Testimony of Jim Simmons
Subcommittee on Water Resources and Environment
U.S. House of Representatives * Tuesday, July 10, 2007

Bajagua, LLC
160 Industrial Street, Suite 200, San Marcos, CA 92078
(760) 471-2365

Madam Chair, members of the Committee. Thank you for the opportunity to appear before you today to discuss a matter of vital importance to the San Diego/Tijuana border region. My name is Jim Simmons, and I am managing partner for the Bajagua project, a public-private partnership dedicated to resolve a decades-old public health and pollution problem that has plagued both the United States and Mexico.

It is with deep regret that a critical need exists for me to appear before you here today. I say that because my associates and I hoped by now to be under construction on a history-making binational endeavor authorized by Congress and the President on two previous occasions that would mark a major step forward in addressing infrastructure and pollution challenges in the border region.

Under the authority of Public Law 106-457, we have been working diligently for more than 7 years to implement the will of Congress and Minute 311 of an international treaty that authorizes the construction and operation of new sewage treatment facilities on the U.S.-Mexican border. Bajagua was analyzed amongst other alternatives, including the one now being revisited by the US IBWC, and was selected as the "preferred alternative" certified in the Record of Decision following the Supplemental Environmental Impact Statement, which included significant environmental and public review. I should note that, unlike the alternative being pressed by the US IBWC, not one letter of opposition

was received regarding this decision, and no lawsuit was threatened or filed against the SEIS or the ROD.

This plan was selected above all others to correct 1) the current non-compliance with the Clean Water Act of IBWC's existing South Bay International Wastewater Treatment Plant, which currently is under federal court order to comply with NPDES permit standards by September 2008; 2) address the sanitation needs of the region with a 20 year horizon and 3) provide critically needed new water supplies by means of reclaiming and reusing the water for the region, bringing more industrial development and new jobs to the area.

All of this preparatory work, including extensive preliminary engineering work, preliminary designs, numerous hydraulic, geotechnical and other field studies, the preparation of bid documents and the qualification of contractors to build and operate the Bajagua project has been privately funded to date by Bajagua LLP, with no taxpayer money expended. Furthermore, Bajagua will fund the engineering, construction and operation of the project until we deliver treated water that meets all applicable standards of both the U.S. and Mexico. Then, and only then, would we be reimbursed incrementally for our costs, plus a reasonable profit over a twenty-year period. It is important to understand that the real profit in this project, is not in the contract to treat the sewage. The modest percentage memorialized in our development agreement with the US IBWC is far less than most Americans expect to see out of their 401k's. In fact, any real profits for our company would lie far down the road, if and when we can attract sales of reclaimed industrial water treated to a higher standard – all of which will require more

completely private investment, on our nickel and at our risk, without reimbursement from the U.S. taxpayer.

I regret to report that the objective we have pursued has been repeatedly frustrated, hindered and delayed by bureaucratic obstruction in the U.S. Section of the International Boundary and Water Commission that is directly in conflict with the expressed will of Congress and the agency's own environmental analysis approving the project. We can provide full documentation that those delays have been caused primarily by the agency itself -- we believe purposeful delays -- to enable it to propose a project that will be entirely dependent upon the U.S. taxpayer for both its construction cost and its cost of operation.

One specific example to demonstrate the agency's true intentions is the statement by the US IBWC's in house legal counsel who said at a meeting with Bajagua that the legislation adopted by Congress and signed into law to clean up the Tijuana River was "bad public policy" and that "no one with any common sense supports it." It is statements like this that make it quite clear that the agency was only paying lip service to the law, and was actively undermining our efforts to complete the Bajagua project.

Another example of efforts to obstruct the timely completion of this project were again the work of Commission's in house counsel. During a briefing to IBWC by our financial lender, the Commission's counsel repeatedly sought to discourage this particular institution from participating in the project based on unrealistic claims of financial uncertainty surrounding the project. It was only after our financial institution abruptly insisted numerous times that it was fully aware of every element of the financial

risk and obligations and yet was still eager to participate in this project that the Commission's counsel reluctantly discontinued this line of harassment.

On May 8 of this year, the U.S. Section unilaterally suspended any work on the Bajagua project, without prior notice, so that it can pursue its own alternative project.

The US IBWC's proposed alternative project has previously been reviewed and rejected. Because the merits of the Bajagua project are so superior to those the U.S. Section is now promoting, we believe the appropriate response is to redouble all efforts to move this project forward, and we are doing so independent of the USIBWC.

The Bajagua project makes sense for the San Diego/Tijuana border. It will more than double the current volume of sewage treated by the South Bay International Wastewater Treatment Plant – and treat it to the higher standard demanded by law -- a standard that the US IBWC's South Bay Plant has never achieved from the day it opened. We thereby can help bring about cleaner San Diego bay waters and cleaner California beaches and help restore the estuaries that have been left to die.

But that is only part of our goal. The other part lies in our goal to turn the volume of partially or untreated sewage that currently pollutes southern California into critically needed new supplies of reclaimed water. And therein lies the great difference between the Bajagua project and the discredited alternative that has been resurrected by the USIBWC.

It is reclaimed water, available only through the construction of the Bajagua project that offers new hope to all involved. First of all, it is the sale of reclaimed water that offers the opportunity for the U.S. government to obtain part of its money back from Mexico. The law that authorized the project required the reimbursement of the cost to

treat the water to secondary for any water we sell for reuse in Mexico. The foresight of Congress was the assure the US taxpayers that while Mexico does not have the money to deal with its own problems, the resale of reclaimed water could provide a revenue source to offset the US taxpayers' contributions.

It is the availability of new supplies of reclaimed water that can also allow several other agencies and jurisdictions in the region to address their water management challenges. There is no need to describe here the challenges of water supply in that arid part of North America. From the water deficit issues in the delivery of Colorado River water to the lining of the All-American Canal and the resulting concerns in Mexicali, it is clear that Bajagua presents an opportunity to address multiple problems.

It is unfortunate as we meet here today that the USIBWC has the narrow view to put millions more taxpayer dollars into a failed project – a project so inadequate that since the day it opened it has been in violation of the Clean Water Act. Despite a court order, USIBWC continues to drag its feet implementing the will of Congress. Instead, the agency is providing incomplete and misleading information about its alternative. Because of its unwillingness to address this problem, the only way USIBWC can comply with the court order is to shut down its existing plant. I suggest this is not an option any reasonable person would consider.

The information the US IBWC is providing to the Congress in support of their position needs to be scrutinized. First, they have said they need $66 million to build their alternative, being 25 mgd of secondary sewage treatment adjacent to the existing plant in San Diego. In reality, and they admitted this to your staff, they need closer to $100 million, and that estimate has yet to be reviewed by the GAO or OMB. Our own experts

say the cost could be much higher. The remaining portion of the cost they say they plan to request from Mexico. Unfortunately, the trial balloon was already floated and Mexico has already told them they do not have the money and cannot participate. In a recent meeting with numerous Congressional staffers, US IBWC Commissioner Carlos Marin said he was told by administration officials to stick with the lower number to avoid "sticker shock" and to return for the remaining $30+ million in the FY09 appropriations cycle. This is the same manipulative behavior that halted the construction of the existing IBWC plant in the early 1990s and is the reason why the San Diego region holds the agency in such disdain for the 70 plus years we've been dealing with the cross-border sewage related health crisis.

On the other hand, Bajagua offers to help resolve this decades old problem. It will treat the US EPA's determined 59 mgd of sewage being generated in Tijuana and flowing across the border. The plant will be build and paid for by private sector dollars, and repaid over 20 years when and only when the testing of the sewage demonstrates it meets Clean Water Act discharge standards. In addition, the plant provides a source of money to repay this cost through the sale of reclaimed water, with the additional proceeds providing a source of infrastructure money to the City of Tijuana to aid in plumbing parts of the city that currently have none. Bajagua also provides new supplies of water for an arid region all at no public expense. It is the reclaimed water portion of the plant that also provides that "light at the end of the tunnel" for US taxpayers, in that after the 20 year contract expires, the plant should be fully self-sustained. This is in stark contrast to

the US IBWC's proposed alternative that will subjugate US taxpayers to forever pay the burden of treating Mexico's sewage.

Bajagua LLC has invested nearly a decade of effort and tens of millions of dollars in pursuing this environmentally sound, international cooperative solution to a decades old pollution problem. We have the commitments for private financing the of project, we have three highly qualified international firms ready to bid to build and operate the project, and we have the commitments from Mexico to support the project with necessary concessions for land and for the water. But we need your help at this critical stage.

We ask for your support to say "no" to any further approval of public funds to pursue the failed, so-called "alternative" project by USIBWC. And we respectfully ask Congress for new stewardship of this project – an agency or authority with the vision, competence and will to successfully complete this project with all of its promises.

Once again, we appreciate the opportunity to be heard on this important public health and economic development issue. We hope that the committee will remember that the Bajagua solution offers a win-win for the people of the border region of both the U.S. and Mexico. US IBWC's lack of leadership means more failure and delay, a continued public health and pollution crisis, and potentially more cost to the taxpayers.

Thank you for this opportunity. I stand ready to respond to any questions you might have.

