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INFORMATIONAL HEARING

"Addressing Cross-Border Pollution Impacting California's Southern Coastline"

Friday, December 1st, 2023 at 10:00am
City of Chula Vista City Council Chambers
City Hall Building A, 276 Fourth Avenue,
Chula Vista, CA, 91910

For decades, California's southernmost coastline has been ravaged by contamination and pollution stemming from failing infrastructure. The U.S. International Boundary and Water Commission (IBWC) has documented 35 billion gallons of wastewater entered the United States through the Tijuana River since December 2022 alone, and over 100 billion since 2018. Beaches have been closed since December 2021 due to poor water quality. Research led by Scripps Institution of Oceanography at UC San Diego has confirmed that coastal water pollution transfers to the atmosphere in sea spray aerosol, which can reach local residents beyond just beachgoers, surfers, and swimmers. Californians are suffering from the health, economic, and environmental impacts of continued transboundary sewage flows. In order to ensure that the federal government is doing all it can to protect the health and safety of the people of California, the Senate Select Committee on California-Mexico Cooperation has convened a hearing on "Addressing Cross-Border Pollution Impacting California's Southern Coastline". This hearing will provide the committee and the public an opportunity to hear from federal representatives what their efforts mean for local residents and the state of California. The hearing seeks a robust discussion that includes state and local representatives who are working to address continued cross-border flows of pollution. Ensuring that the federal government address this federal responsibility is a top priority for the committee. Given the multi-jurisdictional nature of the problem, solutions will require all levels of government. To that end, the committee will investigate what innovative solutions have been considered and their potential impact including: a state and federal emergency declaration, identifying a permanent source of funding, and the potential to draw down resources from existing federal funds.

Background

The Tijuana River watershed spans 1,750 square miles and straddles the international border between the United States and Mexico. A large portion (two-thirds) of the watershed is in Mexico (see figure 1)[1] and flows through the densely urbanized City of Tijuana, Mexico draining in the Pacific Ocean in the United States through the Tijuana River estuary. The watershed consists of

[1] Tijuana Estuary - TRNERR. "Tijuana River Watershed." Accessed November 20, 2023. https://trnerr.org/about/tijuana-river-watershed/.

the Tijuana River, the Tijuana River estuary, and the ocean shoreline, all located in the most southwestern portion of the City of San Diego, and bounded by the residential communities of San Ysidro and Imperial Beach. The Tijuana River estuary is the largest functioning wetland in southern California, is designated as a "Wetlands of International Importance" by the United Nations, and provides a critical habitat for multiple endangered species and many threatened wildlife and vegetation. The Tijuana River and Estuary, otherwise referred to the Tijuana River Valley, are listed as impaired water bodies on the Clean Water Act section 393(d) list of impaired water bodies because of excessive levels of bacteria, heavy metals, trash, sediment, and other pollutants. This is because for decades, millions of gallons of untreated sewage and stormwater runoff have frequently polluted this segment of California's southern coastline. As Tijuana, Mexico experienced population and industrial growth, along with rapid urbanization, all primarily driven by foreign investment, its aging sewage infrastructure has failed to meet the region's needs.[2] This failure has led to recurring cross-border, or transboundary, flows of untreated sewage and other pollutants decimating the environment and spilling into state coastal waters. The transboundary flows have a severe impact on the economy, environment, and public health of the region because of exposure to pollution.

Figure 1

The International Boundary and Water Commission

Given the binational nature of the watershed and pursuant to a 1944 treaty, the International Boundary Water Commission (IBWC) was authorized to address and resolve water issues at cross-border rivers and was instructed to give "preferential attention to the solution of all border sanitation problems".[3] The IBWC (**CILA in Mexico**) is comprised of two sections – the United States Section (USIBWC) and the Mexico Section - each section has exclusive jurisdiction on its respective side of the border for projects located within its own country. The treaty can be amended

[2] Wakida, Fernado, and Karen Riveles. "The Tijuana River Basin: Basic Environmental and Socioeconomic Data." Institute for Regional Studies of the Californias, n.d. https://irsc.sdsu.edu/_resources/docs/brdlnk97.pdf.

[3] Treaty between the United States of America and Mexico on the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Treaty Series 994 § (1944).

by issuing "Minutes", which both countries approve, and lay out actions to meet the obligations set forth under the treaty.

The IBWC oversees a sewage diversion system over the U.S.-Mexico border to treat sewage originating from Tijuana and water from the Tijuana River (see figure 2)[4]. The diversion system includes a network of pump stations and piping that sends river water and sewage to sources for treatment before transboundary flows occur.

