

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION  
TENTATIVE RESOLUTION NO. R9-2019-0246**

JOINT RESOLUTION BETWEEN THE COUNTY OF SAN DIEGO, CITY OF SAN DIEGO, CITY OF IMPERIAL BEACH, CITY OF CHULA VISTA, CITY OF CORONADO, CITY OF NATIONAL CITY, PORT OF SAN DIEGO, SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD, CALIFORNIA STATE LANDS COMMISSION, AND SURFRIDER FOUNDATION RECOMMENDING PROJECT ALTERNATIVES AND FEDERAL AND STATE ACTIONS TO ELIMINATE DETRIMENTAL TRANSBOUNDARY FLOWS OF WASTES IN THE TIJUANA RIVER VALLEY

WHEREAS:

1. The signatories of this joint resolution include key State and local stakeholders having vested interests in the Tijuana River Valley and its surrounding environs; all signatories and their respective stakeholders have been significantly and negatively impacted by the effects of transboundary flows of waste in the Tijuana River Valley; and all signatories are unified in identifying project alternatives and actions to eliminate the greatest amount of transboundary flows of waste possible, as soon as possible; and
2. International transboundary rivers and tributary canyons that carry water across the border from Mexico into the Tijuana River Valley in Southern California are the major source of untreated sewage, trash, sediment, hazardous chemicals, heavy metals, and toxins, which have seriously impacted waters and communities; and
3. Transboundary flows continue to result in clear public health, environmental, and safety issues; these flows have threatened and continue to threaten the health of residents in the United States and Mexico, harm important estuarine land and waters of international significance, force closure of beaches, damage agricultural resources, adversely impact the San Diego County economy; compromise border security, and directly affect United States military readiness; and
4. A significant amount of untreated sewage, trash, sediment, hazardous chemicals, heavy metals, and toxins have entered southern California through the Tijuana River Watershed since the 1930s; and
5. In February 2017, an estimated 143 million gallons of raw sewage flowed into the United States via the Tijuana River and flowed downstream into the Pacific Ocean; the February 2017 transboundary flows are an example of an ongoing condition that has contributed to over two billion gallons of cumulative, verifiable transboundary waste to date and counting; and numerous, repeated transboundary flows have caused beach closures at Border Field State Park for 211 days in 2015; 162 days in 2016, 168 days in 2017, 101 days in 2018, and more than 200 days to date for 2019 as well as

closure of beaches along the Pacific coastline from Imperial Beach as far north as Coronado each of those years; and

6. The presence of pollution is creating unsafe conditions for state, local government and federal agency staff, residents, and visitors on public lands; which public lands are taxpayer supported and intended to be managed for recreation, resource conservation, and enjoyment by the public; and
7. Water-treatment infrastructure is insufficient to control transboundary pollution through the main channel of the Tijuana River, which poses a significant risk to the public health and safety of residents and the environment on both sides of the border, and places significant economic stress on local governments that are struggling to mitigate the negative impacts of pollution; and
8. The 1944 treaty between the United States and Mexico regarding *Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande* and its implementing Minutes provide for the allocation of flows on transborder rivers between Mexico and the United States, and provide that the nations, through their respective sections of the International Boundary and Water Commission (IBWC) shall “give preferential attention to the solution of all border sanitation problems.”; and
9. In 1990, the United States and Mexico sections of the IBWC issued Minute 283 that provided for the “...the construction and operation of the conveyance, treatment, and final disposal works...[that would] permanently and definitively resolve the existing border sanitation problem...”; and
10. In 1993, the United States and Mexico entered into the Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a North American Development Bank which created the North American Development Bank to certify and fund environmental infrastructure projects in border-area communities; and
11. Transboundary flows of waste including untreated sewage, trash, sediment, hazardous chemicals, heavy metals, and toxins continue to impact the Tijuana River, Estuary, coastal waters of the Pacific Ocean, and tributary Canyons including Stewart’s Drain, Cañon del Sol, Silva Drain, Smuggler’s Gulch, Goat Canyon, and Yogurt Canyon; and
12. The Tijuana River, Estuary, and coastal waters of the Pacific Ocean are listed as impaired water bodies under the Clean Water Act section 303(d) List of Water Quality Limited Waters for numerous constituents including bacterial indicators, trash, ammonia, benthic community effects, eutrophication, low dissolved oxygen, pesticides, phosphorous, sedimentation/siltation, lead, selenium, solids, surfactants, synthetic organic chemicals, total nitrogen, toxicity, trace elements, nickel, thallium, and turbidity; and

