

United States - Mexico Law Journal

Volume 11 *Presentations at the Eleventh Annual
Conference: Water Law & White Collar Crime*


Article 10

3-1-2003

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Recommended Citation

Maria Elena Giner, *Municipal Water Supply on the Border*, 11 U.S.-Mex. L.J. 53 (2003).
Available at: <https://digitalrepository.unm.edu/usmexlj/vol11/iss1/10>

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MUNICIPAL WATER SUPPLY ON THE BORDER

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The Border Environment Cooperation Commission (BECC)¹ was created in 1993 out of the North American Free Trade Agreement (NAFTA) Side Agreement.² The NAFTA Side Agreement took into account that NAFTA would promote significant industrial and population growth along the border, and this growth would exacerbate already-substandard infrastructure conditions. Thus, the BECC was created to promote conservation, protection, and improvement of the environment along the border due to the foreseen growth.

Most of the border areas in both the Mexico and the U.S. are growing rapidly. The BECC develops and certifies its projects through a broad public participation process that promotes sustainable development. Although on the U.S. side of the border the government claims to engage in a public participation process through public hearings regarding the environmental process, the BECC's process differs in that it actually performs an outreach. Specifically, the outreach is carried out through a steering committee who represent a cross-section of the community. This is essential to disseminate information because the members of the community are those who know their community best.

There are interesting differences on the U.S. side of the border as opposed the Mexican side regarding water, wastewater, and solid waste issues, and how public participation is achieved in the process. For example, on the Mexican side, there is not a culture of payment for services from the water utilities. Most of the smaller communities have a very low collection rate and up until recently on the Mexican side, especially in the larger cities, many people had the perception that water was a gift from God and should be a free commodity. The BECC tries to reeducate people that water does not necessarily need to be plumbed to homes for free. Contrary to the U.S., people on the Mexican side are willing to pay for it, yet they are not willing to pay the true cost of water.

The BECC is a bi-national agency that covers both sides of the border, 62 miles on either side. The BECC's board consists of ten members, five from the U.S. side and five members from the Mexican side. This composition generates a spirit of consensus-building, primarily due to the voting procedures. In order for the BECC board to certify a project, a majority vote is required, which amounts to a minimum of three votes from the U.S. members and three votes from the Mexican members. Unanimity has been something the Board has worked towards and achieved.

The BECC's areas of responsibility are water pollution, wastewater treatment, and solid waste, and other related matters. In 2001, the BECC adopted an expanded mandate to include water conservation, hazardous waste, clean and efficient energy,

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1. The Border Environment Cooperation Commission (BECC) identifies, supports, evaluates, and certifies affordable environmental infrastructure projects, as a binational team, to improve the quality of life for the people in the U.S.-Mexico border region, now and in the future in an open public process. See generally www.cocef.org (last visited March 25, 2003).

2. NAFTA Supplemental Agreement, North American Agreement on Environmental Cooperation Between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States, Sept. 13, 1993, 32 I.L.M. 1482 (1993).

municipal planning and development, and air quality. A large component of air quality is transportation and municipal road paving. Therefore, a majority of BECC projects have dealt substantially with paving and improving the quality of pavement in order to avoid contamination.

The BECC considers five major criteria when developing its projects. First, a project has to be technically viable, meaning the appropriate technology must be used. Second, a project must be financially viable so that the rates are able to sustain the operation and maintenance of the plan as well as any loan component. The BECC works closely with the North American Development Bank (NADB)³ on this criterion. Third, there must be a public participation process. This requirement includes the necessity for documented public support for the project. In some cases the public participation process for projects is bi-national and have steering committees that are bi-national. Public meetings are held on both sides in these situations. The fourth criterion is that the project has to solve an environment and human health problem. The BECC was created for this purpose and not to create future development or strictly growth-related projects. The final criterion is sustainable development. From the public participation perspective, sustainable development applies across the board from being financially viable to technically viable.

Additionally, there are 14 minimum criteria that must be met when certifying a project. The BECC emphasizes that its criteria are flexible and its certification process takes into account current state and federal requirements on each side. The BECC does not impose any of its own requirements or new federal or state requirements. Rather, the requirements are dependent on what the state and federal requirements are on either side. The BECC certification process is a coordination of the project development process required by the various state and federal stakeholders. To date the BECC has certified 60 projects, 36 in the U.S. and 24 in Mexico.⁴ The water, wastewater, and solid waste projects benefit 11.7 million border residents and amount to \$1.6 billion in total investment.⁵ The BECC is also considering certification of some mandate projects in 2002 which include both irrigation and air quality projects.

The BECC's technical assistance program provides funding for projects from planning through design, and is geared towards improving the environment along the U.S./Mexico Border. One problem is that many communities want to invest their money in construction but not in planning. On both sides of the border, when new administrations enter office they tend to make cosmetic reforms and not invest money in planning because planning can be expensive. They paint schools, put in new trash bins or get new police cars. This culture of bricks and mortars exists especially on the Mexican side, where on the municipal level officials have three-

3. The North American Development Bank (NADB) is an international financial institution created by the North American Free Trade Agreement (NAFTA). Under its charter, the NADB is authorized to use its capital to finance the operation and development of environmental infrastructure projects in the U.S.-Mexico border region. All NADB-financed environmental projects must be certified by the Border Environment Cooperation Commission (BECC). See generally <http://www.nadb.org> (last visited March 26, 2003).

