

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1597 (Alvarez)
Version: June 5, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Water quality: California-Mexico cross-border rivers

DIGEST

Authorizes, upon appropriation by the Legislature, funds to be made available to the California Environmental Protection Agency for the North American Development Bank, as specified, for the purposes of loans, grants, and direct expenditures on projects to address water quality issues in California-Mexico cross-border watersheds.

EXECUTIVE SUMMARY

For decades, water quality problems have plagued the Tijuana and New Rivers and the watersheds in which they reside. Wastewater and untreated sewage in both rivers have created significant pollution and public health hazards for the communities living near these watersheds. Because both watersheds cover territory of Mexico and California, comprehensive approaches that address the issue from both sides of the border are necessary. In recent years, the federal government has attempted to address the issue through expenditures and short- and long-term projects. However, water quality problems persist. This bill proposes to provide funds for water quality projects both in California and in the Mexican state of Baja California through the North American Development Bank (NAD Bank), a binational organization created by the United States and Mexican governments through the North American Free Trade Agreement. This bill provides for a funding agreement to be determined between the California Environmental Protection Agency (CalEPA), other state agencies, and NAD Bank through which NAD Bank will administer the funding and grant funding to sub-recipients for projects. AB 1597 includes various provisions aimed at attempting to ensure accountability between the state, NAD Bank, and sub-recipients. AB 1597 is sponsored by NAD Bank, and is supported by a variety of local governments near the California-Mexico border and associations for local and rural governments. The Committee has received no timely opposition. The bill passed out of the Senate Environmental Quality Committee by a vote of 7 to 0.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Authorizes the President to accept membership for the United States in the North American Development Bank (NAD Bank) provided for in the Border Environment Cooperation Agreement between the United States and Mexico, and provides for the capitalization and various rules of NAD Bank. Specifies that, for any civil action brought within the United States by or against NAD Bank in accordance with the Cooperation Agreement, NAD Bank must be considered an inhabitant of the Federal judicial district in which its principal office in the United States or agency appointed to accept service is located, and provides federal courts original jurisdiction in any such action. Provides that, whenever NAD Bank is a defendant in any action in a state court, it may remove the action to federal court at any time under the federal rules of civil procedure. (22 U.S.C. § 290m.)

Existing state law:

- 1) Establishes the Porter-Cologne Water Quality Control Act, which prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board. (Wat. Code § 1300 et seq.)
- 2) Requires the California-Mexico Border Relations Council to establish the New River Water Quality, Public Health, and River Parkway Development Program to coordinate funding for, and the implementation of, the strategic plan developed by the Council. (Pub. Resources Code § 71103.6)
- 3) Requires – upon an appropriation of funds from the Legislature – CalEPA and the California Natural Resources Agency, including their subsidiary agencies, to collaborate to create a Tijuana River Valley Watershed Action Plan, known as the Tijuana River Plan, as specified. (Pub. Resources Code § 71107.)

This bill:

- 1) Makes various Legislative findings and declarations regarding the importance of cross-border environmental solutions for cross-border water and air basins, and regarding NAD Bank.
- 2) Authorizes, upon appropriation by the Legislature, funds to be made available to CalEPA for NAD Bank for loans, grants, and direct expenditures to address water quality problems arising in California-Mexico cross-border watersheds.
- 3) Requires that funds be made available under (1), above, for purposes consistent with the New River Water Quality, Public Health, and River Parkway Development

Program, and water quality projects for the Tijuana River, and requires expenditures of these funds to be consistent with the work of the CalEPA Border Affairs Program and for priority to be given to projects that have funding committed by the United States (U.S.), Republic of Mexico, State of Baja California, or the Cities of Tijuana or Mexicali.