13. In 2009, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) organized the Tijuana River Valley Recovery Team with over 30 agencies and organizations including the IBWC, City of San Diego, County of San Diego, City of Imperial Beach, United States Fish and Wildlife Service, California Department of Parks and Recreation, WILDCOAST, Surfrider, Tijuana River Valley Equestrian Association, United States Customs and Border Projection (CBP), and the California Coastal Conservancy, to address the transboundary flows of wastes, flooding, and impaired water quality through a multi-agency collaborative approach in lieu of traditional regulatory authorities; and
14. In 2012, the San Diego Water Board adopted Resolution R9-2012-0030 endorsing the *Tijuana River Valley Recovery Strategy: Living with the Water* (Recovery Strategy), prepared jointly by the member agencies of the Tijuana River Valley Recovery Team, to guide efforts to address sediment, trash and polluted waters to "...clean up the Valley, restore its beneficial uses, and maintain environmental and human values in the Valley."; and
15. In 2015, the San Diego Water Board, having received commitments from each of the aforementioned members of the Recovery Team to work together to implement the Recovery Strategy, adopted Resolution R9-2015-0035, renewing its endorsement of the Recovery Strategy and adopted a Five-Year Action Plan to consolidate and focus efforts to address pollution impacts from transboundary flows and recommend "an alternate course of action should the Recovery Team approach fail to attain applicable water quality standards in the Tijuana River Valley within a reasonable period of time."; and
16. The IBWC subsequently developed Minute 320 with the support of the San Diego Water Board and local agencies including the City of San Diego, City of Imperial Beach, County of San Diego, California Department of Parks and Recreation, and other members of the Tijuana River Valley Recovery Team with the goal of addressing transboundary flows of sediment, trash, and sewage; and
17. Congress authorized funding under the United States Environmental Protection Agency's (USEPA) Safe Drinking Water Act and established the State and Tribal Assistance Grants (STAG) program for the United States-Mexico Border Water Infrastructure Program (BWIP) in 1996 to provide grants for high-priority water, wastewater, and storm-water infrastructure projects within 100 kilometers of the southern border; and
18. In its Fiscal Year 2020 Budget Request, the current federal Administration proposed to not fund BWIP; and
19. Without urgent federal action through BWIP and other federal programs and by federal agencies charged with addressing international pollution flowing through the Tijuana River Valley and into the Pacific Ocean, the People of

- California, and visitors impacted by transboundary sewage and toxic waste will continue to suffer from this critical pollution and public health issue; and
20. The U.S.- Mexico Border Mayors Association, at their Annual Summit on November 7, 2019, the National Association of Counties, at their Annual Conference on July 15, 2019, the U.S. Conference of Mayors at their Annual Conference on July 1, 2019, and the League of California Cities at their Annual Conference on October 18, 2019 all adopted resolutions calling on the federal and state governments to work together to fund and address this environmental issue; and
  21. Local governments and the public support the state's primary objectives in ensuring compliance with environmental laws including the Clean Water Act, California Porter-Cologne Water Quality Control Act, federal Resource Conservation and Recovery Act, and federal Endangered Species Act; and that those touchstone environmental laws are paramount and must be supported by substantial public investments at all levels of government to maintain a healthy and sustainable environment for current and future residents of California; and
  22. In June 2017, the San Diego Water Board conducted a public Environmental Justice Symposium in which the highest priority Environmental Justice and water quality/community impact identified by the public was the historic and ongoing impacts associated with transboundary flows of waste in the Tijuana River; and
  23. Public concerns in response to widespread threats to public health and safety, damage to fish and wildlife resources, and degradation to California's environment resulting from transboundary flows of waste requires urgent action by the federal government; and
  24. In 2017, Governor Brown signed Senate Bill (SB) 507 (Hueso), which allocated \$500,000 to the County of San Diego to commission a study focused on the improvement and protection of natural lands, including the main river channel, in the Tijuana River Valley, and the County of San Diego has drafted an evaluation of potential projects as set forth in its "SB507 Needs and Opportunities Assessment – Alternative Evaluation Matrix (Draft)" (NOA Matrix) that is attached to this Resolution; and
  25. In 2018, U.S. Customs and Border Protection (CBP) conducted monitoring of waters in the Tijuana River and tributary Canyons which monitoring showed repeated exceedances of water quality objectives and reporting over 86 cases of workplace injury reported by CBP Agents and contractors from exposure to polluted transboundary flows; and
  26. AB 74 (Ting, 2019) appropriated \$15 million to assist with the construction of a Tijuana River Pollution Control Project and SB 690 (Hueso, 2019) directed the California Coastal Conservancy to, when expending this funding, prioritize projects studied under SB 507; and

