



OUTDOOR
OUTREACH

August 1, 2022

To: U.S. Environmental Protection Agency
Via Email: Tijuana-Transboundary-EIS@epa.gov

Re: NEPA Draft PEIS Comments for Tijuana River Watershed, USMCA Mitigation of Contaminated Transboundary Flows project

Dear United States Environmental Protection Agency and U.S. International Boundary and Water Commission,

The Surfrider Foundation and Outdoor Outreach hereby submit these comments regarding the Draft Programmatic Environmental Impact Statement (“PEIS”) for the Tijuana River watershed, United States-Mexico-Canada (“USMCA”) Mitigation of Contaminated Transboundary Flows project. Surfrider Foundation appreciates the U.S. Environmental Protection Agency’s (“EPA”) and the U.S. International Boundary and Water Commission’s (“USIBWC”) efforts in addressing contaminated transboundary flows that cause adverse public health and environmental impacts to the Tijuana River Valley watershed and helping to find a solution to the coastal border water quality crisis.

Surfrider Foundation (or “Surfrider”) is a grassroots nonprofit organization dedicated to the protection and enjoyment of our ocean, waves, and beaches, for all people, through a powerful activist network. Surfrider’s primary initiatives include protecting clean water, ocean protection, coastal preservation, public beach access, and reducing marine plastic pollution – initiatives that all come into play in addressing the significant pollution at the U.S-Mexico Border. Surfrider’s San Diego Chapter has thousands of members, many of whom swim, surf, and recreate along the coast of San Diego, including near the U.S.-Mexico Border. The Chapter is part of a nationwide network with over 500,000 supporters, activists and members.

Outdoor Outreach is a San Diego-based nonprofit that connects youth to the transformative power of the outdoors. The organization’s vision is an outdoors for all that inspires and sustains healthy and vibrant communities. Since 1999, Outdoor Outreach has provided opportunities for more than 17,000 young people to explore their world, cultivate belonging, and discover what they’re capable of. Outdoor Outreach prioritizes serving youth from communities historically impacted and marginalized by social and economic inequities, including those along the San Diego border region.

The transborder pollution impacting beach water quality in Imperial Beach, Silver Strand and Coronado has had a direct impact on the organization's ability to run programs for its youth participants. Between May and July, 2022, Outdoor Outreach has had to cancel or reschedule over 40 coastal recreational programs due to transborder pollution.

In July 2018, after Surfrider Foundation's San Diego Chapter had already engaged in a decades long "No Border Sewage" and "Clean Border Water Now" campaign, Surfrider filed a lawsuit against the USIBWC for its Clean Water Act violations affecting the waters of the U.S.-Mexico border region, including the coast off Imperial Beach and Coronado, California. Surfrider's lawsuit sought to protect the surfing, swimming, and other recreational resources of the San Diego coast, defend threatened species and habitats, reduce trash pollution, and ensure clean coastal waters. Surfrider's lawsuit sought to compel wastewater infrastructure upgrades for the Tijuana River Valley, including those that improve interception and diversion of solid waste, wastewater collection and treatment, and water quality monitoring (with timely public notification of pollution). The lawsuit settled on the merits in April 2022 with a settlement agreement requiring many improvements for water quality designed to complement the USMCA¹ Comprehensive Infrastructure Solution. Surfrider is committed to seeing the full Comprehensive Infrastructure Solution implemented by EPA and USIBWC and will continue to advocate for full watershed protection so that our members and the public can enjoy this treasured coastal area.

Legal Requirements Under NEPA

The National Environmental Policy Act of 1969 ("NEPA") establishes a policy to encourage a productive and enjoyable harmony between human and environment, prevent or eliminate damage to the environment, and enrich the understanding of the ecological systems and natural resources important to the nation. (42 USC § 4321). In furtherance of this policy, NEPA requires that the Federal Government use all practicable means such that the Nation may, among other duties, fulfill its responsibilities as trustee of the environment for future generations; assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings; attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences; and enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources. (42 USC § 4331(b)).

