

FILE NUMBER: 2024-317

DATE: Tuesday, August 13, 2024

SUBJECT: Continuance of a Local Emergency – Tijuana River Valley Pollution Crisis

DESCRIPTION: Adopt a Resolution Proclaiming the Continuance of a Local Emergency Relating to the On-Going Tijuana River Valley Transboundary Pollution Crisis

EXECUTIVE SUMMARY:

On April 3, 2024, by Resolution No. 2024-0085, the Board of Port Commissioners (Board/BPC) adopted a proclamation of a local emergency relating to the on-going Tijuana River Valley transboundary pollution crisis. BPC Policy No. 777, dated June 23, 2020, (Clerk's Document #71570), details the District's Emergency Management policy, which requires the Board review the need for the continuation of the local emergency at least every 60 days until the local emergency is terminated.

Since the adoption of the initial Emergency Proclamation, there have been multiple continuances of the local emergency by the Board due to the continued presence of transboundary flows and beach closures that are beyond the control of local resources, requiring substantial efforts and resources of the federal and state government. On May 14, 2024, by Resolution No. 2024-255, the Board continued the proclamation of a local emergency to July 13, 2024; on July 9, 2024, by Resolution No. 2024-301, the Board continued the proclamation to September 7, 2024. This proclamation will expire, unless continued by this action.

Another continuance of the proclamation of a local emergency is needed due to the on-going pollution and contamination from transboundary flows within the Tijuana River Valley watershed and nearby coastline on both the U.S. and Mexico sides of the border. The BPC maintains its position to lobby for additional funding to complete the Comprehensive Infrastructure Solution, involving Tijuana River diversion projects and expanding the treatment capacity at the South Bay International Wastewater Treatment Plant (SBIWTP) operated and managed by the U.S. International Boundary and Water Commission (USIBWC) once critical repairs are completed. These projects are essential to modernize the wastewater treatment system on both sides of the border and reopen beaches along the south San Diego County shoreline from the Tijuana Slough to Border Field State Park which have now been closed every day since December 8, 2021, and is approaching 1,000 days.

Staff is recommending continuing the declaration at the August Board meeting as the 60-day period will end on September 7, 2024, prior to the September 10, 2024 Board meeting. This action will continue the local emergency for an additional 60 days to October 12, 2024.

RECOMMENDATION:

Adopt a resolution proclaiming the continuance of a local emergency relating to the ongoing Tijuana River Valley transboundary pollution crisis.

FISCAL IMPACT:

There is no fiscal impact caused by approval of this action.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A Port with a healthy and sustainable bay and its environment.

DISCUSSION:

For decades, pollution and contamination from transboundary flows have negatively impacted community health, economy, and ecosystems within the Tijuana River Valley watershed and coastline on both the U.S. and Mexico sides of the border. The continuous flow of untreated sewage and pollutants into the Tijuana River Valley and coastal waters is inexcusable and must be addressed with immediate resolve. The unabated pollution from U.S. facilities violates multiple fundamental federal and state environmental laws and regulations, and harms human health and wellbeing, damages the Tijuana River Valley, estuary, and adjacent state tidelands.

As an environmental champion and the state-designated trustee for beach and submerged lands in Imperial Beach, the District is committed to working cooperatively with its federal, state, regional, and local partners to participate in and support various efforts to address water and air quality in the Tijuana River Valley and nearby coastal waters, as well as health and safety of our local communities. Over the past decade, the District and other local agencies have forged a strong partnership with federal agencies to develop comprehensive solutions for the ongoing transboundary pollution crisis in the Tijuana River.

On March 2, 2018, the District and the Cities of Imperial Beach and Chula Vista, filed suit in the U.S. District Court for the Southern District of California against the US International Boundary and Water Commission (USIBWC) and Veolia Water North America-West, LLC (Veolia) for violations of the Clean Water Act.

On April 25, 2022, the District and the Cities of Imperial Beach and Chula Vista executed a settlement agreement resolving their claims against USIBWC. Pursuant to that settlement, USIBWC has been implementing several substantive measures to mitigate the effects of transboundary pollution in the Tijuana River Valley and to improve situational awareness and the flow of information from USIBWC to stakeholders. These actions reflect interim mitigation measures while the US EPA allocates \$300 million in

funding as part of the United States-Mexico-Canada Agreement Implementation Act (USMCA) to design, construct, and operate the Comprehensive Infrastructure Solution to address chronic transboundary flows. The Comprehensive Infrastructure Solution was developed in coordination with USIBWC and the USMCA Eligible Public Entities group, in which the District is an active participant.

