beyond the Court as well.

Bajagua has done, and continues to do its part to achieve the Court's objective. Bajagua's letter of April 25, 2007 identified numerous causes of the anticipated delay in the completion of the project, and most of those delays have arisen as a result of the

160 Industrial St. Suite 200 San Marcos, CA 92078 • Bus. 760.471.2365 • Fax 760.471.2383
www.bajagua.com

USIBWC's repeated and lengthy delays in meeting the deadlines for its obligations to Bajagua under the Development Agreement. Your decision to "suspend" taking further action to accomplish the project only exacerbates these delays and indeed illustrates what has occurred repeatedly during this process. Furthermore, your action significantly hinders Bajagua in completing its agreements with Mexican government agencies and retaining the interest of qualified bidders to compete for the DBO Contract, both of which could significantly delay or even jeopardize the project.

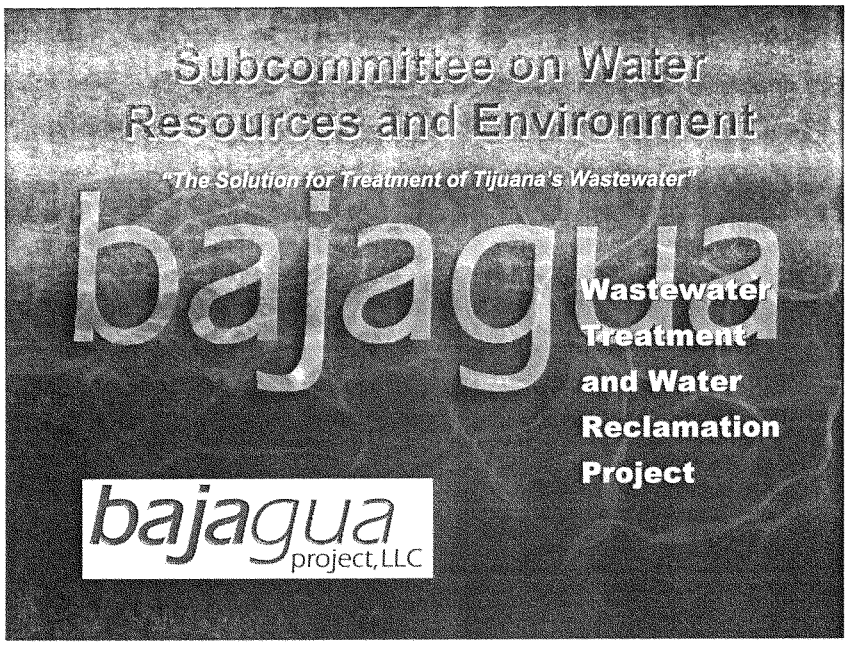
Your action leaves us no choice but to advise the Court of these facts and the consequences of this unjustified suspension. It would not be surprising if the Court ordered sanctions for your actions in suspending work since it clearly violates the intent and spirit of the Court Order and shows a total disregard for the continuing pollution problem that your agency is supposed to be committed to solve.

The accomplishments we have achieved in obtaining land for the project, qualified bidders, and commitments for private financing of the construction of the facilities have been accomplished at significant time and expense to Bajagua and despite the lack of appropriate cooperation. Bajagua is nonetheless prepared to continue to work constructively with USIBWC to complete this project, in which Bajagua already has invested millions of dollars, but does so without waiving its rights under the Development Agreement if these issues are not resolved promptly and should the USIBWC continue to obstruct Bajagua's efforts to complete the project.

We urge you to reconsider this decision promptly and to expedite approval of the RFP so that we may finally address the decades-old environmental problem that caused Congress to authorize this project in the first instance.

Sincerely,

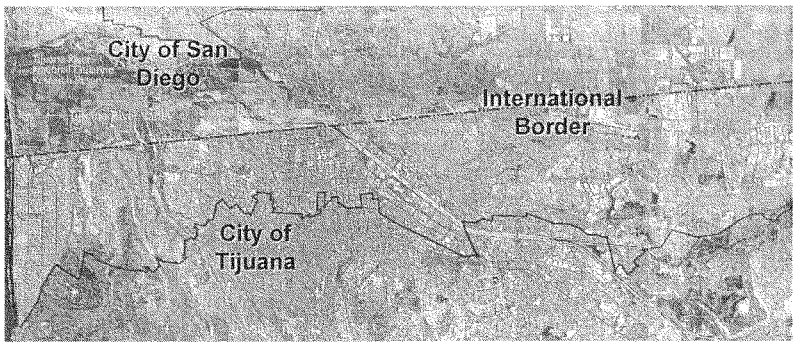
Jim Simmons
Managing Member
Bajagua, LLC.

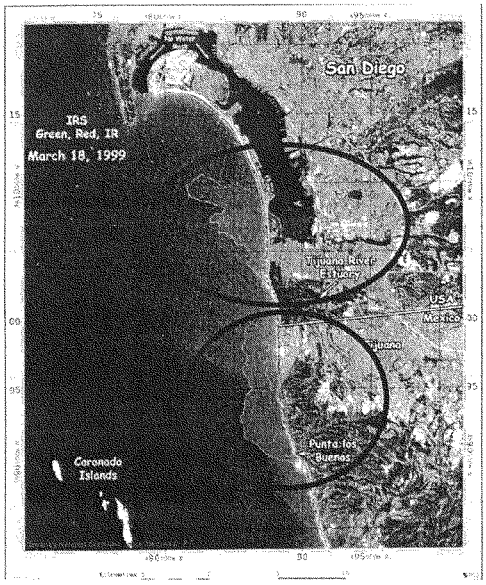


bajagua project, LLC

- A wastewater treatment plant built in Mexico to treat up to 59 mgd of sewage generated in Tijuana
- With additional capacity for up to 75 mgd to accommodate future growth
- Privately financed
- Constructed, owned and operated under a public/private partnership model
- Will provide reclaimed water opportunities to the border region

Satellite Overview of Tijuana / San Diego Border Area

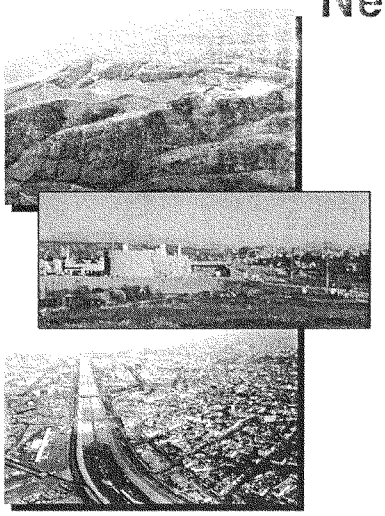




Where's the Sewage Coming From?

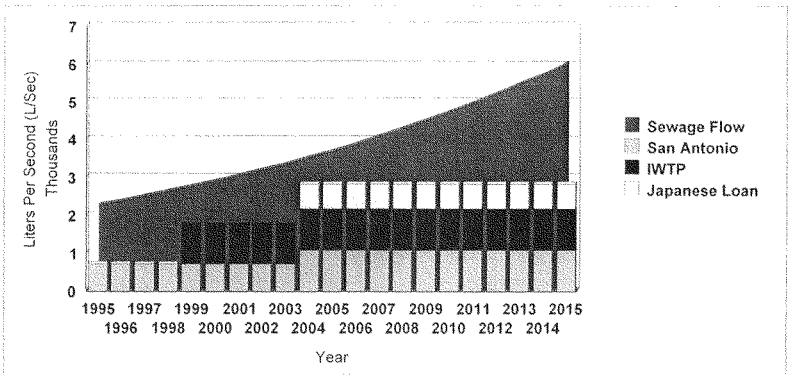
** From Jan. 25, 2000 Ocean Imaging Report to City of San Diego Metropolitan Wastewater Department (Satellite Image / Enhanced)*

Existing Facilities Cannot Meet Needs



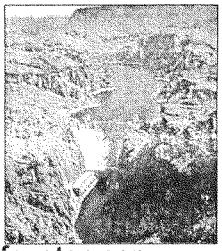
- Tijuana is growing very rapidly
- By the year 2020, the population of Tijuana is expected to be 3.8 million, adding to this problem
- Current treatment at IWTP does not meet applicable U.S., Mexico and California standards
- Planned upgrades and new facilities in Tijuana won't keep pace with current or projected need

Tijuana Sewage Treatment Deficit



Calculated Sewage Treatment Deficit in liters
(including currently approved and funded projects)

