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9 Water Quality Control Board, San Diego
Region*

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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15 **PEOPLE OF THE STATE OF CALIFORNIA,**
16 **Ex. Rel. THE REGIONAL WATER**
QUALITY CONTROL BOARD, SAN
17 **DIEGO REGION,**

18 Plaintiff,

19 v.

20 **INTERNATIONAL BOUNDARY AND**
WATER COMMISSION, UNITED STATES
21 **SECTION; JOSE NUÑEZ, in his capacity**
as Acting Commissioner of the
22 **INTERNATIONAL BOUNDARY AND**
WATER COMMISSION, UNITED STATES
23 **SECTION**

24 Defendants.
25

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF (CLEAN
WATER ACT, 33 U.S.C. § 1251 et
seq.)**

26 Plaintiff, the People of the State of California, ex rel., the Regional Water
27 Quality Control Board, San Diego Region, alleges as follows:
28

1 Clean Water Act sections 301 and 402, 33 U.S.C. §§ 1311, 1342 (herein Sections
2 301 and 402, respectively).

3 4. For nearly three years, spanning from at least April 2015 through February
4 2018, USIBWC repeatedly failed to properly manage and operate its wastewater
5 treatment facilities and comply with the terms of its NPDES Permit. USIBWC's
6 systematic NPDES Permit violations are the byproduct of its unwillingness to address
7 pollution that crosses into the United States from Mexico, absent being compelled
8 through legal action.

9 5. Without the compulsion of a court order, USIBWC will continue to operate
10 its wastewater treatment facilities in violation of its NPDES Permit and the Clean
11 Water Act. If USIBWC fails to correct its on-going permit violations, water quality
12 within the Tijuana River, Tijuana River Estuary and the Pacific Ocean will be further
13 impaired to the detriment of the communities of San Diego County and those who
14 work and seek recreation in and around those areas.

15 JURISDICTION

16 6. This action arises under the Clean Water Act. This Court has jurisdiction
17 over the subject matter of this action pursuant to the Clean Water Act's citizen suit
18 provision, 33 U.S.C. § 1365(a), and federal question jurisdiction, 28 U.S.C. §§ 1331,
19 1346.

20 7. USIBWC is subject to the jurisdiction of this Court under the terms of
21 Executive Order 12467, issued on March 2, 1984, which provides that the immunities
22 conferred on the International Boundary and Water Commission, as a public
23 international organization, by the International Organization Immunities Act "shall
24 not extend to the United States Section of the Commission in respect of matters
25 within the exclusive control, supervision or jurisdiction,...pursuant to international
26 agreements in force with the United Mexican States, statute or other authority."
27 Pursuant to a 1944 Treaty between the United States and Mexico, USIBWC has
28 exclusive control over the operation of its treatment facilities at-issue in this lawsuit.

1 12. The San Diego Water Board oversees all basins within California draining
2 into the Pacific Ocean between the southern boundary of the Santa Ana region and
3 the California-Mexico border. Cal. Water Code § 13200(f). The Tijuana River, its
4 tributaries, the Tijuana River Estuary, and the Pacific Ocean in San Diego County
5 are within the jurisdiction of the San Diego Water Board.

6 13. As part of its mandate, the San Diego Water Board is vested with specific
7 powers and duties and authorized to administer and implement the Clean Water Act
8 in California. The San Diego Water Board is a "citizen" within the meaning of Clean
9 Water Act section 505(g), 33 U.S.C. § 1365(g), because its interest in ensuring
10 compliance with the Clean Water Act and protecting water quality of waters of the
11 state and of the United States is "adversely affected" by USIBWC's acts and
12 omissions.

13 14. USIBWC is an agency of the United States. Pursuant to a 1944 Treaty
14 between the United States and Mexico, USIBWC is responsible for addressing waste
15 entering the United States from Mexico along the Tijuana River watershed. To fulfill
16 its obligations, starting in 1996, USIBWC constructed a network of facilities
17 designed for a single purpose: to capture and treat waste flows entering the United
18 States from Mexico through the Tijuana River watershed (transboundary flows).
19 This network includes:

20 a) the South Bay International Wastewater Treatment Plant
21 ("Plant"), a secondary treatment plant which receives wastewater from the Tijuana
22 River watershed, treats the wastewater, and discharges the treated wastewater into
23 the Pacific Ocean through the South Bay Ocean Outfall;

24 b) a system of five concrete channels and detention basins located
25 in canyons within San Diego County ("canyon collectors"), just north of the United-
26 States-Mexico border and west of the main channel of the Tijuana River. USIBWC
27 designed the canyon collectors to capture dry-weather, transboundary flows from
28 Mexico and convey that wastewater to the Plant; and,

1 c) two pump stations to facilitate the diversion of wastewater from
2 the canyon collectors to the Plant for treatment.

3 15. In order to lawfully operate these facilities, USIBWC applied for and
4 received a NPDES permit from the San Diego Water Board in 2014 to allow the
5 discharge of treated waste into the Pacific Ocean. The San Diego Water Board
6 alleges that the Clean Water Act violations at issue in this litigation arose through
7 USIBWC's delinquent operation and maintenance of these facilities between April
8 2015 and February 2018, resulting in the improper discharge, monitoring, and
9 recovery of waste into waters of the state and United States.

