

THOMAS A. RUSSELL (SBN 108607)
trussell@portofsandiego.org
ELLEN F. GROSS (SBN 149217)
egross@portofsandiego.org
JOHN N. CARTER (SBN 246886)
jcarter@portofsandiego.org
**SAN DIEGO UNIFIED PORT DISTRICT
OFFICE OF THE GENERAL COUNSEL**
3165 Pacific Highway
P.O. Box 120488
San Diego, CA 92112-0488
Tel: (619) 686-6219
Fax: (619) 686-6444

*Attorneys for the San Diego Unified
Port District*

VICTOR M. SHER (SBN 96197)
vic@sheredling.com
MATTHEW K. EDLING (SBN 250940)
matt@sheredling.com
TIMOTHY R. SLOANE (SBN 292864)
tim@sheredling.com
SHER EDLING LLP
100 Montgomery St. Ste. 1410
San Francisco, CA 94104
Tel: (628) 231-2500
Fax: (628) 231-2929

*Attorneys for Plaintiffs the City of Imperial
Beach, the San Diego Unified Port District,
and the City of Chula Vista.*

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

CITY OF IMPERIAL BEACH, a municipal
corporation, SAN DIEGO UNIFIED PORT
DISTRICT, a public corporation, and CITY OF
CHULA VISTA, a municipal corporation,

Plaintiffs,

vs.

THE INTERNATIONAL BOUNDARY &
WATER COMMISSION – UNITED STATES
SECTION, an agency of the United States, and
VEOLIA WATER NORTH AMERICA –
WEST, LLC,

Defendants.

GLEN R. GOOGINS (SBN 137977)
ggoogins@chulavistaca.gov
BART J. MIESFELD (SBN 126056)
bmiesfeld@chulavistaca.gov
**CITY OF CHULA VISTA
OFFICE OF THE CITY ATTORNEY**
276 4th Avenue
Chula Vista, CA 91910
Tel: (619) 691-5037
Fax: (619) 409-5823

Attorneys for the City of Chula Vista

Case No.

COMPLAINT FOR:

1. DISCHARGES WITHOUT A NPDES PERMIT, 33 U.S.C § 1311(a);
2. DISCHARGES IN VIOLATION OF A NPDES PERMIT, 33 U.S.C. § 1311(a); and
3. IMMINENT AND SUBSTANTIAL ENDANGERMENT UNDER RCRA, 42 U.S.C. § 6972(a)(1)(B).

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1 **I. INTRODUCTION**

2 1. Plaintiffs the City of Imperial Beach (“Imperial Beach”), the San Diego Unified
3 Port District (“Port District”), and the City of Chula Vista (“Chula Vista”) (together, “Plaintiffs”
4 or “Citizens”) have beseeched the federal government through political, diplomatic, regulatory,
5 and administrative avenues to address devastating pollution discharges that injure the Plaintiffs
6 and their constituents. The government has repeatedly failed to act. Plaintiffs now bring this action
7 to halt Defendants’ ongoing, severe, and dangerous violations of the Federal Water Pollution
8 Control Act, also known as the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, and the
9 Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.*

10 2. Defendants the International Boundary and Water Commission – United States
11 Section (“USIBWC”) and Veolia Water North America – West, LLC (“Veolia”) own and operate,
12 respectively, flood control and wastewater collection and treatment infrastructure in the Tijuana
13 River Valley,¹ a sprawling and largely untouched natural open space area adjacent to Plaintiffs’



25
26 ¹ As used herein, “Tijuana River Valley” and “Valley” refer to the land approximately bounded
27 by the Cities of Imperial Beach and San Diego to the North, Interstate 5 to the East, the
28 U.S./Mexico Border to the South, and the Pacific Ocean to the West. This area contains the
Tijuana River and Estuary and all of the USIBWC facilities described herein. All illegal

southern boundaries. In operating their infrastructure, Defendants assumed a critical responsibility: to protect local communities from pollution flowing through the Tijuana River Valley, United States coastal waters, and onto beaches in the United States.

3. Defendants have utterly failed to fulfill their legal and moral mandates. The above photograph, taken in February 2017 after a massive pollutant discharge from Defendants' facilities, depicts an enormous plume of sewage and other pollution migrating from the Tijuana River ("River") mouth toward the City of Imperial Beach in the upper left corner. Unfortunately, pollution discharge events such as the one depicted above have become routine. Human sewage, enormous volumes of sediment, industrial wastes, pesticides, massive amounts of trash, and a host of other nefarious pollutants from Defendants' facilities barrage the Tijuana River, its Estuary, the Pacific Ocean, and the Imperial Beach beachfront, contaminating those natural resources, stigmatizing the beachfront as unclean and unsafe, and sickening members of the public who use the Tijuana River Valley, the beach, and the ocean for recreation.

4. These discharges create severe public health risks in the Tijuana River Valley and along the Imperial Beach beachfront. Untreated and partially treated human and industrial wastewater flowing through the Tijuana River Valley contains human pathogens and toxins that create a hazard to public health through poisoning and/or the spread of disease. Toxins and human bacterial and viral pathogens, including, but not limited to, hepatitis, enteroviruses, and vibrio, have been and will continue to be present in and around coastal beaches in the absence of abatement measures. Currents and other natural conditions carry these pollutants from the Tijuana River Valley to multiple beaches in and around Imperial Beach.

5. Additionally, discharges of sewage, trash, tires, sediment, and other wastes to the Tijuana River Valley impact surface waters and recreational and ecological resources in the Valley. The image below depicts an ephemeral waterway in the Valley clogged with sediment, tires, and other garbage. Pollution of this nature upends the ecological equilibrium in the Valley,

discharges and/or disposal of pollutants and solid and/or hazardous wastes described herein occur in the Tijuana River Valley.

1 requires significant manpower and expense to remediate, and presents a latent hazard of releasing
2 toxins and other hazardous materials contained within with subsequent wastewater flows.



17
18 6. Despite years of attempted collaborative processes involving Plaintiffs,
19 Defendants, other local stakeholders, pertinent state and federal agencies, and others, Defendants
20 have failed to take meaningful action to address the known and anticipated discharges of pollutants
21 from their facilities. Instead of addressing these issues, Defendants falsely herald their past
22 achievements, while the pollution flowing through the Tijuana River onto local beaches grows
23 ever more severe.

24 7. Accordingly, Plaintiffs notified Defendants of their intent to sue over Tijuana River
25 Valley pollution discharges on September 27, 2017. That notification compelled USIBWC to
26 initiate yet another discussion of solutions in the Valley. At the resulting meeting on December
27 12, 2017, the Water Board asked USIBWC to declare its commitment to constructing several
28 “Priority Projects” to finally resolve pollution flowing through the Tijuana River Valley. These

1 projects, memorialized in a January 26, 2018 Water Board memorandum, are not new; Defendants
2 have been aware of the need to implement these projects for years. These projects include: (1) a
3 main river channel pollution interception facility with a conveyance to Defendants' existing
4 wastewater treatment facility in the Valley; (2) enhanced wastewater capture and control facilities
5 in the hills west of the Tijuana River's intersection with the international border, including a new
6 collector/diversion in Yogurt Canyon; and (3) a functioning water quality monitoring and
7 assessment program. These projects would substantially prevent, if not eliminate, illegal
8 discharges of pollutants and solid and/or hazardous wastes from Defendants' facilities.

9 8. Since the December 12 meeting, more than seventeen new pollution events have
10 occurred in the Tijuana River Valley, and over three million gallons of wastewater containing
11 sewage, industrial wastes, pesticides, and other contaminants have passed through Defendants'
12 facilities and emptied into the Tijuana River Valley, forcing beach closures and public health
13 advisories for Imperial Beach beachfront users.

14 9. USIBWC provided a response to the Water Board's memorandum on March 1,
15 2018. Therein, Defendants refused to accept responsibility for and fund, let alone build, any of
16 these projects. Had Defendants implemented those projects when their need was first-identified,
17 virtually all of the pollution events in the Valley since the December 12 meeting would have been
18 prevented.

19 10. Solutions in the Tijuana River Valley are a matter of relatively straightforward
20 engineering: a few critical infrastructural upgrades to collect and treat wastewater flows and to
21 manage sediment and other solid waste in the Valley. Yet, Defendants have failed to even commit
22 to undertaking these projects, meaning that unchecked pollution and Defendants' legal violations
23 will continue indefinitely. The law does not authorize such an unconscionable result. Accordingly,
24 Plaintiffs bring this lawsuit to compel Defendants' compliance with the Clean Water Act and the
25 Resource Conservation and Control Act, to eliminate pollution in the Tijuana River Valley flowing
26 onto beaches, and to finally protect the local communities and the people of the State of California.

1 **II. PARTIES**

2 **A. Plaintiffs**

3 11. **The City of Imperial Beach** is a California General Law City and municipal
4 corporation, duly organized and existing by virtue of the laws of the State of California.

5 12. The City is located in San Diego County, California. It is bordered by the Tijuana
6 River Valley to the South, the City of San Diego to the East, San Diego Bay to the North, and the
7 Pacific Ocean to the West. The City is adjacent to approximately seven miles of beach.

8 13. Imperial Beach depends on beach and ocean access as a main driver of its economy,
9 and its constituents rely on those facilities for recreation. However, the City's beachfront is
10 regularly subjected to regulatory advisories and closures due to Tijuana River Valley pollution
11 pouring unabated through the River. For instance, portions of the City's beachfront were closed
12 for more than two hundred days in 2015, and over 160 days in both 2016 and 2017.

13 14. The presence of the pollutants and solid and/or hazards wastes, in Imperial Beach's
14 environs, including, but not limited to those identified herein, and the danger of that pollution, is
15 widely publicized via news reports, among other manners of communication, both generally and
16 during acute pollution events. That public knowledge diminishes the number of users of Imperial
17 Beach's beachfront coming to and conducting economic activity in Imperial Beach. Moreover,
18 that public knowledge has stigmatized the City of Imperial Beach as associated with pollution and
19 health hazards. All of these impacts result in decreased revenue to the City.

