

State of California
Regional Water Quality Control Board
San Diego Region

Supplemental
EXECUTIVE OFFICER SUMMARY REPORT
May 9, 2007

ITEM: 10

SUBJECT: Status Report on Provision of Secondary Treatment for Effluent
from the International Wastewater Treatment Plant. (*Art Coe*)

SUPPORTING
DOCUMENTS:

7. Letter dated July 20, 2006 from U.S. EPA
8. Letter dated April 25, 2007 from U.S. EPA
9. May 3, 2007 Union-Tribune article
10. Development Agreement

SUP. DOC. 8



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

July 20, 2006

John H. Robertus
Executive Officer
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, California 92123-4353

Dear Mr. Robertus:

This is in response to your letter dated June 18, 2006 regarding the International Boundary and Water Commission - U.S. Section's NPDES Permit No. CA0108928 for the South Bay International Wastewater Treatment Plant and South Bay Ocean Outfall. Specifically, you requested guidance from the U.S. EPA concerning the Regional Board's regulatory role in issuing a revised NPDES permit for these facilities.

In your letter, you requested a response from U.S. EPA on a set of questions, which identified the concerns by the Regional Board in issuing a revised NPDES permit. Our response to these issues is as follows:

1. The Regional Board requested U.S. EPA's position regarding a scenario where the Regional Board refused to issue renewed or revised NPDES requirements for discharges of Mexican treated effluent to waters of the State until IBWC achieves compliance with Order No. 96-50.

Consistent with the Clean Water Act, the U.S. EPA acknowledges that, under the scenario described above, we would have no basis for objecting to a State decision not to issue an NPDES permit.

2. The Regional Board requested guidance regarding the appropriateness of issuing an NPDES permit for discharges of treated effluent originating in Mexico to waters of the State or U.S. that would not name IBWC as a discharger.

The U.S. EPA believes that the IBWC is legally required to obtain a NPDES permit and be a named permit holder until such time that they no longer own or operate any of the facilities that constitute the point source for the discharge.

Page Two

3. The Regional Board requested guidance regarding the appropriateness of issuing a joint NPDES permit to the IBWC and to contracted partners that operate and maintain sewage collection, conveyance, and treatment facilities in the U.S. and Mexico.

The U.S. EPA considers it to be allowable and appropriate under the Clean Water Act to include, along with the IBWC, appropriate contractor partners that may operate and maintain the type of facilities described above.

4. The Regional Board requested guidance regarding the appropriateness of issuing a NPDES permit for discharges of treated effluent from Mexican that does not include enforceable provisions for pretreatment, sanitary sewer overflow prevention and response, solids disposal and other activities that relate to facilities in the Mexico.

U.S. EPA understands the unique challenges posed by this permit and that it may not be feasible to include all of the provisions normally included in a NPDES permit. However, the U.S. Congress, through Public Law No. 106-457, has directed the IBWC to move forward with a secondary treatment facility in Mexico and, as such, a NPDES permit is necessary.

5. The Regional Board requested guidance regarding the possibility of the U.S. EPA objecting to the Regional Board's adoption of a NPDES permit that acknowledges that there will be little or no State oversight of discharge related activities in Mexico.

Again, the U.S. EPA acknowledges the unique challenges in regulating a treatment facility in Mexico with a discharge to State and U.S. waters. We acknowledge that discharge related activities occurring in Mexico may receive limited oversight by the Regional Board. However, U.S. EPA cannot make any definitive comments on the possibility of objecting to a draft permit until the permit has been submitted for review.

6. The Regional Board requested that the U.S. EPA consider providing contractor assistance to oversee discharge related activities in Mexico in lieu of such actions by the Regional Board.

At this time, the U.S. EPA can not commit funds that have yet to be appropriated to the agency. However, we will make every effort to make available resources from the U.S. EPA. We will also consult with the State regarding addressing this priority through the use of funds that have been allocated under Section 106 of the Clean Water Act. In addition to consulting with the California State Water Resources Control Board, we recognize the need to consult with appropriate Mexican authorities on this matter.

Page Three

7. With the confirmation that the South Bay Ocean Outfall discharge is within the 3 mile distance from the high tide line, the Regional Board requested guidance regarding the circumstances with which the US EPA would be compelled to assume the oversight of the discharge of Mexican treated effluent.

Since the discharge is in State waters, the only method for EPA to assume oversight of the permit would be if we object to the State's draft permit, and the draft permit is not revised to resolve EPA's objections.

Again, we appreciate all of your efforts in addressing this unique and challenging matter. If you would like to discuss any of the issues identified in this letter further, please contact me at 415-972-3572 or Nancy Woo, Associate Director, at 415-972-3409.

Sincerely,

Alexis Strauss 20 July 2008
Alexis Strauss, Director
Water Division

Cc: Carlos Marin, Commissioner, U.S. International Boundary and Water Commission
Celeste Cantú, Executive Director, State Water Resources Control Board
Lori Saldana, Assemblymember, California State Assembly
Mayda Winters, Councilmember, City of Imperial Beach
Scott Tulloch, Director, San Diego Metropolitan Wastewater Department



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

April 25, 2007

Carlos Pena
International Boundary and Water Commission
United States Section
4171 North Mesa Street, C-310
El Paso, Texas 79902

Dear Mr. Pena:

Thank you for the opportunity to review the draft Request for Proposal (RFP) package for the Design, Construction, and Operation and Maintenance Contract for the Minute 311 Sanitation Project (the "Project"). This letter is transmitting EPA's comments as an official representative on IBWC's Technical Advisory Committee for the project.

