

FILE NUMBER: 2024-301

DATE: Tuesday, July 9, 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.

Following the adoption of the initial Emergency Proclamation, the District sent letters to the White House and the Congressional Delegation informing them of the District's Emergency Proclamation and advocating for the completion of the Comprehensive Infrastructure Solution, including Tijuana River diversion and expanded treatment capacity.

Consistent with BPC Policy No. 7777, which provides that the Board will review the need for a continuation of a local emergency at least every sixty (60) days until terminated, the Board continued the proclamation of a local emergency on May 14, 2024, by Resolution 2024-255, due to the continued 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.

In June 2024, a joint stakeholder letter supporting the Board's position and efforts by the regional coalition partners was submitted to the California Governor Gavin Newsom's Office renewing the request for a declaration of a State of Emergency from the State of California for the pollution crisis in the Tijuana River or at minimum request the Biden Administration declare one (Attachment A).

To further the District's request for state and federal actions, Port of San Diego Vice Chair Danielle Moore participated in a press conference on June 4, 2024, along with Imperial Beach Mayor Paloma Aguirre, Coronado Councilman John Duncan, Dr. Paula Stigler Granados with San Diego State University's School of Public Health, and Lauren Cazares with the San Diego Regional Chamber of Commerce to compel state and federal action to address the urgent public health emergency severely impacting South Bay communities.

Another continuance of the proclamation of a local emergency is needed 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. The south San Diego County shoreline from the Tijuana Slough to

Border Field State Park has now been closed every day for more than 900 days. In response to this crisis, 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.

Staff recommends that the Board continue the proclamation of a Local Emergency consistent with BPC Policy No. 777, which will continue the local emergency for an additional 60 days to September 7, 2024.

RECOMMENDATION:

Adopt a resolution proclaiming the continuance of a local emergency relating to the on-going 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 impacted the 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 chronic beach closures not only limit coastal access, constituting a fundamental violation of multiple federal and state regulations and requirements, they also inflict direct harm upon the Tijuana River Valley, estuary, and the adjacent state tidelands and have impacts on human health from polluted water and air.

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) was subsequently 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. IBWC has indicated that that the plant cannot be expanded as contemplated in the Comprehensive Infrastructure Solution until the repairs to the existing facilities are completed.

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 900 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. Following the adoption of the Emergency Proclamation, the District sent letters to the White House and the Congressional Delegation informing them of the District’s Emergency Proclamation and the facts therein. It is the position of the BPC to lobby for the completion of the Comprehensive Infrastructure Solution, including Tijuana River diversion and expanded treatment capacity.

The Board continued the proclamation on May 14, 2024, by Resolution 2024-255 due to the continued transboundary pollution to the Tijuana River Valley watershed and nearby coastline on both the U.S. and Mexico sides of the border. To further the call for state and federal action, a joint stakeholder letter supporting the Board’s position and efforts by the regional coalition partners was submitted in June 2024 to California Governor Gavin Newsom’s Office. The letter renewed the request for a declaration of a State of Emergency from the State of California for the pollution crisis in the Tijuana River or at minimum request the Biden Administration declare one (Attachment A).

To further the District’s request for state and federal actions, Port of San Diego Vice Chair Danielle Moore participated in a press conference on June 4, 2024 along with Imperial Beach Mayor Paloma Aguirre, Coronado Councilman John Duncan, Dr. Paula Stigler Granados with San Diego State University’s School of Public Health, and Lauren Cazares with the San Diego Regional Chamber of Commerce to compel state and federal action to address the urgent public health emergency severely impacting the South Bay communities.

District staff recommends that the Board continue the proclamation of a local emergency in conformance with BPC Policy No. 777 for an additional 60 days. This proclamation will expire unless continued by this action. The current 60-day period will expire on September 7, 2024, prior to the September BPC meeting. Therefore, District staff will recommend the Board continue the proclamation at the August 13, 2024 BPC meeting.

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

Attachment A: San Diego Regional Chamber of Commerce Letter to Governor Newsom