The Water Supply Problem in Tijuana

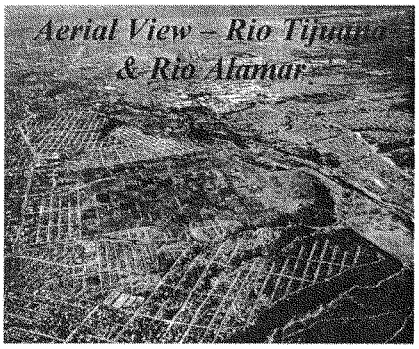


- The current system in Tijuana is already overburdened
- Tijuana currently uses 65,000 acre feet of water per year
- Tijuana's population is approximately 1.2 million
  - The estimated population growth is 2.6 million over the next 20 years
  - This would result in the need for an additional 140,400 acre feet per year of water
- United States and Mexico are currently discussing Colorado River allocations
- With utilization of this water source increasing, the pressure to find additional supply is enormous

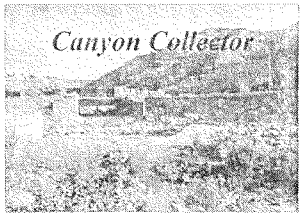
Privately Financed and Implemented by Bajagua

This includes private:

- ✓ Development
- ✓ Financing
- ✓ Design and construction
- ✓ Operation
- ✓ Design, Construction and Operation will be Competitively Procured



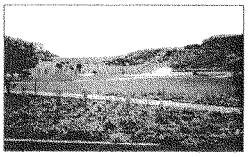
Project Treatment Facilities



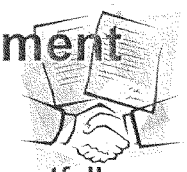
- Provide secondary treatment that will meet U.S., Mexico and California clean water and environmental standards
- May also treat raw sewage from Tijuana not currently going to other facilities, including once unplumbed areas
- Will make pre-treatment of sewage feasible and provide additional time to improve treatment levels

Reclaimed Water

- The Bajagua Project will offer reclaimed water to offset the potable water needs in Tijuana
- Only other options for increased water supply are expensive and politically/technically difficult
- The Bajagua Project at 59 mgd can reclaim approx. 45,000 acre feet of water per year or approximately ***70% of current demand***
- At 75 mgd that number increases to 55,000 acre feet or ***85% of current demand***



Contract Terms of the Fee-for-Service Agreement



- Secondary wastewater treatment
- Return of treated effluent to ocean outfall
- Arrangement for sludge disposal
- Minimum 20% equity investment
- Fees for investment, financing and operating costs
- Credit for sale of treated water
- Various guarantees and penalties for nonperformance

Misinformation Issues Regarding Funding for a Project to Treat 25 mgd of Sewage at the South Bay International Wastewater Treatment Plant (IWTP)

- Capacity
  - The IBWC proposal will treat 25 mgd
  - Bajagua will treat 59 mgd
- Compliance
  - The IBWC proposal ignores Tijuana's 2003 Master Plan projections.
  - IBWC's proposal will be undersized and obsolete on the first day of operation.

Misinformation Issues Regarding Funding...

(Continued)

- Readiness of Design
  - The proposed alternative design is only conceptual
  - Represents a resurrection of a project reviewed in three previous NEPA studies
  - Thirteen year old proposal offered in 1994
  - Has not been reviewed for constructability and technology
  - Review can take 12 to 18 months
  - The proposed project is NOT ready for immediate delivery.

Misinformation Issues Regarding Funding...

(Continued)

- Applicability of Project to Present Issues
  - The IBWC proposal treats a maximum of 25mgd
  - Bajagua is designed for not less than 59mgd of treatment
  - Reviewed three times under NEPA
  - NEVER selected as the preferred alternative
  - The IWTP has continuously violated the acute toxicity levels of its permit.
  - The IBWC proposal can be rendered inoperative from acute toxicity.
  - Bajagua will not be subject to toxic upset that will render it inoperative.

Misinformation Issues Regarding Funding...

(Continued)

- Delay
  - The unilateral and indefinite suspension of Bajagua effectively blocks any progress
  - The IBWC is holding Bajagua hostage in order to manipulate the outcome of non-performance
  - There is no justification for IBWC's suspension of Bajagua.
  - Every day of delay compounds both the cost and timing of project implementation.

Misinformation Issues Regarding Funding...

(Continued)

- Site preparation, environmental issues, permits and approvals
  - The NEPA review (July 2005 SEIS) considered the presently flaunted "alternative" project
  - Record of Decision (ROD, September, 2005) concluded the Bajagua Project is superior
  - The legal challenges facing the proposal rendered the alternative (5B) infeasible

Misinformation Issues Regarding Funding...

(Continued)

- Capital Cost Distortion
  - The IBWC grossly understated its proposal costs
  - A true cost analysis of the plant fails to include all the elements needed for its total design, permitting, construction, and operation
  - IBWC costs only portray the EXPANSION excluding costs of existing plant
  - O&M stated costs address only the cost of operation. Present cost of operations is neglected
  - Ignores debt service

Misinformation Issues Regarding Funding...

(Continued)

- Financing
  - The IBWC proposal is dependent on both US appropriations AND a 1/3 contribution from Mexico
  - The 1994 version of the IBWC project required 7% contribution from Mexico. The present proposal requires 33%
  - Bajagua is a private/public partnership requiring no appropriations or government funding from either country for implementation
  - Bajagua amortizes the cost of construction ($180 m) over the 20 years of operations

Misinformation Issues Regarding Funding...

(Continued)

- **Future Budgetary Allocations**
  - The IBWC proposal fails to point out the need for INDEFINITE budgetary support from the US
  - US will continue to pay the projects capital and O&M costs
  - Participation of other than the US government in the daily operation and maintenance of the plant remains UNCERTAIN at best

Misinformation Issues Regarding Funding...

(Continued)

- **Cost Recovery**
  - The IBWC proposal treats the minimum of sewage without looking into future needs
  - The Bajagua Project will provide the capability for WATER REUSE
  - Bajagua provides the conversion of discharged sewage into a VALUABLE COMMODITY for reuse
  - Development Agreement provides for "... *the United States [to] receive a portion of the revenue produced by [water reuse] sales.*"

Misinformation Issues Regarding Funding...

(Continued)

- Cost Recovery (continued)
  - Revenues generated may considerably offset/mitigate the entire cost of the Bajagua Project.
  - At the end of the 20 year operations envisioned, the plant will potentially become self sufficient through revenues generated from water reuse sales
  - This will allow Mexico to operate it.
  - Mexico will be able to derive enough profits to guarantee its future operation

Misinformation Issues Regarding Funding...

(Continued)

- Capacity
  - Bajagua will treat 236% more sewage than the proposed alternate
  - While costing about the same as the cost for the secondary portion addition to the present plant.

Current Development Status

- Record of Decision Selects the Bajagua Project as the "Preferred Alternative"
- Concession for land, ROW and water imminent
- Land available for pump station at SBIWTP
- Pipeline route selected
- Preliminary design for project
- Shortlist of qualified DBO Contractors selected
  - Earth Tech, Mexico
  - INIMA Grupo OHL
  - Veolia – North America
- Ready to issue DBO Request for Proposals

Project Schedule

- Permits confirmed
- Site studies completed
- Preliminary engineering is complete
- RFP and permitting activities are ready to begin
- 14 – 20 month construction schedule once the award of Design-Build-Operate contract
- Operations projected for as early as Summer 2009

The Bajagua Project will...

- ✓ Treat up to 59 mgd of effluent to secondary or higher standards
- ✓ Potential of an additional 16 mgd more to meet the projections set forth in the Tijuana Master Plan
- ✓ Make available 45,000 to 55,000 acre feet of reclaimed water per year to help satisfy water demand in Tijuana/San Diego region
- ✓ Return of unused water, if any, satisfying U.S., Mexico and California clean water standards, to the ocean outfall
- ✓ Built in Mexico where treatment and water are needed

Thank You!

bajagua project, LLC

"The Solution for Treatment of Tijuana's Wastewater"

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into as of the 14th day of February 2006 between the **United States Section of the International Boundary and Water Commission, United States and Mexico**, ("USIBWC" or "Grantor") and **Bajagua LLC**, a Delaware limited liability company ("Bajagua or Grantee").