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GCIRP070307;10:38AM

June 10, 2007

List of items presented to the T&I Subcommittee on Water Resources and Environment Hearing on "Addressing Sewage Treatment in the San Diego – Tijuana Border Region: Implementation of TTLE VII of P.L. 106-457, as Amended"

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1. Jim Simmons testimony
2. PowerPoint presentation Bajagua Presentation - T&I Water Resources and Environment Subcommittee Jul 10, 2007
3. T&I Committee Hearing Project Progress Book
4. Misinformation issues regarding IBWC's request for funding for a project to treat 25 mgd of sewage at the South Bay International Wastewater Treatment Plant (IWTP)
5. Letter from Bajagua stating readiness of the RFP documents and requesting approval to release
6. Letter from the USIBWC denying Bajagua the ability to conduct business with Mexico unless through the USIBWC protocol.
7. Letter from Bajagua rebutting allegations of not meeting Development Agreement deadlines

Jim Simmons
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(760) 471-2365

Minute 311 Sanitation Plant (Bajagua) Project Completion Progress Book

bajagua project, LLC

Jim Simmons, Managing Member

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B) *El Mexicano Newspaper – **Carmelo Zavala Centro Industrial de Gestión Ambiental (CIGA) – US Cancels Bajagua Project – "The cancelation of the Bajagua International Project for Water Treatment by the US is an unfortunate setback for the enhancement of the environment because it was going to allow the treatment of all the sewage in Tijuana".***

Tab 1 Executive Summary

Tab 2 Project Financing

A letter outlining the commitment of Citigroup to provide the debt financing necessary to construct the project. In addition, a copy of the presentation given to the IBWC to further document Citigroup's dedication to fund the project and Citigroup's clear understanding of the risks associated with the appropriation of funds from the Congress of the United States is attached.

The summary of the Bank's ability to fund the debt is that they are fully engaged in coordinating the financial and legal documentation to ensure funds are available to the design, build, operate contractor (DBO) at the start of construction. The Bank has made it clear that they have accomplished similar funding requirement many, many times and are familiar and comfortable with the risks associated with a federal lease purchase financing.

Tab 3 CONAGUA's Letters of Support

The attached letters from CONAGUA provide a clear indication that the Government of Mexico considers this a "keystone" project in the development of its sewer and water reuse infrastructure for the next decades.

Tab 4 City of Tijuana's Project for the "Vergel" Zone

This provides a conceptual layout of the project the City of Tijuana has planned for the area where the Bajagua project will be located. The larger project will consist of the channeling of the Alamar River in the "Vergel" zone, the construction of a roadway to connect Boulevard Cardenas at the Westside of the zone with boulevard Clouthier (also known as "Gata Bronco) to the west with a "Via Rapida" roadway on the south side of the site and the construction of a "Linear-Park. Bajagua has been working with the City of Tijuana to ensure the compatibility of our project with theirs.

The attached letter from the Planning office of the City of Tijuana states that the City has agreed to the location of the Bajagua facilities in the zone known as "Vergel."

Tab 5 Clippings from the Mexican Press

Two contemporary press articles from the Mexican press are provided to demonstrate the commitment from Mexican authorities to support the Bajagua Project.

The first article quotes Mr. Jose Guadalupe Zamorano Ramirez, who is the Director of the Comisión Estatal de Servicios Públicos (CESPT – the state agency that runs the wastewater system in the City of Tijuana), and the Comisión Estatal de Aguas (the state arm of the Comision Nacional de Aguas which is the agency in charge of wate resources at the Mexican Federal level) stating:. ***"There is a start-up project, by the name of Bajagua which has been deemed "completely feasible" by the experts".***

The other article reported on the IBWC's recent "suspension" of the project and quotes Mr. Carmelo Zavala from the "Centro Industrial de Gestión Ambiental" (CIGA – a non-governmental environment watchdog group) who said ***"The cancellation of the Bajagua International Project for Water Treatment by the US is an unfortunate setback for the enhancement of the environment because it was going to allow the treatment of all the sewage in Tijuana"***

STUDIES

Land Survey

The survey to determine the boundaries of the site and right-of-way for the project have been completed. This document is required for the request for land and water use concessions in Mexico. Additionally, this document will be provided as part of the Request for Proposal (RFP) documents to be presented to the project bidders.

Land topography

These mapping surveys to determine land topography for the site and right-of-way for the project have been completed. This document is required as part of the Request for Proposal (RFP) documents to be presented to the project bidders.

Geotechnical Study

The following geotechnical reports have been concluded:

1) Geotechnical Soil Study Report concluded that soils on the site are suitable for the project,

(2) Environmental Assessment Report that has identified the debris and soils in the project footprint that may need to be removed, and

(3) a Memorandum of Preliminary Geotechnical Feasibility of Supporting Pipelines on the Tijuana River Channel Berm which has concluded that the Tijuana River berm can support the conveyance pipelines for the project. These

documents also will be provided as part of the RFP to project bidders.

Sewage Flow Study

Completed a commissioned study to measure sewage flow rates in Tijuana, including in those areas where the discharges do not enter the existing system, but flow to the watercourses directly. The report allows us to more accurately identify the quantity and location of flows, which will allow for a better design of the secondary treatment facility.

Tab 2 Project Financing

A) *Letter from Citigroup providing assurance it will issue the necessary funds for construction of the project*

B) *Citigroup Financing Presentation to USIBWC*

Carlos Marin
Commissioner
International Boundary and Water Commission
4171 North Mesa Street, Suite C 100
El Paso TX 79902

Dear Commissioner Marin:

As you know, Citigroup Global Markets Inc. ("Citi") is serving as financial arranger and placement agent for Bajagua LLC (the "Company") in connection with the issuance of senior project bonds ("Senior Bonds") for the Bajagua Wastewater Project (the "Project"). On April 3, 2007, we provided a letter to the Company expressing our confidence in our ability to place the Senior Bonds. I understand the Company has shared that letter with you.

As part of the due diligence we have carried out to date, we have reviewed the draft of the Fee-for-Services Contract (the "Contract") dated March 4, 2007 between the USIBWC and the Company. We have noted among the provisions of the draft Contract the fact that USIBWC's obligation to make payments under the Contract are subject to the availability of appropriated funds from the United States Government, and that USIBWC has rights, pursuant to Section 10.7 of the Contract, to terminate the Contract without liability for payment of a cancellation fee. We have taken these provisions into account in reaching the conclusions described in our April 7 letter to the Company.

I appreciate the time your staff spent with my colleague, David Livingstone, during the meeting last week in El Paso to discuss our views of the financing. I hope his presentation was helpful in describing the capital markets financing process which we believe will provide the most cost-effective financing solution for the Project. All of us on the Citi team look forward to working with you, your staff and the Company over the coming months to bring the Project to a successful financial close.

Sincerely,

Michael T. Gomez
Director

cc: Susan Daniel, IBWC
James Simmons, Bajagua LLC

Tab 3 CONAGUA's Letters of Support

A) *Letter from CNA (water agency for Mexico) providing assurance that it will issue a "concession" for the land to Bajagua (9/7/06).*

B) *Letter from CNA asserting the "Vital Importance" of the Bajagua Project for Mexico (3/16/07.)*

SECRETARÍA DE MEDIO AMBIENTE Y RECURSOS NATURALES

COMISIÓN NACIONAL DEL AGUA
SUBDIRECCIÓN GENERAL DE INFRAESTRUCTURA HIDRÁULICA URBANA

Oficio No. BOO.03.- 00142

México, D.F., a 07 de septiembre de 2006.

ING. ARTURO HERRERA SOLIS
COMISIONADO DE LA SECCION MEXICANA DE LA CILA MEX/EUA
P R E S E N T E .

Me refiero a su atento oficio Núm. CEU 01187/06 de fecha 30 de agosto de 2006, para informarle que:

El Gobierno de México está de acuerdo en la ubicación de la planta de tratamiento en el sitio "El Vergel". Asimismo, que el proyecto integral de saneamiento debe contemplar los colectores necesarios que hagan llegar los 1470 l/s adicionales y los bombeos a que haya lugar, en el entendido que el financiamiento del proyecto será con cargo al Gobierno Estadounidense conforme al Acta 311.

En lo que respecta al emisor que permite enviar el efluente tratado hacia el sitio "El Florido" tomamos nota de que el Gobierno de los Estados Unidos seguirá explorando el financiamiento para la construcción de dicha infraestructura.

En cuanto al diseño del formato y mecanismo para emitir convocatoria a empresas que tengan interés en participar en el desarrollo del proyecto, no tenemos objeción en que la Sección Mexicana de la CILA, lo lleve a cabo, lo cual permitirá a la parte estadounidense responsable del financiamiento identificar el flujo de los recursos financieros para asegurar su construcción conforme a lo establecido en el Acta 311.

Finalmente, expreso a Usted que no existe inconveniente para que las gestiones y tramites relativos, a la obtención, en su caso, de derechos de vía y ocupación de zona federal que el proyecto requiera, en sus componentes de emisores, estaciones de rebombeo y planta de tratamiento, se realicen por parte de la persona que la sección mexicana de la CILA se sirva designar, en el entendido de que el Gobierno de EUA cubrirá los costos que de ello se deriven.

A T E N T A M E N T E
EL SUBDIRECTOR GENERAL

ING. JESÚS CAMPOS LÓPEZ

C.c.p.- Lic. Cristóbal Jaime Jáquez.- Director General de la Comisión Nacional del Agua.- Para su conocimiento.- Presente.

c.c.p. Expediente
Minutario

September 7, 2006

Ing. Arturo Herrera Solis
Commissioner for Mexican Section of the IBWC

In response to your letter with reference no CEU 01187/06 dated August 30, 2006, the following is provided:

The government of Mexico agrees with the sitting of the treatment plant at the location known as "El Vergel". Providing that the project as described considers the collection and pumping requirements necessary to deliver the additional 1,470 l/s (34 mgd) and with the understanding that the US Government will be in charge of financing the works in accordance with Minute 311.