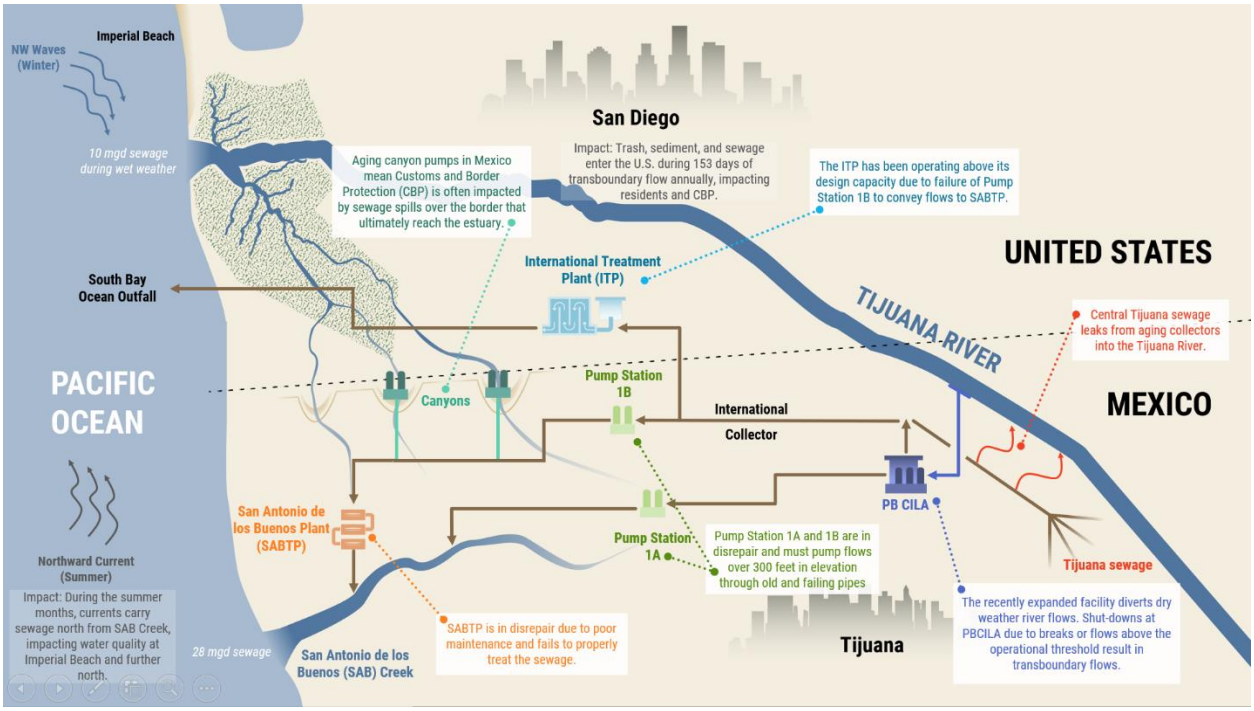

Figure 2

How is it all supposed to work?

The network can be summarized as follows:[5] During dry weather events and if everything is functioning properly, ***Planta de Bombeo CILA pump station (PB-CILA)***, located south of the U.S. border, diverts up to 23 million gallon per day (MGD) of flows from the Tijuana River, to ***Pump Station 1A (PB-1A)*** or into the ***International Collector***. **PB-1A** conveys flows of river water to an outfall into San Antonio de los Buenos Creek. The ***International Collector***, 1.5 miles of 72-inch reinforced concrete piping located in Tijuana, has a design flow capacity of about 103 MGD. It receives untreated wastewater collected from downtown Tijuana and a portion of river water. The ***International Collector*** directs flows to two treatment facilities, the ***South Bay International Wastewater Treatment Plant*** **(SBIWTP),** located on the U.S. side of the border, and ***the San Antonio de los Buenos Wastewater Treatment Plant (SAB WTP)***, located in Mexico. The ***SBIWTP*** is a primary and secondary treatment facility designed to treat an average daily flow

[4] US EPA, OW. "USMCA Tijuana River Watershed." Overviews and Factsheets, January 13, 2021. https://www.epa.gov/sustainable-water-infrastructure/usmca-tijuana-river-watershed.

[5] "Final Programmatic EIS: USMCA Mitigation of Contaminated Transboundary Flows Project." Environmental Protection Agency and the U.S. Section of the International Boundary Commision, November 2, 2022. https://www.epa.gov/system/files/documents/2022-11/Programmatic%20Environmental%20Impact%20Statement.pdf.

of 25 MGD of wastewater. A **canyon collector system** (consisting of diversion structures in Goat Canyon, Smuggler's Gulch, Cañón del Sol, Silva Drain, and Stewart's Drain in the U.S) helps capture transboundary dry-weather flows from Mexico and convey them to the **SBIWTP**. Alongside the facility, is the **South Bay Reclamation Plant (SBWRP),** which is designed to treat an average daily flow of 15 MGD and a peak daily flow of 35 MGD of wastewater collected in the U.S. The **SBIWTP** discharges effluent through the ***South Bay Ocean Outfall (SBOO),*** to 3.5 miles offshore. In Mexico, **P1-B** pumps up to 35 MGD, to the **SAB WTP**, along with flows from a series of canyon pump stations. The water and wastewater systems for the Mexican side are owned and operated by the **Comision Estatal de Servicios Publicos de Tijuana (CESPT**), except for PB-CILA, which is operated by the Mexican Section of the **IBWC**. CEPST also manages two wastewater treatment facilities in the southeast portion of the city, **La Morita Wastewater Treatment Plant** (capacity of 5.8 MGD) and The **Arturo Herrera Wastewater Treatment Plant** (10.5 MGD).

So What's The Problem?

Sewage has been spilling from Mexico into the coastal waters of the southernmost coast of California for decades because of inadequate and failing infrastructure and the rapid growth of Tijuana. Tijuana is home to 2.1 million people and is expected to grow by nearly 40% by 2050.[6] As the population as the city has grown, sanitary service failed to keep up with demand. Unregulated urban sprawl spurred by foreign investment, combined with aging and underfunded infrastructure resulted in an overloaded system where transboundary flows of river water and untreated sewage are common. If the population of Tijuana continues to grow, so will wastewater discharges and flows, further stressing an already aging system.

It is estimated that Tijuana has an 89.6% wastewater service coverage but the poor condition of existing infrastructure results in billions of gallons of Tijuana's wastewater entering the river and/or ocean without treatment.[7] This is especially true during wet events, when the capacity of the network is overwhelmed and stations are shut down. The capacity of flows after wet events far exceeds the capacity of the Tijuana diversion system as the flow rate of the river can reach several billions of gallons per day.[8] The wastewater system is subject to mechanical failures because of the sheer volume of water, as well as the amount of uncontrolled trash, waste tires, and sedimentation flowing through the watershed (see figures 3 and 4)[9].

[6] "Tijuana: Economy, Employment, Equity, Quality of Life, Education, Health and Public Safety | Data México." Accessed November 30, 2023. https://www.economia.gob.mx/datamexico/en/profile/geo/tijuana-99203.

[7] McMahon, George, Esteban Azagra, and Joel Mora. "Tijuana River Diversion Study: Flow Analysis, Infrastructure Diagnostic and Alternatives Development." *Flow Analysis*, July 2019. https://www.nadb.org/uploads/files/tijuana_river_diversion_study_final_report_full_sm.pdf.

[8] "Final Programmatic EIS: USMCA Mitigation of Contaminated Transboundary Flows Project." Environmental Protection Agency and the U.S. Section of the International Boundary Commision, November 2, 2022. https://www.epa.gov/system/files/documents/2022-11/Programmatic%20Environmental%20Impact%20Statement.pdf.

[9] Ben-Hamo, Yehuda. "WILDCOAST STOPS THE TSUNAMI OF TRASH AT THE US/MEXICO BORDER." WILDCOAST, April 19, 2022. https://wildcoast.org/wildcoast-stops-the-tsunami-of-trash-at-the-us-mexico-border/.

Figure 3

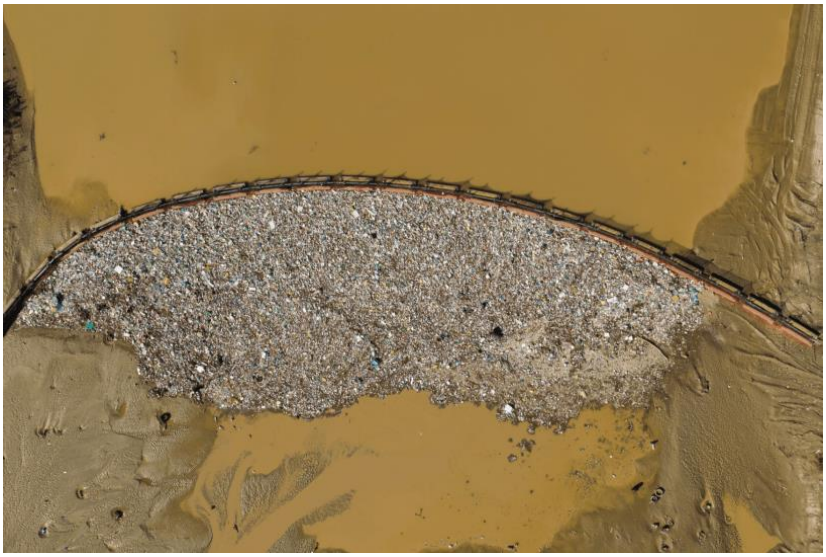

Figure 4

There are three main sources of pollution (see figure 5). [10] First, untreated wastewater makes its way through the Tijuana River. About 10 MGD escapes the Tijuana wastewater collection system, and 11% of Tijuana's population is not connected to the sewer system, resulting in these flows entering the Tijuana River. Secondly, the SAB WTP does not treat or improve the quality of the water, meaning that untreated wastewater mixed with river water results in 35 MGD of diverted flows routed to this treatment plant being directly discharged into the ocean without any

[10] Barrera, Alexis, Camila Paula, and Cassidy Teufel. "Informational Briefing on the Trans-Boundary Pollution Crisis in the Tijuana River and Tijuana River Valley." Presented at the Meeting of the Coastal Commission, Imperial Beach CA 91932, October 11, 2023. https://cal-span.org/meeting/ccc_20231011/.

treatment.[11] Finally, effluent flowing into the Pacific Ocean from the **SBOO**, connected to the **SBIWTP,** has consistently failed to meet water quality standards. [12]

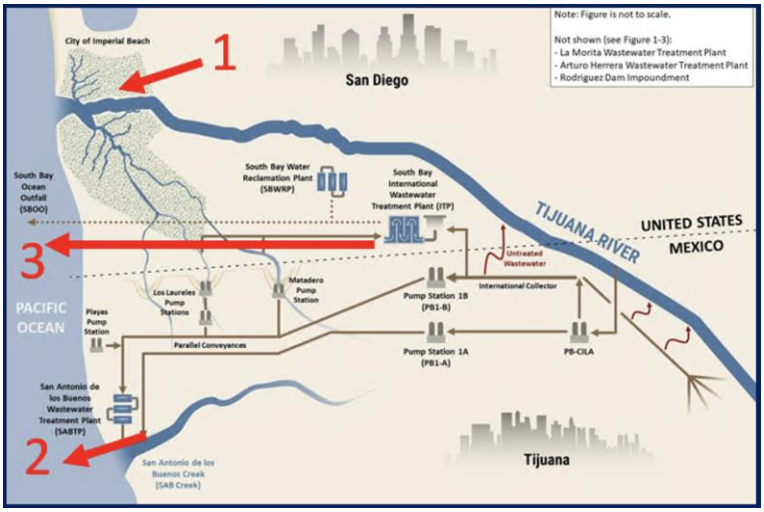

Figure 5

The diversion and pumping system provides inconsistent diversion of dry-weather flows because of mechanical failures or power outages. According to the IBWC, the **SBIWTP** is operating with flows that far exceed its capacity and the facility is in desperate need of repairs. Junction Box 1, which controls the flow that goes into the plant, is inoperable. Infrastructure in the Mexican side, **Pipeline PB1A** is collapsed, and the **SAB WTP** is inoperable, adding to the limitations of the system. The **International Collector** is weak and has imploded (see figure 6). [13]

[11] "Final Programmatic EIS: USMCA Mitigation of Contaminated Transboundary Flows Project." Environmental Protection Agency and the U.S. Section of the International Boundary Commision, November 2, 2022. https://www.epa.gov/system/files/documents/2022-11/Programmatic%20Environmental%20Impact%20Statement.pdf.

[12] Barrera, Alexis, Camila Paula, and Cassidy Teufel. "Informational Briefing on the Trans-Boundary Pollution Crisis in the Tijuana River and Tijuana River Valley." Presented at the Meeting of the Coastal Commission, Imperial Beach CA 91932, October 11, 2023. https://cal-span.org/meeting/ccc_20231011/.

[13] Giner, Dr Maria-Elena, and USIBWC Commissioner. "South Bay International WWTP Expansion Project," October 11, 2023. https://cal-span.org/meeting/ccc_20231011/.