As you are aware, details regarding the project, such as the final site selection, are still under deliberation and were not included in the RFP. Specific information concerning the project's service area and the size and location of conveyance facilities were also not included in the RFP. Without this information, my comments are focused on the major issues regarding the RFP. I would appreciate an opportunity to review any new information concerning the project as it becomes available.

COMMENTS:

1. The RFP does not identify a specific wastewater treatment technology for the project. It is advisable that the RFP includes some selection criteria for the technology, such as technologies that can document their record of performance. Selection criteria are important to ensure the best use of federal funds and to avoid systems that may not be able to meet performance requirements.
2. The RFP does not include a peaking factor for the project. A specific peak flow capacity must be included in the RFP, since the design of the project must consider normal diurnal and seasonal fluctuations.
3. The RFP does not address all of the environmental commitments identified in the July 2005 "Final Supplemental Environmental Impact Statement (EIS) – Clean Water Act Compliance at the South Bay International Wastewater Treatment Plant." Please refer to Section 5 of the Final EIS for a complete list of commitments. Also, please be advised that a change in the project site, as identified in the above referenced EIS, may warrant an additional, and complete, review under the National Environmental Policy Act (NEPA).

4. The RFP includes a reference to lime stabilization for the sludge handling. Lime stabilization can create a higher volume of sewage sludge and a product which, historically, has not been adequate for reuse. EPA recommends that the IBWC consult with the Comisión Estatal de Servicios in Tijuana (CESP-T), the Mexican governmental agency responsible for the City of Tijuana's sludge disposal facility, for other preferable methods of sludge handling.

5. The RFP does not acknowledge the current activities by the IBWC and EPA to optimize the South Bay International Wastewater Treatment Plant (IWTP). Optimization, which is scheduled to begin within 30 days, will substantially improve the effluent discharged from the IWTP. Potentially, the effluent from the IWTP (and the influent to the project) may achieve 85% removal for total suspended solids (TSS). The RFP should note this potential change.

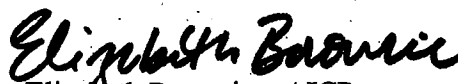
6. The RFP identifies a minimum requirement of only one wastewater treatment plant operator to be present at the project site. Currently, the South Bay International Wastewater Treatment Plant, a 25 mgd facility, functions with a minimum of two operators with a higher number during certain times of the day. EPA recommends that that the minimum number of operators be increased to ensure the highest level of performance.

7. The RFP includes references that the proposed project will only be required to meet NPDES permit limits if "acceptable influent" limits are also met. Since wastewater treatment facilities are rarely given a guarantee of influent quality, they are designed in such a way as to anticipation of fluctuations of influent quality, while still meeting NPDES permit requirements. EPA suggests including criteria for the selection of the treatment technology that would encourage flexibility to address these potential fluctuations.

In closing, EPA encourages the IBWC to begin immediate and robust discussions with San Diego Regional Water Quality Control Board regarding the project's NPDES permit. Input from the San Diego Regional Water Quality Control Board is essential to ensure that the RFP has the appropriate direction on requirements such as pretreatment, influent and effluent quality, etc. EPA also recommends that the IBWC use the existing NPDES permit as a minimum threshold for performance.

Please feel free to contact me if you have questions regarding these comments. I can be reached at 415.972.3419 or at borowiec.elizabeth@epa.gov.

Sincerely,


Elizabeth Borowiec, AICP
Project Manager

*The City Of
Imperial
Beach*

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OFFICE OF THE CITY COUNCIL
825 IMPERIAL BEACH BOULEVARD • IMPERIAL BEACH, CALIFORNIA 91932



April 20, 2007

Carlos Pena
U.S. International Boundary & Water Commission
4171 North Mesa Street, C-310
El Paso, TX 79902

RE: Comments on Draft RFP for Bajagua LLC, Bajagua Project Facilities, Design-Build-Operate Project

Dear Mr. Pena,

After careful review of the draft volumes provided in the RFP package and subsequent discussion at the Bi-National Technical Committee Meeting held April 18, 2007, we are submitting the following questions and comments. Many of our comments and questions were discussed and covered in the letter of April 19th, submitted by the State Water Resources Control Board; therefore we have not included them below.

Recognizing that these were draft documents, there were still many areas that lacked figures and details that were crucial for proper evaluation. Additionally, the supporting studies - e.g. flow and geotechnical data for pipeline - were not available at the time of the review. We would like to receive these reports and any other additional information that was not provided in the draft documents before finalized documents are provided to the contractors. Further discussion may be required by the committee and additional comments may be submitted for consideration based on new information. We trust we will be afforded that opportunity.

Volume I (Note that sections cited are not consistent between copies reviewed)

pg. 2 – 1.2 – 2. *Effective Treatment* – ... *proposed treatment unit processes to be commercially proven*... Proposal should cite at least 3 examples of where the proposed process is used successfully.

pg. 8 – 2.3 – *Environmental Review* - ... *change in treatment plant site location will require minimal U.S. environmental reviews*. Define "minimal" and time involved to complete and copy of opinion by IBWC stating this.

pg. 9 – 2.4 – *NPDES Permit* – It is anticipated that existing permit standards may be expanded to include additional Priority Pollutants. Shouldn't the permit discharge standards be established *before* the proposers develop their proposed treatment process?

