

Public Law No: 106-457.

A bill to encourage the restoration of estuary habitat through more efficient project financing and enhanced coordination of Federal and non-Federal restoration programs, and for other purposes.

—TITLE VIII—

TIJUANA RIVER VALLEY ESTUARY AND BEACH CLEANUP

SEC. 801. SHORT TITLE.

This title may be cited as the 'Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000'.

SEC. 802. PURPOSE.

The purpose of this title is to authorize the United States to take actions to address comprehensively the treatment of sewage emanating from the Tijuana River area, Mexico, that flows untreated or partially treated into the United States causing significant adverse public health and environmental impacts.

SEC. 803. DEFINITIONS.

In this title, the following definitions apply:

- (1) ADMINISTRATOR- The term 'Administrator' means the Administrator of the Environmental Protection Agency.
- (2) COMMISSION- The term 'Commission' means the United States section of the International Boundary and Water Commission, United States and Mexico.
- (3) IWTP- The term 'IWTP' means the South Bay International Wastewater Treatment Plant constructed under the provisions of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), section 510 of the Water Quality Act of 1987 (101 Stat. 80-82), and Treaty Minutes to the Treaty for the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, dated February 3, 1944.
- (4) SECONDARY TREATMENT- The term 'secondary treatment' has the meaning such term has under the Federal Water Pollution Control Act and its implementing regulations.
- (5) SECRETARY- The term 'Secretary' means the Secretary of State.
- (6) MEXICAN FACILITY- The term 'Mexican facility' means a proposed public-private wastewater treatment facility to be constructed and operated under this title within Mexico for the purpose of treating sewage flows generated within Mexico, which flows impact the surface waters, health, and safety of the United States and Mexico.
- (7) MGD- The term 'mgd' means million gallons per day.

SEC. 804. ACTIONS TO BE TAKEN BY THE COMMISSION AND THE ADMINISTRATOR.

(a) SECONDARY TREATMENT-

- (1) IN GENERAL- Subject to the negotiation and conclusion of a new Treaty Minute or the amendment of Treaty Minute 283 under section 1005 of this Act, and notwithstanding section 510(b)(2) of the Water Quality Act of 1987 (101 Stat. 81), the Commission is authorized and directed to provide for the secondary treatment of a total of not more than 50 mgd in Mexico--
 - (A) of effluent from the IWTP if such treatment is not provided for at a facility in the United States; and
 - (B) of additional sewage emanating from the Tijuana River area, Mexico.
- (2) ADDITIONAL AUTHORITY- Subject to the results of the comprehensive plan developed under subsection (b) revealing a need for additional secondary treatment capacity in the San Diego-Tijuana border region and recommending the provision of such capacity in Mexico, the Commission may

provide not more than an additional 25 mgd of secondary treatment capacity in Mexico for treatment described in paragraph (1).

(b) **COMPREHENSIVE PLAN-** Not later than 24 months after the date of enactment of this Act, the Administrator shall develop a comprehensive plan with stakeholder involvement to address the transborder sanitation problems in the San Diego-Tijuana border region. The plan shall include, at a minimum--

- (1) an analysis of the long-term secondary treatment needs of the region;
- (2) an analysis of upgrades in the sewage collection system serving the Tijuana area, Mexico; and
- (3) an identification of options, and recommendations for preferred options, for additional sewage treatment capacity for future flows emanating from the Tijuana River area, Mexico.

(c) **CONTRACT-**

(1) **IN GENERAL-** Subject to the availability of appropriations to carry out this subsection and notwithstanding any provision of Federal procurement law, upon conclusion of a new Treaty Minute or the amendment of Treaty Minute 283 under section 5, the Commission may enter into a fee-for-services contract with the owner of a Mexican facility in order to carry out the secondary treatment requirements of subsection (a) and make payments under such contract.

(2) **TERMS-** Any contract under this subsection shall provide, at a minimum, for the following:

(A) Transportation of the advanced primary effluent from the IWTP to the Mexican facility for secondary treatment.

(B) Treatment of the advanced primary effluent from the IWTP to the secondary treatment level in compliance with water quality laws of the United States, California, and Mexico.

(C) Return conveyance from the Mexican facility of any such treated effluent that cannot be reused in either Mexico or the United States to the South Bay Ocean Outfall for discharge into the Pacific Ocean in compliance with water quality laws of the United States and California.

(D) Subject to the requirements of subsection (a), additional sewage treatment capacity that provides for advanced primary and secondary treatment of sewage described in subsection (a)(1)(B) in addition to the capacity required to treat the advanced primary effluent from the IWTP.