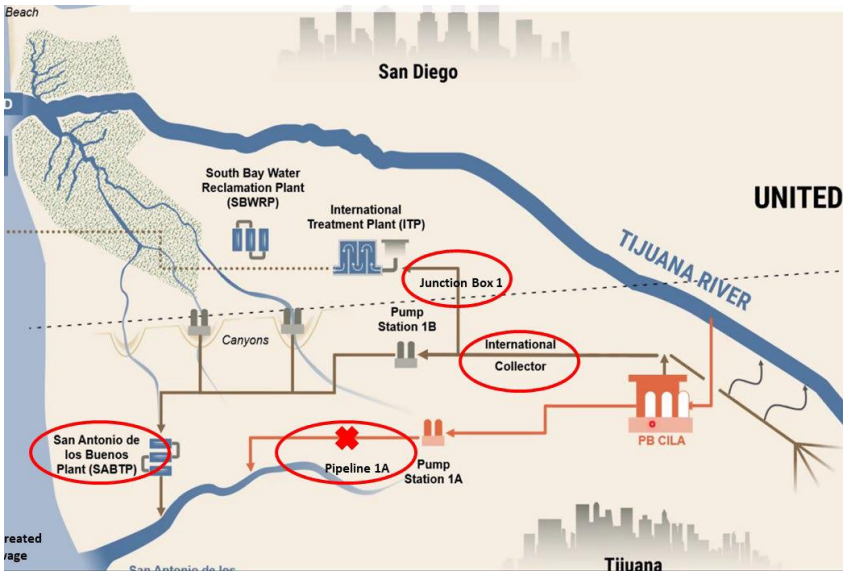

Figure 6

What are the impacts?

Transboundary flows have a severe impact on the region's economy, the environment, and the health of the surrounding communities. Transboundary flows containing raw sewage, waste tires, trash, and sediment cause severe economic and environmental degradation because of the continued need to excavate, haul, and dispose of the pollution in the Tijuana River Valley. Poor water quality and exposure to dangerous pollutants has limited public access to beaches and has even threatened the health of border security personnel and the U.S. military.

According to the County of San Diego, more than 100 billion gallons of toxic waste have crossed the border since 2018 and more than 35 billion gallons have crossed the border since December 28, 2022.[14] The surrounding communities, closest to the border, have a designation as "Disadvantaged Communities" by the state and CalEnviroScreen has shown that these communities deal with high pollution burdens for impaired water bodies, elevated PM 2.5., elevated linguistic isolation and poverty rates. [15] The community is mostly a working-class Latino community with high levels of poverty.

The federal government lists the Tijuana River Valley as impaired water bodies on the Clean Water Act section 393(d) list of impaired water bodies because of excessive levels of bacteria, heavy metals, trash, sediment, and other pollutants. The estuary is one of the largest remaining coastal wetlands in southern California. According to WildCoast, the watershed presents over "18,000 acres of some of the most ecologically significant coastal, marine, and island ecosystems on the Pacific Coast".[16] These ecosystems include: "the Tijuana River National Estuarine Research Reserve (2,293 acres), Tijuana River Valley Regional Park Preserve (1,800 acres), Tijuana River

[14] County of San Diego Board of Supervisors. "PROCLAMATION OF A LOCAL EMERGENCY FOR U.S.-MEXICO TRANSBOUNDARY POLLUTION ENVIRONMENTAL CRISIS AND REQUEST FOR FEDERAL STATE OF EMERGENCY," June 27, 2023. https://bosagenda.sandiegocounty.gov/cobservice/cosd/cob/content?id=0901127e80fe305d.

[15] County of San Diego Board of Supervisors. "PROCLAMATION OF A LOCAL EMERGENCY FOR U.S.-MEXICO TRANSBOUNDARY POLLUTION ENVIRONMENTAL CRISIS AND REQUEST FOR FEDERAL STATE OF EMERGENCY," June 27, 2023. https://bosagenda.sandiegocounty.gov/cobservice/cosd/cob/content?id=0901127e80fe305d.

[16] Aguirre, Paloma. "Issue Briefing Tijuana River Pollution," n.d. https://wildcoast.org/wp-content/uploads/2019/08/Issue-Briefing-Tijuana-River-Pollution.pdf.

Mouth State Marine Conservation Area (1,930 acres), San Diego Bay National Wildlife Refuge (3,940 acres); and the Coronado Islands, part of the Biosphere Reserve of the Pacific Islands (45,786 acres)". The estuary is an important stop for over 300 bird species, including endangered and threatened species, and the Marine Conservation Area provides habitat for numerous marine species. Not only is pollution an issue, but waste-tires and plastic pollution pose a major threat to the environment and public health.

The discharge of raw sewage and other waste through the Tijuana River Valley poses serious public health risks from untreated and partially treated human and industrial wastewater that contains toxins and bacterial and viral pathogens, E. coli, vibrio and salmonella, all of which have been detected in the surf zone of the Tijuana River during both wet and dry weather.[17] Research at Scripps Institution of Oceanography has identified that sewage associated bacteria flowing into Coastal waters from the Tijuana River has become aerosolized and exposes many people along the coast. [18] Scripps also attributed 34,000 illnesses in 2017 to water quality pollution in Imperial Beach.[19] Reports of illness include swimmers and lifeguards who have been exposed to serious health risks, including hepatitis or gastrointestinal problems. Transboundary flows have even impacted U.S. Customs and Border Protection (CBP) and U.S. Navy trainings. Reports include the relocation and cancellation of U.S. Navy training activities[20] and exposure to dangerous pathogens for migrants and border patrol agents. Cases of Hepatitis A, MRSA, and even flesh-eating bacteria have been reportedly linked to exposure in the South Bay.[21] Surrounding emergency and urgent care centers have noted an increase in illness when there is an increase in transboundary flows. [22]

The pollution also poses a grave threat to the economy of South Bay. Beach tourism is an important part of the economy of South Bay communities. Beach closures and beach advisories impact the revenue and livelihoods of businesses and residents in the community. Businesses have reported major reductions in their revenue because people do not visit the beach. According to San Diego County, "due to sewage impacts, the Tijuana Shoreline has been closed to water contact since December 8, 2021 and the Imperial Beach shoreline has been closed to water contact since December 28, 2022."[23] Odor and air quality present a huge threat to businesses and residents alike.

