

STAFF REPORT

77

A Federal

10/24/19

S. Pemberton

S Federal

K. Robinson-Filipp

CONSIDER SUPPORTING H.R. 3895 BY REPRESENTATIVE JUAN VARGAS (D-CA-51) AND H.R. 4039 BY REPRESENTATIVE MIKE LEVIN (D-CA-49): LEGISLATION INTRODUCED IN THE 116th CONGRESS TO SUPPORT MITIGATION EFFORTS IN THE TIJUANA RIVER VALLEY AND TO REDUCE CROSS-BORDER POLLUTION FLOWING INTO THE UNITED STATES

SUMMARY:

In recent years, pollution from Mexico via the Tijuana River has caused numerous beach closures in San Diego County. Federal legislation was introduced in July 2019 to address the cross-border flows of wastewater, trash, and sediment into California from the Tijuana River. Representative Juan Vargas introduced H.R. 3895, the North American Development Bank Pollution Solution Act, to help overcome the financial hurdles stalling mitigation efforts in the Tijuana River Valley. Representative Mike Levin introduced H.R. 4039, the Border Water Infrastructure Improvement Act, that would require the U.S. Environmental Protection Agency to fund water infrastructure projects near the United States – Mexico border, and for other purposes.

BACKGROUND AND DISCUSSION:

The Commission has jurisdiction over sovereign land in and near the Tijuana Estuary. Some of that land is leased to the U.S. Fish and Wildlife Service for the Tijuana River National Estuarine Research Reserve, to the California Department of Parks and Recreation for Border Field State Park, and to the International Boundary and Water Commission (IBWC) and the City of San Diego for the ocean outfall associated with the South Bay International Wastewater Treatment Plant. The Tijuana River flows through a roughly 1,750-square-mile watershed on both sides of the United States – Mexico border. Nearly three-quarters of the watershed is in Mexico. The river drains into the Pacific Ocean through the 8-square-mile Tijuana River Valley that lies north of the border in San Diego County.

The Tijuana River Valley is located between two heavily populated urban areas, the city of Tijuana in Mexico and the cities of Imperial Beach, Chula Vista, National City, San Diego, and Coronado in the United States. Untreated wastewater flows, contaminated sediment loads, and trash influxes plague the Tijuana River watershed. Just recently, in September 2019, over 100 million gallons of untreated wastewater and runoff flowed through the Tijuana River from

STAFF REPORT NO. 77 (CONT'D)

Mexico into the United States, resulting in beach closures in San Diego County. Pollution events like this occur regularly because of inadequate water infrastructure that becomes overwhelmed with wastewater and debris, and inadequate maintenance and operation of that infrastructure. Wastewater from the city of Tijuana is supposed to be diverted, treated, and discharged 5 miles south of the border before entering the Tijuana River Valley in California. Wet weather, even light rains, can overwhelm the water diversion infrastructure in Mexico, causing untreated wastewater overflow to enter the Tijuana River Valley and Estuary and flow into the Pacific Ocean south of the city of Imperial Beach. These overflows of untreated wastewater, sewage, and debris impede public access and harm public health, directly impacting Public Trust resources, uses, and values throughout the Tijuana River watershed and the San Diego County coastline. The discharged waste has contained contaminants such as mercury, chloroform, ammonia, toluene, dibromochloromethane, oil, grease, and fecal coliform and enterococcus bacteria.

Under a 1944 Treaty between the United States and Mexico, the International Boundary and Water Commission was charged with resolving transboundary pollution in the Tijuana River. The IBWC has two sections—the United States Section and the Mexico Section. The United States section is a federal agency that manages the South Bay International Wastewater Treatment Plant and other infrastructure intended to manage water quality and reduce pollution from entering the United States. Significant population growth, climate change, lack of management resources, and insufficient infrastructure have, however, resulted in a pollution crisis at the border.

Despite a critical mass of concerned and tenacious citizens and organizations, and the efforts of California's elected officials, this pollution crisis has persisted for decades. But the solutions are not science fiction—they are commonsense proposals that include, among other things, expanded stormwater diversion structures, increased treatment capacity at the South Bay International Wastewater Treatment Plant, sediment retention basins, and trash collectors, along with improvements to inspection, monitoring, water quality testing, and spill reporting and response procedures. What is missing is funding for projects that will improve water infrastructure near the United States – Mexico Border.

