

# United States Senate

August 29, 2023

The Honorable Chuck Schumer  
Majority Leader  
United States Senate  
Washington DC 20510

The Honorable Patty Murray  
Chair  
U.S. Senate Committee on  
Appropriations  
Washington DC 20510

Dear Leader Schumer and Chair Murray:

We write to request \$310 million in the upcoming supplemental to repair infrastructure needed to treat raw sewage spilling across the border from Mexico, fouling California beaches, degrading U.S. Navy readiness, and harming the health of Customs and Border Protection agents, U.S. Coast Guardsmen, and millions of Americans in Southern California.

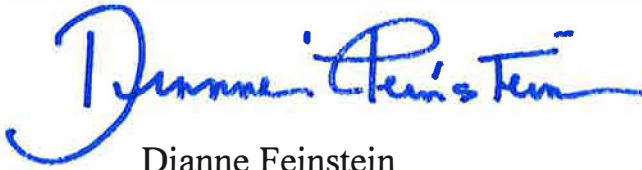
More than 100 billion gallons of toxic effluent have entered the United States through the Tijuana River since 2018, routinely pumping dangerous bacteria into regional waterways and closing beaches up and down the coast. Since 2017, the Customs and Border Protection union has notified us that agents suffer chemical burns, rashes, headaches, and other ailments from exposure to raw sewage and industrial and chemical discharge flowing across the border. While normal conditions overwhelm the system, Tropical Storm Hilary pushed hundreds-of-millions of gallons more of untreated stormwater and wastewater across the border, polluting nearby waterways and the ocean.

In 2019, the California delegation secured \$300 million in the U.S.-Mexico-Canada Agreement to expand the South Bay International Wastewater Treatment Plant from 25 million gallons per day to 50 million gallons per day, which will alleviate the pollution burden. However, the International Boundary and Water Commission (IBWC) and U.S. Environmental Protection Agency (EPA) have identified urgent repairs to the South Bay International Wastewater Treatment Plant (SBIWTP) that must be undertaken before expanding capacity.

We have attached letters from Governor Newsom, as well as the State of California Environmental Protection Agency and California Natural Resources Agency requesting urgent federal assistance.

Thank you for your attention to this matter. The recent historic storm underscores the urgency of the situation. We look forward to your response. If you have any questions, please do not hesitate to contact us.

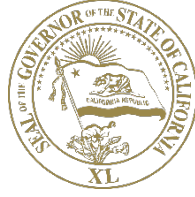
Sincerely,



Dianne Feinstein  
United States Senator



Alex Padilla  
United States Senator



## OFFICE OF THE GOVERNOR

August 9, 2023

The Honorable Chuck Schumer  
Majority Leader  
U.S. Senate  
Washington, D.C. 20510

The Honorable Hakeem Jeffries  
Minority Leader  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Majority Leader Schumer and Minority Leader Jeffries:

We write to request your urgent assistance to secure federal funding in a supplemental appropriations measure and the Administration's FY 2025 budget to repair the South Bay International Treatment Plant (ITP) in San Diego, California, which is owned and administered by the U.S. Section of the International Boundary and Water Commission (IBWC). As a result of needed upgrades and repairs to the ITP, untreated wastewater is polluting the beaches of Southern California, resulting in months of beach closures and an ongoing environmental and public health crisis. We need our federal partners to address this federal responsibility.

The ITP is in very poor condition and in non-compliance with its Clean Water Act discharge permit, impacting the United States Environmental Protection Agency and IBWC's ability to fulfill their commitments under the U.S.-Mexico-Canada Agreement Implementation Act. The ITP also requires upgrades to expand its capacity to treat increased amounts of wastewater. We urge you to build federal funding into a supplemental appropriations bill and your FY 2025 budget to address the much needed repairs and plant expansion. Without this funding, sewage will continue to flow untreated, contaminating the beaches of Southern California.

