



OFFICE OF THE GOVERNOR

October 10, 2023

Via Electronic Mail

Dr. Kate Huckelbridge, Executive Director
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105
Kate.Huckelbridge@coastal.ca.gov

RE: Trans-Boundary Pollution Crisis in the Tijuana River and Tijuana River Valley

Dear Dr. Huckelbridge,

As you know, the Coastal Commission will receive an update on the longstanding Tijuana River sewage crisis during its upcoming meeting. Addressing that crisis has been a major priority for the Governor and his Administration. We believe the meeting will provide a valuable opportunity to share information with the Commission and interested stakeholders about the robust efforts that the State has taken to date on this issue and to address some misconceptions that have animated calls for the Governor to proclaim a state of emergency under the Emergency Services Act related to the Tijuana River.

Unlike like emergency declarations at a local level, state-level emergency proclamations are a significant exercise of the Governor's executive powers. The Governor's emergency powers include, for example, the authority to issue orders that have the force and effect of law and to suspend state laws that impede the emergency response. Cal. Gov't Code §§ 8567; 8571. Accordingly, the Governor invokes his emergency powers judiciously—and only when necessary and consistent with the scope of authority granted by the Emergency Services Act.

As noted, the Governor's emergency powers extend to waiving only state statutes and regulations, as necessary to facilitate emergency response and

recovery. For example, sections of the Coastal Act or other state laws could be waived if they would delay the U.S. International Border and Water Commission's work to construct the new facilities the federal government needs to adequately process wastewater entering the U.S. in the Tijuana River. To date, however, no one has identified or proposed any specific relief from state statutes or regulations necessary to facilitate emergency response and recovery, even in response to specific requests from our office to identify any needed suspensions.

Moreover, in this context, where federal entities are responsible for the wastewater facility, these state powers are inapplicable. A state proclamation of emergency cannot accelerate *federal* work needed on this federal facility that is in a federally-controlled area on an international border.

For this same reason, a state proclamation of emergency is not necessary to trigger a federal emergency declaration to support the *federal* response to this crisis. Section 501 of the Stafford Act specifically provides that the President may declare an emergency in a situation where the primary responsibility for emergency response belongs to the federal government because it involves an area for which exclusive or preeminent responsibility and authority rests with the federal government. See 41 U.S.C. § 5191(b). The South Bay International Wastewater Treatment Plant is a facility for which exclusive responsibility and authority rests with the federal government, and transboundary water flows also fall under the federal government's jurisdiction.

Although the Governor has not proclaimed a state of emergency because it would not actually aid the ongoing response to this crisis, he has taken a host of other actions focused on the real solution to this crisis—pushing the federal government to move urgently to upgrade the South Bay International Wastewater Treatment Plant and related facilities. Specifically:

- The Governor has engaged with federal and binational partners requesting urgent action and additional funding.
- The Governor joined state and local leaders representing the County of San Diego and 18 of the cities in Southern California in their support of the late Senator Feinstein and Senator Padilla's call for \$310 million to address the Tijuana River crisis.
- The Governor has focused on the unlocking of federal funds to ensure the necessary repairs can be funded for this federal water treatment plant.

This is in addition to the substantial enforcement actions that state agencies have taken in response to the crisis, including most recently a Notice of Violation issued by the San Diego Regional Water Quality Control Board to the

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U.S. International Boundary and Water Commission on September 5, 2023, for its failure to comply with terms of an earlier enforcement order and its water discharge permit.

We hope this letter provides helpful context on the State's role in addressing the current crisis and will help keep the focus on actions and advocacy that will actually make a difference in addressing this crisis. Please feel free to share this letter with Commissioners and other interested stakeholders.

Sincerely,

A handwritten signature in black ink, appearing to read "David Sapp", with a long, sweeping flourish extending to the right.

DAVID SAPP
Legal Affairs Secretary
Office of Governor Gavin Newsom