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9  
10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 SAN DIEGO COASTKEEPER, a non-  
13 profit corporation; COASTAL  
ENVIRONMENTAL RIGHTS  
14 FOUNDATION, a non-profit corporation,

15 Plaintiffs,

16 v.

17 UNITED STATES INTERNATIONAL  
18 BOUNDARY AND WATER  
COMMISSION, an agency of the United  
19 States; MARIA-ELENA GINER, in her  
official capacity as Commissioner of the  
20 International Boundary and Water  
Commission; VEOLIA WATER NORTH  
21 AMERICA - WEST, LLC, a Delaware  
22 Limited Liability Company,

23 Defendants.  
24  
25  
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27  
28

Case No. 24-cv-00663-JES-VET  
Honorable James E. Simmons

**DEFENDANT VEOLIA WATER  
WEST OPERATING SERVICES,  
INC.’S NOTICE OF MOTION AND  
MOTION TO DISMISS PLAINTIFFS’  
COMPLAINT PURSUANT TO RULES  
12(B)(1) & (6), THE PRIMARY  
JURISDICTION AND RIPENESS  
DOCTRINES, AND MOTION TO  
STRIKE PURSUANT TO RULE 12(F)**

**ORAL ARGUMENT REQUESTED**

Hearing Date: July 31, 2024  
Hearing Time: 9:00 am  
Courtroom: 4C

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**  
2 **RECORD:**

3 PLEASE TAKE NOTICE that on July 31, 2024 or as soon thereafter as the matter  
4 may be heard in the courtroom of the Honorable James E. Simmons, Jr. United States  
5 District Court Judge, located at 221 West Broadway, San Diego, CA 92101, Courtroom 4B,  
6 Veolia Water West Operating Services, Inc. will and hereby does, moves this Court  
7 pursuant to Civil Rules of Civil Procedure (“Rule”) 12(b)(1) and 12(b)(6) to dismiss it from  
8 these proceedings on several grounds.

9 First, this Court lacks jurisdiction over Veolia because Plaintiffs failed to provide it  
10 with adequate pre-suit notice as required by 33 U.S.C. section 1365(b). Plaintiffs’ notice  
11 letter is inadequate as to Veolia because: (a) it puts IBWC only on notice of alleged  
12 violations of the National Pollutant Discharge Elimination System Permit (“NPDES”)   
13 Order No. R9-2014-0229, NPDES No. CA0108928, and Order No. R9-2021-0001, NPDES  
14 No. CA0108928 (“Permit”), as amended by Order No. R9-2023-0009, (b) references the  
15 wrong Veolia entity, (c) fails to explain how Veolia, which is not a party to the Permit,  
16 violated it and (d) asserts civil penalties against IBWC only, not Veolia. In contrast, the  
17 Complaint for the first time asserts civil penalties against Veolia, not IBWC. Plaintiffs’  
18 notice letter also fails to identify with specificity which purported violations trigger civil  
19 penalties.

20 Second, Plaintiffs complaint should be dismissed because it fails to state a claim as  
21 to Veolia. The complaint does not specifically allege how Veolia is subject to the Permit  
22 and therefore can be held liable or what Veolia did when that caused the purported  
23 violations. Instead, it only summarily alleges, without any factual basis, that Veolia must  
24 have violated the Permit because it was the operator of SBIWTP. Such vague allegations  
25 do not allege a plausible claim against Veolia under Rule 8(a) and *Iqbal/ Twombly*.

26 Third, the San Diego Regional Water Quality Control Board (“San Diego Water  
27 Board”) the administrative entity authorized by the Environmental Protection Agency  
28 (“EPA”) to issue the Permit, is actively enforcing it and recently issued Time Schedule

1 Order No. R9-2023-0189 which sets repair deadlines and orders IBWC to comply with  
2 secondary effluent limitations by August 15, 2024. Thus, under the primary jurisdiction  
3 doctrine, this Court should dismiss Plaintiffs' claim since it implicates issues within the  
4 special competence of an administrative agency – the San Diego Water Board.

5 Fourth, Plaintiffs' claims are not ripe for adjudication since the Board is actively  
6 enforcing the Permit.

7 Alternatively, pursuant to Rule 12(f), Veolia moves to strike paragraphs 161, 168,  
8 180, 189 and 196 from the Complaint because there is no basis for Plaintiffs to assert civil  
9 penalties against Veolia.

10 This motion is based upon this notice of motion, the accompanying memorandum of  
11 points and authorities, the attached declaration of Rebecca S. Roberts, supporting exhibits,  
12 all pleadings, papers, and records on file in this action, all matters of which the Court may  
13 take judicial notice, and all argument and evidence as may be presented at the hearing on  
14 this motion.

15 Respectfully submitted,

16 Dated: June 14, 2023

17 **BIENERT KATZMAN**  
18 **LITRELL WILLIAMS LLP**

19  
20 By: /s/ Rebecca S. Roberts

21 Thomas H. Bienert, Jr.  
22 Rebecca S. Roberts

23 *Attorneys for Defendant*  
24 *Veolia Water West Operating Services, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing pleading has been electronically served on the following parties by virtue of their registration with the CM/ECF system:

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Dated: June 14, 2024

/s/ Leah Thompson  
Leah Thompson

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13 IN THE UNITED STATES DISTRICT COURT  
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17 profit corporation; COASTAL  
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21 v.

22 UNITED STATES INTERNATIONAL  
23 BOUNDARY AND WATER  
24 COMMISSION, an agency of the United  
25 States; MARIA-ELENA GINER, in her  
26 official capacity as Commissioner of the  
27 International Boundary and Water  
28 Commission; VEOLIA WATER NORTH  
AMERICA - WEST, LLC, a Delaware  
Limited Liability Company,

Defendants.

Case No. 24-cv-00663-JES-VET  
Honorable James E. Simmons

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANT VEOLIA WATER WEST  
OPERATING SERVICES, INC.’S  
MOTION TO DISMISS PURSUANT  
TO RULES 12(b)(1) & (6), THE  
PRIMARY JURISDICTION AND  
RIPENESS DOCTRINES, AND  
MOTION TO STRIKE PURSUANT TO  
RULE 12(f)**

Hearing Date: July 31, 2024  
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1 **I. INTRODUCTION**

2 Since October 2020, the South Bay International Wastewater Treatment Plant  
3 (“SBIWTP”), which is owned by the U.S. Section of the International Boundary and Water  
4 Commission (“IBWC”), has been negatively impacted by influent flows from Mexico  
5 exceeding design capacity. These excessive flows have been exacerbated by weather events  
6 such as Hurricane Hilary and other significant storms. Excessive flows carrying sediment  
7 and trash have caused interference, upset, and equipment failure, leading to diminished  
8 treatment and exceedances of secondary effluent limitations as well as increased discharges  
9 from the South Bay Ocean Outfall (“SBOO”).

10 On December 18, 2023, the San Diego Regional Quality Control Water Board (“San  
11 Diego Water Board” or “the Board”), the administrative agency that issued and enforces  
12 the National Pollutant Discharge Elimination System Permit Order No. R9-2014-0229,  
13 NPDES No. CA0108928, and Order No. R9-2021-0001, NPDES No. CA0108928, as  
14 amended by Order No. R9-2023-0009 (“NPDES Permit” or “Permit”), which is at the center  
15 of Plaintiffs’ Complaint, adopted Time Schedule Order No. R9-2023-0189 (“TSO”), which  
16 requires IBWC to comply with the Permit’s secondary effluent limitations by August 15,  
17 2024 and sets task deadlines and corresponding interim goals. Declaration of Rebecca  
18 Roberts (“Roberts Decl.”) ¶ 4; Roberts Time Schedule Order No. R9-2023-0189, Exhibit C  
19 (“Ex. C”) at 8-9.<sup>1</sup>

20 The discharge of treated effluent from the SBIWTP to the Pacific Ocean through the  
21 SBOO has been identified by members of the public and the press as a significant source of  
22 the water quality issues affecting the San Diego region, including beach closures and  
23 adverse effects to wildlife and human health. However, discharges from the SBIWTP are  
24 only one of several sources contributing to the water quality issues. Other sources include,  
25 but are not limited to, effluent from the South Bay Water Reclamation Plant (“SBWRP”),  
26 effluent from San Antonio de los Buenos Wastewater Treatment Plant (“SABWTP”) at

27 \_\_\_\_\_  
28 <sup>1</sup> See Defendant Veolia Water West Operating Services, Inc.’s Request for Judicial Notice  
concurrently filed.

1 Punta Bandera in Mexico, daily transboundary and stormwater flows from the Tijuana  
2 River, and wastewater discharges in Mexico to ocean waters south of the international  
3 border, all events that are outside of Defendants’ control.

4 In February 2024, the San Diego Water Board reported that uncontrolled daily flows  
5 of up to 30-40 million gallons per day (“MGD”) of sewage from Mexico into the Tijuana  
6 River, contaminated storm water runoff from metropolitan Tijuana, and discharges of  
7 untreated or partially treated sewage from SABWTP at Punta Bandera in Mexico are the  
8 most significant source of coastal water quality impacts, including beach closures. Roberts  
9 Decl. ¶ 6; San Diego Water Board’s Executive Officer’s Report (Feb. 14, 2024), Exhibit E  
10 (“Ex. E”) at 34. Moreover, preliminary findings of a plume tracking study for the SBOO  
11 done by the City of San Diego report that there is no evidence that the wastewater  
12 discharged into the ocean via the SBOO reaches nearshore recreational waters. Ex. E at 26.

13 The landscape of the border sewage problems is changing drastically. Pursuant to  
14 Minute 328 of the 1944 United States-Mexico treaty (“Minute 328”), many contemplated  
15 projects are in progress or have already been completed, including the repair of a major  
16 pipeline in Matadero Canyon, the expansion of the SBIWTP, the replacement of SABWTP,  
17 a project fully funded by Mexico that has already broke ground, repair of the International  
18 Collector, and repair of the Los Laureles Pump Station. *Id.* at p. 3-4.

19 Within this context, Plaintiffs’ Clean Water Act (“CWA”) lawsuit against Veolia is  
20 misplaced for several reasons. First, pursuant to Rule<sup>2</sup> 12(b)(1), this Court lacks subject  
21 matter jurisdiction over Veolia because Plaintiffs failed to provide it with adequate pre-suit  
22 notice as required by 33 U.S.C. section 1365(b). Plaintiffs’ Notice Letter is inadequate as  
23 to Veolia because it: (a) references the wrong Veolia entity, (b) puts IBWC only on notice  
24 of alleged violations of the ND PES Permit, (c) fails to explain how Veolia, which is not a  
25 party to the Permit, violated it, and (d) asserts civil penalties against IBWC only, not Veolia.  
26 In contrast, the Complaint for the first time asserts civil penalties against Veolia, not IBWC.

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<sup>2</sup> Unless otherwise stated, “Rule” shall refer to the Federal Rules of Civil Procedure.

1 Second, pursuant to Rule 12(b)(6), Plaintiffs' Complaint should be dismissed  
2 because it fails to state a claim as to Veolia. The complaint does not specifically allege how  
3 Veolia is subject to the Permit and therefore can be held liable, or what Veolia did that  
4 caused the purported violations. Instead, it only summarily alleges, without any factual  
5 basis, that Veolia must have violated the Permit because it was the operator of SBIWTP.  
6 Such vague allegations do not allege a plausible claim against Veolia under Rule 8(a) and  
7 *Iqbal/ Twombly*.

8 Third, the San Diego Water Board, the administrative entity that issued the NDPEs  
9 Permit, is actively enforcing it. The Board recently issued a TSO, which scheduled repairs  
10 and requires IBWC to comply with secondary effluent limitations by August 14, 2024.  
11 Under the primary jurisdiction doctrine, the Court should dismiss Plaintiffs' claims since  
12 they implicate issues within the special competence of the Board.

13 Fourth, Plaintiffs' claims are not ripe for adjudication because the Board is actively  
14 enforcing the Permit.

15 Fifth, pursuant to Rule 12(f), Veolia moves to strike paragraphs 161, 168, 180, 189  
16 and 196 from the Complaint because there is no basis for Plaintiffs to assert civil penalties  
17 against Veolia.

## 18 **II. FACTUAL BACKGROUND**

### 19 **A. Construction of the South Bay International Wastewater Treatment** 20 **Plant.**

21 After periods of tremendous population growth and a long history of inadequate  
22 sewage facilities in Tijuana, Mexico and associated transboundary raw sewage flows, the  
23 United States and Mexico agreed in 1990—through an agreement known as Minute 283—  
24 to build the SBIWTP and associated infrastructure (collectively “the Facility”) on the U.S.  
25 side of the international border as part of a bilateral program to address environmental  
26 pollution in the international border region. The Facility consists of: (1) SBIWTP; (2) five  
27 diversion structure canyons collectors located at Stewart's Drain, Canyon de Sol, Silva's  
28 Drain, Smuggler's Gulch, and Goat Canyon; (3) two pumps stations - Hollister Street Pump

1 Station and Goat Canyon Pump Station; (4) two junction boxes - Junction Box 1 and 2; (5)  
2 the South Bay Land Outfall (“SBLO”); (6) South Bay Ocean Outfall (“SBOO”); and (7)  
3 other associated infrastructure such as pipes and conveyances between the diversion  
4 structures, pump stations, and the SBIWTP. *See* Order No. R9-2021-0001, Exhibit 2  
5 (“Ex. 2”) at F-3.

6 The Facility was built on a 75-acre site in San Ysidro, near the international border  
7 in the U.S. immediately north of Tijuana’s main wastewater pumping station. *Id.* at F-4.  
8 The Facility is designed to treat to secondary treatment standards up to 25 MGD of raw  
9 sewage flows exceeding the capacity of Tijuana’s sewage treatment and conveyance  
10 facilities, including some low-volume transboundary flows in canyons and gullies that  
11 empty from Tijuana into the Tijuana River Estuary on the U.S. side of the border. *Id.*

12 IBWC is the owner of the Facility. *Id.* at F-3. SBLO and SBOO are jointly owned  
13 by IBWC and the City of San Diego. *Id.* IBWC operates and maintains the SBLO. *Id.*  
14 IBWC and the City of San Diego jointly operate and maintain SBOO.<sup>3</sup> IBWC privately  
15 contracts with Veolia Water West Operating Services, Inc., not the named Defendant Veolia  
16 Water North America West, LLC, to operate and maintain the other facilities. *See id.* at F-  
17 4.

18 In the decades since construction of SBIWTP, the communities along the border have  
19 experienced exponential population growth and development that has resulted in ongoing  
20 transboundary flows of raw sewage, trash, and sediment, exacerbated by aging and  
21 deteriorating infrastructure. *Id.* at F-5. In the last two decades, the local Mexican utility  
22 that operates and manages Tijuana’s sewage infrastructure has invested in expanding that  
23 city’s wastewater collection infrastructure to address direct dischargers or inadequate  
24 disposal practices in Mexico. *Id.* However, overall, the Mexican system has not kept pace  
25 with the region’s rapid growth, nor has the existing infrastructure in Mexico received  
26 sufficient maintenance. *Id.* Poor conditions of critical wastewater infrastructure in Mexico

27 \_\_\_\_\_  
28 <sup>3</sup> The City of San Diego discharges secondary effluent from its SBWRP to the SBOO  
through the SBLO under separate waste discharger requirements (“WDRs”). Ex. 2 at F-3.

1 still results in a percentage of Tijuana’s wastewater entering the Tijuana River or Pacific  
2 Ocean without treatment. *Id.*

3 **B. Regulation by the San Diego Regional Water Quality Control Board.**

4 Pursuant to authority delegated to it via the Environmental Protection Agency  
5 (“EPA”) and the State of California, the San Diego Water Board is the regulatory agency  
6 that authorizes IBWC to discharge up to 25 MGD monthly average of raw sewage and other  
7 wastewater flows originating from Tijuana consisting of: (1) sewage flows exceeding the  
8 capacity of Tijuana’s sewage collection and treatment and conveyance facilities, and (2)  
9 dry weather transboundary flows collected from five canyon collectors. *Id.* at F-4; F-7, F-  
10 40; Complaint (“Compl.”) ¶ 52. Along with secondary treated wastewater from the City of  
11 San Diego’s SBWRP, the SBIWTP discharges secondary treated wastewater to SBOO,  
12 which extends westward into the Pacific Ocean approximately 23,600 feet offshore and  
13 terminates in a diffuser-wye structure approximately 95 feet below sea level. Ex. 2 at F-9.

14 The San Diego Water Board regulates SBIWTP’s discharge to the Pacific Ocean  
15 through the SBOO via the NPDES Permit. *See generally* Ex. 2.<sup>4</sup> The Permit, which is at  
16 the center of Plaintiffs’ case, was issued, and is enforced by, the Board. *See generally* Ex.  
17 2; Ex. C.<sup>5</sup> IBWC is the only named discharger on the Permit. Ex. 2 at 1 (“The following

18 \_\_\_\_\_  
19 <sup>4</sup> IBWC was previously regulated by NPDES Permit No. CA0108928, as amended by Order  
20 Nos. R9-2014-0094, R9-2017-0024, and R9-2019-0002. Ex. C ¶ 3. The 2014 Permit  
21 expired on July 31, 2018 but remained in effect until it was superseded by a reissued NPDES  
22 Permit. *Id.*

23 <sup>5</sup> The terms of the NPDES Permit were addressed in prior litigation brought by San Diego  
24 Water Board, the State of California, and several cities against IBWC, which settled in  
25 2022. *See, e.g., City of Imperial Beach, et al. v. IBWC*, No. 3:18-cv00457-JM-JLB (S.D.  
26 Cal.), filed on March 2, 2018; *Surfrider Foundation v. IBWC*, Case No. 3:18-cv-01621-JM-  
27 JLB (S.D. Cal.), filed on July 17, 2018; *People of the State of California ex rel. the San*  
28 *Diego Regional Water Quality Control Board, et al. v. IBWC*, Case No. 3:18-cv-02050-  
JM- JLB (S.D. Cal.), filed on September 4, 2018.

In October 2021, the United States separately sued the San Diego Regional Board to  
challenge certain provisions of the NPDES Permit. *See United States of America v.*  
*California Regional Water Quality Control Board, San Diego Region, et al.*, Case No. 3:21-  
cv-01749-JM-JLB (S.D. Cal.), filed on October 8, 2021. This case also settled and the

1 Discharger is subject to waste discharge requirements (WDRs) set forth in this Order:  
2 **Discharger** United States Section of the International Boundary and Water Commission  
3 (USIBWC).” (emphasis in original)). The Permit does not identify Veolia as a discharger.  
4 *See id.* It only twice mentions Veolia in passing as the privately contracted party in charge  
5 of operating and maintaining certain facilities. Ex. 2 at F-4 (“The Discharger contracts with  
6 Veolia Water North America to operate and maintain the other facilities.”); *id.* at F-6 (“The  
7 SBIWTP, which is located at 2995 Clearwater Way, San Diego, near the U.S. and Mexico  
8 International boarder, is operated by Veolia Water North America.”)

9 The Permit sets forth certain requirements to which IBWC must adhere:

10 (1) **effluent limitations** - certain pollutant parameters and the  
11 respective maximum limits based on various monthly, weekly,  
12 and daily limit calculations, Compl. ¶ 79; Ex. 2 at 8-18;

13 (2) **receiving water limitations** – prohibits discharges of waste  
14 from the Discharger shall not cause or contribute to violations of  
15 set limitations for bacterial, physical, chemical, and biological  
16 characteristics tested at various zones and distances, and provides  
17 water quality objectives for the Basin and Ocean Plans,  
18 Compl. ¶¶ 81-87; Ex. 2 at 18-20;

19 (3) **discharge prohibitions** - prohibits Facility discharges from  
20 the SBOO not treated by a secondary treatment process, not in  
21 compliance with effluent limitations, and certain spill events due  
22 system overflow, leaks, etc.<sup>6</sup>, Compl. ¶¶ 58-78;

23 (4) **reporting requirements for self-monitoring reports** –  
24 requires the Discharger to conduct weekly monitoring tests at  
25 certain shoreline, kelp/nearshore locations and file monthly  
26 reports uploaded to the California Integrated Water Quality

27 Permit was amended on March 8, 2023 to reflect the agreed upon modifications. Ex. C ¶ 9.

28 <sup>6</sup> As the complaint acknowledges, spill events do not include: (1) wet weather flows that  
bypass the canyon collectors or (2) any portion of dry weather flows which exceed the  
maximum design capacity of the canyon collectors and are not diverted by the canyon  
collectors. Compl ¶ 60; Ex.2 at 24, F-50, F-51. Moreover, under the March 2023  
amendment, IBWC, the discharger, is deemed in compliance even if a dry weather  
transboundary flow event constitutes a spill event if it “implements its Spill and  
Transboundary Flow Event Prevention and Response Plan.” Compl. ¶ 62; Ex. 2 at 7.

1 System (“CIWQS”), Compl. ¶ 88-89; Ex. 2 at , E-5-E-10, E-71-  
2 E-77;

3 (5) **Tijuana River Valley Monitoring Report** (“TRVMP”) requires the Discharger to submit a monitoring plan for the  
4 Tijuana River Valley which addresses several questions  
5 concerning the nature of transboundary flows through the canyon  
6 collectors within a specified period of time, Compl. ¶ 65; Ex. 2 at  
7 F-68, E-65.

8 **C. Weather events and the San Diego Water Board’s Time Schedule Order.**

9 The San Diego Water Board has been actively enforcing the NPDES Permit while  
10 also considering how the Facility has impacted by aging equipment, increased flows from  
11 Mexico and weather events. For example, on the same day the San Diego Water Board  
12 reissued the permit as Order No. R9-2021-001, it issued a corresponding Cease and Desist  
13 requiring IBWC to assess and report on maintenance and other repairs needed to be made  
14 to the Facility to ensure compliance with Permit effluent limitations since, at the time, the  
15 Facility was receiving excess influent flows beyond the design capacity of the SBIWTP’s  
16 secondary treatment system. Roberts Decl. ¶ 2; *see generally* Order No. R9-2021-0220  
17 Amending Cease and Desist Order No. R9-2021-0107, Exhibit A (“Ex. A”).

18 On September 5, 2023, the San Diego Water Board issued a Notice of Violation to  
19 IBWC for ongoing violations of the Permit, including self-reported exceedances of effluent  
20 limitations, late filed reports, missing reports including the TRVMP, and other violations  
21 of Permit. Roberts Decl. ¶ 3; Notice of Violation No. R9-2023-0162, Exhibit B (“Ex. B”) at  
22 35-40. The alleged violations addressed by the Board largely overlap with Plaintiffs’  
23 allegations. The Board accepted comments and evidence from various parties, including  
24 Plaintiffs. Ex. C at 7.

25 The Board considered how Tropical Storm Hilary, which brought record rainfall to  
26 San Diego County and Baja California, impacted the Facility. *Id.* at 5-7. During the storm,  
27 SBIWTP received flows that exceeded its design capacity between 100-320% and its  
28 equalization basins were filled within the first hour of the storm. *Id.* The high inflow and  
infiltration rates in the collection system in Tijuana exacerbated infrastructure and system

1 vulnerabilities of the Facility. *Id.* These events resulted in damage throughout the SBIWTP  
2 and at the Hollister Avenue Pump Station due to the excessive flows, sedimentation, and  
3 influx of debris in the wastewater that overwhelmed the screening in the treatment plant and  
4 canyon collectors. *Id.* Damage to the Facility was also exacerbated by the heavy rains San  
5 Diego and Baja California experienced during the 2023-24 El Niño season.

6 To address the Permit violations and weather and border events beyond Defendants’  
7 control, on December 18, 2023, the Board adopted the TSO. *See id.* at 8-10. The TSO  
8 directs IBWC to take certain actions and includes a table of task deadlines for certain  
9 repairs, replacement of equipment, and maintenance. *Id.* at pp. 8-9. It also requires IBWC  
10 to comply with the Permit’s secondary effluent limitations by August 15, 2024 and to  
11 submit monthly reports. *Id.* at p. 8. The TSO also notes that “[c]ompliance with the 2023  
12 Amended Permit Monitoring and Reporting Program requirement to submit [the TRVMP]  
13 will be achieved through binational cooperation in the Minute 320 process.” *Id.* at 5.<sup>7</sup> Thus,  
14 Plaintiffs’ alleged Permit violations are currently being addressed by the proper  
15 administrative regulator, the San Diego Water Board.

16 **D. Plaintiffs’ notice letter and deficiencies as to Veolia.**

17 On January 30, 2024, Plaintiffs served a “Clean Water Act Notice of Intent to Sue/  
18 60 Day Notice Letter on Maria Elena Giner, Commissioner, the South Bay International  
19 Treatment Plant and Veolia Water North America-West, LLC (“Notice Letter”). Clean  
20 Water Act Notice of Intent to Sue, Exhibit 1 (“Ex. 1”) at 1. The Notice Letter is addressed  
21 to “Commissioner Giner” only and was served on the wrong Veolia entity, not Veolia Water  
22 West Operating Services, Inc. *Id.*

23  
24  
25  
26  
27  
28 <sup>7</sup> Veolia is informed that the TRVMP has been submitted to the Board and is currently  
under review.

1 Moreover, the letter specifically puts IBWC, not Veolia on notice.<sup>8</sup> The very first  
2 page of the letter provides:

3 This letter puts **the IBWC** on notice of its violations of the  
4 NPDES permit for the South Bay International Wastewater  
5 Treatment Plant (“SBIWTP”) and associated infrastructure  
6 (collectively “the Facility.”) As explained below, **IBWC** is liable  
7 for violations of its NPDES Permit and thus the Clean Water Act  
8 (“CWA”). . . . .

9 This Notice Letter is issued pursuant to 33 U.S.C. § 1365(a) and  
10 (b) of the Clean Water Act as notice of CERF and Coastkeeper’s  
11 intention to file a federal enforcement action against the **IBWC**  
12 for violations of **its** NDPEs permit and the Clean Water Act sixty  
13 (60) days from the date of this Notice

14 Ex. 1 at 1 (emphasis added).

15 The Notice Letter also fails to provide any explanation as to why Plaintiffs believe  
16 Veolia is subject to the Permit, what it did wrong, or how its purported actions contributed  
17 to CWA violations. The Notice Letter is 353 pages yet Veolia is specifically mentioned  
18 only eight times, twice in the heading and six times in the body of the letter. *See generally*  
19 *id.* The only conclusory allegations as to Veolia are as follows:

- 20 • IBWC contracts with Veolia North America to operate and  
21 maintain the Facility. *Id.* at 2;
- 22 • IBWC and Veolia own and/or exercise control over pipes and  
23 conveyances between diversion structures, pump stations, and  
24 the wastewater treatment plant and control the operation and  
25 maintenance of the canyon collection and have a measure of  
26 control over the waste. *Id.* at 8;

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26 <sup>8</sup> The Notice Letter states that IBWC and Veolia are to be collectively referred to as “IBWC”  
27 but this not proper. Ex. 1 at 1. IBWC and Veolia are two different entities, only one of  
28 which is the listed discharger on the Permit. IBWC is obviously an acronym for the  
International Boundary and Water Commission, not Veolia. Moreover, the Notice Letter  
consistently distinguishes between IBWC and Veolia. *See, e.g.*, Ex. 1 at 2, 8, 16, and 17.

- 1 • IBWC and Veolia, as owners and/or operators of the Facility  
2 have failed, and continue to fail, to properly operate and  
3 maintain the Facility. *Id.* at 16; and
- 4 • IBWC and Veolia failed to conduct monitoring required by the  
5 Permit. *Id.* at 17.

6 The Notice Letter does not explain how Veolia failed to properly operate or maintain  
7 the Facility or how its actions contributed to violations of the Permit’s effluent limitations,  
8 receiving water limitations, and/or discharge prohibitions. *See generally id.* It is devoid of  
9 any explanation as to how Veolia violated the self-monitoring reporting requirements or is  
10 responsible for filing the TRVMP. *See generally id.*

11 Moreover, the Notice Letter states that it intends to seek **civil penalties against**  
12 **IBWC only**, it does not provide any notice at all to Veolia that it could be subject to civil  
13 penalties under the CWA. *See id.* at 12. The Letter states: “[E]ach and every violation of  
14 an NPDES permit is a violation of the CWA for which **the permittee** is liable, including  
15 liability for civil penalties. . . . IBWC, as the owner/operator, is liable for ongoing violations  
16 of the Permit, and civil penalties and injunctive relief are available remedies.” *Id.*  
17 (emphasis added.) The Complaint, on the other hand, alleges civil penalties against Veolia  
18 only, not IBWC, for the first time for each cause of action. Compl. ¶¶ 161, 168, 180, 189,  
19 196.

20 **E. Inadequate allegations in the Complaint as to Veolia.**

21 Like the Notice Letter, the Complaint is devoid of any specific factual allegations as  
22 to Veolia but only summarily alleges:

- 23 • IBWC and Veolia have discharged and continue to discharge  
24 pollutants in the Tijuana River and Estuary and the Pacific  
25 Ocean, in violation of the Permit. Compl. ¶ 8;
- 26 • Veolia contracts with IBWC to operate and maintain the  
27 SBIWTP and its associated infrastructure. *Id.* ¶¶ 26, 93;
- 28 • IBWC and Veolia, as owners and/or or operators have failed  
to operate and maintain the facility. *Id.* ¶ 126.

1 Again, there are no specific allegations as to why the Permit applies to Veolia, what  
2 Veolia did wrong, when these actions occurred, how Veolia specifically failed to maintain  
3 or operate the Facility, or how Veolia’s actions contributed to any violation. *See generally*  
4 *id.*

5 **F. U.S. Supreme Court grant of certiorari re EPA’s ability to set discharge**  
6 **prohibitions via NPDES permits.**

7 On May 28, 2024, the U.S. Supreme Court granted the City and County of San  
8 Francisco’s Petition for Certiorari challenging a recent Ninth Circuit decision upholding the  
9 EPA’s ability to issue NPDES Permits that contain generic prohibitions against violating  
10 water quality standards. *San Francisco, CA v. EPA*, — S. Ct. —, 2024 WL 2709345 . The  
11 question before the Court is whether the CWA allows the EPA (or an authorized state) to  
12 impose generic prohibitions in NPDES permits that subject permit holders to enforcement  
13 for exceedances of water quality standards without identifying specific limits to which their  
14 discharges must conform. This question directly overlaps with Plaintiffs’ Third Cause of  
15 Action “Discharges in Violation of the Permit’s Receiving Water Limitations in Section 5  
16 and the Clean Water Act.” The case is scheduled to be heard by the U.S. Supreme Court  
17 in October 2024.

18 **III. ARGUMENT**

19 **A. The Court does not have subject matter jurisdiction over Veolia because**  
20 **Plaintiffs did not provide adequate notice under the CWA.**

21 “Federal courts are courts of limited jurisdiction, possessing only that power  
22 authorized by Constitution and statute.” *Gunn v. Minton*, 568 U.S. 251, 257 (2013). District  
23 Courts “may not exercise jurisdiction absent a statutory basis.” *Home Depot U.S.A., Inc.*  
24 *v. Jackson*, 587 U.S. —, 139 S. Ct. 1743, 1746, (2019). This threshold requirement  
25 “‘spring[s] from the nature and limits of the judicial power of the United States’ and is  
26 ‘inflexible and without exception.’” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83,  
27 94-95 (1998). A party may move to dismiss a case for lack of subject matter jurisdiction  
28 pursuant to Rule 12(b)(1).

1 A citizen plaintiff may only bring a CWA action 60 days after it has provided notice  
2 “of the alleged violation to . . . any alleged violator of the standard, limitation, or order.”  
3 33 U.S.C. § 1365(b). The notice must include sufficient information to allow the recipient  
4 “to identify the specific standard, limitation, or order alleged to have been violated, the  
5 activity alleged to constitute a violation, the persons or person responsible for the alleged  
6 violation, the location of the alleged violation, the date or dates of such violation, and the  
7 full name, address, and telephone number of the person giving notice.” 40 C.F.R. 135.3(a).