20 15. For instance, the near-constant presence of pollution in the Tijuana River Valley
21 causes health hazards in and near the City of Imperial Beach, among other physical impacts. Those
22 impacts negatively stigmatize the City's desirability as a residence or place of business, thereby
23 diminishing property values in the City and diminishing assessable property value in the City. The
24 City suffers a decrease in property tax revenue as a result of that pollution.

25 16. Additionally, such health hazards diminish the number of visitors willing to visit
26 and spend money in Imperial Beach. Known for its miles of sandy beach and popular surf breaks,
27 the City is injured when regulatory closures prevent the public from utilizing the City's beachfront.
28 Moreover, the number of visitors at Imperial Beach relative to other similarly situated beach

communities is diminished because of the pollution and public health stigma associated with the Tijuana River Valley and City. Diminished economic activity caused by reduced tourism has caused and will continue to cause diminished sales tax revenue to the City.

17. The City has committed significant staff time and other resources to public processes intended to resolve water quality violations in the Tijuana River Valley, including, but not limited to, the Treaty of February 3, 1944, for the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande's ("Treaty of 1944") Minute 320 Binational work groups, and the Tijuana River Valley Recovery efforts. The City would not have committed that time or expended those resources on its participation in those processes but for the water pollution problems in the Tijuana River Valley arising out of Defendants' violations of the CWA and RCRA.

18. The quality of life in Imperial Beach and of people residing, working, and recreating in and near the Tijuana River Valley is compromised by sewage-contaminated waters, along with the associated odors and poor air quality.

19. **The San Diego Unified Port District** is a public entity created by the San Diego Unified Port District Act, California Harbors & Navigation Code, Appendix 1, § 1 et seq.

20. The Port District is the successor to the powers vested in the cities that make up the Unified Port District, and the powers of those cities related to these properties are vested in the Port District, including the right to sue and be sued. The Port District is authorized to use its powers and authority to protect and enhance physical access to, natural resources within, and the water quality of the natural resources under its charge.

21. The Port District is a trustee for the people of the State of California, and holds and manages tidelands and submerged lands in and around San Diego Bay and certain portions of the Pacific Ocean for the benefit of the people of the State of California, and specifically, "for the promotion of commerce, navigation, fisheries, and recreation." The Port District holds and exercises land management authority over portions of the beach and submerged lands under the Pacific Ocean that are negatively impacted when the pollution that is the subject of this Complaint contaminates those resources. These lands and the ocean have been and will continue to be injured by the discharges of pollutants from Defendants' facilities in the Tijuana River Valley, which

injure resident and migratory flora and fauna, diminish the aesthetic beauty of those lands, and injure the invaluable public resources subject to the Port District's trusteeship.

22. **The City of Chula Vista** is a California Charter City and municipal corporation, duly organized and existing by virtue of the laws of the State of California and the Charter of the City of Chula Vista. The City has the power to sue and be sued.

23. The City is located in San Diego County, California, adjacent to the San Diego Bay, and in close proximity to the Tijuana River Valley and the Imperial Beach beachfront. Chula Vista constituents regularly use and enjoy the beach and ocean in and around Imperial Beach.

24. Tijuana River Valley pollution and consequent beach closures injure Chula Vista's reputation for, and interest in protecting, its actual quality of life. Chula Vista depends on its proximity to the Imperial Beach as an essential element of the quality of life it affords its citizens, employees, and resident businesses. That proximity to the beach induces individuals and businesses come to and conduct economic activity in Chula Vista; however, due to frequent closures of the Imperial Beach beachfront, Chula Vista loses the benefit of that proximity, and the attendant boost to both its actual quality of life. This damages the City's reputation, by creating the appearance that the City does not offer its residents nearby ocean access despite the fact that it does; and creating the appearance that Chula Vista provides access to a beach that is unsafe and unclean. That diminished reputation depresses property values and economic activity in, and attendant tax revenue to, the City of Chula Vista.

25. Defendants' ongoing violations of the CWA and RCRA are the primary causes of pollution in the Tijuana River Valley and along the Imperial Beach beachfront. Defendants' ongoing violations of the CWA and RCRA have actually injured and will imminently injure Plaintiffs unless those violations cease immediately.

B. Defendants

26. **The International Boundary and Water Commission** – U.S. Section ("USIBWC") is an agency and instrumentality of the United States government. USIBWC is the agency charged with addressing transboundary issues arising out of agreements between the United States and Mexico, including, but not limited to, the Treaty of 1944.

27. Among USIBWC’s responsibilities under the Treaty of 1944 is the responsibility to address transboundary sanitation problems that arise due to the transboundary nature of the Tijuana River watershed. Indeed, the Treaty of 1944 obligates USIBWC to “give preferential attention to the solution of all border sanitation problems.” USIBWC defines a “border sanitation problem” to include “each case in which waters that cross the boundary, including coastal waters...have sanitary conditions that present a hazard to the health and well-being to inhabitants on either side of the border or impair the beneficial uses of those waters.”