BACKGROUND

A. The USIBWC owns and operates the South Bay International Wastewater Treatment Plant (SBIWTP) located at 2415 Dairy Mart Road, San Diego County, San Diego, California, providing treatment of 25 million gallons per day (MGD) of wastewater from the City of Tijuana, Baja California, Mexico, and discharges effluent from the treatment plant through the South Bay Ocean Outfall (SBOO) to waters of the United States in the Pacific Ocean within the San Diego region. The SBOO is jointly owned and operated by the City of San Diego, California and the USIBWC. Discharges from the treatment plant have not complied with the effluent standards and limitations based on secondary treatment contained in the National Pollution Discharge Elimination System (NPDES) permit for carbonaceous biochemical oxygen demand ("CBOD") and total suspended solids ("TSS") or the effluent standards and limitations for acute and chronic toxicity. The treatment plant exceeds effluent limitations because it was built as an advanced primary treatment plant, and the USIBWC lacks funding to build a facility to provide secondary treatment.

B. The Tijuana River Valley Estuary and Beach Cleanup Act of 2000, Pub. L. No 106-457 (the "Public Law, as amended"), amended by Pub. L. No. 108-425 (H.R. 4794), 118 Stat. 2420 (codified as amended at 22 U.S.C. 277d 43-46) (2004), authorizes and directs the USIBWC to provide for secondary wastewater treatment in Tijuana, Mexico for treating the effluent from the SBIWTP, if such treatment is not provided for at a facility in the United States, and additional sewage emanating from the Tijuana, Mexico area. The Public Law, as amended, provides that the USIBWC may enter into a fee for services contract with a contractor to carry out the secondary treatment requirement envisioned by the Public Law, as amended, and, subject to the availability of funds appropriated to it for this purpose, to make payments under such contract.

C. The International Boundary and Water Commission, United States and Mexico have concluded IBWC Minute 311 (Recommendations For Secondary Treatment in Mexico of the Sewage Emanating from the Tijuana River Area in Baja California, Mexico). Minute 311 is an agreement that provides the framework for the design, construction, operation and maintenance of wastewater facilities in Mexico to provide secondary treatment for sewage originating in the Tijuana, Baja California, Mexico area, including sewage currently treated to the advanced primary level at the SBIWTP. Minute 311 contemplates, consistent with the Public Law, as amended, that facilities will be constructed, operated and maintained in Mexico through a public-private participation arrangement.

D. The United States District Court for the Southern District of California issued an Order Setting Compliance Schedule (the "Court Order") on December 6, 2004 in *People of the State of California, Ex Rel. The Regional Water Quality Control Board, San Diego Region. v. Duran*, Case No. 01-CV-0270-BTM (JFS) (consolidated with Case No. 99-CV-2441), which establishes several milestone dates that the USIBWC is required to meet in the process of bringing discharges from the SBIWTP into full compliance with applicable permits and legal requirements. The Court Order requires, among other dates, that the construction of facilities be completed not later than August 24, 2008 and that SBIWTP achieve full compliance with applicable effluent standards and limitations not later than September 30, 2008. Any schedule for completion of project facilities, including milestone dates, that is not in conformance with the Court Ordered Compliance Schedule is subject to approval by United States District Court.

E. On September 30, 2005, USIBWC published a Record of Decision (ROD) for the Final Supplemental Environmental Impact Statement for Clean Water Act Compliance at the SBIWTP selecting the Public Law Alternative 4C, Option 1, Bajagua Project, LLC Proposal, for the design, construction, operation and maintenance of wastewater facilities in Mexico for achieving compliance with the Court Order and IBWC Minute 311. This alternative was selected with the provision that the proposed facilities to be designed and constructed under the alternative selected in the ROD are the subject of ongoing consultations with the Government of Mexico.

F. Through a process consistent with the Public Law, as amended, and on the basis of further discussions with Grantee, Grantor wishes to confer upon Grantee, as Contractor to the USIBWC, the exclusive right to pursue a Fee-for-Services agreement for the acquisition of permits, approvals, financing and other prerequisites to the design, construction, ownership, operation, maintenance of facilities in Mexico intended to process 59 MGD of wastewater originally emanating from the Tijuana, Mexico area, in order to achieve, among other benefits, compliance with the Court Order in a manner consistent with the Public Law, as amended, and Minute 311. Such facilities will be located in the United States and in Mexico and will include a treatment plant, pipelines, pumping stations, disposal systems, and other subsystems that make-up a complete and useable wastewater treatment system.

G. The Grantee wishes to obtain such exclusive right as Contractor to the USIBWC, with the intent that it will furnish, with oversight by the IBWC, all necessary financing, labor, management, supervision, concessions, authorizations, permits, equipment, supplies, materials, transportation, and any other incidental services for the complete ownership, operation, maintenance, repair, upgrades, and improvements to the wastewater treatment system.

H. Grantee understands that nothing in the Public Law, as amended, waives the Anti-Deficiency Act, Title 31 U.S.C. Section 1341 et seq., and furthermore, that the Public Law, as amended, requires zero cancellation liability on the part of the USIBWC in connection with termination of this Agreement. **There is no full faith and credit of the United States pledged under this Agreement to make any payment to the Grantee for expenses or costs incurred prior to or during the non-binding negotiations of this**

Agreement, or for any costs incurred in the performance of work by Grantee after signature of the Agreement. USIBWC's obligation to make payments for wastewater treatment services rendered will be subject to the availability of annual funds duly appropriated by the U.S. Congress to it for such purpose. This Agreement does not constitute a guarantee of any current or future payments by the USIBWC and nothing in this Agreement shall be construed as requiring the U.S. Government to appropriate or obligate funds for any purpose, including but not limited to, the design, development, financing, permitting, construction, operation or maintenance of any wastewater facilities, or for repayment of any funds expended or committed by Grantee in connection with development of the Project Facilities, or for the treatment of wastewater utilizing the Project Facilities.

AGREEMENTS

ARTICLE I

DEFINITIONS

"Agreement" means this Development Agreement.

"BTC" means the Bi-National Technical Committee established by the IBWC pursuant to Minute 311.

"Court Order" means the Order Setting Compliance Schedule issued by the United States District court for the Southern District of California on December 6, 2004 in *People of the State of California Ex Rel The Regional Water Quality Control Board San Diego Region v. Duran*, Case No. 01-CV-0270-BTM (JFS) (consolidated with Case No. 98-CV-2441).

"Fee-for-Services Contract" means the contract for providing twenty years of wastewater treatment services to be negotiated by Grantor and Grantee on the basis of the Term Sheet.

"Grantee" means Bajagua, LLC, a Delaware limited liability company.

"Grantor" means United States Section, International Boundary and Water Commission, United States and Mexico.

"IBWC" means the International Boundary and Water Commission, United States and Mexico.

"Implementing Minute" has the meaning set forth in Section 4.2.

"Mexican Facilities" means the portion of the Project Facilities to be constructed and operated in the United Mexican States.

"Mexican Government" means the government of the United Mexican States.

"Mexican Section" means the Mexican Section, International Boundary and Water Commission, United States and Mexico.

"Minute 311" means IBWC Minute 311 (Recommendations for Secondary Treatment in Mexico of the Sewage Emanating from the Tijuana River Area in Baja California, Mexico), as formally approved by the U.S. Government on February 23, 2004 and by the Government of Mexico on March 3, 2004.

"Parties" means "Grantor" and "Grantee," each being individually a "Party."

"Project Facilities" means all land, easements, rights of way, pipelines, buildings, structures and equipment obtained, constructed or otherwise used or to be used by Grantee to provide secondary treatment for up to 25 MGD of primary treated wastewater discharged by the SBIWTP and up to 34 MGD of untreated wastewater discharged by sources in the Tijuana, Mexico area.

"Public Law, as amended" means the Tijuana River Valley Estuary and Beach Cleanup Act of 2000, Pub. L. No 106-457, amended by Pub. L. No. 108-425 (H.R. 4794), 118 Stat. 2420 (codified as amended at 22 U.S.C. 277d 43-46) (2004).

"RWQCB" means the Regional Water Quality Control Board, San Diego Region.

"SBIWTP" means the South Bay International Wastewater Treatment Plant located near San Diego, California.

"SBIWTP Land Use Agreement" has the meaning set forth in Section 3.4.

"SBOO" means the South Bay Ocean Outfall located off San Diego, California.

"Subcontract" means the contract to be awarded by Grantee for design, construction and operation of the Project Facilities.

"Term Sheet" means the non-binding Fee-for-Services Contract Term Sheet attached hereto as "Exhibit B".

