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RESOLUTION NUMBER R- 305256
DATE OF FINAL PASSAGE SEP 23 2009

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DECLARING A STATE OF EMERGENCY IN THE TIJUANA RIVER VALLEY DUE TO THE POTENTIAL FOR SEVERE FLOODING; REQUESTING THAT THE SECRETARY OF HOMELAND SECURITY AFFIRM THAT AN EXECUTIVE ORDER WAIVING ENVIRONMENTAL LAWS OTHERWISE APPLICABLE TO THE CONSTRUCTION OF BORDER BARRIERS EXTENDS TO FLOOD CONTROL WORK MADE NECESSARY IN THE TIJUANA RIVER VALLEY BY THE CONSTRUCTION OF TACTICAL BORDER INFRASTRUCTURE; AUTHORIZING THE MAYOR TO DEPLOY CITY FORCES TO PERFORM EMERGENCY FLOOD CONTROL WORK; AUTHORIZING THE MAYOR TO ENTER INTO EMERGENCY CONTRACTS FOR THE TRANSPORTATION AND DISPOSITION OF REMOVED MATERIAL; AND AUTHORIZING NECESSARY EXPENDITURES FOR SUCH FLOOD CHANNEL MAINTENANCE WORK.

WHEREAS, in 2008 the U.S. Department of Homeland Security [DHS] constructed Tactical Border Infrastructure [TBI] border fence and berms at the international border in the Tijuana River Valley area; and

WHEREAS, the TBI was constructed pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [IIRIRA], of which Section 102(c) permits the Secretary of the DHS to issue orders waiving environmental and other laws applicable to the TBI project to expedite its completion; and

WHEREAS, on April 3, 2008 the Secretary of DHS issued an Executive Order (Federal Register Vol. 73 No. 65, 18293) invoking Section 102(c) of IIRIRA waiving the applicability local, state, and federal laws to the construction of the TBI, including but not limited to upkeep of drainage and erosion controls; and

WHEREAS, as a result of the TBI being constructed without application of permit standards, the TBI project presently lacks Best Management Practices to contain sediment from occluding flood channels managed by the City of San Diego which are integral to the drainage of the TBI project area; and

WHEREAS, the TBI project has modified the hydrology of the Tijuana River Valley in the Smugglers Gulch area, resulting in higher flows of water and waste, with higher velocities and scouring, and this has created sedimentation and occlusion problems in the drainage channels which convey water from the TBI area; and

WHEREAS, in November and December 2008, during relatively typical rain events, severe flooding occurred in the Tijuana River Valley due in material measure to TBI water drainage with its associated volumes, velocities, and debris; and

WHEREAS, the winter of 2009-2010 is impending with rain, and more flooding of the Tijuana River Valley is imminent unless emergency work is performed to clear drainage channels; and

WHEREAS, California Government Code section 8630 authorizes local governing bodies to proclaim local emergencies when such events occur as are defined by California Government Code section 8558(c), provided further by section 8630 that the local governing body must review the state of emergency at its regularly scheduled meetings or every twenty-one days until such emergency is declared to be terminated; and

WHEREAS, pursuant to California Government Code section 8558(c), the potential for severe flooding in the Tijuana River Valley is beyond the control of the services, personnel, equipment, and facilities of the City; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that pursuant to California Government Code section 8630, a state of local emergency is declared to exist in the City of San Diego due to the potential for severe flooding in the Tijuana River Valley.

BE IT FURTHER RESOLVED, that during the existence of this local emergency, the powers, functions, and duties of the Mayor and City shall be those prescribed by state law and the City Charter, ordinances, resolutions, and approved plans of the City.

BE IT FURTHER RESOLVED, that the Secretary of the United States Department of Homeland Security is hereby requested to affirm that the Executive Order published on April 3, 2008 in the Federal Register as Document No. 08-1096 (73 F.R. 18293) waiving laws applicable to the construction of border barriers extends to City flood control work in the vicinity of the federal project that has been made necessary by the construction of the Tactical Border Infrastructure, as such flood control work is necessary to the upkeep of drainage and erosion controls incident to the project.

BE IT FURTHER RESOLVED, that subject to the affirmation of the Secretary of DHS as to the applicability of the Executive Order, the Mayor is authorized to deploy City forces to perform emergency excavation work in the Smugglers Gulch, Pilot, and Northern channels of the Tijuana River Valley system as necessary to prevent flooding of the valley.

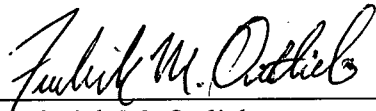
BE IT FURTHER RESOLVED, that the Director of Purchasing & Contracting Department is authorized to award sole source contracts and purchase orders as may be required for the transportation and disposal of sediment and debris from the Smuggler's Gulch, Pilot, and Northern Channels of the Tijuana River Valley pursuant to San Diego Municipal Code section 22.3212(c).

BE IT FURTHER RESOLVED, that the Mayor or his designee is authorized to execute all necessary documents for contracting and maintenance activities with respect to this local emergency, subject to ratification by the Council.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to expend an amount not to exceed \$4,400,000 from the Storm Water Department, Storm Water Pollution Prevention Division General Fund No. 100000, solely and exclusively to provide funds for emergency contracting and maintenance activities related to flood control in the Tijuana River Valley, provided that the City Comptroller issues one or more certificates demonstrating that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

BE IT FURTHER RESOLVED, that a state of local emergency shall be deemed to continue until its termination is proclaimed by the City Council.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 

Frederick M. Ortlieb
Deputy City Attorney

FMO:mb
09/02/09
09/11/09 Corrected.
Or.Dept:Storm Water
R-2010-114

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego,
at its meeting of SEP 15 2009.

ELIZABETH S. MALAND, City Clerk

By 
Deputy City Clerk

Approved: 9.23.09
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor