

**California Regional Water Quality Control Board
San Diego Region**

Tentative Resolution No. R9-2024-0155

**A RESOLUTION APPROVING THE LOWER TIJUANA
RIVER INDICATOR BACTERIA AND TRASH
ADVANCE RESTORATION PLAN**

WHEREAS, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), finds that:

1. The Tijuana River watershed straddles the international border between the United States and Mexico, with approximately two-thirds of the watershed in Mexico, and approximately one-third of the watershed in the United States. The Tijuana River flows through highly urbanized areas in Mexico before ultimately crossing the international border and entering the Tijuana River Estuary and Pacific Ocean in southern San Diego County.
2. The lower six miles of the Tijuana River and the Tijuana River Estuary (collectively, the lower Tijuana River, or Tijuana River Valley) are severely impaired by transboundary flows carrying raw sewage, trash, and other pollutants, which predominately originate in Mexico.
3. As a result of these pollutants, water quality objectives (WQOs) in the lower Tijuana River are not attained, and the water body's beneficial uses are impaired. Most importantly, beneficial uses associated with the protection of human health and protection of aquatic life (e.g., Water Contact Recreation, Non-Contact Water Recreation, Commercial and Sport Fishing, Warm Freshwater Habitat, Estuarine Habitat, Marine Habitat, and Rare and Endangered Species, etc.) are severely impaired.
4. Transboundary flows conveyed through the lower Tijuana River are a significant contributor to unsafe levels of indicator bacteria and degraded water quality in San Diego County's southern beaches.
5. Pollution in the lower Tijuana River has emerged as a profound environmental justice issue in California. The historically underserved communities surrounding the lower Tijuana River have lost access to an exceptional environmental and recreational resource due to prolonged periods of unsafe water quality in the lower Tijuana River, Tijuana River Estuary, and nearby beaches.

6. The Tijuana River Estuary is an exceptionally rich and invaluable natural resource. The estuary provides critical salt marsh habitat and serves as an essential breeding, feeding, and nesting ground and key stopover point on the Pacific Flyway for over 370 species of migratory and native birds, including six endangered species, and many threatened species of wildlife and vegetation.¹ Transboundary flows carrying raw sewage, trash, and other pollutants, pose a significant threat to the health of the estuary and the species it protects.
7. The Water Quality Control Plan for the San Diego Basin (Basin Plan), adopted on September 8, 1994, designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for receiving waters addressed through the plan. The Basin Plan was approved by the State Water Resources Control Board (State Water Board) on December 13, 1994. Subsequent amendments to the Basin Plan have also been adopted by the San Diego Water Board and approved by the State Water Board.
8. The Tijuana River and Tijuana River Estuary were first designated on the Clean Water Act's Section 303(d) List of Impaired Waters in 1992 due to excessive levels of bacteria and heavy metals contained in transboundary flows of raw sewage. Since the original listing, other pollutants have been added, including pesticides, toxicity, synthetic organics, nutrients, low dissolved oxygen, sedimentation/siltation, solids, turbidity, and trash.
9. Clean Water Act section 303(d) requires states to develop total maximum daily loads (TMDLs) for all water body/pollutant combinations identified on the 303(d) list of impaired waters. A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality objectives for that pollutant. For TMDLs established by the Regional Water Quality Control Boards through a Basin Plan amendment, the TMDL must include an implementation plan/schedule.
10. An advance restoration plan (ARP), as defined by the United States Environmental Protection Agency, is a near-term plan or description of actions, with a schedule and milestones, that can in some cases be more immediately beneficial or practicable than a TMDL in achieving water quality objectives. An ARP is not a substitute for a TMDL, but rather is designed to address impairments prior to the development of a TMDL. Impaired waters for which a state, territory, or authorized tribe pursues an ARP remain on the section 303(d) List and still require a TMDL until water quality objectives are attained.²

¹ California Department of Parks and Recreation: https://www.parks.ca.gov/?page_id=27897

² USEPA 2023. Memorandum from Brian Frazer, Director (Acting) Office of Wetlands, Oceans, and Watersheds, to Regional Water Division Directors Regarding Information Concerning 2024 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions. U.S. EPA Washington, D.C.

11. Despite a historical record of binational efforts in remedial planning and implementation, existing practices and infrastructure are inadequate in controlling transboundary flows originating in Mexico, attaining water quality objectives, and protecting the lower Tijuana River and surrounding beaches' beneficial uses. Accordingly, the San Diego Water Board has developed the Lower Tijuana River Indicator Bacteria and Trash Advance Restoration Plan (Lower Tijuana River ARP or ARP) as a more immediately effective and practicable way to address water quality impairments in the lower Tijuana River, at this stage.
12. An ARP is currently the most appropriate response to the impairments in the near-term due to the: 1) unique binational circumstances surrounding impairments in the lower Tijuana River, 2) obvious significant source of pollution, 3) collaborative willingness of the primary responsible party, 4) well developed project proposals to address the pollution, 5) time sensitivity of securing federal project funding, and 6) the flexibility for adaptive implementation.
13. The Lower Tijuana River ARP identifies the applicable WQOs for trash and indicator bacteria. The ARP's implementation plan/schedule identifies actions to achieve reductions in trash and indicator bacteria loading and identifies the necessary monitoring to track the progress of meeting WQOs in the lower Tijuana River. Wherever appropriate, the ARP's implementation plan/schedule identifies actions the San Diego Water Board can pursue to ensure waste discharges do not cause or contribute to exceedance of WQOs.
14. The Lower Tijuana River ARP recognizes that the vast majority of indicator bacteria and trash loading comes from sources in Mexico, outside of the San Diego Water Board's regulatory jurisdiction. Accordingly, the ARP's implementation plan calls for the development of a memorandum of understanding (MOU) between the San Diego Water Board, the United States section of the International Boundary and Water Commission (USIBWC), and the United States Environmental Protection Agency (USEPA), to identify procedures, actions, roles, and responsibilities within respective jurisdictions and funding allocations to control transboundary sources of pollution and to support the implementation of projects in the USEPA-USIBWC June 9, 2023, Record of Decision.
15. The Lower Tijuana River ARP's implementation plan identifies a timeline of seven years to achieve reductions in indicator bacteria loading, and a timeline of five to nine years for the progressive reduction in trash loading in the lower Tijuana River. The ARP calls on the San Diego Water Board to routinely evaluate if water quality objectives are attained as a result of reductions in trash and indicator bacteria loading. The requirement to develop a TMDL will remain in effect until WQOs are attained, and the San Diego Water Board will prioritize development of TMDLs for trash and indicator bacteria in accordance with the timelines identified in the ARP's