Notable Efforts

Locals have led efforts to address transboundary flows of pollution for decades. Since 1993, the City of San Diego has declared an ongoing state of emergency due to the serious public health

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[17] Allsing, Nicholas, Scott T. Kelley, Alexandra N. Fox, and Karilyn E. Sant. "Metagenomic Analysis of Microbial Contamination in the U.S. Portion of the Tijuana River Watershed." *International Journal of Environmental Research and Public Health* 20, no. 1 (December 29, 2022): 600. https://doi.org/10.3390/ijerph20010600.

[18] Pendergraft, Matthew A., Pedro Belda-Ferre, Daniel Petras, Clare K. Morris, Brock A. Mitts, Allegra T. Aron, MacKenzie Bryant, et al. "Bacterial and Chemical Evidence of Coastal Water Pollution from the Tijuana River in Sea Spray Aerosol." *Environmental Science & Technology* 57, no. 10 (March 14, 2023): 4071–81. https://doi.org/10.1021/acs.est.2c02312.

[19] Feddersen, Falk, Alexandria B. Boehm, Sarah N. Giddings, Xiaodong Wu, and Doug Liden. "Modeling Untreated Wastewater Evolution and Swimmer Illness for Four Wastewater Infrastructure Scenarios in the San Diego-Tijuana (US/MX) Border Region." *GeoHealth* 5, no. 11 (2021): e2021GH000490. https://doi.org/10.1029/2021GH000490.

[20] Navy Region Southwest. (2022). U.S. House of Representatives Armed Services Committee: Tijuana River Sewage Impacts on Training/Training Ranges. https://www.govinfo.gov/content/pkg/CRPT-117hrpt118/html/CRPT-117hrpt118.htm

[21] "Toxic Border Pollution Sickens US Border Patrol Agents." Accessed November 25, 2023. https://www.surfrider.org/news/the-impact-of-toxic-border-pollution-on-us-border-patrol.

[22] "Video: California Coastal Commission- Oct. 11, 2023, 9 a.m. CAL-SPAN." Accessed November 24, 2023. https://calspan.org/meeting/ccc_20231011/.

[23] County of San Diego Board of Supervisors. "PROCLAMATION OF A LOCAL EMERGENCY FOR U.S.-MEXICO TRANSBOUNDARY POLLUTION ENVIRONMENTAL CRISIS AND REQUEST FOR FEDERAL STATE OF EMERGENCY," June 27, 2023. https://bosagenda.sandiegocounty.gov/cobservice/cosd/cob/content?id=0901127e80fe305d.

risks that arise from untreated and partially treated human and industrial waste flowing through our waters. Since 2018, the City of Imperial Beach has also declared a continued state of emergency. Earlier this year, June 2023, the County of San Diego declared a state of emergency. Advocacy groups, nonprofit organizations, academia, and residents have been integral in finding a solution.

In 2018, the Cities of Imperial Beach and Chula Vista, and the Port of San Diego filed a lawsuit against the U.S. IBWC for violations of the Clean Water Act and the Resource Conservation and Recovery Act. This action was followed by separate court actions from the City of San Diego, the California San Diego Regional Water Quality Control Board, California State Lands Commission, and Surfrider Foundation. Last year, a settlement was reached that among other things, required the U.S. IBWC to "diligently mitigate water that flows across the border and regularly share information with stakeholders on its progress for a period of seven years".[24]

The San Diego Water Board has tracked impacts in the Tijuana River Valley for many years. The board has been working on developing Total Maximum Daily Loads (TMDLs) and a program of implementation for indicator bacteria and trash since 2018. These efforts had previously been suspended (since 2012) to focus on a stakeholder-based Tijuana River Valley Recovery Team Strategy. The team and strategy developed a vision for a healthy Tijuana River Watershed that included seven Priority Action Areas with 27 specific projects to reduce sediment and trash affecting water quality.[25] Although the waterboard has made substantial progress on several projects, the flows of waste across the border have not diminished, due to the massive scope of the problem. In February of 2017, one of the largest spills occurred, with an estimated 143- 230 million gallons of raw sewage pouring into the Tijuana River Valley.[26] The following year, the waterboard, through the Attorney General of California, sued the U.S. IBWC for violations of the Clean Water Act. In February of 2020, the waterboard issued an order requiring the U.S. IBWC to submit technical reports to identify the extent, magnitude, durations, trends, and risks associated with pathogens and pollutants that are discharged through the U.S. IBWC's infrastructure.[27] The waterboard has also consistently issued Notices of Violation to the U.S. IBWC for failure to comply with its discharge permit, most for exceeding the limit of 25 million gallons per day of flow from Mexico that should enter the plant.

In 2017, the Legislature reappropriated $500,000 from a 2014 California Wildlife, Coastal and Park Land Conservation Fund of 1988 for acquisition of lands in the Tijuana River Valley to fund a Needs Assesment that helped identify the 27 projects mentioned above. In 2019, the legislature approved $15 million for border pollution control projects in the Tijuana River Valley. Since then, California has invested more than $30 million to mitigate wastewater and pollution crossing the border.

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[24] California, State of. "Regional Leaders Announce Settlement in Tijuana River Valley Sewage Litigation | CA State Lands Commission." Accessed November 25, 2023. https://www.slc.ca.gov/collaborations/regional-leaders-announce-settlement-in-tijuana-river-valley-sewage-litigation/

[25] "Sewage Pollution within the Tijuana River Watershed | San Diego Regional Water Quality Control Board." Accessed November 27, 2023. https://www.waterboards.ca.gov/sandiego/water_issues/programs/tijuana_river_valley_strategy/sewage_issue.html.

[26] Minute 320 Binational Technical Team Water Quality Workgroup. "Report of Transboundary Bypass Flows into the Tijuana River." International Boundary and Water Commission, April 4, 2017. https://www.waterboards.ca.gov/rwqcb9/board_info/agendas/2017/Jun/item8/06_Item_8_SD6.pdf.

[27] "Sewage Pollution within the Tijuana River Watershed | San Diego Regional Water Quality Control Board." Accessed November 27, 2023. https://www.waterboards.ca.gov/sandiego/water_issues/programs/tijuana_river_valley_strategy/sewage_issue.html.