With respect to the pipeline to deliver the treated effluent to the "El Florido" site, we hereby note that the US Government will continue to explore the possibilities of financing the construction for such infrastructure.

In regards to the format and process to advertise the procurement of the project to firms interested in participating in its development, we have no objection in allowing the Mexican Section of the IBWC to conduct the procedure, allowing the US section, responsible for the project financing, to identify the resources necessary to ensure the construction of the Project in accordance with the requirements of Minute 311.

Finally, I would like to convey that there are no objections, for a person designated by the Mexican Section of the IBWC to execute the necessary activities for the obtainment, as necessary, for Rights-of-Way and use of federal lands that may be required by the Project, such as pipelines, pumping stations and the treatment plant; with the understanding that the US Government of the will pay for all associated costs.

Yours truly,

Ing. Jesus Campos Lopez
Subdirector, CONAGUA

CONAGUA
Comisión Nacional del Agua

SUBDIRECCIÓN GENERAL DE ADMINISTRACIÓN DEL AGUA
OFICIO No. BOO.02. 0097

México, D.F., a. 16 MAR 2007

ING. J. ARTURO HERRERA SOLÍS
COMISIONADO MEXICANO DE LA COMISIÓN INTERNACIONAL DE LÍMITES Y AGUAS ENTRE MÉXICO Y LOS ESTADOS UNIDOS
Av. Universidad 2180, Zona del Chamizal
Cd. Juarez, Chihuahua, C.P. 32310
P R E S E N T E

Estimado Ing. Herrera:

Nos referimos a las diversas conversaciones sostenidas con relación a la ejecución del Proyecto para la construcción de las instalaciones de tratamiento de aguas residuales de la ciudad de Tijuana, Baja California, en el marco del Acta 311 de la Comisión Internacional de Límites y Aguas.

Sobre el particular, nos permitimos manifestar a usted la viabilidad de dicho proyecto. Además le externamos el gran interés que tiene la Comisión Nacional del Agua en la ejecución del proyecto de tratamiento de aguas residuales en dicha entidad y la posibilidad de que se otorguen las concesiones correspondientes para el mismo, siempre y cuando se cumplan con los requisitos, términos y condiciones previstos en la legislación mexicana.

Este proyecto lo consideramos de gran trascendencia y relevancia para nuestro país, por lo que estamos en la mejor disposición de apoyarlo.

Sin otro particular, reciba un cordial saludo.

A T E N T A M E N T E
EL SUBDIRECTOR GENERAL

LIC. ROBERTO ANAYA MORENO

c.c.p. Ing. José Luis Luege Tamargo.- Director General de la CONAGUA.- Para su conocimiento.
RAM/MVDP/07

March 16, 2007

Ing. Arturo Herrera Solis
Commissioner, Mexican Section of the IBWC
Avenida Universidad 2180, Zona del Chamizal
Ciudad Juárez, Chihuahua, México C.P. 32310

Dear Commissioner Herrera,

We make reference to various conversations regarding the execution of the project to construct a water treatment facility in the City of Tijuana as delineated by Minute 311 form the International Water and Boundary Commission.

In reference to that project, we would like to express our support its execution. Additionally we like to express the great interest the "Comisión Nacional del Agua" (CONAGUA) has for this project in Tijuana and, provided that a petition is made within the requirements of the law, our interest in providing an approval for such a concession.

We consider this a "keystone" project for our country and therefore are willing to provide it with our full support.

Sincerely,

Lic. Roberto Anaya Moreo, Subdirector of CONAGUA

Tab 4

City of Tijuana's Project for the "Vergel" Zone

A) *Projected City of Tijuana development of the Alamar River area consisting of the eco-channeling of the Alamar River, construction of a roadway and a linear-park, and inclusion of the Bajagua project.*

B) *Letter from Instituto Municipal de Planeación (IMPLAN – the City of Tijuana's Planning Agency) providing zoning for the area known as "Vergel" in the Alamar River basin for the construction of the Bajagua Project.*

OFICIO
Dependencia: INSTITUTO MUNICIPAL DE PLANEACION
Sección: Dirección
Número de Oficio: DIR/ SN/2006
Expediente:
Anexo: El que se indica

Para que estés bien y de buenos

Tijuana, B.C., 21 de Julio de 2006
"2006. Año del Bicentenario del Natalicio del Benemérito de las Américas, Don Benito Juárez García".

Arq. Enrique Landa
Empresa Bajagua
P R E S E N T E

Anteponiendo un cordial saludo, por medio de la presente le informo en base a su solicitud presentada ante este Instituto, de la evaluación de los sitios posibles para la localización de una planta de tratamiento secundario para aguas residuales. Se recomienda de manera preliminar dos zonas que pueden ser compatibles dentro de la zona del alamar.

- El denominado vergel km 0+000 al 3+000.
- El denominado matamoros del km 6+000 al 10+205.

CONSIDERANDOS:

Que la ciudad de Tijuana a través de la Secretaría de Desarrollo Urbano del XVIII Ayuntamiento promueve el desarrollo urbano integral de la zona del alamar en seguimiento al los lineamientos estratégicos del Plan Municipal de Desarrollo de Tijuana 2002-2007 y el tercer nivel de las estrategias del PDUCPT 2002-2025 donde se considera una vialidad de impacto regional de 11 km. de longitud con una sección de 5 carriles por sentido, el encauzamiento Ecohidrológico del arroyo por medio del cual se diseñará un parque lineal utilizando las zonas de inundación.

Por lo anteriormente expuesto:

a) Se le solicitará la parte proporcional de las obras de infraestructura correspondientes a los frentes del polígono en base al proyecto del ayuntamiento.

b) Adicionalmente, al proyecto del ayuntamiento se propone la incorporación de instalaciones educativas para el conocimiento del reuso de agua y con ello generar una cultura del agua en los niños y la población en general.

Blvd. Cuauhtémoc No. 2340 Col. Revolución, C.P. 22400. Tijuana, B. C. México
Tel. (664) 6 86 6248 al 53 Fax. (664) 6 86 6245 http://www.tijuana.gob.mx/implan.html

OFICIO
Dependencia: INSTITUTO MUNICIPAL DE PLANEACION
Sección: Dirección
Número de Oficio: DIR/ 82V2006
Expediente:
Asunto: El que se indica

Para que estés bien y de buenos

c) Considerando como base que el diseño de la planta de tratamiento un sistema anaeróbico, no de lagunas de oxidación, que no genere olores y responda a las normas oficiales aplicables en materia de protección al medio ambiente y de calidad del agua.

d) La empresa a su cargo se compromete a desarrollar los estudios técnicos de prefactibilidad, estudio de impacto urbano y ambiental de acuerdo a lo estipulado por la SEMANART y la normatividad en la materia correspondiente a los 3 niveles de gobierno.

Lo anterior con fundamento en los artículos 115 fracciones I y II de la Constitución Política de los Estados Unidos Mexicano, 79 y 82 apartado A, fracción II inciso a) de la Constitución Política del Estado Libre y Soberano de Baja California ; 3 y 7 , fracciones III y IV de la Ley de Régimen Municipal para el estado de Baja California, el artículo 11 fracciones III, XVIII, XXI y XXV, 117,141, 202, 235, 236 y 237 de la Ley de Desarrollo Urbano del Estado de Baja California, artículos 6 fracciones I y III, 19, 21, y 24 del Reglamento para la Protección al Ambiente para el Municipio de Tijuana, B.C, así como el artículo tercero puntos 1º, 12 y 17 del Acuerdo de Creación del Instituto Municipal de Planeación publicado en el Periódico Oficial del Estado el 28 de Diciembre de 1998.

Sin otro particular, reciba un cordial saludo y quedo de Usted.

A TENTAMENTE
INSTITUTO MUNICIPAL DE PLANEACIÓN

MTRA. ANA ELENA ESPINOZA LOPEZ
Directora General

IMPlan RECIBIDO 21 JUL 2006 INSTITUTO MUNICIPAL DE PLANEACIÓN TIJUANA, B.C.

C.c.p. Arq. Fernando Zamora Rubio.- Secretario de Desarrollo Urbano del XVIII Ayuntamiento de Tijuana
C.c.p. Archivo
AEEL/lmo

IMPlan
Blvd. Cuauhtémoc No. 2340 Col. Revolución, C.P. 22400. Tijuana, B. C. México
Tel. (664) 6 86 6248 al 53 Fax. (664) 6 86 6245 http://www.tijuana.gob.mx/iimplan.html

Tijuana, July 21, 2006

Arq. Enrique Landa
Bajagua Project

With warm regards I hereby inform you of your decision regarding your request for sitting a secondary treatment water treatment plant. We recommend, preliminarily, the following two zones that may be compatible for this use within the "Alamar River area:

- A site called "El Vergel" Km. 0.000 to 3+000
- A site called "Matamoros" Km. 6+000 to 10.205

Whereas

The City of Tijuana, through the Office of the Secretary of Urban design for the XVIII City Council desires to promote the development of the "Alamar" zone in accordance with the strategic planning of the Municipal Zoning Plan for the City of Tijuana for 2002 through 2007 and the third strategic level of the PDUCPT 2002-2005, which call for an 11 Km. roadway of national importance with 5 lanes each-way, the Eco-channeling of the river and a lineal park which will be designed along the channel utilizing the floodable areas of the zone.