implementation plan should WQOs remain unattained.

16. The San Diego Water Board has provided public outreach and opportunities for public participation while developing the Lower Tijuana River Indicator Bacteria and Trash Advance Restoration Plan. In addition to maintaining information on the Board's website, the ARP was the subject of two staff workshops in February 2024 and the Board provided a 62-day public written comment period from January to March 2024. The San Diego Water Board provided responses to written comments on September 30, 2024. San Diego Water Board staff distributed a Public Notice to responsible parties, interested persons, and public agencies on October 25, 2024 regarding the Board's consideration of the Lower Tijuana River ARP for approval at its December 11, 2024 meeting.
17. On February 28, 2022, San Diego Water Board staff solicited feedback from local Native American tribes on the draft Lower Tijuana River ARP. On May 1, 2023, and June 22, 2023, respectively, San Diego Water Board staff provided notification to tribes and disadvantaged communities regarding the Lower Tijuana River ARP.
18. The ARP is consistent with the *Restoration Goal and Environmental Justice Focus Area* of USEPA's 2022-2032 Vision for the Clean Water Act Section 303(d) Program,³ which calls for states to "design TMDLs and other restoration plans to attain and maintain water quality standards, facilitate effective implementation, and drive restoration of impaired waters" and "actively consider environmental justice in assessment, listing, TMDLs, and other restoration and protection plans to address disproportionately high and adverse environmental, water quality, climate-related, and other relevant impacts on underserved communities".
19. The Lower Tijuana River ARP is not a TMDL and is non-regulatory in nature. It does not establish or change any existing regulations, but rather references existing regulatory programs, such as permitting, to control discharges of trash and indicator bacteria in the U.S. within the San Diego Water Board's jurisdiction, and proposes a MOU with USIBWC and USEPA to control transboundary sources of pollution and to support the implementation of projects in the USEPA-USIBWC June 9, 2023, Record of Decision.
20. The San Diego Water Board's approval of the Lower Tijuana River ARP is not a "project" as defined in the California Environmental Quality Act (CEQA) (Pub. Res. Code, § 21065) because the ARP is not "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The ARP identifies and discusses ongoing and expected actions to remedy the impairments in the lower Tijuana River but does not mandate any compliance activities. To address sources of indicator

³ USEPA. September 2022. 2022-2032 Vision for the Clean Water Act Section 303(d) Program

bacteria and trash generated in the U.S. within the San Diego Water Board's jurisdiction, the ARP implementation actions rely on the Board's existing regulatory authority and programs to control discharges. The Board's existing programs, including permitting, are either exempt from CEQA or have already undergone environmental review. To control transboundary sources of indicator bacteria and trash, the proposed MOU would support the implementation of projects in the USEPA-USIBWC June 9, 2023, Record of Decision. Projects outlined in the USEPA-USIBWC June 9, 2023, Record of Decision have already undergone environmental review, documented in the November 2022 USEPA-USIBWC Final Programmatic Environmental Impact Statement (PEIS) for the United States-Mexico-Canada Agreement (USMCA) Mitigation of Contaminated Transboundary Flows Project.

21. The ARP calls for the Board to request that USIBWC develop, propose, and implement a minimum frequency of assessment and collection (MFAC) program to achieve progressive trash reductions. Any proposed MFAC program would need to be approved by the San Diego Water Board or the Executive Officer on behalf of the Board. Prior to approval of any proposed MFAC program, the San Diego Water Board will evaluate whether environmental review is required.

THEREFORE, BE IT RESOLVED THAT the San Diego Water Board:

1. Approves and authorizes the implementation of the Lower Tijuana River Indicator Bacteria and Trash Advance Restoration Plan.
2. Authorizes the Executive Officer to develop and enter into on behalf of the San Diego Water Board a memorandum of understanding (MOU) with the United States section of the International Boundary and Water Commission and United States Environmental Protection Agency as provided for in the ARP.
3. Directs the Executive Officer to provide annual updates on the implementation of the MOU with USIBWC and USEPA.
4. Will provide annual updates to the public on progress toward addressing the impairments in accordance with the timelines identified in the ARP.
5. Commits to assisting other entities in supporting actions taken to address the impairments consistent with the ARP.
6. Directs the Executive Officer to transmit the ARP to the USEPA for acceptance as the San Diego Water Board's near-term plan for water quality impairments caused by transboundary flows into the lower Tijuana River.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on December 11, 2024.

DAVID GIBSON
Executive Officer