28. To carry out those treaty obligations, USIBWC has constructed, operated and/or contracted to operate, and maintained flood control and wastewater collection, conveyance, and treatment infrastructure in the Tijuana River Valley. These facilities are described in detail *infra* at Section IV. B.

29. **Veolia Water North America – West, LLC** (“Veolia”), is a limited liability company incorporated in Delaware. Veolia maintains its corporate headquarters in Boston, Massachusetts, and maintains offices in Walnut Creek, Contra Costa County, California, and San Diego, San Diego County, California. Veolia contracts with USIBWC to, and does, operate and maintain the South Bay International Wastewater Treatment Plant and its associated facilities in San Diego, San Diego County, California. Veolia is a wholly owned subsidiary of Veolia Water North America Operating Services, LLC.

30. Veolia purposefully availed itself of the privilege of conducting activities within the Southern District of California, including by contracting to operate and operating the South Bay International Wastewater Treatment Plant in San Diego County, California.

III. JURISDICTION AND VENUE

31. This action involves conduct, injuries, and rights to relief that present federal questions arising under the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, and the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.* Accordingly, this court has jurisdiction over the subject matter of this action pursuant to 33 U.S.C. § 1365(b), 42 U.S.C. § 6972(a), and 28 U.S.C. § 1331.

1 32. Defendants the USIBWC and Veolia were served with a notice of the Plaintiffs’
2 intent to sue for violations of the CWA, and notice of an imminent and substantial endangerment
3 and the Plaintiffs’ intent to sue for violations of RCRA, via certified mail and registered mail,
4 return receipt requested, on September 27, 2017. More than ninety days have passed since
5 Defendants each received the Notice Letter. Defendants have not remedied the CWA and RCRA
6 violations that are the subject of the Notice Letter and this Complaint. No regulatory agency has
7 commenced and is diligently prosecuting any action to address the contamination that is the subject
8 of this action. A copy of Plaintiffs’ combined CWA and RCRA “Notice of Intent” letter is attached
9 as Exhibit A.

10 33. Venue is proper in the Southern District of California pursuant to 28 U.S.C.
11 § 1391(b), 33 U.S.C. § 1365(c)(1), and 42 U.S.C. § 6972(a) because the acts and omissions giving
12 rise to this claim, the water pollutant discharge sources of the effluent standard and limitation
13 violations described herein, and the imminent and substantial endangerment arising therefrom, all
14 occurred and/or are located in San Diego County, California, in the Southern District of California.

15 34. The United States District Court for the Southern District of California has
16 jurisdiction to, *inter alia*, order civil penalties and grant equitable relief including an order to
17 comply with the CWA and applicable permits thereunder. 33 U.S.C. §§ 1319(g); 1365(a).
18 Additionally, the Court has jurisdiction under RCRA to enjoin Defendants’ conduct contributing
19 to the imminent and substantial endangerment to human health and the environment present in the
20 Tijuana River Valley.

21 **IV. FACTUAL ALLEGATIONS**

22 **A. The Tijuana River Valley and Estuary.**

23 35. The Tijuana River watershed drains into the Tijuana River, which flows
24 northwesterly from Mexico and crosses the international border near the neighborhood of San
25 Ysidro in San Diego, San Diego County, California.

