

USIBWC CITIZENS' FORUM MEETING
Southwest High School Theater
1685 Hollister Street
Imperial Beach, CA 92154

October 12, 2005

Tentative Meeting Notes*

Opening Remarks

Welcome and Introductions – Dion McMicheaux, Acting Co-Chair, USIBWC. There were 38 people in attendance.

Agenda Items:

1. Record of Decision for Clean Water Act Compliance at the South Bay International Wastewater Treatment Plant updates – by Steve Smullen, Acting Principal Engineer, USIBWC.
2. USIBWC Budget Overview, FY 2005 and FY 2006 Projects – Diana Forti, Acting Administrative Officer, USIBWC.
 - Operation and Maintenance Issues
 - Treatment Plant Optimization Study
 - Supplemental Environmental Impact Statement for Clean Water Act Compliance

Clean Water Act Compliance at the South Bay International Wastewater Treatment Plant

Steve Smullen gave an update on the Record of Decision for Clean Water Act Compliance at the South Bay International Treatment Plant. The record of decision selects alternative 4C as the recommended solution for secondary treatment of South Bay advanced primary effluent. Mr. Smullen explained that the Public Law 106-57, in its 2004 amendment, has a multi-year fee for services contract. This allows for a private concern to provide financing and capital investment to construct, operate and maintain wastewater facilities in Mexico to treat 25 mgd of advanced primary effluent from the South Bay Plant, and 34 mgd of additional untreated Tijuana wastewater. The investment will be repaid over a 20-year period in the form of annualized payments starting after the plant comes on line and at which time, the facility would be turned over to an entity in Mexico. Mr. Smullen said that the Tijuana Master Plan, also called for in the public law, was a comprehensive plan that analyzed potable water and wastewater needs for the San Diego and Tijuana region. The Master Plan formulated the wastewater flow projections for the public law plant for a total of 59 mgd.

A motion for summary judgment was granted to the State of California by the U.S. District Court after the state filed a suit alleging clean water act violations at the South Bay International Treatment Plant. The motion set court ordered compliance dates as follows: a) to award a contract for design and construction by December 2005, b) commence construction by September 2006, c) complete construction by August 2008 and, d) full compliance of secondary treatment by September 30, 2008.

The USIBWC has met all NEPA compliance dates. A draft SEIS was released in December 2004, and the final SEIS released in July 29, 2005. The California Coastal Commission issued a consistency determination on July 9, 2005, the Record of Decision (ROD) was signed September 30, 2005 and a CPM schedule will be issued and was to be posted on the USIBWC website no later than October 15, 2005. The record of decision selects Alternative 4C Option 1. The decision was based on review of the draft of the SEIS and public comments received, and review of preliminary technical documents provided by Bajagua. According to Steve, this is the only known firm to have prepared preliminary engineering and environmental documents for this project. The SEIS included coordination and approval by the California Coastal Commission, U.S. Fish and Wildlife Service and mitigation for the following terrestrial biological resources will be provided during construction as well as paleontological resources monitoring for construction activities in the United States.

Steve Smullen explained the following alternatives:

- * The implementation of alternatives 4C is contingent on consultations with Mexico on most project components, especially the site selection, treatment technology, design construction on O&M and the concession for the selling of the effluent. In addition, the environmental impacts in Mexico will be subject to review. The Bi-national technical committee, which was established in Minute 311, will provide an oversight under supervision of the IBWC for the project. The Bi-national Technical Committee (BTC) will be formed by October 31st, the USIBWC has already contacted USBTC members, they include the following people, Nancy Woo from EPA of Region IX, Mayda Winter and Gary Brown from the City of Imperial Beach, Bart Christensen and Pete Silva from the State Water Resources Control Board, Art Coe and John Robertus from the California Regional Water Quality Control Board, and Scott Tullock and Elsa Saxod from City of San Diego.
- * Modifications to alternative 4C may result from Mexico's requirements, findings of the BTC, or the contracting process. These may require additional supplemental environmental considerations, which will be determined by the USIBWC. Mr. Smullen said that as far as implementation of the public law, the USIBWC is undertaking a non-binding sole source negotiations with Bajagua. And even though this is a sole source procurement, competitive procedures will be used in the procurement of all sub-contractors services, including design, construction, operations and maintenance. This is in accordance with Minute 311. Sole Source procurement is authorized by the public law but not required. He added that this enables the agency to meet the court compliance schedule in expeditious manner and allows us to proceed with the funding limitations. This awards a contract without having congressional appropriation. The procurement will be in accordance with federal guidelines. Contract execution is depending on the agreement on the contract terms and reaching a fair and a reasonable price. He said that it is a very complex procurement, absent appropriation with construction in Mexico, and the transfer of a facility to a Mexican entity after 20 years. For that reason, USIBWC has contracted with the Corps of Engineers District Privatization Group for assistance in developing and evaluating restricted solicitation, and have also contracted with a financial consultant to review the contractors' proposal and to assist in negotiating

contract elements. The contract award is targeted for mid-December, 2005. The ROD is posted on the USIBWC website.

Terry Thomas – The term “restricted solicitation”, does this mean that there are no requests for proposals or request for qualifications from other agencies for this project? And they are doing this in the name of expediting the project?

Steve Smullen explained that there was a request for a proposal sent to Bajagua as a sole source solicitation. This is sole source procurement and for that reason, they don't have to advertise it to the public. The only way that they will be able to meet the court order deadlines in an expeditious manner would be sole source procurement.

Ms. Thomas made a comment that the request for qualifications could have been done several years ago, and with that, you will have qualified parties to carry out the project in a timely manner.

Mr. Smullen explained that to actually go through a competitive procurement would add a year or more to the project. This would not meet those compliance guidelines that were established by the court. There is currently no funding for the project and that's part of the problem, he said.

Ms. Thomas said that if funding is part of the problem, are you going ahead with it anyway? Steve said that the public law allows for that, and we can award a contract without appropriations.

Ms. Thomas has raised the question “what if in the middle of the project the funding would stop? What would happen then?” Steve explained that the project is contingent upon future appropriations. There is a risk that the contractor would have to take to finance and provide investment capital to actually design and construct the facility.

Oscar Romo – if the compliance to U.S. Environmental laws should be met by September 30, 2008, but there are some externalities like the lack of pre-treatment infrastructure in Tijuana and the Japanese treatment plants are not design to fulfill that component. If by 2008, the lack of pre-treatment would not allow this plant to meet U.S. Environmental laws and it is too soon for the State of Baja, California to impose regulations for all the industries to comply before its deadline, then what is going to happen?

Carlos Marin explained that the holder of the permit would have to make sure the compliance with U.S. Environmental rules are met. If the Japanese Plants would not meet the water quality, and they would not be able to discharge to the ocean outfall, they will create a problem in the permitting process. This is what we try to avoid, not meeting the permit requirements. This would be a very big concern and something that needs to be addressed to make sure the discharge meets U.S. standards.

Mr. Romo stated that if the actual plant now does not meet the standards, and is still operating, would it be a case that this plant would be in operation even it does not meet the standards? Carlos reiterated that the whole intent is to meet the standards, the secondary treatment including the primary treatment at our plant. The whole total volume of water should be meeting the standards.

David Gomez made a comment that “we should be concerned about the environment and keeping the beaches clean”. This secondary plant has been proposed in Mexico. We have continued the debate as far as where it is going to be, or how much does it cost and who’s going to do it? This will hold up the project and make this valley more polluted. Right now, he said, we are concerned about the West Nile Virus and you should know that we have last years’ sewage still in this valley. Lets work on this project and not necessarily picking on it.

USIBWC Budget Overview, FY 2005 and FY 2006 Projects

Diana Forti gave an overview of how the agency is funded, from the structure, and the types of reviews that are being considered. According to Ms. Forti, the IBWC has a series of treaties that are funded by congress under two programs. This funds the operations and maintenance of the agency including the administrative and engineering support, including about ten field offices along the border. The second program is the construction appropriation for multi-year projects. This is a boundary wide program that funds facilities renovation and heavy equipment that supports field operations. There are projects that specifically address flood control, and water quality issues. The USIBWC has border wide responsibilities that we have to address in our budget request. We have to be very cautious in assuring that we are addressing our priorities in the budget request from congress.

Ms. Forti explained that in the last 3-4 years, there has been no increase to the USIBWC budget. Congress has significant challenges. We know that with the war in Iraq and the recent hurricanes, they have to direct any type of excess funding to address those issues. She added, we have to compete with those issues when we submit increases to our budget. We have to respect that the challenges that they are face with far exceed many times our issues. But non-the-less we have to do our job in representing our mission, our stakeholders and allow congress then to do their job as well.