Therefore,

a) Provide the construction of the City's project in proportion to the size of the proposed project [by Bajagua].
b) Additionally, the City's project envisions to incorporate educational facilities for public education regarding the benefits of re-use and to develop a "culture" of water for the inhabitants [of the City] and its growing population.
c) That the water treatment plant will be designed using an anaerobic treatment system and not oxidation lagoons method which will not generate odors and will be in accordance with applicable environmental and water quality requirements.
d) [Bajagua] will provide the necessary technical studies to determine the projects viability, Environmental and Urban Development Impact Statements(s) in accordance with SEMERNAT requirements and any applicable local, state or federal laws.

All of the above in accordance with articles 115, subsections 1 and 2 of the Mexican Constitution, section A, 79 and 92, subsection II, a) of the Constitution of the State of Baja California; sections 3 and 7 subsections III,XVIII, XXI, and XXV, 117, 141, 202, 235, 236 and 237; ..... [and other cited references].

Sincerely,

Ana Elene Espinoza López, Director IMPLAN

IMPlan

Tijuana, Baja California Mexico

SIMBOLOGIA

- AFECTACIONES ZONA FEDERAL
- AFECTACIONES VIA RAPIDA
- VIA RAPIDA ALAMAR
- ZONA FEDERAL
- CANALIZACION ARROYO ALAMAR
- ASENTAMIENTOS IRREGULARES
- NODOS VEHICULARES (SINGLE POINT)
- VIALIDAD PRIMARIA
- VIALIDAD PRIMARIA DE ACCESO CONTROLADO
- VIALIDAD PRIMARIA
- VIALIDAD PROPUESTA

LOCALIZACIÓN TIJUANA, B.C.

Jorge Hank Rhon
Presidente Municipal

Andres Garza Chavez
Secretario de Gobierno

Fernando Zamora Rubio
Secretario de Desarrollo Urbano

Ana Elena Espinoza Lopez
Dir. del Instituto Municipal de Planeación

PLANO DE AFECTACIONES
PRIMERA SECCION

FECHA ENERO 2007
ARCHIVO ALAMAR-SECCION

AF-01

HOJA No. 01
ESCALA s/n escala

Tab 5

Clippings from the Mexican Press

A) *La Forntera Newspaper – Zamorano (CESPT) The Future of Water has Hopes in Privatization -"There is a start-up project, by the name of Bajagua which has been deemed "completely feasible" by the experts".*

B) *El Mexicano Newspaper – Carmelo Zavala Centro Industrial de Gestión Ambiental (CIGA) – US Cancels Bajagua Project – "The cancelation of the Bajagua International Project for Water Treatment by the US is an unfortunate setback for the enhancement of the environment because it was going to allow the treatment of all the sewage in Tijuana".*

IDENTIDAD Y EXPRESIÓN DE TIJUANA

FRONTERA

No. 2762 • Año VIII • 112 páginas • 6 secciones • Local $10.00 • Dominical y revista: $12.00 • San Diego: $1.00 dólar www.frontera.info Viernes 23 de marzo del 2007, Tijuana, B.C.

INTERESA A EMPRESAS EXTRANJERAS INVERTIR

Ven en privatización futuro para el agua

Ya existe un primer proyecto de arranque, de nombre Bajagua, que ya ha sido estudiado por expertos y es totalmente viable

Por Daniel Salinas

El único futuro posible del agua en Baja California es la privatización de proyectos de reutilización, tratamiento y desalación, y ya hay empresas estadounidenses interesadas en invertir, dijo José Guadalupe Zamorano Ramírez, director de la Cespt y ex director de la Comisión Estatal del Agua.

Zamorano explicó que bajo este nuevo esquema, la Comisión Estatal de Servicios Públicos y la Comisión Estatal del Agua se vuelven únicamente rectores, mientras que una empresa privada se encarga de la distribución, conducción y tratamiento del agua, aunque por desgracia no hay empresarios mexicanos interesados, pero sí en cambio algunos extranjeros.

Un primer proyecto de arranque que ya existe, cuyo nombre es Bajagua, ya ha sido estudiado por expertos y es totalmente viable, señaló Zamorano.

El problema es que los proyectos de reutilización no se pueden ejecutar con dinero público, pues no hay recursos, por lo que se requiere necesariamente inversión privada y hasta ahora todas las propuestas que han llegado son estadounidenses.

"Hay gente interesada que ya se han acercado a platicar; el proyecto Bajagua, por ejemplo, es un proyectazo, una planta de tratamiento a nivel terciario para recolectar toda el agua de Tijuana, más de 3 mil metros por segundo, y que esa agua se venda a quien la quiera comprar", dijo Zamorano Ramírez.

"¿Qué ganamos? Ganamos muchísimo y ganamos todos; no generamos costos, al contrario, vamos a cobrar por entregar esa agua, desafortunadamente no hay empresarios mexicanos que vean el potencial económico del agua tratada, los norteamericanos lo ven muy seriamente", añadió.

El agua no tendrá dueño

El funcionario dijo que no se trata de una privatización del líquido, sino de los servicios de tratamiento, ya sea desalación o reutilización y en su caso la distribución y venta de esta misma agua a particulares.

"El agua nunca va a ser de un privado, la concesión es el tratamiento, la potabilización, la distribución, pero el líquido es de la comisión, pero tú como privado puedes distribuir, conducir, tratar y cobrar bajo un esquema normativo y yo comisión me convierto sólo en rector", señaló Zamorano.

"Venderla con redes de distribución a quien la quiera comprar, no nada más en la vivienda, sino en la parte industrial; mientras no tengamos agua para ofrecer se va a detener el desarrollo", agregó.

El proyecto Bajagua, explicó, cuesta 140 millones de pesos y se puede ejecutar con apoyo de Banobras, y la idea es que sea punta de lanza para impulsar otros proyectos de inversión privada.

Por su parte, el diputado Luis Rodolfo Enríquez dijo que a nivel legislativo se debe trabajar en las reformas necesarias para garantizar el abasto de agua a las generaciones futuras.

Si los métodos tradicionales han dejado de ser útiles, se deben impulsar nuevas formas de tratamiento y los legisladores deben sensibilizarse con el tema, señaló Enríquez.

A FUTURO

- Nombre del proyecto inicial: Bajagua
- Tecnología: Desalación y reutilización
- Costo: 140 millones de pesos
- Metros cúbicos de agua disponibles para BC: 270 millones
- Metros cúbicos disponibles para Tijuana: 110 millones
- Dotación del proyecto: 250 litros por segundo
- Ahorro de agua: 2 mil 500 millones de pesos en 20 años

SIDUE

Descartan los tandeos

Redacción/FRONTERA
TIJUANA, B.C. (PM)

El secretario de Infraestructura y Desarrollo Urbano del Estado, Arturo Espinosa Jaramillo, dijo que el Gobierno del Estado, en ningún momento prevé el suministro de agua por periodos de tiempo para Tijuana-Rosarito.

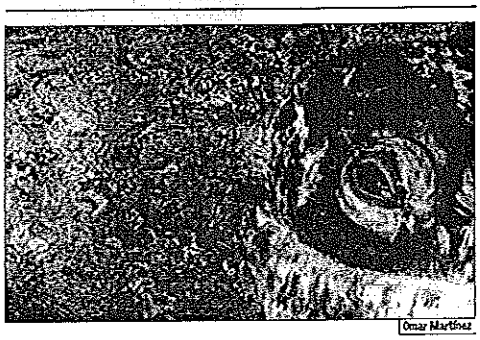
Agregó que la secretaría a su cargo ha estado dando seguimiento a todo el proceso de necesidad de agua y se han tomado las medidas necesarias previamente.

En cuanto a la ampliación del acueducto, dijo que primero se logró el recurso federal que solventa el 40% de la inversión fondo perdido, para luego licit la aplicación de estos recursos.

"En estos momentos el fallo licitación no tiene ninguna situ ción que impida la continuació de los trabajos que ya iniciaron con la fabricación de la tubería equipo para el bombeo de agu así como la aplicación del proy ejecutivo", dijo.

Espinosa Jaramillo informó q la obra física inicia en 30 días, lo que la necesidad de agua de Tijuana estará cubierta hasta e año 2018; incluso ya se ha inici la obra física complementaria para que Tijuana y Rosarito reciban este recurso extra.

El titular de Sidue dijo que así el Estado cumple con esta necesidad pública sin que exista posibilidad de escasez.



Omar Martínez

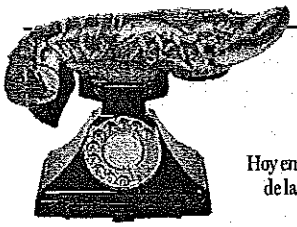
Siempre DE VUELTA A CASA

Las lagunas Ojo de Liebre y San Ignacio reciben cada año a su visitante más distinguida: La ballena gris, que todos los inviernos llega para dar continuidad a su especie

Tijuana... Pág. 17

año se realizó durante
abo en Austin, Texas

Informática... Pág. 14



eléfonos I ESTILO

Hoy en día es un complemento de la decoración del hogar

Casa y Estilo

STA DEL "NARCO"

Recibe amenazas, desvela Calderón

Es lamentable, señala Carmelo Zavala

Cancela EU proyecto Bajagua

Iba a cubrir al 100 por ciento el tratamiento de aguas residuales

José Israel IBARRA GONZÁLEZ/el mexicano

TIJUANA.- La cancelación del proyecto internacional de tratamiento de aguas residuales Bajagua por parte de Estados Unidos es un lamentable retroceso para el cuidado del medio ambiente de la región, debido a que iba permitir el saneamiento de la ciudad en un 100 por ciento, pero ahora ya no será posible, expresó José Carmelo Zavala Álvarez, director del Centro Industrial de Gestión Ambiental (CIGA).

Señaló que la planta la promovió la empresa Bajagua y estaba negociada con la Comisión Internacional de Límites y Aguas (CILA); era un proyecto viejo que permitiría empatar la infraestructura hidráulica de San Diego-Tijuana como una continuación a la planta de Estados Unidos que trata agua mexicanas.

> Esta planta de 3 litros cúbicos por segundo estaría del lado mexicano y la ubicación esperada sería cerca del Cañón del Alamar

Comentó que es una lástima la cancelación porque los recursos iban a ser de Estados Unidos, sin embargo, ahora ya se perdió el proyecto de 600 millones de dólares: "Esta planta de 3 litros cúbicos por segundo estaría del lado mexicano y la ubicación esperada era cerca del Cañón del Alamar".

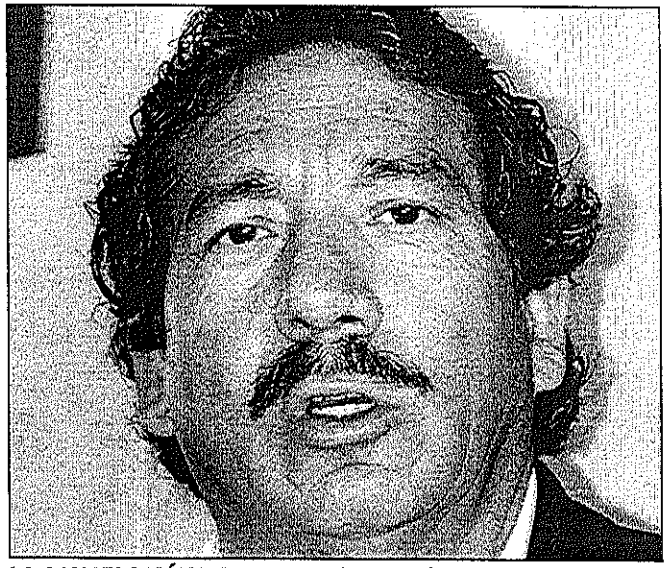
Dio a conocer que el vecino país del Norte lo canceló porque la empresa americana no tuvo los avances que se necesitaban, debido a que la planta debía estar lista para el 2008 y en mayo haber comenzado, lo que no se logró.

"Esta planta era de 3 metros cúbicos de tratamiento de aguas residuales y la expectativa del lado mexicano era que Tijuana hubiera podido cubrir el 100 por ciento de sus aguas residuales", dijo.

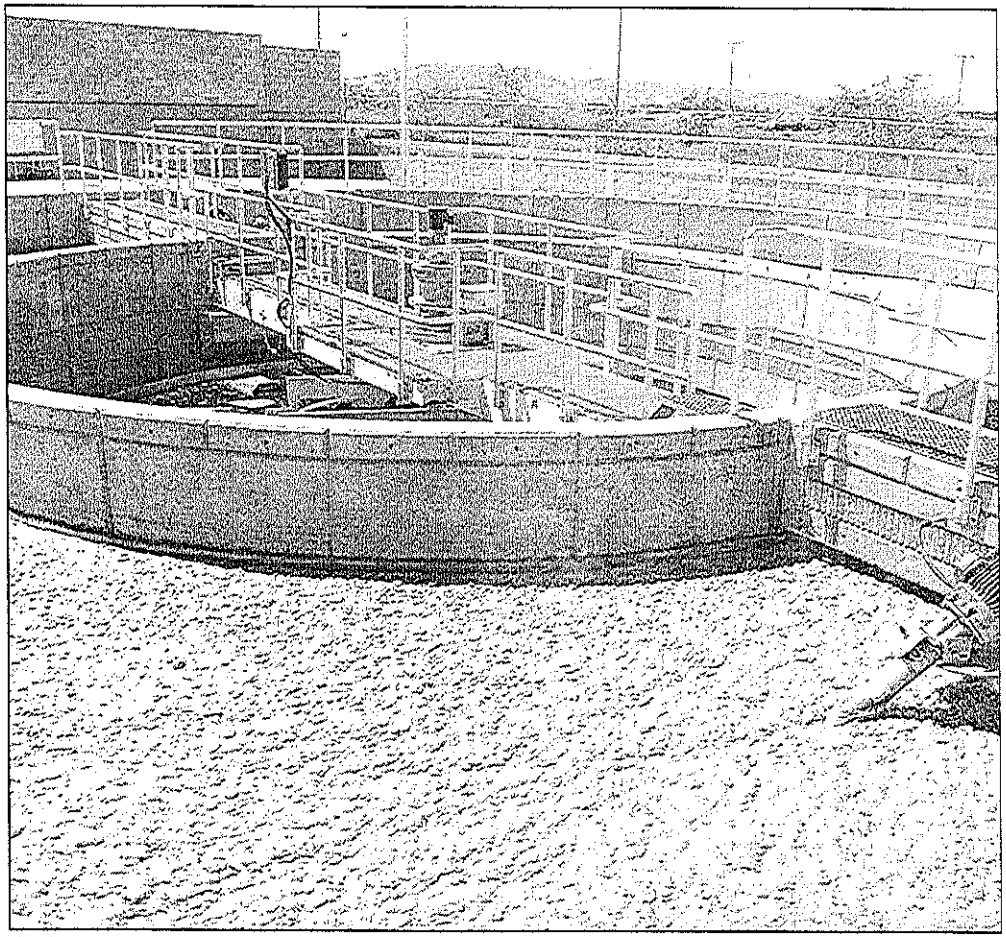
Señaló que ahora se tendrán que gestionar otra vez recursos y construir otras plantas para poder cumplir con la expectativa del proyecto de Bajagua: "en el país sólo se trata la tercera parte de las aguas residuales y en Tijuana andamos tal vez por las dos terceras partes, pero esta planta iba cubrir la demanda de tratamiento hasta el 2025".

Dijo que a Estados Unidos otorga recursos a fondo perdido porque siempre le interesa que Tijuana trate bien sus aguas, debido a que se comparte la cuenca hídrica y la contaminación de México les llega a ellos.

Dio a conocer que la EPA paga 40 millones de dólares a Tijuana para que se cambien las tuberías de drenaje colapsadas, porque la cuenca drena hacia Imperial Beach completa.



LA CANCELACIÓN DEL proyecto de tratamiento de aguas residuales Bajagua fue considerado como un lamentable retroceso para Tijuana, porque iba a permitir cubrir la demanda de tratamiento al 100 por ciento.



ESTADOS UNIDOS OTORGA recursos a fondo perdido para proyectos de limpieza de agua, debido a que los desechos de Tijuana llegan a través de la cuenca hídrica a Imperial Beach.

bajagua project, LLC

May 1, 2007

Mr. Steve S. Smullen, Acting Principal Engineer
International Boundary and Water Commission
The Commons, Building C, Suite 100
4171 N. Mesa Street
El Paso, TX 79902

Mr. Carlos Pena, Special Projects Engineer
International Boundary and Water Commission
The Commons, Building C, Suite 100
4171 N. Mesa Street
El Paso, TX 79902

Re: Comments on the Request For Proposals for the Bajagua Facility

Gentlemen:

This letter once again requests that the USIBWC provide Bajagua with comments on the draft Request for Proposals (RFP). An English-language version of the RFP originally was provided to the USIBWC for review in three volumes on February 7th, 14th, and 28th 2007, respectively. Comments from the USIBWC then were reviewed and incorporated by Bajagua into a three-volume, Spanish-language version of the RFP. The three translated volumes of the RFP were sent to the USIBWC on March 13th, and March 30th, and April 12th to be forwarded to the Bi-National Technical Committee (BTC) for review.

Despite repeated requests, Bajagua still has not received the USIBWC's final comments on Volumes 1, 2 or 3 of the RFP. Until Bajagua receives final comments on the RFP, it cannot send the RFP to the chosen contractors for preparation of bids to construct the wastewater treatment facility, so the failure of the IBWC to review the RFP is delaying the project, and negatively impacting the project start-up date.

Bajagua had planned to release the RFP for bidding, at the latest, by May 14, 2007. To meet that date, however, Bajagua needed to receive comments from the IBWC by April 30, 2007, and even then, it planned to work overtime to release the RFP by that date. Bajagua still will attempt to keep that schedule, but each day that it does not receive comments makes it more difficult to do so.

160 Industrial St. Suite 200 San Marcos, CA 92078 • Bus. 760.471.2365 • Fax 760.471.2383
www.bajagua.com

Please contact me as soon as you receive this letter to inform me of the status of the RFP review, what the IBWC is and can do to obtain input from the relevant BTC members, and to provide me with an estimate when comments on all three volumes will be delivered to Bajagua. Bajagua appreciates your efforts in resolving this issue, and if there is anything that we can do to help, please let me know.