H.R. 3895 and H.R. 4039 reflect a comprehensive approach to prioritize funding for projects that reduce the risk of untreated overflows, including addressing water pollution, wastewater treatment, and water conservation. In July 2019, H.R. 3895 and H.R. 4039 were introduced as part of the Tijuana River Valley Pollution Solution bill package. Representatives Juan Vargas, Scott Peters, and Mike Levin authored H.R. 3895 to increase the capital of the North American Development Bank by \$1.5 billion. The National American Development Bank is

STAFF REPORT NO. 77 (CONT'D)

a binational financial institution established by the Governments of the United States and Mexico to provide financing to support the development and implementation of infrastructure projects that preserve, protect, or enhance the environment in order to advance the well-being of the people of the United States and Mexico. H.R. 3895 directs and urges the National American Development Bank to prioritize and accelerate water infrastructure projects related to wastewater treatment, water conservation, and water pollution. H.R. 3895 also establishes the United States – Mexico Border Public Health Trust Fund Act of 2019.

In the same week that H.R. 3895 was introduced, Representative Mike Levin introduced H.R. 4039 to require the U.S. Environmental Protection Agency to carry out a program to fund water infrastructure projects near the United States – Mexico border. H.R. 4039 would increase the authorization for the Border Water Infrastructure Fund to \$150 million per year for the next 5 years. The Border Water Infrastructure Fund would provide funding for drinking water treatment or distribution and wastewater treatment projects. H.R. 4039 would provide equal allocations of the funding to Region 6 (serving Texas and New Mexico) and Region 9 (serving Arizona and California). H.R. 4039 would also require a 50 percent match in funds for eligible projects located in Mexico.

H.R. 3895 was introduced on July 23 and referred to the House Financial Services Committee. H.R. 4039 was introduced on July 25 and referred to the House Energy and Commerce and House Foreign Affairs Committees, and the House Transportation and Infrastructure, Water Resources and Environment Subcommittee. H.R. 3895 and H.R. 4039 are intended to address the severe problem of pollution and water management in the Tijuana River Estuary by prioritizing and funding improvements and expansions to water infrastructure near the United States – Mexico Border.

For the reasons stated above, staff recommends that the Commission support H.R. 3895 and H.R. 4039.

OTHER PERTINENT INFORMATION:

- 1. In October 2019, United States Senator Dianne Feinstein secured language and funding in three appropriates bills to address toxic cross-border sewage flows on the U.S.-Mexico border. The language secured by Senator Feinstein directs the Secretary of State to create an interagency plan to address the effects of toxic transboundary flows on U.S. communities and outline which agencies are responsible and what steps will be taken to raise the issue with Mexican officials. The Senate funding bills appropriate \$19.5 million for the U.S. EPA to increase its efforts to address toxic cross-border**

STAFF REPORT NO. 77 (CONT'D)

flows through the Border Water Infrastructure Program and direct the U.S. Customs and Border Patrol to submit a report on efforts to protect agents from toxic cross-border flows. The appropriations language is as follows:

Southwest Border Pollution. Not later than 180 days after enactment of the act, the Secretary of State, in coordination with the heads of other relevant federal agencies, shall submit to the Committee an interagency plan to address the impacts of toxic transboundary flows on U.S. communities, including: (1) an explanation of the sources and impacts of such flows; (2) the delineation of responsibility between each agency and a description of necessary actions and resources for each agency to address such impacts; (3) steps that will be taken to raise the issue of transboundary flows with the Government of Mexico, including by utilizing U.S. assistance for Mexico to obtain improvements to prevent, divert, and/or treat toxic flows on the Mexican side of the border; and (4) steps that will be taken to improve the timeliness of warnings to U.S. communities regarding toxic conditions.

International Programs. The Committee remains concerned that despite millions of dollars of U.S. infrastructure investments on both sides of the U.S.-Mexico border over the past two decades, untreated sewage, chemicals, and pollution continue to flow from Mexico into U.S. communities. The Committee directs EPA to increase its efforts to address toxic cross-border flows through the Border Water Infrastructure Program in coordination with the International Boundary and Water Commission and the North American Development Bank.

Homeland Security Report Sanitation and Waste Operations. The Committee is concerned by reports that toxic transboundary flows of untreated sewage, chemicals, and pollution from Mexico are jeopardizing the health of Border Patrol agents and limiting their ability to operate in areas affected by these flows. In recent years, local Border Patrol union officials have reported that dozens of officers have suffered from contamination, rashes, infections, chemical burns, and lung irritation due to toxic cross-border flows. Not later than 180 days after the date of enactment of this act and annually thereafter, the U.S. Customs and Border Protection shall submit a report to the Committee detailing efforts to protect and mitigate health impacts to personnel related to

STAFF REPORT NO. 77 (CONT'D)

toxic cross-border flows. The U.S. Customs and Border Protection shall work with States, localities, and other governmental entities to ensure that any planned new development or expansion of detritus industrial operations, including landfills and recycling facilities, within one mile of the southern border do not negatively impact border security operations.