- 4) Requires that 5 percent of funds be made available for the administrative costs of NAD Bank, and 5 percent for the administrative costs of CalEPA in implementing the bill.
- 5) Requires CalEPA, the Department of Resources Recycling and Recovery (CalRecycle), or the State Water Resources Control Board, with approval of the Secretary of Environmental Protection, to determine with NAD Bank the terms of the funding agreement, including enforceability, transparency, and other requirements under which NAD Bank shall administer the funding, including developing grant guidelines establishing a timeline for funding disbursement, project prioritization, and monitoring requirements.
- 6) Specifies that any funding for activities or projects in the State of Baja California may be provided through direct expenditures and grants to an eligible recipient authorized to work in Mexico. Requires projects eligible for funding to comply with, and be subject to, enforcement under local, state, and federal laws, as applicable.
- 7) Authorizes expenditures to be made available for actions in California or the State of Baja California, provided the actions provide water quality benefits to the portions of the watersheds and coastal waters that are in California.
- 8) Specifies that eligible funding recipients, including NAD Bank, are entities that are, or consent to be, subject to the jurisdiction of federal courts in California for the purpose of enforcement of the funding agreement.
- 9) Requires that funds provided to NAD Bank be conditioned on NAD Bank agreeing to do the following:
 - a) consent to be subject to the jurisdiction of federal courts in California for the purposes of the funding agreement with CalEPA;
 - b) consent to a designated agent for service of process;
 - c) waive any immunity it enjoys under international law or treaty, or the International Organizations Immunity Act with regard to the state of California or its designees for the purposes of implementing and enforcing the bill's provisions;
 - d) require that sub-recipients of funds accept their obligation, as applicable, to ensure that all workers employed on public works projects are paid the prevailing wage determined by the Director of the Department of

Industrial Relations, according to the type of work and location of the project, as applicable.

- 10) Requires grant funding be conditioned upon the enforceability and accountability requirements mutually agreed upon by CalEPA and NAD Bank, and authorizes funding be withheld by CalEPA if any requirements of the applicable funding agreement are not met.
- 11) Specifies that grant funding may also be conditioned on accountability mechanisms agreed upon by CalEPA, NAD Bank, and the recipient, including, but not limited to, both of the following:
 - a) progress reports accompanying each disbursement request; and,
 - b) an enforceable commitment to operate and maintain the funded project for the project's useful life or 30 years, whichever is less.
- 12) Provides that the authority to enforce the terms of funding agreements is expressly reserved to the NAD Bank, and requires NAD Bank to inform the Office of the Attorney General, should the need for legal action arise.
- 13) Specifies that any cause of action that arises from implementation of the bill's provisions shall be vested in favor of the state of California and no private right of action may be asserted by any party.
- 14) Requires CalEPA to notify the leadership office in each house of the Legislature about cross-border collaboration and the expenditure of funding made available pursuant to this bill.
- 15) Authorizes direct expenditures under this section to be provided in a lump sum in advance of costs incurred.

COMMENTS

1. Author's statement

According to the author:

The border region and surrounding communities have been suffering from this environmental disaster for decades and the problem continues to worsen. Since 2018, over 100 billion gallons of toxic untreated wastewater flowed across the California-Mexico border impacting public health, sensitive habitat and the region's economy. In March 2023, Scripps Institution of Oceanography released a study that found a significant amount of potentially infectious bacteria in the City of Imperial Beach has been linked to cross-border pollution. This is a

regional problem that requires a regional solution and California needs to be a partner in this effort.

California's shoreline is routinely impacted by this pollution with Imperial Beach having been closed for 550 consecutive days (since December 2021) and more than 200 days each year in the past 3 years. In 2023, more than 12 miles of coastline has been impacted by cross-border pollution.

NAD Bank can leverage the proposed public dollars with existing Bank funding to maximize the investment and have a trusted partner oversee sustainable infrastructure development to mitigate this environmental disaster.