Sincerely,

Albert P. Rechany
Director of Operations

AR\mkk

cc: Mr. Enrique Landa
Mr. Jim Simmons
John J. Lormon, Esq.
Craig Sapin, Esq.
Carlos Marin, Commissioner, USIBWC
Susan Daniel, Legal Advisor, USIBWC

bajagua project, LLC

Misinformation issues regarding IBWC's request for funding for a project to treat 25 mgd of sewage at the South Bay International Wastewater Treatment Plant (IWTP)

The U.S. Section of the International Boundary and Water Commission (USIBWC) has requested funding for a project that it claims will be a back up to the Bajagua proposal. The IBWC's project fails to equal Bajagua in many criteria. Importantly the IBWC proposal is limited to 25 million gallons per day (mgd) of treatment, where current demand exceeds 50mgd.

Compliance
The IBWC proposal addresses the problem as understood 17 years ago. It ignores Tijuana's 2003 Master Plan. The Bajagua Project addresses current issues (Minute 311), with 59mgd capacity as selected by the Tijuana 2003 Master Plan. IBWC's proposal will be undersized and obsolete on the first day of operation. The Bajagua Project will provide full compliance, with expansion capability from day one of commercial operation.

Capacity
The IBWC proposal provides less than half the capacity (25mgd) of the Bajagua project (59mgd).

Readiness of Design
The design of the IBWC proposal is little more than conceptual, and represents a resurrection of a project reviewed in three NEPA studies, and identified in the 2005 Final Supplemental Environmental Impact Statement (SEIS) as "Activated Sludge Secondary Treatment", "Alternative 5 Option B" (Alternative 5B). This 13 year old proposal was first offered for consideration in 1994 and has not been reviewed for constructability and applicability of the technology to the present day. A review of the project as proposed can take 12 to 18 months. The project is NOT ready for immediate delivery.

Applicability of Project to Present Issues
The IBWC proposal treats a maximum of 25mgd. Bajagua is designed for not less than 59mgd of treatment. The technology behind the IBWC proposal was evaluated three times under NEPA, and was never selected as the preferred alternative. The IWTP has continuously violated the acute toxicity levels of its permit. The IBWC proposal can be rendered inoperative from acute toxicity. Bajagua will not be subject to toxic upset that will render it inoperative.

Delays
The IBWC has indefinitely suspended Bajagua unilaterally, effectively blocking any possibility that the project can progress. The IBWC is holding Bajagua hostage in order to manipulate the outcome of non-performance. There is no justification for IBWC's suspension of Bajagua. Every day of delay compounds both the cost and timing of project implementation.

Site preparation, environmental issues, permits and approvals
The NEPA review (July 2005 SEIS) considered "Activated Sludge Secondary Treatment", Alternative 5B, concluding in the Record of Decision (ROD, September, 2005) that the Bajagua Project was superior to Alternative 5B. Notable was the ROD's recognition that legal challenges to the proposal had rendered Alternative 5B infeasible to complete as designed because "...that alternative was subject to a legal challenge and USIBWC resolved the litigation by agreeing to reexamine the alternatives available to

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www.bajagua.com

complete the secondary treatment component of the SBIWTP." That reexamination resulted in the September 2005 ROD selecting Bajagua.

Legal Issues and Status of the Standing Record of Decision

The proposed alternative by the USIBWC is a previously reviewed and bypassed as a viable alternative to solve the present problem. A secondary process for the existing plant, which was first proposed in 1994, raised a question of how effectively the proposed plant would be in handling the highly toxic chemicals in the Mexican sewage flows. Several groups strongly contend that a "ponding system," in which the waste is treated via natural biological decomposition, would be more effective, cheaper and environmentally friendly than the "mechanical" system now being defended.
In July 1995, the Sierra Club, Surfrider Foundation, Chaparral Greens and Lori Saldaña filed a lawsuit to compel consideration of the ponding system alternative.
As presented the project has not been updated to address the issues brought over by the lawsuit and therefore the alternative is incomplete, shortsighted and lacks support.

Capital Cost Distortion
The IBWC grossly understated its proposal costs' while overstating Bajagua's. A true cost analysis of the plant must include all the elements needed for its total design, permitting, construction, and operation. IBWC has chosen, however, to only show the cost of the EXPANSION without including the first phase which has already been constructed.
Bajagua will treat 236% more sewage than the IBWC proposal, yet it has been projected to cost about the same as the cost for the secondary portion addition to the present plant. Additionally, IBWC's costs stated for O&M show only the cost of operation without taking into consideration the present costs to operate the primary train of the existing plant, and ignores the inclusion of debt service.

Financing
The IBWC proposal is dependent on both US appropriations AND a 1/3 contribution from Mexico. The 1994 version of the IBWC project required a 7% contribution from Mexico. The present proposal requires a 33% contribution from Mexico. The likelihood of realizing this necessary foreign component is unknown, however, a historical view should be considered.
Bajagua is a private/public partnership requiring no appropriations or government funding from either country for implementation. Bajagua amortizes the cost of construction ($180 m) over the 20 years of operations.

Future Budgetary Allocations
The IBWC proposal fails to point out that their project will require the INDEFINITE budgetary support of the US government to provide treatment to the Mexican sewage forever. In its best case the US will continue to pay two thirds of the cost of the project (capital and O&M costs) as it is presently stated. It is doubtful that the Mexican government, whose contributory status for this project remains in doubt for the capital investment alone, will participate in the daily operation and maintenance of the plant should it ever materialize.

Cost Recovery
The Bajagua Project will not only treat the present and projected Tijuana sewage through additional capacity availability, but most importantly, it will treat this matter innovatively to eliminate the need for the continual US financial support of the Mexican sewage treatment challenges. It will provide the capability of REUSE OF WATER. In doing so it converts the treatment of sewage to be simply discharged it into the ocean into a VALUABLE COMMODITY for reuse that has tremendous significance for the future development of the Baja California region. The Mexican government has already recognized Bajagua as a keystone project which is of "*...transcendental importance for [Mexico]...*" in the development of the water infrastructure in Tijuana, B.C.
As indicated in the Development Agreement with the IBWC, "*... the United States will receive a portion of the revenue produced by [water reuse] sales.*" It is conceivable that enough revenues may be generated as the result of reuse water sales as to considerably offset, and possibly mitigate in its entirety, the cost

of the US contract for the Bajagua Project. The direct impact to the US budget will result in the elimination of the cost for treatment of sewage that ends up polluting the beaches along the southern San Diego coastline while ensuring that uninterrupted treatment is in fact provided by Mexico, free from US taxpayers burden.
At the end of the 20 year operations envisioned in the present Development Agreement, the plant will potentially become self sufficient through revenues generated from water reuse sales to allow Mexico to operate it. At this point Mexico will be able to derive enough profits to guarantee its future operation.

CONCLUSIONS

IBWC has distorted key project differentiators regarding:

- Capital Costs
  - Understates IBWC costs
  - Overstates Bajagua costs
- Capacity
  - 25mgd IBWC proposal inconsistent with Tijuana Master Plan
  - 59mgd Bajagua consistent with Tijuana Master Plan
- O&M Costs
  - IBWC proposal understates or ignores costs
  - IBWC overstates Bajagua costs
- Water Quality
  - IBWC falls short of addressing discharge permit and current demand
  - Bajagua addresses permit, and current and future demand
- Time
  - IBWC proposal requires 8 years optimistically to complete
  - Bajagua is in the bidding process
- Financing
  - IBWC relies on additional US appropriations and foreign contributions
  - Bajagua can be completed independent of any government funding

For clarity, consider the unit life-cycle costs of the projects.

In 2007 dollars:
IBWC = $21.99/gallon of treated sewage

Bajagua = $11.49/gallon of treated sewage

Prepared by Jim Simmons, Bajagua Project, LLC, Managing Member

bajagua project, LLC

May 1, 2007

Mr. Steve S. Smullen, Acting Principal Engineer
International Boundary and Water Commission
The Commons, Building C, Suite 100
4171 N. Mesa Street
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Mr. Carlos Pena, Special Projects Engineer
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Sincerely,

Albert P. Rechany
Director of Operations

AR\mkk

cc: Mr. Enrique Landa
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Craig Sapin, Esq.
Carlos Marin, Commissioner, USIBWC
Susan Daniel, Legal Advisor, USIBWC

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

March 31, 2006

Mr. Jim Simmons
Bajagua LLC
160 Industrial Street, Suite 200
San Marcos CA 92078

Dear Jim:

We are in the process of scheduling the April bi-national meeting of the International Boundary and Water Commission, United States and Mexico regarding the implementation of Minute 311. Representatives of Bajagua LLC are invited to attend along with Bajagua's Mexican advisors. The meeting is to be held on Monday April 24, 2006, in Tijuana, Baja California, Mexico; details as to the time and location of the meeting will be provided to you shortly. A tour of the proposed site of the Bajagua Project facility will take place after the bi-national meeting.

At the meeting in April both the United States and Mexican Sections will be stressing the importance of having IBWC representation in all meetings with government officials in both countries in order to facilitate the project in accordance with both United States and Mexican laws. As standard operating procedure, please include us in any meeting you have with government officials regarding this project.

Mexico has advised us in discussions on March 10, 2006, that review of the draft Fee for Services document was not possible in a short time frame and requested an extension of the March 31, 2006 date for finalizing the document. We will be working on establishing a new date based on Mexico's input. Mexico will be ready to discuss the draft Fee for Services Agreement and standard operating procedures in Mexico for the project at the bi-national meeting in April.

Additionally, please provide us with an updated Critical Path Management (CPM) schedule in both electronic and hard copy formats as required by the Development Agreement. Thank you for your efforts in this matter. Please let me know if you have any questions or concerns.