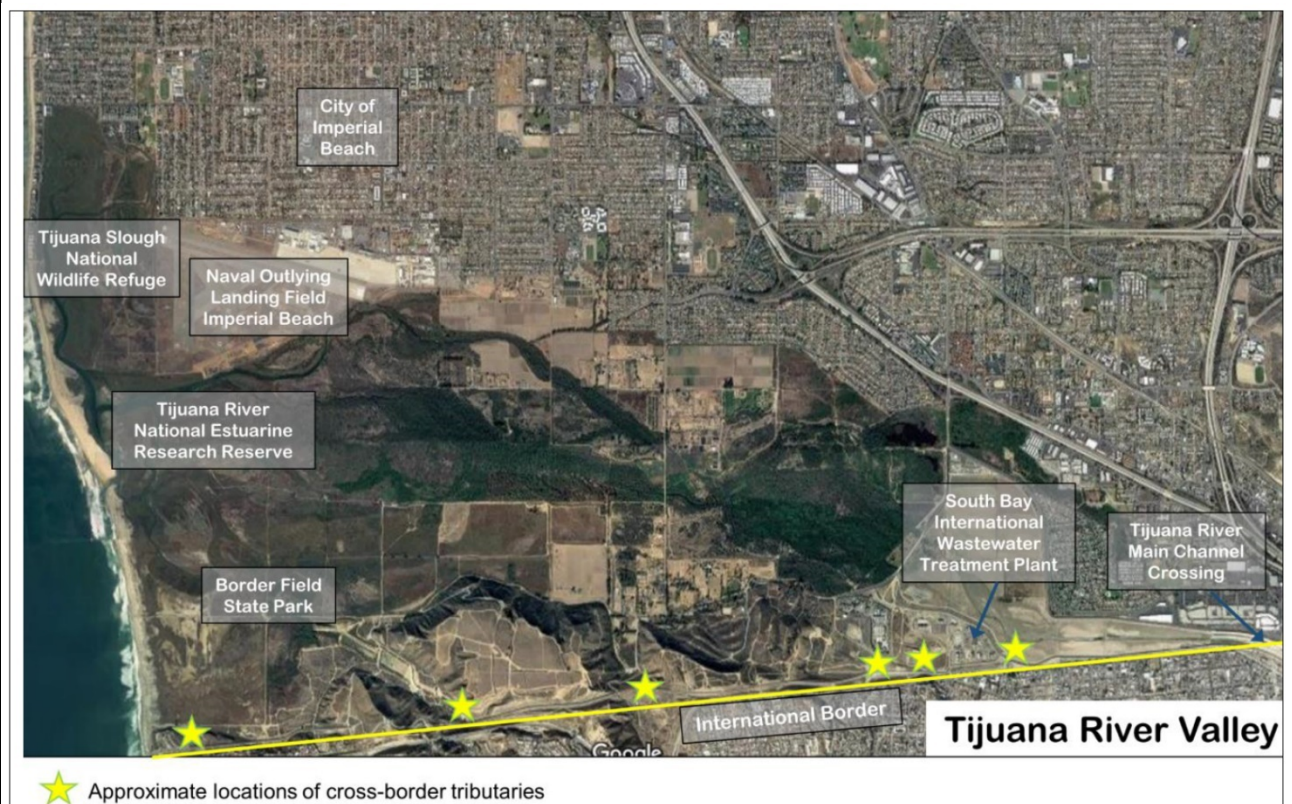
26 36. Upon crossing the border, the Tijuana River veers westward for approximately one
27 mile. Thereafter, the River meanders northwesterly through the largely undeveloped Tijuana River
28

Valley for several miles, develops into an estuary near the coast, and ultimately empties into the Pacific Ocean immediately south of the City of Imperial Beach.

37. The Tijuana River, the Tijuana River Estuary, and the Pacific Ocean are “navigable” in the traditional sense of the word.

38. The Tijuana River Valley is bordered to the South by an east-west range of hills that span from the Tijuana River’s intersection with the U.S. Mexico Border to the Pacific Ocean. The U.S. Mexico border is located in these hills, at a higher elevation than the Tijuana River. Thus, fugitive wastewater, precipitation, and other water in this portion of the City of Tijuana tends to flow downhill, into U.S. waters that transit the border at several canyons and ravines that are hydrologically connected to the Tijuana River and Estuary and the Pacific Ocean.

39. The image below depicts the Tijuana River Valley and major features therein. The primary canyons and ravines described in ¶38 that naturally drain into the Tijuana River and Estuary are demarcated with stars.



40. The Valley is an important recreational resource, and contains trails for biking, hiking, and horseback riding. The beach at the western edge of the Valley provides additional

1 terrestrial and aquatic recreational opportunities. The Tijuana River Estuary, located in the Valley,
2 is an important ecological resource. It is a marine-dominated estuary designated as a Wetland of
3 International Importance by the Ramsar Convention in 2005. It has several sensitive habitats, such
4 as sand dunes and beaches, vernal pools, tidal channels, mudflats, and coastal sage scrub. The
5 Estuary contains one of the few salt marshes left in California. The Estuary provides critical habitat
6 for several endangered species; nursery grounds for commercially-important fish species; and an
7 essential breeding, feeding and nesting area and a stopover point on the Pacific Flyway for both
8 native and migratory birds. In recognition of the Tijuana River Valley's recreational and ecological
9 importance, areas of the Valley have been protected under the California State Park System, the
10 National Estuarine Research Reserve System, and the National Wildlife Refuge System.