2. An ongoing environmental crisis in California-Mexico cross-border watersheds

The Tijuana River watershed is a massive water drainage basin that spans land in both Mexico and California. It covers more than 1,750 square miles, covering both mountainous regions and the mega-city of Tijuana.¹ Its waters drain into the Tijuana river, which passes through the city of Tijuana before crossing the border into California and emptying into the Pacific ocean through the Tijuana River estuary near Imperial Beach, California. For years, pollution and wastewater has flowed through the Tijuana River estuary and into the ocean, creating significant pollution. This pollution has resulted in closed beaches, significant odor, concerns about contamination and exposure for local residents to toxic chemicals and dangerous bacteria or pathogens both through the water and aerosolized particles.² Some local beaches have been closed for over 700 consecutive days. This pollution originates from industrial waste and untreated sewer and wastewater, and is often exasperated by storms that further cause transboundary flows and flood the Tijuana River Valley.³ The International Boundary and Water Commission has estimated that over 100 billion gallons of untreated sewage, industrial waste, and urban runoff have flowed into the Tijuana Estuary and the Pacific Ocean.⁴

The Salton Sea watershed, like the Tijuana River watershed, is also a transboundary watershed. It includes the Coachella and Imperial Valleys, and the Salton Sea. The New River originates near Mexicali, Mexico, and flows into California near Calexico before

¹ Tijuana River National Estuarine Research Reserve, "Tijuana River Watershed," (accessed Jun. 21, 2024) <https://trnerr.org/about/tijuana-river-watershed/>.

² Pedro Rios, "San Diegans hold their breath as Newsom defers to Washington D.C. on Tijuana River sewage crisis," Cal Matters (Nov. 20, 2023), available at https://calmatters.org/commentary/2023/11/san-diego-tijuana-river-sewage/?utm_medium=email&utm_source=ActiveCampaign&utm_content=California%20Democrats%20don%20t%20endorse%20in%20U%20S%20%20Senate%20race&utm_campaign=WhatMatters.

³ Rocio De La Fe, "14.5 billion gallons of raw sewage, trash flood Tijuana River Valley," CBS 8 (Jan. 25, 2024), available at <https://www.cbs8.com/article/news/local/145-billion-gallons-raw-sewage-trash-flood-tijuana-river-valley/509-11c12428-a557-4e20-a240-ab3f669649f8>.

⁴ Rios, *supra* note 2.

being discharged into the Salton Sea. The New River also presents significant pollution problems from agricultural runoff and high concentrations of fecal coliform bacteria and raw sewage.⁵

3. Previous attempts to address the issue of transboundary water pollution

The United States, Mexico, and various regional stakeholders have tried for decades to address the issue of wastewater pollution in the Transboundary Tijuana and Salton Sea watersheds. The International Boundary and Water Commission (IBWC), an international body created by the United States and Mexico for applying the water and boundary treaties between the two countries, began addressing the issue as early as 1985. In 1989, Congress authorized construction of the International Wastewater Treatment Plant by IBWC as part of IBWC's efforts to reduce pollution from untreated wastewater in the Tijuana River.⁶ Since then, the IBWC has continued to attempt to address the issue of pollution in the Tijuana River watershed, carrying out various projects for wastewater treatment and pumping. In 2015, it established an accord for a general framework for binational cooperation on transboundary issues in the Tijuana River basin, which created the Binational Core Group. In recent years, a Mexico-based wastewater treatment has begun to fail, pushing more wastewater to the International Wastewater Treatment Plant beyond its capacity and resulting in millions of more untreated wastewater being spilled into the Tijuana River.⁷ In 2022, the IBWC established two more binational agreements between the United States and Mexico to plan and fund a suite of infrastructure projects on both sides of the border, including repairing the aging treatment plant in Mexico and expanding the International Wastewater Treatment Plant.⁸ The agreement identified short- and long-term wastewater infrastructure projects, and outlined the funding needs and sources for them. In 2020, Congress appropriated \$300 million to renovate the International Wastewater Treatment Plant, and after requests were made in 2023 for an additional \$310 million, appropriated another \$156 million in the 2024 budget.⁹

⁵ State Water Resources Control Board, "Introduction to the New River/Mexicali Sanitation Program," (accessed Jun. 21, 2024), available at https://www.waterboards.ca.gov/rwqcb7/water_issues/programs/new_river/nr_intro.html#:~:text=N ew%20River%20at%20International%20Boundary,odor%20at%20the%20International%20Boundary.