Additionally, the original modeling for the SBOO discharge was based on the most current ocean data available *at the time*. Since then, Scripps (SIO) has established an ocean monitoring system and has collected over 4 years of data, specific to ocean currents in the south bay region. Recent plume tracking has shown that discharges from the SBOO are, in fact, reaching shore, perhaps skewing the accuracy of the original modeling and impacts of a proposed increase in discharge from 25 to 59. This should require additional review.

pg. 15 – 3.2.2 & 3.3 – *Treatment Facilities – Allow for integration with Reclaimed Water Facilities that are planned to be located at the Bajagua Treatment Plant site.* Reclamation facilities/processes are not part of the Public Law project, nor should *purchase* of the underlying land for those purposes. Language should be inserted in the RFP that specifies that any land set aside for future reclamation purposes must be identified in the proposal and if so, must be purchased by/conveyed to Bajagua LLC independently of the Public Law project.

pg. 25 – 5.2 *Bajagua Rights and Options -16. To award a contract based on initial proposals.* In light of the Sept. 2008 completion date and an aggressive schedule required to comply, this right invites a rush to decision. Associated change orders, additional costs and delays are inherent to such decisions. This provision should be removed.

pg. 26- 5.5 *No Contact with Elected Officials.... Why? Isn't that concomitant with a "fair and open procurement process"?*

Reiterate the comment made by the SWRCB re: "bypass provisions". Under *no* circumstances should this be allowed and language should be modified to prohibit.

Volume II

pg. 2 – Eliminate all language and references to "acceptable influent". Reiterate comments by SWRCB contractor should be responsible for treating *all* influent.

Volume III

5.6.3.4 *Laboratory-* All testing to determine compliance with NPDES permit standards should be performed by an off-site, independent, U.S. certified laboratory.

7.1 *Intent* – Does "granting relief" from influent that is not deemed "Acceptable" mean that effluent will be discharged through the SBOO that does not meet their NPDES permit standards? For how long and in what timeframe must remedy be sought? Will "granting relief" also grant the contractor immunity from penalties/fines or will permit *holder* be responsible for non-compliance?

8.3.2.3 *Municipality of Tijuana/Private Owners* – Has the City of Tijuana (and private landowners/businesses) been apprised of the magnitude of impacts that could be created by the construction of the pipeline? Have the terms of agreement or easements for construction of the pipeline on private land been obtained?

9.5.2 *Wastewater Flows or Water Quality Parameters Outside Acceptable Limits* – Reiterate comments by SWRCB that no flows should be permitted to “bypass” untreated or partially treated sewage for any reason whatsoever.

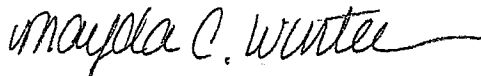
9.5.5 *Pipe Break or Sewage Spill* - If repairs necessitate the shutting down of the facility, the excess raw sewage not treated at the SBIWTP should be diverted back to Mexico for treatment through their system. Under no circumstances should raw sewage be diverted through the SBOO.

Table 17-1 : *Bajagua Project Permits* – Please identify status of all permits listed

Thank you for the opportunity to review these RFP documents. We are making every effort to provide comments in a timely manner and will continue to do so as additional information is available.

Should you have any questions, please feel free to contact me at 619-5-424-7303 or 619-575-0550.

Sincerely,



Mayda C. Winter
Mayor Pro Tempore

SUP. DOC. 7

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A deadline passes

Tijuana sewage treatment project still an open question

By Mike Lee

UNION-TRIBUNE STAFF WRITER

May 3, 2007

The fate of the U.S. government's long-delayed attempt to improve treatment of Tijuana sewage remained shrouded in mystery yesterday, despite a deadline that federal officials had set to complete several critical pieces of the costly proposal.

At least one major milestone – the execution of a construction contract – was missed. But the federal agency in charge of the project refused to answer questions about the contract, the financing or the regulatory approvals that were supposed to be in place by yesterday.

The lack of answers generated additional concern about a project that has been debated and delayed for several years.

“There appears to be no resolution in sight,” Imperial Beach Mayor James Janney said.

The U.S. International Boundary and Water Commission and a private partner, Bajagua LLC of San Marcos, are trying to improve treatment of wastewater produced by the agency's San Ysidro facility. The plant was built in the late 1990s to treat Tijuana River sewage, but the water it discharges off the South County coast has never met federal water-quality standards.

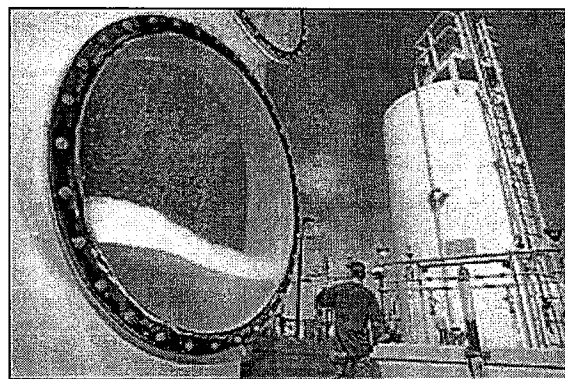
Bajagua wants to pipe water from San Ysidro to its proposed treatment facilities in Tijuana and then sell the reclaimed water to local businesses. The company and the boundary commission said last year that their development agreement could be terminated if Bajagua failed to perform any of its obligations by May 2.

A Bajagua spokesman said the company had done everything it could to uphold the deal, but that “bureaucratic and international factors” have prevented it from issuing a construction contract and filling a bank account to pay for the work.

The boundary commission “has not communicated to us how they intend to proceed,” said Craig Benedetto, spokesman for Bajagua. “We believe we have met our obligations and are awaiting a decision from them.”

Critics have complained that Bajagua got the sole-source project because of its political connections. They also have questioned whether the company can make good on its promises.

Company boosters say there are plenty of safeguards and that Bajagua can do the job well.



SCOTT LINNETT / Union-Tribune

The odor-reduction station is part of the U.S. International Boundary and Water Commission's treatment plant in San Ysidro. The plant was built in the late 1990s to treat Tijuana River sewage, but the water it discharges has never met federal water-quality standards.