4. Border Environment Cooperation Commission, Operations Department Certified Projects, available at <http://www.cocof.org/englishbecc.html> (last visited March 26, 2003).

5. *Id.*

year terms, and on the U.S. side as well where mayors have two-year terms. The BECC technical assistance program works to counter this phenomena.

The BECC's Technical Assistance Program consists of funding from the Environmental Protection Agency's (EPA)⁶ project development assistance program, and the funds for that project go to both sides of the border. Additionally, the BECC also has operating funds, half of which come from the U.S. government and half from the Mexican government. The BECC allocates a portion of those funds to solid waste and our mandate projects, and the technical assistance program can be used for concept development through final design.

The technical assistance requirements for water and wastewater projects include a financial plan, intergovernmental coordination, and community support. The assistance must also meet the requirements of the Border Environment Infrastructure Fund, a fund that is administered through the NADB. Finally, the projects must have the potential to obtain BECC certification. For Mexican projects, there must be a U.S. side benefit and there must be documented evidence of federal or state support. For a project to come to fruition, a great deal of coordination is necessary as well as focused financial strategy.

A community initially requests technical assistance by sending a letter to the BECC. Next, the commission performs an assessment of that community's needs and begins the process of coordinating with stakeholders to determine what is the best project's approach, what sort of technical assistance will be needed for the community, and how the BECC can apply that type of funding. The development aspect of these projects is extremely team oriented. The certification of a project is a team effort on behalf of the BECC, the sponsor, the state and federal stakeholders as well as the NADB. These projects require serious investment from these stakeholders. Currently the BECC's general manager, Fernando Macias, can approve a project up to \$300,000. Projects in the range of \$300,000 and \$500,000 must have board approval, and anything exceeding \$500,000 for water and wastewater projects must get U.S.-EPA concurrence.

The BECC has a procurement process for its technical assistance program which is a hybrid of the U.S. and Mexican processes. The commission has a list of its best-qualified consultants and the project is procured among those 22 consultants. The BECC solicits proposals, procures the study, and administers the contract. Since its inception, the BECC has given \$29.4 million, roughly \$17 million to the U.S. and about \$12.4 million to Mexico.⁷ Approximately \$26 million of this amount has gone solely to water and wastewater projects, while \$3 million has gone to solid waste and mandate projects.⁸

Whenever the BECC does water conservation and water supply planning for communities, it examines the availability of supply for those communities and projects what type of water needs these communities will have over the next twenty

6. The United States Environmental Protection Agency researches and sets national standards for numerous environmental programs, delegates responsibility to states and tribes to monitor and enforce compliance with national standards, and also issues sanctions for non-compliance. See <http://www.epa.gov/> (last visited March 26, 2003).

7. Border Environment Cooperation Commission, Technical Assistance, Requests and Approval Amounts, available at <http://www.cocof.org/englishbecc.html> (last visited March 26, 2003).

8. *Id.*

years. As far as exclusively water supply only types of studies, the BECC's funding is limited because raw water supply is not an eligible expense under the EPA funding. Most of the BECC Technical Assistance funding is through the EPA-funded Project Development Program and consequently treatment is eligible but not the raw water supply.

However, the commission did receive special funding for its El Paso/Juarez/Doña Ana County tri-regional water supply project. This challenging project was a study which analyzed the feasibility of raw water supply to the El Paso, Juarez, and Doña Ana County area for treatment and consumption. Difficulties arose because three states and two nations had to arrive at a consensus as to the best method of supplying this area. It was also demanding because on the Mexican side the water is administered by the federal government, and there are very clear lines of jurisdiction on the municipal, state, and federal levels. In contrast, on the U.S. side there are multiple agencies working on water issues that all have a certain jurisdiction. Moreover, water supply is something that does not stop at the border but transcends it. Therefore the three areas overlap. The El Paso/Juarez/Doña Ana County tri-regional study was recently completed and specific recommendations were made. The water boards of the Juarez water agency *Junta Municipal de Agua y Saneamiento de Juarez* (Juarez Municipal Board of Water and Sanitation)⁹ and the El Paso Water Utilities met for the first time to discuss what steps should be taken next. Quite a bit of progress has been made and there is a cooperative spirit among these agencies.

The BECC also has water conservation projects that are attempting to promote the more efficient use of water along the border. One project, which is a top priority, is improvement to the irrigations districts along the Rio Conchos. That project aims to improve the water irrigation districts for Rio Florido, Delicias, and Bajo Rio Conchos, which are three districts that are located along the river. The BECC is working closely with the Mexico's National Water Commission (*Comisión Nacional del Agua*), the NADB, the EPA and the two offices of the IBWC on this project. The commission has also received about 25 applications for irrigation projects in Texas. Currently, the BECC is focusing on two of those, the Hidalgo County District Irrigation Improvement Project and the Harlingen Irrigation Improvement Project, which are technically very advanced. The state of Texas should be commended on its ability to fund many of these projects for planning.

The BECC's project development and certification process has been a collaborative one, involving a team of representatives from the various stakeholders. The success of a project and its ability to achieve a timely development and certification has a direct correlation with the responsiveness of each of these stakeholders. Through this process the BECC, since its creation, has worked effectively with water utilities, cities, counties, state and federal funding, and federal agencies, private citizens, the private sector, and irrigation districts to provide assistance in the implementation of their projects.

9. Junta Municipal de Agua y Saneamiento de Juarez, *see generally* <http://www.jmas.com.mx/conocenos/queses.php> (last visited March 26, 2003).