NEPA requires that federal agencies fully consider the environmental effects of proposed major actions and any reasonable alternatives of a proposed major federal action. 42 U.S.C. § 4332(2)(C). NEPA is a critical law that has empowered local communities to protect themselves, their environment, and protected areas for over 45 years. The Council on Environmental Quality ("CEQ") regulations note that the "NEPA process is intended to help public officials make decisions that are

¹ USMCA section 821 mandates EPA, in coordination with eligible public entities, to carry out the planning, design, construction, operation and maintenance of high priority treatment works for solutions to pollution coming across the border from Mexico.

based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." See 40 CFR 1500.1.

One of NEPA's key mandates requires Federal agencies to prepare a detailed EIS for any major Federal action significantly affecting the environment, which addresses: (1) the environmental impact of the proposed action; (2) any adverse environmental effects which cannot be avoided if the proposal is implemented; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. (42 USC § 4332). The primary purpose of an EIS is to force the government to take a "hard look" at its proposed action, and to provide a full and fair discussion of significant environmental impacts and inform decision makers and the public of reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. (*Baltimore Gas and Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87 (1983); 40 C.F.R. § 1502.1). Additionally, California Environmental Quality Act ("CEQA") compliance analysis may be required for components of the project that may be constructed within state or local jurisdiction.

Agencies complying with NEPA must also consider environmental justice ("EJ") concerns. In 1994, Executive Order 12898 was established to require federal agencies to address "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low income populations." Exec. Order No. 12898, 32 C.F.R. 651.17 (1994). An accompanying Presidential Memorandum clearly linked this executive EJ order to NEPA. To articulate how this may be achieved under NEPA, the CEQ released EJ guidance in 1997. In addition, The Executive Order created the Environmental Justice Interagency Working Group (EJ IWG) which released updated guidance for agencies in 2016.

Current Baseline Conditions & Anticipated Future Conditions

In 2021, the Tijuana Sloughs were closed 246 days, Imperial Beach was closed 71 days, Silver Strand 30 days, and the Coronado shoreline 2 days. With the implementation of new genetic-based testing in San Diego County in 2022, that is more sensitive to picking up signs of sewage and fecal contamination, we've already seen a significant increase in closure and sewage warning days. As of July 27th, the Tijuana Sloughs have been closed for the entirety of 2022 (206 days). Meanwhile, Imperial Beach has already been closed 102 days, Silver Strand 45 days, and Coronado 20 days.

Surfrider San Diego's Blue Water Task Force volunteer water testing program, in collaboration with Mar Vista High School, tested water quality at the Imperial Beach Pier nine times at the end of this school year between April and May, 2022. Bacteria levels exceeded the beach action value used by the State of California to make management decisions to issue swim advisories and beach closures in 2 of the 9 samples collected by Surfrider. The San Diego Chapter has not been back out to sample any of the sampling sites within the Tijuana River Valley (or "TRV") since the spring of 2021 out of

concern for volunteer safety as nearly every sample collected showed bacteria levels that were 10-100 fold higher than acceptable water quality criteria for recreational waters. All Surfrider data are available for viewing at BWTF.surfrider.org.

Water quality information generated by local health agencies and Surfrider volunteers clearly show that the beaches in South San Diego County do not support safe recreational use on far too many days every year, and the communities in this region continue to be impacted by cross-border sewage flows.

No Action Alternative is not a Realistic Alternative Considering Project Need and History of Litigation.

The “no action alternative” is a non-starter, as it would do nothing to address the border pollution crisis. Local, state and federal governmental entities, including U.S. Congress, have acknowledged that the extent of pollution in this area is untenable and have committed to action on the issue. Surfrider Foundation appreciates that the EPA admitted, during the July 20, 2022 USMCA Public Comment Meeting on the Draft PEIS, that the No Action Alternative does not meet the purpose and need of the project but merely serves as a baseline.