If completed, Bajagua's project could cost U.S. taxpayers about \$600 million over 20 years of operation. However, the U.S. government still could scrap plans for the Bajagua plant and try to build another treatment facility near the existing one in San Ysidro.

In February, President Bush's budget request included \$66 million for a U.S. plant that would be available if the Bajagua project is canceled. At the time, a spokeswoman for boundary commission said domestic upgrades were "more efficient and less expensive" than construction in Tijuana.

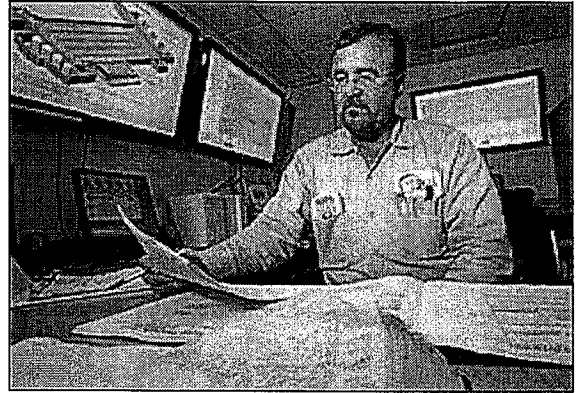
Yesterday, the Justice Department issued a one-sentence statement that left open the possibility that Bajagua's proposal wasn't the only one being evaluated. It said the government is "pursuing all available options to bring it into compliance with the Clean Water Act." Government lawyers refused to answer specific questions.

Even if the boundary commission sticks with Bajagua, it's not clear the government will pay for it. The president's budget request in February linked project funding for fiscal year 2008 to the parties' meeting the May 2 milestones.

Bajagua's plan also could be interrupted by U.S. District Judge Barry Ted Moskowitz. In June, he urged the boundary commission to get the project on track after regional water-pollution regulators complained about delays.

Moskowitz said he was prepared to order the agency to "formulate another plan" if "in the not-too-distant future, it becomes clear . . . that the Bajagua project will not" meet water treatment standards by September 2008.

The San Diego Regional Water Quality Control Board will review the issue May 9. Art Coe, a senior board staff member, said it doesn't appear that the boundary commission can meet the court-ordered deadline for water quality. He wouldn't speculate about how his agency's board would respond.



SCOTT LINNETT / Union-Tribune
Alberto Perez, shift supervisor for operations, monitored the sewage treatment process. Several parts of a proposal to improve treatment were supposed to be in place yesterday.

■Mike Lee: (619) 542-4570; mike.lee@uniontrib.com

Find this article at:

<http://www.signonsandiego.com/news/mexico/tijuana/20070503-9999-1m3bajagua.html>

Check the box to include the list of links referenced in the article.

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into as of the 14th day of February 2006 between the **United States Section of the International Boundary and Water Commission, United States and Mexico**, ("USIBWC" or "Grantor") and **Bajagua LLC**, a Delaware limited liability company ("Bajagua or Grantee").