Over the last year, Southern California communities have experienced unprecedented beach closures. Imperial Beach was closed 249 days last year due to untreated sewage in the water, and has been closed for much of this year. Silver Strand has been closed for 122 days, and closures have extended north to Coronado, where beaches have been closed due to sewage for 51 days this year.

Transboundary pollution is not a new issue, but the heavy rains California experienced earlier this year strained the ITP's already aging infrastructure. Southern California communities urgently need federal action to address this environmental and public health crisis; they cannot afford further delays in funding and implementation.

In 2020, Congress appropriated \$300 million to the U.S. Environmental Protection Agency (EPA) through the U.S.-México-Canada Agreement implementing legislation to expand the ITP's treatment capacity and other infrastructure projects. We ask that you implore EPA and IBWC to utilize this existing funding immediately to complete the repairs and deferred maintenance that are necessary to proceed with the plant's expansion. In addition, we ask that you dedicate funding in a supplemental appropriations bill and your FY 2025 budget to complete construction of the expansion of the ITP so that it has the capacity to treat all wastewater before it enters the Tijuana River. This funding is critically important to stop the ongoing harmful discharges into the marine environment that are impacting ecosystems, species, and public health in coastal communities across San Diego County.

Thank you for your consideration of this request to secure the needed funding to address this acute problem affecting Californians.

Sincerely,



Gavin Newsom  
Governor of California



Toni G. Atkins  
Senate President pro Tempore



Robert Rivas  
Speaker of the Assembly



June 30, 2023

Senator Alex Padilla  
United States Senate  
112 Hart Senate Office Building  
Washington DC, 20510

Senator Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington DC, 20510

Congressman Scott Peters  
U.S. House of Representatives  
1201 Longworth, House Office Building  
Washington DC, 20515

Congresswoman Sara Jacobs  
U.S. House of Representatives  
1314 Longworth, House Office Building  
Washington DC, 20515

Congressman Juan Vargas  
U.S. House of Representatives  
2334 Rayburn, House Office Building  
Washington DC, 20515

**RE: Request for Additional Resources to Address Tijuana River Sewage Flows**

As California's Secretaries for Environmental Protection and Natural Resources and as Chairs of the California California-México Border Relations Council and the California Ocean Protection Council, we request your support in fulfilling federal commitments to the San Diego-Tijuana region under the U.S.-México-Canada Agreement (USMCA) as it relates to the South Bay International Treatment Plant (ITP) in San Diego, managed by the International Boundary and Water Commission (IBWC)<sup>1</sup>. On June 19, 2023, CalEPA made a similar request to Secretary of State Antony J. Blinken and U.S. Environmental Protection Agency (US EPA) Administrator Michael Regan.

The ITP is in non-compliance with its Clean Water Act (33 U.S.C. § 1251 et seq.) discharge permit<sup>2</sup>, resulting in impaired water quality discharges into the marine environment and impacting the US EPA and IBWC's ability to fulfill their commitments under the USMCA Implementation Act.<sup>3</sup>

Currently, all southern San Diego beaches, up to and including Coronado, are closed due to the human health and environmental risks posed by sewage flows from the

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<sup>1</sup> U.S. Env'tl. Protection Agency, U.S. Int'l Boundary & Water Comm'n, Joint Record of Decision for the Final Programmatic Environmental Impact Statement for United States-Mexico-Canada Agreement (June 6, 2023), <https://www.epa.gov/system/files/documents/2023-06/usmca-eis-record-decision.pdf>.

<sup>2</sup> State Water Resources Control Bd., Tijuana River Valley TMDLs for Indicator Bacteria and Trash (June 22, 2023) [https://www.waterboards.ca.gov/sandiego/water\\_issues/programs/tmdls/tijuanarivervalley.html](https://www.waterboards.ca.gov/sandiego/water_issues/programs/tmdls/tijuanarivervalley.html).