8 The Supreme Court has held that the notice provision must be strictly construed and  
9 “is a mandatory, not optional, condition precedent for suit.” *Hallstrom v. Tillamook County*,  
10 493 U.S. 20, 23–24, 26 (1989) (affirming dismissal of RCRA lawsuit for lack of subject  
11 matter jurisdiction when plaintiffs failed to notify Oregon’s Department of Environmental  
12 Quality (“DEQ”) or the EPA of their intent to sue respondent’s sanitary landfill). If the  
13 plaintiff fails to provide adequate notice, the court lacks subject matter jurisdiction. *See*  
14 *Covington v. Jefferson Cnty.*, 358 F.3d 626, 636 (9th Cir. 2004); *Waterkeepers N. Cal. v.*  
15 *AG Indus. Mfg., Inc.*, 375 F.3d 913, 916 (9th Cir. 2004); 33 U.S.C. § 1365(a)-(b). “[T]he  
16 giving of a 60–day notice is not simply a desideratum; it is a jurisdictional necessity.”  
17 *Center for Biological Diversity v. Marina Point Dev. Co.*, 566 F.3d 794, 800 (9th Cir. 2009).  
18 “When a party does not fulfill that threshold requirement, ‘the district court must dismiss  
19 the action as barred by the terms of the statute.’” *Id.*, *see also Washington Trout v. McCain*  
20 *Foods, Inc.*, 45 F.3d 1351, 1355 (9th Cir.1995) (affirming dismissal of CWA case because  
21 plaintiff did not properly provide the names of all plaintiffs that eventually filed suit and  
22 failed to specify the dates of the alleged violations).

23 “To provide proper notice of an alleged violation, a would-be plaintiff must ‘[a]t a  
24 minimum ... provide sufficient information so that the [notified parties] could identify and  
25 attempt to abate the violation.’” *Klamath-Siskiyou Wildlands Center v. MacWhorter*, 797  
26 F.3d 645, 651 (9th Cir. 2015) (alternations in original). The plaintiff’s notice need not “list  
27 every specific aspect or detail of every alleged violation” nor “describe every ramification  
28 of a violation.” *Community Ass’n for Restoration of the Env’t v. Henry Bosma Dairy*, 303

1 F.3d 943, 951 (9th Cir. 2002). However, the pre-suit notice must “tell[ ] **a target precisely**  
2 **what it allegedly did wrong, and when.**” *Marina Point Dev. Co.*, 566 F.3d at 801  
3 (emphasis added).

4 The Ninth Circuit case *Center for Biological Diversity v. Marina Point Dev. Co.* is  
5 insightful. 566 F.3d. In this case, a nonprofit group and local residents bought a CWA  
6 action against a developer to enjoin the development of a residential project on a lake  
7 shoreline. *Id.* at 799-800. The U.S. Army Corps of Engineers (“Corps”) granted the  
8 developer a permit to dredge the shoreline but prohibited certain activities such as  
9 depositing sand below the watermark or transferring fill to neighboring wetlands. *Id.* At  
10 some point, the Corps issued a Cease and Desist Order to the developer concerning its use  
11 of equipment that caused incidental fallback to the soil. *Id.* The developer requested interim  
12 approval and the Corps issued a corrective measure order. In the meantime, the citizen  
13 plaintiffs issued a series of notices before filing an action. *Id.* at 799-800.

14 The Ninth Circuit vacated the lower court judgment, finding that the prior notices  
15 were insufficient because they did not mention any claims under the CWA, give any detail  
16 as what “wetlands” were affected or how, identify specific dates of violation, or provide  
17 any detail as to how alleged activities affected the lake or wetlands. *Id.* at 803. The Ninth  
18 Circuit also held that the efficacy of the plaintiffs’ claims was limited because the Corps,  
19 the regulatory body, had taken action to address the developer’s noncompliance. *Id.* at 803-  
20 04; *see also California Sportfishing Protection Alliance v. City of West Sacramento*, 905 F.  
21 Supp. 792, 799 (E.D. Cal. 1995) (finding notice, which identified only effluent violations  
22 and not monitoring report violations, as alleged in the complaint, was insufficient).

23 Other courts hold that notices that summarily lump allegations against catchall  
24 “defendants” are insufficient because they fail to inform the individual defendant of a  
25 specific regulatory violation it could cure. *Stark-Tusc-Wayne Joint Solid Waste Mgmt. Dist.*  
26 *v. Am. Landfill, Inc.*, 2012 WL 4475444, at \*4 (N.D. Ohio, Sept. 26, 2012) (finding  
27 plaintiffs’ catch-all single sentence assertion against all defendants failed to satisfy statute  
28 and precedential purpose of providing notice because it did not provide moving defendants

1 with sufficient information of a specific regulatory violation); *Wason Ranch Corp. v. Hecla*  
2 *Mining Co.*, 2006 WL 1305191, at \*4 (D. Colo., May 9, 2006) (finding notice insufficient  
3 because it did not individually identify any defendant nor link any individual defendant to  
4 a particular violation of the RCRA or CWA but only collectively refers to “defendants”);  
5 *Moraine Properties, LLC v. Ethyl Corp.*, 2008 WL 4758692, at \*6 (S.D. Ohio, Oct. 27,  
6 2008) (finding notice insufficient where plaintiff identified “several entities that were  
7 involved in operating the paper sludge disposal area,” but was not specific as to the alleged  
8 violation, “leaving Defendant to guess” which entity might have been at fault specifically);  
9 *Chute v. Montgomery Cnty. Shooting Complex*, 2013 WL 681987, at \*4 (M.D. Tenn., Feb.  
10 25, 2013) (finding that the plaintiff “failed to give notice to a statutorily required party, the  
11 State, in the manner expressly mandated by the regulations promulgated under the CWA  
12 and RCRA”).

13 The Notice Letter as to Veolia is insufficient for several reasons. First, it fails to  
14 name the proper entity, Veolia Water West Operating Services, Inc., and therefore the  
15 complaint should be dismissed outright. *Washington Trout*, 45 F.3d at 1355. Second, the  
16 Notice Letter is addressed only to IBWC Commissioner Giner and puts IBWC only, the  
17 Permit holder, on notice of its intent to sue. Ex. 1 at 1. That the Notice Letter attempts to  
18 lump IBWC and Veolia collectively as “IBWC” is improper, *id.*, because the two are  
19 distinct and different entities and IBWC is the official acronym for the International  
20 Boundary & Water Commission. See *Stark-Tusc-Wayne Joint Solida Wast Mgmt. Dist.*,  
21 2012 WL 4475444, at \*4; *Wason Ranch Corp.*, 2006 WL 1305191, at \*4; *Morain*  
22 *Properties, LLC*, 2008 WL 4758692, at \*6. The Notice Letter recognizes IBWC and Veolia  
23 as distinct and different entities and thus cannot take the inconsistent position that IBWC is  
24 IBWC and Veolia, one and the same.

25 Third, the Notice Letter is also insufficient because it fails to inform Veolia precisely  
26 of what it did wrong and when. *Marina Point Dev. Co.*, 566 F.3d at 801. The Notice Letter  
27 alleges various Permit violations but Veolia is not the designated discharger. Ex. 1 at 1. It  
28 is devoid of any explanation as to why Plaintiffs believe Veolia is subject to the Permit,

1 what it did wrong and when, or how Veolia’s actions or inactions contributed to purported  
2 violations.

3 Fourth, the Notice Letter fails to put Veolia on notice that it could be subject to civil  
4 penalties. It alleges that the “the permittee” – IBWC – is liable for civil penalties, not  
5 Veolia, and does not identify any basis by which Veolia could be subject to such penalties.  
6 *California Sportfishing*, 905 F. Supp. 7 at 799 (holding that dates of violation must be stated  
7 with some specificity and that civil penalty claims must be especially specific in notice  
8 letter); *American Canoe Ass’n v. City of Lousia Water & Sewer Com’n*, No. CIV.A. 01-99-  
9 ART, 2009 WL 8520526, at \* 10 (E.D. Ky., Feb. 27, 2009) (“[B]ecause the CWA only  
10 permits citizen suit plaintiffs to pursue claims stemming from violations that were  
11 specifically identified in the 60-day notice letter[,] . . . the City can only be assessed civil  
12 penalties for those violations that were specifically identified in the plaintiff’s notice  
13 letter.”)

14 For these reasons, Plaintiffs failed to satisfy the notice requirement of 33 U.S.C.  
15 section 1365(b) as to Veolia, and its action should be dismissed pursuant to Rule 12(b)(1)  
16 for lack of subject matter jurisdiction.

17 **B. The complaint fails to state a claim against Veolia.**

18 Rule 12(b)(6) permits a defendant to move to dismiss a claim for “failure to state a  
19 claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). A pleading must contain  
20 “a short and plain statement of the claim showing that the pleader is entitled to relief,” Rule  
21 8(a)(2), such that the defendant is provided “fair notice of what the . . . claim is and the  
22 ground upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
23 Plaintiffs must also plead “enough facts to state a claim to relief that is plausible on its face.”  
24 Rule 12(b)(6); *Twombly*, 550 U.S. at 570. The plausibility standard demands more than “a  
25 formulaic recitation of the elements of a cause of action,” or “naked assertions devoid of  
26 further factual enhancement.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (reiterating that  
27 “recitals of the elements of a cause of action, supported by mere conclusory statements, do  
28 not suffice.”) Instead, the complaint “must contain allegations of underlying fact sufficient

1 to give fair notice and to enable the opposing party to defend itself effectively.” *Starr v.*  
2 *Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

3 In reviewing a motion to dismiss under Rule 12(b)(6), courts must assume the truth  
4 of all factual allegations and must construe them in the light most favorable to the  
5 nonmoving party. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-39 (9th Cir. 1996).  
6 A court need not take legal conclusions as true merely because they are cast in the form of  
7 factual allegations. *See Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987).  
8 Similarly, “conclusory allegations of law and unwarranted inferences are not sufficient to  
9 defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998).

10 **1. Plaintiffs’ conclusory allegations are not sufficient.**

11 Plaintiffs’ allegations as to Veolia are conclusory, not factually supported and  
12 insufficient to satisfy the pleading requirements of Rule 8(a) and *Iqbal/Twombly*. The 34-  
13 page complaint contains conclusory allegations of various permit violations by “the  
14 Defendants” but fails to specify what Veolia purportedly did wrong, when these alleged  
15 violations occurred or how Veolia’s actions or inactions contributed to the alleged  
16 violations. It also fails to explain why Veolia, which is not a designated permittee, can be  
17 held liable for purported violations.

18 Plaintiffs’ claims are conclusory, lump “Defendants” together, and do not set forth  
19 the individual basis of liability for each defendant. The Complaint is virtually devoid of  
20 specific allegations against Veolia. Notably, the Complaint, which consists of 196  
21 paragraphs, only specifically mentions Veolia in fourteen paragraphs, the last five of which  
22 wrongly assert civil penalties against the entity. Compl. ¶¶ 2, 4, 8, 36, 37, 93, 126, 156,  
23 160, 161, 168, 180, 189, 196.

24 The minimal allegations against Veolia in the Complaint are conclusory and not  
25 factually supported. For example, none of the allegations explain why Veolia is subject to  
26 the Permit. Paragraph 8 summarily alleges that the two entities have discharged and  
27 continue to discharge various pollutants in the Tijuana River and Estuary but does not  
28 specify how, when, or where Veolia’s actions or inactions contributed to these unlawful

1 discharges into either body of water. Similarly, paragraph 126 summarily alleges that  
2 IBWC and Veolia, as owners and/or operations of the Facility have failed, and continue to  
3 fail, to properly operate and maintain the facility. But again, the Complaint is devoid of  
4 any factual allegations as to how and when Veolia failed to properly operate and maintain  
5 the facility or how these failures contributed to the violations.

6 The Complaint’s lack of specificity as to Veolia is particularly pronounced as to the  
7 Fourth (failure to submit self-monitoring reports in accordance with permit requirements)  
8 and Fifth (failure to submit TRVMP within 90 days of the effective order No. R9-2021-  
9 0001) causes of action. There are no allegations at all that Veolia was responsible for  
10 submitting the self-monitoring reports or the TRVMP or that it failed to do so.

11 **C. The San Diego Water Board has primary jurisdiction over any alleged**  
12 **violations of effluent limitations governed by the NDPES Permit.**

13 “The doctrine of primary jurisdiction has developed to guide courts in determining  
14 how to proceed when some or all of the issues in the litigation are concurrently cognizable  
15 before an administrative agency.” *Montgomery Env’t Coal. Citizens Coordinating Comm.*  
16 *on Friendship Heights v. Washington Suburban Sanitary Comm’n*, 607 F.2d 378, 381 (D.C.  
17 Cir. 1979). It is a “prudential doctrine” that allows courts to evaluate whether “an otherwise  
18 cognizable claim implicates technical and policy questions that should be addressed in the  
19 first instance by the agency with regulatory authority over the relevant industry rather than  
20 by the judicial branch.” *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 760 (9th Cir.  
21 2015). Allowing the agency to adjudicate these issues instead of the court “may serve one  
22 or both of two important interests.” *Montgomery*, 607 F.2d at 381. First, it “allow[s] the  
23 agency to bring its expertise to bear before the court reaches a final decision.” *Id.* Second,  
24 it often “avoid[s] the need for a final decision by the courts altogether.” *Id.*

25 The Ninth Circuit considers four factors when determining primary jurisdiction: (1)  
26 whether there is a need to “resolve an issue”; (2) whether Congress has placed resolution of  
27 the issue “within the jurisdiction of an administrative body having regulatory authority”;  
28 (3) whether the industry or activity in question has been subjected to a “comprehensive

1 regulatory authority” by statute; and (4) whether the regulation of the activity or industry  
2 “requires expertise or uniformity in administration.” *Astiana*, 783 F.3d at 753.

3 All four factors are satisfied here. First, the issue to be resolved is whether there has  
4 been a violation of the NPDES Permit and if so, what “affirmative injunctive measures”  
5 must be implemented. The San Diego Water Board has taken up this issue and requires  
6 IBWC to comply with the Permit’s secondary effluent limitations by August 15, 2024. Ex.  
7 C at 8-9. The San Diego Water Board has also imposed tasks and goals so that secondary  
8 effluent limitation compliance is achieved by the deadline and is also monitoring progress  
9 by requiring regular reports. *Id.* The San Diego Water Board has also resolved the TRVMP  
10 report issue by finding compliance will be achieved through binational cooperation in  
11 Minute 320, which is the basis of the Fifth Cause of Action. *Id.* at 5.

12 Second, Congress has delegated authority to regulate effluent discharges to the EPA  
13 under the CWA. 33 U.S.C. § 1342. In turn, the EPA has delegated this authority to the  
14 State of California, 40 C.F.R. Part 123, Cal. Water Code §§ 13260 *et seq.*, *id.* §§ 13370 *et*  
15 *seq.*, a process that is sanctioned by the CWA. 33 U.S.C. § 1342(b)-(d). There is no doubt  
16 that the San Diego Water Board is an administrative body vested with the authority to  
17 regulate effluent discharges. Compl. ¶ 52; *see generally* Ex. 2.

18 Third, pollutant discharges and wastewater treatment plants are governed by a  
19 “statute that subjects [the] industry or activity to a comprehensive regulatory authority.”  
20 *Astiana*, 783 F.3d at 760. That is the entire purpose of the CWA. 33 U.S.C. §§1251 *et seq.*

21 Fourth, the administration of NPDES permits is a complicated area that requires  
22 uniformity and expert knowledge. One of the key policies underlying the CWA is “uniform  
23 enforcement.” *Connecticut Fund for the Env’t v. Job Plating Co.*, 623 F. Supp. 207, 212  
24 (D. Conn. 1985). The U.S. Supreme Court has acknowledged that the EPA’s and other  
25 related agencies’ (like the San Diego Water Board) “technical expertise” must be deferred  
26 to when construing the CWA. *See United States v. Riverside Bayview Homes, Inc.*, 474  
27 U.S. 455, 463 (1985) (finding that the Army Corps of Engineers’ “conclusion that adjacent  
28 wetlands are inseparably bound up with the ‘waters’ of the United States” was not

1 unreasonable). “Indeed, Congress intended for citizen lawsuits under the Clean Water Act  
2 to have merely an ‘interstitial’ role, so as not to intrude on agency discretion.” *Sierra Club*  
3 *v. Elk Run Coal Co.*, 2010 WL 4867909, at \*8 (S.D.W. Va., Nov. 23, 2010). Thus, a “court  
4 must be ‘particularly deferential to [an enforcement] agency’s expertise’ when presented  
5 with a consent decree, inasmuch as failure to defer to the agency’s judgment can undermine  
6 agency strategy.” *Elk Run*, 2010 WL 4867909, at \*8 (alterations in original).

7 Dismissing Plaintiffs’ claims will also further the two important interests behind the  
8 primary jurisdiction doctrine: it will allow the San Diego Water Board to “bring its expertise  
9 to bear” and may “avoid[] the need for a final decision by the [Court] altogether.”  
10 *Montgomery*, 607 F.2d at 381.

11 The case at hand is very similar to the circumstances of *Montgomery* that warranted  
12 dismissal under the primary jurisdiction doctrine. *Id.* at 383. Like in *Montgomery*, an  
13 administrative agency here is adjudicating the conditions of an NPDES permit. The  
14 principal issue in the administrative proceedings is the same as the litigation in court.  
15 *Montgomery*, 607 F.2d at 381-82; Ex. C at 1-9. Furthermore, “[t]he resolution of the  
16 administrative proceeding may make unnecessary any decision in this case.” *Montgomery*,  
17 607 F.2d at 382. In fact, Plaintiffs “may gain a substantial measure or all of the relief” they  
18 seek from the measures imposed by the San Diego Water Board. *Id.* If appropriate relief  
19 is not achieved with the measures imposed by the Board, Plaintiffs can seek judicial review  
20 of the administrative proceedings. *See id.* (using a parallel justification to find primary  
21 jurisdiction applied).

22 Deferring to the San Diego Water Board will avoid a scenario where “Defendants  
23 could be subjected to conflicting orders of both the Court and the administrative agency.”  
24 *Friends of Santa Fe Cnty. v. LAC Mins., Inc.*, 892 F. Supp. 1333, 1350 (D.N.M. 1995).  
25 Plaintiffs seek injunctive relief that requires scientific and technical expertise, which the  
26 Board has. Applying the primary jurisdiction doctrine here avoids the risk of conflicting  
27 injunctions. For these reasons, Veolia requests that the Court dismiss Plaintiffs’ First and  
28 Fifth Claims pursuant to the primary jurisdiction doctrine. *Montgomery*, 607 F.2d at 383.

1           **D. Plaintiffs’ First and Fifth Causes of Action are not ripe.**

2           Ripeness is a justiciability requirement just like standing. *See Armstrong World*  
3 *Indus., Inc. v. Adams*, 961 F.2d 405, 411 n.13 (3d Cir. 1992). Unlike standing, “ripeness  
4 is concerned with *when* an action may be brought,” rather than “*who*” the action may be  
5 brought by. *Id.* (emphasis in original). The purpose of the ripeness doctrine is “to avoid  
6 premature and potentially unnecessary adjudication.” *Ass’n of Irrigated Residents v. U.S.*  
7 *Env’t Prot. Agency*, 10 F.4th 937, 944 (9th Cir. 2021); *see also Howell v. U.S. Army*  
8 *Corps of Engineers*, 794 F. Supp. 1072, 1075 (D.N.M. 1992) (finding that an agency’s  
9 “particular expertise” under the Clean Water Act allows it “to develop facts and make a  
10 decision” so that “court intervention may be avoided”).

11           In evaluating ripeness, the court must consider: (1) “the fitness of the issues for  
12 judicial decision” and (2) “the hardship to the parties of withholding court consideration.”  
13 *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967), *abrogated on other grounds, Califano*  
14 *v. Sanders*, 430 U.S. 99 (1977). “Both aspects of the [ripeness] inquiry involve the exercise  
15 of judgment, rather than the application of a black-letter rule.” *Nat’l Park Hosp. Ass’n v.*  
16 *Dep’t of Interior*, 538 U.S. 803, 814 (2003) (Stevens, J., concurring).

17           **1. Plaintiffs’ claims are not fit for judicial decision.**

18           The ripeness doctrine’s “basic rationale is to prevent the courts, through avoidance  
19 of premature adjudication, from entangling themselves in abstract disagreements over  
20 administrative policies.” *Abbott Labs.*, 387 U.S. at 148. It is also meant “to protect the  
21 agencies from judicial interference until an administrative decision has been formalized and  
22 its effects felt in a concrete way by the challenging parties.” *Id.* at 148-49.

23           Here, the San Diego Water Board is overseeing and monitoring compliance with the  
24 NPDES permit. Ex. C at 1-9. It has already initiated affirmative measures designed to  
25 eliminate any alleged non-compliance over time. *Id.* at 8-9. Allowing Plaintiffs’ claims to  
26 proceed would entangle the Court into an abstract analysis of the San Diego Water Board’s  
27 remediation plan. *Abbott Labs.*, 387 U.S. at 148. Analogously, allowing the claims to  
28 proceed would also interfere with the Board’s administrative oversight and interrupt its

1 remediation plan before any effects could be “felt in a concrete way by the challenging  
2 parties.” *Id.* at 148-49.

3 In addition, “[a] claim is not ripe for adjudication if it rests upon ‘contingent future  
4 events that may not occur as anticipated, or indeed may not occur at all.’” *Texas v. United*  
5 *States*, 523 U.S. 296, 300 (1998). Here, there is a “contingent future event”: the status of  
6 SBIWTP’s effluent discharge after the San Diego Water Board’s remediation plan has been  
7 completely implemented. Ex. C at 8-9. There is no way to calculate the post-remediation-  
8 plan effluent discharges at this stage.

9 Moreover, Plaintiffs’ claims are not ripe because they interfere with an  
10 environmental agency’s already underway management of a CWA issue. In *Texas*  
11 *Independent Producers and Royalty Owners Association v. United States EPA*, the court  
12 concluded that “ruling on this case would inappropriately interfere with administrative  
13 action” because the EPA had deferred a permit requirement date and was “contemplat[ing]  
14 an additional evaluation and assessment” of the CWA Section at issue. 413 F.3d 479, 482-  
15 83 (5th Cir. 2005). Similarly, the court in *Delaware County Safe Drinking Water Coalition,*  
16 *Inc. v. McGinty*, held that the CWA “does not confer jurisdiction upon district courts to  
17 oversee the pending administrative details of a permit application process, or to interject  
18 [themselves] into the NPDES process in substitute of a state agency” and “[t]hus, the claims  
19 must fail because they are not ripe for adjudication.” 2007 WL 2213516, at \*11 (E.D. Pa.,  
20 July 31, 2007). Accordingly, Plaintiffs’ claims are not ripe because they are not fit for  
21 judicial decision.

22 **2. The hardship to Defendants of allowing this case to proceed**  
23 **outweighs any hardship that Plaintiff would suffer from its**  
24 **dismissal.**

25 Withholding consideration at this time will not cause Plaintiffs substantial hardship.  
26 First, Plaintiffs face no “adverse effects of a strictly legal kind,” which are the effects that  
27 traditionally would have qualified as harm. *Ohio Forestry Ass’n, Inc. v. Sierra Club*, 523  
28 U.S. 726, 733 (1998). Second, this is not a scenario where “immediate compliance can be  
achieved” through judicial intervention. *Cf. id.* at 734. Remediation of any existing effluent

1 violations will be time-consuming and costly, which is why this process is best left within  
2 the domain of the San Diego Water Control Board. Should any alleged effluent violations  
3 continue after the remediation plan is implemented Plaintiffs “will have ample opportunity  
4 later to bring [their] legal challenge at a time when harm is more imminent and more  
5 certain.” *Id.* Plaintiffs will not suffer substantial harm just because they need to re-file their  
6 claims: “[t]he ripeness doctrine reflects a judgment that the disadvantages of a premature  
7 review that may prove too abstract or unnecessary ordinarily outweigh the additional costs  
8 of—even repetitive—postimplementation litigation.” *Id.* at 735.

9 Conversely, Defendants will suffer severe harm if the court allows this litigation to  
10 continue. Defendants will be forced to litigate the same issues in two separate forums and  
11 incur unnecessary expense. This overlapping jurisdiction also risks conflicting orders.  
12 Should this litigation continue, it is possible, if not likely, that Defendants may receive  
13 inconsistent commands from the Water Board and any Court order. It would be a far better  
14 use of Defendants’ time and capital to spend their resources implementing the San Diego  
15 Water Board’s already-in-place remediation plan. Because the balance of hardships tips in  
16 Defendants favor and Plaintiffs First and Fifth claims are not fit for judicial decision, the  
17 Court should dismiss these claims.

18 **E. Alternatively, the Court should strike Plaintiffs’ civil penalty allegations**  
19 **against Veolia from the Complaint.**

20 If the Court determines that dismissal under a 12(b) motion to dismiss is not  
21 appropriate, the Court may instead “strik[e] the non-actionable allegations.” *Pace v.*  
22 *Bonham*, 2013 WL 5487426, at \*4 (N.D. Cal., Sept. 30, 2013). Pursuant to Rule 12(f), a  
23 court may strike from a pleading “any redundant, immaterial, impertinent, or scandalous  
24 matter.” Fed. R. Civ. P. 12(f). The purpose “of a 12(f) motion to strike is to avoid the  
25 expenditure of time and money that must arise from litigating spurious issues by dispensing  
26 with those issues prior to trial.” *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th  
27 Cir. 1983).

1 Here, as demonstrated above, Plaintiffs’ claims for civil penalties are not actionable  
2 because: (1) the notice regarding civil penalties relief was insufficient; and (2) Veolia is not  
3 the NPDES permit-holder. *See* Section III A, *supra* (insufficient notice) and Section III A,  
4 *supra* (non-permittee). Thus, if the Court finds that dismissal is not warranted, it should  
5 instead strike Plaintiffs’ civil penalties allegations from the Complaint: paragraphs 161,  
6 168, 180, 189, 196, and 199(d).

7 **IV. CONCLUSION**

8 For the reasons discussed above, Veolia respectfully requests that the Court grant its  
9 motion for lack of subject matter jurisdiction and/or for failure to state a claim pursuant to  
10 Rule 12(b)(1) & (6). Alternatively, Veolia requests the Court dismiss this action pursuant  
11 the primary jurisdiction doctrine and/or because the matter is not ripe for review.  
12 Alternatively, Veolia requests that the Court strike paragraphs 161,168, 180, 189, 196, and  
13 199(d) from the Complaint pursuant to Rule 12(f).

14  
15  
16 Dated: June 14, 2024

Respectfully submitted,  
**BIENERT KATZMAN**  
**LITTRELL WILLIAMS LLP**

17  
18  
19 By: /s/ Rebecca Roberts  
20 Thomas H. Bienert, Jr.  
21 Rebecca Roberts

22 *Attorneys for Defendant*  
23 *Veolia Water West Operating Services, Inc.*  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing pleading has been electronically served on the following parties by virtue of their registration with the CM/ECF system:

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Dated: June 14, 2024

/s/ Leah Thompson  
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9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

12 SAN DIEGO COASTKEEPER, a non-  
13 profit corporation; COASTAL  
ENVIRONMENTAL RIGHTS  
14 FOUNDATION, a non-profit corporation,

15 Plaintiffs,

16 v.

17 UNITED STATES INTERNATIONAL  
18 BOUNDARY AND WATER  
COMMISSION, an agency of the United  
19 States; MARIA-ELENA GINER, in her  
20 capacity as Commissioner of the  
International Boundary Water  
21 Commission; VEOLIA WATER NORTH  
22 AMERICA- WEST, LLC, a Delaware  
Limited Liability Company,

23 Defendants.  
24

Case No. 24-cv-00663-JES-VET  
Honorable James E. Simmons

**DECLARATION OF REBECCA S.  
ROBERTS IN SUPPORT OF MOTION  
TO DISMISS PLAINTIFFS’  
COMPLAINT PURSUANT TO RULES  
12(B)(1) & (6), THE PRIMARY  
JURISDICTION AND RIPENESS  
DOCTRINES, AND MOTION TO  
STRIKE PURSUANT TO RULE 12(f)**

Hearing Date: July 31, 2024  
Hearing Time: 9:00 am  
Courtroom: 4C

**DECLARATION OF REBECCA S. ROBERTS**

I, Rebecca Roberts, declare as follows:

1. I am an attorney licensed to practice law in the United States District Court for the Southern District of California and a partner at Bienert Katzman Littrell Williams LLP, counsel of record for Veolia Water West Operating Services, Inc. in this action. I make this declaration in support of the concurrently filed *Motion to Dismiss Pursuant to Rule 12(b)(1) and 12(b)(6) and Motion to Strike Pursuant to Rule 12(f)* along with the concurrently filed *Request for Judicial Order* (collectively, “Motions”). I make this declaration based on my personal knowledge. I am familiar with the pleadings and papers served and filed in this case. If called as a witness, I could and would testify competently to the facts set forth in this declaration.

2. Attached as Exhibit A is Order No. R9-2021-0220, amending Cease and Desist Order No. R9-2021-0107 which was issued by the California Regional Water Quality Control Board, San Diego Region (“San Diego Water Board”). The Order requires International Boundary and Water Commission, United States Section (“IBWC”) to assess and report on maintenance and other repairs needed at the South Bay International Wastewater Treatment Plant to ensure compliance with the Permit’s effluent limitations.

3. Attached as Exhibit B is Notice of Violation No. R9-2023-0162 which was issued by the San Diego Water Board on September 5, 2023. It notified IBWC of ongoing violations of the Permit, including self-reported exceedances of effluent limitations, late filed reports, missing reports including the TRVMP and other violations of the Permit.

4. Attached as Exhibit C is Time Schedule Order (“TSO”) No. R9-2023-0189 which was issued by the “San Diego Water Board”.

5. Attached as Exhibit D is the San Diego Water Board’s Special Meeting Minutes from December 18, 2023. In the minutes the court moved to issue the TSO attached as Exhibit C. Before issuing the TSO, the Board heard from stakeholders, including San Diego Coastkeeper.



**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing pleading has been electronically served on the following parties by virtue of their registration with the CM/ECF system:

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*Environmental Defense Section US Department of Justice Attorneys*

Dated: June 14, 2024

/s/ Leah Thompson  
Leah Thompson

# **Exhibit A**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

2375 Northside Drive, Suite 100, San Diego, CA 92108  
Phone (619) 516-1990 · Fax (619) 516-1994  
<https://www.waterboards.ca.gov/sandiego>

**ORDER NO. R9-2021-0220  
AMENDING**

**CEASE AND DESIST ORDER NO. R9-2021-0107**

**UNITED STATES SECTION OF THE INTERNATIONAL BOUNDARY AND WATER  
COMMISSION SOUTH BAY INTERNATIONAL WASTEWATER TREATMENT PLANT  
DISCHARGE TO THE PACIFIC OCEAN THROUGH THE SOUTH BAY OCEAN  
OUTFALL**

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), finds that:

**Background**

1. The International Boundary and Water Commission, United States Section (USIBWC) owns and operates the South Bay International Wastewater Treatment Plant (SBIWTP) and the associated infrastructure located in the United States (U.S.). Together, these facilities comprise a federally-owned treatment works.
2. The SBIWTP discharges secondary-treated wastewater to the Pacific Ocean through the South Bay Ocean Outfall. Discharges from the SBIWTP are regulated by National Pollutant Discharge Elimination System (NPDES) Permit No. CA0108928, Order No. R9-2021-0001, *Waste Discharge Requirements for the United States Section of the International Boundary and Water Commission South Bay International Discharge to the Pacific Ocean Through the South Bay Ocean Outfall* (NPDES Permit), adopted by the San Diego Water Board on May 12, 2021.
3. The San Diego Water Board adopted Cease and Desist Order (CDO) No. R9-2021-0107 on May 12, 2021, addressing discharges from the SBIWTP that threaten to take place in violation of the requirements of the NPDES Permit. The CDO requires USIBWC submit a Compliance Assurance Report that identifies all shortcomings, inadequacies, and maintenance issues with regard to control measures that need to be addressed to attain consistent compliance with the effluent limitations contained in the NPDES Permit. The Compliance Assurance Report is required to include a schedule for retaining appropriate contractors and designing, installing, and putting into operation the new or modified control measures, and estimated project costs. The CDO also requires USIBWC make necessary repairs to the SBIWTP by specific dates and comply with reporting requirements and effluent limitations contained in the NPDES Permit.

U.S. International Boundary and  
Water Commission

Amending Order No. R9-2021-0220  
Cease and Desist Order No. R9-2021-0107

4. On October 7, 2021, USIBWC submitted a revised Compliance Assurance Report which identified anticipated completion dates for various actions. Some of the completion dates identified in the revised Compliance Assurance Report exceeded the time schedule contained in the CDO.
5. On October 14, 2021, USIBWC requested that the time schedule contained in the CDO be amended. USIBWC stated that the deadline date in the time schedule for the repair of Junction Box 1 was unattainable because the design for the repair is scheduled to be completed on January 31, 2022, and the repair cannot be completed until the design is completed and the repair is funded. Additionally, USIBWC stated that the deadline date in the time schedule for the replacement of the influent meter and associated piping and valves was unattainable because the COVID-19 pandemic has impacted supply chains causing delays in procuring the valves necessary to complete the project.
6. The California Code of Regulations (CCR) title 23, division 3, chapter 9.1, article 1, section 2243 states that a time schedule should always be included in a CDO unless there is a lack of information upon which to base a schedule in which case the discharger should be instructed to comply forthwith. "Forthwith" means as soon as is reasonably possible.

#### **Purpose of this Order**

7. This Order makes modifications to the time schedule contained in the CDO as requested by USIBWC on October 14, 2021. USIBWC was unable to comply with the time schedule contained in the CDO for the repair of Junction Box 1 and the replacement of the influent meter and associated piping and valves.
8. This Order also modifies the CDO to include three additional time schedule tasks. The revised Compliance Assurance Report submitted by USIBWC on October 7, 2021, included several repair, replacement, and/or improvement projects that have not been scheduled or funded. Therefore, this Order modifies the CDO to require USIBWC to submit a revised Compliance Assurance Report once per quarter that includes information on scheduling and project costs as the projects are planned and funded. Additionally, one of the projects listed in the Compliance Assurance Report that has not been funded or scheduled is the replacement of the diffusers in the aeration tanks. Deficient diffusers may result in effluent limitation exceedances including, but not limited to, limitation exceedances for carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), total suspended solids (TSS), settleable solids, and turbidity. Therefore, this Order modifies the CDO to require that the replacement of the diffusers be completed forthwith. Lastly, this Order modifies the CDO to require that USIBWC complete the design of the Junction Box 1 repairs no later than January 31, 2022.
9. This Order also modifies the CDO to remove the term "forthwith" from the CDO directives to comply with the transboundary flow reporting requirements, violations

U.S. International Boundary and  
Water Commission

Amending Order No. R9-2021-0220  
Cease and Desist Order No. R9-2021-0107

reporting requirements, and 5-Day Report requirements of the NPDES Permit. Immediate compliance by USIBWC with these directives is reasonably practicable.

10. This Order also modifies the CDO to clarify that immediate compliance with effluent limitations in the NPDES Permit is required for all parameters, except for flow, settleable solids, TSS, turbidity, and CBOD<sub>5</sub>. The time schedule contained in the CDO establishes a deadline of January 3, 2022, for USIBWC to achieve consistent compliance with the effluent limitations for flow, settleable solids, TSS, turbidity, and CBOD<sub>5</sub>.
11. This Order also modifies the CDO to include a description of the other needed and/or planned repairs and preventative maintenance as described in the Compliance Assurance Report submitted by USIBWC on October 7, 2021.
12. This Order also modifies the CDO to clarify that the San Diego Water Board may amend the CDO if it is determined that the failure to comply with the time schedule contained in the CDO is due to a force majeure or some other reason that the San Diego Water Board agrees is out of USIBWC's control.
13. This Order also modifies the CDO to include a definition of the term "forthwith".

#### **Legal Authorities**

14. The CDO is not being reopened for any other purpose than the revisions contained herein. Except as contradicted or superseded by the findings and directives set forth in this Order, all the previous findings and directives of the CDO shall remain in full force and effect.

#### **California Environmental Quality Act**

15. As an enforcement action, this CDO is exempt from the provisions of the California Environmental Quality Act (Public Resources Code § 21000 et seq.) in accordance with Title 14 of the California Code of Regulations, section 15321.

#### **Public Participation**

16. The San Diego Water Board has notified all known interested parties of its intent to adopt this Order.
17. The San Diego Water Board released this Order for a 12-day public comment period on October 20, 2021. Public comments were due no later than 5:00 PM on November 1, 2021.
18. The San Diego Water Board, in a public meeting on December 8, 2021, heard and considered all comments pertaining to the adoption of this Order.
19. Any person aggrieved by this action of the San Diego Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in

U.S. International Boundary and Water Commission

Amending Order No. R9-2021-0220  
Cease and Desist Order No. R9-2021-0107

accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 *et seq.* The State Water Board must receive the petition by 5:00 p.m., 30 days after the adoption date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [https://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](https://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**IT IS HEREBY ORDERED:**

1. This Order amends the CDO as described in the revised version included as Attachment 1 to this Order. Added text to the CDO is displayed in **redline** text and deleted text is displayed as **strikeout** text. Modifications to the CDO were made to the following sections:

<b>Page No.</b>	<b>Section No.</b>
1	Title
2 through 12	Heading
8	Section 12
8	Section 14
8	Section 16
8	Section 17
8 through 9	Section 18
10 through 11	Section 1, Table 2
11	Section 2
11	Section 3
11	Section 4
11	Section 5
11 through 12	Section 6
12	Certification Statement
A-1	Attachment A Heading
B-1	Attachment B Heading

2. The amended version of the CDO included as an attachment to this Order shall become effective on December 8, 2021.
3. San Diego Water Board staff is directed to prepare and post a conformed copy of the CDO incorporating the revisions made by this Order.

I, David W. Gibson, Executive Officer, do hereby certify that this Order is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on **December 8, 2021**.

ORIGINAL ON FILE SIGNED BY  
DAVID W. GIBSON ON DECEMBER 10, 2021

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David W. Gibson, Executive Officer

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**CEASE AND DESIST ORDER NO. R9-2021-0107  
AS AMENDED BY ORDER NO. R9-2021-0220**

**UNITED STATES SECTION OF THE  
INTERNATIONAL BOUNDARY AND WATER COMMISSION  
SOUTH BAY INTERNATIONAL WASTEWATER TREATMENT PLANT  
DISCHARGE TO THE PACIFIC OCEAN THROUGH THE SOUTH BAY OCEAN  
OUTFALL**

**WHEREAS** the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) finds the following:

**Background**

1. The International Boundary and Water Commission, United States Section (USIBWC) owns and operates the South Bay International Wastewater Treatment Plant (SBIWTP) and the associated infrastructure in the United States (U.S.).<sup>1</sup> Together, these facilities comprise a federally-owned treatment works. These facilities are collectively referred to as the Facility or Facilities in this Cease and Desist Order (CDO).
2. The SBIWTP discharges secondary-treated wastewater to the Pacific Ocean through the South Bay Ocean Outfall. Attachment A provides a map of the area around the Facility. Attachment B provides collection system flow schematics of the Facility and infrastructure in Mexico.
3. USIBWC was previously regulated by National Pollutant Discharge Elimination System (NPDES) Permit No. CA0108928 which was issued by the San Diego Water Board as Order No. R9-2014-0009, as amended by Order Nos. R9-2014-0094, R9-2017-0024 and R9-2019-0012, *Waste Discharge Requirements for the United States Section of the International Boundary and Water Commission, South Bay International Discharge to the Pacific Ocean Via the South Bay Ocean Outfall* (2014 Permit). The 2014 Permit expired on July 31, 2018 but remained in effect until such time as it was superseded by a reissued NPDES permit.
4. On May 12, 2021, the San Diego Water Board reissued NPDES Permit No. CA0108928, as Order R9-2021-0001, *Waste Discharge Requirements for the United States Section of the International Boundary and Water Commission South Bay International Discharge to the Pacific Ocean Through the South Bay Ocean Outfall* (2021 Permit).

---

<sup>1</sup> Infrastructure in the U.S. includes, but is not limited to, South Bay International Wastewater Treatment Plant; five canyon collector systems located at Stewart's Drain, Canyon del Sol, Silva's Drain, Smugglers Gulch, and Goat Canyon; Hollister Street Pump Station and Goat Canyon Pump Station; Junction Box 1 and 2; South Bay Land Outfall; South Bay Ocean Outfall; and other associated infrastructure such as pipes and conveyances between the diversion structures, pump stations, and the wastewater treatment plant (see Attachment F section 1.1 of the 2021 Permit).

U.S. International Boundary  
and Water Commission

Cease and Desist  
Order No. R9-2021-0107

Amended by Order No. R9-2021-0220

- The 2014 and 2021 Permits established requirements for the discharge of 25 million gallons per day (MGD) of treated wastewater from the SBIWTP through the South Bay Ocean Outfall to the Pacific Ocean and include discharge prohibitions, effluent limitations calculated from secondary treatment standards, and other more stringent limits necessary to meet water quality standards, receiving water limitations for ocean waters, an effluent and receiving water monitoring program, reporting requirements, and other miscellaneous provisions.

**Effluent Limitation Violations**

- The 2021 Permit contains the following numeric effluent limitations, among others, with compliance measured at Monitoring Location EFF-001, as described in the 2021 Permit’s Monitoring and Reporting Program (MRP, Attachment E):

**Table 1. Numeric Effluent Limitations at Discharge Point 001**

Parameter	Units	Average Monthly Effluent Limitation (AMEL)	Average Weekly Effluent Limitation (AWEL)	Instantaneous Maximum Effluent Limitation (IMEL)
Flow	MGD	25	-	-
Carbonaceous Biochemical Oxygen Demand (5-Day at 20°C) (CBOD <sub>5</sub> )	milligrams/liter (mg/L)	25	40	-
CBOD <sub>5</sub>	pounds/ day (lbs/day)	5,213	8,340	-
CBOD <sub>5</sub>	percent removal	≥ 85	-	-
Total Suspended Solids (TSS)	mg/L	30	45	-
TSS	lbs/day	6,255	9,383	-
TSS	percent removal	≥ 85	-	-
Settleable Solids	milliliters/liter (mL/L)	1.0	1.5	3.0
Turbidity	nephelometric turbidity unit (NTU)	75	100	225

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7. Based on the data collected at Monitoring Location EFF-001, USIBWC threatens to violate the 2021 Permit effluent limitations, in Table 1 of this CDO. Between November 2020 and January 2021, USIBWC reported 46 exceedances of effluent limitations contained in the 2014 Permit for the parameters listed in Table 1. USIBWC attributed the primary cause of these effluent limitation exceedances to excess influent flow volume beyond the design capacity of the secondary treatment processes. Compliance with the 2021 Permit effluent limitations is unlikely until the sluice gates in Junction Box 1 have been repaired and flows into the SBIWTP are reduced to a monthly average of 25.0 MGD. Thus, until USIBWC completes the actions described in Table 2 of this CDO, discharges from the Facility threaten to continue taking place in violation of the requirements of the 2021 Permit.
- a. In November 2020, USIBWC reported the following 20 violations of effluent limitations contained in the 2014 Permit for Discharge Point 001:
- Flow exceeded the AMEL of 25 million MGD with a result of 30.95 MGD at Discharge Point 001.
  - CBOD<sub>5</sub> exceeded the AMEL of 25 mg/L with a result of 44 mg/L.
  - CBOD<sub>5</sub> exceeded the AMEL of 5,213 lbs/day with a result of 11,422 lbs/day.
  - CBOD<sub>5</sub> exceeded the AWEL of 40 mg/L with a result of 51 mg/L for the week of November 15 through November 21, 2020.
  - CBOD<sub>5</sub> exceeded the AWEL of 40 mg/L with a result of 81 mg/L for the week of November 22 through November 28, 2020.
  - CBOD<sub>5</sub> exceeded the AWEL of 8,340 lbs/day with a result of 13,069 lbs/day for the week of November 15 through November 21, 2020.
  - CBOD<sub>5</sub> exceeded the AWEL of 8,340 lbs/day with a result of 21,328 lbs/day for the week of November 22 through November 28, 2020.
  - CBOD<sub>5</sub> did not achieve the required average monthly percent removal of no less than 85 percent with a result of 80.8 percent removal.
  - TSS exceeded the AMEL of 30 mg/L with a result of 97 mg/L.
  - TSS exceeded the AMEL of 6,255 lbs/day with a result of 25,137 lbs/day.
  - TSS exceeded the AWEL of 45 mg/L with a result of 143 mg/L for the week of November 15 through November 21, 2020.
  - TSS exceeded the AWEL of 45 mg/L with a result of 175 mg/L for the week of November 22 through November 28, 2020.
  - TSS exceeded the AWEL of 9,383 lbs/day with a result of 36,667 lbs/day for the week of November 15 through November 21, 2020.

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- TSS exceeded the AWEL of 9,383 lbs/day with a result of 46,089 lbs/day for the week of November 22 through November 28, 2020.
  - TSS did not achieve the required average monthly percent removal of no less than 85 percent with a result of 67.2 percent removal.
  - Settleable Solids exceeded the IMEL of 3.0 mL/L with a result of 3.5 mL/L on November 18, 2020.
  - Settleable Solids exceeded the IMEL of 3.0 mL/L with a result of 15 mL/L on November 19, 2020.
  - Settleable Solids exceeded the IMEL of 3.0 mL/L with a result of 7.5 mL/L on November 20, 2020.
  - Turbidity exceeded the AWEL of 100 NTU with a result of 107.96 for the week of November 22 to November 28, 2020.
  - Turbidity exceeded the IMEL of 225 NTU with a result of 270 NTU on November 22, 2020.
- b. In December 2020, USIBWC reported the following 17 violations of effluent limitations contained in the 2014 Permit for Discharge Point 001:
- Flow exceeded the AMEL of 25 MGD with a result of 28.15 MGD at Discharge Point 001.
  - CBOD<sub>5</sub> exceeded the AMEL of 25 mg/L with a result of 34 mg/L.
  - CBOD<sub>5</sub> exceeded the AMEL of 5,213 lbs/day with a result of 7,864 lbs/day.
  - CBOD<sub>5</sub> exceeded the AWEL of 40 mg/L with a result of 48.71 mg/L for the week of November 29 through December 5, 2020.
  - CBOD<sub>5</sub> exceeded the AWEL of 8,340 lbs/day with a result of 11,746 lbs/day for the week of November 29 through December 5, 2020.
  - CBOD<sub>5</sub> exceeded the AWEL of 8,340 lbs/day with a result of 8,943 lbs/day for the week of December 6 through December 12, 2020.
  - CBOD<sub>5</sub> did not achieve the required average monthly percent removal of no less than 85 percent with a result of 84.6 percent removal.
  - TSS exceeded the AMEL of 30 mg/L with a result of 67 mg/L.
  - TSS exceeded the AMEL of 6,255 lbs/day with a result of 15,719 lbs/day.
  - TSS exceeded the AWEL of 45 mg/L with a result of 106 mg/L for the week of November 29 through December 5, 2020.
  - TSS exceeded the AWEL of 45 mg/L with a result of 71 mg/L for the week of December 6 through December 12, 2020.

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- TSS exceeded the AWEL of 45 mg/L with a result of 59 mg/L for the week of December 20 through December 26, 2020.
  - TSS exceeded the AWEL of 9,383 lbs/day with a result of 25,582 lbs/day for the week of November 29 through December 5, 2020.
  - TSS exceeded the AWEL of 9,383 lbs/day with a result of 16,500 lbs/day for the week of December 6 through December 12, 2020.
  - TSS exceeded the AWEL of 9,383 lbs/day with a result of 10,074 lbs/day for the week of December 13 through December 19, 2020.
  - TSS exceeded the AWEL of 9,383 lbs/day with a result of 13,559 lbs/day for the week of December 20 through December 26, 2020.
  - TSS did not achieve the required average monthly percent removal of no less than 85 percent with a result of 76.6 percent removal.
- c. In January 2021, USIBWC reported the following nine violations of effluent limitations contained in the 2014 Permit for Discharge Point 001:
- CBOD<sub>5</sub> exceeded the AWEL of 40 mg/L with a result of 64.27 mg/L for the week of January 24 through January 30, 2021.
  - CBOD<sub>5</sub> exceeded the AWEL of 8,340 lbs/day with a result of 13,274 lbs/day for the week of January 24 through January 30, 2021.
  - TSS exceeded the AMEL of 30 mg/L with a result of 46.4 mg/L.
  - TSS exceeded the AMEL of 6,255 lbs/day with a result of 9,175 lbs/day.
  - TSS exceeded the AWEL of 45 mg/L with a result of 148.8 mg/L for the week of January 24 through January 30, 2021.
  - TSS exceeded the AWEL of 9,383 lbs/day with a result of 29,353 lbs/day for the week of January 24 through January 30, 2021.
  - Settleable Solids exceeded the IMEL of 3.0 mL/L with a result of 15.5 mL/L on January 25, 2021.
  - Settleable Solids exceeded the IMEL of 3.0 mL/L with a result of 38 mL/L on January 29, 2021.
  - Turbidity exceeded the IMEL of 225 NTU with a result of 400 NTU on January 30, 2021.

### **Reporting Violations**

8. Sections VI.C.2.d.iii. and VI.C.2.d.iv of the 2014 Permit required USIBWC to submit a preliminary report within three business days of becoming aware of certain spill and transboundary flow events, including Type A transboundary flows (i.e., dry weather transboundary flows at the canyon collector systems), and submit a

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certified report for certain spill and flow events within 15 calendar days of the spill or flow end date, and requested this information for dry weather transboundary flows at other locations.

Under the 2014 Permit, USIBWC failed to timely submit 11 preliminary reports and 11 certified reports for Type A transboundary flows occurring between September 2020 and December 2020.<sup>2</sup>

The following canyon collector transboundary flows reports were submitted untimely in violation of the 2014 Permit:

- 33,900-gallon transboundary flow at Stewart's Drain on September 5, 2020.
- 2,500-gallon transboundary flow at Stewart's Drain on November 10, 2020.
- 141,750-gallon transboundary flow at Stewart's Drain on November 16, 2020.
- 25,000-gallon transboundary flow at Stewart's Drain on November 23, 2020.
- 314,000-gallon transboundary flow at Stewart's Drain on November 26, 2020.
- 900-gallon transboundary flow at Stewart's Drain on November 28, 2020.
- 539-gallon transboundary flow at Stewart's Drain on December 15, 2020.
- 43,354-gallon transboundary flow at Stewart's Drain on December 19, 2020.
- 600-gallon transboundary flow at Stewart's Drain from December 20 to December 21, 2020.
- 33,000-gallon transboundary flow at Stewart's Drain from December 21 to December 22, 2020.
- 325,380-gallon transboundary flow at Stewart's Drain on December 26, 2020.

Sections 6.3.2.4.3 and 6.3.2.4.4 of the 2021 Permit similarly requires USIBWC to submit a preliminary report within three business days of becoming aware of a transboundary flow that reaches a surface water and submit a certified report for the transboundary flow within 15 calendar days of the transboundary flow end date.

9. Sections VIII.A.2 and VIII.B.7 of Attachment E of the 2014 Permit required USIBWC to clearly identify violations of waste discharge requirements and discuss corrective actions taken or planned to address the noncompliance in monitoring report cover letters.

Under the 2014 Permit, USIBWC failed to clearly identify violations of waste discharge requirements and discuss corrective actions taken or planned to address

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<sup>2</sup> USIBWC also failed to timely submit reports for transboundary flows occurring between December 2018 and January 2019. USIBWC provided notice to the San Diego Water Board that the federal government shutdown from December 22, 2018, to January 25, 2019, resulted in reduced staffing at USIBWC. The San Diego Water Board acknowledged the federal government shutdown may have caused delays in transboundary flow reporting in a letter to Mr. Carlos Pena, USIBWC on March 1, 2019.

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the noncompliance in monitoring report cover letters at least twice between February 2020 and January 2021.

On February 7, 2020, USIBWC exceeded the settleable solids IMEL of 3.0 ml/L with a result of 6.5 ml/L at Discharge Point 001. USIBWC failed to clearly identify the violation and describe the corrective actions taken or planned to address the noncompliance. Instead, USIBWC reported that there were no unusual effluent conditions observed in the month of February 2020.

USIBWC also failed to clearly identify the turbidity IMEL violation on January 30, 2021, and the settleable solids IMEL violation on January 25, 2021 (see Finding 7.c above), in the January 2021 monitoring report.

Section 7.2.7.2, of Attachment E, of the 2021 Permit, similarly requires USIBWC to clearly identify violations of waste discharge requirements and discuss corrective actions taken or planned to address the noncompliance in the monitoring report cover letter.

10. Section V.E.1 of Attachment D of the 2014 Permit required USIBWC to report any noncompliance which may endanger health or the environment within 24 hours and to provide a written report within five days of becoming aware of the circumstances (5-Day Report) that includes a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

As described in Finding 7 of this CDO, USIBWC reported 46 effluent violations from November 2020 through January 2021 that endangered the environment. To date, USIBWC has not submitted any 5-Day Reports addressing the violations and has not responded to the San Diego Water Board's requests for the 5-Day Reports.

Section 5.5.1 of Attachment D of the 2021 Permit includes similar requirements to report any noncompliance that may endanger the health or the environment within 24 hours and provide a 5-Day Report.

### **CDO Authority**

11. Water Code section 13301 authorizes the San Diego Water Board to issue a CDO when it finds that a waste discharge is taking place, or threatening to take place, in violation of San Diego Water Board requirements or discharge prohibitions prescribed by the San Diego Water Board. The San Diego Water Board may, in a CDO, direct that those persons not complying with the requirements or discharge prohibitions to a) comply forthwith, b) comply in accordance with a time schedule set by the Board, or c) in the event of a threatened violation, take appropriate remedial or preventive action.

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12. Based on recent reports from USIBWC regarding the condition of the Facilities, Finding 7 explains that discharges at Discharge Point 001 occurred in violation of the 2014 Permit requirements. As conditions at the Facility will continue until USIBWC conducts and performs necessary maintenance, repairs, and other deliverables at the Facilities, USIBWC is threatening to violate the 2021 Permit effluent limitations. "Forthwith" means as soon as is reasonably possible.
13. This CDO establishes a time schedule for USIBWC to conduct and perform necessary maintenance, repairs, and other deliverables to ensure that USIBWC will cease threatening to violate the 2021 Permit requirements.
14. The volume of influent flow into the SBIWTP cannot be controlled until USIBWC completes the actions listed in Table 2 of this CDO. If the volume of influent flows continues to exceed the design capacity of the secondary treatment processes at the Facility, discharges from the Facility threaten to continue taking place in violation of the 2021 Permit effluent limitations or any reasonable interim effluent limits. Thus, this CDO requires USIBWC to comply with numeric effluent limitations in the 2021 Permit for flow, settleable solids, TSS, turbidity, and CBOD<sub>5</sub> forthwith through timely completion of the actions listed in Table 2 of this CDO.
15. The time schedule in Table 2 is as short as possible, based on reasonably expected times needed to select contractors, and for new or modified control measures to be designed, installed, and put into operation. The San Diego Water Board may modify the tasks and time schedule for completing the tasks if it receives new information.
16. Finding 8 explains that USIBWC failed to timely submit dry weather canyon collector transboundary flow reports in violation of the 2014 Permit. Pursuant to the 2021 Permit, USIBWC is required to provide similar reports for all types of transboundary flows. Based on USIBWC's pattern of failing to timely submit transboundary flow reports, USIBWC threatens to violate the 2021 Permit requirements. This CDO requires USIBWC to comply with the transboundary flow reporting requirements in the 2021 Permit forthwith.
17. Finding 9 explains that USIBWC failed to clearly identify violations of waste discharge requirements and discuss corrective actions taken or planned to address the noncompliance in violation of the 2014 permit. Pursuant to the 2021 Permit, USIBWC is required to provide similar notifications of noncompliance. Based on USIBWC's pattern of failing to report all violations of waste discharge requirements and discussing the corrective actions taken or planned to address the noncompliance, USIBWC threatens to violate the 2021 Permit. This CDO requires USIBWC to comply with the violation reporting requirements in the 2021 Permit forthwith.
18. Finding 10 explains that USIBWC has failed to submit to the San Diego Water Board 5-Day Reports addressing the 46 effluent limitation violations that threaten the environment in violation of the 2014 Permit. Pursuant to the 2021 permit,

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USIBWC is required to submit the same 5-Day Report for any violation that threatens the environment. Based on USIBWC's pattern of failing to submit the 5-Day Report after multiple requests by the San Diego Water Board, USIBWC threatens to violate the 2021 Permit. This CDO requires USIBWC to comply with the requirement to submit a 5-Day Report in the 2021 Permit ~~forthwith~~.

19. Water Code section 13383, subdivision (a), authorizes the San Diego Water Board to "establish monitoring, inspection, entry, reporting, and recordkeeping requirements . . . for any person who discharges, or proposes to discharge, to navigable waters . . ." The San Diego Water Board "may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required." (Water Code, § 13383, subd. (b); see also 33 U.S.C. § 1318(a); 40 C.F.R. § 122.41(h).) This CDO requires USIBWC to submit a Compliance Assurance Report. The Compliance Assurance Report will assist USIBWC and the San Diego Water Board in identifying the actions needed for the Facility to attain consistent compliance with the effluent limitations in the 2021 Permit in a timely manner, and to protect water quality and beneficial uses in the receiving water. The San Diego Water Board may amend Table 2 of this CDO based on the information in the Compliance Assurance Report. Water Code section 13383 does not require the San Diego Water Board to consider costs of compliance. However, the San Diego Water Board strives to ensure that costs of compliance are reasonable and warranted. The San Diego Water Board estimates the cost of providing the Compliance Assurance Report will range from \$1,200 and \$2,000.<sup>3</sup> USIBWC may also rely on existing reports to develop the Compliance Assurance Report, which may reduce costs. The burden, including cost, of the Compliance Assurance Report is reasonable and warranted based on the need to ensure compliance with the 2021 Permit effluent limits, and to protect water quality and beneficial uses in the receiving water.
20. As an enforcement action, this CDO is exempt from the provisions of the California Environmental Quality Act (Public Resources Code § 21000 et seq.) in accordance with Title 14 of the California Code of Regulations, section 15321.
21. The San Diego Water Board notified USIBWC and interested persons of its intent to consider adoption of this CDO and provided an opportunity to appear and provide comments at a public hearing. The San Diego Water Board, at a public hearing, heard and considered all comments.

**IT IS HEREBY ORDERED**, in accordance with Water Code sections 13301 and 13383, that USIBWC shall cease and desist from discharging and threatening to discharge wastes in violation of the 2021 Permit by complying with the following provisions:

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<sup>3</sup> This estimate is based on the assumption that the Compliance Assurance Report will take approximately 20 hours to complete by a professional engineer at an estimated cost of \$60 to \$100 per hour.

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- USIBWC shall complete the actions listed in Table 2 of this CDO in accordance with the time schedule provided therein to consistently comply with all effluent limitations contained in the 2021 Permit, and to protect water quality and beneficial uses in the receiving water. USIBWC shall implement all actions set forth for each deliverable.

**Table 2: Time Schedule and Prescribed Actions**

Task	Deadline
Submit a Compliance Assurance Report that identifies all shortcomings, inadequacies, and maintenance issues with regard to control measures that need to be addressed to attain consistent compliance with the effluent limitations contained in the 2021 Permit. The report shall also include a schedule for retaining appropriate contractors and designing, installing, and putting into operation the new or modified control measures and estimated project costs.	June 30, 2021
<u>Submit a revised Compliance Assurance Report. The Compliance Assurance Report shall be continuously revised to include information on scheduling and project costs as it is determined, and any additional Facility deficiencies not already included in the Compliance Assurance Report. The revised Compliance Assurance Report shall be submitted quarterly until this CDO is terminated.</u>	<u>Once per quarter on January 1, April 1, July 1, and October 1 of each year until the termination of this CDO</u>
Complete supervisory control and data acquisition (SCADA) upgrades	December 31, 2021
Replace two influent pumps	October 1, 2021
<u>Complete design for Junction Box 1 repairs</u>	<u>January 31, 2022</u>
Complete <u>r</u> Repairs of Junction box 1 <ul style="list-style-type: none"> <li>i. Repair 72-inch Sluice Gate</li> <li>ii. Repair 96-inch Sluice Gate</li> </ul>	<u>Comply forthwith January 3, 2022</u>
Replace the influent meter <ul style="list-style-type: none"> <li>i. Replace the temporarily repaired influent pipe</li> <li>ii. Replace the two valves on the replaced influent pipe</li> </ul>	<u>February 13, 2023 January 3, 2022</u>
Replace <u>b</u> Belt <u>f</u> Filter <u>p</u> Press	January 3, 2022
<u>Replace diffusers in aeration tanks</u>	<u>Comply forthwith</u>

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Task	Deadline
Other needed/planned repairs <u>including, but not limited to, upgrading the secondary treatment process aeration blower, refurbishing bar screens 1, 2, and 3, replacing the unstabilized sludge storage tank (USST) valves and piping, repairing the secondary treatment process main breaker and ground fault, and replacing the conduit and wiring in the solids processing building.</u>	<del>To be determined as described in the Compliance Assurance Report</del> <u>Comply forthwith</u>
Other needed/planned preventive maintenance <u>including, but not limited to, cleaning the USST, improving the electrical for influent pumps 1, 3, and 5, and isolating the switchgear transformer for the headworks treatment process needed for corrective and preventative maintenance on downstream equipment.</u>	<del>To be determined as described in the Compliance Assurance Report</del> <u>Comply forthwith</u>
Achieve consistent compliance with the 2021 Permit effluent limitations for flow, settleable solids, TSS, turbidity, and CBOD <sub>5</sub> as described in Table 1 of this CDO	January 3, 2022

2. USIBWC shall comply with the 2021 Permit effluent limitations, except for the effluent limitations for flow, settleable solids, TSS, turbidity, and CBOD<sub>5</sub> ~~forthwith~~.<sup>4</sup>
3. USIBWC shall comply with the transboundary flow reporting requirements in the 2021 Permit ~~forthwith~~.
4. USIBWC shall comply with the violation reporting requirements in the 2021 Permit ~~forthwith~~.
5. USIBW shall comply with the 5-Day Report requirements in the 2021 Permit ~~forthwith~~.

**Consequences of Non-Compliance**

6. USIBWC shall submit a written statement within 10 days after each compliance date in Table 2 of the CDO documenting compliance or noncompliance with the specified task. If USIBWC is delayed, interrupted, or prevented from meeting the provisions and time schedule of this CDO due to a force majeure or some other reason out of USIBWC's control, USIBWC shall notify the Executive Officer in writing within ten days of the date USIBWC first knows of the force majeure or other

<sup>4</sup> Table 2 establishes the deadline for USIBWC to achieve consistent compliance with the effluent limitations for flow, settleable solids, TSS, turbidity, and CBOD<sub>5</sub>.

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reason.<sup>5</sup> USIBWC shall demonstrate that timely compliance with the CDO or any affected deadlines will be actually and necessarily delayed, and that it has taken measures to avoid or mitigate the delay by exercising all reasonable precautions and efforts, whether before or after the occurrence of the force majeure or other reason. If the San Diego Water Board agrees that the failure to complete the action by the deadline listed in Table 2 was due to a force majeure or some other reason out of USIBWC's control, the San Diego Water Board may amend this CDO to modify the time schedule for the action.

7. If USIBWC fails to comply with the provisions of this CDO, the San Diego Water Board Executive Officer is hereby authorized to take enforcement action or to request the Attorney General to take appropriate actions against USIBWC in accordance with Water Code sections 13308, 13331, 13350, 13385, and 13386. Such actions may include injunctive and civil remedies, if appropriate, or the issuance of an Administrative Civil Liability Complaint for the San Diego Water Board's consideration.

#### **Effective Date**

8. This CDO shall become effective on May 12, 2021.

I do hereby certify the foregoing is a full, true, and correct copy of a CDO adopted by the California Regional Water Quality Control Board, San Diego Region on May 12, 2021, and amended on December 8, 2021.

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David W. Gibson, Executive Officer

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<sup>5</sup> A "force majeure" is an event that could not have been anticipated by and is beyond the control of USIBWC, including an act of God; earthquake, flood, or other natural disaster; civil disturbance or strike; fire or explosion; declared war within the United States; embargo; or other event of similar import and character. "Force majeure" does not include delays caused by funding, contractor performance, equipment delivery and quality, weather, permitting, other construction-related issues, CEQA challenges, initiative litigation, adverse legislation, or legal matters (with the exception of an injunction issued by a court of law specifically preventing construction from occurring).

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### Attachment A – Map of the South Bay International Treatment Plant and Associated Facilities

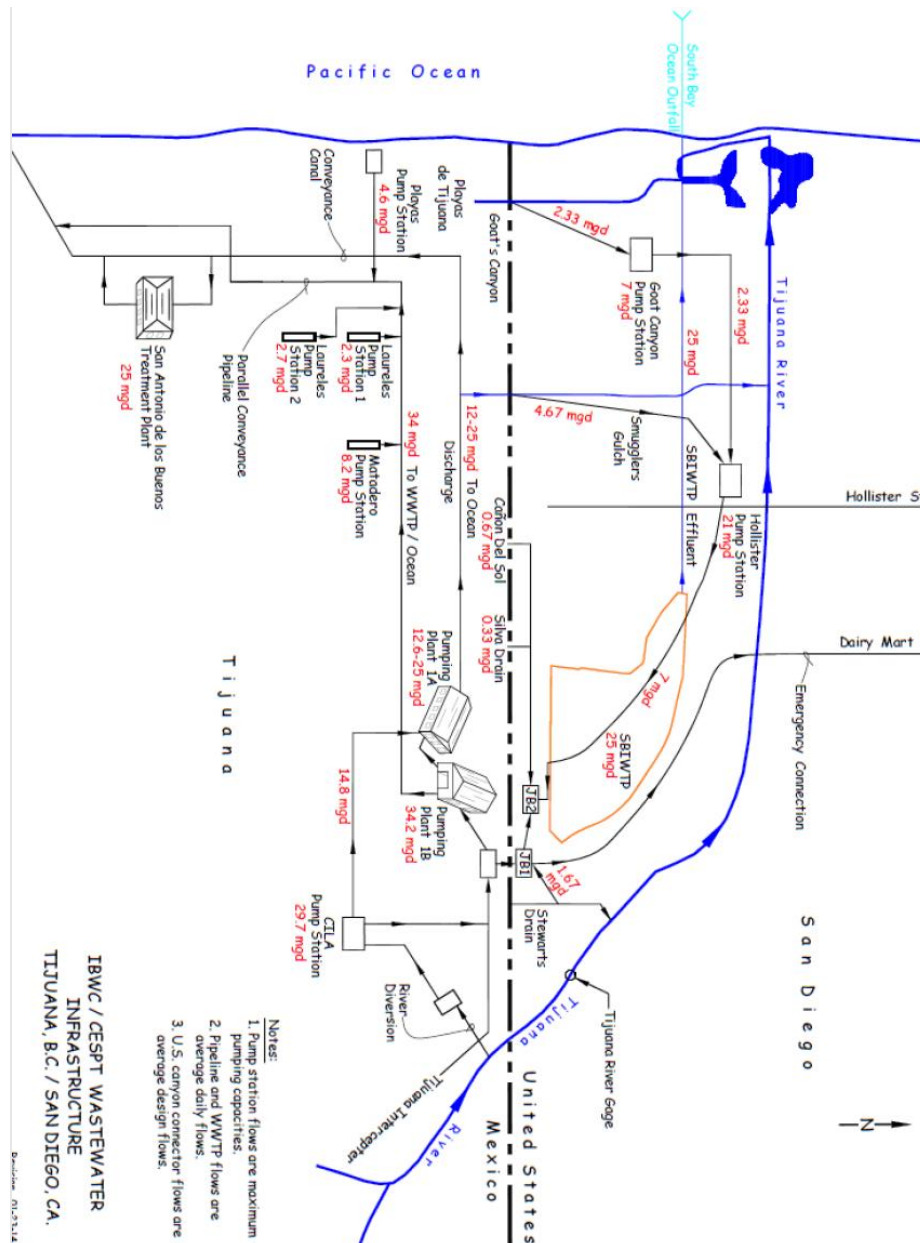


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**Attachment B – Collection System Flow Schematic**



# **Exhibit B**



## San Diego Regional Water Quality Control Board

September 5, 2023

Dr. Maria-Elena Giner, P.E.  
Commissioner  
International Boundary and Water  
Commission, United States Section  
4191 N. Mesa  
El Paso, Texas 79902  
[mariaelena.giner@ibwc.gov](mailto:mariaelena.giner@ibwc.gov)

**Sent by Email Only**  
**In reply refer to:**  
**257821:VRodriguez**

**Subject: Notice of Violation No. R9-2023-0162 to the United States International Boundary and Water Commission for Violations of Order No. R9-2021-0001, NPDES No. CA0108928, *Waste Discharge Requirements for the United States Section of the International Boundary and Water Commission, South Bay International Wastewater Treatment Plant Discharge to the Pacific Ocean through the South Bay Ocean Outfall***

Dr. Maria-Elena Giner:

As detailed in the attached Notice of Violation (NOV) No. R9-2023-0162, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) alleges that the United States International Boundary and Water Commission (USIBWC or Discharger) has violated Order No. R9-2021-0001, NPDES No. CA0108928, *Waste Discharge Requirements for the United States Section of the International Boundary and Water Commission, South Bay International Wastewater Treatment Plant Discharge to the Pacific Ocean through the South Bay Ocean Outfall* (Order).

The San Diego Water Board appreciates USIBWC's transparency and open communication regarding the state of the South Bay International Wastewater Treatment Plant (SBIWTP). The San Diego Water Board acknowledges the operational challenges presented in treating wastewater from a collection system in Mexico outside the USIBWC's direct control or authority and appreciates the efforts to coordinate operations and improvements with agencies in Mexico through Minute 320 and Minute 328. During our meeting with USIBWC staff on August 16, 2023, the pathway to return to compliance with the Order and Cease and Desist Order R9-2021-0709 (CDO) was described in detail.

Tropical Cyclone Hilary (Hilary) brought significant inflow and infiltration with excessive sedimentation and debris into the SBIWTP. Throughout the storm itself and in the day following, USIBWC staff kept the San Diego Water Board informed regarding operations and impacts. The damage to the SBIWTP is extensive and serious throughout the

Dr. Maria-Elena Giner  
USIBWC

-2-

September 5, 2023

treatment plant. The San Diego Water appreciates the detailed plans USIBWC shared on August 31, 2023, to make emergency repairs and restore operations.

Nonetheless, it is imperative that USIBWC take note of the secondary exceedances pre- and post-Hilary and overdue reports and continue to make every possible effort to restore the SBIWTP to operational status and compliance with the Order and CDO in the shortest possible time. It should be noted that at other, non-federal facilities, the 86 Chronic Violations and 125 Serious Violations reported would constitute 211 Minimum Mandatory Penalty Violations and would result in assessment of Administrative Civil Liabilities of \$633,000. Implementation of the plan shared on August 16, 2023, to restore compliance with the Order and CDO in the shortest possible time is a critical environmental responsibility.

Regarding the overdue submission of the Tijuana River Valley Monitoring Program Work Plan (Att. E, section 4.2.4 (pp.E-62,E-63), it has been indicated that this is planned as a binational project being developed as a Minute 320 project. In the interest of the most useful and informative monitoring and assessment of water quality in the Tijuana River watershed, please work with the Minute 320 Secretariats and Commissioner Resendez of the Comisión Internacional de Limites y Aguas (CILA, the Mexican Section of the IBWC) to expedite completion of the draft plan and a schedule for implementation to achieve compliance with the Order at the soonest date.

For questions or concerns regarding this NOV, please contact Vicente Rodriguez by phone at 619-521-3966 or by email at [Vicente.Rodriguez@waterboards.ca.gov](mailto:Vicente.Rodriguez@waterboards.ca.gov). In the subject line of any written response, please include the following: 257821:VRodriguez.

Respectfully,

David W. Gibson  
Executive Officer

Attachment: Notice of Violation (NOV) No. R9-2023-0162

Copies to:

Laurie Walsh, San Diego Water Board, [Laurie.Walsh@waterboards.ca.gov](mailto:Laurie.Walsh@waterboards.ca.gov)

Brandi Outwin-Beals, San Diego Water Board, [Brandi.Outwin-Beals@waterboards.ca.gov](mailto:Brandi.Outwin-Beals@waterboards.ca.gov)

Morgan Rogers, Commissioner, International Boundary and Water Commission, U.S. Section, [morgan.roger@ibwc.gov](mailto:morgan.roger@ibwc.gov)

Dr. Maria-Elena Giner  
USIBWC

September 5, 2023

Tech Staff Info & Use	
Technical Information	Number
Order No.	R9-2021-0001
NPDES No.	CA0108928
CW Place ID (South Bay International WTP)	CW-257821
CW Party/Organization ID (IBWC-US & Mexico Section)	21523
CW Party/Person ID (Dr. Maria-Elena Giner)	634777
CW Regulatory Measure (Order No. R9-2021-0001)	442331
CW Regulatory Measure (NOV R9-2023-0162)	453821
WDID	9 000000732

Dr. Maria-Elena Giner  
USIBWC

September 5, 2023

Tech Staff Info & Use (continued)	
Violation IDs	1095194, 1095195, 1095939, 1095941, 1095942, 1095943, 1098935,
	1098937, 1100628, 1103622, 1103623, 1103624, 1103625, 1103626,
	1103628, 1103629, 1103630, 1103631, 1103632, 1103633, 1103634,
	1103635, 1103636, 1103637, 1103638, 1103943, 1103944, 1103945,
	1103947, 1103948, 1103949, 1103950, 1103951, 1103952, 1103953,
	1103954, 1103955, 1103956, 1103957, 1103958, 1104355, 1104356,
	1104357, 1104358, 1104359, 1104360, 1104361, 1104362, 1104363,
	1104364, 1104365, 1104366, 1104368, 1104369, 1105851, 1105852,
	1105853, 1105854, 1105855, 1105856, 1105857, 1105858, 1105860,
	1105861, 1105862, 1105863, 1105864, 1105865, 1106693, 1108811,
	1108812, 1108814, 1108815, 1108816, 1108817, 1108819, 1108820,
	1108821, 1108822, 1109623, 1109624, 1109625, 1109626, 1109627,
	1109628, 1109630, 1109631, 1109632, 1109633, 1110722, 1110723,
	1110724, 1110725, 1110726, 1110727, 1110729, 1110731, 1110732,
	1110733, 1110734, 1110735, 1110736, 1111588, 1111589, 1111590,
	1111591, 1111592, 1111593, 1111595, 1111597, 1111598, 1111599,
	1111600, 1111601, 1112867, 1112868, 1112869, 1112870, 1112871,
	1112872, 1112873, 1112874, 1112875, 1112877, 1112878, 1112879,
	1112881, 1112882, 1112883, 1113382, 1114378, 1114380, 1114381,
	1114382, 1114383, 1114384, 1114385, 1114386, 1114387, 1114388,
	1114390, 1114391, 1114392, 1114393, 1114394, 1114947, 1114948,
	1114949, 1114950, 1114951, 1114953, 1114954, 1114955, 1114956,
	1114957, 1114959, 1114960, 1114961, 1114962, 1114963, 1114964,
	1115867, 1115868, 1115869, 1115870, 1115871, 1115872, 1115873,
	1115874, 1115875, 1115876, 1115877, 1115879, 1115880, 1117391,
	1117392, 1117393, 1117394, 1117395, 1117396, 1117397, 1117398,
	1117399, 1117400, 1117401, 1117402, 1117403, 1118212, 1118213,
	1118215, 1118216, 1118217, 1118218, 1118219, 1118220, 1118221,
	1118222, 1118223, 1118224, 1118225, 1118890, 1118892, 1118893,
	1118894, 1118895, 1118896, 1118897, 1118898, 1118899, 1118900,
	1118901, 1118902, 1118903, 1118904

**Notice of Violation No. R9-2023-0162**

**to the United States International Boundary and Water Commission for Violations of Order No. R9-2021-0001, NPDES No. CA0108928, *Waste Discharge Requirements for the United States Section of the International Boundary and Water Commission, South Bay International Wastewater Treatment Plant, Discharge to the Pacific Ocean through the South Bay Ocean Outfall***

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) hereby issues Notice of Violation (NOV) No. R9-2023-0162 to the United States International Boundary and Water Commission (USIBWC or Discharger) for violations of Order No. R9-2021-0001, NPDES No. CA0108928, *Waste Discharge Requirements for the United States Section of the International Boundary and Water Commission, South Bay International Wastewater Treatment Plant, Discharge to the Pacific Ocean through the South Bay Ocean Outfall* (Order). These violations are a result of the Discharger's failure to comply with the Order.

**1. Background**

The Discharger is required to maintain and operate the South Bay International Wastewater Treatment Plant (SBIWTP) in compliance with requirements contained in the Order. Consistent with the Order, the Discharger is required to submit self-monitoring reports and other technical reports. Between September 30, 2021, and June 30, 2023, the Discharger self-reported 208 violations, and the San Diego Water Board identified six missing or late reports. The Discharger reported that most of the violations were caused by the inflow of sewage from Tijuana, Mexico exceeding the design flow capacity of the SBIWTP.

**2. Summary of Alleged Violations the Order**

The Discharger is alleged to have violated the following sections of the Order:

**2.1. Section 4 of the Order:** The Discharger is required to maintain compliance with effluent limitations in section 4.1.1.1.

**Observation:** The Discharger self-reported 208<sup>1</sup> exceedances of the effluent limitations in the California Integrated Water Quality System (CIWQS) database.

**2.2. Section 6.3.2.1 of the Order:** The Discharger was required to submit an Updated Flow Prevention/Response Plan Section 6.3.2.1.2 by December 28, 2021.

**Observation:** This Discharger submitted the Updated Flow Prevention/Response Plan Section 6.3.2.1.2 on December 15, 2022.

**2.3. Section 6.3.2.5.1 of the Order:** The Discharger was required to submit an Asset Management Plan by December 28, 2021.

**Observation:** This Discharger submitted the Asset Management Plan on December 5, 2022.

**2.4. Section 6.3.3.2.5 of the Order:** The Discharger was required to submit a Pollutant Minimization Program Annual Status Report by February 1, 2022.

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<sup>1</sup> Exhibit 1, List of Violations

Notice of Violation No. R9-2023-0162  
USIBWC

-2-

September 5, 2023

**Observation:** This Discharger submitted the Pollutant Minimization Program Annual Status Report on December 15, 2022.

- 2.5. Section 6.3.3.2.5 of the Order:** The Discharger was required to submit a Pollutant Minimization Program Annual Status Report by February 1, 2023.

**Observation:** This Discharger submitted the Pollutant Minimization Program Annual Status Report on February 21, 2023.

- 2.6. Attachment D, Section 1.1 of the Order:** The Discharger is required to comply with all terms, requirements, and conditions of the Order. Any noncompliance constitutes a violation of the Clean Water Act (CWA) and the California Water Code (Water Code) and is grounds for enforcement action including permit termination, revocation and reissuance, or modification; denial of a permit renewal application; or a combination thereof.

**Observation:** The Discharger had 214 violations of the Order.

- 2.7. Attachment E, Section 4.2.4 of the Order:** The Discharger was required to submit a Tijuana River Valley Monitoring Plan (TRVMP) Work Plan by September 29, 2021.

**Observation:** This Discharger has not submitted the TRVMP Work Plan.

- 2.8. Attachment E, Section 3.3.6 of the Order:** The Discharger was required to submit an Initial Investigation TRE Work Plan by September 29, 2021.

**Observation:** This Discharger submitted the Initial Investigation TRE Work Plan on March 8, 2022.

### **3. Potential Enforcement Actions**

The alleged violations may potentially subject the Discharger to additional enforcement by the San Diego Water Board or the State Water Resources Control Board (State Water Board). The San Diego Water Board intends and desires to continue to engage proactively and constructively with the Discharger through judicious and progressive enforcement efforts.

**Notice of Violation R9-2023-0162****Exhibit 1, List of Violations**

No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
1	1095939	09/05/21 through 09/11/21	OEV	Settleable Solids concentration exceeded the weekly average effluent limitation of 1.5 milliliters per liter (ml/L) with a result of 1.8 ml/L.
2	1095943	9/8/2021	OEV	Settleable Solids concentration exceeded the instantaneous maximum effluent limitation of 3 ml/L with a result of 3.4 ml/L.
3	1095941	9/9/2021	OEV	Settleable Solids concentration exceeded the instantaneous maximum effluent limitation of 3 ml/L with a result of 4 ml/L.
4	1095942	9/10/2021	OEV	Settleable Solids concentration exceeded the instantaneous maximum effluent limitation of 3 ml/L with a result of 4 ml/L.
5	1095194	09/30/21 through ongoing	Late Report	Tijuana River Valley Work Plan (Doc ID:2523482), due 09/29/2021, has not been submitted.
6	1095195	09/30/21 through 03/08/22	Late Report	Initial Investigation TRE Work Plan (Doc ID:2523481), due 09/29/2021, was submitted on 3/8/2022.
7	1098935	12/29/21 through 12/15/22	Late Report	Updated Flow Prevention/Response Plan Section 6.3.2.1.2 (Doc ID:2528203), due 12/28/2021, was submitted on 12/15/2022.
8	1098937	12/29/21 through 12/05/22	Late Report	Asset Management Plan (Doc ID:2528204), due 12/28/2021, was submitted on 12/5/2022.
9	1103943	02/01/22 through 02/28/22	CAT1	Carbonaceous Biochemical Oxygen Demand 5-day @ 20°C (CBOD) concentration exceeded the monthly average effluent limitation of 25 milligram per liter (mg/L) with a result of 55 mg/L.

**Notice of Violation R9-2023-0162****Exhibit 1, List of Violations**

No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
10	1103945	02/01/22 through 02/28/22	CAT1	Total Suspended Solids (TSS) percent removal did not meet the monthly average minimum requirement of 85% with a result of 63.59%.
11	1103951	02/01/22 through 02/28/22	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 100 mg/L.
12	1103952	02/01/22 through 02/28/22	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 pounds per day (lb/day) with a result of 14,151 lb/day.
13	1103954	02/01/22 through 02/28/22	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 26,591 lb/day.
14	1103955	02/01/22 through 02/28/22	CAT1	CBOD percent removal did not meet the monthly average minimum requirement of 85 % with a result of 76.21 %
15	1103958	02/01/22 through 02/28/22	OEV	Settleable Solids concentration exceeded the monthly average effluent limitation of 1 ml/L with a result of 2.68 ml/L.
16	1100628	02/02/22 through 12/15/22	Late Report	Pollutant Minimization Program Annual Status Report (Doc ID:2528201), due 02/01/2022, was submitted on 12/15/2022.
17	1103948	02/13/22 through 02/19/22	OEV	Settleable Solids concentration exceeded the weekly average effluent limitation of 1.5 ml/L with a result of 5.8 ml/L.
18	1103956	2/16/2022	OEV	Settleable Solids concentration exceeded the instantaneous maximum effluent limitation of 3 ml/L with a result of 40 ml/L.
19	1103944	02/20/22 through 02/26/22	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 142.09 mg/L.

**Notice of Violation R9-2023-0162****Exhibit 1, List of Violations**

No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
20	1103947	02/20/22 through 02/26/22	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 264 mg/L.
21	1103949	02/20/22 through 02/26/22	OEV	Turbidity concentration exceeded the weekly average effluent limitation of 100 Nephelometric Turbidity Units (NTU) with a result of 169.6 NTU.
22	1103950	02/20/22 through 02/26/22	CAT1	TSS mass emission rate exceeded the weekly average effluent limitation of 9,383 lb/day with a result of 79,454 lb/day.
23	1103953	02/20/22 through 02/26/22	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 41,591 lb/day.
24	1103957	2/23/2022	OEV	Turbidity cloudiness exceeded the instantaneous maximum effluent limitation of 225 NTU with a result of 800 NTU.
25	1104360	02/27/22 through 03/05/22	OEV	Turbidity cloudiness exceeded the weekly average effluent limitation of 100 NTU with a result of 146.33 NTU.
26	1103622	03/01/22 through 03/31/22	OEV	Settleable Solids concentration exceeded the monthly average effluent limitation of 1 ml/L with a result of 1.78 ml/L.
27	1103624	03/01/22 through 03/31/22	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 57.1%.
28	1103629	03/01/22 through 03/31/22	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 143 mg/L.
29	1103631	03/01/22 through 03/31/22	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 33,887 lb/day.

**Notice of Violation R9-2023-0162****Exhibit 1, List of Violations**

<b>No.</b>	<b>Violation ID</b>	<b>Occurrence Date(s)</b>	<b>Violation Type</b>	<b>Violation Description</b>
30	1103636	03/01/22 through 03/31/22	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 48 mg/L.
31	1103637	03/01/22 through 03/31/22	CAT1	CBOD percent removal did not meet the monthly average minimum requirement of 85% with a result of 82.06%.
32	1103638	03/01/22 through 03/31/22	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 11,102 lb/day.
33	1103625	03/06/22 through 03/12/22	OEV	Settleable Solids concentration exceeded the weekly average effluent limitation of 1.5 ml/L with a result of 1.94 ml/L.
34	1103630	03/13/22 through 03/19/22	CAT1	TSS mass emission rate exceeded the weekly average effluent limitation of 9,383 lb/day with a result of 40,701 lb/day.
35	1103632	03/13/22 through 03/19/22	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 194 mg/L.
36	1103634	03/13/22 through 03/19/22	OEV	Turbidity cloudiness exceeded the weekly average effluent limitation of 100 NTU with a result of 124.19 NTU.
37	1103623	03/27/22 through 04/02/22	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 13,722 lb/day.
38	1103633	03/27/22 through 04/02/22	OEV	Turbidity cloudiness exceeded the weekly average effluent limitation of 75 NTU with a result of 83.4 NTU.
39	1103635	03/27/22 through 04/02/22	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 65.29 mg/L.

**Notice of Violation R9-2023-0162**  
**Exhibit 1, List of Violations**

No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
40	1104358	03/27/22 through 04/02/22	OEV	Settleable Solids concentration exceeded the weekly average effluent limitation of 1.5 ml/L with a result of 5.51 ml/L.
41	1103626	3/29/2022	OEV	Settleable Solids concentration exceeded the instantaneous maximum effluent limitation of 3 ml/L with a result of 38 ml/L.
42	1103628	3/29/2022	OEV	Turbidity cloudiness exceeded the instantaneous maximum effluent limitation of 225 NTU with a result of 797 NTU.
43	1104355	04/01/22 through 04/30/22	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 62.39%.
44	1104356	04/01/22 through 04/30/22	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 128 mg/L.
45	1104357	04/01/22 through 04/30/22	CAT1	CBOD percent removal did not meet the monthly average minimum requirement of 85% with a result of 77.91%.
46	1104359	04/01/22 through 04/30/22	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 25,897 lb/day.
47	1104364	04/01/22 through 04/30/22	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 61 mg/L.
48	1104366	04/01/22 through 04/30/22	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 12,351 lb/day.
49	1104363	4/16/2022	OEV	Settleable Solids concentration exceeded the instantaneous maximum effluent limitation of 3 ml/L with a result of 5 ml/L.

**Notice of Violation R9-2023-0162****Exhibit 1, List of Violations**

<b>No.</b>	<b>Violation ID</b>	<b>Occurrence Date(s)</b>	<b>Violation Type</b>	<b>Violation Description</b>
50	1104361	04/24/22 through 04/30/22	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 267 mg/L.
51	1104362	04/24/22 through 04/30/22	CAT1	TSS mass emission rate exceeded the weekly average effluent limitation of 9,383 lb/day with a result of 65,429 lb/day.
52	1104368	04/24/22 through 04/30/22	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 135.29 mg/L.
53	1104369	04/24/22 through 04/30/22	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 27,819 lb/day.
54	1104365	4/26/2022	OEV	Turbidity cloudiness exceeded the instantaneous maximum effluent limitation of 225 NTU with a result of 227 NTU.
55	1105852	05/01/22 through 05/31/22	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 77 mg/L.
56	1105853	05/01/22 through 05/31/22	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 45 mg/L.
57	1105854	05/01/22 through 05/31/22	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 14,442 lb/day.
58	1105857	05/01/22 through 05/31/22	CAT1	CBOD percent removal did not meet the monthly average minimum requirement of 85% with a result of 82.3%.
59	1105860	05/01/22 through 05/31/22	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 8,325 lb/day.

**Notice of Violation R9-2023-0162****Exhibit 1, List of Violations**

No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
60	1105862	05/01/22 through 05/31/22	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 76.87%.
61	1105851	05/08/22 through 05/14/22	OEV	Settleable Solids concentration exceeded the weekly average effluent limitation of 1.5 ml/L with a result of 1.67 ml/L.
62	1105856	05/08/22 through 05/14/22	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 173 mg/L.
63	1105861	05/08/22 through 05/14/22	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 18,794 lb/day.
64	1105863	05/08/22 through 05/14/22	CAT1	TSS mass emission rate exceeded the weekly average effluent limitation of 9,383 lb/day with a result of 31,258 lb/day.
65	1105864	05/08/22 through 05/14/22	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 104 mg/L with a result of 40 mg/L.
66	1105865	05/08/22 through 05/14/22	OEV	Turbidity cloudiness exceeded the weekly average effluent limitation of 100 NTU with a result of 113.84 NTU.
67	1105855	5/10/2022	OEV	Turbidity cloudiness exceeded the instantaneous maximum effluent limitation of 225 NTU with a result of 286 NTU.
68	1105858	5/10/2022	OEV	Settleable Solids concentration exceeded the instantaneous maximum effluent limitation of 3 ml/L with a result of 11 ml/L.
69	1106693	06/05/22 through 06/11/22	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 45.57 mg/L.

**Notice of Violation R9-2023-0162****Exhibit 1, List of Violations**

No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
70	1108811	08/01/22 through 08/31/22	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 32 mg/L.
71	1108814	08/01/22 through 08/31/22	OEV	Flow volume rate exceeded the monthly average effluent limitation of 25 MGD with a result of 31.31 MGD.
72	1108815	08/01/22 through 08/31/22	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 15,890 lb/day.
73	1108820	08/01/22 through 08/31/22	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 8,327 lb/day.
74	1108821	08/01/22 through 08/31/22	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 78.78%.
75	1108822	08/01/22 through 08/31/22	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 62 mg/L.
76	1108812	08/21/22 through 08/27/22	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 49.4 mg/L.
77	1108819	08/21/22 through 08/27/22	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 12,175 lb/day.
78	1108816	08/28/22 through 09/03/22	CAT1	TSS concentration exceeded the monthly average effluent limitation of 45 mg/L with a result of 82 mg/L.
79	1108817	08/28/22 through 09/03/22	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 9,383 lb/day with a result of 20,267 lb/day.
80	1109623	09/01/22 through 09/30/22	CAT1	CBOD percent removal did not meet the monthly average minimum requirement of 85% with a result of 84.37%.

**Notice of Violation R9-2023-0162****Exhibit 1, List of Violations**

No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
81	1109624	09/01/22 through 09/30/22	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 39 mg/L.
82	1109627	09/01/22 through 09/30/22	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 72 mg/L.
83	1109628	09/01/22 through 09/30/22	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 19,365 lb/day.
84	1109631	09/01/22 through 09/30/22	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 76.7%.
85	1109633	09/01/22 through 09/30/22	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 10,372 lb/day.
86	1109625	09/25/22 through 10/01/22	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 54.46 mg/L.
87	1109626	09/25/22 through 10/01/22	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 15,122 lb/day.
88	1109630	09/25/22 through 10/01/22	CAT1	TSS mass emission rate exceeded the weekly average effluent limitation of 9,383 lb/day with a result of 27,487 lb/day.
89	1109632	09/25/22 through 10/01/22	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 99 mg/L.
90	1110722	10/01/22 through 10/31/22	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 46 mg/L.
91	1110724	10/01/22 through 10/31/22	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 12,355 lb/day.

**Notice of Violation R9-2023-0162****Exhibit 1, List of Violations**

<b>No.</b>	<b>Violation ID</b>	<b>Occurrence Date(s)</b>	<b>Violation Type</b>	<b>Violation Description</b>
92	1110725	10/01/22 through 10/31/22	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 70.5%.
93	1110727	10/01/22 through 10/31/22	OEV	Flow volume rate exceeded the monthly average effluent limitation of 25 MGD with a result of 32.17 MGD.
94	1110731	10/01/22 through 10/31/22	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 88 mg/L.
95	1110735	10/01/22 through 10/31/22	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 23,519 lb/day.
96	1110736	10/01/22 through 10/31/22	CAT1	CBOD percent removal did not meet the monthly average minimum requirement of 85% with a result of 80.46%.
97	1110723	10/30/22 through 11/05/22	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 81.81 mg/L.
98	1110729	10/30/22 through 11/05/22	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 151 mg/L.
99	1110732	10/30/22 through 11/05/22	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 21,821 lb/day.
100	1110733	10/30/22 through 11/05/22	CAT1	TSS mass emission rate exceeded the weekly average effluent limitation of 9,383 lb/day with a result of 40,368 lb/day.
101	1110734	10/30/22 through 11/05/22	OEV	Turbidity cloudiness exceeded the weekly average effluent limitation of 100 NTU with a result of 104.51 NTU.
102	1111591	10/30/22 through 11/05/22	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 159 mg/L.

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No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
103	1111593	10/30/22 through 11/05/22	CAT1	TSS mass emission rate exceeded the weekly average effluent limitation of 9,383 lb/day with a result of 41,982 lb/day.
104	1111595	10/30/22 through 11/05/22	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 88.43 mg/L.
105	1110726	10/31/2022	OEV	Turbidity cloudiness exceeded the instantaneous maximum effluent limitation of 225 NTU with a result of 389 NTU.
106	1111588	11/01/22 through 11/30/22	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 130 mg/L.
107	1111589	11/01/22 through 11/30/22	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 36,536 lb/day.
108	1111590	11/01/22 through 11/30/22	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 19,647 lb/day.
109	1111592	11/01/22 through 11/30/22	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 70 mg/L.
110	1111597	11/01/22 through 11/30/22	CAT1	CBOD percent removal did not meet the monthly average minimum requirement of 85% with a result of 72.08%.
111	1111598	11/01/22 through 11/30/22	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 61.1%.
112	1111600	11/06/22 through 11/12/22	OEV	Settleable Solids concentration exceeded the weekly average effluent limitation of 1.5 ml/L with a result of 2.51 ml/L.
113	1111601	11/06/22 through 11/12/22	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 23,468 lb/day.

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<b>No.</b>	<b>Violation ID</b>	<b>Occurrence Date(s)</b>	<b>Violation Type</b>	<b>Violation Description</b>
114	1111599	11/9/2022	OEV	Settleable Solids concentration exceeded the instantaneous maximum effluent limitation of 3 mg/L with a result of 17 mg/L.
115	1112868	12/01/22 through 12/31/22	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 67 mg/L.
116	1112869	12/01/22 through 12/31/22	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 17,511 lb/day.
117	1112871	12/01/22 through 12/31/22	OEV	Flow volume rate exceeded the monthly average effluent limitation of 25 MGD with a result of 28.64 MGD.
118	1112877	12/01/22 through 12/31/22	CAT1	CBOD percent removal did not meet the monthly average minimum requirement of 85% with a result of 77.07%.
119	1112878	12/01/22 through 12/31/22	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 68.06%.
120	1112879	12/01/22 through 12/31/22	OEV	Settleable Solids concentration exceeded the monthly average effluent limitation of 1 ml/L with a result of 1.39 ml/L.
121	1112882	12/01/22 through 12/31/22	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 117 mg/L.
122	1112883	12/01/22 through 12/31/22	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 31,147 lb/day.
123	1112867	12/25/22 through 12/31/22	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 31,849 lb/day.
124	1112870	12/25/22 through 12/31/22	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 121.91 mg/L.

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No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
125	1112872	12/25/22 through 12/31/22	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 184 mg/L.
126	1112873	12/25/22 through 12/31/22	CAT1	TSS mass emission rate exceeded the weekly average effluent limitation of 9,383 lb/day with a result of 49,021 lb/day.
127	1112875	12/25/22 through 12/31/22	OEV	Settleable Solids concentration exceeded the weekly average effluent limitation of 1.5 ml/L with a result of 5.8 ml/L.
128	1112874	12/28/2022	OEV	Turbidity cloudiness exceeded the instantaneous maximum effluent limitation of 225 NTU with a result of 283 NTU.
129	1112881	12/28/2022	OEV	Settleable Solids concentration exceeded the instantaneous maximum effluent limitation of 3 ml/L with a result of 40 ml/L.
130	1114378	01/01/23 through 01/31/23	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 37 mg/L.
131	1114380	01/01/23 through 01/31/23	OEV	Flow volume rate exceeded the monthly average effluent limitation of 25 MGD with a result of 27.46 MGD.
132	1114381	01/01/23 through 01/31/23	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 75 mg/L.
133	1114382	01/01/23 through 01/31/23	CAT1	CBOD percent removal did not meet the monthly average minimum requirement of 85% with a result of 86.86%.
134	1114386	01/01/23 through 01/31/23	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 78.31%.
135	1114387	01/01/23 through 01/31/23	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 21,856 lb/day.

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No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
136	1114388	01/01/23 through 01/31/23	OEV	Settleable Solids concentration exceeded the monthly average effluent limitation of 1 ml/L with a result of 1.6 ml/L.
137	1114392	01/01/23 through 01/31/23	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 10,748 lb/day.
138	1114383	01/15/23 through 01/21/23	CAT1	TSS concentration exceeded the weekly average effluent limitation of 9,383 mg/L with a result of 39,877 mg/L.
139	1114384	01/15/23 through 01/21/23	OEV	Settleable Solids concentration exceeded the weekly average effluent limitation of 1.5 ml/L with a result of 1.51 ml/L.
140	1114391	01/15/23 through 01/21/23	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 54.61 mg/L.
141	1114385	01/29/23 through 02/04/23	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 19,840 lb/day.
142	1114393	01/29/23 through 02/04/23	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 112 mg/L.
143	1114951	01/29/23 through 02/04/23	OEV	Settleable Solids concentration exceeded the weekly average effluent limitation of 1.5 ml/L with a result of 3.74 ml/L.
144	1114390	1/31/2023	OEV	Turbidity cloudiness exceeded the instantaneous maximum effluent limitation of 225 NTU with a result of 314 NTU.
145	1114394	1/31/2023	OEV	Settleable Solids concentration exceeded the instantaneous maximum effluent limitation of 3 ml/L with a result of 25 ml/L.
146	1114948	02/01/23 through 02/28/23	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 47.94%.

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<b>No.</b>	<b>Violation ID</b>	<b>Occurrence Date(s)</b>	<b>Violation Type</b>	<b>Violation Description</b>
147	1114949	02/01/23 through 02/28/23	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 39,243 lb/day.
148	1114954	02/01/23 through 02/28/23	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 146 mg/L.
149	1114959	02/01/23 through 02/28/23	OEV	Flow volume rate exceeded the monthly average effluent limitation of 25 MGD with a result of 28.83 MGD.
150	1114960	02/01/23 through 02/28/23	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 84 mg/L.
151	1114961	02/01/23 through 02/28/23	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 22,471 lb/day.
152	1114963	02/01/23 through 02/28/23	OEV	Turbidity cloudiness exceeded the monthly average effluent limitation of 75 NTU with a result of 87.99 NTU.
153	1114964	02/01/23 through 02/28/23	CAT1	CBOD percent removal did not meet the monthly average minimum requirement of 85% with a result of 63.25%.
154	1113382	02/02/23 through 02/21/23	Late Report	Pollutant Minimization Program Annual Status Report (Doc ID:2528232), due 02/01/2023, was submitted on 2/21/23.
155	1114947	02/12/23 through 02/18/23	OEV	Turbidity cloudiness exceeded the weekly average effluent limitation of 100 NTU with a result of 167.09 NTU.
156	1114950	02/12/23 through 02/18/23	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 242 mg/L.
157	1114953	02/12/23 through 02/18/23	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 123 mg/L.

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No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
158	1114955	02/12/23 through 02/18/23	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 35,298 lb/day.
159	1114962	02/12/23 through 02/18/23	CAT1	TSS mass emission rate exceeded the weekly average effluent limitation of 9,383 lb/day with a result of 70,259 lb/day.
160	1114957	2/13/2023	OEV	Turbidity cloudiness exceeded the instantaneous maximum effluent limitation of 225 NTU with a result of 620 NTU.
161	1114956	2/23/2023	OEV	Settleable Solids concentration exceeded the instantaneous maximum 3 ml/L with a result of 5 ml/L.
162	1115870	02/26/23 through 03/04/23	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 20,801 lb/day.
163	1115871	02/26/23 through 03/04/23	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 84.54 mg/L.
164	1115867	03/01/23 through 03/31/23	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 63 mg/L.
165	1115868	03/01/23 through 03/31/23	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 14,957 lb/day.
166	1115872	03/01/23 through 03/31/23	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 145 mg/L.
167	1115873	03/01/23 through 03/31/23	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 34,885 lb/day.
168	1115877	03/01/23 through 03/31/23	OEV	Settleable Solids concentration exceeded the monthly average effluent limitation of 1 ml/L with a result of 1.82 ml/L.

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<b>No.</b>	<b>Violation ID</b>	<b>Occurrence Date(s)</b>	<b>Violation Type</b>	<b>Violation Description</b>
169	1115879	03/01/23 through 03/31/23	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 44.17%.
170	1115869	03/05/23 through 03/11/23	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 174 mg/L.
171	1115876	03/05/23 through 03/11/23	CAT1	TSS mass emission rate exceeded the weekly average effluent limitation of 9,383 lb/day with a result of 47,873 lb/day.
172	1115880	3/11/2023	OEV	Turbidity cloudiness exceeded the instantaneous maximum effluent limitation of 225 NTU with a result of 279 NTU.
173	1115874	03/12/23 through 03/18/23	OEV	Settleable Solids concentration exceeded the weekly average effluent limitation of 1.5 ml/L with a result of 5.8 ml/L.
174	1115875	3/15/2023	OEV	Settleable Solids concentration exceeded the instantaneous maximum effluent limitation of 3 ml/L with a result of 40 ml/L.
175	1117403	04/01/23 through 04/30/23	OEV	Turbidity cloudiness exceeded the monthly average effluent limitation of 75 NTU with a result of 93.35 NTU.
176	1117393	04/01/23 through 04/30/23	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 198 mg/L.
177	1117395	04/01/23 through 04/30/23	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 116 mg/L.
178	1117398	04/01/23 through 04/30/23	CAT1	CBOD percent removal did not meet the monthly average minimum requirement of 85% with a result of 34.41%.
179	1117399	04/01/23 through 04/30/23	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 19.81%.

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No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
180	1117400	04/01/23 through 04/30/23	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 20,602 lb/day.
181	1117401	04/01/23 through 04/30/23	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 35,389 lb/day.
182	1117396	04/09/23 through 04/15/23	OEV	Turbidity cloudiness exceeded the weekly average effluent limitation of 100 NTU with a result of 115.43 NTU.
183	1117397	4/21/2023	OEV	Turbidity cloudiness exceeded the instantaneous maximum effluent limitation of 225 NTU with a result of 236 NTU.
184	1117391	04/23/23 through 04/29/23	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 142.29 mg/L.
185	1117392	04/23/23 through 04/29/23	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 25,628 lb/day.
186	1117394	04/23/23 through 04/29/23	CAT1	TSS mass emission rate exceeded the weekly average effluent limitation of 9,383 lb/day with a result of 41,825 lb/day.
187	1117402	04/23/23 through 04/29/23	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 232 mg/L.
188	1118212	04/30/23 through 05/06/23	OEV	Turbidity cloudiness exceeded the weekly average effluent limitation of 100 NTU with a result of 125.86 NTU.
189	1118220	04/30/23 through 05/06/23	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 188 mg/L.
190	1118221	04/30/23 through 05/06/23	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 26,431 lb/day.

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No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
191	1118222	04/30/23 through 05/06/23	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 108.86 mg/L.
192	1118225	04/30/23 through 05/06/23	CAT1	TSS mass emission rate exceeded the weekly average effluent limitation of 9,383 lb/day with a result of 42,864 lb/day.
193	1118215	05/01/23 through 05/31/23	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 130 mg/L.
194	1118216	05/01/23 through 05/31/23	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 29,778 lb/day.
195	1118217	05/01/23 through 05/31/23	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 53.36%.
196	1118218	05/01/23 through 05/31/23	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 17,513 lb/day.
197	1118219	05/01/23 through 05/31/23	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 76 mg/L.
198	1118223	05/01/23 through 05/31/23	OEV	Flow volume rate exceeded the monthly average effluent limitation of 25 MGD with a result of 26.89 MGD.
199	1118224	05/01/23 through 05/31/23	CAT1	CBOD percent removal did not meet the monthly average minimum requirement of 85% with a result of 63.17%.
200	1118213	5/1/2023	OEV	Turbidity cloudiness exceeded the instantaneous maximum effluent limitation of 225 NTU with a result of 409 NTU.
201	1118892	06/01/23 through 06/30/23	OEV	Flow volume rate exceeded the monthly average effluent limitation of 25 MGD with a result of 29.43 MGD.

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No.	Violation ID	Occurrence Date(s)	Violation Type	Violation Description
202	1118894	06/01/23 through 06/30/23	CAT1	TSS concentration exceeded the monthly average effluent limitation of 30 mg/L with a result of 161 mg/L.
203	1118895	06/01/23 through 06/30/23	CAT1	CBOD mass emission rate exceeded the monthly average effluent limitation of 5,213 lb/day with a result of 20,850 lb/day.
204	1118896	06/01/23 through 06/30/23	CAT1	TSS mass emission rate exceeded the monthly average effluent limitation of 6,255 lb/day with a result of 40,187 lb/day.
205	1118898	06/01/23 through 06/30/23	CAT1	CBOD percent removal did not meet the monthly average minimum requirement of 85% with a result of 65.07%.
206	1118901	06/01/23 through 06/30/23	CAT1	CBOD concentration exceeded the monthly average effluent limitation of 25 mg/L with a result of 83 mg/L.
207	1118903	06/01/23 through 06/30/23	CAT1	TSS percent removal did not meet the monthly average minimum requirement of 85% with a result of 44.71%.
208	1118904	06/01/23 through 06/30/23	OEV	Turbidity cloudiness exceeded the monthly average effluent limitation of 75 NTU with a result of 80.94 NTU.
209	1118893	06/11/23 through 06/17/23	CAT1	CBOD mass emission rate exceeded the weekly average effluent limitation of 8,340 lb/day with a result of 25,202 lb/day.
210	1118897	06/11/23 through 06/17/23	CAT1	TSS concentration exceeded the weekly average effluent limitation of 45 mg/L with a result of 199 mg/L.
211	1118899	06/11/23 through 06/17/23	CAT1	TSS mass emission rate exceeded the weekly average effluent limitation of 9,383 lb/day with a result of 49,968 lb/day.
212	1118900	06/11/23 through 06/17/23	OEV	Turbidity cloudiness exceeded the weekly average effluent limitation of 100 NTU with a result of 107.78 NTU.

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<b>No.</b>	<b>Violation ID</b>	<b>Occurrence Date(s)</b>	<b>Violation Type</b>	<b>Violation Description</b>
213	1118902	06/11/23 through 06/17/23	CAT1	CBOD concentration exceeded the weekly average effluent limitation of 40 mg/L with a result of 101.29 mg/L.
214	1118890	6/13/2023	OEV	Turbidity cloudiness exceeded the instantaneous maximum effluent limitation of 225 NTU with a result of 278 NTU.

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<b>TERM</b>	<b>DEFINITION</b>
CAT1	Category 1 violation type. This violation type is identified when the water quality effluent parameter is part of the Group I pollutant.
CAT2	Category 2 violation type. This violation type is identified when the water quality effluent parameter is part of the Group II pollutant.
CIWQS	California Integrated Water Quality System database.
GROUP	The list of pollutants is based on Appendix A to section 123.45 of title 40 of the Code of Federal Regulations.
Occurrence Date(s)	Date that a violation occurred. For continuing violations, such as a monthly average, the days of the reporting period are used. If the occurrence date is unknown, the date is entered as the day it was first discovered by staff, the discharger, or a third party. For deficient or late reports, the occurrence date is the day after the report was due.
OEV	Violation of any constituent-specific effluent limitation not included in Group I or Group II.
Violation Description	Narrative description of the violation.
Violation ID	Identification number assigned to a violation in CIWQS.

**Table 1: June 2023 – Summary of Public and Federal Sanitary Sewer Overflow Events<sup>1</sup>**

Responsible Collection System Agency	Total Volume (Gallons) <sup>2</sup>	Total Recovered (Gallons) <sup>3</sup>	Total Reaching Surface Waters (Gallons) <sup>4</sup>	Total Reaching Separate Storm Drain and Recovered (Gallons) <sup>5</sup>	Total Discharged to Land (Gallons) <sup>6</sup>	Surface Water Body Affected <sup>7</sup>	Miles of Pressure Sewer	Miles of Gravity Sewer	Population in Service Area <sup>8</sup>
Buena Sanitation District	477	0	477	0	0	Not Reported	3.3	93.4	41,000
California Department of Parks and Recreation Winterhaven	200	200	0	0	200	Not Applicable	1.2	0.6	1,350
City of Lemon Grove	235	235	0	235	0	Not Applicable	0.04	68.0	25,800
United States Marine Corps Base Camp Pendleton	3,000	300	2,700	300	300	Pacific Ocean	39.2	125	83,340

<sup>1</sup> Table 1 may not include information on public SSOs that were less than 50 gallons in volume and that did not reach surface waters.

<sup>2</sup> Total Volume = total amount that discharged from sanitary sewer system to a separate storm drain, drainage channel, surface water body, and/or land.

<sup>3</sup> Total Recovered = total amount recovered from a separate storm drain, drainage channel, surface water body, and/or land.

<sup>4</sup> Total Reaching Surface Waters = total amount reaching separate storm drain (not recovered), drainage channel, and/or surface water body, but does not include amount reaching separate storm drain that was recovered.

<sup>5</sup> Total Reaching Separate Storm Drain and Recovered = total amount reaching separate storm drain that was recovered.

<sup>6</sup> Total Discharged to Land = total amount reaching land.

<sup>7</sup> Agencies are only required to note the surface water body affected if the discharge reaches or has the potential to reach a surface water. If the discharge did not reach a surface water and does not have a potential to reach a surface water (i.e., a discharge to land or a discharge to a separate storm drain that is fully recovered) the surface water body affected is listed as "Not Applicable." If the discharge was to a surface water body or to a separate storm drain and was not fully recovered, and the surface water body was not reported, the surface water body affected is listed as "Not Reported."

<sup>8</sup> As reported in the Collection System Questionnaire required under Order No. 2006-0003-DWQ.

Responsible Collection System Agency	Total Volume (Gallons) <sup>2</sup>	Total Recovered (Gallons) <sup>3</sup>	Total Reaching Surface Waters (Gallons) <sup>4</sup>	Total Reaching Separate Storm Drain and Recovered (Gallons) <sup>5</sup>	Total Discharged to Land (Gallons) <sup>6</sup>	Surface Water Body Affected <sup>7</sup>	Miles of Pressure Sewer	Miles of Gravity Sewer	Population in Service Area <sup>8</sup>
United States Marine Corps Base Camp Pendleton	250	30	220	0	30	San Onofre Creek	39.2	125	83,340

**Table 2: June 2023 – Summary of Private Lateral Sewage Discharge Events**

Responsible Collection System Agency	Total Volume (Gallons) <sup>1</sup>	Total Recovered (Gallons) <sup>2</sup>	Total Reaching Surface Waters (Gallons) <sup>3</sup>	Total Reaching Separate Storm Drain & Recovered and/or Discharged to Land (Gallons) <sup>4</sup>	Surface Water Body Affected <sup>5</sup>	Population in Service Area <sup>6</sup>	Number of Lateral Connections
City of El Cajon	50	50	0	50	Not Applicable	101,709	17,100
City of Poway	38	4	0	38	Not Applicable	43,216	12,290

<sup>1</sup> Total Volume = total amount that discharged from private lateral to a separate storm drain, drainage channel, surface water body, and/or land.

<sup>2</sup> Total Recovered = total amount recovered from a separate storm drain, drainage channel, surface water body, and/or land.

<sup>3</sup> Total Reaching Surface Waters = total amount reaching separate storm drain (not recovered), drainage channel, and/or surface water body, but does not include amount reaching separate storm drain that was recovered.

<sup>4</sup> Total Reaching Separate Storm Drain & Recovered and/or Discharged to Land = total amount reaching separate storm drain that was recovered and/or total amount reaching land.

<sup>5</sup> Agencies are only required to note the surface water body affected if the discharge reaches or has the potential to reach a surface water. If the discharge did not reach a surface water and does not have a potential to reach surface water (i.e., a discharge to land or a discharge to a separate storm drain that is fully recovered) the surface water body affected is listed as "Not Applicable." If the discharge was to a surface water body or to a separate storm drain and was not fully recovered, and the surface water body was not reported, the surface water body affected is listed as "Not Reported."

<sup>6</sup> As reported in the Collection System Questionnaire required under Order No. 2006-0003-DWQ.

Responsible Collection System Agency	Total Volume (Gallons) <sup>1</sup>	Total Recovered (Gallons) <sup>2</sup>	Total Reaching Surface Waters (Gallons) <sup>3</sup>	Total Reaching Separate Storm Drain & Recovered and/or Discharged to Land (Gallons) <sup>4</sup>	Surface Water Body Affected <sup>5</sup>	Population in Service Area <sup>6</sup>	Number of Lateral Connections
City of Vista	45	45	0	45	Not Applicable	90,000	17,109
City of Laguna Beach	80	0	2	0	Storm Drain Tributary to Beach	18,000	6,650
Vallecitos Water District	585	0	585	0	Not Reported	108,392	20,756

**Table 3: June 2023 – Summary of Sewage Discharges by Source<sup>1</sup>**

Spill Type	Month/Year	Number of Spills	Total Volume (Gallons) <sup>2</sup>	Total Recovered (Gallons) <sup>3</sup>	Total Reaching Surface Waters (Gallons) <sup>4</sup>	Total Reaching Separate Storm Drain & Recovered and/or Discharged to Land (Gallons) <sup>5</sup>
Public Spills	June 2023	3	912	435	477	435
Federal Spills	June 2023	2	3,250	330	2,920	630
Private Spills	June 2023	5	798	99	587	133
<b>All Spills</b>	<b>June 2023</b>	<b>10</b>	<b>4,960</b>	<b>855</b>	<b>3,984</b>	<b>1,198</b>

<sup>1</sup> Information displayed may not include public SSOs that were less than 50 gallons in volume that did not reach surface waters.

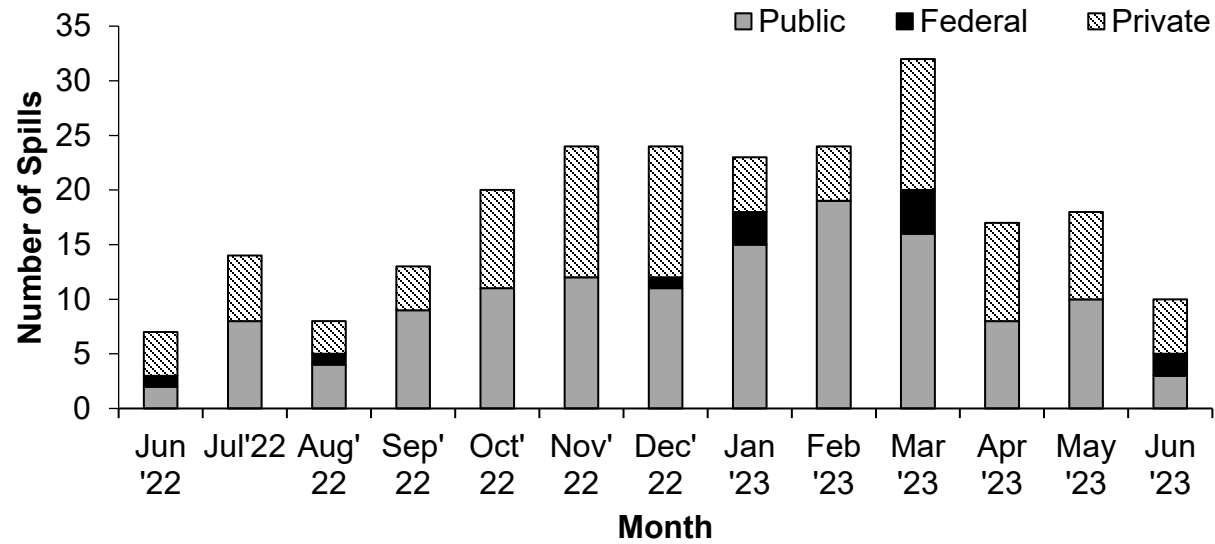
<sup>2</sup> Total Volume = total amount that discharged from sanitary sewer system to a separate storm drain, drainage channel, surface water body, and/or land.

<sup>3</sup> Total Recovered = total amount recovered from a separate storm drain, drainage channel, surface water body, and/or land.

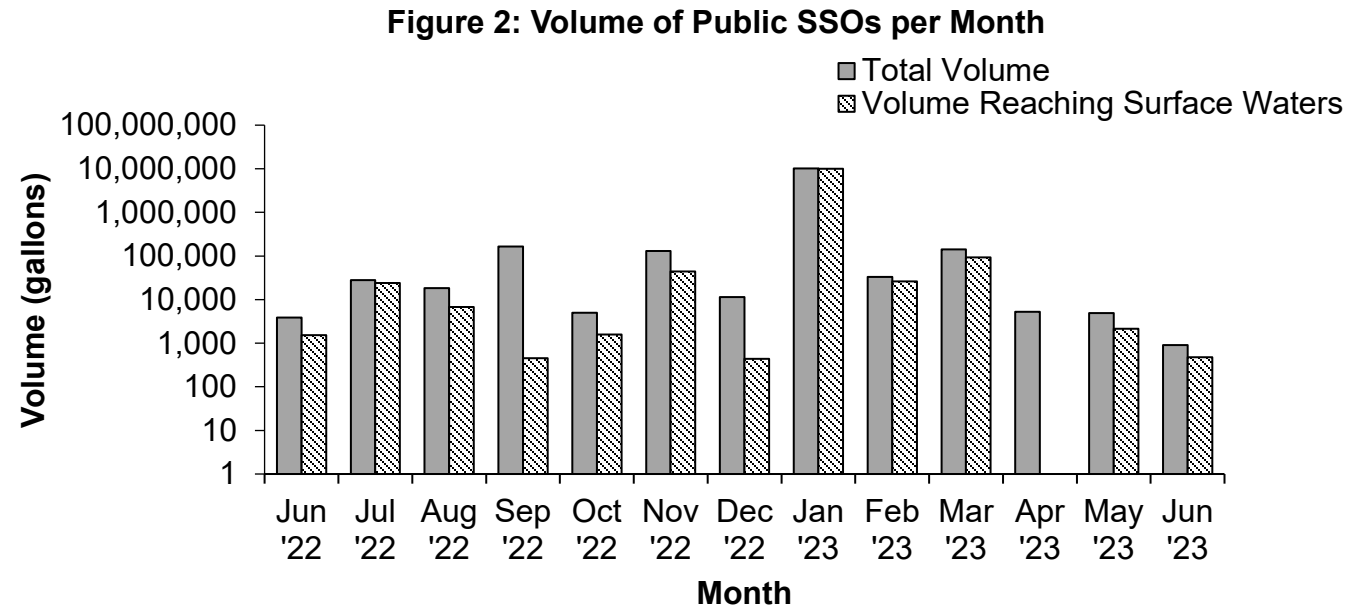
<sup>4</sup> Total Reaching Surface Waters = total amount reaching separate storm drain (not recovered), drainage channel, and/or surface water body, but does not include amount reaching separate storm drain that was recovered.

<sup>5</sup> Total Reaching Separate Storm Drain & Recovered and/or Discharged to Land = total amount reaching separate storm drain that was recovered and/or total amount reaching land.

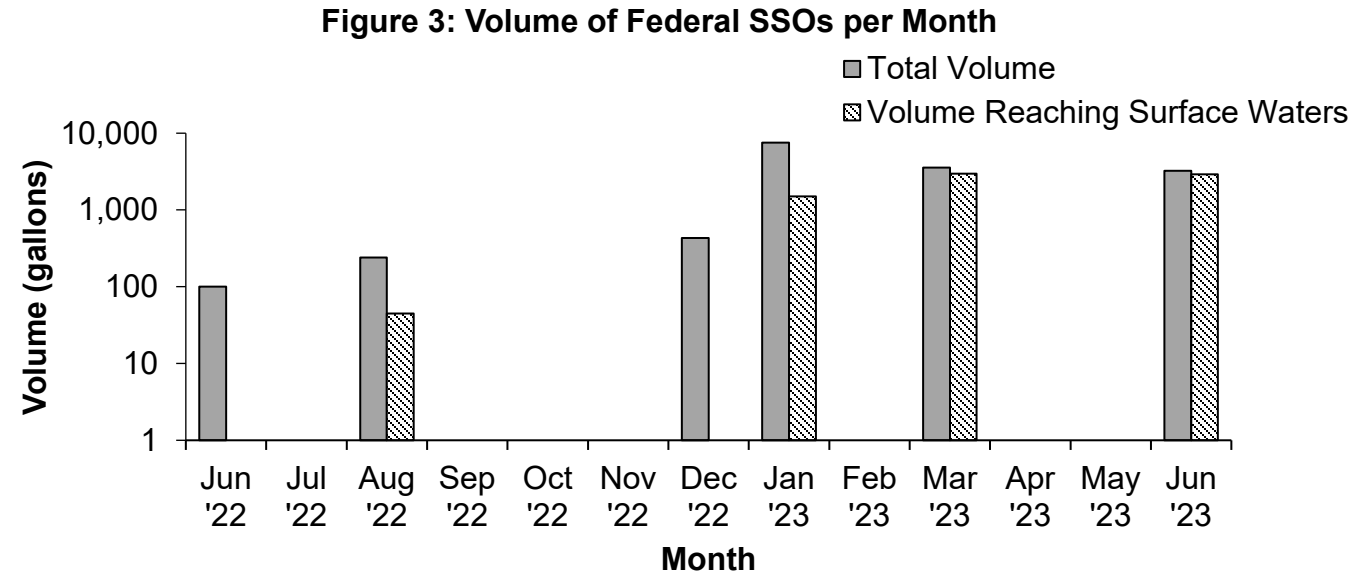
**Figure 1: Number of Spills per Month**



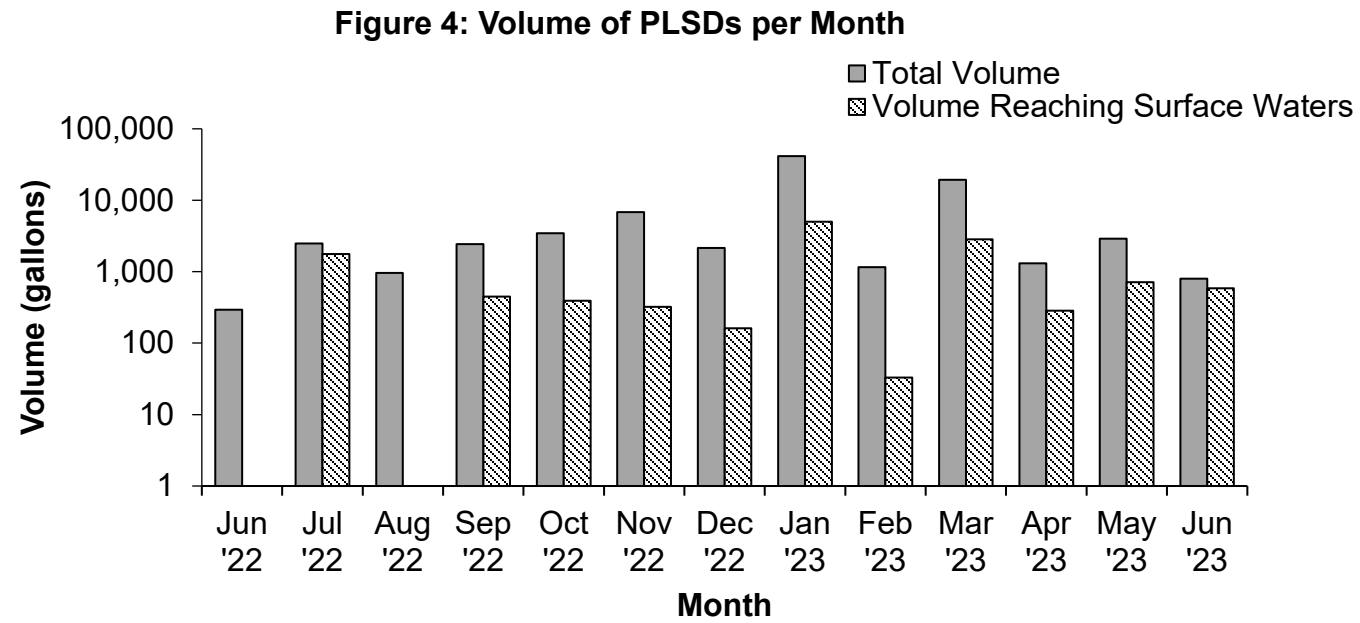
**Figure 1:** The number of public, federal, and private sewage spills per month from June 2022 through June 2023. Note total number of spills per month may not include public SSOs that were less than 50 gallons in volume that did not reach surface waters.



**Figure 2:** The volume of SSOs from public agencies per month from June 2022 through June 2023. Note, spill totals may not include public SSOs that were less than 50 gallons in volume that did not reach surface waters. Also, note the logarithmic scale on the vertical axis showing the wide variation in spill volumes.



**Figure 3:** The volume of SSOs from federal agencies per month from June 2022 through June 2023. Note the logarithmic scale on the vertical axis showing the wide variation in spill volumes.



**Figure 4:** The volume of PLSDs per month from June 2022 through June 2023. Note the logarithmic scale on the vertical axis showing the wide variation in spill volumes.

**Table 1: June 2023 – Summary of Transboundary Flows from Mexico by Event<sup>1</sup>**

Location	Transboundary Flow Start Date	Transboundary Flow End Date	Weather Condition <sup>2</sup>	Total Volume (Billion Gallons) <sup>3</sup>	Total Volume Recovered (Million Gallons) <sup>3</sup>	Total Volume Reaching Surface Waters (Billion Gallons) <sup>3</sup>	Additional Details Reported By USIBWC
Tijuana River Main Channel	12/28/2022	6/20/2023	Wet	34	0	34	Rain Event
Tijuana River Main Channel	6/20/2023	6/27/2023	Dry	89.998 (million gallons)	0	89.998 (million gallons)	Rain Event plus dry weather flows
Tijuana River Main Channel	6/27/2023	6/28/2023	Dry	5.248 (million gallons)	0	5.248 (million gallons)	Dry weather flows above system capacity
Tijuana River Main Channel	6/28/2023	6/29/2023	Dry	3.628 (million gallons)	0	3.628 (million gallons)	Dry weather flows above system capacity
Tijuana River Main Channel	6/29/2023	6/30/2023	Dry	4.917 (million gallons)	0	4.917 (million gallons)	Dry weather flows above system capacity
Tijuana River Main Channel	6/30/2023	7/5/2023	Dry	19.384 (million gallons)	0	19.384 (million gallons)	Dry weather flows above system capacity

<sup>1</sup> Transboundary flow volumes are obtained from self-monitoring reports submitted by USIBWC pursuant to Order No. R9-2021-0001.