27. Based on more than 30 years of environmental and engineering studies and IBWC's documentation of transboundary flows to the San Diego Water Board, it is clear that the overwhelming majority of polluted transboundary flows enter the Tijuana River Valley in the United States through the IBWC flood control channel, rendering the need to address polluted flows through that channel the foremost priority and greatest opportunity to resolve the public health and safety and environmental issues in the Tijuana River Valley.

THEREFORE BE IT RESOLVED THAT:

1. The San Diego Water Board, along with the other signatories of this joint resolution, generally endorses the projects identified, developed, and analyzed under SB507 and set forth in the NOA Matrix, but specifically endorses certain projects as more specifically detailed herein; and
2. The San Diego Water Board, along with the other signatories of this joint resolution, specifically endorses, and finds critically necessary and to be of the utmost importance, to intercept, divert, and treat in compliance with the Clean Water Act as much of the polluted flows from the Main Channel of the Tijuana River at the South Bay International Waste Water Treatment Plant as possible (currently estimated at 163 million gallons per day based on the unpermitted carrying capacity of the South Bay Ocean Outfall) and to discharge that treated effluent through the South Bay Ocean Outfall; and to study, analyze, and assess the feasibility of constructing additional storage at a new 82 million gallon basin immediately downstream of the IBWC flood control channel as referenced in the NOA Matrix as Alternative D; and
3. The San Diego Water Board specifically endorses the NOA Alternative Evaluation Matrix projects for Smuggler's Gulch (NOA Matrix Alternatives L, M, O, and P or combination thereof) and Goat Canyon (NOA Matrix Alternatives N, Q and R or a combination thereof) to address flows of polluted water, sediment, and trash; and
4. The San Diego Water Board specifically endorses NOA Matrix Alternative K to support active sediment and trash management in the Main Channel of the Tijuana River on an annual basis as envisioned in the 2012/2015 Tijuana River Valley Recovery Strategy; and
5. The San Diego Water Board, along with the other signatories, calls upon the federal government to
  - a. Direct its agencies, instrumentalities, employees, and contractors to prioritize the expeditious restoration and maintenance of the chemical, physical, and biological integrity of the Tijuana River, tributary Canyons, Estuary, and coastal waters of the Pacific Ocean, and to take all necessary steps to end the clear public health, environmental, and safety issues caused by transboundary pollution in the Tijuana River Valley (the "Tijuana River Valley Project Goals");

- b. Provide authority and direction to EPA, including by designating EPA the agency vested with primary federal authority to facilitate the achievement of the Tijuana River Valley Project Goals, and requiring cooperation from IBWC, United States Army Corps of Engineers, and any other federal agency with relevant technical expertise, for the purposes of expeditiously assessing the feasibility of NOA Matrix Alternatives D, K, L, M, N, O, P, Q, and R, and other projects as appropriate, in order to identify the measures necessary and feasible to achieve the Tijuana River Valley Project Goals;
- c. Authorize funding and provide authority and direction to EPA to design the capital projects deemed necessary and feasible to achieve the Tijuana River Valley Project Goals;
- d. Authorize funding for the construction of the capital projects necessary and feasible to achieve the Tijuana River Valley Project Goals;
- e. Authorize funding for the ongoing operation and maintenance of capital projects deemed necessary and feasible to achieve the Tijuana River Valley Project Goals; and
- f. Fund BWIP at its historic \$100,000,000 level.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on December 11, 2019.

TENTATIVE

David W. Gibson  
Executive Officer