<sup>3</sup> 19 USC § 4501 (2020)

Tijuana River. This escalation resulted in the County of San Diego Board of Supervisors declaring a state of emergency on June 27, 2023.<sup>4</sup>

To fulfill federal commitments made to address cross boundary pollution and because we cannot afford to delay vital infrastructure, we ask that you include funding for the rehabilitation of the ITP in Fiscal Year 2024 appropriations bills.

The IBWC has requested additional resources to address these challenges and to repair essential ITP components necessary to comply with its Clean Water Act obligations and to begin the expansion work under the USMCA Implementation Act. Without the repair of these essential ITP components, U.S. EPA and IBWC cannot proceed with the ITP expansion.

### **Background**

In 2020, Congress appropriated \$300 million through the USMCA directing U.S. EPA to plan, design, and construct infrastructure to address the decades-old problem of transboundary pollution in the San Diego-Tijuana region; including flows contaminated with sewage, trash, and sediment.

Subsequently, in 2021, U.S. EPA developed a comprehensive infrastructure solution in coordination with IBWC and the USMCA Eligible Public Entities. This solution combines several projects that together will reduce sewage and wastewater in the Tijuana River. In July 2022, the U.S. and México signed Minute 328 and a bilateral Statement of Intent to launch a series of short- and long-term projects – the highest priority U.S. project is the expansion of the ITP from its current capacity of 25mgd to 50mgd.<sup>5</sup>

The communities in the San Diego-Tijuana region have long awaited major infrastructure investments to improve the impaired flows impacting human health and their coastal wetlands.

### **Deferred Maintenance**

In 2022, the IBWC conducted an evaluation of the ITP to identify rehabilitation needs in preparation for its expansion under the USMCA. The evaluation identified total rehabilitation needs ranging from \$116-\$245 million with the cost to rehabilitate essential components required before proceeding with expansion ranging from \$70-\$140 million.

During the recent May 4, 2023, meeting of the USMCA Eligible Public Entities stakeholder group, the IBWC explained that the significant rehabilitation needs are due to deferred maintenance given its limited operations and maintenance budget.

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<sup>4</sup> Cnty. of San Diego, *Proclamation of a Location 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>

<sup>5</sup>Minute No. 328, Sanitation Infrastructure Projects in San Diego, California – Tijuana, Baja California for Immediate Implementation and for Future Development, Mexico-U.S. International Boundary and Water Commission, § I(A), July 19, 2022.

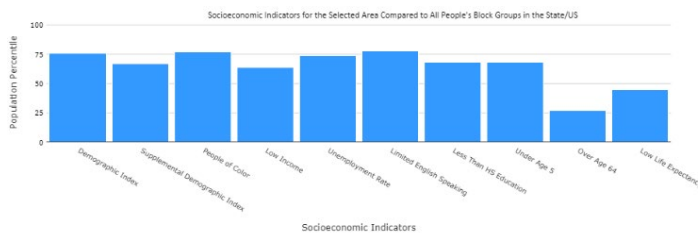
## Status of South Bay International Treatment Plant (ITP)

The ITP is currently operating but is in very poor condition<sup>6</sup> – its primary sedimentation tanks are off-line and the sluice gate that controls influent flows into the plant from Tijuana is inoperable.<sup>7</sup> Consequently, over the last year, IBWC has consistently violated its discharge permit under the Clean Water Act and has experienced over 100 permit limit exceedances resulting in impaired water quality discharges into the marine environment.<sup>8</sup>

Without proper repair of existing facilities, the plant cannot be expanded, which will result in continued beach closures; the beach immediately north of the border has been closed due to bacteria exceedances since December 8, 2021.