BACKGROUND

- A. The USIBWC owns and operates the South Bay International Wastewater Treatment Plant (SBIWTP) located at 2415 Dairy Mart Road, San Diego County, San Diego, California, providing treatment of 25 million gallons per day (MGD) of wastewater from the City of Tijuana, Baja California, Mexico, and discharges effluent from the treatment plant through the South Bay Ocean Outfall (SBOO) to waters of the United States in the Pacific Ocean within the San Diego region. The SBOO is jointly owned and operated by the City of San Diego, California and the USIBWC. Discharges from the treatment plant have not complied with the effluent standards and limitations based on secondary treatment contained in the National Pollution Discharge Elimination System (NPDES) permit for carbonaceous biochemical oxygen demand ("CBOD") and total suspended solids ("TSS") or the effluent standards and limitations for acute and chronic toxicity. The treatment plant exceeds effluent limitations because it was built as an advanced primary treatment plant, and the USIBWC lacks funding to build a facility to provide secondary treatment.
- B. The Tijuana River Valley Estuary and Beach Cleanup Act of 2000, Pub. L. No 106-457 (the "Public Law, as amended"), amended by Pub. L. No. 108-425 (H.R. 4794), 118 Stat. 2420 (codified as amended at 22 U.S.C. 277d-43-46) (2004), authorizes and directs the USIBWC to provide for secondary wastewater treatment in Tijuana, Mexico for treating the effluent from the SBIWTP, if such treatment is not provided for at a facility in the United States, and additional sewage emanating from the Tijuana, Mexico area. The Public Law, as amended, provides that the USIBWC may enter into a fee for services contract with a contractor to carry out the secondary treatment requirement envisioned by the Public Law, as amended, and, subject to the availability of funds appropriated to it for this purpose, to make payments under such contract.
- C. The International Boundary and Water Commission, United States and Mexico have concluded IBWC Minute 311 (Recommendations For Secondary Treatment in Mexico of the Sewage Emanating from the Tijuana River Area in Baja California, Mexico). Minute 311 is an agreement that provides the framework for the design, construction, operation and maintenance of wastewater facilities in Mexico to provide secondary treatment for sewage originating in the Tijuana, Baja California, Mexico area, including sewage currently treated to the advanced primary level at the SBIWTP. Minute 311 contemplates, consistent with the Public Law, as amended, that facilities will be constructed, operated and maintained in Mexico through a public-private participation arrangement.
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- D. The United States District Court for the Southern District of California issued an Order Setting Compliance Schedule (the "Court Order") on December 6, 2004 in *People of the State of California, Ex Rel. The Regional Water Quality Control Board, San Diego Region. v. Duran*, Case No. 01-CV-0270-BTM (JFS) (consolidated with Case No. 99-CV-2441), which establishes several milestone dates that the USIBWC is required to meet in the process of bringing discharges from the SBIWTP into full compliance with applicable permits and legal requirements. The Court Order requires, among other dates, that the construction of facilities be completed not later than August 24, 2008 and that SBIWTP achieve full compliance with applicable effluent standards and limitations not later than September 30, 2008. Any schedule for completion of project facilities, including milestone dates, that is not in conformance with the Court Ordered Compliance Schedule is subject to approval by United States District Court.
- E. On September 30, 2005, USIBWC published a Record of Decision (ROD) for the Final Supplemental Environmental Impact Statement for Clean Water Act Compliance at the SBIWTP selecting the Public Law Alternative 4C, Option 1, Bajagua Project, LLC Proposal, for the design, construction, operation and maintenance of wastewater facilities in Mexico for achieving compliance with the Court Order and IBWC Minute 311. This alternative was selected with the provision that the proposed facilities to be designed and constructed under the alternative selected in the ROD are the subject of ongoing consultations with the Government of Mexico.
- F. Through a process consistent with the Public Law, as amended, and on the basis of further discussions with Grantee, Grantor wishes to confer upon Grantee, as Contractor to the USIBWC, the exclusive right to pursue a Fee-for-Services agreement for the acquisition of permits, approvals, financing and other prerequisites to the design, construction, ownership, operation, maintenance of facilities in Mexico intended to process 59 MGD of wastewater originally emanating from the Tijuana, Mexico area, in order to achieve, among other benefits, compliance with the Court Order in a manner consistent with the Public Law, as amended, and Minute 311. Such facilities will be located in the United States and in Mexico and will include a treatment plant, pipelines, pumping stations, disposal systems, and other subsystems that make-up a complete and useable wastewater treatment system.
- G. The Grantee wishes to obtain such exclusive right as Contractor to the USIBWC, with the intent that it will furnish, with oversight by the IBWC, all necessary financing, labor, management, supervision, concessions, authorizations, permits, equipment, supplies, materials, transportation, and any other incidental services for the complete ownership, operation, maintenance, repair, upgrades, and improvements to the wastewater treatment system.
- H. Grantee understands that nothing in the Public Law, as amended, waives the Anti-Deficiency Act, Title 31 U.S.C. Section 1341 et seq., and furthermore, that the Public Law, as amended, requires zero cancellation liability on the part of the USIBWC in connection with termination of this Agreement. **There is no full faith and credit of the United States pledged under this Agreement to make any payment to the Grantee for expenses or costs incurred prior to or during the non-binding negotiations of this**

Agreement, or for any costs incurred in the performance of work by Grantee after signature of the Agreement. USIBWC's obligation to make payments for wastewater treatment services rendered will be subject to the availability of annual funds duly appropriated by the U.S. Congress to it for such purpose. This Agreement does not constitute a guarantee of any current or future payments by the USIBWC and nothing in this Agreement shall be construed as requiring the U.S. Government to appropriate or obligate funds for any purpose, including but not limited to, the design, development, financing, permitting, construction, operation or maintenance of any wastewater facilities, or for repayment of any funds expended or committed by Grantee in connection with development of the Project Facilities, or for the treatment of wastewater utilizing the Project Facilities.

AGREEMENTS

ARTICLE I

DEFINITIONS

"Agreement" means this Development Agreement.

"BTC" means the Bi-National Technical Committee established by the IBWC pursuant to Minute 311.

"Court Order" means the Order Setting Compliance Schedule issued by the United States District court for the Southern District of California on December 6, 2004 in *People of the State of California Ex Rel The Regional Water Quality Control Board San Diego Region v. Duran*, Case No. 01-CV-0270-BTM (JFS) (consolidated with Case No. 98-CV-2441).

"Fee-for-Services Contract" means the contract for providing twenty years of wastewater treatment services to be negotiated by Grantor and Grantee on the basis of the Term Sheet.

"Grantee" means Bajagua, LLC, a Delaware limited liability company.

"Grantor" means United States Section, International Boundary and Water Commission, United States and Mexico.

"IBWC" means the International Boundary and Water Commission, United States and Mexico.

"Implementing Minute" has the meaning set forth in Section 4.2.

"Mexican Facilities" means the portion of the Project Facilities to be constructed and operated in the United Mexican States.

"Mexican Government" means the government of the United Mexican States.

"Mexican Section" means the Mexican Section, International Boundary and Water Commission, United States and Mexico.

"Minute 311" means IBWC Minute 311 (Recommendations for Secondary Treatment in Mexico of the Sewage Emanating from the Tijuana River Area in Baja California, Mexico), as formally approved by the U.S. Government on February 23, 2004 and by the Government of Mexico on March 3, 2004.

"Parties" means "Grantor" and "Grantee," each being individually a "Party."

"Project Facilities" means all land, easements, rights of way, pipelines, buildings, structures and equipment obtained, constructed or otherwise used or to be used by Grantee to provide secondary treatment for up to 25 MGD of primary treated wastewater discharged by the SBIWTP and up to 34 MGD of untreated wastewater discharged by sources in the Tijuana, Mexico area.

"Public Law, as amended" means the Tijuana River Valley Estuary and Beach Cleanup Act of 2000, Pub. L. No 106-457, amended by Pub. L. No. 108-425 (H.R. 4794), 118 Stat. 2420 (codified as amended at 22 U.S.C. 277d 43-46) (2004).

"RWQCB" means the Regional Water Quality Control Board, San Diego Region.