⁶ International Boundary and Water Commission (IBWC), "Wastewater Treatment Plants," (accessed Jun. 21, 2024), available at <https://www.ibwc.gov/wastewater-treatment-plants/>.

⁷ MacKenzie Elmer, "Lots of Tijuana's sewage is crossing the border right now. Here's why," Voice of San Diego (Aug. 2, 2022), available at <https://voiceofsandiego.org/2022/08/02/lots-of-tijuanas-sewage-is-crossing-the-border-right-now-heres-why/>.

⁸ International Boundary and Water Commission, *Minute No. 328, Sanitation Infrastructure Projects in San Diego, California – Tijuana, Baja California For Immediate Implementation and For Future Development*, (Jul. 18, 2022), available at <https://www.ibwc.gov/minutes/>; U.S. Environmental Protection Agency, *Statement of Intent and Minute 328*, (2022), available at <https://www.epa.gov/system/files/documents/2022-10/Summary%20of%20Agreements.pdf>.

⁹ Sharon Udasin, "Federal spending package triples funds aimed at fixing US-Mexico sewage crisis," The Hill (Mar. 25, 2024), available at <https://thehill.com/policy/energy-environment/4553826-federal-spending-package-us-mexico-sewage-crisis-california-funds-tripled/>.

The state has also been involved in efforts to address the issue. In 2009, the San Diego Water Board created the Tijuana River Valley Recovery Team (Recovery Team) to engage in multi-agency collaboration to address the Tijuana River Valley issues.¹⁰ This Recovery Team developed a Five-Year Action Plan that included the projects identified in IBWC's 2015 accords. The state has also provided funding to address border river water quality, most recently in the amount of \$20 million in the Budget Act of 2021 (AB 180 (Ting, Ch. 44, Stats. 2022)) and \$15 million in the Budget Act of 2022 (SB 154 (Skinner), Ch. 43, Stats. 2022.). However, significant transboundary wastewater flows and pollution of the Tijuana River continues.

4. NAD Bank

The North American Development Bank (known as NAD Bank) is a binational organization that was established in 1989 by the United States and Mexico as part of the North American Free Trade Agreement (NAFTA). The purpose of NAD Bank is to provide financing to support the development and implementation of infrastructure projects and to provide other assistance for projects protecting and enhancing the environment of the border region of the United States and Mexico. It provides grants, loans and related financial services, and technical assistance. NAD Bank has geographic jurisdiction over projects within 100 kilometers north of the United States-Mexico border and 300 kilometers south of the border. It received initial contributions of \$202.5 million each from the United States and Mexico, and both countries committed to an additional \$450 million in capital to the bank.¹¹ In addition to these capital investments, NAD Bank receives funding from the United States Environmental Protection Agency (U.S. EPA) to administer the Border Environmental Infrastructure Fund to provide grants for municipal drinking water and wastewater infrastructure projects within 100 kilometers of the United States-Mexico border.¹²

To date, NAD Bank has leveraged a total \$11.5 billion in investments in infrastructure projects through \$3.9 billion in loans and grants to 308 projects, with 159 in Mexico and 149 in the United States.¹³ Of these projects, 178 were for water and wastewater projects that resulted in 157 million gallons a day (mgd) of new or improved water treatment capacity and 491 mgd of new or improved wastewater treatment capacity.

¹⁰ State Water Resources Control Board, "Tijuana River Valley Recovery," (accessed Jun. 21, 2024), https://www.waterboards.ca.gov/sandiego/water_issues/programs/tijuana_river_valley_strategy/.

¹¹ North American Development Bank, "Capitalization," (accessed Jun. 21, 2024) <https://www.nadb.org/about/capitalization>.

¹² North American Development Bank, "Border Environment Infrastructure Fund (BEIF/PDAP)" (accessed Jun. 21, 2024) <https://www.nadb.org/infrastructure-financing/grants/border-environment-infrastructure-fund-beif-pdap#overview>.

