

Bajagua and the South Bay International Wastewater Treatment Facility

Background

An international wastewater treatment plant (IWTP) and ocean outfall (OO) were constructed in the San Diego area adjacent to the US/Mexico border. The purpose of the plant was to treat excess sewage from Tijuana that had in the past contaminated the estuary and beaches within the San Diego/Tijuana area. The IWTP, which is owned and operated by the US Section of the International Boundary and Water Commission (IBWC), currently treats to an advanced primary level up to 25 million gallons per day (mgd) of sewage from Tijuana, Mexico. Section 510 of the Water Quality Act of 1987 authorized the project, for which Congress appropriated \$239 million. The planned secondary treatment has not been built due to a spending cap imposed on the project in 1991. Congress declined to lift the spending cap and instead passed legislation (Estuaries and Clean Water Act of 2000) which expressly prohibited further federal spending on the IWTP. In addition, the legislation directs the IBWC to build additional wastewater facility in Tijuana, Mexico (a.k.a. Bajagua project). As the IWTP remains at advanced primary, it is operating in violation of its NPDES permit and the Clean Water Act, which requires secondary treatment. EPA had set aside funds for secondary treatment, however, since the cap hasn't been raised, those funds have been spent on other high priority border projects.

As previously mentioned, Congress passed the *Estuaries and Clean Waters Act of 2000*. Title VIII, *Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000*, authorizes the U.S. to do the following:

- o Directs the IBWC to negotiate a new or amended treaty minute with Mexico which would provide for secondary treatment of 50 mgd of wastewater (25 mgd of advanced primary effluent from the IWTP and 25 mgd additional flows from Mexico). IBWC is authorized to provide the above capacity with a fee-for-services contract with a Mexican facility owner (the Bajagua project).
- o Directs EPA to prepare a comprehensive Tijuana Water/Wastewater plan within 2 years. This work has commenced. EPA has allocated \$2 million for this effort. The legislation indicates that IBWC may provide an additional 25 mgd of treatment capacity at Bajagua if recommended by the comprehensive plan.
- o \$156 million has been authorized by this legislation but no actual funding has been appropriated.

The Bajagua wastewater treatment project was originally proposed by a private firm, AguaClara Llc. The proposal includes a pond system nearly identical to the one proposed for secondary treatment at the IWTP to be built in Tijuana. The facility with an initial capacity of 50 mgd would provide treatment for up to 25 mgd of sewage from Tijuana and would also provide secondary treatment to the primary effluent from the IWTP. The sewage which is now conveyed to the IWTP from Tijuana is currently discharged through the OO. Under the Bajagua proposal, the primary effluent would be conveyed from the IWTP to Bajagua for secondary treatment, then back the OO for disposal in US waters, unless Mexico claims it for re-use.

Under AguaClara's proposed financing plan for the Bajagua project, the private company would be responsible for constructing the facility, which would be supported by a long-term operation contract with the IBWC to cover costs associated with development, financing, construction and operation and maintenance costs (O&M). No funds have been appropriated to the IBWC for the Bajagua project. EPA cannot provide funding for the following reasons:

- 1.) Under current law, EPA is authorized to pay only for the *construction* of a facility, and not the operation and maintenance costs.
- 2.) As EPA has no authority to construct the Bajagua project, it cannot fund another agency for any portion of this effort.
- 3.) EPA does not have authority to fund a private entity for wastewater treatment, Section 510 only allows EPA to fund other federal agencies.
- 4.) The *Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000* provides EPA with no authorities with respect to the Bajagua project.

Status

International Wastewater Treatment Plant: Owner/Operator of the IWTP, IBWC is currently being sued by the State of California and the Surfrider Foundation for violation of the Clean Water Act, due to the lack of secondary treatment.

Master Plan: Through the NADBank, EPA has provided approximately \$2 million to CESPT, the public utility in Tijuana responsible for water and wastewater service in Tijuana. These funds are for a Potable Water and Wastewater Infrastructure Master Plan for the municipalities of Tijuana and Playas de Rosarito, Baja California, Mexico. The Master Plan will serve as a planning tool to identify infrastructure needs in the short, medium, and long term. 24 "expressions of interest" were received from consultants, the Scope of Work has been sent to a short list of 6 firms with a request for proposal. We expect a selection to be made and the consultant to begin work by the end of this year. The Master Plan should be complete in approximately one year after that, by the end of 2002.