"Uncontrollable Circumstances" means circumstances beyond the reasonable control of Grantee, including without limitation Acts of God, or of the public enemy, acts of government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. Uncontrollable Circumstances shall not include acts of the Mexican Government relating to the activities of Grantee described in Sections 3.1.

"U.S. Facilities" means the portion of the Project Facilities to be constructed and operated in the United States of America.

"U.S. Government" means the government of the United States of America.

ARTICLE II

GRANT OF EXCLUSIVE RIGHTS

2.1 Grant of Exclusive Development Rights. Until and unless this Agreement is terminated in accordance with the provision of Article 5:

(a) Grantor grants to Grantee the exclusive right as Contractor of the USIBWC to pursue the acquisition of permit approvals, financing and other prerequisites to the design, construction, ownership, operation and maintenance of all land, rights of way, facilities and services in Mexico to provide secondary treatment and effluent discharge for up to 25 MGD of advanced primary treated wastewater discharged by the SBIWTP and 34 MGD of untreated wastewater discharged by sources in the Tijuana, Mexico area, all subject to the terms and conditions required by the IBWC and the Government of Mexico.

(b) Grantor will not directly or indirectly grant any rights to any third party, nor authorize or permit any third party to undertake activities that are inconsistent with the rights granted to Grantee pursuant to Section 2.1(a), nor will Grantor provide to any third party any designation or characterization that would be inconsistent with the descriptions set forth in Section 2.1(b). This provision does not affect in any way the USIBWC's continuing and unimpeded operation or measures to achieve compliance with the NPDES permit of the SBIWTP and in no way prevents the USIBWC from recognizing the rights of the Mexican Section and the Government of Mexico. Furthermore, this provision in no way prevents the Government of Mexico from granting any rights, directly or indirectly, to any third party in Mexico which may be perceived as inconsistent with this Agreement.

2.2 Acknowledgement of Grantee Rights. Grantee acknowledges that it is undertaking the activities contemplated by Section 2.1 at its own risk and expense and that neither Grantor nor any other branch of the U.S. Government, shall have any financial responsibility in respect to activities undertaken by Grantee.

ARTICLE III

OBLIGATIONS OF GRANTEE

3.1 Development Activities. Grantee shall achieve the following activities, at its sole expense:

(a) Obtain all rights necessary to purchase the real estate necessary for the Project Facilities in Mexico on or before September 12, 2006, subject to the approval of the IBWC and the BTC regarding site selection;

(b) Obtain all rights necessary to acquire rights-of-way in Mexico and the United States for the siting of, or use in connection with, the Project Facilities on or before September 12, 2006, subject to the approval of the IBWC and the BTC;

(c) Obtain all permits necessary to commence construction of the Project Facilities, both in Mexico and in the United States on or before May 2, 2007, including an

NPDES permit for the Mexican facility, to the extent allowed by the RWQCB, for the discharge coming into the United States at the border of the United States and Mexico;

(d) Make all reasonable efforts to obtain on or before September 12, 2006, a new NPDES permit for the discharge from the Project Facilities into the United States land outfall pipeline.

(e) Obtain on or before May 2, 2007 from the Mexican Government, in form and substance satisfactory to Grantee and IBWC, all necessary approvals to treat to secondary standards up to 34 MGD of untreated wastewater discharged by sources in the Tijuana, Baja California, Mexico area, and 25 MGD currently treated to the advanced primary level at the SBIWTP;

(f) Award, execute and deliver on or before May 2, 2007, subject to the procedures set forth in Section 3.2, the Subcontract and other contracts necessary for construction of the Project Facilities in accordance with Mexican law, the Public Law, as amended, Minute 311, and the approval of IBWC and the BTC;

(g) Secure, on or before May 2, 2007, with the proceeds deposited in a trust account, all debt and equity financing (in an 80/20 ratio) necessary to construct the Project Facilities and to provide for necessary and appropriate ancillary costs including, without limitation, engineering fees, financing costs and expenses, bond insurance, interest during construction, a debt service reserve, a developer fee and working capital reserves;

(h) In connection with the financing of the cost of construction of the Project Facilities, Grantee will enter into an agreement with an institutional trustee in the United States, which will act as trustee of the proceeds of the construction financing. The trustee will release construction funds and all ancillary costs and expenses, including the developer fee, according to a draw schedule agreed to by the Grantor. No Development Fee will be paid to the Grantee until the Project Facilities are fully operational and effluent is in full compliance with all effluent standards, including NPDES permit(s) standards;

(i) Project facilities will be fully operational and in compliance with all applicable effluent standards and limitations including NPDES permit(s) by September 30, 2008. Any schedule for completion of project facilities, including milestone dates, that is not in conformance with the Court Ordered Compliance Schedule is subject to approval by United States District Court. Grantee will indemnify Grantor for any fines or costs imposed on the Grantor for failure to meet the September 30, 2008 Court ordered deadline.

3.2 Procedures for Award of Subcontract. In general, the Grantee proposes, subject to approval by the IBWC, that the Subcontract for the design, construction, operation and maintenance of Project Facilities, shall be procured through the use of competitive procedures, consistent with Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) and consistent with Minute 311, which requires the use of competitive procedures applicable in Mexico, and in compliance with the Court Order, as may be amended.

(a) Solicitation documentation relating to the Subcontract prepared by Grantee for general distribution (including Requests for Qualifications and Requests for

Proposals) shall be submitted for review, comment and approval by the IBWC and the BTC before distribution to prospective contractors. The solicitation documentation shall be in accordance with Mexican procurement law and shall be approved by the IBWC.

(b) Grantee shall negotiate the terms and conditions of the Subcontract with a contractor selected in cooperation with the BTC and the IBWC and will provide to the IBWC copies of the proposed execution version of the Subcontract for approval. Grantee will not execute and deliver the Subcontract absent the approval of the IBWC.

3.3 Negotiation and Drafting of Fee-for-Services Contract. Promptly following the execution and delivery of this Agreement, Grantee shall negotiate with Grantor in good faith the terms and conditions of a final form of Fee-for-Services Contract based on the Term Sheet. The final form of the Fee-for-Services Contract will be completed on or before March 31, 2006.

3.4 Negotiation and Drafting of SBIWTP Lease or License. Promptly following the execution and delivery of this Development Agreement, Grantee shall negotiate with Grantor in good faith the terms and conditions of a license (the "SBIWTP Land Use Agreement") to use, at no or nominal cost to Grantee, such portions of the SBIWTP site as are necessary to construct, operate and maintain, for the term of the Fee-for-Services Contract, those pumps, pipelines, and other U.S. Facilities that are to be located on the SBIWTP site.

3.5 Preparation of the Critical Path Schedule. Promptly following the execution and delivery of this Agreement, Grantee shall generate a "Critical Path Schedule" for the Project Facilities utilizing Critical Path Management Method (CPMM) software to define, track, and report the design and construction phases of the Project Facilities from the date of this Agreement until the beginning of NPDES compliant operation and maintenance of the Project Facilities. The Critical Path Schedule shall be updated daily and be in accordance with the provisions of the Court Order. Grantee shall provide Grantor full access to Grantee's Critical Path Schedule to enable Grantor to comply with the provisions of the Court Order requiring a Critical Path Schedule.

3.6 Cost Expectations. Grantee shall undertake the efforts and activities described in this Article III with the objective of minimizing the amount to be paid by the USIBWC under the Fee-for-Services Contract. Grantee believes that the first full year cost to the USIBWC under the Fee-for-Services Agreement will be between $29 million and $39 million and, based on currently available information and projections, is likely to cost approximately $34 million. Grantee will exercise good faith efforts, consistent with developing, constructing and operating high quality, high reliability Project Facilities, to use value-engineering and other measures with a view to achieving a first full year cost of $30 million or lower.

ARTICLE IV

OBLIGATIONS OF GRANTOR

4.1 Negotiation and Drafting of Fee-for-Services Contract. Promptly following the execution and delivery of this Agreement, Grantor shall negotiate with Grantee in good faith the

terms and conditions of a final form of the Fee-for-Services Contract based on the Term Sheet. It is Grantor's expectation that such negotiation and drafting of the final form of the Fee-for-Services Contract will be completed on or before March 31, 2006. Grantor understands and acknowledges that Grantee will not issue any solicitation for the Subcontract before negotiation and drafting of the final form of Fee-for-Services Contract are complete.

