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Sent Via e-mail and 2-day Fedex

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State Water Resources Control Board
801 K Street, 23rd Floor
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Re: Response to the San Diego Regional Water Quality Control Board's Priorities for Addressing Cross-border Pollution

Dear Ms. Okamoto,

The United States Section of the International Boundary and Water Commission ("USIBWC") has received your message transmitting the San Diego Regional Water Quality Control Board's ("Water Board's") summary of proposed priority project concepts to address cross-border pollution in the Tijuana River Valley. As requested, this letter provides the USIBWC's response.

I. The IBWC and Border Sanitation

As you are aware, the IBWC is an international organization comprised of a United States Section ("USIBWC") and its Mexican counterpart, Comisión Internacional de Límites y Agua ("CILA"). In 1944, the United States and Mexico concluded the Treaty for Utilization of the Waters of the Colorado and Tijuana Rivers and of the Rio Grande ("Treaty"). Among other things, the Treaty authorized the IBWC to exercise the rights and obligations of both governments under the Treaty and to give attention to the issue of border sanitation.

The USIBWC's role in implementing the Treaty is a cooperative one that does not contemplate the sort of unilateral commitments and decisions on infrastructure investments outlined by the Water Board. The USIBWC cooperates with CILA to address transboundary water sanitation issues such as those impacting the Tijuana River, under the foreign policy guidance of the governments of the United States and Mexico. For example, when the IBWC exercises its binational authority under the Treaty, it may record its decisions by issuing Minutes, which must have the concurrence of the two governments and be consistent with applicable authorization and appropriations by national legislatures in both countries. During the development, negotiation, conclusion, and implementation of such Minutes the Department of

State may, when necessary, take an active diplomatic role in working with the government of Mexico to reach agreement. While the IBWC has successfully used the Minute process to take joint actions under the Treaty to improve boarder sanitation issues, solutions to binational issues of concern often take several years to develop and implement. Contrary to the suggestion in the Water Board's letter, the USIBWC's role under the 1944 Water Treaty does not make it the agency that, under U.S. law, is "responsible for managing transboundary trash, sewage, and sediment discharges" from Mexico.

Additionally, the USIBWC cannot commit to funding projects for which it has not received appropriations or for which it does not have the authority. The USIBWC is an executive branch agency that is under the overall budget supervision of the Office of Budget Management ("OMB"). USIBWC funding requests must go through the State Department to OMB to be considered for inclusion in the President's annual budget, and ultimately are subject to an appropriation by Congress and apportionment from OMB. There are of course many competing demands on the executive branch's annual budget.

It is within this context that the USIBWC works with CILA to find science-based solutions to border sanitation problems. Most recently, in October 2015, the United States and Mexico agreed upon Minute 320. This accord facilitates cooperation between the two nations by creating a a Binational Core Group ("BCG") that is charged with identifying projects that address pollution and sediment issues in the Tijuana River Valley basin. The BCG is led by the USIBWC and CILA, and includes federal, state, and local government representatives as well as non-governmental stakeholders from both sides of the border. To tackle the diverse issues of the Tijuana River watershed, the BCG created three bi-national working groups that focus on solid waste management, water quality, and sediment control. The working groups define and make recommendations for the execution of priority projects, arrange for their study, determine costs, and identify cooperative measures for funding—from study, to construction, to operation and maintenance. It is important to note that once priority projects are identified, studies are necessary to justify recommended projects, define scope of work, and seek the appropriate level of funding.

While there is still more work to do, the Minute 320 process has already identified tangible steps to improve the health of the Tijuana River Watershed and, ultimately, our border region's beaches and coastal waters. Furthermore, as detailed below, many, if not all, of the projects identified by the Water Board for priority have been identified by the Minute 320 working groups and are being addressed and considered as part of the Minute 320 process.

II. The South Bay International Wastewater Treatment Plant

In 1990, the IBWC entered into an international agreement, known as Minute 283, for the construction, operation, and maintenance of the South Bay International Wastewater Treatment Plant ("SBIWTP"). In the interest of addressing public health and environmental concerns as expeditiously as possible, Minute 283 located the SBIWTP in the United States because of the more stringent environmental standards, lack of Mexican funding, and a desire to apply the most appropriate technologies to address the sewage problem. Congress authorized the construction of the SBIWTP and appropriated necessary funds for its construction and operation. The SBIWTP's purpose is to capture (within the facilities' designed capacity), and treat to secondary

standards for eventual discharge in the Pacific Ocean, Tijuana wastewater that would otherwise flow into the United States through the Tijuana River and its tributaries.