Sincerely,

Carlos Marin
Acting Commissioner
USIBWC

The Commons, Building C, Suite 310 • 4171 N. Mesa Street • El Paso, Texas 79902
(915) 832-4100 • (FAX) (915) 832-4190 • http://www.ibwc.state.gov

bajagua project, LLC

April 25, 2007

Carlos Marin P. F., Commissioner
U.S. International Boundary and Water Commission
The Commons, Building C, Suite 100
4171 N. Mesa Street
El Paso, TX 79902

Re: Response to Letter of April 6, 2007

Dear Commissioner Marin:

As promised in our letter to you dated April 11, 2007, this letter further addresses the issues raised in your letter to me dated April 6, 2007. That April 6th letter requested additional information from Bajagua to support its request that the USIBWC agree to extend certain milestone dates in the Development Agreement by five months. That request was first made by Bajagua in my letter to you dated February 20, 2007. USIBWC's April 6th letter requested that Bajagua provide relevant and current information describing (1) why the extension is necessary, and (2) the activities that Bajagua will undertake and complete during the extension period.

The April 6th letter also asked for additional information (1) to resolve some questions regarding the status of project activities; (2) on the status of land concessions from the Government of Mexico (GOM) and the ownership of the land necessary to construct the project, (3) on financing for the project; and (4) on Bajagua's discussions with the GOM concerning the expansion of the wastewater treatment facility's capacity to 75 million gallons per day (MGD). While we believe that our April 11th letter and the presentation provided to the USIBWC by Citigroup on April 18, 2007, adequately explained these issues, this letter further addresses each those issues.

I. Bajagua's Request For a Five-Month Extension To Complete Tasks Under the Development Agreement is Required Because of the Significant Delays Caused by the USIBWC.

Recent letters from the USIBWC have requested information from Bajagua to support its request for an extension of time to select and contract with a Design, Build and Operate (DBO) contractor to complete construction of the wastewater treatment plant (WWTP) in Mexico. The reasons for Bajagua's request were described in detail in my February 20th letter to you, and they are discussed in even greater detail below. As the USIBWC has been aware throughout this

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process, Bajagua's ability to complete required activities under the Development Agreement requires the good faith efforts of the USIBWC in performing its obligations under the Development Agreement and in cooperating with Bajagua as needed. Not only did the USIBWC delay the execution of the Development Agreement itself by 57 days, but as set out below the USIBWC has not performed as required by the Development Agreement, and these delays provide the basis for Bajagua's requested extension.

A. Delays in Negotiating the Fee-for-Services Agreement.

For example, Section 4.1 of the Development Agreement requires that the USIBWC negotiate in good faith with Bajagua the terms and conditions of a Fee-for-Services (FFS) Agreement by March 31, 2006. Bajagua provided a FFS Agreement to the USIBWC on March 10, 2006, to which the USIBWC provided initial and additional comments on March 31, 2006, and April 14, 2006.

Although Bajagua believed that the parties had resolved all issues related to the FFS Agreement during a telephone call on April 24, 2006, the USIBWC did not respond for 10 months to Bajagua's repeated requests to complete the Agreement. Then, on February 14, 2007, nearly 11 months after the FFS Agreement was required to be completed, the USIBWC sent even more comments on the FFS Agreement, again raising issues that had been resolved. Bajagua again responded promptly to the USIBWC on February 23, 2007, but the most-recent response from the USIBWC on April 18, 2007, reopens a number of previously resolved issues. This timeline shows that the USIBWC's actions and inaction have delayed execution of the FFS Agreement by 397 days. As you know, agreement on terms of a FFS Agreement is a prerequisite to Bajagua's issuing an RFP and completing its financial arrangements. USIBWC's unwarranted delay in competing the FFS Agreement alone justifies Bajagua's request for additional time.

B. Delays in Completing the Request for Qualifications.

On February 28, 2006, Bajagua sent the USIBWC a draft Request for Qualifications (RFQ) for it to review as required by the Development Agreement, but the USIBWC did not complete its review until October 18, 2006, nearly eight months later. The requirement in the Development Agreement that the Bi-National Technical Committee (BTC) also review the RFQ, further delayed the process, and not until November 30, 2006, did the USIBWC consent to the publication of the RFQ. The inaction of the USIBWC and the BTC resulted in an almost eight-month delay, which also provides sufficient reason alone for Bajagua's requested extension of time.

C. Delays in Approving A Site for the WWTP.

The process of selecting a site for the WWTP in Mexico also delayed Bajagua's ability to meet milestone dates in the Development Agreement. Soon after the Development Agreement

was signed in February of 2006, Bajagua submitted a number of potential sites where the facility might be located to the USIBWC and the BTC for review and approval as required by the Development Agreement. But, the required approval was not provided to Bajagua until November of 2006, nearly 11 months later. Until the USIBWC agreed on a site, Bajagua could not begin focused discussions with the GOM regarding land concessions. This delay directly affected Bajagua's ability to conduct a survey and other field studies on the site and to prepare the Request for Proposal (RFP) for the project for the selected bidders to consider. As with other delays, this 11 month delay provides requisite support for the Bajagua request for a time extension.

D. Delays in Reviewing the Request for Proposals.

The Development Agreement also requires that the USIBWC and the BTC review and approve the RFP. Because the RFP is a large document, Bajagua attempted to expedite the RFP review process by providing the USIBWC with each of the three volumes of the RFP for review as they were completed. The three volumes were submitted to the USIBWC for review on February 7th, 14th and 28th of 2007, respectively, with final approval from the USIBWC on all the volumes occurring on March 19, 2007. As the USIBWC approved each volume, Bajagua translated that volume into Spanish, and provided both English and Spanish versions to the BTC for its review.

Although the BTC's review took three to four weeks longer than expected, Bajagua provided the BTC's comments on Volumes 1 and 2 to the USIBWC for review on March 26th and April 12th, respectively, but still has not received a response from the USIBWC. Bajagua hopes to receive the BTC's comments on Volume 3 by the end of April, at which time it will provide that volume to the USIBWC as well. If Bajagua receives these comments by April 30th, it will be able to work overtime to prepare and issue the RFP by May 14, 2007. Again, the delay in completing the RFP process has not been Bajagua's fault.

E. The Cumulative Delays Have Been Substantial.

Even discounting the lengthy delays caused by the USIBWC during the negotiation of the Development Agreement, the facts show that the project has been delayed for more than one year by the actions and/or inaction of the USIBWC. As you know, delays caused by the USIBWC or the BTC, such as those discussed above, are defined as "Uncontrollable Circumstances" under the Development Agreement. That entitles Bajagua to a one-year extension at least, but it is only seeking five months. Bajagua is dedicated to making up the extra time through its own efforts and those of the DBO contractor.

While Bajagua will continue to respond to the USIBWC's requests for specific information on the status of the project, nevertheless the USIBWC's review of Bajagua's request for an extension of the milestone dates must be completed and decided in light of the delays

discussed above. The remainder of this letter addresses the specific issues raised by the USIBWC in its April 6th letter, and in your follow-up letter dated April 17, 2006.

II. Further Responses to Issues Raised in the April 6, 2007, Letter.

A. Questions Regarding the Scheduling of Activities.

The April 6th letter questioned whether the Performance Schedule included with Bajagua's April 2, 2007 submission confirmed that Bajagua's activities during the next five months will ensure that necessary milestones for the project can be met. The April 6th letter also questioned whether some of the tasks identified as having been completed in the Performance Schedule actually had been completed. This section addresses both of those issues.

First, it should be noted that the Performance Schedule reflects Bajagua's best estimate as to when ongoing activities will be completed. The Performance Schedule is a useful tool for tracking performance and anticipating delays. The schedule is regularly updated to ensure that all parties are aware of ongoing activities. Bajagua acknowledges that the schedule provided to the USIBWC with the April 2, 2007, letter had not been updated to show the estimated completion dates for the field studies (geotechnical, survey, flow measurement and floodplain studies), the electrical supply study, and the sludge disposal study. These field studies will be completed by April 30, 2007, with final reports to provided within two weeks of that date. That schedule will allow the field studies to be included in the RFP. In addition, the survey of the site was completed on April 23, 2007, and a copy will be provided to the USIBWC under a separate cover.

The fact that these studies are only now being completed reflects the fact that the selection of a site for the WWTP was delayed for a many months by the USIBWC. Bajagua was prepared to engage consultants to conduct these studies as early as May of 2006, but it could not do so because Bajagua had not received approval of the site to be studied. The studies began in late February and early March of this year, and the two-month turnaround is evidence of Bajagua's efforts and commitment to keep the project on schedule.

B. Land Concessions and Ownership of the Project Lands and Rights-of-Way.

During the Citigroup presentation to the USIBWC in El Paso on April 18, 2007, and in telephone call with me on April 24th , you acknowledged that Commissioner Herrera had confirmed to you both verbally and officially in writing, that the GOM will issue concessions to Bajagua for (1) the land where the WWTP will be located, (2) the rights-of-way for pipelines, and (3) the use of the water. You indicated that Commissioner Herrera will be sending you an additional letter confirming those facts. Since the project will be located on Federal land, GOM will make the land and right-of-way directly available to Bajagua de Mexico, and the costs of the

land, improvements, permits and fees will be incorporated into the capital, not the operational, budget. Bajagua believes that its original budget, expressed in the Development Agreement, includes these costs.