4.2 Implementation Minute. The Grantor shall undertake all reasonable efforts to negotiate and draft a new IBWC Minute for an operating lease arrangement contract, as provided for in Minute 311, for the financing and development of the engineering, construction, operation and maintenance of the facilities in Mexico.

4.3 Reasonable Efforts to Request Appropriation for Fiscal Year 2008. Grantor will make reasonable efforts to request appropriations in Grantor's budget for Fiscal Year (FY) 2008. Reasonable efforts equate to requesting funding for the Fee-for-Services Contract in the Grantor's Budget Request to the United States Department of State beginning in FY 2008. USIBWC's obligation to make any payments for wastewater treatment services rendered will be subject to the availability of annual funds duly appropriated by the U.S. Government to it for this purpose. This Development Agreement does not constitute a guarantee of any current or future payments by the USIBWC and nothing in this Development Agreement shall be construed as requiring the U.S. Government to appropriate or obligate funds for any purpose, including but not limited to, the design, development, financing, permitting, construction, operation or maintenance of any wastewater facilities, or for repayment of any funds expended or committed by Grantee in connection with development of the Project Facilities, or for the treatment of wastewater utilizing the Project Facilities. There is no full faith and credit of the United States pledged under this Agreement to make any payment to the Grantee for any expenses or costs incurred before, during or after the Development Agreement or Fee for Services Agreement.

4.4 Negotiation and Drafting of SBIWTP License. Promptly following the execution and delivery of this Agreement, Grantor shall negotiate with Grantee in good faith the terms and conditions of the SBIWTP Land Use Agreement.

4.5 Execution and Delivery of Fee-For-Services Contract. At such time as:

(a) Grantee has accomplished all of the tasks set forth in Section 3.1 to the satisfaction of the Grantor and the Mexican authorities;

(b) The new NPDES permit referred to in Section 3.1 has been issued; and

(c) Grantee has established, to the reasonable satisfaction of Grantor, that the total first full year cost for wastewater treatment services under the Fee for Services Contract (i) reflects local market costs, as determined by a competitive bidding process pursuant to applicable U.S. and Mexican laws, and (ii) does not exceed $39 million; then, simultaneously with

(A) acquisition of the Mexican real estate referred to in Section 3.1(a);

(B) acquisition of the rights-of-way referred to in Section 3.1(b); and

(C) closing of the debt and equity financings referred to in Section 3.1(g),

Grantor shall execute and deliver the Fee-for- Services Contract and the SBIWTP Land Use Agreement.

ARTICLE V

TERMINATION

5.1 Automatic Termination. This Agreement shall automatically terminate and be of no further force and effect:

(a) If the dates called for in this agreement that require approval by the United District Court are not approved by the United States District Court; or

(b) upon written agreement of the Parties; or

(c) upon the effective date of the Fee-for-Services Contract.

5.2 Termination by Grantee. Grantee may terminate this Agreement upon thirty (30) days written notice to Grantor if:

(a) The final form of the Fee-for-Services Contract acceptable to both Parties has not been negotiated and drafted by March 31, 2006.

5.3 Termination by Grantor. Grantor may terminate this Agreement upon written notice to Grantee if:

(a) The final form of Fee-for-Services Contract acceptable to both Parties has not been negotiated and drafted by March 31, 2006; or

(b) By May 2, 2007 the USIBWC has not obtained reasonable assurance of appropriation (i) for the Fee-for-Services Contract, and (ii) for IBWC funding for the administration and oversight of the design, construction, operation and maintenance of the Project Facilities; or

(c) Grantee fails to achieve on a timely basis, for reasons other than "Uncontrollable Circumstances", any of the obligations of the Grantee under Article III of this agreement or any milestone dates set forth herein, including but not limited to those listed in Exhibit A.

5.4 No Monetary Recourse. If this Agreement is terminated for any reason set forth in Article V, neither Party shall have any right to sue nor have recourse to the other for damages, compensation or other monetary relief.

ARTICLE VI

MISCELLANEOUS

6.1 Approval of Submittals. Whenever any Grantor approval is contemplated hereunder, Grantor shall make good faith efforts to evidence approval (or disapproval) of the recommendation or document under consideration within twenty (20) business days after receipt of relevant materials from Grantee. If review is not completed in the 20-day time frame then schedule relief equal to one day for every day past the 20-days shall be afforded to Grantee. If review does not result in an approval it shall not count against the 20-day requirement. Should the Grantor disapprove submittal due to incompleteness or poor quality then Grantee shall resubmit submittal.

6.2 Notices. Any and all notices, elections or demands permitted or required to be made under this Agreement shall be in writing, signed by the Party giving such notice, election or demand and shall be delivered personally, or sent by reputable overnight courier or by registered or certified mail, return receipt requested, to the other Party, at its address set forth in this Agreement, or at such other address as may be supplied by written notice given by such Party to the other Party in conformity with the terms of this Section 6.1. Notices shall be effective upon receipt. All notices to Grantor shall be sent to the International Boundary and Water Commission, United States Section, 4171 North Mesa, C-100, El Paso, Texas 79902, Attn: Commissioner, and shall be copied to Susan E. Daniel, Esq., International Boundary and Water Commission, United States Section, 4171 North Mesa, C-100, El Paso, Texas 79902. All notices to Grantee shall be sent to Bajagua, LLC, 160 Industrial Street, Suite 200, San Marcos, California 92078, Attn: Mr. Enrique Landa and shall be copied to Irwin M. Heller, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111.

6.3 Successors and Assigns. Subject to the restrictions on transfer set forth herein, this Agreement, and each and every provision hereof, shall be binding upon and shall inure to the benefit of the Parties, their respective successors, successors-in-title and assigns, and each and every successor-in-interest to any Party shall hold such interest subject to all of the terms and provisions of this Agreement. Nothing in this Agreement express or implied is intended or shall be construed to give any third party any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provision herein contained.

6.4 Amendments. Amendments may be made to this Agreement from time to time only in writing that is executed by both Parties.

6.5 No Waiver. The failure of either Party to insist upon strict performance of a covenant hereunder or of any obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder, shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder.

6.6 Entire Agreement. This Agreement and the Exhibits constitute the full and complete agreement of the parties hereto with respect to the subject matter hereof.

6.7 Captions. Titles or captions of Articles or Sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

6.8 Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall for all purposes constitute one Agreement, binding on both Parties notwithstanding that all Parties have not signed the same counterpart.

6.9 Applicable Law; Jurisdiction. This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed and enforced in accordance with federal law.

6.10 Notice to Proceed. The signing of this agreement constitutes Notice to Proceed with the provisions set forth in this Agreement.

IN WITNESS WHEREOF, the Parties have mutually executed and delivered this Agreement to be effective when signed by both parties.

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES SECTION

By: _____
Carlos Marin, Acting Commissioner

Date: Feb 14, 2006

BAJAGUA, LLC
By: Bajagua Water, LLC, its Managing Member

By: _____
Enrique Landa, its Manager

Date: FEB 14 2006

EXHIBIT A

Key Milestones

Milestone	Date
Secure Rights to Acquire Land and Rights of Way in Mexico for Project Facilities	9/12/06
RWQCB Approval of NPDES Permit	9/12/06
Secure Necessary Authorizations to Treat Wastewater in Mexico	5/2/07
Secure U.S. and Mexican permits necessary to commence construction	5/2/07
Execution of DBO Subcontract	5/2/07
Commence Operations in Full Compliance with NPDES permit	9/30/08

EXHIBIT B

Term Sheet

NON-BINDING TERM SHEET
For
An Exclusive Fee-For-Services Contract
To Provide Wastewater Treatment Services For

United States Section, International Boundary and Water Commission

Purpose of Term Sheet:	To provide guidance for legal drafting of the Fee-for-Services Contract ("Services Contract") contemplated by the Development Agreement between the Parties dated February 14, 2006, to which this Term Sheet is attached. The Parties acknowledge that they agree in principle with the terms outlined herein. This Term Sheet is non-binding and the Parties reserve their respective rights to negotiate the Services Contract in good faith, by March 31, 2006, time being of the essence.
Authorization for Contract:	The Parties intend that the Services Contract will comply with the Tijuana River Valley Estuary and Beach Cleanup Act of 2000, Pub. L. No. 106-457, amended by Pub. L. No. 108-425 (H.R. 4794), 118 Stat. 2420 (codified as amended at 22 U.S.C. 277d 43-46) (2004) (the "Public Law, as amended") and IBWC Minute 311. The Services Contract will be a fee-for-services contract as contemplated in the Public Law, as amended.
Purpose of Services Contract:	Establish the terms and conditions for the Grantee to pursue an exclusive right of construction, operation and maintenance of a wastewater treatment plant in Mexico and related pumping and conveyance systems, on a fee-for-services basis, for treating and processing 59 million gallons per day ("MGD") average daily flow (over 24 hours) ("ADF") of wastewater to standards required by National Pollution Discharge Elimination System ("NPDES") permit from sources in the Tijuana River watershed (the "Project Facilities") for discharge into the San Diego Ocean Outfall ("SBOO"). The Grantor and the City of San Diego jointly own the SBOO. The wastewater treatment plant and the majority of related pumping and conveyance systems for the Project Facilities shall be built in Mexico. The design, construction, operation and maintenance of the facilities located in Mexico shall be subject to the consultation,

coordination and approval of Mexican authorities having jurisdiction. Oversight will be conducted by the IBWC within the framework of IBWC Minute 311. The Services Contract prepared pursuant to this Term Sheet shall comply with the Public Law, as amended, and Minute 311, which are attached to and made a part of this Term Sheet.