2. This recommendation is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction.

EXHIBIT:

- A. Copy of H.R. 3895 and H.R. 4039

RECOMMENDED ACTION:

It is recommended that the Commission: Support H.R. 3895 and H.R. 4039.

EXHIBIT A

I

116TH CONGRESS
1ST SESSION

H. R. 3895

To provide for a general capital increase for the North American Development Bank, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2019

Mr. VARGAS (for himself, Mr. PETERS, Mrs. DAVIS of California, and Mr. LEVIN of California) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To provide for a general capital increase for the North American Development Bank, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “North American Devel-
5 opment Bank’s Pollution Solution Act”.

6 **SEC. 2. GENERAL CAPITAL INCREASE.**

7 Part 2 of subtitle D of title V of Public Law 103-
8 182 (22 U.S.C. 290m–290m–5) is amended by adding at
9 the end the following:

1 **“SEC. 547. FIRST CAPITAL INCREASE.**

2 “(a) **SUBSCRIPTION AUTHORIZED.**—The Secretary of
3 the Treasury is authorized to subscribe on behalf of the
4 United States to, and make payment for, 150,000 addi-
5 tional shares of the capital stock of the Bank.

6 “(b) **LIMITATION.**—Any subscription by the United
7 States to the capital stock of the Bank shall be effective
8 only to such extent and in such amounts as are provided
9 in advance in appropriations Acts.

10 “(c) **USE OF CAPITAL RAISED TO FURTHER CER-**
11 **TAIN POLICY GOALS.**—The Secretary of the Treasury
12 shall instruct the United States Executive Director at the
13 Bank to use the voice and vote of the United States to
14 prioritize using the capital raised through the purchase
15 of additional shares of capital stock of the Bank to further
16 the policy goals set forth in section 3 of the North Amer-
17 ican Development Bank’s Pollution Solution Act.”.

18 **SEC. 3. POLICY GOALS.**

19 “(a) **IN GENERAL.**—In addition to projects within the
20 mission and scope of the North American Development
21 Bank, including wastewater treatment, water conserva-
22 tion, municipal solid waste and related matters, on the day
23 before the date of the enactment of this Act and pursuant
24 to section 2 of article II of the Charter, the Secretary of
25 the Treasury shall direct the representatives of the United
26 States to the Board of Directors of the Bank to use their

1 voice and vote of the United States to support the financ-
2 ing of projects related to environmental infrastructure re-
3 lating to water pollution, stormwater drainage, non-point
4 pollution and any other environmentally beneficial infra-
5 structure project.

6 (b) CHARTER DEFINED.—In this section, the term
7 “Charter” means the Agreement Concerning the Estab-
8 lishment of a Border Environment Cooperation Commis-
9 sion and a North American Development Bank, signed at
10 Washington and Mexico November 16 and 18, 1993, and
11 entered into force January 1, 1994 (TIAS 12516), be-
12 tween the United States and Mexico.

13 **SEC. 4. EFFICIENCIES AND STREAMLINING.**

14 The Secretary of the Treasury shall direct the rep-
15 resentatives of the United States to the Board of Directors
16 of the North American Development Bank to use the voice
17 and vote of the United States to seek to require the Bank
18 to develop and implement efficiency improvements to
19 streamline and accelerate projects described in section
20 3(a).

21 **SEC. 5. PERFORMANCE MEASURES.**

22 (a) IN GENERAL.—The Secretary of the Treasury
23 shall direct the representatives of the United States to the
24 Board of Directors of the North American Development
25 Bank to use the voice and vote of the United States to

1 seek to require the Bank to develop performance measures
2 that—

3 (1) demonstrate how projects and financing ap-
4 proved by the Bank are meeting the Bank’s mission
5 and providing added value to the region near the
6 international land border between the United States
7 and Mexico; and

8 (2) are reviewed and updated not less fre-
9 quently than annually.

10 (b) REPORT TO CONGRESS.—The Secretary of the
11 Treasury shall submit to Congress, with the submission
12 to Congress of the budget of the President for a fiscal
13 year under section 1105(a) of title 31, United States
14 Code, a report on progress in imposing the performance
15 measures described in subsection (a).