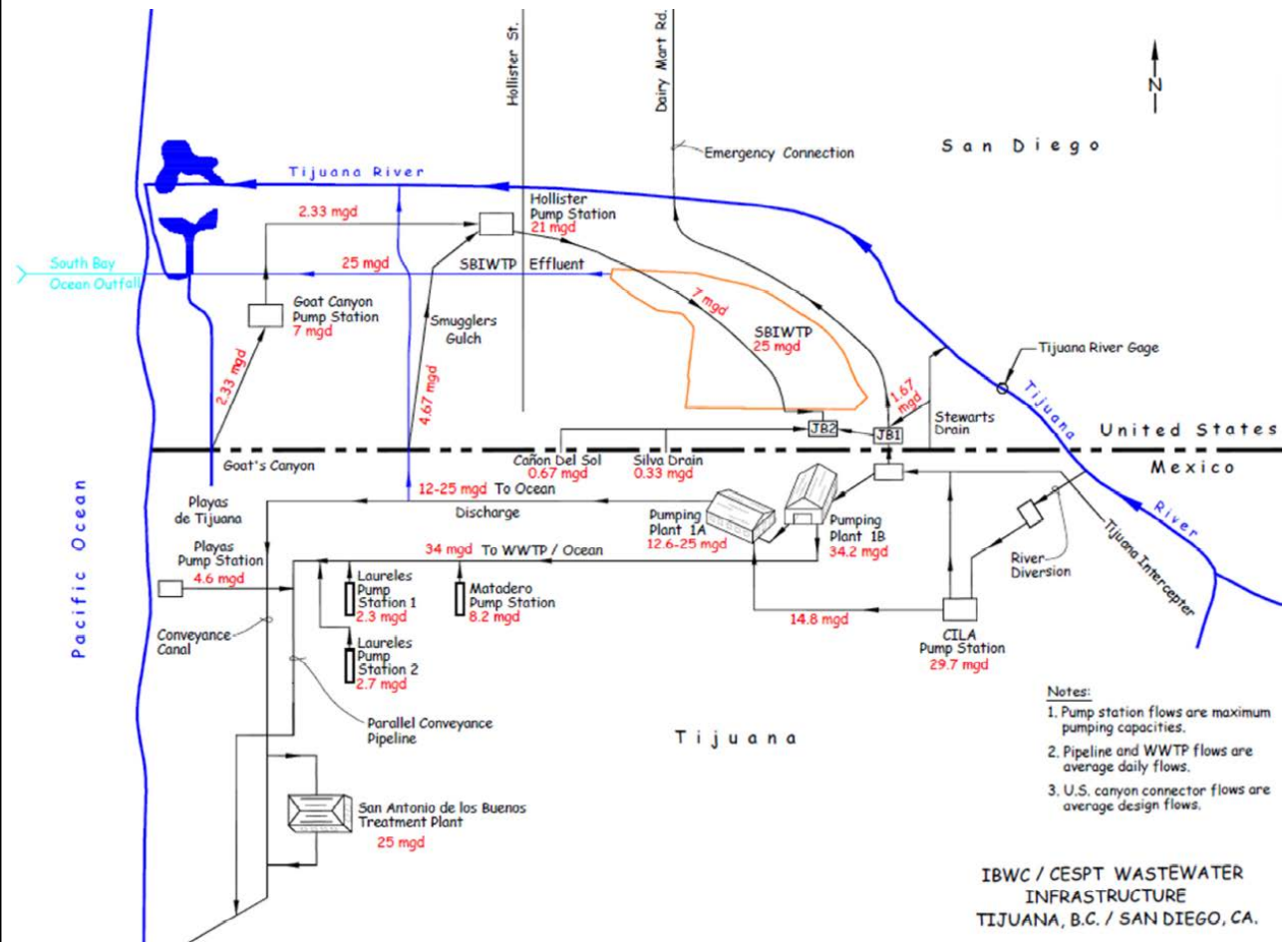
11 41. Polluted water enters the main channel Tijuana River in Mexico and the natural
12 drainages west of the river. Poorly constructed and maintained wastewater collection facilities, lax
13 regulation, and substandard pollution prevention practices, among other factors, all contribute to
14 pollution in the Mexican section of the Tijuana River and in the drainages. Fugitive wastewater
15 from street runoff, residences, industrial operations, agricultural fields, broken sewerage, and other
16 sources located in Mexico moves through the Tijuana River watershed, a substantial portion of
17 which enters the United States and ultimately flows to the Pacific Ocean and Imperial Beach
18 beachfront.

19 42. Defendants are aware that water crossing the border via the main channel Tijuana
20 River and the natural drainages west of the River is polluted.

21 43. Polluted water that crosses the border via the main channel Tijuana River or the
22 natural drainages west of the Tijuana River ultimately flows downstream and into the Pacific
23 Ocean, where currents, tides, winds, storms, and/or other influences cause it to drift along, and
24 deposit onto, the Imperial Beach beachfront and adjacent marine and tidal lands and waters.

25 **B. USIBWC Facilities in the Tijuana River Valley.**

26 44. The following illustration depicts a schematic of the transboundary wastewater
27 infrastructure that includes USIBWC's facilities here at issue. This image represents the facilities
28 and flow progression. It is not to scale.



45. At all relevant times, USIBWC has owned and controlled the South Bay International Wastewater Treatment Plant (“South Bay Plant” or the “Plant”). The Plant is located in the Tijuana River Valley in the City of San Diego, San Diego County, California. It is situated between the Tijuana River to the north and the international border to the south, and immediately west of the intersection of the border and the Tijuana River. The Plant is depicted in the schematic above by a yellow polygon marked “SBIWTP.”

46. The South Bay Plant and its associated facilities operate under and are subject to the terms of National Pollution Discharge Elimination System (“NPDES”) permit CA0108928 (California Waste Discharge Requirement Order R9-2014-0009 as amended by Order R9-2014-0094) (“South Bay Plant NPDES permit”).

47. The South Bay NPDES permit authorizes discharges of pollutants *only* at the South Bay Ocean Outfall, and only after such pollutants have gone through secondary treatment

at the South Bay Plant. All other discharges are prohibited.