This Term Sheet contemplates that the exclusive Services Contract, which shall be effective upon satisfaction of the conditions in the Development Agreement and end on September 30, 2028, will provide that Grantee will process 25 MGD ADF of outflow from the South Bay International Wastewater Treatment Plant ("SBIWTP") and up to an additional 34 MGD ADF of wastewater from the Tijuana River watershed to standards required by the SBIWTP NPDES permit. In exchange, Grantee will receive monthly treatment service fee payments, subject to Congressional appropriation of funds to the USIBWC for this purpose. The monthly treatment fee will be comprised of (i) a fixed base fee that will amortize the cost of the land and rights of way acquisition, development, design, construction and financing of the Project Facilities; (ii) fixed operation and maintenance fees sufficient to pay for the transport and treatment of 25 MGD of effluent from the SBIWTP; (iii) a variable operations and maintenance service fee based upon the number of gallons of wastewater received from sources in the Tijuana watershed other than the SBIWTP and treated by the Project Facilities; (iv) Grantee's management fee; and (v) Grantee's profit.

Grantor: United States Section, International Boundary and Water Commission, United States and Mexico ("USIBWC").

Grantee: Bajagua, LLC, a Delaware Limited Liability Company.

Parties: Grantor and Grantee together shall be known as the Parties, where appropriate.

Notice to the Parties: The USIBWC's obligation to make any payments under the Services Contract is subject to future appropriations by the United States Congress. There is no guarantee of any current or future appropriations to pay for the Services Contract. Nothing in the Services Contract shall be construed as requiring the United States Government to appropriate funds for the Services Contract. The Parties acknowledge that there is no pledge of full faith and credit of the United

States to make any payment to the Grantee for expenses or costs incurred under the Development Agreement or under the Services Contract.

Escrow of Borrowed Funds:

In connection with the financing of the cost of construction of the Project Facilities, Grantee agrees to enter into an agreement with an institutional trustee in the United States, which will act as trustee of the proceeds of the construction financing. The trustee will release construction funds according to a draw schedule agreed upon by the Grantor. No Developer Fee shall be paid to the Grantee unless and until the Project Facilities are completed and in full compliance with effluent standards and limitations, including NPDES permit(s).

The Services Contract:

In exchange for a service fee to be paid monthly over the 20-year period, for which treatment services are provided, subject to appropriations to the Grantor for this purpose, Grantee will:

Design and Construction Phase – Design, construct and demonstrate satisfactory performance of all necessary facilities and systems to receive, treat, and return wastewater, as specified below and as a fully functional, efficient and operable wastewater treatment system.

Provide full access to construction sites and suitable work facilities for Grantor and Grantor's representatives at the project construction site(s), starting ninety days prior to the start of construction work and for the full term of construction and warranty work and during entire Services Contract.

Maintain all construction, planning, staffing, cost, budget, and scheduling records in paper form and on Primavera ™ Version 3 Enterprise software (or approved equivalent) and provide monthly reports and updates of progress against the critical path schedule.

Prepare as-built drawings of Grantee's Facility and update such drawings as needed quarterly throughout the term of the Services Contract. Prepare an operating and maintenance manual for Project Facilities prior to placing Project Facilities into operation and update the manual throughout the term of the Services Contract.

Assure suitable wet well capacity, power availability, pump systems and facilities capacity and reliability,

emergency generators for backup power, measurement points, testing and sampling locations, and other equipment and facilities to accomplish necessary measurement and transfer of wastewater from the SBIWTP or other receiving point(s) to Grantee's Mexico plant.

Design and construct a 48-inch (or appropriately sized) force main for movement of wastewater from the SBIWTP to Grantee's treatment plant in Mexico.

Design and construct a 60-inch (or appropriately sized) return flow pipeline for return of treated wastewater extending from Grantee's treatment plant in Mexico to the receiving point at the SBIWTP for secondary treated water.

Design and construct a wastewater treatment plant capable of providing secondary treatment for not less than 59 MGD ADF of wastewater, as specified above. Required capacity level of 59 MGD ADF includes design and construction of necessary collection, pumping, transfer, and testing facilities in Mexico for the interception and movement of not less than 34 MGD ADF to Grantee's Mexico wastewater treatment plant in addition to movement of the existing supply of 25 MGD ADF from the SBIWTP to the same plant of Grantee. Peak flow exceeding 59 MGD ADF will be treated to the peak hydraulic capacity of the Facility.

Construct all necessary receiving, storage, pumping and transfer facilities, with appropriate safety and other safeguards against spillage or bacteria release required by U.S. statutes and regulations, on a site provided by Grantor at the SBIWTP for nominal consideration. Facilities located in Mexico shall be constructed and operated in conformance with the laws of Mexico. Facilities located in the United States shall be constructed and operated in conformance with the laws of the United States.

Provide to Grantor a suitable volume and quality control measurement location within the United States for effluent evaluation of treated wastewater from Grantee's Mexico plant, as agreed with Grantor, for up to a maximum of 59 MGD ADF of treated effluent, to the extent that such flow is directed to the SBOO.

Grantee shall employ a neutral construction-engineering firm with a national reputation in the construction of wastewater treatment plants to provide

quality assurance and quality control services during construction and provide reports to the Parties. The neutral construction-engineering firm shall be selected by Grantor, subject to the approval of Grantee, which approval shall not be unreasonably withheld.
Grantee shall comply with the following construction schedule:

- Obtain rights to real estate and rights-of-way in Mexico by September 12, 2006
- Obtain agreement for delivery of additional 34 MGD ADF from Tijuana municipal wastewater system, together with permits required to commence construction on or before May 2, 2007
- Close financing and issue Notice to Proceed to construction subcontractor by May 2, 2007
- Complete construction by September 2, 2008

Services Phase – Receive up to 25 MGD ADF of advanced primary treated wastewater that complies with the standards set forth in an agreed schedule from the SBIWTP and transport such wastewater to Grantee's Facility in Mexico, beginning on or before September 30, 2008 and continuing for the term of the Services Contract.

Intercept and receive up to 34 MGD ADF of untreated municipal wastewater from other sources originating in the Tijuana municipal wastewater collection system and transport to Grantee's Facility in Mexico, beginning on or before September 30, 2008 and continuing for the term of the Services Contract.

Perform secondary treatment of up to 59 MGD ADF of wastewater from both the SBIWTP and from the Tijuana municipal sewage collection system at Grantee's Facility in Mexico, beginning on or before September 30, 2008 and continuing for the term of the Services Contract.

Return such treated water not otherwise used by Grantee, subject to reuse provisions approved by the Mexican authorities, to the U.S. for discharge into the SBOO at a rate of not more than 59 MGD ADF under the supervision of the Grantor, beginning on or before September 30, 2008 and continuing for the term of the Services Contract. Treated water returned to Grantor shall comply with the requirements of an NPDES permit.

Grantee shall be responsible for all sampling, testing, and reporting required by the NPDES permit, except ocean monitoring that may be required by the NPDES permit, beginning on September 30, 2008 and continuing for the full term of the contract.

Adequately stabilize and dispose of biosolids from the Grantee's Mexico Facility in Mexico in accordance with Mexican laws and regulations, beginning on or before September 30, 2008 and continuing for the term of the Services Contract. All costs associated with disposal shall be paid by Grantee.