In 2020, the U.S. Government, after substantial advocacy and because of the leadership of the San Diego congressional delegation, committed $300 million in the United States-Mexico-Canada Agreement (USMCA).

In 2022, the IBWC agreed to invest $474 million and signed Minute No. 328, "Sanitation Infrastructure Projects in San Diego, California – Tijuana, Baja California for Immediate Implementation and for Future Development," which outlined sanitation projects to be constructed in San Diego and Tijuana using $330 million dollars from the U.S. government and $144 million dollars from the Mexican government.[28]

Earlier this year, through the 2023-24 budget, the Legislature approved $3 million to develop a model to forecast the presence of pathogens in San Diego coastal and tidal waters and help measure the effectiveness of potential projects in the Tijuana River Valley. Chairman Padilla, joined by a bipartisan coalition of state legislators in the San Diego delegation, requested $3 million in the state's budget to be allocated for Scripps to create and administer the forecast model.

Most recently, efforts regarding the Tijuana River Valley have coalesced around a request for $310 million dollars, made by the late Senator Feinstein and Senator Padilla, along with a state and federal emergency declaration. San Diego area legislators, the San Diego County Board of Supervisors, 18 San Diego County Mayors, and 40 community-based organizations have sent letters making a request to state and federal declaration of emergency and similar letters were submitted in support of the $310 million dollar ask. In July, Representatives Scott Peters, Vargas, Jacobs, and Levin submitted an amendment to the 2024 National Defense Authorization Act (NDAA) calling for a federal Emergency Declaration for Tijuana River Valley and submitted a letter making the request to the Biden administration.

Following this request, Governor Newsom, Senate President pro Tempore Toni Atkins, and Speaker of the Assembly Robert Rivas, submitted a letter urgently requesting the federal government address this federal responsibility. On September 1st, 2023, Assistant Administrator of the Office of Water, Radhika Fox, and USIBWC Commissioner Dr. Maria-Elena Giner, provided an update regarding the federal government's project to rehabilitate and expand the South Bay International Wastewater Treatment Plant (SBIWTP) in San Ysidro. Testimony before this committee will provide more details regarding the federal government's efforts.

On October 10, 2023, the Office of Governor Newsom responded to requests to proclaim a state of emergency related to the Tijuana. In their response, the Office noted that "the Governor's emergency powers extend to waiving only *state* statute and regulations" and given that the project is under federal jurisdiction, a state proclamation cannot "accelerate *federal* work needed on this federal facility that is in a federally-controlled area on an international border". The letter also outlined that because of this same reason, "a state proclamation of emergency is not necessary to trigger a federal emergency declaration". The letter cited Section 501 of the Stafford Act, which "specifically provides that the President may declare an emergency in a situation where the primary responsibility for emergency response belongs to the federal government because it involved an

[28] US EPA, OA. "U.S. and Mexico Agree to Invest $474M to Address Tijuana River Sewage Problem." News Release, August 18, 2022. California. https://www.epa.gov/newsreleases/us-and-mexico-agree-invest-474m-address-tijuana-river-sewage-problem.

area for which exclusive or preeminent responsibility and authority rests with the federal government (41 U.S.C. § 5191 (b))".

On October 25, 2023, the Biden-Harris Administration requested $310 million to expand wastewater treatment as part of their supplemental funding request before congress.

Declaration of Emergencies

At the state level, the process to declare a state of emergency is delineated under California Government Code Section 8625. The Governor is empowered to proclaim an emergency when: 1) he finds that the circumstances described fit the definition of state of emergency; and 2) he is requested to do so by the Mayor of a city or the Chairperson of a County Board of Supervisors or he finds that the local authority is inadequate to cope with the emergency. A State of Emergency is defined as follows:

> "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, electromagnetic pulse attack, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a "state of war emergency," which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the Public Utilities Commission.

Once an emergency declaration is made, the Governor is empowered with certain abilities. These include:

- Having complete authority over all agencies of the state government and can promulgate, issue, and enforce orders and regulations he deems necessary
- Can direct all agencies of the state government to utilize and employ state personnel, equipment, and facilities for the performance of any and all activities designed to prevent or alleviate actual and potential damage
- He can direct agencies to provide supplemental services and equipment to restore any services lost that are needed to provide for the health and safety of the citizens of the affected area.
- Any agency so directed by the Governor may expend any of the moneys which have been appropriated to it in performing such activities, irrespective of the particular purpose for which the money was appropriated.

At the federal level, the Stafford Act governs emergency declarations. According to the Congressional Research Bureau, there are two ways an emergency declaration can be made: a request can be made by a Governor or Tribal Chief Executive and must meet all statutory and regulatory requirements for such declaration, or an emergency declaration can be made when primary responsibility rests with the federal government. This does not preclude or prevent a Governor from declaring a state of emergency for other unmet needs.

The Stafford Act allows the President to issue either "emergency" or "major disaster" declarations, with emergency being broadly defined. The type of declaration will determine what type of resources are made available. Table 1 shows a list of the forms of assistance available under each type of declaration. [29]

Table 1

Table 1. Assistance Available under Stafford Act Declarations

	Emergency Declaration	Major Disaster Declaration
Public Assistance (PA)	Emergency Work	Emergency Work
	Category A – Debris Removal	Category A – Debris Removal
	Category B – Emergency Protective Measures	Category B – Emergency Protective Measures
		Permanent Work
		Categories C-G – Restoration of damaged facilities
Individual Assistance (IA)	Individuals and Households Program (IHP)	IHP
		Crisis Counseling Program
		Disaster Case Management
		Disaster Unemployment Assistance
		Disaster Legal Services
		Disaster Supplemental Nutrition Assistance Program
Hazard Mitigation Assistance (HMA)	Not Available	Hazard Mitigation Grant Program

Source: FEMA, "The Disaster Declaration Process."