<sup>2</sup> Order No. R9-2021-0001 defines wet weather as the period of time when a storm event produces 0.1 inches or greater within a 24-hour period plus 72 hours after, based on the Goat Canyon Pump Station rain gauge. USIBWC reported that there was no precipitation as recorded at Marron Valley in June 2023. The rain gauges at Goats Canyon and Smugglers Gulch were not operable and are scheduled for maintenance and repair.

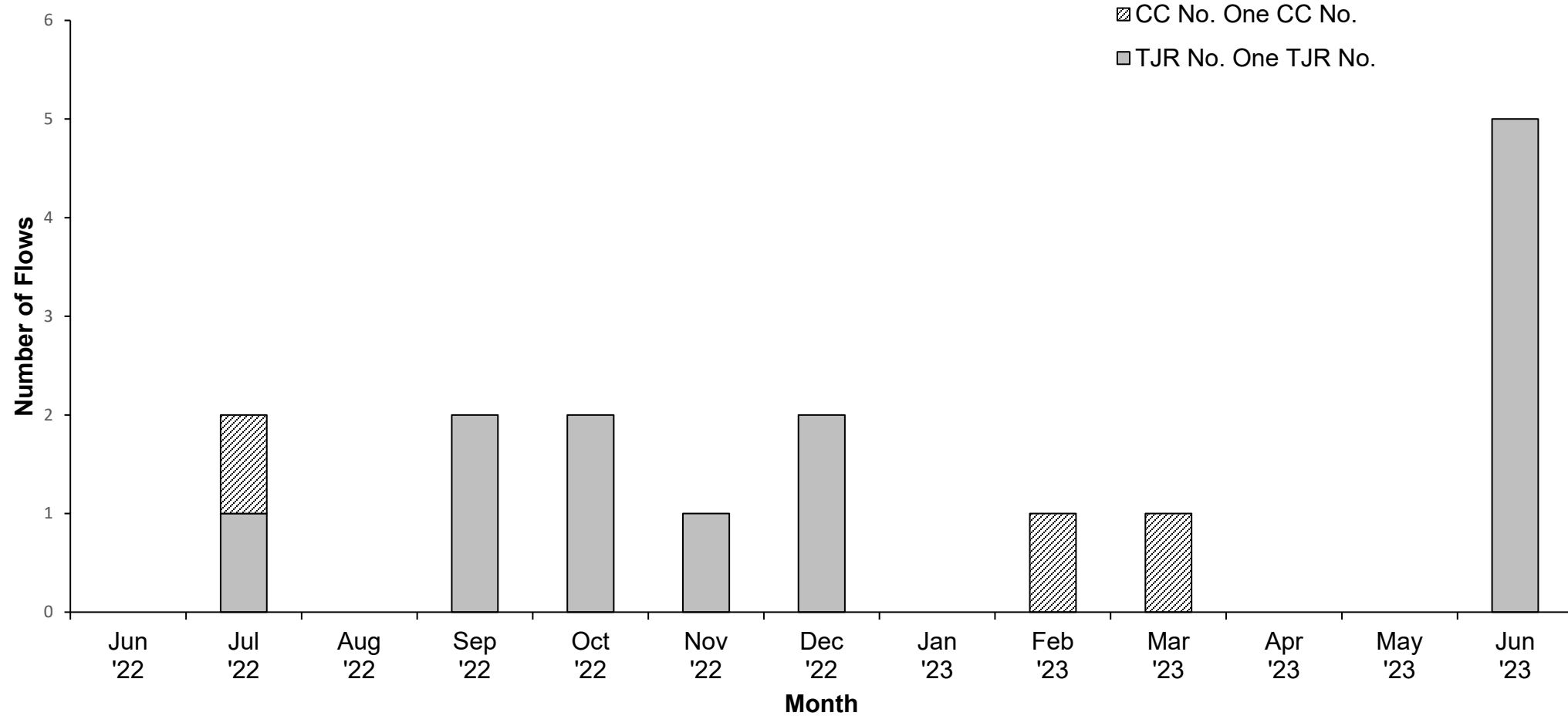
<sup>3</sup> Total transboundary flow volume, total volume recovered, and total volume reaching surface waters is an estimate provided by USIBWC.

**Table 2: June 2023 - Summary of Transboundary Flows from Mexico<sup>1</sup>**

<b>Location</b>	<b>Month/Year</b>	<b>Number of Transboundary Flows</b>	<b>Total Volume (Million Gallons)</b>	<b>Total Volume Recovered (Gallons)</b>	<b>Total Volume Reaching Surface Waters (Million Gallons)</b>
Tijuana River Main Channel	June 2023	5	123.175	0	123.175
Canyon Collectors	June 2023	0	0	0	0
South Bay International Wastewater Treatment Plant	June 2023	0	0	0	0
<b>All Locations</b>	June 2023	<b>5</b>	<b>123.175</b>	<b>0</b>	<b>123.175</b>

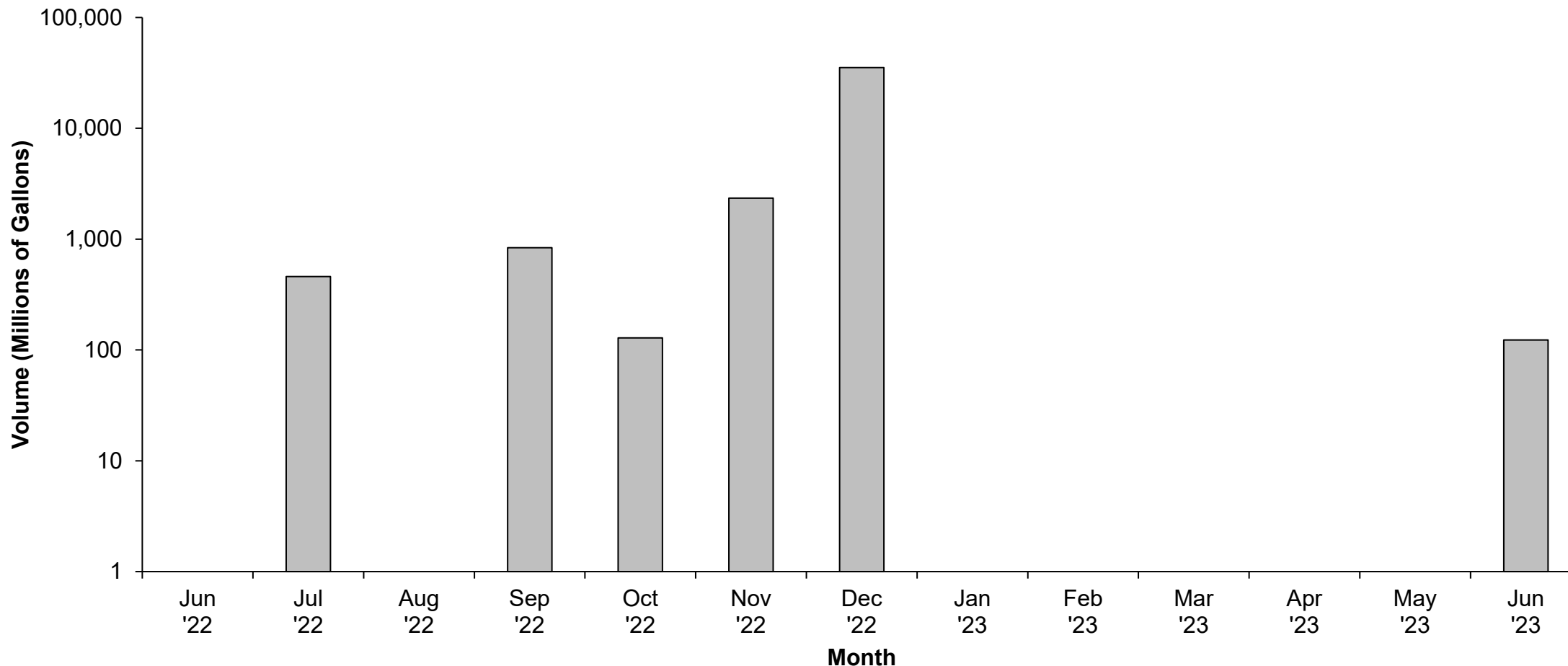
<sup>1</sup> For transboundary flows that start and end in different months, Table 2 includes the transboundary flow in the month the transboundary flow started. For June, there are only five flows because the 12/28/2022 event started in December 2022.

**Figure 1: Number of Transboundary Flows**



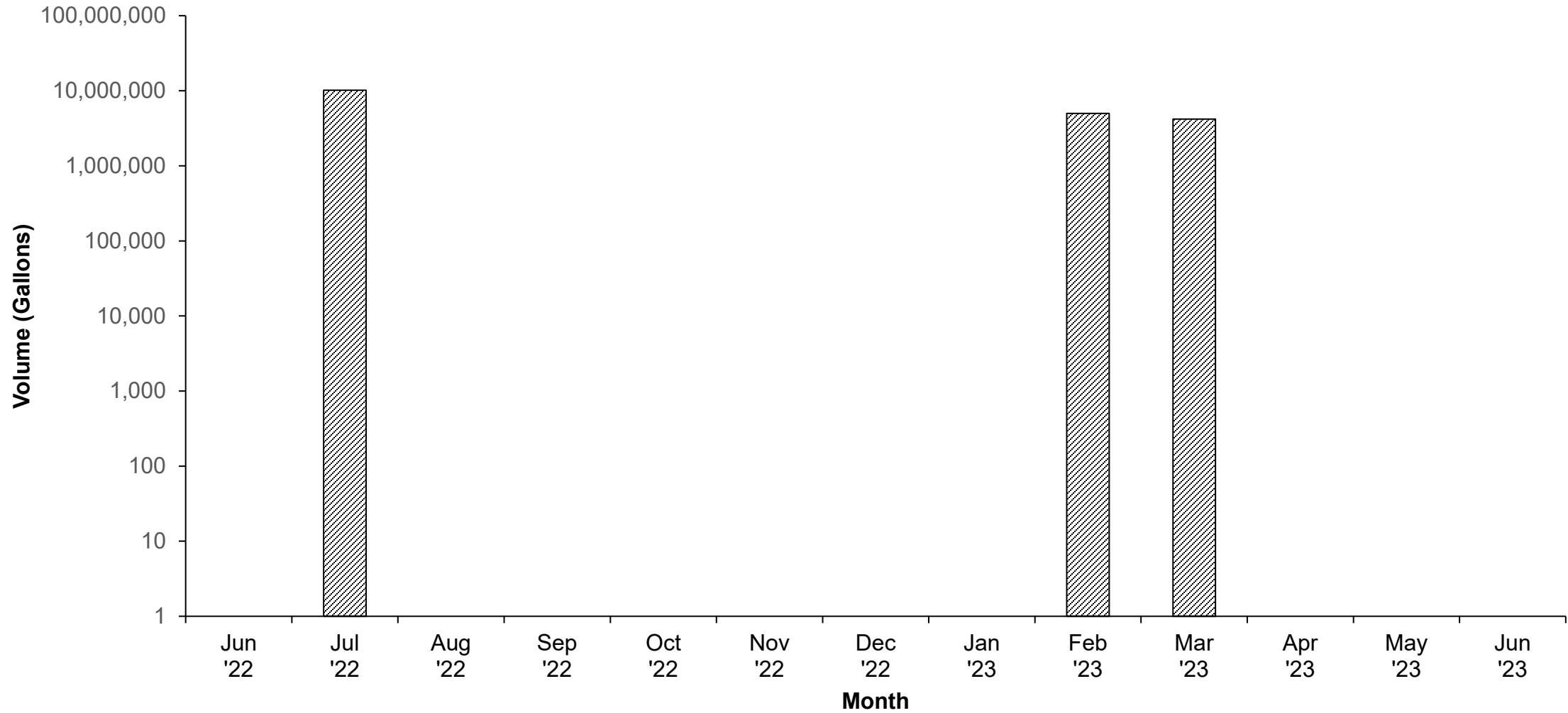
**Figure 1:** Number of reported transboundary flows per month from June 2022 through June 2023 at the canyon collector systems and the Tijuana River main channel. For transboundary flows that start and end in different months, the figure includes the transboundary flow in month the transboundary flow started. For example, flows in January through June 2023 that started in December 2022 are only shown in December 2022.

**Figure 2: Tijuana River Transboundary Flow Volume**



**Figure 2:** Volume of reported transboundary flows per month from June 2022 through June 2023 at the Tijuana River main channel. For transboundary flows that start and end in different months, the figure includes the total volume of the transboundary flow in the month the transboundary flow started. For example, flows in January through June 2023 that started in December 2022 are only shown in December 2022. Note the logarithmic scale on the vertical axis to accommodate the variation in transboundary flow volumes.

**Figure 3: Canyon Collector Transboundary Flow Volume**



**Figure 3:** Volume of reported transboundary flows per month from June 2022 through June 2023 at the canyon collector systems. Note the logarithmic scale on the vertical axis to accommodate variation in transboundary flow volumes.

# **Exhibit C**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**TIME SCHEDULE ORDER NO. R9-2023-0189**

**UNITED STATES SECTION OF THE INTERNATIONAL BOUNDARY AND WATER  
COMMISSION SOUTH BAY INTERNATIONAL WASTEWATER TREATMENT PLANT  
DISCHARGE TO THE PACIFIC OCEAN THROUGH THE SOUTH BAY OCEAN  
OUTFALL**

**WHEREAS** the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) finds the following:

**Background**

1. The International Boundary and Water Commission, United States Section (USIBWC) owns and operates the South Bay International Wastewater Treatment Plant (SBIWTP) and the associated infrastructure in the United States (U.S.).<sup>1</sup> Together, these facilities comprise a federally-owned treatment works. These facilities are collectively referred to as the Facility or Facilities in this Time Schedule Order (TSO).
2. The SBIWTP discharges secondary-treated wastewater to the Pacific Ocean through the South Bay Ocean Outfall. Attachment A provides collection system flow schematics of the Facility and infrastructure in Mexico.
3. USIBWC was previously regulated by National Pollutant Discharge Elimination System (NPDES) Permit No. CA0108928 issued by the San Diego Water Board as Order No. R9-2014-0009, as amended by Order Nos. R9-2014-0094, R9-2017-0024, and R9-2019-0002, *Waste Discharge Requirements for the United States Section of the International Boundary and Water Commission, South Bay International Discharge to the Pacific Ocean Via the South Bay Ocean Outfall* (2014 Permit). The 2014 Permit expired on July 31, 2018, but remained in effect until it was superseded by a reissued NPDES permit.
4. On May 12, 2021, the San Diego Water Board reissued NPDES Permit No. CA0108928 as Order No. R9-2021-0001, *Waste Discharge Requirements for the United States Section of the International Boundary and Water Commission South Bay International Discharger to the Pacific Ocean Through the South Bay Ocean Outfall* (2021 Permit).

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<sup>1</sup> Infrastructure in the U.S. includes, but is not limited to, SBIWTP; five canyon collector systems located at Stewart's Drain, Canyon del Sol, Silva's Drain, Smugglers Gulch, and Goat Canyon; Hollister Street Pump Station and Goat Canyon Pump Station; Junction Box 1 and 2; South Bay Land Outfall; South Bay Ocean Outfall; and other associated infrastructure such as pipes and conveyances between the diversion structures, pump stations, and the SBIWTP (see Attachment F, section 1.1, of the 2021 NPDES Permit).

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5. That same day, the San Diego Water Board also issued a corresponding Cease and Desist Order (CDO) to USIBWC, Order No. R9-2021-0107. Based on effluent monitoring data at the South Bay Ocean Outfall, the San Diego Water Board determined that USIBWC's discharge of effluent threatened to violate the effluent limitations established in the 2021 Permit.<sup>2</sup> At the time, USIBWC attributed those effluent limitation exceedances to excess influent flow beyond the design capacity of the SBIWTP's secondary treatment system. The San Diego Water Board found that, among other actions, repairs to the sluice gates in Junction Box 1 would be necessary to reduce flows to the SBIWTP to its design capacity of 25 million gallons per day (mgd). The CDO required USIBWC to identify all shortcomings, inadequacies, and maintenance issues with regard to control measures that need to be addressed to attain consistent compliance with the effluent limitations contained in the 2021 Permit. The CDO also established a time schedule for USIBWC to conduct and perform necessary maintenance, repairs, and other deliverables to return the Facility to compliance with the 2021 Permit requirements, including conventional pollutant effluent limitations for total suspended solids, settleable solids, biological oxygen demand, and turbidity, and the Facility's average monthly flow effluent limit of 25 million gallons per day.
6. On December 8, 2021, the San Diego Water Board adopted Order No. R9-2021-0220, amending the CDO (Amended CDO). In October 2021, USIBWC submitted a revised Compliance Assurance Report which identified anticipated completion dates for various actions to the Facilities. Some of the completion dates identified in the Compliance Assurance Report exceeded the time schedule contained in the CDO due to design and funding issues and impacted supply chains. USIBWC requested that the CDO time schedule be amended to be consistent with its anticipated completion dates. The Amended CDO, among other things, modified the time schedule for the repair of Junction Box 1 and other repair and maintenance activities at the Facility, added tasks to the time schedule (including replacement of diffusers in aeration tanks), and required USIBWC to submit quarterly Compliance Assurance Reports.
7. In September of 2018, the San Diego Water Board and California Department of Justice initiated a citizen suit against USIBWC alleging violations of the federal Clean Water Act and the 2014 Permit due to, among other things, ongoing discharges of waste, including untreated sewage and trash, from its Facilities to the Tijuana River and the Pacific Ocean. The San Diego Water Board and the

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<sup>2</sup> Between November 2020 and January 2021, USIBWC reported 46 exceedances of effluent limitations contained in the 2014 Permit.

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USIBWC executed a settlement agreement to resolve the citizen suit litigation in April of 2022.

8. On October 8, 2021, the United States filed lawsuits against the San Diego Water Board challenging certain provisions of the 2021 Permit. In September 2022, the San Diego Water Board and the United States executed a settlement agreement in which USIBWC would submit a revised Spill and Transboundary Wastewater Flow Event Prevention and Response Plan (Revised Spill Plan) and the San Diego Water Board would consider certain amendments to the 2021 Permit. On April 14, 2023, USIBWC submitted its Revised Spill Plan. On April 26, 2023, the San Diego Water Board approved the Revised Spill Plan.
9. On March 8, 2023, the San Diego Water Board adopted Order No. R9-2023-0009, amending the 2021 Permit (2023 Amended Permit). Subsequently, the United States dismissed its lawsuits against the San Diego Water Board regarding the 2021 Permit.

**Cease and Desist Order Requirements, CDO Non-Compliance, and Continuing 2021 Permit Violations**

10. As stated above, the San Diego Water Board issued a CDO and Amended CDO based on its findings of USIBWC's self-reported effluent limit exceedances in violation of its 2014 Permit and findings that the self-reported data also threatened to violate effluent limitations in the 2021 Permit.
11. Table 1, below, provides a summary of the time schedule and prescribed actions in the Amended CDO and when USIBWC completed or anticipates completing the tasks:

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**Table 1: Summary of CDO or Amended CDO Deadlines and Completion Dates**

Task	Deadline from Amended CDO	Completion or Anticipated Completion Date <sup>3</sup>
A) Submit a Compliance Assurance Report (CAR) i. Identifies all shortcomings, inadequacies, and maintenance issues with regard to control measures that need to be addressed to ensure compliance with permit effluent limits; ii. Include a schedule for retaining contractors and design, installation, and operation of new or modified control measures; and iii. Estimated project costs	June 30, 2021	June 30, 2021; October 7, 2021 (revised)
B) Submit a revised CAR updating information on scheduling and project costs, and any additional Facility deficiencies not originally included in the CAR	Quarterly January 1 April 1 July 1 October 1	Ongoing
C) Complete supervisory control and data acquisition (SCADA) upgrades	December 31, 2021	December 31, 2021
D) Replace two influent pumps	October 1, 2021	May 28, 2021
E) Complete design for Junction Box 1 repairs	January 31, 2022	June 30, 2022
F) Repair Junction Box 1 i. Repair 72-inch sluice gate ii. Repair 96-inch sluice gate	Comply forthwith	(February 10, 2025)

<sup>3</sup> Anticipated, future completion dates are denoted within parentheses. Anticipated completion dates in Table 1 are taken from USIBWC's quarterly Compliance Assurance Report submitted on October 3, 2023.

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Task	Deadline from Amended CDO	Completion or Anticipated Completion Date <sup>3</sup>
G) Replace influent meter i. Replace the temporarily repaired influent pipe ii. Replace the two valves on the replaced influent pipes	February 13, 2023	(September 30, 2024)
H) Other needed/planned repairs	Comply forthwith	Outstanding
I) Other needed/planned preventative maintenance	Comply forthwith	Outstanding
J) Achieve consistent compliance with 2021 Permit effluent limitations for flow, settleable solids, TSS, turbidity, and CBOD5	January 3, 2022	Outstanding

12. On September 5, 2023, the San Diego Water Board issued Notice of Violation No. R9-2023-0162 to USIBWC for ongoing violations of the 2021 Permit that occurred during the period between September 30, 2021, and June 30, 2023. Violations listed in NOV R9-2023-0162 include approximately 208 self-reported exceedances of effluent limitations in the 2021 Permit, required reports submitted after deadlines listed in the 2021 Permit, missing reports, such as the Tijuana River Valley Monitoring Plan Work Plan (Work Plan), and approximately 214 other violations of the 2021 Permit’s Standard Provisions. Compliance with the 2023 Amended Permit Monitoring and Reporting Program requirement to submit a Tijuana River Valley Monitoring Work Plan will be achieved through binational cooperation in the Minute 320 process. The Work Plan is currently under development.
13. Since July 1, 2023, until August 30, 2023, prior to and following the onset of Tropical Storm Hilary, USIBWC self-reported 27 additional exceedances of effluent limitations in the 2023 Amended Permit including flow, total suspended solids, biological oxygen demand, and turbidity. USIBWC reported that most of these exceedances were caused by the inflow of sewage from Mexico exceeding the design capacity of the SBIWTP.

**Tropical Storm Hilary, Exacerbated Infrastructure Problems, and Continuing 2023 Amended Permit Violations**

14. Between August 19 and August 22, 2023, Tropical Storm Hilary brought record rainfall to San Diego County and Baja California. During the storm, the SBIWTP received flows that exceeded its design capacity of 25 mgd by 100% (50 mgd) for

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- 6 hours and 320% (80 mgd) for 6 hours. The SBIWTP's flow equalization basins were filled within the first hour of the storm. The high inflow and infiltration rates in the collection system in Tijuana exacerbated infrastructure and system vulnerabilities of the Facility. These events resulted in damage throughout the SBIWTP and at the Hollister Avenue Pump Station due to the excessive flows, sedimentation, and influx of debris in the wastewater that overwhelmed the screening in the treatment plant and canyon collectors. At the height of the storm, USIBWC bypassed secondary treatment and discharged approximately 30 million gallons directly to the South Bay Ocean Outfall as an emergency measure to prevent further damage and overflow of the SBIWTP to the Tijuana River.
15. Flows in the Tijuana River flood control channel exceeded 10,000 cubic feet per second (cfs) during the storm on August 20, 2023, and more than 2.6 billion gallons flowed through the main channel of the Tijuana River between August 19, 2023, and September 1, 2023. Due to excessive inflows during the storm event, USIBWC bypassed its secondary treatment system for a period of 10 hours resulting in a discharge of 30 million gallons of untreated sewage and wastewater to the Pacific Ocean from South Bay Ocean Outfall.
  16. On September 13, 2023, USIBWC Commissioner Dr. Maria-Elena Giner appeared before the San Diego Water Board to provide an update on pre- and post-Hilary storm conditions at the Facility, including planned maintenance and repair of the Facility. During the informational item, Dr. Giner provided an overview of wastewater treatment infrastructure challenges including: Junction Box 1, a critical point in USIBWC's collection system that routes sewage and waste from the International Collector to SBIWTP; clogged bar screens; inoperable influent pumps; and overloaded primary sedimentation tanks. These infrastructure challenges have been exacerbated by a lack of investment in critical infrastructure maintenance and upgrades coupled with excess transboundary flows and storm events. Dr. Giner conveyed USIBWC's commitment to prioritizing infrastructure repairs, compliance with the 2023 Amended Permit, and post-Hilary recovery efforts.
  17. To that end, in federal Fiscal Year 2023, USIBWC awarded ten million dollars (\$10,000,000) to capital improvement projects designed to bring SBIWTP in compliance with its 2023 Amended Permit. These projects include replacing Junction Box 1, rehabilitation and clean-out of all primary sedimentation tanks, and replacement of two influent pumps (pumps #1 and #5). Additionally, USIBWC redirected eight million dollars (\$8,000,000) in its existing budget toward post-Hilary recovery repairs including emergency pump and electrical repairs at the headworks of SBIWTP and replacement of additional pumps throughout the treatment and collection system including Hollister Avenue pump station.

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18. On September 19, 2023, USIBWC installed a replacement pump for one of the four pumps at Hollister Avenue. Installation and operation of the replacement pump together with the second operational pump allowed USIBWC to bring the Hollister Avenue pump station back online on September 29, 2023, as part of its post-Hiliary recovery work. A third pump will be installed to provide redundancy at the pump station.

### **Time Schedule Order Authority**

19. Water Code section 13300 authorizes the San Diego Water Board to issue a TSO when it finds that a discharge of waste is taking place that violates requirements prescribed by the San Diego Water Board or that waste collection, treatment, or disposal facilities are approaching capacity. The San Diego Water Board is authorized to require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions that the discharger will take in order to correct the violation of requirements.
20. Water Code section 13167.5, subdivision (a)(4), requires the San Diego Water Board to provide a 30-day public comment period prior to the adoption of a time schedule order pursuant to section 13300 that sets forth a compliance schedule and required actions relating to waste discharge requirements prescribed in a discharger's permit. The 30-day public comment period began on October 31, 2023, and closed on November 30, 2023.
21. Under Water Code sections 7 and 13223, and San Diego Water Board Resolution No. R9-2005-0271, the Executive Officer is authorized by delegation of the San Diego Water Board to issue this TSO. The Executive Officer is authorized to amend this TSO and any deadlines, as appropriate.
22. All technical and monitoring reports required under this TSO are required pursuant to Water Code section 13383. The San Diego Water Board needs the required information to determine compliance with this TSO, the Amended CDO, and the 2021 and 2023 Amended Permits for the protection of the environment, human health, and beneficial uses.
23. As an action to enforce USIBWC's underlying 2021 and 2023 Amended Permits, this TSO is exempt from the provisions of the California Environmental Quality Act (Public Resource Code § 21000 et seq.) in accordance with Title 14 of the California Code of Regulations, section 15321.

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**IT IS HEREBY DIRECTED** that, pursuant to Water Code sections 13300 and 13383, USIBWC shall take the following actions, consistent with the time schedule set forth herein, to correct and prevent further violations of the permit requirements issued by the San Diego Water Board:

1. By August 15, 2024, comply with secondary effluent limitations, as required, in R9-2021-0001 NPDES No. CA0108928 *Waste Discharge Requirements for the United States Section of the International Boundary and Water Commission South Bay International Wastewater Treatment Plant Discharge to the Pacific Ocean Through the South Bay Ocean Outfall* as amended by R9-2023-0009.
2. The table below outlines tasks (Tasks) and corresponding interim goals to assist USIBWC in achieving secondary effluent limitation compliance by the deadline in Directive No. 1 (Interim Goals). These Interim Goals are based on task completion approximations self-reported by USIBWC in its quarterly Compliance Assurance Reports or through other written correspondence to the San Diego Water Board. Some Interim Goals occur after the secondary effluent limitation compliance deadline, however, implementation of temporary controls in advance of the Interim Goal target date will assist USIBWC in achieving timely compliance with secondary effluent limitations. Task completion and construction of permanent controls by a date certain will be necessary for continued long-term compliance with secondary effluent limitations.

**Table 2 – Directive No. 2 Tasks and Interim Goals**

Task	Interim Goals
A) Installation of third pump at Hollister Avenue Pump Station	December 1, 2023
B) Replacement of influent pumps #1 and #5	February 28, 2024
C) Primary sedimentation tanks: i. Rehabilitation of all mechanical parts for primary sedimentation tanks ii. Clean out of primary sedimentation tanks	September 30, 2024
D) Influent meter repairs i. Replace the temporarily repaired influent pipe ii. Replace the two valves on the replaced influent pipes	September 30, 2024
E) Replacing Junction Box 1	February 10, 2025

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3. USIBWC shall present an oral report to the San Diego Water Board at a board meeting within approximately 180 days of the adoption of this TSO, and no later than 240 days after the adoption of this TSO, as the board's schedule and agenda reasonably permits. The report shall summarize USIBWC's efforts to achieve compliance with the directives in this TSO.
4. Continue to submit quarterly Compliance Assurance Reports as required by Amended Cease and Desist Order R9-2021-0220 and include information specific to this TSO regarding Task progress, achievement of Interim Goals, Interim Goal delays, and changes to scheduling, projected timelines, and project costs.
5. Beginning with the January 1, 2024, Compliance Assurance Report, and continuing monthly thereafter by the first of the month, include a visual depiction (e.g., Gantt chart) of the Tasks, progress towards Interim Goal achievement, and the secondary effluent limitation compliance deadline to include in and inform the Executive Officer's monthly report. USIBWC shall submit the monthly report to the San Diego Water Board via the State Water Board's California Integrated Water Quality System (CIWQS) Program website.
6. Requests to amend the secondary effluent limitation compliance deadline in Directive No. 1 must be submitted in writing to the attention of the Executive Officer and include a justification for requesting the extension of time. Any extension request shall be submitted as soon as a delay beyond the reasonable control of USIBWC is recognized and not later than 45 days prior to the compliance deadline in Directive No. 1. The San Diego Water Board acknowledges that there may be circumstances beyond the reasonable control of USIBWC leading to a delay in compliance with this TSO, for example, supply chain-related delays, and will take all relevant facts provided by USIBWC into consideration when determining whether to grant the extension request.

The San Diego Water Board reserves its right to take any subsequent enforcement action(s) as authorized by law if the Executive Officer determines that USIBWC has failed to comply with the requirements of this TSO.

Any person aggrieved by this action of the San Diego Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050, et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this TSO, except that if the thirtieth day following the date of this

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TSO falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Links to the laws and regulations applicable to filing petitions may be found at [Water Quality Petitions Page \(https://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality\)](https://www.waterboards.ca.gov/public_notices/petitions/water_quality) or may be provided upon request.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, San Diego Region, on December 18, 2023.