Grantee shall pay for all costs, major and minor, for maintenance including preventative and corrective maintenance and equipment repair and replacement cost. Grantee shall set up an equipment repair and replacement reserve fund paid for by Grantee. Grantor will not absorb any costs for equipment repair or replacement or for faulty equipment at any time including during Services Contract period.

In the event of design changes from conceptual design set forth in the Final SEIS Record of Decision, Grantee will absorb all costs relating to such redesign.

Commence full operation of treatment services in compliance with NPDES permit requirements by September 30, 2008.

Fee-for-Services Payment:

Grantor shall pay for the services provided by Grantee under the Services Contract through a monthly fee, payable by the 20th of the following month, which will be comprised of the sum of four elements, and each of which will be separately identified on Grantee's monthly invoice: (i) a Fixed Monthly Charge, (ii) a Variable Monthly Charge, (iii) Grantee's Management Charge, and (iv) Grantee's profit. Each of the foregoing elements will be calculated as described below.

Prior to receipt of the first fee-for-services payment to Grantee, Grantee will enter into an agreement pursuant to 41 U.S.C. § 15 assigning the right to receive such payments to a financing institution for distribution to the entities entitled to receive repayment of construction debt before distributing the balance to Grantee.

Fixed Monthly Charge – The Fixed Monthly Charge paid to Grantee by Grantor consists of Debt Service, Repayment of Grantee's Equity, Return on Grantee's Equity, Fixed Facility O&M Charge, Fixed Pump/Pipeline O&M Charge, and Land Payment.

Debt Service is that monthly payment amount that will repay, over a 20-year period, the principal on an amount equal to the Net Construction Cost, plus interest. The Net Construction Cost ("NCC") is an amount equal to eighty percent (80%) of the Gross Construction Cost ("GCC") of the Facility. (GCC x .80 = NCC). The Gross Construction Cost of the Facility shall be determined as follows:

- Total construction costs including all costs for design, permitting, land purchase and rights-of-way acquisition, performance bonds, subcontractor procurement, construction, construction management, inspection, engineering, start-up, compliance testing, accounting and legal fees associated with construction of the Facility, plus
- Total financing costs (including underwriting, financial advisory, legal, financing insurance, working capital, one-year debt service reserve, and interest during construction costs associated with the financing of the construction of the Facility), plus
- Developer fee of $16,275,000. Developer fee will not be paid to the Grantee until the Project Facilities are fully operational and effluent is in full compliance with all effluent standards, including NPDES permit(s) standards.

The Net Construction Cost shall become a debt of Grantee, who agrees to finance such debt at the lowest cost readily available.

Grantee will maintain at all times throughout the term of the Services Contract a 20 percent (20%) equity position in the capital structure. Grantee cannot sell more than 80 percent (80%) of the capital investment or ownership to other investors at any time during the contract. Grantee must be responsible for at least 20 percent (20%) of any expenses or debts if the operation is not successful. The 20 percent (20%) Equity does not include any costs incurred by Grantee to obtain the Fee-for-Services contract. The Equity is the ownership liability for Project Facilities after construction is completed and is a guarantee that

Grantee does not obtain the Fee-for-Services contract, sell the operation to others and walk away from the project. Grantee's Equity is a sum equal to twenty percent (20%) of the GCC. Grantee's Equity shall be repaid *pari passu* with the debt principal together with a fixed annual rate of return that is four percent (4%) above the fixed annual interest rate paid on the bonds sold to finance the Net Construction Cost of this project. However, the fixed annual rate of return paid on Grantee's Equity shall not exceed twelve percent (12%).

The Fixed Facility O&M Charge shall be that amount, agreed to by Grantee's O&M Subcontractor, to operate and maintain the treatment Facility in Mexico to treat 25 MGD ADF of wastewater received from the SBIWTP, plus the monthly premium of Grantee's Performance Bond.

The monthly Fixed Pump/Pipeline O&M Charge shall be that amount, agreed to by Grantee's O&M Subcontractor, to operate and maintain the pump stations, pipelines and other facilities required to transport 25 MGD ADF of wastewater from the SBIWTP to Grantee's Mexican treatment Facility and return it to the SBOO.

The Fixed Facility O&M Charge and the Fixed Pump/Pipeline O&M Charge (together the "Fixed O&M Charges") will be adjusted annually based upon agreed economic indices for such fixed costs as labor, utilities, supplies, insurance, and federal, state and local taxes (other than taxes paid by Grantee or DBO Subcontractor on income); provided however, that annual increases of Fixed O&M Charges based on the costs of electricity, fuel and chemicals shall be limited to increases in actual costs, without regard to changes in the relevant index. Grantee's Profit shall not be applied to power costs.

Land Payment shall be that amount paid by Grantee to purchase the premises in Mexico upon which the Facility improvements and equipment are located, together with appropriate security buffers and exclusion areas ("Premises"). Total Land Payment paid over the term of the Services Contract shall not be an amount greater than the actual cost paid by Grantee to acquire the Premises, amortized over a term of 20 years plus an annual return of eight percent (8%). If Grantee purchases real estate containing more land than is needed for the Premises, then only

land payment for land required for the Premises will be charged to Grantor. Land will be obtained based on appropriate Mexican laws and regulations related to public works.

Variable Monthly O&M Charge – In addition to the Fixed Monthly Charge, Grantor will pay Grantee a Variable Monthly O&M Charge as compensation for the treatment of up to an additional 34 MGD ADF of municipal wastewater received from Mexican sources in the Tijuana River watershed. The Variable Monthly O&M Charge for each month of the initial year of treatment services shall be the sum of the Variable Facility O&M Charge and the Variable Pump/Pipeline O&M Charge.

The Variable Facility O&M Charge shall be an amount equal to the product of a fixed rate agreed to by Grantee's O&M Subcontractor, expressed as a rate per 1,000 gallons treated, times the number of gallons (not to exceed 34 MGD) of municipal wastewater received from the Tijuana River watershed from sources other than the SBIWTP.

The monthly Variable Pump/Pipeline O&M Charge shall be an amount equal to the product of a fixed rate agreed to by Grantee's O&M Subcontractor, expressed as a rate per 1,000 gallons treated, times the number of gallons (not to exceed 34 MGD ADF) of municipal wastewater received from the Tijuana River watershed from sources other than the SBIWTP.

The fixed rate per 1,000 gallons used in calculating the Variable Monthly O&M Charge will be adjusted each year after the initial year based upon agreed economic indices for such fixed costs as labor, utilities, supplies, insurance, and federal, state and local taxes (other than taxes paid by Grantee or O&M Subcontractor on income); provided however, that annual increases in Variable O&M Charge fixed rates based on the costs of electricity, fuel and chemicals shall be limited to increases in actual costs, without regard to changes in the relevant index. Grantee's Profit shall not be applied to power costs.

Grantee's Management Charge – Grantee's monthly Management Charge for providing O&M subcontract management, effluent monitoring, reporting, and other administrative services shall be the sum of: (i) four percent (4%) of the monthly Fixed Facility O&M

Charge, plus (ii) four percent (4%) of the monthly Fixed Pump/Pipeline O&M Charge, plus (iii) four percent (4%) of the product of the Variable Facility O&M Rate times the number of days in the applicable month times 34,000,000/1,000, plus (iv) four percent (4%) of the product of the Variable Pump/Pipeline O&M Rate times the number of days in the applicable month times 34,000,000/1,000.

Grantee's Profit – Grantee's profit will be paid monthly at the rate of eight percent (8%) of the sum of the Fixed O&M Charges, the Variable O&M Charges and the Grantee's Management Charge times the quotient which results from a division in which the dividend is the number of gallons treated in such month less the product of 25 MGD times 365 days divided by 12 and in which the divisor is the product of 34 MGD times 365 days divided by 12. Grantee's Profit shall not be applied to power costs.

Rebate of O&M Charges:

Pursuant to Minute 311 and the Public Law, as amended, ownership and disposition of wastewater from Tijuana, Baja California, treated or not treated, will remain under the jurisdiction of the Government of Mexico. Payments to the Grantee under the Services Contract may be offset by compensations or credits that reflect an agreed upon percentage of payments received by Mexico through the sale of water treated by the facility. The two governments through the IBWC will mutually agree upon compensations or credits. In the event that Grantee develops a market for and sells treated wastewater for reuse, it is the intention of the parties that the United States will receive a portion of the revenue produced by such sales.

Interest on Unpaid Fee for Services:

The Grantor shall pay interest automatically, without the request of the Grantee, if payment is not made by the due date. Interest shall be computed in accordance with the Office of Management and Budget prompt payment regulations, 5 C.F.R. Part 1315.