"SBIWTP" means the South Bay International Wastewater Treatment Plant located near San Diego, California.

"SBIWTP Land Use Agreement" has the meaning set forth in Section 3.4.

"SBOO" means the South Bay Ocean Outfall located off San Diego, California.

"Subcontract" means the contract to be awarded by Grantee for design, construction and operation of the Project Facilities.

"Term Sheet" means the non-binding Fee-for-Services Contract Term Sheet attached hereto as "Exhibit B".

"Uncontrollable Circumstances" means circumstances beyond the reasonable control of Grantee, including without limitation Acts of God, or of the public enemy, acts of government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. Uncontrollable Circumstances shall not include acts of the Mexican Government relating to the activities of Grantee described in Sections 3.1.

"U.S. Facilities" means the portion of the Project Facilities to be constructed and operated in the United States of America.

"U.S. Government" means the government of the United States of America.

ARTICLE II

GRANT OF EXCLUSIVE RIGHTS

2.1 Grant of Exclusive Development Rights. Until and unless this Agreement is terminated in accordance with the provision of Article 5:

(a) Grantor grants to Grantee the exclusive right as Contractor of the USIBWC to pursue the acquisition of permit approvals, financing and other prerequisites to the design, construction, ownership, operation and maintenance of all land, rights of way, facilities and services in Mexico to provide secondary treatment and effluent discharge for up to 25 MGD of advanced primary treated wastewater discharged by the SBIWTP and 34 MGD of untreated wastewater discharged by sources in the Tijuana, Mexico area, all subject to the terms and conditions required by the IBWC and the Government of Mexico.

(b) Grantor will not directly or indirectly grant any rights to any third party, nor authorize or permit any third party to undertake activities that are inconsistent with the rights granted to Grantee pursuant to Section 2.1(a), nor will Grantor provide to any third party any designation or characterization that would be inconsistent with the descriptions set forth in Section 2.1(b). This provision does not affect in any way the USIBWC's continuing and unimpeded operation or measures to achieve compliance with the NPDES permit of the SBIWTP and in no way prevents the USIBWC from recognizing the rights of the Mexican Section and the Government of Mexico. Furthermore, this provision in no way prevents the Government of Mexico from granting any rights, directly or indirectly, to any third party in Mexico which may be perceived as inconsistent with this Agreement.

2.2 Acknowledgement of Grantee Rights. Grantee acknowledges that it is undertaking the activities contemplated by Section 2.1 at its own risk and expense and that neither Grantor nor any other branch of the U.S. Government, shall have any financial responsibility in respect to activities undertaken by Grantee.

ARTICLE III

OBLIGATIONS OF GRANTEE

3.1 Development Activities. Grantee shall achieve the following activities, at its sole expense:

(a) Obtain all rights necessary to purchase the real estate necessary for the Project Facilities in Mexico on or before September 12, 2006, subject to the approval of the IBWC and the BTC regarding site selection;

(b) Obtain all rights necessary to acquire rights-of-way in Mexico and the United States for the siting of, or use in connection with, the Project Facilities on or before September 12, 2006, subject to the approval of the IBWC and the BTC;

(c) Obtain all permits necessary to commence construction of the Project Facilities, both in Mexico and in the United States on or before May 2, 2007, including an

NPDES permit for the Mexican facility, to the extent allowed by the RWQCB, for the discharge coming into the United States at the border of the United States and Mexico;

(d) Make all reasonable efforts to obtain on or before September 12, 2006, a new NPDES permit for the discharge from the Project Facilities into the United States land outfall pipeline.

(e) Obtain on or before May 2, 2007 from the Mexican Government, in form and substance satisfactory to Grantee and IBWC, all necessary approvals to treat to secondary standards up to 34 MGD of untreated wastewater discharged by sources in the Tijuana, Baja California, Mexico area, and 25 MGD currently treated to the advanced primary level at the SBIWTP;

(f) Award, execute and deliver on or before May 2, 2007, subject to the procedures set forth in Section 3.2, the Subcontract and other contracts necessary for construction of the Project Facilities in accordance with Mexican law, the Public Law, as amended, Minute 311, and the approval of IBWC and the BTC;

(g) Secure, on or before May 2, 2007, with the proceeds deposited in a trust account, all debt and equity financing (in an 80/20 ratio) necessary to construct the Project Facilities and to provide for necessary and appropriate ancillary costs including, without limitation, engineering fees, financing costs and expenses, bond insurance, interest during construction, a debt service reserve, a developer fee and working capital reserves;

(h) In connection with the financing of the cost of construction of the Project Facilities, Grantee will enter into an agreement with an institutional trustee in the United States, which will act as trustee of the proceeds of the construction financing. The trustee will release construction funds and all ancillary costs and expenses, including the developer fee, according to a draw schedule agreed to by the Grantor. No Development Fee will be paid to the Grantee until the Project Facilities are fully operational and effluent is in full compliance with all effluent standards, including NPDES permit(s) standards;

(i) Project facilities will be fully operational and in compliance with all applicable effluent standards and limitations including NPDES permit(s) by September 30, 2008. Any schedule for completion of project facilities, including milestone dates, that is not in conformance with the Court Ordered Compliance Schedule is subject to approval by United States District Court. Grantee will indemnify Grantor for any fines or costs imposed on the Grantor for failure to meet the September 30, 2008 Court ordered deadline.

3.2 Procedures for Award of Subcontract. In general, the Grantee proposes, subject to approval by the IBWC, that the Subcontract for the design, construction, operation and maintenance of Project Facilities, shall be procured through the use of competitive procedures, consistent with Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) and consistent with Minute 311, which requires the use of competitive procedures applicable in Mexico, and in compliance with the Court Order, as may be amended.