The declarations authorize Public Assistance (PA), to provide financial support to state, territorial, or tribal government's ability to respond to the crisis. The common types of PA include debris removal and emergency protective measures. The resources are then granted to the state level actor, who can then sub-grant to other entities. The amount of money that can be awarded for any single applicant or declaration is not limited but the President must notify Congress when expenditures exceed $5 million.

Considerations for the Committee

The federal government made available $300 million through the USMCA that was intended to expand the capacity of wastewater treatment in the region. In 2020, the EPA began a process to assess potential infrastructure solutions. Through this process, the EPA evaluated and developed a Comprehensive Infrastructure Solution, which is estimated to cost $627 million dollars, $26 million annually for operations and maintenance, and $1.6 billion over a 40-year cycle (see figure 7).[30] The solution includes the following improvements:

On the U.S. side:

- Expand the South Bay International Wastewater Treatment Plant (ITP) to double its capacity;
- Build a new advanced primary wastewater treatment plant to receive and treat water from Tijuana River;
- Direct canyon flows to the expanded ITP; and
- Install a river trash boom;

On the Mexico side:

- Repairing portions of the collection system in Mexico to prevent sewage leaks;

[29] Lee, Erica A, Bruce R Lindsay, and Elizabeth M Webster. "The Stafford Act Emergency Declaration for COVID-19," March 13, 2020. https://crsreports.congress.gov/product/pdf/IN/IN11251.

[30] "Comprehesive Solution Fact Sheet." EPA, n.d. https://www.epa.gov/system/files/documents/2021-11/cis-factsheet-110221.pdf.

- Reuse treated wastewater for beneficial uses instead of discharging it into the Tijuana River; and
- Constructing a new San Antonio de los Buenos Treatment Plant in Tijuana.

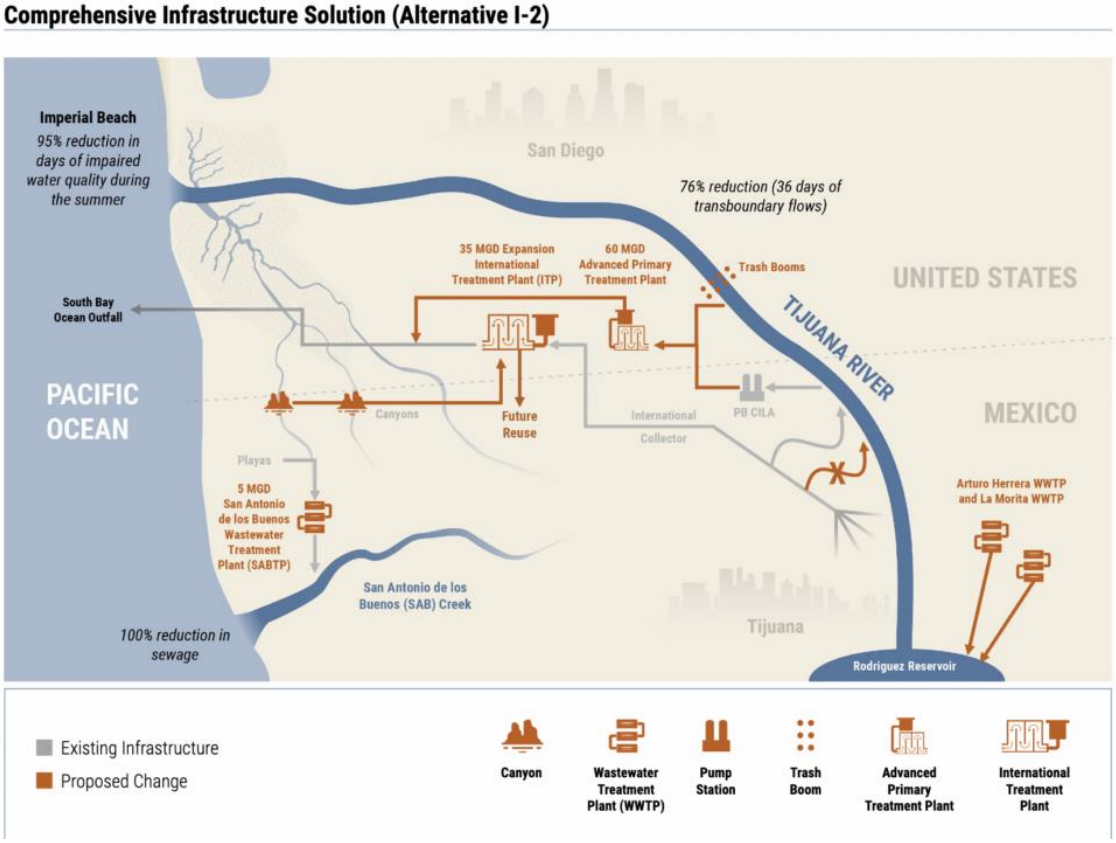

Figure 7

Unfortunately, the plant is also is desperate need of repairs because of deferred maintenance estimated to cost about $150 million. Tropical Storm Hilary only worsened the need for repairs, costing about $8 million dollars. Even if funding is ultimately secured, given the rate of Tijuana's population growth, pressures on the network will only continue to grow.

The upgrades to the plant, for which funding is currently available, are expected to take some time, and securing the additional funding needed has been and will continue to be a challenge. This will only further delay the implementation and development of the Comprehensive Solution. Local, state, and federal leaders have all requested that the federal government declare an emergency over the Tijuana River Valley.