¹³ North American Development Bank, "Our Impact" (accessed Jun. 21, 2024) <https://www.nadb.org/our-impact>.

As NAD Bank is an international organization, it enjoys unique privileges and immunities. The United States' membership in NAD Bank and NAD Bank's basic structure was established through the passage of Public Law 103-182 in 1993. (P.L. 103-182 (1993).) That law established in statute the federal government's commitment of initial pay-in funding, compensation for NAD Bank's board members, and the process for additional contributions to NAD Bank. (22 U.S.C. § 290m.) It also specifies that, for any civil action brought by or against NAD Bank in the United States, NAD Bank is deemed an inhabitant of the Federal judicial district in which its principal United States office is located, and that federal district courts have original jurisdiction in any such action. (22 U.S.C. § 290m(g).) In 1993, NAD Bank was designated a public international organization under the International Organizations Immunities Act (IOIA) by President Clinton. (E.O. 12904 (1993).) Under current Supreme Court precedent, that means that NAD Bank enjoys immunity from suit, unless it engages in commercial activity and the suit is based upon that commercial activity. (*Jam v. International Finance Corporation* (2019) 139 S. Ct. 759, 772.) NAD Bank's charter also makes the bank's assets and property immune from seizure, search, confiscation or appropriation, or any other taking or foreclosure, and state that the bank's archives are inviolable.

5. AB 1597 proposes to provide funding to NAD Bank to fund cross-border water quality projects

AB 1597 authorizes funds, upon appropriation by the Legislature, to be made available to NAD Bank through CalEPA for the provision of loans, grants, and direct expenditures to address water quality projects for the Tijuana River. Projects funded under the bill must be consistent with similar water quality projects in the New River and Tijuana River areas, and also must be consistent with the work of CalEPA's Agency Border Affairs Program. Sub-recipients of funds from NAD Bank and funded projects may be located either in California or Mexico, as long as any projects outside of California provide water quality benefits to portions of watershed and coastal waters in California. Priority for projects must be given to those projects with funding already committed by the United States, Mexico, the State of Baja California, or the City of Tijuana or Mexicali.

AB 1597 requires that CalEPA, the Department of Resources Recycling and Recovery, or the State Water Resources Control Board, to determine with NAD Bank the terms of the funding agreement between CalEPA and NAD Bank, and determine the terms under which NAD Bank must administer the funding. These terms include the development of grant guidelines with a timeline for funding disbursement, project prioritization, and monitoring requirements.

6. Enforceability mechanisms to ensure funds are appropriately spent

AB 1597 includes a number of provisions meant to ensure that the state of California can ensure that its funds are appropriately utilized for the purposes in AB 1597. These

enforcement mechanisms are meant to address the fundamental awkwardness of this legislation in that it provides state funds to a foreign entity not otherwise accountable to the state of California to disburse to potentially out-of-state sub-recipients. The specific terms of funding agreements and enforcement and transparency mechanisms are to be determined by CalEPA and NAD Bank in consultation with other stakeholders in the area. In addition, CalEPA is authorized to withhold funding from NAD Bank if the agreements in the funding agreement with NAD Bank are not met. To ensure that the state could enforce the funding agreement upon NAD Bank or resolve an issue with the use or disbursement of funds, AB 1597 requires NAD Bank to consent to the jurisdiction of California federal courts, an agreed-upon agent for service of process, and to waive any immunity it enjoys for the purposes of implementing and enforcing the funding agreement. Sub-recipients awarded funds must also consent to the jurisdiction of California federal courts. However, AB 1597 reserves to NAD Bank the express authority to enforce the terms of funding agreements with sub-recipients, and if NAD Bank must initiate legal action for enforcement, it must inform the California Attorney General.

7. Amendments

The author has agreed to accept amendments to clarify a number of enforcement provisions of this bill. Specifically, the amendments will remove the reference to federal courts in the provisions that require sub-recipients and NAD Bank to consent to the jurisdiction of California federal courts. The amendments will also specify that NAD Bank shall enforce funding agreements with sub-recipients, but that the Attorney General may also initiate a civil action to enforce those funding agreements, at the Attorney General's discretion. A full mock-up of the amendments are attached at the end of this analysis.