Bajagua: USIBWC has not yet initiated negotiations with Mexico regarding the Bajagua Project. OMB is currently reviewing the legislation regarding the Bajagua project. Its preliminary determination is that IBWC must have all the funds necessary for the for the entire contract (30 years), which includes construction, operation, maintenance, return on investment, and other costs. This is estimated at approximately \$400 million.

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

**By:
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Mr. Chairman and Honorable Members of the Sub-Committee, I am here speaking not only as a former member of the House of Representatives or a spokesman of the San Diego Regional Chamber of Commerce, but as a life-long resident of a community that has had to endure pollution that would not be acceptable anywhere else in our country; pollution that is not of our making, but inflicted upon us by the inaction of a foreign country and our own US Government.

Over the entirety of my career in public office I have been addressing the issue of cross-border sewage flows and the environmental and health emergency these renegade raw flows have created. For over 70 years, the people of San Diego and Imperial Beach have been forced to deal with this horrific public health crisis because of geography. What does this mean? The City of Tijuana sits above San Diego County. The Tijuana Rivers flows north, from this high point, across the border in to the United States and out through the Tijuana River Estuary and into the Pacific Ocean.

As a former Councilman and Mayor of the City of Imperial Beach, as well as an avid surfer in the coastal waters off of San Diego County I fought to get the federal government's, from the EPA to the IBWC, attention to our situation. My children, my former constituents, my friends, fellow surfers, environmentalists, and others and I have all had to deal with the repercussions of

these flows. I have personally had to endure the long process to receive Hepatitis shots to ensure against sickness resulting from surfing in the polluted waters off of Imperial Beach.

I was elected to the San Diego County Board of Supervisors because of this issue, once climbing on a skip loader (bulldozer) to push beach sand back into the river mouth to stop the flow of renegade sewage from entering the Pacific Ocean and polluting our beaches. Eventually, being unable to deal with the situation from the local level, I ran for Congress in order to bring resolution to this decades' old problem.

During my time in the House, I was able to shine specific light on the lack of progress being made toward a solution that would appropriately and adequately treat the sewage being generated in Mexico, but also find a solution that met the current and future capacity needs in the region. One thing we cannot stop is water from flowing down hill. That is why a solution, in partnership with Mexico, is critical to both our countries.

In November of last year, my colleagues, Randy Cunningham, Duncan Hunter, and Bob Filner and I were pleased to announce that President Clinton had signed S. 835 into law as Public Law 106-457. We were also encouraged that the House and Senate had passed the measure unanimously. Commissioner Ramirez has stated in a public meeting in San Diego, that Title VIII of this P.L. 106-457 was only passed unanimously because it was part of a larger bill. For those who have never served in Congress, there may be a lack of understanding about how and why bills are passed and signed into law. You, as my former colleagues, and I know that an extraordinary amount of time was spent analyzing every word in this bill in both Houses and

conference committee. Ultimately, PL 106-457 would not have passed unanimously, had it been controversial, including any one of its provisions. The unanimous passage is a testament to the work of this committee and others who reviewed the specifics and moved it toward final signature into law.

One of the specific provisions of the law, dealt with the issue of time. As I mentioned previously, the people of San Diego have been dealing with cross-border sewage pollution for the past 70 years. Some, who were concerned about PL 106-457, mentioned the time they felt it might take would be far too long to help our residents. That is why I added a provision to request that formal negotiations commence within 60 days of the bill's enactment into law.

We now sit over 395 days later without the commencement of formal negotiations. The reason for this has been debated broadly. Commissioner Ramirez points the finger back at the Office of Management and Budget and the Department of State saying that he has not been authorized to start negotiations. When queried further, though, he then says that PL 106-457 only "requests" the Department to commence negotiations not "require." In my opinion, we need to get to the real problem, eliminate that problem, and get moving on implementing an act of Congress, which was unanimously signed into law.

We're on the verge of implementing a unique and innovative public-private cross-border project that will have the potential of solving a 70 year-old public health crisis, while also providing the leverage to create a reclaimed water opportunity to a water depleted region. The economic development opportunities are amazing. In short, the much-touted desire by both President Bush

and President Fox to work together on border issues, including infrastructure, will actually be demonstrated with the implementation of this project.

My personal history with the sewage issue is long and there are many details of which I could spend hours discussing here today, the bottom line is that we cannot allow bureaucratic stall tactics, turf wars and unending process to delay this private sector solution. In seeing several IBWC Commissioners come and go and watching them struggle with how to treat the cross-border sewage flow, one thing is clear, this is about control. The IBWC does not want to concede what they perceive is control over the ownership and operation of the plant. It appears to me that they don't understand that the ultimate control exists.

In fact, the Bajagua Project represents an opportunity to erase our concerns about water quality and enforceability of treatment in Mexico. The private sector and its creative ingenuity have created the mechanism to enforce our clean water standards through a fee-for-services contract. We're always talking about an outcomes based approach to our decisions. The Bajagua Project would be the ultimate in outcomes based infrastructure in our region. If they don't treat it to our clean water standards, they don't get a dime of taxpayer's money. This is control and this is the approach we debated last year and passed into law.

In the local press, Commissioner Ramirez has recently brought up this issue of taxpayers expense to treat sewage generated by Mexico. The Congress debated this very same point last year and in fact understood that the U.S. is already obligated to provide secondary treatment of this sewage by Treaty. The reason this body saw fit to pass PL 106-457 was that we could

leverage the obligation to build a better, more comprehensive plant, in Mexico, where it belongs, and also allow the private sector to work with Mexico on providing reclaimed water opportunities to their residents and businesses in Tijuana. The bottom line is that we cannot control gravity and therefore must act to protect our public's health and welfare. This is why Section 510 of the Clean Water Act reauthorization was established and why Minute 183 was originally negotiated with Mexico.

There has been much talk in over the last decade about options. The original plant overran its costs by so much that the Congress in 1993 capped the EPA and IBWC's expenditures. As the secondary sewage treatment component was proposed, the environmental community, both the Surfrider Foundation and the Sierra Club sued over the EPA's original record of decision to force the federal government to consider complete mixed aeration ponds as a treatment alternative to an activated sludge plant. Their rationale was clear. An activated sludge plant couldn't handle the toxic spikes that are frequent in sewage from Mexico. These spikes could shut down the plant for weeks, thus resulting in the same situation we have today. Further, the sludge being generated would be highly toxic and difficult to deal with. Ultimately, the environmental community prevailed; the EPA reanalyzed and concluded that CMA ponds were a superior treatment alternative for sewage generated in Mexico.

The problem then became location and size. The site adjacent to the IWTP can only accommodate 25 mgd of sewage. We already know that there is the need for 50 mgd and more. Further, those living in the area didn't want ponds next to their homes saying it wasn't their sewage so why treat it here.

Bajagua was born out of this lack of solutions and alternatives. It promised all the things the other alternatives couldn't including the opportunity to reuse the water. Now, Commissioner Ramirez says publicly he wants to turn back the clock and build an activated sludge plant. If the last ten years have taught us anything its that we cannot go backwards to solutions that won't work and will only lead to more delays. We need a solution now and not just any solution as the Commissioner suggests. We need the right solution and if the private sector can do it, then we ought to take advantage of their ingenuity.

No other option meets the promise of Bajagua. No other alternative stands a chance of being broadly accepted in San Diego. No other project stands a chance of being funded because it does not meet the benefits afforded by Bajagua. Bajagua will privately finance their facility so the federal government does not have to expend the capital costs. This will help ensure that the built is plant on schedule and on cost. It will also be an example of what we can do on the border in cooperation with Mexico and the private sector.

In closing, I believe we must, as the legislative and appropriations body of the U.S. Government insist that the IBWC and the Department of State meet their obligations under the law and expeditiously negotiate not only the treaty minute, but the contract with Bajagua so we can get this solution in the ground treating sewage and protecting the citizens of the United States.

Mr. Chairman, there has been a lot of discussion from members of Congress and the White House about how essential our relations with the Republic of Mexico are for the economic future

of our country. The ability of both nations to address the environmental problem such as the Tijuana pollution will have a major impact on the success of any relationship with our neighbors to the south. This is our chance to show how much we really care. Thank you for this opportunity and I am prepared to answer your questions.