



March 13, 2024

San Diego Regional Water Quality Control Board
Attn: Cynthia Gorham
2375 Northside Drive, Suite 100
San Diego, CA 92108-2700

Via Email to SanDiego@waterboards.ca.gov

**Re: Comments on the Lower Tijuana River Indicator Bacteria and Trash
Advance Restoration Plan, Tijuana River ARP (CG; CW-650436)**

To Chair Cantú and the Members of the San Diego Regional Water Quality Control Board:

Please accept these comments regarding draft Lower Tijuana River Indicator Bacteria and Trash Advance Restoration Plan for Total Maximum Daily Loads (draft ARP) on behalf of San Diego Coastkeeper (Coastkeeper). Coastkeeper is the San Diego region's leading clean water advocacy organization, member supported since 1995. Our mission is to protect and restore coastal and inland waters in San Diego County, using advocacy, community science, and education. Coastkeeper also actively seeks agency implementation of federal, state, and local laws, regulations, and permits; regularly engages in the administrative review and public comment procedures for agency actions; and, where necessary, directly initiates enforcement actions on behalf of itself and its members. Coastkeeper also fully supports the comments filed by the City of Imperial Beach, California on the draft ARP.

Coastkeeper cannot support the adoption of the draft ARP, because it is non-binding, unenforceable, and allows for continuing inaction regarding the ongoing environmental and human health catastrophe unfolding in the Tijuana River Valley. The ARP is replete with requests for voluntary actions, and off-ramps for the parties involved. For example, the lynchpin of the ARP is a Memorandum of Understanding (MOU) between USIBWC, USEPA, *potentially* DHS, and the San Diego Regional Water Quality Control Board (Regional Board). However, this MOU is entirely optional. "The San Diego Water Board *requests* that USIBWC, USEPA, and DHS develop an MOU with the San Diego Water Board to establish agreements, roles, and responsibilities to

control transboundary sources of pollution.”¹ As such, nothing in the ARP requires these parties to agree upon an MOU, or even begin negotiating an MOU. Further still, the ARP merely suggests that “[t]he MOU *may* include” certain specific actions.² The mere hope for good-faith negotiations and efforts from these agencies is extremely unlikely to yield the solutions needed to address problems of the magnitude and complexity at hand.

Unfortunately, all prior collaborative efforts have failed to stem the flow of transboundary pollution. For example, “[d]espite having invested years into the Minute 320 process, the Recovery Team’s efforts have not yielded significant results to reduce transboundary flows of wastes.”³ Without any enforcement mechanisms, assurances, or other backstops, why would the Draft ARP achieve a different result?

Coastkeeper understands the need for collaboration amongst agencies. Furthermore, we support the vast majority of the findings of the Draft ARP, including Regional Board’s numeric target selection, data inventory and analysis, source assessment, allowable loads and allocations, and the findings regarding the sources of trash and bacteria. We also support the aggressive five and seven year timelines for trash and bacteria respectively.

However, Coastkeeper does not support using a non-binding ARP and voluntary MOU as the means to achieve applicable trash and bacterial objectives. Other regulatory mechanisms are better suited for this unique and pressing crisis. **As such, we respectfully request the Regional Board to utilize the strongest tools in its regulatory toolbox to ensure compliance, including investigative orders, cleanup and abatement orders, and traditional TMDLs with waste load allocations and load allocations, as needed.**

As the Regional Board and all interested parties are well-aware, at its core, the ongoing pollution crisis in the Tijuana River and Estuary is a funding issue. More specifically, solutions will require significant funding from the federal governments of both the United States and Mexico.

Encouragingly, as transboundary pollution has been so well-studied and assessed, likely solutions for the problem and are available and well-known. For example, SB 507 NOA Matrix Alternative D; L, M, O, and P (or combination thereof); N, Q and R (or a combination thereof); and K; Minute 328 and the USMCA Comprehensive Infrastructure Solution; and Time Schedule Order R9-2023-0189, set forth various infrastructure and maintenance plans that, if implemented, are expected to dramatically reduce trash and bacteria loading in the Tijuana River, and restore the health of the Tijuana River and Estuary. However, as these existing plans, orders, and bilateral agreements are

¹ Draft ARP at 67.

² *Id.* at 72.

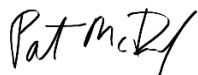
³ *Id.* at 20.

already in place, they render the voluntary ARP unnecessary and redundant. What is missing is a regulatory backstop, enforceable provisions, and consequences for failure to apply ongoing pressure and motivation.

As the Draft ARP states, “[d]ue to its unique position in a joint, binational commission, USIBWC is in the best position to effectuate meaningful and lasting solutions through coordinated efforts with Mexico to protect water quality and beneficial uses in the lower Tijuana River watershed.”⁴ Coastkeeper agrees. The vast majority of trash and bacteria impacting the Tijuana River originate in Mexico. However, recognizing that USIBWC’s recent efforts have improved compared to decades prior, USIBWC is failing to: 1) operate and maintain its own transboundary pollution reduction infrastructure, 2) adequately pressure and engage with MxIBWC to ensure projects and solutions are being properly implemented on the Mexican side of the border, and 3) effectively advocate for badly needed funding before the U.S. federal government. Coastkeeper strongly believes that an enforceable traditional TMDL would significantly assist USIBWC in achieving these goals. Therefore, we respectfully request the Board reject the Draft ARP, and adopt a full TMDL in lieu of the ARP.

Coastkeeper appreciates the opportunity to provide comments regarding the Draft ARP. Please contact me via email at patrick@sdcoastkeeper.org, or phone at 760-525-6838 if you have any questions or need more information regarding our comments.

Respectfully,



Patrick McDonough
Senior Attorney
San Diego Coastkeeper

⁴ *Id.* at 73.