## Socioeconomic Indicators

According to census data the population within the Tijuana Estuary is over 60% Latino. CalEnviroScreen 4.0<sup>9</sup> also shows high levels of poverty and linguistic isolation in the area. Below is a graph from EJ Screen<sup>10</sup> that displays the socioeconomic indicators of Imperial Beach compared to the rest of the U.S. population. It is important to note the below data is for the City of Imperial Beach. Southeast City of San Diego communities are also within the Tijuana Estuary and have a higher number of people of color, higher rates of limited English speakers, and higher rates of people without a high school education compared to the City of Imperial Beach.<sup>11</sup>



<sup>6</sup>U.S. Env'tl. Protection Agency, *USMCA Mitigation of Contaminated Tijuana Transboundary Flows Project* (Nov. 19, 2021), <https://www.epa.gov/system/files/documents/2021-12/usmca-baseline-conditions-summary-technical-document.pdf>

<sup>7</sup> U.S. Env'tl. Protection Agency, *Feasibility Analysis for Project 3: Treat Wastewater from the International Collector at the South Bay International Wastewater Treatment Plant* (Sept. 17, 2021) [https://www.epa.gov/system/files/documents/2021-12/usmca-feasibility-analysis\\_project-3\\_expand-itp-for-ic-flow.pdf](https://www.epa.gov/system/files/documents/2021-12/usmca-feasibility-analysis_project-3_expand-itp-for-ic-flow.pdf)

<sup>8</sup> In 2018, in response to continued wastewater flows into the Tijuana River Valley within San Diego County, and alleged NPDES permit violations at the Plant, several lawsuits were filed in U.S. District Court against USIBWC, including one by the State (*People of the State of California ex rel. the San Diego Regional Water Quality Control Board, et al., v. International Boundary and Water Commission, United States Section*, No. 3:18-cv-02050-JM-JLB, which was resolved through a settlement agreement in April 2022. Plaintiffs settled that litigation in part because the USMCA comprehensive suite of projects would address transboundary flows.

<sup>9</sup> The CalEnviroScreen 4.0 tool shows cumulative impacts in California communities by census tract. Off. Env'tl. Health Hazard Asses, *CalEnviroScreen 4.0*, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.

<sup>10</sup> U.S. Env'tl. Protection Agency, *EJScreen Version 2.0*, <https://ejscreen.epa.gov/mapper/>.

<sup>11</sup> *Id.*

We must deliver on our cross-boundary promises, particularly as it aligns with the Biden-Harris Administration's approach to advancing environmental justice as affirmed by Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad<sup>12</sup> and Executive Order 14096 on Revitalizing Our Nation's Commitment to Environmental Justice for All<sup>13</sup>. Climate change will only exacerbate current conditions for the overburdened communities in the San Diego-Tijuana region if we do not act now.

As the interconnected border region of California and México continues to face unprecedented challenges, our collaboration has never been more important. Border affairs initiatives and relationships are a top priority for Governor Gavin Newsom, his administration, and the State of California, as we know they are also for the Biden-Harris administration. We look forward to continuing to build on our vital collaborative efforts. The IBWC and successful investment in capacity to treat transboundary wastewater is key to our success.

We thank you for your consideration of this request to use your congressional authority to request appropriations for the rehabilitation of the ITP and to fulfill Biden-Harris Administration's commitment to advancing environmental justice. Please let us know if you have any questions.



Yana Garcia  
Secretary for Environmental Protection

Chair, California-México  
Border Relations Council<sup>14</sup>



Wade Crowfoot  
Secretary for Natural Resources

Chair, California Ocean  
Protection Council<sup>15</sup>

CC: Tom Perez, Director, White House Office of Intergovernmental Affairs

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<sup>12</sup> Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Jan 27, 2021).

<sup>13</sup> Exec. Order No. 14,096, 88 Fed. Reg. 25251 (Apr. 21, 2023).

<sup>14</sup> The California-Mexico Border Relations Council is the central organizational body that coordinates interagency projects, programs, initiatives, and partnerships along the California-Mexico border. It also serves as a representative body of the State of California whose goal is to continue to develop and enhance cross-border relations between California and Mexico.

<sup>15</sup> The Ocean Protection Council is a Cabinet-level state body that works jointly with state and federal agencies, NGOs, tribes, and the public to ensure that California maintains healthy, resilient, and productive ocean and coastal ecosystems.