

# Congress of the United States

Washington, DC 20515

December 4, 2000

Mr. John Bernal  
United States Commissioner  
International Boundary and Water Commission  
The Commons Building #C-310  
4171 N Mesa St  
El Paso, TX 79902

Dear John:

It has come to our attention that the IBWC is seeking clarification of certain portions of Title VIII to S. 835, the Estuaries and Clean Waters Act of 2000. With regard to the Memorandum of Principal Engineer Robert Ortega to Congressman Bob Filner, dated November 13, 2000 the following constitutes the understanding of this office with respect to the intent of the Transportation and Infrastructure Committee and the House of Representatives prior to passage of the legislation. The bipartisan and unanimous House and Senate support for the Bill language was based on this understanding. We hope this assists in your determination of the clear intent of Title VIII to S. 835.

## 1. ADVANCED PRIMARY TREATMENT

It is not the intent of Congress that the United States enlarge the advanced primary treatment capacity at the International Wastewater Treatment Plant (IWTP) to handle volumes beyond the current 25 mgd. Any additional capacity beyond the 25 mgd of advanced primary treatment now being treated at the IWTP is to be treated through all treatment levels at the Mexican facility. Accordingly, the IBWC should not anticipate the need to request funding to design, construct, operate or maintain additional treatment works beyond the currently operating 25 mgd advanced primary treatment plant within the context of Title VIII to S. 835. Further, the Act should not be interpreted to imply that funding for expansion of advanced primary is authorized or appropriated. This issue has been addressed both in the Act, and in the 1993 VA-HUD Appropriations Bill (H.R. 5679, P.L. 102-389), and accompanying Committee Report language.

Mr. John Bernal  
December 4, 2000  
page 2

SEC. 804. of Title VIII provides in relevant part

**"ACTIONS TO BE TAKEN BY THE COMMISSION AND THE ADMINISTRATOR.**

**(a) SECONDARY TREATMENT-**

(1) **IN GENERAL-** Subject to the negotiation and conclusion of a new Treaty Minute or the amendment of Treaty Minute 283 under section 1005 of this Act, and notwithstanding section 510(b)(2) of the Water Quality Act of 1987 (101 Stat. 81), the Commission is authorized and directed to provide for the secondary treatment of a total of not more than 50 mgd in Mexico--

(A) of effluent from the IWTP if such treatment is not provided for at a facility in the United States; and

(B) of additional sewage emanating from the Tijuana River area, Mexico."

The intent of the identified language is that Section 804 provides the Commission with authority to expand the treatment capacity of 25 mgd in the U.S. as specified in section 510(b)(2) of the Water Quality Act of 1987 (101 Stat. 81) to 50 mgd in Mexico, contingent upon negotiation and conclusion of a new Treaty Minute or the amendment of Treaty Minute 283. It is not intended to vitiate or adjust the spending cap imposed by the FY 1993 VA-HUD Appropriations Bill (H.R. 5679, P.L. 102-389). The language of Section 804 of Title VIII to S. 835 is consistent with section 510(c).

**2. SECONDARY TREATMENT**

The intent of the Act is to provide authorization to proceed with a Mexican facility (Bajagua) as soon as possible. There is no provision in the Act authorizing funding for secondary treatment in the United States. Treatment is to be constructed in Mexico, subject to the negotiation and conclusion of a new Treaty Minute or the amendment of Treaty Minute 283.

**3. PROJECT SCHEDULE**

It may be prudent for the U.S. Section Commissioner to wait until the Mexican counterpart is confirmed prior to initiating formal discussions on a new Minute, or modification of existing Minute 283.

**4. MASTER PLAN**

Section 804(b) does not prevent the implementation of the initial 50 mgd project authorized by the Act. The Comprehensive Plan is intended to address long-term and additional sewage treatment capacity beyond the initial 50 mgd authorized by the Act. It is understood that Mexico must be involved in formulation of the Comprehensive Plan identified in Section 804.

Mr. John Bernal  
December 4, 2000  
page 3

5. CONTRACT

Section 804(c) is intended only to provide the IBWC with authority to contract with the owner of the Mexican facility outside the provisions of FAR (CICA). The Committee Report offers guidance and justification for the Commissions' anticipated contract with Agua Clara LLC, as the owner of the Bajagua Project. The Act is clear at section 804(c)(2)(L) that the owner of the Mexican facility is obligated to use competitive procedures consistent with title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) in the procurement of property or services for the engineering, construction, and operation and maintenance of the Mexican facility. In sub-chapter (M) of that section, the IBWC will have the ability to review and approve the selection of the contractors, providing engineering, construction, and operation and maintenance for the Mexican facility.

The Mexican facility is not a public project in Mexico. Therefore, public contracting law in Mexico is not relevant. USIBWC has no responsibility to investigate public contracting law in Mexico with the Mexican section of the IBWC regarding contract issues. USIBWC should focus on Treaty issues. It is the responsibility of the owner of the Mexican facility to develop the project in Mexico, and therefore, comply with Mexican law with regard to its project.

We trust this information is helpful and serves as a catalyst to begin moving forward to provide secondary sewage treatment in Mexico. We appreciate your prompt attention in this matter.

Sincerely,



BOB FILNER  
Member of Congress



BRIAN BILBRAY  
Member of Congress

BF/mn  
2023731