The committee will hear testimony from federal representatives from the Environmental Protection Agency and the U.S. IBWC. The committee may wish to ask the following:

- *How and why did deterioration of the South Bay International Wastewater Treatment Plant occur?*
- *In what ways does the federal government partner with state and local stakeholders?*
- *What are the next steps and timeline for short-term and long-term project development to address transboundary flows?*
- *What mechanisms are in place to ensure compliance with timeline?*

- *What challenges exists for short-term and long-term project development?*
- *How will the IBWC maintain improvements to its facilities? What funding is available for these purposes?*
- *Did the IBWC consider population growth in the development of the Comprehensive Solution?*
- *Given the potential growing pressures on the system and need for additional funding, has there been consideration of the development or identification of a permanent funding stream or source?*
- *Has the EPA and IBWC considered existing funding opportunities given the administration's focus on environmental justice?*
- *Would an emergency declaration by the Biden administration help speed up development of the project in the short-term and over the course of the construction of the Comprehesive Solution? Would it make funding available?*

The state of California has invested millions of dollars in resources to mitigate the impacts of this federal responsibility. Resources have been allocated to haul and dispose of cross-border pollution. Much of the pollution impacting the Tijuana River Valley includes plastic and waste tires. State law requires the California Department of Resources Recycling and Recovery, or CalRecycle, in coordination with the California Environmental Protection Agency (CalEPA), to engage in California-Mexico border region waste tire activity. The California-Mexico Border Relations Council, under CalEPA, was required by statute in 2015 to establish the Border Region Solid Waste Working Group "to develop and coordinate long-term solutions to address and remediate problems associated with waste tires, solid waste, and excessive sedimentation along the border". It also requires the Council to identify and recommend to the Legislature changes in law necessary to remediate the impact of waste management problems. In 2017, the Working Group released the "Solid Waste & Waste Tire Strategic Plan". In 2022, legislation was approved by the Governor that required the strengthening of the California tire tracking system since these used tires may end up back in California as waste tires that have not been properly disposed of. The waterboard has regulatory and enforcement authority over discharges into state waters and has issued Notices of Violation for continued transboundary flows of pollution.

The committee will hear testimony from CalEPA and a representative from the waterboard will be available for questions. The committee may wish to ask the following:

- *What is the status of efforts by CalEPA, the Border Relations Council, CalRecycle, and the Solid Waste Working Group?*
- *How much staff is working on this issue? What resources might be needed to deploy the full regulatory, oversight, and enforcement authority of your respective agencies?*
- *How does your agency deal with emergency declarations?*
- *What is the status of any enforcement actions on behalf of the waterboard?*
- *What resources, tools, and mechanisms are at the disposal of CalEPA and the waterboard to ensure maintenance and upgrades to the plant occur in a timely manner?*
- *What efforts are underway or have been taken by CalEPA to help secure federal funding?*
- *Has CalEPA or the waterboard identified any available federal funds given the Biden administration's focus on equity?*
- *What has guided the prioritization of available state funds?*

- *Are there any available updates regarding efforts to address waste tires and plastic pollution?*

Local communities have been enduring transboundary flows of pollution and leading advocacy efforts for decades. Research and anecdotal evidence has shown strong evidence showcasing the relationship between increased transboundary flows of pollution and increased illnesses and hospitalizations. Although a plan to address pollution exists and progress has been made to secure funding, transboundary flows of pollution have only worsened. Californians are rightfully disappointed and frustrated because of the continued exposure to pollutants, the foul air they breathe daily, and the decimation of their natural resources and local economy, all because of the continued failure to address this matter expeditiously.

The committee will hear testimony from the Mayor of Imperial Beach and representatives from Scripps. The committee may wish to ask them the following:

- *In what ways might a state and federal declaration of emergency help address transboundary flows of pollution?*
- *What does your research and experience tell us about the potential public health impacts of exposure to pollution from transboundary flows?*
- *How can the state best partner to mitigate exposure to transboundary flows and limit that exposure in the short-term?*
- *How do transboundary flows impact the local economy and the overall well-being of the region?*

Previous legislation:
a) AB 2248 (Garcia, 2022), vetoed, would have provided one hundred million dollars to the State Water Board from the state's General Fund, upon appropriation by the Legislature in the annual Budget Act or another statute, for grants and direct expenditures to address water quality problems arising in California-Mexico cross-border rivers

b) SB 1181 (Hueso), Chapter 542, Statutes of 2022, requires the Department of Resources Recycling and Recovery (CalRecycle) to strengthen the California tire tracking system to quantify more precisely the number of used tires flowing from California into the Mexican states of Baja California and Sonora.

c)SB 1301 (Hueso), Chapter 368, Statutes of 2020, requires, upon an appropriation by the Legislature, the California Environmental Protection Agency and the Natural Resources Agency to collaborate to create a Tijuana River Valley Watershed Action Plan, to be reviewed and updated on a 3-year cycle.

d) SB 690 (Hueso), Chapter 381, Statutes of 2019 encourages the SCC, when granting specified funds for the purposes of addressing transboundary flows and pollution in the TRV, to prioritize, to the extent feasible, those projects identified in statutorily required studies on the TRV.

e) SR 57 (Hueso, 2019) makes findings regarding the public health and environmental impacts of the discharge of raw sewage and other waste through the TRV and requested that Governor Newsom explore all available state resources, where feasible, to address the sewage crisis affecting the TRV, the Tijuana River Estuary, and surrounding residents.

f) AB 74 (Ting), Chapter 23, Statutes of 2019 appropriated $15 million from Proposition 68 to the SCC for the Tijuana River Border Pollution Control Project.

g) SB 1367 (Atkins), Chapter 738, Statutes of 2018 directs the San Diego River Conservancy to establish the Tijuana River Watershed Advisory Panel and prepare a strategic plan with specified information relating to the Tijuana River Watershed.

h) SB 507 (Hueso), Chapter 542, Statutes of 2017 appropriated $500,000 to the County of San Diego to update the 2012 TRV Recovery Team's "Recovery Strategy: Living with the Water" to include issues related to wastewater and runoff and a study focused on the improvement and protection of natural lands, including the main river channel, in the TRV.

i) SCR 90 (Hueso), Resolution Chapter 80, Statutes of 2014 declared the Legislature's intent to work with the TRV Recovery Team to take various actions to protect and preserve the TRV, to encourage collaboration with the team to protect and enhance our natural resources through improved management of sediment and trash, flood control, ecosystem management, and recreationand education, and to promote bilateral ties with Mexico that will be beneficial to the enhancement of one of California's most resilient ecosystems.

j) SB 167 (Ducheny, Chapter 333, Statutes of 2009) required the California Department of Resources Recycling and Recovery to include additional information relating to waste tires in the California-Mexico Border Region, and authorizes funds generated by the California tire fee to be used for related border activities.