16 **SEC. 6. CREATION OF THE U.S.-MEXICO BORDER PUBLIC**
17 **HEALTH TRUST FUND IN THE NORTH AMER-**
18 **ICAN DEVELOPMENT BANK.**

19 (a) SHORT TITLE.—This section may be cited as the
20 “U.S.-Mexico Border Public Health Trust Fund Act of
21 2019”.

22 (b) CREATION OF THE U.S.-MEXICO BORDER PUB-
23 LIC HEALTH TRUST FUND.—Part 2 of subtitle D of title
24 V of the North American Free Trade Agreement Imple-
25 mentation Act (22 U.S.C. 290m–290m–5), as amended by

1 section 2 of this Act, is amended by adding at the end
2 the following:

3 **“SEC. 548. U.S.-MEXICO BORDER PUBLIC HEALTH TRUST**
4 **FUND.**

5 “(a) ESTABLISHMENT.—

6 “(1) IN GENERAL.—The Secretary of the
7 Treasury, in consultation with the Secretary of State
8 and the Administrator of the Environmental Protec-
9 tion Agency, shall use the voice and vote of the
10 United States to establish, in the Bank, a trust fund
11 (which shall be known as the U.S.-Mexico Border
12 Public Health Trust Fund) which shall—

13 “(A) focus on designing, implementing,
14 and financing, through loans and grants, envi-
15 ronmental infrastructure projects relating to
16 water pollution, wastewater treatment, water
17 conservation, municipal solid waste, and related
18 matters along the United States-Mexico border;
19 and

20 “(B) be administered by the Board of Di-
21 rectors of the Bank.

22 “(2) REPORT TO THE CONGRESS.—Until the
23 trust fund is established, the Secretary of the Treas-
24 ury shall submit to the Committees of jurisdiction
25 semiannual reports on the efforts of, and progress

1 made by, the Secretary in establishing the trust
2 fund.

3 “(b) ADMINISTRATION.—

4 “(1) IN GENERAL.—The Secretary of the
5 Treasury, in consultation with the Secretary of State
6 and the Administrator of the Environmental Protec-
7 tion Agency (and, in the case of matters relating to
8 expenditures from the trust fund, the Secretary of
9 Homeland Security, the Secretary of Health and
10 Human Services, and the head of any department or
11 agency of the Federal Government that has made a
12 deposit into the trust fund), shall use the voice and
13 vote of the United States—

14 “(A) to support the development by the
15 Bank of performance measures for projects fi-
16 nanced by the trust fund;

17 “(B) to support the regular assessment of
18 the projects by the Bank using performance
19 measures; and

20 “(C) to explore and support opportunities
21 for private sector co-financing of trust fund
22 projects.

23 “(2) REPORT TO THE CONGRESS.—Within 1
24 year after the establishment of the trust fund, and
25 annually thereafter, the Secretary of the Treasury

1 shall submit to the Committees of jurisdiction a
2 written report on the progress made in developing
3 the performance measures referred to in paragraph
4 (1).

5 “(c) APPROPRIATIONS.—

6 “(1) IN GENERAL.—Out of any money in the
7 Treasury of the United States not otherwise appro-
8 priated, there are appropriated \$400,000,000 for
9 payment by the Secretary of the Treasury to the
10 Bank as trustee for the trust fund, to remain avail-
11 able until expended.

12 “(2) AUTHORITY TO REPROGRAM UNOBLIGATED
13 FUNDS.—Any department or agency of the Federal
14 Government may deposit into the trust fund any un-
15 obligated funds made available to the department or
16 agency, as the case may be.”.

○

116TH CONGRESS
1ST SESSION

H. R. 4039

To require the Administrator of the Environmental Protection Agency to carry out a program to fund water infrastructure projects near the United States-Mexico border, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2019

Mr. LEVIN of California (for himself, Mr. VARGAS, Mrs. DAVIS of California, and Mr. PETERS) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Energy and Commerce, and Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require the Administrator of the Environmental Protection Agency to carry out a program to fund water infrastructure projects near the United States-Mexico border, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Water Infra-
5 structure Improvement Act”.

1 **SEC. 2. U.S.-MEXICO BORDER WATER INFRASTRUCTURE**
2 **PROGRAM.**

3 (a) DEFINITIONS.—In this section:

4 (1) ADMINISTRATOR.—The term “Adminis-
5 trator” means the Administrator of the Environ-
6 mental Protection Agency.