The SBIWTP is owned and administered by the USIBWC and is operated and maintained by a private contractor. The SBIWTP's discharge to the Pacific Ocean through the South Bay Ocean Outfall is regulated under Order No. R9-2014-0009, National Pollutant Discharge Elimination System ("NPDES") Permit No. CA0108928, Waste Discharge Requirements for the United States Section of the International Boundary and Water Commission, South Bay International Wastewater Treatment Plant, Discharge to the Pacific Ocean Via the South Bay Ocean Outfall. The USIBWC does not handle, generate, contribute to, or otherwise discharge contaminated water or solid waste entering into the United States from Tijuana other than as permitted by its NPDES permit.

III. Tijuana River flows from Mexico

The Tijuana River flows from Mexico into the United States and discharges to the Pacific Ocean through the Tijuana River Estuary. At any given time, the flow of the river may consist of storm water, effluent from wastewater treatment plants located in Mexico, "fugitive" untreated wastewater flows, and other unidentified sources. Some of these flow components may impair the water quality of the river. River flows reaching the Pacific Ocean in the United States may lead to beach closures in San Diego County. In addition to water contaminants, the river may carry trash and debris, which, in addition to creating an environmental problem, may affect the operation of critical infrastructure.

Between 80% and 90% of dry-weather flows in the Tijuana River are treated wastewater discharges from upstream wastewater treatment facilities; the remainder is assumed to be uncontrolled raw sewage flows. Dry-weather flows in the Tijuana River averaging around 14 million gallons per day (613 liters-per-second, or "l/s") are captured in Tijuana and diverted from the river's main channel through the operation of Pump Station CILA and other Mexico-side infrastructure. But under certain circumstances, such as when there is a failure in Tijuana's sewer system or problems with the river diversion infrastructure, water may flow through the Tijuana River into the United States during dry weather.

The Tijuana River swells considerably during wet weather, when stormwater can increase its volume to well over one billion gallons per day. After almost any rain event, flows in the Tijuana River will exceed 27 million gallons per day (1,200 l/s), a level that surpasses Pump Station CILA's capacity. Under those conditions, Pump Station CILA and other Mexico-side diversion infrastructure in the main channel of the Tijuana River is shut down to prevent damage, and water flows from Mexico into the United States through the Tijuana River, which ultimately drains into the Pacific Ocean just south of Imperial Beach. Depending on the amount and frequency of rainfall, it may be days, weeks, or months, before the Tijuana River's flow falls below 27 million gallons per day, allowing Pump Station CILA and other Mexico-side diversion infrastructure to resume operation. Rainfall normally occurs in Tijuana between October and April, but rain events between April and October have been more common in recent years.

In addition to the main channel of the Tijuana River, water also flows across the international border through tributaries located in canyons and washes. During dry weather, some uncollected sewage as well as urban runoff may flow from Tijuana through some of these

tributaries and into the United States. Five of these tributaries contain "canyon collector" systems, which collect and divert some dry-weather transboundary flow for treatment at the SBIWTP. Canyon collectors are designed to capture only low-volume transboundary flows because the capture of higher-volume flows would stress the capacity of the SBIWTP.

Presently, residents in the San Diego region face a number of sanitation problems from stormwater runoff, and from trash, debris, and sewage entering into the United States from Mexico through the Tijuana River. The IBWC continues to work collaboratively to address issues concerning trash, sediment, storm water, and sewage pollution in the Tijuana River watershed.

IV. Water Board Priority Projects

The Water Board's summary outlines three project priorities identified during the Tijuana River Valley Transboundary Wastewater Workshop on December 12, 2017 ("Workshop"), plus one additional priority project, and seeks certain commitments from the USIBWC to address cross-border pollution. While the USIBWC believes that the project concepts set forth at the Workshop and further developed and proposed by the Water Board have promise, it does not have the regulatory, statutory, or legal authority to make the types of commitments sought from the Water Board. Nevertheless, the USIBWC believes there has been significant progress in addressing the Water Board's specific areas of concern.

First, the North American Development Bank, in coordination with the U.S. Environmental Protection Agency, the USIBWC and CILA, Mexico's National Water Commission, and the Tijuana Water and Wastewater Utility, is developing a strategy to identify infrastructure and/or operational improvements to mitigate transboundary flows in the Tijuana River. More specifically, the North American Development Bank is funding a feasibility study ("Tijuana River Diversion Infrastructure Study") to provide analysis and recommendations related to an overall diagnostic of the transboundary flows in the San Diego border region. The study is expected to identify potential operational improvements and infrastructure upgrades in both the United States and Mexico. Funds for this study have been fully committed and contractors have submitted proposals. The North American Development Bank expects to select a contractor by April 2018 and work is expected to be completed by December 2018.

The Tijuana River Diversion Infrastructure Study is essential to understanding how to best control cross-border pollution. The study will identify technically feasible alternatives to address: 1) dry-weather transboundary flows in the main channel of the Tijuana River; 2) the expansion of existing infrastructure and/or construction of complementary infrastructure; and 3) options to optimize operations of existing facilities during and after a rain event. The Tijuana River Diversion Infrastructure Study is also essential to understanding and justifying the capital and operation and maintenance costs necessary for each alternative considered.