SUPPORT

North American Development Bank (sponsor)
California State Association of Counties (CSAC)
City of Coronado
League of California Cities
Otay Mesa Chamber of Commerce
Rural County Representatives of California (RCRC)
San Diego Unified Port District
Wildcoast

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation:

AB 1567 (Garcia, 2023) enacts the Safe Drinking Water, Wildfire Prevention, Drought Preparation, Flood Protection, Extreme Heat Mitigation, and Workforce Development Bond Act of 2024, to, upon approval by California voters, authorize the issuance of \$15.1 billion in bonds to finance safe drinking water, wildfire prevention, drought preparation, flood protection, extreme heat mitigation, and workforce development program projects. Includes at least \$50 million each for the Tijuana River Border Pollution Control Project and the New River Water Quality, Public Health, and River Parkway Development Program. AB 1567 is currently in the Senate Natural Resources and Water Committee.

Prior Legislation:

AB 2248 (E. Garcia, 2022) provided \$100 million to the State Water Resources Control Board from the General Fund, upon appropriation by the Legislature, for grants and direct expenditures to address water quality issues in California-Mexico cross-border rivers. AB 2248 was vetoed by the Governor because it was not considered or accounted for in the annual budget process.

AB 180 (Ting, Ch. 44, Stats. 2022) provided \$20 million as part of the annual budget act, to the State Water Resources Control Board to address water quality problems arising in the cross-border rivers between California and Mexico.

SB 154 (Skinner, Ch. 43, Stats. 2022) provided \$15 million as part of the Budget Act of 2022 to the State Water Resources Control Board to address water quality problems arising in the cross-border rivers between California and Mexico.

SB 507 (Hueso, Ch. 542, Stats. 2017) authorized funds granted to the County of San Diego in the 2014 Budget Act to be available for development, improvement, rehabilitation, protection, restoration, and studies of natural and park lands in the Tijuana River Valley.

PRIOR VOTES:

Senate Environmental Quality (Ayes 7, Noes 0)

Assembly Floor (Ayes 79, Noes 0)

Assembly Appropriations Committee (Ayes 11, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

Assembly Environmental Safety and Toxic Materials Committee (Ayes 9, Noes 0)

Mock-up of proposed amendments to AB 1597 (Alvarez)

(Amendments may be subject to technical or corrective changes by Legislative Counsel)

Mock-up based on Version Number 96 - Amended Senate 6/5/24

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 2.7 (commencing with Section 71108) is added to Division 34 of the Public Resources Code, to read:

PART 2.7. WATER QUALITY IN CALIFORNIA-MEXICO CROSS-BORDER WATERSHEDS

71108. The Legislature finds and declares the following:

(a) California shares water and air basins with Baja California, Mexico, that require cooperative projects to preserve and maintain a healthy ecosystem.

(b) The health and safety of border area residents in California is dependent on the support and implementation of cost-effective environmental solutions that are located on both sides of the international border within the binational water and air basins.

(c) The North American Development Bank is an environmental infrastructure financing entity established in 1994 by the United States federal government and the Federal Government of Mexico to improve the quality of life for residents of the border region which includes up to 62 miles north of the international border in California, and up to 186 miles south of the international border in Mexico.

(d) For more than 30 years, the North American Development Bank has worked with border communities to improve access to drinking water, wastewater treatment, air quality, and renewable energy projects.

71109. (a) (1) Upon appropriation by the Legislature in the annual Budget Act or another statute, funds may be made available to the California Environmental Protection Agency (CalEPA) for the North American Development Bank (NADBank) for loans, grants, and direct expenditures to address water quality problems arising in the California-Mexico cross-border watersheds.

(2) Funding available pursuant to paragraph (1) shall be available for purposes consistent with the New River Water Quality, Public Health, and River Parkway

Development Program, as described in Section 71103.6, and water quality projects for the Tijuana River.