48. At all relevant times, Defendant Veolia has contracted to operate and maintain the South Bay Plant and its associated facilities. Veolia is also bound to comply with the terms of the South Bay Plant NPDES permit.

49. The South Bay Plant is the main wastewater treatment plant in a transboundary sewage system that USIBWC co-operates with CILA. The primary influent to the Plant is sewage from Mexico. A pipe and pump system originating in Mexico conveys domestic sewage from the sewage collection system in Tijuana across the border and directly into the Plant. The Plant processes influent to secondary treatment levels and discharges treated wastewater through the South Bay Ocean Outfall. The Outfall's discharge point is located in U.S. waters of the Pacific Ocean, several miles off of San Diego, California.

50. Among the collection facilities in the transboundary sewage system is a diversion structure in the Mexican section of the Tijuana River (the "CILA Diversion") designed to divert flows in the main river channel into the transboundary sewage system. The CILA diversion frequently malfunctions, allowing sewage to flow freely through the main river channel into the United States.

51. Immediately after the River crosses the international border, it continues its path through a concrete-lined aqueduct that directs flow due westward, away from the River's natural and historical northerly course. This "flood control conveyance" is a discrete concrete-lined channel with banked sides that begins at its attachment with the Mexican portion of the channelized Tijuana River at the international Border and terminates 0.9 miles downstream in the Tijuana River Valley. At its terminus, water flowing through the flood control conveyance discharges to the unlined, unimproved portion of the Tijuana River. At all relevant times, USIBWC has owned and maintained the flood control conveyance, which is designed to redirect the River's flow to prevent flooding in the San Ysidro neighborhood in San Diego.

52. There is no facility on the U.S. side of the border within the flood control conveyance or downstream thereof to capture and collect wastewater flows through the main channel Tijuana River. Thus, any wastewater flow that enters the United States from Mexico via

the main river channel and flood control conveyance is not, and cannot be, collected for treatment and appropriate discharge.

53. To address fugitive wastewater that escapes Tijuana's wastewater collection system and flows into the United States via the natural drainages west of the Tijuana River's intersection with the border, USIBWC owns and operates five "canyon collectors." These facilities are named for the natural drainages in which each is located: Goat Canyon Diversion Structure, Smugglers Gulch Diversion Structure, Silva Drain Canyon Collector, Canyon del Sol Collector, and Stewarts Drain Canyon Collector (collectively, "canyon collectors").

54. The canyon collectors also operate under and are subject to the South Bay Plant NPDES permit.

55. The canyon collectors are designed to capture and detain wastewater originating in Mexico immediately after it crosses the U.S./Mexico Border into the United States. Each facility shares the same basic design: either directly or via a concrete channel with its entrance abutting the border fence, these facilities collect and direct wastewater into a shallow detention basin. Wastewater in the basin is then directed to a drain regulated by a valve, and conveyed, via pump or gravity, to the South Bay Plant.

56. The natural drainages in which the canyon collectors are located are either "navigable" in the traditional sense of the word or are hydrologically connected to the Tijuana River and Estuary and ultimately the Pacific Ocean. Pollutants and solid and/or hazardous wastes discharged or released to these drainages substantially impact downstream water quality.

C. Pollution and Waste Regularly Discharge or Otherwise Escape from USIBWC Facilities.

57. Pollutants and solid and/or hazardous waste discharges from the flood control conveyance are so frequent as to be ongoing and continuous. These flow events cause severe and extensive pollution in the Tijuana River Valley, and eventually flow adjacent to and past, and cause injury to, Imperial Beach, its associated beachfront, and lands and property controlled by the Port District.

58. Since 2015, hundreds of millions of gallons of wastewater have discharged from

the flood control conveyance to the Tijuana River and ultimately the Pacific Ocean in discrete events, some lasting several days.

59. Exhibit B is a table listing known dry-weather discharge events from the flood control conveyance since 2015. Defendants document these discharges in Spill Reports to the San Diego Regional Water Quality Control Board (“Regional Board”) as required under the South Bay Plant NPDES permit. Additional flood control conveyance discharges of pollutants occur during virtually every wet weather event.

60. Such events typically occur due to failures of wastewater collection infrastructure in Mexico, which USIBWC co-manages with CILA, pursuant to Treaty of 1944 Minute 283. Minute 283 laid the groundwork for the transboundary sewage collection, conveyance and treatment system that includes the South Bay Plant and the CILA Diversion. Under Minute 283, USIBWC cooperatively operates and maintains with Mexico portions of the transboundary collection, conveyance, and treatment system.

61. Wastewater that flows through and discharges from the flood control conveyance contains sewage, industrial waste, and other pollutants and solid and/or hazardous wastes that should have been conveyed to the South Bay Plant or treated in Mexico. Instead, these flows continue through the river channel and discharge to the altered, present-day course of the Tijuana River immediately east of the South Bay Plant. These flows do not undergo any water quality treatment before they are discharged.