Next, through the Minute 320 framework, the BCG's Sediment Work Group has recommended and completed a Scope of Work to conduct a feasibility study for the location and sizing of sediment basin(s) in the Tijuana River and tributary washes. The Scope of Work includes analysis for sediment basins in the main channel of the Tijuana River and Smuggler's Gulch and an optional third sediment basin in an area to be determined. This study is essential to identify potential locations and estimate construction and operation and maintenance costs for

the proposed sediment basins. Additionally, as intended by the framework of Minute 320, members of the BCG's Sediment Control Group also considered and discussed how best to move the feasibility study forward through funding partnerships with state and local governments and non-governmental organizations. As part of the Minute 320 process and recommendation, San Diego County has identified funds that could move the study forward and the USIBWC is looking at its existing appropriation to determine whether it can divert existing funds to assist with the study's cost. The USIBWC will make this determination as quickly as possible.

Third, also through the Minute 320 framework, the BCG's Water Quality Work Group has proposed a number of improvements to the efficiency of Tijuana's River diversion infrastructure, several of which have been adopted by Mexico. As discussed above, when the CILA pump stations shuts down, the Tijuana River flows into the United States. The work done by the BCG's Water Quality Work Group has resulted in: (1) $39.2 million pesos ($2.2 million dollars) in Mexican investments in equipment needed to address emergency situations in Tijuana's wastewater collection system; (2) the installation of flow meters in the United States and Mexico to provide information about the status of the pump and river flow and provide real-time alerts of any transboundary flows not captured at the pump station or debris that may be impeding pump operations; (3) a Mexican protocol governing communication lines from the various agencies in Mexico to CILA and an binational protocol providing for the notification from Mexican Section to the USIBWC and the affected stakeholders in the United States; (4) a Tijuana Master Plan to evaluate and address needs for repairing and expanding current infrastructure in Mexico; (5) $68.6 million pesos ($3.9 million dollars) in Mexican investments in Tijuana infrastructure works; and (6) a binational technical committee to conduct routine, binational observations of the system. While these achievements do not eliminate all flows from crossing into the United States, they help to decrease the number of dry-weather transboundary flows, which are typically the result of power outages at Pump Station CILA, trash-blocked intakes, or other operational problems.

Fourth, also through the Minute 320 framework, the BCG's Solid Waste Management Work Group has recommended and completed a Scope of Work to conduct a feasibility study for the location and costs for three additional trash booms in the main stem of the Tijuana River. Flows in the Tijuana River and tributaries carry solid waste that is not properly disposed and deposits that waste at locations in the main channel of the Tijuana River Valley.

Trash removal occurs in both countries on a periodic basis by various public agencies and non-governmental organizations during community cleanup events. There is an existing trash boom at Goat Canyon and there are plans to install an additional trash boom at Smugglers Gulch. The objective of the proposed Trash Boom Feasibility Study is consideration of additional trash booms to consolidate the trash and facilitate collection and disposal, thereby protecting wetlands and riparian areas, and improving water quality. The Trash Boom Feasibility Study will cost approximately $150,000. Unfortunately, the USIBWC does not have funds to commit to this study at this time.

The USIBWC cannot enter into any agreement to expend funds unless Congress has authorized and appropriated funds for that particular purpose. When Minute 320 produces a recommendation or the USIBWC identifies a need that is within its authority to address, the USIBWC considers whether it falls within the scope of its existing appropriations and how it relates to its other priorities for potential future budget requests. The USIBWC, therefore,

continues to believe that proposed funding sources by, and cost shares with, its local and binational partners through the Minute 320 framework will provide the most expeditious path toward implementation.

V. Monitoring and Assessment Program

The USIBWC also has been working with the Water Board to develop a water and sediment quality monitoring and assessment program for the Tijuana River. In response to the Water Board's Tentative Investigative Order No. R9-2017-0135, the USIBWC proposed that its outfall-testing requirement in the NPDES permit be reduced so that it could redirect funds currently dedicated to ocean outfall testing (a funded permit requirement) and instead use those funds to test/monitor some of the land-based transboundary flows. The Water Board has not yet responded to the USIBWC's draft Memorandum of Agreement that would free up a currently available funding source for land-based testing. The USIBWC's proposed Memorandum of Agreement is attached to this letter for your continued review and consideration.

The USIBWC understands and appreciates the frustration of residents in the San Diego border region and remains fully committed to finding binational solutions to border sanitation issues in the Tijuana River watershed, consistent with its authority under the 1944 Treaty. The watershed management issues in this international river basin present technical, political, and financial challenges. It is within the context of Minute 320 – a framework that allows for the collaboration among federal, state, and community partners in the United States and Mexico – that the USIBWC can best work toward implementing the measures identified in your priority list.

Respectfully,

/s/ Debra J. Carfora
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