10 16. Defendant Jose Nuñez is Acting Commissioner of the USIBWC is an
11 individual responsible for implementing the actions necessary to remedy the
12 violations of law alleged by the Plaintiff in this action, and is named only in his
13 official capacity.

14 **CLEAN WATER ACT AND NPDES PERMIT REQUIREMENTS**

15 17. Congress passed the Clean Water Act to "restore and maintain the
16 chemical, physical, and biological integrity of the Nation's waters[.]" 33 U.S.C. §
17 1251(a).

18 18. To protect the chemical, physical, and biological integrity of the nation's
19 surface waters, the Clean Water Act prohibits the discharge of pollutants from point
20 sources to navigable waters of the United States except as authorized. 33 U.S.C. §§
21 1251(a)(1) and (3), 1311(a). The National Pollutant Discharge Elimination System
22 ("NPDES") program was created in 1972 as a federal permit program designed to
23 regulate the discharge of pollutants. 33 U.S.C. § 1342; 40 C.F.R. §§ 122, *et seq.*
24 Under the NPDES program, discharges of pollutants are prohibited unless discharged
25 in compliance with an NPDES permit. Among other things, Section 301, 33 U.S.C.
26 § 1311(a), prohibits the discharge of pollutants from a point source to a water of the
27 United States without a NPDES permit.

28

1 19. The United States Environmental Protection Agency ("EPA") is charged
2 with the responsibility of administering the NPDES permit program unless EPA
3 approves a state water quality control program to implement the NPDES
4 requirements. 33 U.S.C. §§ 1251(d), 1342(b). Pursuant to federal regulations,
5 NPDES permits issued by states with approved programs must contain certain terms
6 and conditions to safeguard water quality. 33 U.S.C. §§ 1311, 1342(a) and (b).

7 20. California participates in the NPDES permit scheme pursuant to the
8 Porter-Cologne Water Quality Control Act ("Porter-Cologne Act"). Cal. Wat. Code,
9 §§ 13260-13276, 13370-13390. The EPA has approved the entire regulatory scheme
10 set forth in the Porter-Cologne Act, which establishes a comprehensive statewide
11 program for water quality administered through the State Water Resources Control
12 Board ("the State Water Board") and the nine regional boards, within a framework
13 of statewide coordination and policy. Cal. Wat. Code, §§ 174, 13001.

14 21. The Porter-Cologne Act is intended to protect, restore, and prevent
15 degradation of the quality and beneficial uses of the waters of the state and of the
16 United States. Cal. Wat. Code, §§ 13000, 13050(f), 13241, 13263. As is authorized
17 under the Clean Water Act, the Porter-Cologne Act adopted more stringent controls
18 on discharges into the waters of the state and United States than are required under
19 the Clean Water Act. 40 C.F.R. §§ 131.2, 130.3; Cal. Wat. Code, § 13377 *et seq.*

20 22. As directed by the Clean Water Act, California adopted water quality
21 standards for the ocean waters in a California Ocean Plan, and for each region of
22 California, as set forth in regional water quality control plans ("basin plans"). As
23 relevant to this matter, water quality standards for the San Diego region, are set forth
24 in both the California Ocean Plan, and the San Diego Basin Plan adopted by the San
25 Diego Water Board and approved by the State Water Board. The water quality
26 objectives in the California Ocean Plan, San Diego Basin Plan, and other relevant
27 plans, policies, and regulations, are designed to protect the water's beneficial uses,
28 which include recreation, the preservation and enhancement of fish, wildlife, and

1 other aquatic resources, and the domestic or municipal water supply. Cal. Wat. Code,
2 §§ 13050(j), 13170, 13240, 13241.

3 23. The principal means of regulating activities which may affect water
4 quality and implementing basin plans in California is through issuance of “waste
5 discharge requirements,” which are equivalent to permits issued under the Clean
6 Water Act. California Water Code section 13376 sets forth the discharger’s duties to
7 obtain waste discharge requirements and is modeled on the provisions of the Clean
8 Water Act. *Compare* Cal. Wat. Code § 13376, *with* 33 U.S.C. §§ 1311, 1342.

9 24. Accordingly, NPDES permittees must, among other requirements,
10 establish and maintain records and implement monitoring programs which require
11 regular reporting to the permitting agency. 33 U.S.C. § 1342; Cal. Water Code §
12 13383.

13 25. Any violation of a NPDES permit issued by the San Diego Water Board
14 constitutes an independent violation of the Clean Water Act under Section 402, 33
15 U.S.C. §1342.

16 **FACTUAL BACKGROUND**

17 **I. USIBWC IS RESPONSIBLE FOR RESOLVING CROSS-BORDER** 18 **POLLUTION WITHIN THE TIJUANA RIVER WATERSHED.**

19 26. The Tijuana River watershed encompasses 1750 square miles and
20 straddles the United States-Mexico border. The vast majority of the watershed is
21 located in Mexico and drains principally into the Tijuana River, which crosses the
22 border into California through a flood conveyance channel—operated by the
23 USIBWC—and feeds the Tijuana River Estuary within San Diego County.

24 27. The Tijuana River Estuary is one of the last, intact, saltwater estuaries in
25 California and is home to numerous migratory species, and species at-risk for
26 extinction and protected under the California Endangered Species Act.

27 28. The Tijuana River enters the estuary and eventually flows into the Pacific
28 Ocean near the coastal city of Imperial Beach.