Mission priorities as stated under the treaties are to address water quantity, water quality boundary demarcation and delineation. Diana Forti explained that the IBWC has significant and very critical projects in the Lower Rio Grande and this is to address serious flood control issues. Nogales has also water sanitation issues, the same situation that we have here in San Diego. Another very high priority project that we are working on is the public law. She said, our responsibilities are significant but we do address these as our primary issues and our primary goals. We do a lot of planning, a lot of prioritizing, and in many cases we have to defer some projects so that they’ll be able to tackle critical emergencies that surface. Construction has taken a hit, at one point it neared almost 13.5 million dollars of projects. When those projects were completed, we went from a base of 6-million dollars to our current base of about 3.5 million dollars. That shows you the difficulty in getting additional funding from congress. San Diego is the largest operation as far as spending goes within the agency. About 26% of the total O&M budget goes to fund field operations. On an average we allocate about 4.8 million dollars from a total of 17 million for O&M, and 67% of the total budget goes to fund the O&M contract which on the annual basis is running over 3-million dollars. The Ocean Monitoring program, utilities, the electricity and water are another big chunk where most of our funding goes.

The funding goes to support primarily the operations of the treatment plant, but there are a series of other activities that this office conducts which are delineation and boundary demarcation, and

water deliveries, which are a significant and very critical function of this agency, in addition to flood control and trans-boundary issues.

Recognizing the importance of the treatment plant, the IBWC addresses critical issues and requirements that we have at the end of the year. This year there was an additional \$729,000 to fund the facility. This assists in the operations of the plant, and improves the facility and the operations. Ms. Forti explained that we don't always necessarily have excess money that we can direct to these operations. In addition, some funding came from EPA, and these were Clean Water Act Funds that were provided and authorized by EPA to support the South Bay operations. The USIBWC has spent over half a million dollars for miscellaneous improvements to the plant, conducted optimization studies, completed a Supplemental EIS and other series of studies. For fiscal year 2005, the USIBWC has redirected close to \$1.5 million dollars above the recurring base, and another \$429,000 to support the operations, which directly impact the community. Ms. Forti stated we are in the process of renegotiating our O&M contract, which we anticipate having in place by the end of this calendar year. For 2008 and beyond, we welcome any projects, ideas from meeting such as this to communicate to us what kind of projects or issues you have. We can only identify and submit in our budget requests things that are within our scope of responsibility. It really takes a significant amount of involvement from the stakeholders, not only to surface to our attention but most importantly to surface to your congressional representation. We cannot do our job on our own, she said, it is imperative that you communicate to your leaders, to your representatives what's impacting upon you and how can they help. When the USIBWC submits our needs to congress for review they will be familiar with your needs. If we communicate our requirements on behalf of the agency solely, and they are not familiar with any of the projects from stakeholders, they will not give it as much importance as they would otherwise if they were familiar with your needs.

Next agenda items:

Ms. Thomas has suggested the implementation of the monitoring program. We bring up the possibility, coupled with the flood warning system, water quality monitoring, and mud flood warning might follow up on that. There are new technologies that could add monitoring for water quality and now I know there are people are working on mud flow warnings also. More of synthesis on some of the things that are happening that really need to be in place now.

In one of the public meetings that Ms. Thomas had attended, it was commented that SANDAG was collaborating more with Tijuana on a number of these environmental types of projects. It seems that water is the main issue so there might be some way to get some of the budget from SANDAG to implement in a collaborative way, especially in relation to the infrastructure in the potable and sewage water.

Jim Peugh – could we get started on the sediment problem? If this is a good time to start thinking about 2008. I would hope that we would lay out whatever steps it will take to do the analysis in submitting a capital proposal as soon as we possibly can.

Oscar Romo – I would like to request that this group would tour the Alamar River prior to the next meeting. That would be an eye opener with some of our discussions.

* Meeting notes are tentative and summarize in draft the contents and discussion of Citizens' Forum Meetings. While these notes are intended to provide a general overview of Citizens'

Forum Meetings, they may not necessarily be accurate or complete, and may not be representative of USIBWC policy or positions.