(E) A contract term of 20 years.

(F) Arrangements for monitoring, verification, and enforcement of compliance with United States, California, and Mexican water quality standards.

(G) Arrangements for the disposal and use of sludge, produced from the IWTP and the Mexican facility, at a location or locations in Mexico.

(H) Maintenance by the owner of the Mexican facility at all times throughout the term of the contract of a 20 percent equity position in the capital structure of the Mexican facility.

(I) Payment of fees by the Commission to the owner of the Mexican facility for sewage treatment services with the annual amount payable to reflect all agreed upon costs associated with the development, financing, construction, operation, and maintenance of the Mexican facility, with such annual payment to maintain the owner's 20 percent equity position throughout the term of the contract.

(J) Provision for the transfer of ownership of the Mexican facility to the United States, and provision for a cancellation fee by the United States to the owner of the Mexican facility, if the Commission fails to perform its obligations under the contract. The cancellation fee shall be in amounts declining over the term of the contract anticipated to be sufficient to repay construction debt and other amounts due to the owner that remain unamortized due to early termination of the contract.

(K) Provision for the transfer of ownership of the Mexican facility to the United States, without a cancellation fee, if the owner of the Mexican facility fails to perform the obligations of the owner under the contract.

(L) The use of competitive procedures, consistent with title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), by the owner of the Mexican facility in the procurement of property or services for the engineering, construction, and operation and maintenance of the Mexican facility.

(M) An opportunity for the Commission to review and approve the selection of contractors providing engineering, construction, and operation and maintenance for the Mexican facility.

(N) The maintenance by the owner of the Mexican facility of all records (including books, documents, papers, reports, and other materials) necessary to demonstrate compliance with the terms of this section and the contract.

(O) Access by the Inspector General of the Department of State or the designee of the Inspector General for audit and examination of all records maintained pursuant to subparagraph (N) to facilitate the monitoring and evaluation required under subsection (d).

(P) Offsets or credits against the payments to be made by the Commission under this section to reflect an agreed upon percentage of payments that the owner of the Mexican facility receives through the sale of water treated by the facility.

(d) IMPLEMENTATION-

(1) IN GENERAL- The Inspector General of the Department of State shall monitor the implementation of any contract entered into under this section and evaluate the extent to which the owner of the Mexican facility has met the terms of this section and fulfilled the terms of the contract.

(2) REPORT- The Inspector General shall transmit to Congress a report containing the evaluation under paragraph (1) not later than 2 years after the execution of any contract with the owner of the Mexican facility under this section, 3 years thereafter, and periodically after the second report under this paragraph.

SEC. 805. NEGOTIATION OF NEW TREATY MINUTE.

(a) CONGRESSIONAL STATEMENT- In light of the existing threat to the environment and to public health and safety within the United States as a result of the river and ocean pollution in the San Diego-Tijuana border region, the Secretary is requested to give the highest priority to the negotiation and execution of a new Treaty Minute, or a modification of Treaty Minute 283, consistent with the provisions of this title, in order that the other provisions of this title to address such pollution may be implemented as soon as possible.

(b) NEGOTIATION-

(1) INITIATION- The Secretary is requested to initiate negotiations with Mexico, within 60 days after the date of enactment of this Act, for a new Treaty Minute or a modification of Treaty Minute 283 consistent with the provisions of this title.

(2) IMPLEMENTATION- Implementation of a new Treaty Minute or of a modification of Treaty Minute 283 under this title shall be subject to the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) MATTERS TO BE ADDRESSED- A new Treaty Minute or a modification of Treaty Minute 283 under paragraph (1) should address, at a minimum, the following:

(A) The siting of treatment facilities in Mexico and in the United States.

(B) Provision for the secondary treatment of effluent from the IWTP at a Mexican facility if such treatment is not provided for at a facility in the United States.

(C) Provision for additional capacity for advanced primary and secondary treatment of additional sewage emanating from the Tijuana River area, Mexico, in addition to the treatment capacity for the advanced primary effluent from the IWTP at the Mexican facility.

(D) Provision for any and all approvals from Mexican authorities necessary to facilitate water quality verification and enforcement at the Mexican facility.

(E) Any terms and conditions considered necessary to allow for use in the United States of treated effluent from the Mexican facility, if there is reclaimed water which is surplus to the needs of users in Mexico and such use is consistent with applicable United States and California law.

(F) Any other terms and conditions considered necessary by the Secretary in order to implement the provisions of this title.

SEC. 806. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated a total of \$156,000,000 for fiscal years 2001 through 2005 to carry out this title. Such sums shall remain available until expended.