Statement to Water Resources & Environment Subcommittee of the Transportation and Infrastructure Committee Regarding the Implementation of Public Law 106-457

By:
Duncan Hunter (CA-52)
Member of Congress

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Mr. Chairman and Honorable Members of the Subcommittee, first of all I would like to thank you for taking time to hold this hearing on an issue of grave importance to my constituents. I am here speaking today as a Member of Congress representing San Diego County. I have represented San Diego in this capacity for more than 20 years and am very familiar with the challenges we face along the San Diego - Tijuana border.

Last year, working with the San Diego Congressional delegation, the U.S. Congress unanimously passed and the President signed into law the Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000 (Public Law 106-457, Title VIII). PL 106-457, Title VIII was passed to address the cross-border sewage flows that have plagued the border region for 70 years.
Over the years, there has been much discussion about possible alternatives on how to approach this problem. In 1987, pursuant to a treaty between the U.S. and Mexico, the U.S. agreed to treat 25 million gallon per day (mgd) of Tijuana sewage at a facility in the United States. Unfortunately, it took over 10 years to build a treatment facility and, upon completion, it was woefully under-sized. In fact, current estimates state that as much as 70 mgd of sewage is being produced and released into the Tijuana River every day. This means that San Diego County residents continue to deal with the public health emergency on our border, estuaries and beaches.

The need for immediate and appropriate action is the primary reason PL 106-457, Title VIII was and is unanimously supported by our San Diego County delegation, as well as the entire Congress. There is full bi-partisan support for this project, and there was an urgency attached to the legislation when it was written last year. This Congress gave a 60-day time-frame to commence negotiations. We are now more than 300 days past that unanimous legislative mandate, and I, for one, am deeply concerned by the apparent lack of interest to proceed demonstrated by those designated to implement it.

I have been following this issue closely for over 20 years. We no longer have the luxury of waiting and rehashing old solutions. The Commissioner has now publicly stated his interest in revisiting activated sludge treatment as a solution. This alternative was discussed many years ago, litigated over by the environmental community and reconsidered and discarded by the EPA in favor of secondary sewage ponds, which PL 106-457, Title VIII authorizes. According to the 1999 Record of Decision, sewage ponds are the preferred alternative and the IBWC and the U.S. EPA are on record supporting this alternative. Revisiting the activated sludge option will only invite additional lawsuits and further delay this important project. In addition, as the ROD states, sewage ponds are the best available alternative and will ultimately be the project that goes forward.

Furthermore, the activated sludge alternative, as well as secondary sewage ponds sited in the U.S. were considered last year by the Congress and discarded as inferior in terms of cost and capacity and inappropriate in terms of location. In fact, the Congress also determined that Bajagua was the most appropriate solution in that it was “right-sized”, sited in Mexico and provided the opportunity for reclaimed water use in Tijuana. For the record, I am including a memo drafted for me by Dave Schlesinger, former Director of the City of San Diego’s Metro Wastewater Department. In this document he clearly states that even with technical advances, active sludge with respect to Mexico’s untreated sewage, is not a workable solution. Plant breakdowns and stoppages would be frequent leading to sewage being once again bypassed into the Tijuana River and out on to the San Diego beaches.

One of the more important components for me is location. Although I understand the financial participation of the United States, I believe the location for treating sewage generated in Mexico should be Mexico. In fact, Mr. Bilbray reminds me that the “return to sender” idea was something I mentioned when discussing this problem years ago. The Bajagua Project offers the advantage of private sector funding for the cost of construction in Mexico.

The private sector can do it faster, cheaper and better, which is why we contract out the construction of the vast majority of our facilities and equipment. The Bajagua Project takes it one step further, as a full private - public partnership that will be enforced through a fee-for-services contract with the U.S. government. This contract will mandate and insure compliance with U.S., Mexico, and California clean water standards. Further, private sector bonding provides a level performance guaranty beyond ordinary federal project development. This makes a lot of sense from my perspective and is a major reason the Congress supported the Bajagua approach.

Additionally, capacity is essential. The Congress, when this was debated last year, was no...
longer interested in half solutions. We felt that using the leverage of our treaty obligation, we should achieve a comprehensive solution now, so that we are not required to chronically revisit this issue time after time. Bajagua will be sited at a location that will allow for the right capacity for the sewage generated, as well as provide for expansion if the need arises.

The time is now for this project to be built. If we put our minds to it and work together we can complete this project with no further delay.

There are two issues related to timing that I would like to address. First is the comment by Commissioner Ramirez about the need for funding. The IBWC has the ability under their current appropriations to negotiate with Mexico on many items. There is no need for additional appropriations at this time, so there should not be any further delay.

In terms of the urgency and the feeling that negotiating with Mexico will take too much time, I have seen the communiqué from Deputy Minister Berruga stating Mexico’s interest in moving forward immediately with negotiations. I have also read the statements by Commissioner Ruffo in the San Diego Union-Tribune. Both officials state that Mexico is ready to negotiate and Commissioner Ruffo states plainly that he supports the Bajagua Project. So the delay, it seems to me, is on our side of the border. That concerns me greatly.

One of the reasons cited by Commissioner Ruffo for the urgency in Mexico is the opportunity for reclaimed water. That component will be built with private money and PL 106-457, Title VIII contemplates rebates back to the United States to offset the incremental costs of secondary treatment when the water is sold. Mexico is in a water crisis, and this opportunity must not be lost. I am familiar with the situation and I understand their desire to have this kind of opportunity. Anything we do in the U.S. would not leverage this advantage, particularly the rebates back to the U.S. taxpayers, which is one of the reasons I so strongly support the implementation of PL 106-457, Title VIII and the construction of the Bajagua project.

In closing, Mr. Chairman and members of the Committee, we as a body addressed all the issues recently raised by the IBWC when we passed P.L. 106-457 last year. This is our solution; the Congress was unambiguous in that statement and it is my hope that the Commissioner will hear that message loud and clear today so we can implement PL 106-457 and resolve this problem immediately.

With that, Mr. Chairman, I would like to thank you for this opportunity and I am happy to answer any questions the Committee might have.