

United States Senate

WASHINGTON, DC 20510

May 7, 2013

The Honorable John F. Kerry
Secretary of State
U.S. Department of State
2201 C Street N.W.
Washington, D.C. 20520

Dear Secretary Kerry:

We are writing to follow up on previous correspondence sent to the State Department and the International Boundary and Water Commission (IBWC) regarding the public-health risks posed by the deterioration of the International Outfall Interceptor (IOI) pipeline, which runs from Nogales, Sonora (Mexico), to Nogales, Arizona. Severe flooding over the past few years from monsoon rains, as well as the high volume of sewage coming from Mexico, and blockages caused by drug smugglers have damaged the Nogales Wash and compromised the integrity of the IOI. If the wash and the IOI fail, large swaths of the southern Arizona region could be affected by serious water contamination.

The IBWC treats the wastewater that flows through the IOI via the Nogales International Water Treatment Plant (NIWTP). Although the IBWC is aware of the threat to public health and Congress has appropriated money for the purposes of renovating the IOI, the IBWC has refused to disburse the funds unless the City of Nogales commits to paying half of the estimated cost. In a letter to the City of Nogales, the IBWC originally suggested that the 50/50 cost split was mandated by Congress. However, the IBWC now claims that its position is dictated by internal policy and refuses to explain or justify that policy.

In an effort to resolve this outstanding issue, Senator McCain wrote to the IBWC on March 21, 2013 seeking information on the IBWC's 50/50 cost-sharing policy. Likewise, Senator Flake wrote to the State Department on May 29, 2012 seeking answers. Although the IBWC has not responded, the State Department provided an "interim response" in which it noted that the IBWC was "actively considering its legal obligations concerning funding for the needed analysis of the Nogales wastewater issue." The State Department further stated that the IBWC, in consultation with the State Department, "will complete its consideration of these issues soon" at which point a "fuller response" would be provided. As of yet, neither the State Department nor the IBWC has clarified their position.

The State Department Office of Inspector General has previously identified internal management problems at the IBWC and questioned whether the State Department has exercised sufficient oversight.¹ We believe that the IOI pipeline issue requires the full attention of the

¹ See United States Department of State Office of Inspector General, *Report of Inspection: U.S. Section of the International Boundary and Water Commission* 3 (ISP-I-05-26) Washington, March 2005. Available at <http://oig.state.gov/documents/organization/44344.pdf>.

IBWC and active oversight of the State Department. Given the importance of this issue to the people of Arizona, we request that the State Department provide its long-awaited "fuller response" regarding the IBWC's policy on the IOI pipeline and report on the status of its IBWC oversight. In particular, please provide answers, with supporting documentation, to the following questions:

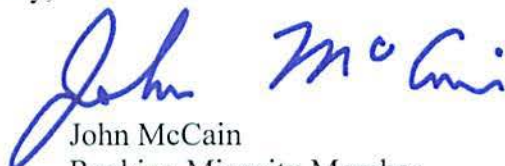
1. Please provide the legislative, regulatory or internal-policy basis for the IBWC's 50/50 cost-share requirement.
2. Please provide a full explanation of the 50/50 cost-share policy, including documentation in the form of memoranda, reports, e-mails or internal rules.
3. The president's fiscal year 2014 budget for the Department of State and Other International Programs includes a \$2 million line item for the Nogales International Outfall Interceptor. How does the State Department and the IBWC plan to use those funds?
4. What guidance, if any, has the State Department provided to the IBWC in regard to the Nogales IOI replacement project?
5. Does the State Department believe that towns in the United States should pay to repair damaged infrastructure that is used to fulfill international agreements with Mexico?
6. What is the current level of State Department oversight into the construction and design operations of the U.S. section of the IBWC? Have limitations identified in previous State Department Office of Inspector General investigations concerning oversight of IBWC water and sanitation activities been addressed?

Please provide a response by no later than May 28, 2013. If you or any of your staff have any questions, please contact Jack Thorlin (Senator McCain) at 202/224-2224 or Kris Kiefer (Senator Flake) at 202/224-0838. Thank you for your cooperation and attention to this important matter.

Sincerely,



Jeff Flake
United States Senator



John McCain
Ranking Minority Member
Permanent Subcommittee on Investigations
Committee on Homeland Security and
Governmental Affairs