(a) Solicitation documentation relating to the Subcontract prepared by Grantee for general distribution (including Requests for Qualifications and Requests for

Proposals) shall be submitted for review, comment and approval by the IBWC and the BTC before distribution to prospective contractors. The solicitation documentation shall be in accordance with Mexican procurement law and shall be approved by the IBWC.

(b) Grantee shall negotiate the terms and conditions of the Subcontract with a contractor selected in cooperation with the BTC and the IBWC and will provide to the IBWC copies of the proposed execution version of the Subcontract for approval. Grantee will not execute and deliver the Subcontract absent the approval of the IBWC.

3.3 Negotiation and Drafting of Fee-for-Services Contract. Promptly following the execution and delivery of this Agreement, Grantee shall negotiate with Grantor in good faith the terms and conditions of a final form of Fee-for-Services Contract based on the Term Sheet. The final form of the Fee-for-Services Contract will be completed on or before March 31, 2006.

3.4 Negotiation and Drafting of SBIWTP Lease or License. Promptly following the execution and delivery of this Development Agreement, Grantee shall negotiate with Grantor in good faith the terms and conditions of a license (the "SBIWTP Land Use Agreement") to use, at no or nominal cost to Grantee, such portions of the SBIWTP site as are necessary to construct, operate and maintain, for the term of the Fee-for-Services Contract, those pumps, pipelines, and other U.S. Facilities that are to be located on the SBIWTP site.

3.5 Preparation of the Critical Path Schedule. Promptly following the execution and delivery of this Agreement, Grantee shall generate a "Critical Path Schedule" for the Project Facilities utilizing Critical Path Management Method (CPMM) software to define, track, and report the design and construction phases of the Project Facilities from the date of this Agreement until the beginning of NPDES compliant operation and maintenance of the Project Facilities. The Critical Path Schedule shall be updated daily and be in accordance with the provisions of the Court Order. Grantee shall provide Grantor full access to Grantee's Critical Path Schedule to enable Grantor to comply with the provisions of the Court Order requiring a Critical Path Schedule.

3.6 Cost Expectations. Grantee shall undertake the efforts and activities described in this Article III with the objective of minimizing the amount to be paid by the USIBWC under the Fee-for-Services Contract. Grantee believes that the first full year cost to the USIBWC under the Fee-for-Services Agreement will be between \$29 million and \$39 million and, based on currently available information and projections, is likely to cost approximately \$34 million. Grantee will exercise good faith efforts, consistent with developing, constructing and operating high quality, high reliability Project Facilities, to use value-engineering and other measures with a view to achieving a first full year cost of \$30 million or lower.

ARTICLE IV

OBLIGATIONS OF GRANTOR

4.1 Negotiation and Drafting of Fee-for-Services Contract. Promptly following the execution and delivery of this Agreement, Grantor shall negotiate with Grantee in good faith the

terms and conditions of a final form of the Fee-for-Services Contract based on the Term Sheet. It is Grantor's expectation that such negotiation and drafting of the final form of the Fee-for-Services Contract will be completed on or before March 31, 2006. Grantor understands and acknowledges that Grantee will not issue any solicitation for the Subcontract before negotiation and drafting of the final form of Fee-for-Services Contract are complete.

4.2 Implementation Minute. The Grantor shall undertake all reasonable efforts to negotiate and draft a new IBWC Minute for an operating lease arrangement contract, as provided for in Minute 311, for the financing and development of the engineering, construction, operation and maintenance of the facilities in Mexico.

4.3 Reasonable Efforts to Request Appropriation for Fiscal Year 2008. Grantor will make reasonable efforts to request appropriations in Grantor's budget for Fiscal Year (FY) 2008. Reasonable efforts equate to requesting funding for the Fee-for-Services Contract in the Grantor's Budget Request to the United States Department of State beginning in FY 2008. USIBWC's obligation to make any payments for wastewater treatment services rendered will be subject to the availability of annual funds duly appropriated by the U.S. Government to it for this purpose. This Development Agreement does not constitute a guarantee of any current or future payments by the USIBWC and nothing in this Development Agreement shall be construed as requiring the U.S. Government to appropriate or obligate funds for any purpose, including but not limited to, the design, development, financing, permitting, construction, operation or maintenance of any wastewater facilities, or for repayment of any funds expended or committed by Grantee in connection with development of the Project Facilities, or for the treatment of wastewater utilizing the Project Facilities. There is no full faith and credit of the United States pledged under this Agreement to make any payment to the Grantee for any expenses or costs incurred before, during or after the Development Agreement or Fee for Services Agreement.

4.4 Negotiation and Drafting of SBIWTP License. Promptly following the execution and delivery of this Agreement, Grantor shall negotiate with Grantee in good faith the terms and conditions of the SBIWTP Land Use Agreement.

4.5 Execution and Delivery of Fee-For-Services Contract. At such time as:

- (a) Grantee has accomplished all of the tasks set forth in Section 3.1 to the satisfaction of the Grantor and the Mexican authorities;
- (b) The new NPDES permit referred to in Section 3.1 has been issued; and
- (c) Grantee has established, to the reasonable satisfaction of Grantor, that the total first full year cost for wastewater treatment services under the Fee for Services Contract (i) reflects local market costs, as determined by a competitive bidding process pursuant to applicable U.S. and Mexican laws, and (ii) does not exceed \$39 million; then, simultaneously with
 - (A) acquisition of the Mexican real estate referred to in Section 3.1(a);
 - (B) acquisition of the rights-of-way referred to in Section 3.1(b); and

- (C) closing of the debt and equity financings referred to in Section 3.1(g);

Grantor shall execute and deliver the Fee-for- Services Contract and the SBIWTP Land Use Agreement.

ARTICLE V

TERMINATION

5.1 Automatic Termination. This Agreement shall automatically terminate and be of no further force and effect:

- (a) If the dates called for in this agreement that require approval by the United District Court are not approved by the United States District Court; or
- (b) upon written agreement of the Parties; or
- (c) upon the effective date of the Fee-for-Services Contract.

5.2 Termination by Grantee. Grantee may terminate this Agreement upon thirty (30) days written notice to Grantor if:

- (a) The final form of the Fee-for-Services Contract acceptable to both Parties has not been negotiated and drafted by March 31, 2006.

5.3 Termination by Grantor. Grantor may terminate this Agreement upon written notice to Grantee if:

- (a) The final form of Fee-for-Services Contract acceptable to both Parties has not been negotiated and drafted by March 31, 2006; or
- (b) By May 2, 2007 the USIBWC has not obtained reasonable assurance of appropriation (i) for the Fee-for-Services Contract, and (ii) for IBWC funding for the administration and oversight of the design, construction, operation and maintenance of the Project Facilities; or
- (c) Grantee fails to achieve on a timely basis, for reasons other than "Uncontrollable Circumstances", any of the obligations of the Grantee under Article III of this agreement or any milestone dates set forth herein, including but not limited to those listed in Exhibit A.

5.4 No Monetary Recourse. If this Agreement is terminated for any reason set forth in Article V, neither Party shall have any right to sue nor have recourse to the other for damages, compensation or other monetary relief.

ARTICLE VI

MISCELLANEOUS

6.1 Approval of Submittals. Whenever any Grantor approval is contemplated hereunder, Grantor shall make good faith efforts to evidence approval (or disapproval) of the recommendation or document under consideration within twenty (20) business days after receipt of relevant materials from Grantee. If review is not completed in the 20-day time frame then schedule relief equal to one day for every day past the 20-days shall be afforded to Grantee. If review does not result in an approval it shall not count against the 20-day requirement. Should the Grantor disapprove submittal due to incompleteness or poor quality then Grantee shall resubmit submittal.

6.2 Notices. Any and all notices, elections or demands permitted or required to be made under this Agreement shall be in writing, signed by the Party giving such notice, election or demand and shall be delivered personally, or sent by reputable overnight courier or by registered or certified mail, return receipt requested, to the other Party, at its address set forth in this Agreement, or at such other address as may be supplied by written notice given by such Party to the other Party in conformity with the terms of this Section 6.1. Notices shall be effective upon receipt. All notices to Grantor shall be sent to the International Boundary and Water Commission, United States Section, 4171 North Mesa, C-100, El Paso, Texas 79902, Attn: Commissioner, and shall be copied to Susan E. Daniel, Esq., International Boundary and Water Commission, United States Section, 4171 North Mesa, C-100, El Paso, Texas 79902. All notices to Grantee shall be sent to Bajagua, LLC, 160 Industrial Street, Suite 200, San Marcos, California 92078, Attn: Mr. Enrique Landa and shall be copied to Irwin M. Heller, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111.

6.3 Successors and Assigns. Subject to the restrictions on transfer set forth herein, this Agreement, and each and every provision hereof, shall be binding upon and shall inure to the benefit of the Parties, their respective successors, successors-in-title and assigns, and each and every successor-in-interest to any Party shall hold such interest subject to all of the terms and provisions of this Agreement. Nothing in this Agreement express or implied is intended or shall be construed to give any third party any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provision herein contained.

6.4 Amendments. Amendments may be made to this Agreement from time to time only in writing that is executed by both Parties.

6.5 No Waiver. The failure of either Party to insist upon strict performance of a covenant hereunder or of any obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder, shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder.

6.6 Entire Agreement. This Agreement and the Exhibits constitute the full and complete agreement of the parties hereto with respect to the subject matter hereof.

6.7 Captions. Titles or captions of Articles or Sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

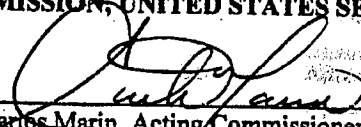
6.8 Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall for all purposes constitute one Agreement, binding on both Parties notwithstanding that all Parties have not signed the same counterpart.

6.9 Applicable Law; Jurisdiction. This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed and enforced in accordance with federal law.

6.10 Notice to Proceed. The signing of this agreement constitutes Notice to Proceed with the provisions set forth in this Agreement.

IN WITNESS WHEREOF, the Parties have mutually executed and delivered this Agreement to be effective when signed by both parties.

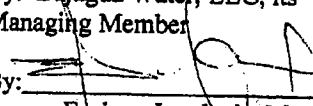
**INTERNATIONAL BOUNDARY AND WATER
COMMISSION, UNITED STATES SECTION**

By: 
Carlos Marin, Acting Commissioner

Date: Feb 14, 2006

BAJAGUA, LLC

By: Bajagua Water, LLC, its
Managing Member

By: 
Enrique Landa, its Manager

Date: FEB 14 2006

EXHIBIT A
Key Milestones

<u>Milestone</u>	<u>Date</u>
Secure Rights to Acquire Land and Rights of Way in Mexico for Project Facilities	9/12/06
RWQCB Approval of NPDES Permit	9/12/06
Secure Necessary Authorizations to Treat Wastewater in Mexico	5/2/07
Secure U.S. and Mexican permits necessary to commence construction	5/2/07
Execution of DBO Subcontract	5/2/07
Commence Operations in Full Compliance with NPDES permit	9/30/08

CC