Grantee Deliverables and Applicable Dates:

Critical Path Network Analysis Schedule and reports for the period from the date of the Development Agreement until plant is fully engaged in wastewater treatment operations will be provided by Grantee. The Critical Path Schedule shall be provided in original or updated form using Primavera ™ Version 3 Enterprise software beginning thirty days from the date of the

Development Agreement execution and each day thereafter so as to reflect status of design and construction work through September 30, 2008, or until the plant is completed and approved for operation. The Critical Path Schedule shall be concurred with by the Binational Technical Committee and shall be a baseline Network Analysis Schedule. The Critical Path Schedule shall comply with the Court Ordered Compliance Schedule.

Provide the following plan and specification submittals at the appropriate phase:

- 25% Design Completion

The 25% final Subcontract plans and specifications for all pump stations, conveyance pipelines and wastewater treatment facilities shall be submitted by the Grantee to IBWC, BTC and Grantor for final approval and concurrence before construction commences. "As built" record drawings will be delivered to Grantor following construction completion.

Monthly, quarterly, and annual reports of work, including NPDES and Mexican permit monitoring and reporting performed by Grantee, prepared by Grantee in the form and content required by applicable statutes, and submitted by Grantee to Grantor in five copies on the 5th of the month following the close of the reporting period, beginning on October 1, 2008 and for the full term of the Services Contract. Reports shall include information on status of work against the Critical Path Schedule for construction of the Facility.

Authorization during construction and for the term of the Services Contract from Grantee for designated representatives of the Grantor and representatives of Mexican agencies having jurisdiction to have access to all monitoring stations and other facilities for the purpose of monitoring construction, operation and maintenance activities of facilities and equipment.

Access to accounting records of the Grantee and the Grantee's subcontractors concerning the performance of the Services Contract by the Inspector General of the U.S. Department of State during the term of the Services Contract. Grantee shall maintain all books of account in accordance with generally accepted accounting principles and the pronouncements of the Financial Accounting Standards Board (FASB).

Grantee's audited financial statements shall be delivered to Grantor within 90 days of the close of Grantee's fiscal year end.

Grantee will transfer ownership of all Project Facilities, plant(s), equipment and land on which the plant is located in Mexican territory in excellent working condition to an appropriate governmental entity, as agreed to by the IBWC and appropriate Mexican governmental authorities, on or before June 1, 2028 and with an effective date of transfer of September 30, 2028.

Grantee will transfer ownership of all Project Facilities, plant(s) and equipment located in U.S. territory in excellent working condition to a suitable owner, as agreed to by the IBWC and appropriate United States governmental authorities, on or before June 1, 2028 and with an effective date of transfer of September 30, 2028.

Events of Default by Grantee:

Criminal conviction, by a United States Court, of Grantee or any of Grantee's principals of fraud, embezzlement, or theft, or violation of the False Claims Act.

Material failure to operate and maintain the Project Facilities at the levels required on a full-time basis (24 hours/day, 365 days/year) for the full term of the Services Contract. Material failure means consistent and repeated failure to maintain minimum quality standards for treated effluent, as specified in the NPDES permit, to the extent that NPDES permit exceedances are not caused by constituents that are typically industrial in nature and that may occur infrequently, including but not limited to metals, total toxic organics (base neutral compounds, acid compounds, volatile compounds, pesticides and PCBs), BTEX (benzene, toluene, ethylbenzene, xylene), and PHC (petroleum hydrocarbons).

In the event of a default resulting from Grantee's material and repeated failure to comply with the terms of this section for more than 90 days, or such longer time as Grantor may determine, and Grantor and Grantee cannot agree upon the party responsible for the default or the steps to be taken to cure the default, then IBWC shall select an independent engineering firm, paid for by Grantee, to determine whether (i) such default is the sole fault of Grantee or its subcontractors, and, if so, (ii) whether Grantee has

failed to take reasonable steps to cure the default. If it is determined by the independent engineering firm that Grantee has failed to take such reasonable steps to cure a default for which it or its subcontractors are solely responsible within ten (10) days of finding, or such independent engineering firm determines that a cure is not possible, then Grantor may terminate the Services Contract.

Events of Default by Grantor:

Diversion by Grantor of SBIWTP effluent to any location other than Grantee's plant in Mexico without the express advance authorization of Grantee.

Payment by Grantor to any party other than Grantee of fees for secondary treatment of up to 59 MGD of wastewater originating in the Tijuana municipal sewage collection system.

Subject to the appropriation of funds, failure to make payment when due out of funds which have been appropriated on or before the 20th day of each month.

Failure by the Government of the United States to accept transfer of the Facility equipment located in the United States when tendered by Grantee.

Failure to provide Grantee with a license and right-of-way at nominal cost to use such lands of the SBIWTP as are necessary to construct, operate, and maintain those pumps, pipelines, and other facilities to connect the Project Facilities, from the effective date of this agreement.

Failure to provide Grantee such access as is reasonably requested by Grantee to the lands, facilities, and equipment of the SBIWTP for the construction, operation and maintenance of facilities needed to carry out the purpose of the Services Contract.

Failure of Grantor to make reasonable efforts to request appropriations in Grantor's budget for FY 2008 and for every year during the term of the Services Contract. Reasonable efforts equate to requesting funding for the Services Contract in the Grantor's Budget Request to the United States Department of State for FY 2008, and for every year in which the Services Contract is in effect

Excusable Delay:

Except for defaults of subcontractors at any tier, Grantee shall not be liable for damages to indemnify

Grantor if the failure to perform arises from causes beyond the control and without the fault or negligence of Grantee. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine restrictions, (vii) strikes, (viii) freight embargoes, and (ix) unusually severe weather. Excusable delay shall not include acts of the Mexican Government relating to the activities of Grantee. In each instance, the failure to perform must be beyond the control and without fault or negligence of Grantee. If the failure to perform is caused by default of a subcontractor at any tier, and if the cause of the default is beyond the control of both Grantee and subcontractor, and without fault or negligence of either, the Grantee shall not be liable for damages for failure to perform.

Termination of Services Contract: In the event the Services Contract is terminated, and to the extent funds are appropriated to the USIBWC for this purpose, the USIBWC agrees to pay the Grantee for reasonable services provided up to the date of termination. The Parties acknowledge that the Public Law, as amended, requires zero cancellation liability on the part of the USIBWC in connection with the termination of the Services Contract. There is no guarantee of any payment to Grantee to reimburse any expenses or costs incurred in connection with the Services Contract.

Performance Bond: Grantee shall deposit with an institutional trustee, as agreed with Grantor, a Performance Bond in the amount of $20 Million U.S. dollars prior to the commencement of operation of the Facility and for the full term of the Services Contract, to guarantee payment of liquidated damages assessed for unexcused failures in providing treatment services. Liquidated damages shall be deducted from the Performance Bond.

Liquidated Damages: If Grantee fails to complete construction, testing, certification, and obtaining appropriate certificates of occupancy and full operation for wet wells(s), force main(s), treatment facilities(s), emergency power facilities, return main(s), pump station(s), and all other facilities in U.S. or Mexican territory on or before August 24, 2008, Grantee will be assessed $25,000 U.S. dollars per day, payable from the Performance Bond until certificates of occupancy and full operation are obtained.

If Grantee fails to operate and maintain the Project Facilities at required capacity in compliance with the NPDES permit and Mexican permit requirements, as defined under Events of Default by Grantee, of up to 59 MGD effective 12:01 a.m., October 1, 2008, Grantee will be assessed $25,000 U.S. dollars per day until operation is restored.

Indemnification of Grantor:

Grantee agrees to indemnify and reimburse Grantor for any claims, damages, fines, costs or penalties imposed upon Grantor for failure to operate Project Facilities in conformance with applicable effluent limitation standards, including but not limited to NPDES permit(s) standards.

Oversight and Monitoring Of Services Contract:

The Inspector General of the Department of State will monitor the implementation of the Services Contract and evaluate the extent to which the Grantee has met the terms of the Public Law, as amended, and fulfilled the terms of the Services Contract. Grantor may contract with the Defense Contract Audit Agency for additional review and audit of Development Agreement and Services Contract. Grantee shall permit access by the Inspector General of the Department of State or the designee of the Inspector General or the Defense Contract Audit Agency for audit and examination of all records maintained by Grantee and subcontractors of Grantee to facilitate the monitoring, evaluation, review and audit.