Surfrider Foundation Strongly Advocates for Alternative 2 Comprehensive Solution

In order to address the egregious water pollution in the Tijuana River Valley that has plagued the watershed for decades and spurred a round of three Clean Water Act litigation cases in 2018, including the Surfrider Foundation case mentioned above, the EPA and USIBWC must commit to implementation of the Alternative 2 Comprehensive Solution evaluated in the draft PEIS. The Alternative 1 would merely implement core projects and would exclude the trash booms, increased diversion rates, effluent reuse and coastal sewage treatment components needed to more comprehensively address the ongoing water quality violations. The Alternative 2 Comprehensive Solution is necessary to more effectively address Clean Water Act violations and abate occurrences of polluted transboundary flows. In fact, as acknowledged by EPA, Alternative 1 would only address 56% of transboundary flows while Alternative 2 is projected to address 76% of transboundary flows and lead to a 95% reduction in summer beach closures.

On November 8, 2021, the EPA announced its intention to move forward on a bold solution to address transboundary water pollution. The EPA chose the Comprehensive Infrastructure Solution (“CIS”) Alternative I-2 after substantial analysis and public input. The CIS combined several individual projects that together will reduce sewage in canyon flows, sewage discharged to the coast, and wastewater in the Tijuana River. The revealed project included a 35 million gallons per day (“MGD”) expansion of the existing South Bay International Wastewater Treatment Plant and a new 60 MGD primary treatment plant, both on the U.S. side of the border. It included plans to improve canyon collector functions, allow for water reuse and improve capture of polluted water

south of the border, and protection of coastal waters through upgraded treatment at the Punta Bandera coastal outfall on the Mexican coastline. The EPA plan reported that it expected to reduce the amount of beach closures due to water quality impairment by 95% in the summer, which is of the utmost importance to residents and visitors of south San Diego County beaches. The new sewage capacity was designed to accommodate population growth until 2050. The plan was also designed to provide the U.S. more oversight to treat wastewater and ensure sewage stays out of the river and ocean. Surfrider was pleased to see the CIS closely reflect the stakeholder solutions that the San Diego Chapter worked hard to develop over several years of active monitoring, analysis and engagement with agencies and communities. The EPA's CIS Alternative I-2 most closely resembles the draft PEIS Alternative 2, including core projects and supplemental projects, with Project A: Expanded ITP at the Option 3 60MGD level. Surfrider Foundation strongly advocates that EPA maintain its commitment under the USMCA Mitigation of Contaminated Transboundary Flows process and pursue the strongest project evaluated in the draft PEIS.

Furthermore, the protection of coastal water quality in the United States will depend on the health of coastal water quality in Mexico near the border region as well. While we are pleased to see planned upgrades to the San Antonio de los Buenos Treatment Plant, we also ask that there be consideration of increased treatment ability to fully cover population growth until 2050 and the consideration of an offshore ocean outfall, similar to the South Bay Ocean Outfall, on the Mexican side of the border at SABTP to more fully protect coastal health and water quality. This ocean outfall may ensure that raw or insufficiently treated sewage from the SABTP would be discharged into deep water offshore where it would present less of a public health threat to communities on both sides of the border.

Project A: International Treatment Plant Expansion Should be to Full 60 MGD Size

While the draft Programmatic Environmental Impact Statement notes there are three options for sizes in Project A Expansion of ITP, only one option is consistent with the objectives of Congress and EPA's identified Proposed Action according to the Notice of Intent to prepare the EIS; this option is the A3 60 Million Gallons per Day sized expansion of the South Bay International Wastewater Treatment Plant. The options A1 for 40MGD and A2 for 50 MGD are insufficient as they would only allow for capacity of population growth to current levels and 2030, respectively. In fact, by the time the project is approved and construction is completed, these options may be insufficient to address the current wastewater treatment demand in the border region. The fullest implementation of the diversion and treatment options will help ensure the protection and restoration of the water quality and biological integrity of the U.S. side Tijuana River and Estuary. Although the costs are higher for Option A3 (PEIS at p.2-11), the demand for expanded treatment capacity is at the crux of the water quality improvement needs to remedy Clean Water Act violations and protect environmental and public health in the region.