Progress towards implementing the EPA's Comprehensive Infrastructure Solution to expand the USIBWC's International Treatment Plant (ITP) has been impeded by significant and previously undisclosed rehabilitation needs at ITP due to insufficient maintenance of the facility. Accordingly, the District and the regional coalition have focused on advocating for additional federal funding required to complete both rehabilitation needs and the expansion of the ITP. Until the repairs to the existing facilities are completed, IBWC has indicated that the plant cannot be expanded as contemplated in the Comprehensive Infrastructure Solution. The BPC position continues to focus on lobbying for the completion of the Comprehensive Infrastructure Solution, including Tijuana River diversion and expanded treatment capacity.

Transboundary flows and beach closures continue to occur and are beyond the control of local resources, requiring substantial efforts and resources of the federal and state government. The south San Diego County shoreline from the Tijuana Slough to Border Field State Park has now been closed every day for over 950 days. In response to this crisis, the District and the cities of Imperial Beach, San Diego, and the County of San Diego have all declared a state of local emergency. The County of San Diego has also issued a public health emergency for the Tijuana River Valley.

Emergency Proclamation

The District's Emergency Management policy, BPC Policy No. 777, was updated June 23, 2020, (Clerks Document #71570). This policy requires the Board review the need for the continuation of the local emergency at least every 60 days until the local emergency is terminated.

BPC Policy No. 777, details the District's Emergency Management policy and defines an "Emergency" as the actual or threatened existence of conditions of disaster or peril to the health and safety of persons and/or property within the District including, but not limited to, those caused by such conditions or hazards as fire, flood, storm, tsunami, earthquake, epidemic, pandemic, hurricane, tornado, civil disturbance, significant technology or infrastructure disruption, act of terrorism, hazardous material spill, effect(s) of climate change or other conditions, including conditions resulting from war or imminent threat of war, or labor controversy.

BPC Policy No. 777, also defines a "Local Emergency" as the duly proclaimed existence of such conditions that are, or likely to be, beyond the control of services, personnel, equipment, and facilities of the District, and which may require the supplemental efforts and available resources of other local government entities, the state and/or federal government, and/or disaster relief organizations to help alleviate the damage, loss, hardship or suffering caused thereby.

On April 3, 2024, by Resolution No. 2024-0085, the BPC adopted a proclamation of a local emergency relating to the on-going Tijuana River Valley transboundary pollution crisis. Since the adoption of the initial Emergency Proclamation, there have been multiple continuances of the local emergency by the Board due to the continued presence of transboundary flows and beach closures that are beyond the control of local resources, requiring substantial efforts and resources of the federal and state government.

On May 14, 2024, by Resolution No. 2024-255, the Board continued the proclamation of a local emergency to July 13, 2024; on July 9, 2024, by Resolution No. 2024-301, the Board continued the proclamation to September 7, 2024. The 60-day period expires prior to the September 10, 2024 BPC meeting.

District staff recommends the Board adopt a resolution proclaiming the continuance of a local emergency at the August 13, 2024 BPC meeting in conformance with BPC Policy No. 777. This action will continue the local emergency for an additional 60 days to October 12, 2024

General Counsel's Comments:

The General Counsel's Office reviewed this agenda as presented to it as to form and legality.

Environmental Review:

The declaration of a local emergency does not constitute a project under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the declaration of a local emergency requiring the District or the Board's discretionary approval resulting in a physical change to the environment would be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The exercise of this discretion is in no way limited by the declaration of a local emergency. Therefore, no further CEQA review is required.

The action complies with the Port Act, which allows for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the presentation and direction to staff are consistent with the Public Trust Doctrine.

The declaration of a local emergency does not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit Regulations, because there will not be,

without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development, if any, would remain subject to its own independent review pursuant to the District's certified CDP Regulations, Port Master Plan (PMP), and the relevant chapter(s) of the Coastal Act. The exercise of the District's discretion under the District's CDP Regulations is in no way limited by the declaration of a local emergency.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

Stephanie Bauer
Program Manager, Environmental Protection