7 (2) ELIGIBLE ENTITY.—The term “eligible enti-
8 ty” means a State, local government, Indian Tribe,
9 or water or wastewater district, with jurisdiction
10 over any area in the United States or Mexico that
11 is located within 100 kilometers of the United
12 States-Mexico border.

13 (3) ELIGIBLE PROJECT.—

14 (A) IN GENERAL.—The term “eligible
15 project” means a project for the construction of
16 a drinking water treatment or distribution facil-
17 ity, or a wastewater management facility,
18 that—

19 (i) addresses an existing human
20 health or ecological issue;

21 (ii) has an effect in the United States;

22 (iii) with respect to a wastewater
23 management facility the water discharged
24 from which will flow, directly or indirectly,
25 into the United States, is designed to meet
26 relevant water quality standards in the

1 United States, including any such stand-
2 ards established under the Federal Water
3 Pollution Control Act;

4 (iv) is proposed by an eligible entity
5 with legal authority to develop the project,
6 provide the proposed drinking water or
7 wastewater services, and obtain necessary
8 financing;

9 (v) will comply with relevant State
10 and local environmental and other laws
11 and regulations, including with respect to
12 obtaining any necessary operating permits
13 and licenses and complying with any other
14 regulatory requirements related to land ac-
15 quisition and rights-of-way; and

16 (vi) has the support of appropriate
17 Federal and State agencies, including the
18 Comision Nacional de Agua (also known as
19 CONAGUA or the Mexican National
20 Water Commission) and any appropriate
21 State water utility, if located in Mexico.

22 (B) EXCLUSIONS.—The term “eligible
23 project” does not include a project—

24 (i) for water supply;

1 (ii) that threatens ecosystems located
2 in the United States, or that are located in
3 both the United States and Mexico, if the
4 project causes reductions in the flow of
5 water; or

6 (iii) to provide drinking water or
7 wastewater services to new development.

8 (b) IN GENERAL.—The Administrator shall carry out
9 a program to provide assistance to eligible entities for ac-
10 tivities related to eligible projects, including feasibility
11 studies, planning studies, environmental assessments, fi-
12 nancial analyses, community participation efforts, and ar-
13 chitectural, engineering, planning, design, and construc-
14 tion activities.

15 (c) CONSULTATION.—In carrying out subsection (b),
16 the Administrator shall consult with the North American
17 Development Bank.

18 (d) PROJECT SELECTION.—

19 (1) IN GENERAL.—In carrying out subsection
20 (b), the Administrator shall select projects to receive
21 assistance under the program in accordance with
22 paragraph (2) and any other criteria determined ap-
23 propriate by the Administrator.

1 (2) PRIORITIZATION.—In carrying out sub-
2 section (b), the Administrator shall prioritize
3 projects that—

4 (A) are likely to have the greatest positive
5 effects relating to the environment, public
6 health, or responding to unmet water supply
7 needs;

8 (B) will result in benefits on both sides of
9 the United States-Mexico border; and

10 (C) address the most urgent public health
11 and environmental needs, as determined by the
12 heads of the Regional offices for Regions 6 and
13 9 of the Environmental Protection Agency.

14 (e) TERMS AND CONDITIONS.—The Administrator
15 may set such terms and conditions on assistance provided
16 under this section as the Administrator determines appro-
17 priate.

18 (f) COST SHARE.—

19 (1) REQUIREMENT FOR CERTAIN PROJECTS.—
20 The Federal share of the cost of an eligible project
21 located in Mexico shall be 50 percent.

22 (2) EXEMPTION.—During the 5-year period be-
23 ginning on the date of enactment of this section, the
24 Administrator may waive the requirement of para-
25 graph (1) if the Administrator, in consultation with

1 the Secretary of Defense and the Secretary of
2 Homeland Security, finds that the project will re-
3 duce negative health effects on Federal law enforce-
4 ment or Department of Defense personnel.

5 (g) FUNDING.—

6 (1) AUTHORIZATION OF APPROPRIATIONS.—

7 There are authorized to be appropriated to the Ad-
8 ministrator to carry out this section \$150,000,000
9 for each of fiscal years 2020 through 2024.

10 (2) REGIONAL ALLOCATIONS.—The amounts
11 made available to carry out this section shall be
12 made available in equal amounts for use by the Re-
13 gional offices for Regions 6 and 9 of the Environ-
14 mental Protection Agency.

○