Need for Comprehensive Trash Capture and Extraction

In addition to the importance of addressing sewage, heavy metals and other water pollution sources, Surfrider Foundation would also like to emphasize that the plan to address physical waste or trash, including large items such as tires, refrigerators, and furniture, as well as smaller items

such as takeout foodware, chip wrappers and other plastic packaging, should be considered an important component of the mitigation of transboundary pollution, so as to minimize downstream impacts of trash once it reaches the Tijuana River Valley. Trash removal is not only important for environmental resources and wildlife habitat, but also to protect human health, which can be compromised from trash accumulation. Trash accumulation can lead to human exposure to bacteria, viruses, and toxic substances, including mosquito-borne diseases.

Surfrider Foundation prioritizes the reduction of pollution as a nationwide initiative, and addresses macroplastic in many of our programs and campaigns. Surfrider Foundation has found enormous amounts of plastic waste accumulate in the Tijuana River Valley each year. There should be a comprehensive and integrated trash plan if the entire system is going to function properly to treat stormwater and wastewater. Uncontrolled trash and solid waste damages and increases maintenance needed for proper function of the conveyance and treatment systems designed to mitigate transboundary pollution. When severe, trash clogs drainage infrastructure and leads to flooding. This accumulation is in spite of Surfrider Foundation volunteers and other NGOs operating in South San Diego, who have engaged in countless beach cleanups in the Tijuana River Valley watershed and corresponding beaches. The extent of trash pollution is a high level of concern for Surfrider members and must be fully addressed.

Climate Change Concerns Demand Comprehensive Action

Climate change impacts may come in many forms. Some of the most notable impacts that can affect the mitigation of transboundary pollution include sea level rise, flash floods, sedimentation, increased drought, and ocean acidification. Sea level rise is affecting coastal communities throughout the region; sea level rise can diminish sand supply, narrow beaches, degrade essential sewage infrastructure and adversely affect beach access opportunities. This is especially true in the case of Imperial Beach, a low-lying city that is highly susceptible to sea level rise impacts. If sediment from the Tijuana River was no longer contaminated with untreated sewage, chemical waste, and trash, it could increase the City's sea level rise resilience by providing an important source of natural beach sand replenishment to the Imperial Beach shoreline. Sadly, this cannot occur at present due to legitimate concerns over contamination. Increased sand supply to the Imperial Beach coastline would also provide additional resilience to the Tijuana River Estuary, Southern California's largest remaining coastal wetland. With water quality impacts leading to loss of opportunity for beach recreation, the reduced beach access due to sea level rise will exacerbate the concern.

Coastal estuaries, such as the Tijuana River Estuary, are important to sequester and store carbon in battling climate change. The Tijuana River Estuary, including the tidal salt marsh and wetlands, is influenced by sediment flow, wave action and tidal shifts. The Estuary contains riparian habitat and is very significant ecologically, as well as acting as an important buffer against sea level rise and habitat loss from climate change. The ecological function and climate change abatement ability of the Tijuana River Estuary will be most protected through the Alternative 2 Core + Supplemental Projects that will reduce contaminated transboundary flows most effectively.

The project is situated on a 100 year floodplain and is significant for the prevention of flooding in the region. With climate change causing more frequent and severe coastal storms, EPA should prioritize protection of healthy wetland systems and resilient coastlines. Wetlands work like natural sponges to trap and slowly release surface water, rain, snowmelt, groundwater, and flood waters. Wetland vegetation slows the speed of flood waters and distributes them more slowly over the floodplain. Healthy wetlands are also an important player in beach erosion control by effectively dissipating wave energy.

There is also a concern regarding sustainable and resilient water supply in the region due to increased drought and loss of potable water resources. The EPA should prioritize and pursue effective water recycling and wastewater reuse opportunities, including Projects H and I in the PEIS that plan for treated effluent reuse, and the possibility for reuse should be explored for treatment at the San Antonio de Los Buenos Treatment Plant to abate coastal discharge.

Climate change is reducing renewable water resources, as well as causing ocean warming and acidification that further challenge the conservation and management of coastal resources. Water quality impairments as a result of untreated sewage flows exacerbate global-scale threats to marine life and coastal communities. For instance, climate change-induced ocean warming, which when paired with elevated sedimentation and nutrient loading, can fuel harmful algal blooms, threatening human and marine health.