Based on your statements, Bajagua believes that the USIBWC no longer has questions regarding the GOM concessions or the ownership of the land necessary for the project. Bajagua request that you send a summary of Commissioner Herrera's letter concerning the concessions confirming our conclusions. Also, Bajagua will provide a copy of the survey of the WWTP site to the USIBWC.

C. Citigroup Has Agreed to Finance the Project.

As stated in the April 11th letter, Bajagua believes that the representations from Citigroup regarding its interest in financing the project sufficiently addressed the USIBWC's concerns with this issue raised in the April 6th letter. Citigroup confirmed its intent to provide financing during a presentation to the USIBWC by Citigroup personnel from its New York offices on April 18, 2007, in El Paso.

During the El Paso meeting, Attorney Daniels repeatedly asked the Citigroup representatives whether they had reviewed pertinent documents and truly intended to finance the project. In each case, they assured her that they had reviewed the relevant laws and documents, had offered comments on the RFP, and were comfortable with the public/private aspects of the project. Citigroup has agreed to provide the USIBWC with another letter again confirming its intention to provide funding for the project.

Your April 6th letter also questioned whether the FFS Agreement "will be acceptable" to Citigroup. As noted above, Bajagua is still waiting for the USIBWC to complete its review of the FFS Agreement, a review that is more than one year overdue. While Citigroup is comfortable with the interim versions of the FFS Agreement that it has reviewed, Bajagua is still waiting for the USIBWC to finish commenting on the Agreement.

D. The Ultimate Capacity of the Wastewater Treatment Facility.

The April 6th letter also requested information on "what commitments, representations and/or communications Bajagua or any of its representatives has had with the Mexican government entities regarding the increase of the Minute 311 sanitation project plant from a 59 MGD plant to 75 MGD plant." As you have indicated, Commissioner Herrera has confirmed to you that the GOM will not seek to have the WWTP constructed to achieve 75 MGD capacity. Commissioner Herrera has agreed to send you a letter confirming the GOM's position, and we request that you provide a summary of that letter to Bajagua.

Likewise, Bajagua has stated that the RFP will request proposals to construct a 59 MGD facility only, using a modular plant design that will allow construction and operation of a

25 MGD plant prior to final completion of the full 59 MGD capacity. Designing the plant in this fashion both makes it easier for Bajagua to complete construction of enough capacity to achieve secondary treatment standards as near as possible to the October 2008 deadline and then to expand the plant to the 59 MGD level. Any future expansions to address the increased amount of wastewater that will be generated as the Tijuana area grows would have to be discussed at a later date.

5. Reimbursement of Costs Incurred by Bajagua Prior to the Execution of the Fee-For-Services Agreement

As Bajagua pointed out in its April 11th letter, certain expenses Bajagua currently is incurring are reimbursable once the FFS Agreement is executed. These costs are defined as "Gross Construction Costs" on page seven of the Development Agreement "Term Sheet" because the costs being incurred by Bajagua include costs for permitting, land acquisition, subcontractor procurement and other costs to expedite completion of the project within the allowable time frames. As you know, Bajagua has discussed options for conducting some preliminary work prior to the award of the construction contract to efficiently utilize the time required for the bidders to assess and respond to the RFP. Such costs are related to the project and are reimbursable. This merely reflects the fact that the parties have agreed that costs incurred by Bajagua prior to the execution of the FFS Agreement would be reimbursed to Bajagua once the FFS Agreement was signed.

III. Issues Concerning the GOM's Contribution to the Project.

Although the issue of the GOM's contribution to the project was not addressed in you recent letters, the issue has been raised recently in various forums, and we believe that the matter should be clarified. We trust that this discussion removes the misconception that the GOM is bearing none of the costs and receiving all of the benefits of the Bajagua project.

As you know, the United States Government has spent hundreds of millions of dollars attempting to resolve the cross-border pollution issues present in the Tijuana area. Because of the limited success, Congress embraced a Public/Private Partnership approach to the issue, which was reflected in the passage of Public Law 106-457. The important provision of that law for this discussion is the one that provides as a rebate to the United States Government a percentage of the funds expended to treat wastewater to secondary standards, if the treated water is subsequently sold for reuse at a profit.

Under this Public Law provision, Bajagua and the GOM will sell treated water to Mexican users through a joint venture between Bajagua and the appropriate Mexican government agency. Users of the treated water will pay the joint venture, which will then pay the United States Government a percentage of the profits as a rebate. Because the GOM owns the treated water, the rebate is a mechanism for the GOM to pay for part of the cost of the WWTP

and, more importantly, these sales allow the WWTP to be economically self sufficient at the end of the 20-year FFS Agreement. The conditions necessary to implement the rebate system will be negotiated among Bajagua, the GOM, and the United States Government during the WWTP bidding process as provided in Treaty Minute 311.

We trust that this discussion dispels the misconception of some members of the public and the IBWC that the GOM is not paying for any of the project. When combined with the fact that the WWTP significantly benefits the ocean waters and the public health of the United States, the project's benefits to the United States are clear. Furthermore, it is these benefits that reflect the Congressional intent in the passage of the public law.

IV. Conclusion

Provided that the USIBWC honors and significantly improves its performance of the obligations under the Development Agreement, the WWTP can be completed and operating by February of 2009, which we believe is well within the expected timeframe for a large project that straddles the international border. As we have discussed, there may be creative ways to complete the project before that time, but even creative methods will require that Bajagua have the full and good faith cooperation of the USIBWC and the BTC during the next few critical months when the RFP will be issued and awarded, in completing the review and approval of the FFS Agreement and DBO Contract, and in initiating all steps necessary to implement a subsequent Minute consistent with Section IV of Minute No. 311.

As we stated in our previous meeting, we need to concentrate in the issuance of the RFP and the conclusion of the Fee for Services Agreements, this project can be a success only with the cooperation of all parties. If the project fails due to lack of cooperation, that failure that will be shared by all the parties, and would be a significant defeat for the environment and public health on the boarder. We trust that the efforts all the parties have expended will lead to successful completion of the project.

Sincerely,

Jim Simmons
Managing Member
Bajagua, LLC.

bajagua project, LLC

May 9, 2007

Carlos Marin P. F., Commissioner
U.S. International Boundary and Water Commission
The Commons, Building C, Suite 100
4171 N. Mesa Street
El Paso, TX 79902

Dear Commissioner:

On May 8, 2007, you wrote to me purporting to "suspend all activities under the Development Agreement" between the USIBWC and Bajagua, LLC because Bajagua will be unable to complete the wastewater treatment project by September 30, 2008, the date set by the United States District Court for the USIBWC to comply with the requirements of the Clean Water Act.

Bajagua agrees that the USIBWC is without authority to unilaterally extend the deadline in the Court's Order. USIBWC also, however, is without authority to "suspend" performance of the Development Agreement for an indeterminate time. The Development Agreement provides USIBWC with no such right, and neither the authorizing legislation nor Minute 311 mention the September 30, 2008 date or authorize the USIBWC to suspend performance of the project on the grounds stated in your letter. Furthermore, Bajagua has not stated categorically it cannot meet the Court deadline, only that we believe it is prudent to inform the Court of the possible delay of up to five months. We have clearly committed to working with the successful DBO bidder to accelerate the schedule to meet or come closer to the Court deadline. Your action yesterday now will likely make that impossible. You have therefore caused the very result you should be trying to avoid.

Bajagua believes that the Court Order reflects the Court's expectation that USIBWC will work diligently to address the continuing violations of the Clean Water Act from the South Bay treatment plant as rapidly as possible. It is inconceivable to us that you would believe that what the Court would like you to do is stop progress on the project that without question is most likely to solve the pollution problem in the shortest period of time, even if not by the mandated date. How it helps San Diego or the U.S. Government to suspend work rather than expedite work is beyond us and I think it will be beyond the Court as well.

Bajagua has done, and continues to do its part to achieve the Court's objective. Bajagua's letter of April 25, 2007 identified numerous causes of the anticipated delay in the completion of the project, and most of those delays have arisen as a result of the

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USIBWC's repeated and lengthy delays in meeting the deadlines for its obligations to Bajagua under the Development Agreement. Your decision to "suspend" taking further action to accomplish the project only exacerbates these delays and indeed illustrates what has occurred repeatedly during this process. Furthermore, your action significantly hinders Bajagua in completing its agreements with Mexican government agencies and retaining the interest of qualified bidders to compete for the DBO Contract, both of which could significantly delay or even jeopardize the project.

Your action leaves us no choice but to advise the Court of these facts and the consequences of this unjustified suspension. It would not be surprising if the Court ordered sanctions for your actions in suspending work since it clearly violates the intent and spirit of the Court Order and shows a total disregard for the continuing pollution problem that your agency is supposed to be committed to solve.

The accomplishments we have achieved in obtaining land for the project, qualified bidders, and commitments for private financing of the construction of the facilities have been accomplished at significant time and expense to Bajagua and despite the lack of appropriate cooperation. Bajagua is nonetheless prepared to continue to work constructively with USIBWC to complete this project, in which Bajagua already has invested millions of dollars, but does so without waiving its rights under the Development Agreement if these issues are not resolved promptly and should the USIBWC continue to obstruct Bajagua's efforts to complete the project.

We urge you to reconsider this decision promptly and to expedite approval of the RFP so that we may finally address the decades-old environmental problem that caused Congress to authorize this project in the first instance.

Sincerely,

Jim Simmons
Managing Member
Bajagua, LLC.