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David W. Gibson, Executive Officer

December 18, 2023

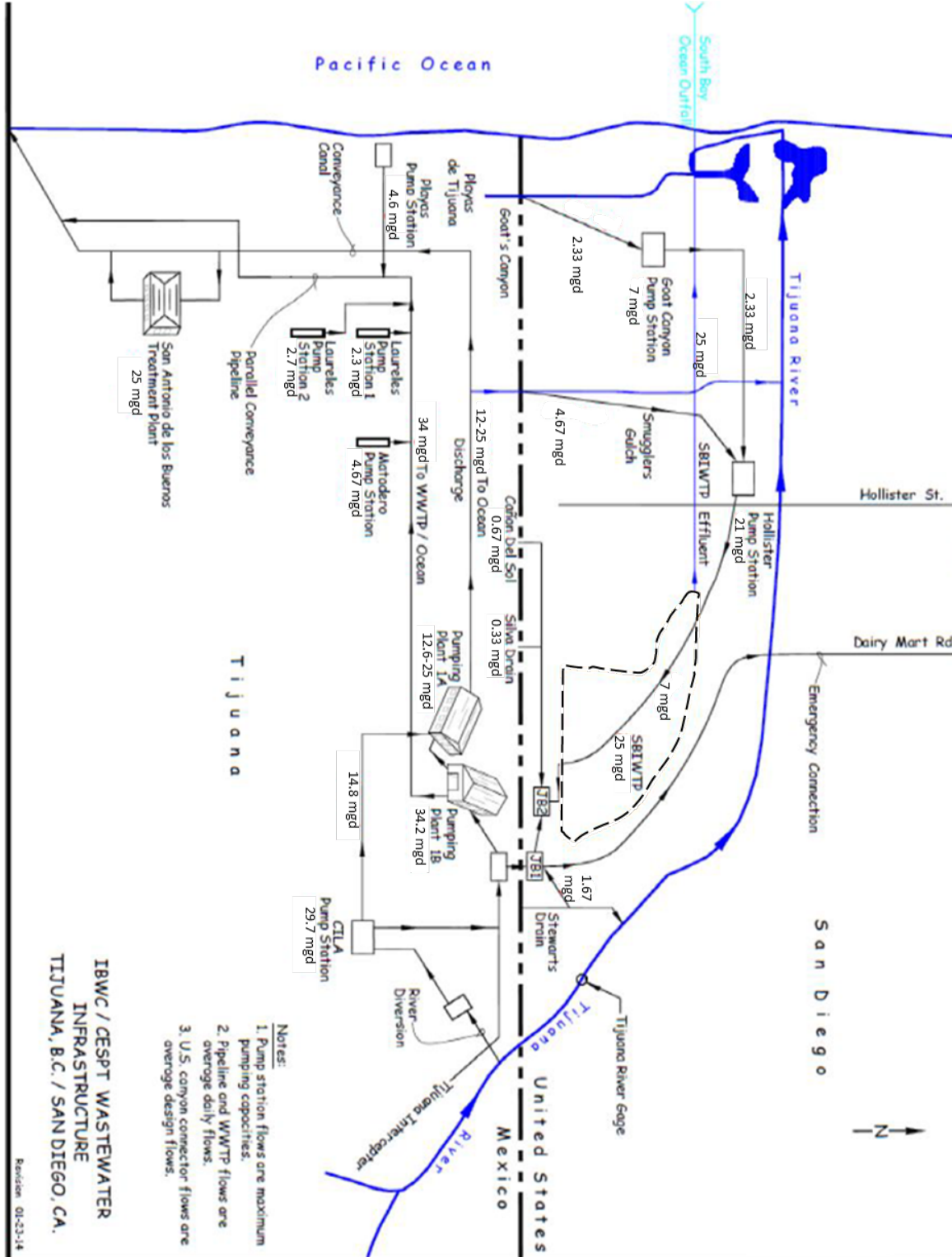
Date

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Time Schedule Order No. R9-2023-0189

Attachment A

Figure 1. Collection System Flow Schematic





# Exhibit D

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION  
BOARD SPECIAL MEETING MINUTES  
December 18, 2023**

**CALL TO ORDER**

Chair Celeste Cantú opened the meeting December 18, 2023, at 1:00 p.m. in the San Diego Regional Water Quality Control Board Hearing Room, 2375 Northside Drive, Room 108, San Diego, California 92108.

**ATTENDANCE**

**Board Members present:**

Celeste Cantú, Board Chair; Betty H. Olson, Ph.D., Vice Chair; Megan Blair, Gary Strawn, and Stefanie Warren (remote).

**Staff present:**

David Gibson, Chris Blank, Jeremy Haas, Vicente Rodriguez

**Staff remote attendance:**

Kelly Dorsey, Brandi Outwin-Beals

**Others present on behalf of the San Diego Water Board**

Vincent Vu (remote), Alex Sauerwein (remote), Office of Chief Counsel; Mayumi Okamoto, Office of Enforcement; Lisa McCann, State Water Resources Control Board; Elise Hicks (remote), California Reporting.

**Public Attendance:**

Present:

Natalie Clagett <i>Coast Law</i>	Phillip Musegaas, Executive Director <i>San Diego Coastkeeper</i>
Jason Giffen, Vice President, Planning & Environment; Stephanie Bauer <i>Port of San Diego</i>	Morgan Rogers, Area Operations Manager <i>South Bay International Wastewater Treatment Plant (SBIWTP)</i>
Paige Copenhaver <i>County of San Diego</i>	

Meeting Minutes December 18, 2023

Remote attendance:

Megan Doran, Land Use Environmental Planner <i>County of San Diego</i>	Jared Pache, Community Resident
Chris Helmer, Environmental and Natural Resources Director <i>City of Imperial Beach</i>	Matt O'Malley
Lauren Case	Livia Beaudin, Legal Director <i>Coastal Environmental Rights Foundation (CERF)</i>
Isela Canava, PE Operations; Xochitl Aranda, Chief, Operations and Maintenance Division <i>International Boundary and Water Commission (IBWC)</i>	

**BOARD MEETING**

***Public comments on agenda items were limited to 3 minutes or otherwise at the discretion of the Board Chair***

**PUBLIC FORUM**

There were no speakers for the Public Forum.

**ACTION ITEMS:**

**Item 1** – Time Schedule Order: Consideration of a Time Schedule Order to be issued to the United States Section of the International Boundary and Water Commission for Discharges to the Pacific Ocean Through the South Bay Ocean Outfall from the South Bay International Wastewater Treatment Plant (Tentative Time Schedule Order No. R9-2023-0189). (*Vicente Rodriguez*)

Chair Cantú gave an opening statement and administered the oath.

Vicente Rodriguez gave the staff presentation and responded to questions from the Board Members and the public.

Morgan Rogers presented on behalf of the International Boundary and Water Commission (IBWC) and responded to questions from the Board Members and the public.

Mr. Gibson also responded to questions from the Board Members and the public.

*Chair Cantú called a recess at 1:51 p.m. and reconvened the meeting at 2:02 p.m.*

Meeting Minutes December 18, 2023

The following stakeholders commented on the item:

- Phillip Musegaas, Executive Director, San Diego Coastkeeper
- Jason Giffen, Vice President, Planning & Environment, San Diego Unified Port District
- Chris Helmer, Environmental and Natural Resources Director, City of Imperial Beach

Chair Cantú closed the public hearing and asked for a motion to adopt the proposed Time Schedule Order R9-2023-0189.

**Motion to adopt Amendment No. 5 and Order No. R9-2023-0189:**

- Mr. Strawn

**Second:**

- Dr. Olson

**Aye:**

- Ms. Blair
- Dr. Olson
- Mr. Strawn
- Ms. Warren
- Chair Cantú

**Nay:**

- None

**Absent:**

- None

There being no further business, Chair Cantú adjourned the meeting at 2:32 p.m.

These Minutes were prepared by:

**Christina Blank**  
 Digitally signed by Christina Blank  
 Date: 2024.02.26 10:58:19 -08'00'

Christina A. Blank  
Executive Assistant

Signed by:

**David W. Gibson**  
 Digitally signed by David W. Gibson  
 Date: 2024.02.26 09:25:35 -08'00'

David W. Gibson  
Executive Officer

# **Exhibit E**

California Regional Water Quality Control Board  
San Diego Region

David Gibson, Executive Officer



Executive Officer’s Report  
February 14, 2024

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**The February report for the Tentative Schedule of Significant NPDES Permits, WDRs, and Actions, Agenda Items Requested by Board Members, and the attachments noted above are included at the end of this report.**

continue to work on the NPDES permits for the City of San Diego's Pure Water Project and the East County Advances Water Purification Program.

The Surface Water Protection Branch would like to welcome Water Resources Control Engineer, Melissa Corona to the Source Control Regulation Unit. Melissa is transitioning from the Restoration and Protection Planning Unit in the Healthy Waters Branch. She will be working on water quality issues related to the U.S and Mexico Border, including the National Pollutant Discharge Elimination System (NPDES) permit for the South Bay International Wastewater Treatment Plant.

Lastly, Ben Neill has accepted a position as the Senior Water Resources Control Engineer in the Stormwater Management Unit in the Surface Water Protection Branch. Ben is returning to the Surface Water Protection Branch after some time leading the Water Sustainability and Protection Unit. Ben brings with nearly a decade worth of stormwater management experience and over 20 years protecting water quality working at the San Diego Water Board. Ben is a California Licensed Professional Chemical Engineer.

Information regarding our vacancies is located on the CalCareers and San Diego Water Board websites:

<https://calcareers.ca.gov/CalHRPublic/Search/AdvancedJobSearch.aspx>  
[https://www.waterboards.ca.gov/sandiego/about\\_us/employment/](https://www.waterboards.ca.gov/sandiego/about_us/employment/)

## **2. United States and Mexico Border Water Quality Update (Attachment A-2)**

*Staff Contacts: Vicente R. Rodriguez and Melissa Corona*

### Status of Border Infrastructure Repairs and Improvements

Minute 328 of the 1944 United States (U.S.)-Mexico treaty, entitled *Utilization of the Colorado and Tijuana Rivers and of the Rio Grande*, was approved in July 2022. It outlines specific border pollution-related projects planned for 2022-2027 and potential projects for the unspecified future.

Minute 328 projects in progress include repairing the 42-inch PB1A pipeline in Matadero Canyon, expanding the South Bay International Wastewater Treatment Plant (SBIWTP), replacing the San Antonio de los Buenos Wastewater Treatment Plant (SABWTP), repairing the International Collector, and repairing the Los Laureles Pump Station.

On November 30, 2023, the U.S. Section of the International Boundary and Water Commission (USIBWC) reported that Mexico has completed repair and reconnection of the 42-inch PB1A pipeline in Matadero Canyon in the City of Tijuana. Subsequent pressure testing of the pipeline revealed leaks downstream of the repaired portion of the pipeline. Those leaks have since been repaired. Although the PB1A pipeline is now operational, it cannot be operated at full capacity concurrently with the PB1B pipeline that runs parallel to it. This is due to ongoing pipeline improvements in support of the ongoing Mexican highway construction. CESPT reports that the pipeline will be fully operational in the Feb-Mar 2024 timeframe. Therefore, polluted transboundary flows through the main Tijuana River channel continue to exceed 50 million gallons per day (MGD). The USIBWC and the Mexican Section of the International Boundary and Water Commission (CILA) are scheduled to meet on January 25, 2024, to

discuss why there continue to be high flow rates through the main river channel. When operating properly, the PB1A pipeline conveys flows from the main river channel in the City of Tijuana to a shoreline discharge point at Punta Bandera approximately 4.2 miles south of the international border.

On January 9, 2024, USIBWC hosted a pre-proposal conference/site visit for the SBIWTP rehabilitation and expansion progressive design-build solicitation. According to USIBWC, the meeting was attended by 35 contractors from 19 companies. Interested bidders must submit statements of qualifications to USIBWC by February 8, 2024. The three best qualified bidders will be invited to submit their technical and cost proposals for final selection of the design-build contractor. Construction is expected to start within one year of the contract award. The SBIWTP will be expanded from 25 MGD to 50 MGD average treatment capacity, which is expected to reduce transboundary wastewater flows by 90 percent.

The SBIWTP expansion is a core project of the USIBWC and U.S. Environmental Protection Agency (USEPA) June 2023 Joint Record of Decision (ROD) for projects to reduce transboundary water pollution. The cost of the SBIWTP expansion is expected to be approximately \$610 million. In 2020, the U.S. federal government, through USEPA, committed \$300 million in the United States-Mexico-Canada Agreement (USMCA). An additional funding request of \$310 million was announced by President Biden on October 25, 2023, in response to bipartisan efforts by local representatives to increase available funding to match the expected cost of the SBIWTP expansion. In January 2024, elected officials from the City of Imperial Beach and the County of San Diego traveled to Washington D.C. to express support for Congress to authorize and allocate the much-needed supplemental funding.

USEPA and USIBWC have contingency plans if the requested \$310 million is not authorized. To date, funding has not been identified for any of the other eight projects included in the ROD to address transboundary flows. Without full implementation of the ROD, transboundary flows of polluted water and trash are likely to continue to impact the Tijuana River Valley, Tijuana River Estuary, and coastal waters from the international border to the City of Coronado.

January 11, 2024, was the groundbreaking ceremony for the SABWTP. The project is fully funded by Mexico and will include rehabilitation of the existing plant as well as treatment upgrades. Completion of the project is scheduled for September 2024. The new SABWTP will treat 18 MGD, which will reduce the volume of untreated wastewater discharged to the shoreline discharge point at Punta Bandera.

USEPA reported that repairs to the damaged 60-inch International Collector pipeline were approximately 40 percent complete on January 17, 2024, and that repairs to the Los Laureles Pump Station are scheduled for early 2024. Until the pump station has been repaired, USIBWC will continue to capture the daily dry weather flows of wastewater at Goat Canyon and divert them to the SBIWTP for treatment.

#### Status of Compliance at the SBIWTP

Flows into the SBIWTP were approximately 25 MGD in December 2023 and January 2024. While repairs and rehabilitation efforts described below are underway, USIBWC remains out of compliance with Order No. R9-2021-0001 as amended by Order No. R9-2023-0009, National Pollutant Discharge Elimination System No. CA0108928, *Waste Discharge Requirements for the United States Section of the International Boundary and Water Commission South Bay International Wastewater Treatment Plant Discharge to the Pacific Ocean Through the South*



Figure 13: Mexican Construction Project in Matadero Canyon. (MC 01/10/2024)

#### Status of State of California Projects to Mitigate Transboundary Pollution

Three projects in the Tijuana River Valley were funded by Senate Bill 170 through the State Water Resources Control Board Division of Financial Assistance:

- Tijuana River Flood Control Trash Control Structure (\$4.73 million – Rural Community Assistance Center)
- Smuggler's Gulch Improvement Project (\$4.25 million – County of San Diego)
- Tijuana River Valley Hydrology and Habitat Restoration (\$2 million – County of San Diego)

Each of the three projects are deeply rooted in the 13 years of coordinated federal, State of California (State), local agency, and non-governmental organization efforts in the Tijuana River Valley Recovery Team to restore and protect water quality. They were originally proposed in the 2012 *Tijuana River Valley Recovery Strategy: Living with the Water* and refined and analyzed in the 2020 *Tijuana River Needs and Opportunities Assessment Report*.

The Tijuana River trash control project involves the design, construction, and operation and maintenance of a floating trash boom system for two consecutive storm seasons in the main channel of the river, immediately downstream of the international border. Installation is expected to be complete by the beginning of the 2024-2025 storm season. This is a

demonstration project. The information gathered will be used to develop permanent trash control infrastructure.

The Smuggler's Gulch improvement project features construction of a full-scale sediment and trash control basin and dredging to remove accumulated sediment, trash, and debris in Smuggler's Gulch and the Tijuana River Pilot Channel. The accumulated sediment, trash, and debris contribute to flooding, which threatens public and private properties and critical habitats. In February 2024, the County of San Diego will dredge up to 30,000 cubic yards of sediment, trash, and debris from Smuggler's Gulch and the Tijuana River Pilot Channel. The basin is currently in the design phase.

The Tijuana River Valley habitat and hydrology restoration project will remediate contaminated property adjacent to the Tijuana River. In January 2024, the County of San Diego started preparing the site for the upcoming demolition and removal of on-site structures at the property containing hazardous materials, such as asbestos and lead.

All three projects will be completed by fall 2027.

#### Status of Advance Restoration Plan (ARP)

The San Diego Water Board developed the draft *Lower Tijuana River Indicator Bacteria and Trash Advance Restoration Plan for Total Maximum Daily Loads* (draft ARP) to address water quality impairments through an implementation plan with actions to restore and maintain water quality standards. The ARP was initially drafted as a total maximum daily load (TMDL) pollution control plan. Waters with an ARP remain on the Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List) until requirements to remove the 303(d) listing are met. If the lower Tijuana River remains on the 303(d) List due to indicator bacteria and trash despite implementation of the ARP, the San Diego Water Board will adopt TMDLs as an amendment to the *Water Quality Control Plan for the San Diego Basin (9)*.

The San Diego Water Board posted the draft ARP on its website for public review and comment on January 10, 2024, and will accept written comments until March 13, 2024. The San Diego Water Board will host an in-person public workshop and a separate virtual public workshop on February 26 and 28, 2024, respectively. The purpose of the public workshops is for the San Diego Water Board to: (1) provide an overview of the draft ARP; (2) receive verbal comments from interested parties on the draft ARP; and (3) in accordance with Assembly Bill 2108, receive verbal comments on any concerns related to environmental justice or potential impacts on water quality for disadvantaged communities and/or Native American Tribes due to the draft ARP's future implementation.

#### Minute 320

USIBWC and CILA held a two-day meeting in Imperial Beach and Tijuana on November 30 and December 1, 2023, to review projects identified for further development in both countries to address sediment, trash, and water quality. Most of the projects under consideration are source control or pollution management projects.

### 3. South Bay International Wastewater Treatment Plant (SBIWT) Receiving Waters Update

*Staff Contact: James Chhor*

#### *Regulatory Background*

The South Bay International Wastewater Treatment Plant (SBIWTP) was constructed in 1996 in a joint United States (U.S.)-Mexico effort pursuant to Minute 283 of the 1944 U.S. Mexico *Treaty Regarding the Utilization of the Tijuana and Colorado Rivers and of the Rio Grande* to end daily transboundary sewage flows. The U.S. and Mexican sections of the International Boundary and Water Commission (IBWC) agreed to expand the sewage collection system in Tijuana and connect it to a U.S. located wastewater treatment plant as well as construct and operate a Tijuana River diversion system and tributary canyon interceptors. The SBIWTP was operated between 1996 and 2010 as a primary wastewater treatment facility and was upgraded to secondary treatment standards in 2011 following the facility upgrade that resulted from the decision in federal court on litigation filed by the San Diego Water Board in 2001.

The SBIWTP is regulated under the Clean Water Act in National Pollutant Discharge Elimination System (NPDES) Permit Order No. R9-2021-0001 as amended by Order No. R9-2023-0009, NPDES No. CA0108928, *Waste Discharge Requirements for the United States Section of the International Boundary and Water Commission South Bay International Wastewater Treatment Plant Discharge to the Pacific Ocean Through the South Bay Ocean Outfall*. Since October 2020, the SBIWTP has been negatively impacted by influent flows from Mexico exceeding design capacity. Excessive flows carrying sediment and trash have caused interference, upset, and equipment failure, leading to diminished treatment and exceedances of secondary effluent limitations as well as increased discharges from the South Bay Ocean Outfall (SBOO). On December 18, 2023, the San Diego Water Board adopted Time Schedule Order No. R9-2023-0189 (TSO), to bring the SBIWTP into compliance with the NPDES Permit and Cease and Desist Order No. R9-2021-0107 adopted by the San Diego Water Board in 2021, as amended in March 2023 by Order No. R9-2023-0009.

#### *Water Quality Impacts*

The San Diego Water Board documented impaired water quality in coastal waters due to uncontrolled releases of sewage in Resolution 53-5 and received complaints of such impairments since the 1930s. In every year since 2010, beaches in Imperial Beach and Border Field State Park have been closed between 100-365 days per year due to elevated fecal coliform bacteria levels resulting from transboundary flows of untreated or partially treated sewage from Mexico in the Tijuana River or from discharges on the coast in Mexico, most notably at Punta Bandera. The sewage has impacted recreation and tourism as far north as Coronado and impaired training at the U.S. Navy Seal Training facility on the Silver Strand between Imperial Beach and Coronado.

The discharge of treated effluent from the SBIWTP to the Pacific Ocean through the South Bay Ocean Outfall (SBOO) has been identified by members of the public and the press as a significant source of the water quality issues, including beach closures and adverse effects to wildlife and human health. However, discharges from the SBIWTP are only one of several sources contributing to the water quality issues. Other sources include, but are not limited to, effluent from the South Bay Water Reclamation Plant (SBWRP), daily transboundary and

stormwater flows in the Tijuana River from Mexico, and wastewater discharges in Mexico to ocean waters south of the international border.

**Transboundary flows** consist of wastewater and stormwater from residential and industrial sources in Mexico that are conveyed by the Tijuana River or coastal canyons to the Tijuana River Estuary (Figure 14). The Tijuana River Estuary then meets the Pacific Ocean approximately 1.24 miles North of the international border. Stormwater in the U.S. also drains to the Tijuana River Estuary. Shoreline discharges of untreated wastewater about 4.2 miles south of the border in Mexico at Punta Bandera from the San Antonio de los Buenos Wastewater Treatment Plant (SABWTP) also travel north by ocean currents to San Diego's southern coastal waters.

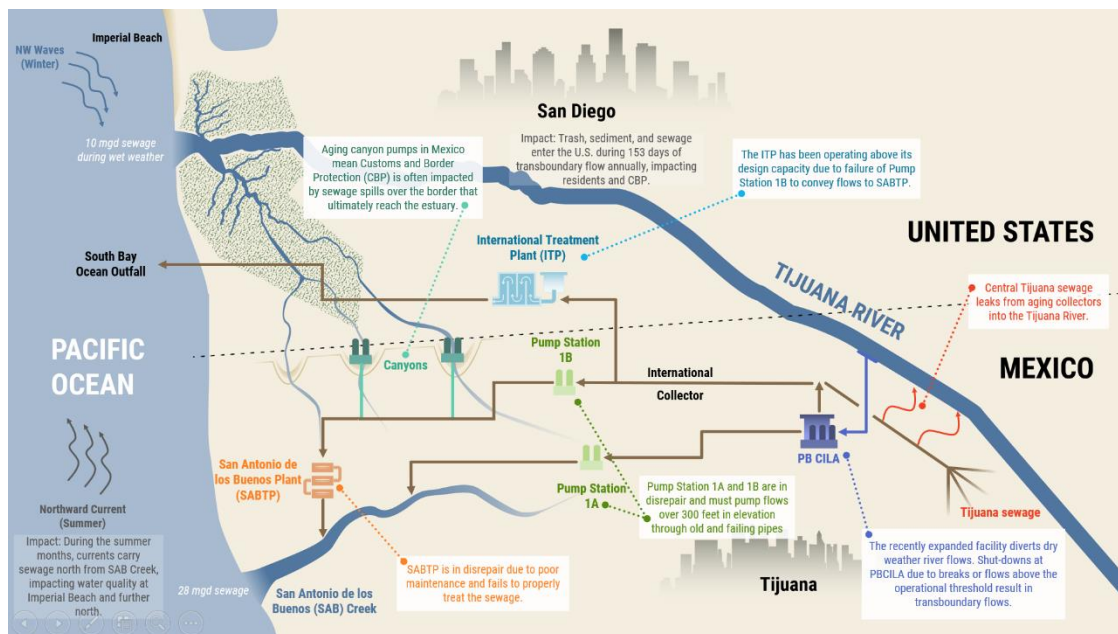


Figure 14: Tijuana River Valley and Border Wastewater Infrastructure

Several studies have been conducted to identify the sources that contribute to poor water quality and the most impactful of projects to improve water quality conditions. One such study was published on October 28, 2021, by Feddersen et al., *Modeling Untreated Wastewater Evolution and Swimmer Illness for Four Wastewater Infrastructure Scenarios in the San Diego-Tijuana (US/MX) Border Region*. The study can be found here:

<https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2021GH000490>.

Feddersen et al. (2021) modelled three scenarios with modified flows from SABWTP or the Tijuana River compared against a baseline scenario with no infrastructure changes to estimate the potential reduction in human illness from impacted beaches. The scenarios are as follows:

- Baseline – two million gallons per day (MGD) diversion from the Tijuana River to SBIWTP with 35 MGD of untreated discharge from SABWTP
- Scenario A – 35 MGD diversion from the Tijuana River to SBIWTP with 10 MGD of treated discharge from SABPWTP
- Scenario B – 100 MGD diversion from the Tijuana River to SBIWTP with 35 MGD of untreated discharge from SABWTP

- Scenario C – 163 MGD diversion from the Tijuana River to SBIWTP with 35 MGD of untreated discharge from SABWTP.

The projected flow and concentration of untreated wastewater from the Tijuana River and SABWTP are shown in Figure 15 where the discharge from SABWTP can travel up to 6.21 miles per day. Feddersen et al. (2021) estimated that Scenario A led to the largest reduction in swimmer related sickness and beach impact. However, it should be noted that the reduction in human illness and beach impact in Scenario A primarily holds true during the dry season when SABWTP is a dominant source of poor water quality. During the wet season, polluted runoff is conveyed into the U.S. through the Tijuana River and tributary canyons and causes gross water quality impact in coastal waters. In both 2022 and 2023, flows were consistently high in the Tijuana River throughout the year resulting in continuous beach closures in Border Field State Park and Imperial Beach and impacting coastal waters and beaches north to Coronado.

**Figure 15: Modeling Untreated Wastewater Evolution and Swimmer Illness for Four Wastewater Infrastructure Scenarios in the San Diego-Tijuana (US/Mexico) Border Region**

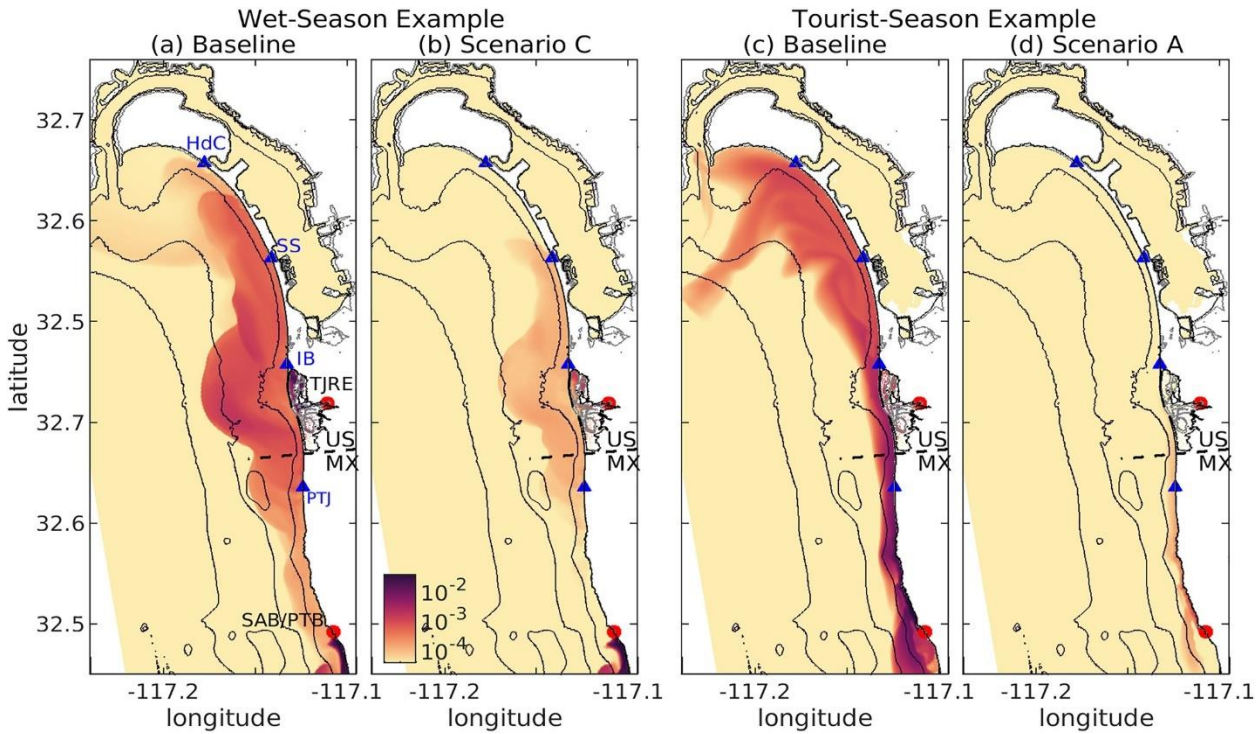


Figure 15 Figure 4 from Feddersen et al. (2021). (a) and (b) show the wet season projection for January 3, 2017, and (c) and (d) show the tourist season (dry season) projection for January 3, 2017. The scale represents the concentration of wastewater in ocean waters where a value of  $10^{-2}$  would be 1.0 percent of wastewater to ocean water, displayed in dark purple, and a value of  $10^{-4}$  would be 0.01 percent of wastewater to ocean water, displayed in the pale yellow. Scenario A and B for the wet season (not displayed) are similar to the wet season baseline projection (a). Scenario B and C for the dry season (not displayed) are similar to the dry season baseline projection (c). Most of the estimated elevated concentration of wastewater to ocean water is within 1.24 – 1.86 miles of the shoreline during the wet season and 0.62 miles of the shoreline during the dry season.

The SBOO is jointly owned by the U.S. Section of the International Boundary and Water Commission (USIBWC) and the City of San Diego. The SBOO was constructed for the conveyance of discharges from the SBIWTP, owned by USIBWC, and the SBWRP, owned by the City of San Diego. As required by the NPDES permits for the SBIWTP and the SBWRP, the City of San Diego conducts an extensive receiving water monitoring program to evaluate potential effects associated with SBOO discharges to the Pacific Ocean. Figure 16 displays the monitoring stations associated with Point Loma Ocean Outfall (PLOO) and SBOO. Bacteriological monitoring sites for the SBOO are differentiated by location type where surf zone sites are highlighted yellow, kelp sites are highlighted green, and offshore sites are highlighted blue.

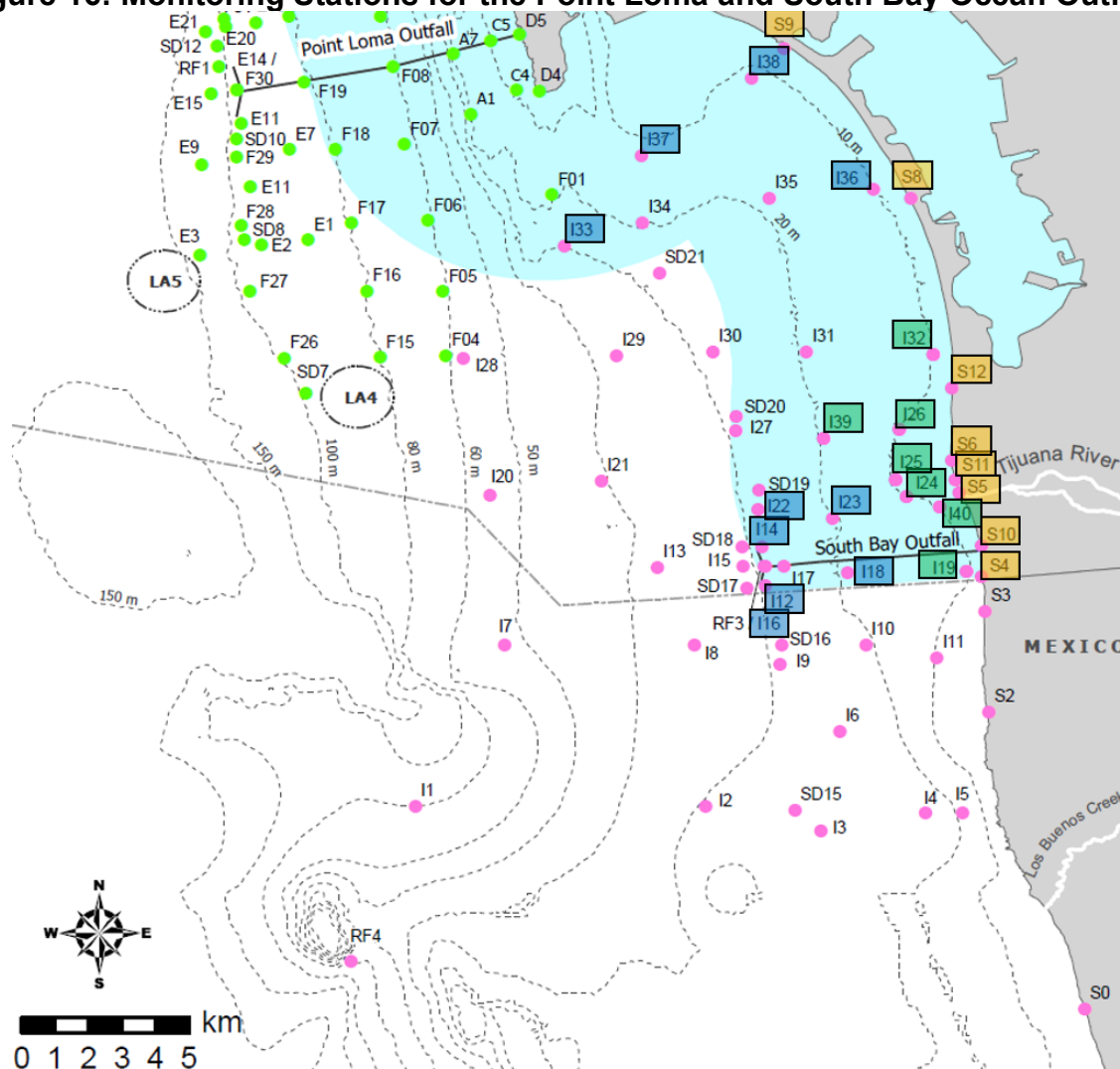
**Figure 16: Monitoring Stations for the Point Loma and South Bay Ocean Outfalls**

Figure 16 Figure 1.1 from *Interim Receiving Waters Monitoring Report for the Point Loma and South Bay Ocean Outfalls*. Monitoring stations for PLOO are represented with green dots and SBOO with pink dots. Bacteriological monitoring sites for SBOO are differentiated by location type where surf zone sites are highlighted yellow, kelp sites are highlighted green, and offshore sites are highlighted blue.