(3) Of the funding available pursuant to paragraph (1), 5 percent shall be available for the administrative costs to NADBank, and 5 percent shall be available for the administrative costs to CalePA in implementing this section.

(4) CalePA, the Department of Resources Recycling and Recovery, or the State Water Resources Control Board, with approval of the Secretary for Environmental Protection, shall determine with NADBank, the terms of the funding agreement, including enforceability, transparency, and other requirements under which NADBank, in consultation with the San Diego Regional Water Quality Control Board, the Colorado River Basin Regional Water Quality Control Board, and the International Boundary and Water Commission Minute 320 Work Groups, shall administer the funding pursuant to paragraph (1), including developing grant guidelines to implement this section that establish a timeline for funding disbursement, project prioritization, and monitoring requirements. Those guidelines are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Expenditures of the funding available pursuant to subdivision (a) shall be consistent with the work of the California Environmental Protection Agency Border Affairs Program. Priority for the funding available pursuant to subdivision (a) shall be given to projects that have funding committed by the United States, the Republic of Mexico, the State of Baja California, or the City of Tijuana or Mexicali.

(c) (1) Any funding provided under this section for activities or projects in the State of Baja California may be provided through direct expenditures and for grants to an eligible funding recipient authorized to work in Mexico. Projects eligible for funding shall comply with and be subject to enforcement under local, state, and federal laws, as applicable.

(2) For purposes of this subdivision, eligible funding recipients, including NADBank, are entities that are, or that consent to be, subject to the jurisdiction of ~~the federal courts in California~~ courts for the purpose of enforcement of the funding agreement.

(3) To the extent that a funding recipient, including NADBank, that is, or consents to be, subject to the jurisdiction of California ~~federal courts in California~~ is eligible to undertake a project, expenditures of the funding available pursuant to subdivision (a) may be available for actions in California or in the State of Baja California provided the actions provide water quality benefits to the portions of the watersheds and coastal waters in California.

(4) Funds provided to NADBank pursuant to this part shall be conditioned on NADBank agreeing to do the following:

(A) Consent to be subject to the jurisdiction of California ~~federal~~ courts in California for the purposes of the funding agreement with CalEPA.

(B) Consent to a designated agent for service of process.

(C) Waive any immunity it enjoys under international law or treaty, or the International Organizations Immunity Act with regard to the State of California or its designees for the purposes of implementing and enforcing the funding agreement.

(D) Require that subrecipients of funds accept their obligation, as applicable, to ensure that all workers employed on public works projects are paid the prevailing wage determined by the Director of Industrial Relations, according to the type of work and location of the project, as applicable.

(d) Grant funding shall be conditioned upon the enforceability and accountability requirements mutually agreed upon by CalEPA and NADBank, and CalEPA may withhold funding if the requirements of the applicable funding agreement are not met.

(e) Grant funding may also be conditioned on enforceability and accountability mechanisms agreed upon by CalEPA, NADBank, and the recipient, including, but not limited to, both of the following:

(1) Progress reports accompanying each disbursement request.

(2) An enforceable commitment to operate and maintain the funded project for the project's useful life or 30 years, whichever is less.

(f) ~~The authority to enforce the terms of funding agreements entered into pursuant to this section is hereby expressly reserved to NADBank~~ **shall enforce the terms of funding agreements with subrecipients entered into pursuant to this section, ~~who~~ and shall**, in accordance with the funding agreements agreed upon with CalEPA, ~~shall~~ inform the Office of the Attorney General should the need for legal action arise. **The Attorney General may bring a civil action to enforce the terms of funding agreements, at the Attorney General's discretion.**

(g) Any cause of action that arises from implementation of this law shall be vested in favor of the State of California and no private right of action may be asserted by any party.

(h) CalEPA shall notify the leadership office in each house of the Legislature on cross-border collaboration and the expenditure of the funding available pursuant to subdivision (a).

(i) Direct expenditures under this section may be provided in a lump sum in advance of costs incurred.

SEC. 2. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique expertise of the North American Development Bank in funding international projects that address cross-border issues.