Environmental Justice Will Be Best Served with Alternative 2 Comprehensive Solution

Surfrider Foundation is committed to the protection and enjoyment of coastal resources for *all people*. As noted above, NEPA requires federal agencies to consider environmental justice in their activities. EPA must strive to ensure EJ issues are adequately considered when there is federal agency action that may involve environmental impacts on minority populations, low-income populations, and/or indigenous communities. The EPA also has an environmental justice mandate: “The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies” (EPA, 2021c). Within California law, environmental justice is called for in municipal planning efforts, including the mandate to cities and counties to identify “disadvantaged communities” and include EJ goals when updating their general plans. Cal. Gov. Code Sec. 65302) The California Governor’s Office of Planning and Research (OPR) released recommendations on how to define disadvantaged communities, which provides potential connections for these “environmental Justice requirements to be included in an agency’s CEQA compliance. Additionally, the U.S.-Mexico-Canada Agreement itself indicates a priority for environmental justice, stating “The Parties recognize that the environment plays an important role in the economic, social, and cultural well-being of indigenous peoples and local communities, and acknowledge the importance of engaging with these groups in the long-term conservation of the environment.” (USMCA article 24:2(4)).

In the Tijuana River Valley and adjacent communities, there are ongoing environmental justice concerns, especially in San Ysidro, Nestor, and Imperial Beach, regarding trash accumulation and unsanitary conditions in the Valley. There is also a concern amongst environmental justice communities regarding pollution that has become airborne as well with aerosolized pathogens and irritants, which should be accounted for, as well. The City of Imperial Beach is a majority-minority community, with 68% of the population reporting as non-white and 51% hispanic. (PEIS at 3-90). The South San Diego County border region is also home to residents with lower income than the County as a whole, who face greater health disparities, and who experience inequities in access to parks and healthy outdoor spaces. Environmental justice demands that these communities receive fair treatment and meaningful involvement in the enforcement of environmental laws. While the build out and implementation of the projects may have some temporary and/or negative environmental effects, the Alternative 2 Core + Supplemental Projects is designed to remedy a grave and long-standing environmental injustice with the chronic pollution of these environmental justice communities through contaminated transborder water flows. In fact, the enforcement of the Clean Water Act is the exact desire evinced by the Cities of Imperial Beach and Chula Vista in filing suit against USIBWC in February 2018. The USMCA's Comprehensive Infrastructure Solution (most closely resembling Alternative 2 in the current PEIS) was designed to address those water quality violations and bring clean water back to the border communities.

Funding is Available from Several Sources

In addition to the United States-Mexico-Canada Agreement mandate to address transboundary pollution at the U.S./Mexico border, the United States Congress also indicated that the issue is a priority for the nation through allocating funding of \$300 Million in the USMCA Implementation Act. The U.S. Congress then appropriated \$300 Million to support border water infrastructure projects along the US-Mexico Border The Border Water Infrastructure Grant Program ("BWIP") has also received \$32 Million in funding for Fiscal Year 2022. This is an increase of \$2 Million and Surfrider Foundation continues to advocate for increased funding levels.

Additionally, state and even local funds have become available to address the complex and long-standing environmental issue. The California Legislature has allocated \$35 Million for border water quality improvement projects and is considering an additional \$100 Million in the current legislative session. The promising funding levels and commitments by various governmental bodies, in addition to any cost sharing agreements with Mexico, should indicate to EPA and IBWC that the full comprehensive solution is justified and fundable, especially with community buy-in and support. This indicates the need to select and pursue Alternative 2: Core + Supplemental Projects.

We appreciate your consideration of these comments regarding the forthcoming EIS for the USMCA Mitigation of Contaminated Transboundary Flows project and EPA's efforts to address the significant pollution affecting the U.S.-Mexico border region. Again, we emphasize that in order to address the immense, decades-long issue of contaminated cross-border pollution that both "core" and "supplemental" projects are necessary to more comprehensively address extent of pollution in

Tijuana River Valley Watershed; **we ask that EPA and IBWC take action as quickly and comprehensively as possible to implement Alternative 2: Core + Supplemental Projects.**

Sincerely,

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