The City of San Diego's most recent *Interim Receiving Waters Monitoring Report for the Point Loma and South Bay Ocean Outfalls* summarizes the monitoring results between January 2022 and December 2022 (Interim Report) and discusses bacteriological monitoring, benthic conditions, community composition of fishes and invertebrates, and contaminants in fish tissues. The Interim Report generally states that all monitoring results were consistent with conditions documented in previous years with only a few changes to local receiving waters. Some of the results are discussed below. The full Interim Report can be found here: [https://www.sandiego.gov/sites/default/files/2023-11/2022\\_InterimReceivingWatersMonitoringReportPLOOSBOO.pdf](https://www.sandiego.gov/sites/default/files/2023-11/2022_InterimReceivingWatersMonitoringReportPLOOSBOO.pdf).

*Enterococcus, Total Coliform, and Fecal Coliform Monitoring*

In their Interim Report, the City of San Diego provides a summary of the monitoring performed for *Enterococcus*, total coliforms, and fecal coliforms at shore, kelp, and offshore locations. Monitoring sites for bacteriological monitoring are listed in Table 1 and can be viewed in Figure 17.

**Table 1. South Bay Ocean Outfall Bacteriological Monitoring Sites Within Waters of the United States**

Monitoring Location Type	Monitoring Sites									
Shore	S4	S5	S6	S8	S9	S10	S11	S12		
Kelp	I19	I24	I25	I26	I32	I39	I40			
Offshore	I12	I14	I16	I18	I22	I23	I33	I36	I37	I38

The City of San Diego reports that for 2022, *Enterococcus*, total coliform, and fecal coliform levels remained largely in compliance with the requirements in the *Water Quality Control Plan for Ocean Waters of California* (Ocean Plan) for offshore monitoring sites, but compliance was reduced and highly variable at shore and kelp monitoring sites and appeared to coincide with stormwater flows from terrestrial sources.

The City of San Diego states that receiving water quality compliance with the Ocean Plan was reduced when compared to previous years, likely due to issues at the SBIWTP. Since October 2020, the SBIWTP has been negatively impacted by influent flows from Mexico exceeding design capacity. Excessive flows carrying sediment and trash have caused interference, upset, and equipment failure, leading to diminished treatment and increased wastewater flows to the SBOO.

Based on the preliminary findings of a plume tracking study for the SBOO, the City of San Diego states that there is no evidence that wastewater discharged into the ocean via the SBOO reaches nearshore recreational waters. This is consistent with the findings in Feddersen et al. (2021) which identified the SABWTP and the Tijuana River, not the SBOO, as the primary sources of bacteriological concerns prevalent in the nearshore environment in southern San Diego’s coastal beaches.

***Benthic Sediment and Benthic Invertebrate Communities***

To characterize the benthic conditions around SBOO, the City of San Diego monitors the benthic sediment for particle size, chemistry, and toxicity and identifies communities of small benthic invertebrates that live in or on the sea-floor habitats surrounding SBOO. Figure 17 displays the City of San Diego’s monitoring stations for PLOO and SBOO as well its regional monitoring stations.

The Interim Report states there was no evidence of fine particle loading related to discharges from SBOO. Contaminant concentrations at or near the zone of initial dilution were also within the range of variability observed throughout southern California coastal areas and do not appear to have significant organic enrichment from untreated wastewater. Sediment toxicity results report high survival rates greater than 90 percent for species exposed to sediments from sampled locations. Benthic invertebrate community assemblages and conditions remain in good overall health compared to reference stations from the Southern California Bight.

Overall, the City of San Diego reports that the results from the studies were all within historical ranges and representative of habitats throughout the Southern California Bight.

*Demersal Fishes and Large Invertebrates*

In 2022, the City of San Diego conducted several otter trawl surveys across 13 locations within San Diego's coastal waters to characterize demersal fish and large invertebrate species. Seven of the locations are situated around SBOO. Two of those seven locations are within 1,000 meters of the outfall structures and are considered to represent nearfield conditions. The City of San Diego states in their Interim Report that demersal fish and large invertebrate communities were not impacted by discharges from SBOO. As a part of the monitoring, the City of San Diego also recorded any physical abnormalities or external parasites when they identified and inspected fish. For the survey locations associated with SBOO in 2022, only one out of 48 (2.1 percent) Hornyhead turbot had an external parasite and 2 out of 2,555 (0.078 percent) speckled sanddabs had an external parasite. Communities were similar between nearfield sites and other monitoring sites across San Diego's coastal waters. Metrics such as species richness, abundance, and diversity were all within historical ranges.



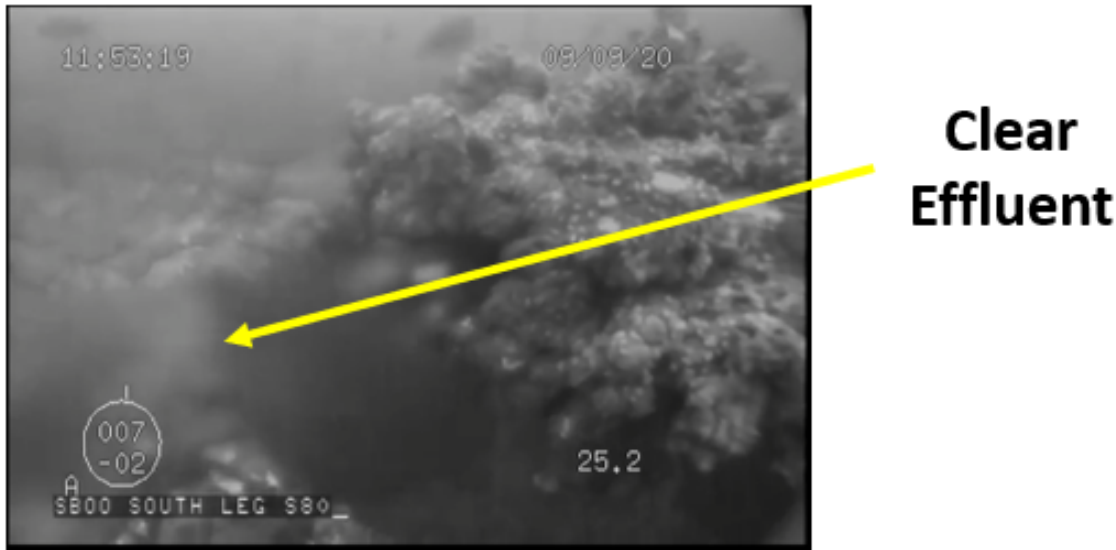
*Contaminants in Marine Fishes*

To evaluate the presence of contaminants in fish tissue, liver tissue from primarily trawl-caught fishes and muscle tissue from hook-and-line caught fishes were analyzed by the City of San Diego. Preliminary analysis by the City of San Diego saw no evidence of accumulations of contaminants related to SBOO discharges. If contaminants in liver or fish tissue were detected, results were generally similar across the capture methods as well as location so no trends could be detected.

*City of San Diego Meeting Summary*

On January 25, 2024, the San Diego Water Board and the City of San Diego discussed the role that discharges from SBOO have on water quality within the vicinity of the U.S. and Mexico border. The City of San Diego reported that in August 2023, the City of San Diego first noted darker effluent being discharged from the SBOO from the diffuser ports. Examples are provided in Figure 18 and Figure 19. While no formal investigation has begun, the City of San Diego believes the darker effluent may be attributed to the excess influent flows to the SBIWTP that began in October 2020. The excess influent, which exceeded the SBIWTP's treatment capacity, have caused interference and equipment failure and have contributed to effluent exceedances for carbonaceous biochemical oxygen demand, total suspended solids, settleable solids, and turbidity since 2021.

**Figure 18: Example of Normal Effluent from the South Bay Ocean Outfall**



*Figure 18 Picture from the City of San Diego's inspection of SBOO outlets on September 9, 2020, that displays the effluent discharge that is normally clear but with a visible difference in density than ocean water.*

**Figure 19: Example of Dark Effluent from the South Bay Ocean Outfall**



*Figure 19 Picture from the City of San Diego's inspection of SBOO outlets on April 12, 2023, that displays the atypical effluent discharge darker than the normal effluent pictured in Figure 18.*

The City of San Diego also provided a summary of the last 10 years of total coliform monitoring at the site nearest SBOO (monitoring site I16). Total coliform monitoring is done on a quarterly basis at offshore sites such as I16. The City of San Diego noted that total coliform levels at site I16 have been elevated since the 3rd quarter monitoring in 2022 and coincides with the increased transboundary flows. The City of San Diego also noted that although the levels were elevated since 2022 at monitoring site I16, the levels are typically lower than shoreline sites and highlighted shoreline monitoring site S5 as an example. The quarterly means of total coliform monitoring for site I16 and S5 are shown in Figure 22 and recreated from data supplied by the City of San Diego.

The City of San Diego stated that SBOO discharges should not contribute much, if any, bacteriological load to any water quality exceedances reported in shoreline monitoring stations. Flows from SBOO typically travel southward, and not eastward towards shore, as shown in Figure 23, which may indicate little mixing between shore and offshore waters. On January 28, 2024, the City of San Diego provided the bacteriological monitoring results for all of 2023. The San Diego Water Board is still reviewing the data to determine if there is evidence that discharges from SBOO contribute to shoreline bacteriological monitoring exceedances. Compliance with the NPDES Permit effluent limitations and Time Schedule Order R9-2023-0189 by August 15, 2024, however, are required regardless of the limited impact documented to date on shoreline or offshore water quality conditions.

**Figure 20: History of *Enterococcus* Concentrations at Shoreline Site S5 and Offshore Site I16 Reported as Quarterly Means**

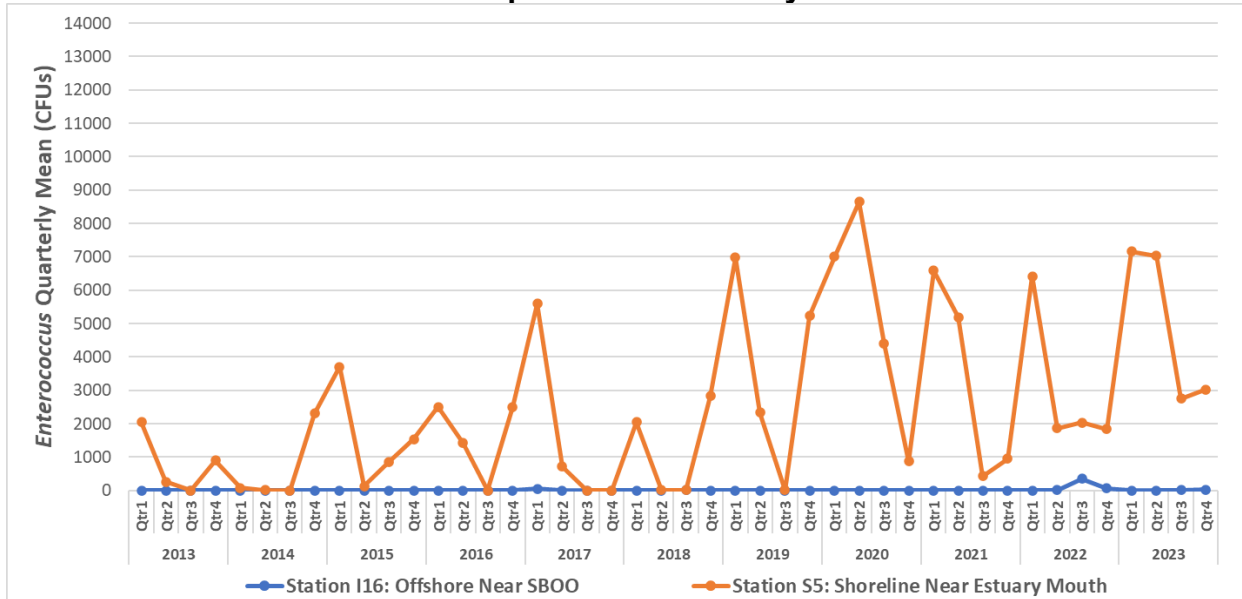


Figure 20 A timeline graph of the quarterly mean *Enterococcus* concentrations between 2013 and 2023 from offshore monitoring site I16, that is near the SBOO outlet, in blue and shoreline monitoring site S5, that is near the Tijuana River Estuary mouth, in orange. The increased concentrations at I16 occur in 2022 and 2023.

**Figure 21: History of Fecal Coliform Concentrations at Shoreline Site S5 and Offshore Site I16 Reported as Quarterly Means**

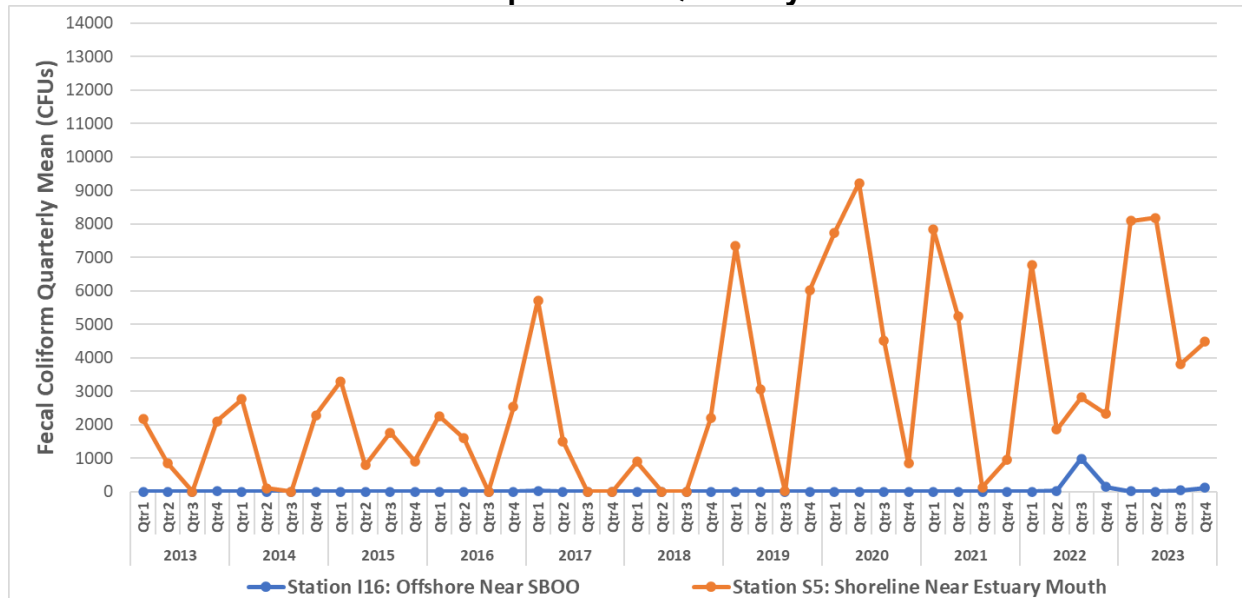


Figure 21 A timeline graph of the quarterly mean fecal coliform concentrations between 2013 and 2023 from offshore monitoring site I16, that is near the SBOO outlet, in blue and shoreline monitoring site S5, that is near the Tijuana River Estuary mouth, in orange. The increased concentrations at I16 occur in 2022 and 2023.

**Figure 22: History of Total Coliform Concentrations at Shoreline Site S5 and Offshore Site I16 Reported as Quarterly Means**

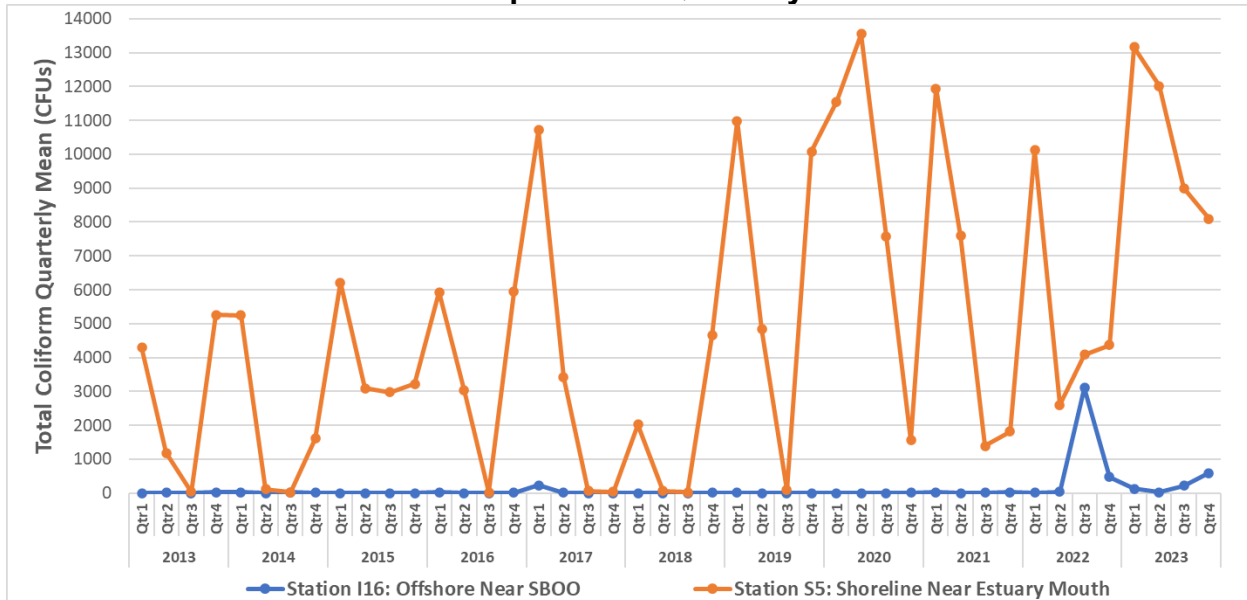
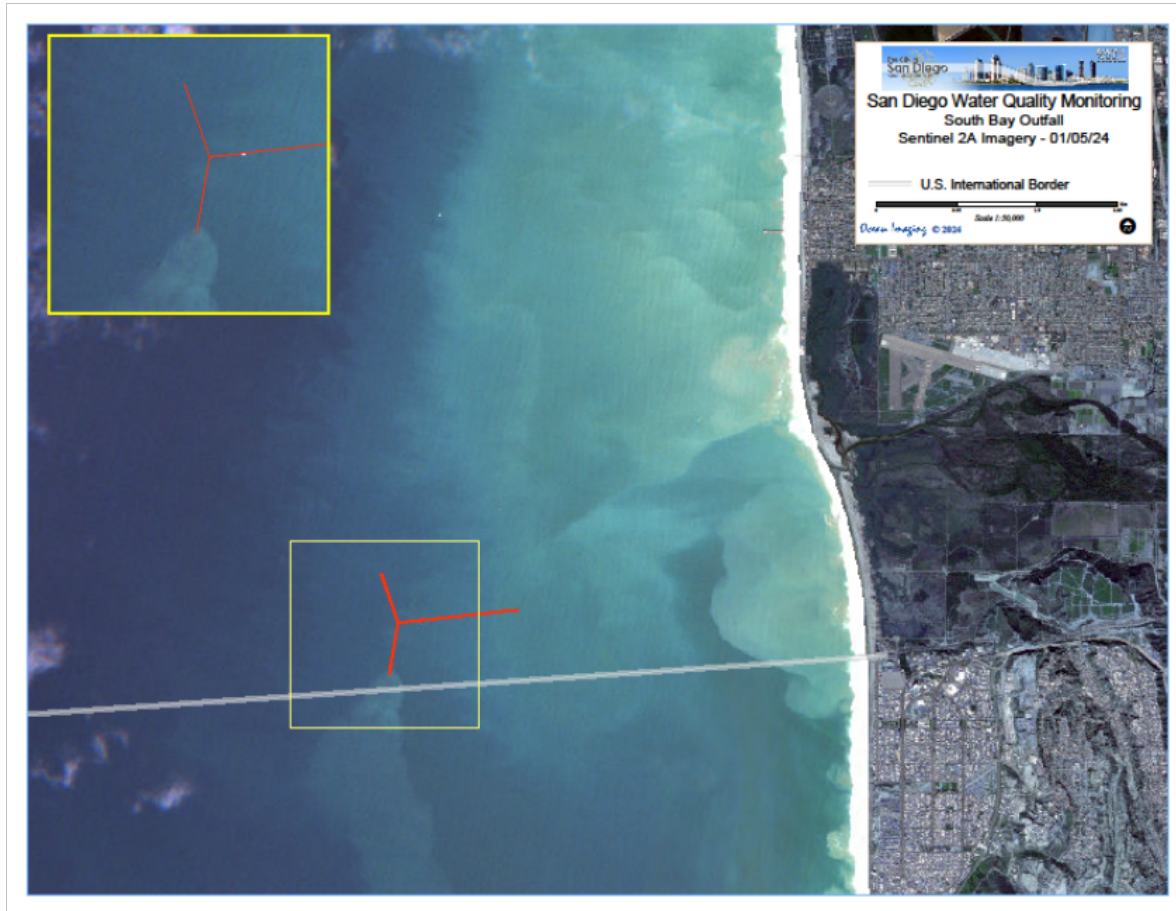


Figure 22 A timeline graph of the quarterly mean total coliform concentrations between 2013 and 2023 from offshore monitoring site I16, that is near the SBOO outlet, in blue and shoreline monitoring site S5, that is near the Tijuana River Estuary mouth, in orange. A timeline graph of the quarterly mean total coliform concentrations between 2013 and 2023 from offshore monitoring site I16, that is near the SBOO outlet, in blue and shoreline monitoring site S5, that is near the Tijuana River Estuary mouth, in orange. The increased concentrations at I16 occur in 2022 and 2023.

**Figure 23: Satellite Imagery of the Normal Path of Discharge from the South Bay Ocean Outfall**



*Figure 23 Satellite imagery of effluent discharges from SBOO on January 1, 2024. Discharges from SBOO can normally be viewed through satellite imagery and displays the southward movement and dilution of SBOO's discharge.*

#### ***Effluent Water Quality Monitoring***

During the Board Meeting on December 18, 2023, on the consideration of Time Schedule Order R9-2023-0189, San Diego Coastkeeper (Coastkeeper) and Coastal Environmental Rights Foundation (CERF) provided comments on their review of data submitted by USIBWC documenting effluent limitation exceedances related to benzidine and polychlorinated biphenyls (PCBs). USIBWC responded during the meeting and made it known that results for benzidine and PCBs should be non-detect. USIBWC is working on reviewing the data and will input the correct data into the California Integrated Water Quality System (CIWQS) and notify the San Diego Water Board when the corrected data upload is complete. Once the corrections have been made, the San Diego Water Board will review the data and will then be able to further comment on any actual exceedances. It should be noted that the SBIWTP was designed to comply with secondary standards which do not include removal of heavy metals or chemicals such as benzidine or PCBs. Elevated levels would not necessarily indicate failures at the SBIWTP. Removal of constituents beyond the capability of secondary treatment will depend on an effective pretreatment program in Mexico, which is currently unknown to the San Diego Water Board. Neither the SBIWTP NPDES permit requirements, nor the TSO, are

enforceable in Mexico where the source of the wastewater influent originates. USIBWC is working with their counterpart in Mexico to request information about the upstream wastewater collection system so that joint efforts to assess options to reduce toxicity sources and develop a pollution minimization plan can be made.

*Summary*

The coastal waters off southern San Diego County receive polluted runoff flows and discharges of treated, partially treated, and untreated wastewater from both the U.S. and Mexico which has resulted in 55 Clean Water Act constituent-water body listings of impairment in the Tijuana River Valley, Estuary, and coastal waters from the U.S. – Mexico International Border to Coronado. While there has been concern in the public and press that discharges from SBOO may contribute to water quality impairment, analysis of the City of San Diego’s Interim Report and the other reports and studies cited above suggest SBOO did not significantly contribute to water quality impairment in nearshore waters in the vicinity of the U.S. and Mexico border in 2022.

Uncontrolled daily flows of up to 30-40 MGD of sewage in the Tijuana River, contaminated storm water runoff from metropolitan Tijuana, and discharges of untreated or partially treated sewage from SABWTP at Punta Bandera in Mexico are the most significant sources of coastal water quality impacts including 782 consecutive days of beach closures (as of February 14, 2024). Water Board staff will continue to closely review monitoring data for impacts or changes in coastal water quality as the efforts to upgrade the SBIWTP and SABWTP are underway and will continue to closely review monitoring data after upgrades are completed. The funding and construction of the Core Projects in the Preferred Alternative of the USEPA and USIBWC [Record of Decision](#), including Project D: The Tijuana River Diversion and Advanced Primary Treatment Plant, are critical to the long term reduction in transboundary flows of pollution that impair the Tijuana River, Estuary, and coastal waters.

## **Part B – Significant Regional Water Quality Issues**

### **1. Summary of Fireworks Shows in the San Diego Region in 2023**

*Staff Contact: James Chhor*

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) reissued Order No. R9-2022-0002, NPDES No. CAG999002, *General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Firework Pollutant Discharges to Waters of the United States in the San Diego Region from the Public Display of Fireworks* (General Order). The General Order was adopted on February 9, 2022, and became effective on June 1, 2022. Fireworks displays located over or near any waterbody in the San Diego region must enroll under the General Order.

#### **Current Enrollees**

There are currently 19 enrollees under the General Order throughout the San Diego region:

- 16 enrollments (84%) for annual fireworks displays celebrating the Fourth of July.
- 3 enrollments (16%) for other events, including multiple events each year.

# **Exhibit F**

2024 WL 2709345

Only the Westlaw citation is currently available.  
Supreme Court of the United States.

SAN FRANCISCO, CA

v.

EPA

No. 23-753

I  
May 28, 2024

Case below, [75 F.4th 1074](#).

**Opinion**

\*1 The petition for a writ of certiorari is granted.

**All Citations**

--- S.Ct. ----, 2024 WL 2709345 (Mem)

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11 *Veolia Water West Operating Services, Inc.,*

12  
13 IN THE UNITED STATES DISTRICT COURT  
14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15 SAN DEIGO COASTKEEPER, a  
16 nonprofit corporation; COASTAL  
17 ENVIRONMENTAL RIGHTS  
18 FOUNDATION, a non-profit corporation,  
19  
20 Plaintiffs,

21 v.

22 UNITED STATES INTERNATIONAL  
23 BOUNDARY AND WATER  
24 COMMISSION, an agency of the United  
25 States; MARIA-ELENA GINER, in her  
26 capacity as Commissioner of the  
27 International Boundary Water  
28 Commission; VEOLIA WATER NORTH  
AMERICA- WEST, LLC, a Delaware  
Limited Liability Company,

Defendants.

Case No. 24-cv-00663-JES-VET  
Honorable James E. Simmons

**DEFENDANT VEOLIA WATER WEST  
OPERATING SERVICES, INC.'S  
REQUEST FOR JUDICIAL NOTICE**

Hearing Date: July 31, 2024  
Hearing Time: 9:00 am  
Courtroom: 4C

1 Pursuant to Federal Rule of Evidence 201, Veolia requests that the Court take  
2 judicial notice of: (1) the NPDES Permit attached as Exhibit 1 to Plaintiffs’ complaint and  
3 (2) the December 2023 TSO issued by the San Diego Water Board attached as Exhibit C  
4 to the Declaration of Rebecca Roberts.

5 Federal Rule of Evidence 201 provides that courts may take judicial notice of facts  
6 that are not subject to reasonable dispute because they are generally known or are capable  
7 of accurate and ready determination. *See* Fed. R. Evid. 201(b). The court may take notice  
8 of such facts on its own, and “must take judicial notice if a party requests it and the court  
9 is supplied with the necessary information.” Fed. R. Evid. 201(c). “[C]ourts routinely  
10 take judicial notice of letters published by the government . . . as well as records and reports  
11 of administrative bodies.” *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 851 n.10  
12 (9th Cir. 2016). Accordingly, a court “may take judicial notice of matters of public record  
13 without converting a motion to dismiss into a motion for summary judgment.” *Lee v. City*  
14 *of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

15 On a motion to dismiss, the court may also consider documents apart from the  
16 pleadings based on the incorporation-by-reference doctrine. Incorporation by reference “is  
17 a judicially created doctrine that treats certain documents as though they are part of the  
18 complaint itself.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1102 (9th Cir.  
19 2018). Under this doctrine, the court may consider extrinsic documents when “the  
20 plaintiff’s claim depends on the contents of a document, the defendant attaches the  
21 document to its motion to dismiss, and the parties do not dispute the authenticity of the  
22 document.” *Knieval v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005).

23 Here, Plaintiffs’ Complaint alleges various discharge violations of the NPDES  
24 Permit. The Permit itself designates the entity which issued it, the San Diego Regional  
25 Water Quality Control Board (“San Diego Water Board”) and the designated discharger,  
26 IBWC. Plaintiffs attached a copy of the NPDES Permit to the Complaint and none of the  
27 parties dispute its authenticity. Therefore, the court may consider the contents of the  
28

1 NPDES Permit without converting the motion into a motion for summary judgment under  
2 the incorporation-by-reference doctrine.

3 While the Time Schedule Order was not attached to the Complaint, the Ninth Circuit  
4 has held “that documents whose contents are alleged in a complaint and whose authenticity  
5 no party questions, but which are not physically attached to the pleading, may be  
6 considered in ruling on a Rule 12(b)(6) motion to dismiss.” *Branch v. Tunnell*, 14 F.3d  
7 449, 454 (9th Cir. 1994), *overruled on other grounds by Galbraith v. Cnty. of Santa Clara*,  
8 307 F.3d 1119 (9th Cir. 2002). Plaintiffs cite to the Time Schedule Order in their  
9 Complaint and allege that it was “intended to bring the Facility into compliance with the  
10 Permit, but . . . failed to do so.” Compl. ¶ 24.

11 In addition, the TSO is judicially noticeable as a public record and a quasi-judicial  
12 document. *United States v. Corinthian Colls.*, 655 F.3d 984, 999 (9th Cir. 2011) (stating  
13 courts make “take judicial notice of matters of public record”); *Cal. Sportfishing*  
14 *Protection All. v. River City Waste Recyclers, LLC*, 205 F. Supp. 3d 1128, 1136 (E.D. Cal.  
15 2016) (taking judicial notice of NDPES General Permit as quasi-judicial document). The  
16 Court may take judicial notice of the San Diego Water Board’s decision because it “can be  
17 accurately and readily determined from sources whose accuracy cannot reasonably be  
18 questioned.” Fed. R. Evid. 201(b)(2); *see W. Radio Servs. Co. v. Qwest Corp.*, 530 F.3d  
19 1186, 1192 n.4 (9th Cir. 2008).

20 Both items are appropriate for judicial notice because they are matters of public  
21 record, the parties do not dispute their authenticity, and the documents do not contain  
22 disputed facts. Accordingly, Veolia requests that the Court take judicial notice of (1) the  
23 NPDES Permit attached as Exhibit 1 to the Complaint and (2) the TSO attached as Exhibit  
24 C to the Roberts Declaration.

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Dated: June, 14, 2024

Respectfully submitted,  
**BIENERT KATZMAN  
LITTRELL WILLIAMS LLP**

By: /s/ Rebecca S. Roberts  
Thomas H. Bienert, Jr.  
Rebecca Roberts

*Attorneys for Defendant  
Veolia Water West Operating Services, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing pleading has been electronically served on the following parties by virtue of their registration with the CM/ECF system:

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Dated: June 14, 2024

/s/ Leah Thompson  
Leah Thompson