62. When flow in the collector exceeds the canyon collector’s capacity, or when the drain is closed during storm events, wastewater flows escape into the natural drainages that are tributaries to the Tijuana River and Estuary, or are deposited on the periphery of the canyon collector or the banks of those tributaries.

63. Since 2015, Defendants have documented that several millions of gallons of wastewater have discharged from the canyon collectors to the Tijuana River and the natural drainages that are tributary to the Tijuana River and Estuary, in hundreds of discrete events.

64. Exhibit C is a table listing discharge events at each of the canyon collectors since 2015 for which Defendants prepared Spill Reports as required under the South Bay Plant NPDES

1 permit. Spill Reports describe the estimated volume of the specific discharge event, the receiving
2 water, and results of any water quality sampling identifying constituent pollutants and solid
3 and/or hazardous wastes.

4 65. Exhibit D is a table listing other discharge events at each of the canyon collectors
5 since August 30, 2015 that Defendants documented in daily canyon collector inspection reports
6 as required under the South Bay Plant NPDES permit. These discharges are reported as “signs of
7 sewage overflows in [the] past 24 hours,” or as flows that were observed to have broken
8 containment from a canyon collector. Beyond these daily reports, Defendants do not investigate
9 the cause of these discharges, do not estimate total volume of these discharges, and do not
10 undertake water quality sampling of the discharged wastewater to identify constituent pollutants
11 and solid and/or hazardous wastes. The receiving water for each discharge listed in Exhibit D is
12 the natural drainage channel for which the pertinent canyon collector is named. Each of the
13 natural drainage channels is a hydrologically-connected tributary to the Tijuana River and
14 Estuary, and ultimately the Pacific Ocean.

15 66. Each and every discharge event at the canyon collectors contains pollutants and
16 solid and/or hazardous wastes.

17 **D. Pollutants and Wastes Discharging from USIBWC Facilities and their**
18 **Impacts.**

19 67. Known discharges from the flood control conveyance are not regularly sampled
20 for the complete range of water quality parameters necessary to understand the full impact of
21 these pollution events. However, routine bacteriological sampling at Dairy Mart Bridge, just
22 downstream of the termination of the conveyance, indicates that, at a minimum, pollutants
23 including *e. coli*, total coliforms, and enterococcus are present in virtually every flow event that
24 discharges from the flood control conveyance into surface water in the riverbed.

25 68. *E. coli*, total coliforms, and enterococcus are indicator bacteria demonstrating the
26 presence of fecal contamination in water.

27 69. Flood control conveyance discharges also contain substantial quantities of solid
28 waste, including, but not limited to, sediment, trash, garbage, and other refuse. Used automobile

tires are particularly common component of the refuse carried by flood control conveyance discharges into the Tijuana River Valley, where they are deposited on the banks of the estuary.

70. Water quality sampling of flood control conveyance discharges during discovery will reveal that myriad other pollutants and solid and/or hazardous wastes are present in all flood control conveyance discharges, including, but not limited to, industrial wastes, pesticides, and heavy metals.

71. Defendants infrequently collect canyon collector discharge water quality samples. Of the more than three hundred documented discharges since August 2015, sampling data is available for only eleven discharges.

72. As described in Exhibit C and documented in Defendants' Spill Reports to the Regional Water Board, canyon collector discharges contain several pollutants and solid and/or hazardous wastes, including, but not limited to, garbage and refuse; discarded solid, liquid, or semisolid materials from industrial, commercial, and agricultural operations, and from community activities; metals, including, but not limited to, chromium, copper, nickel, zinc, arsenic, cadmium, lead, and beryllium; pesticides, including aldrin, DDT, lindane, dieldrin, and heptachlor; solvents, including, but not limited benzene, toluene, and trichloroethene; and many others.

73. Exposure to the pollutants and solid and/or hazardous wastes contained in canyon collector discharges presents a grave threat to human health. Exhibit E describes the human health effects of exposure to a selection of the materials that Defendants have reported are present in discharges from the canyon collectors.

74. Many of the contaminants Defendants are discharging to the Tijuana River Valley are slow to break down and accumulate in the environment. Subsequent disruption of reservoirs of pollutants and solid and/or hazardous wastes cause impacts as alleged herein long after the wastewater discharge that initially deposited the materials has subsided.

75. The vectors for exposure to these and other hazardous wastes and pollutants in the Tijuana River Valley and canyon collectors render the potential for human exposure to them an imminent and substantial endangerment to human health. Pathways to human exposure to these

1 materials include, but are not limited to, dermal absorption, inhalation of dust with adsorbed
2 pollutants, inhalation of volatilized pollutants, and unintended ingestion. U.S. Border Patrol
3 agents working in the Tijuana River Valley are frequently exposed to these materials by walking
4 through or wading in waters in the drainages, and have reported chemical burns, respiratory
5 irritation, and other maladies. Once these pollutants and solid and/or hazardous wastes reach the
6 Tijuana River and Estuary, they present an exposure risk to recreational users, such as
7 equestrians and hikers, via inhalation and other direct exposure. Upon reaching the Pacific Ocean
8 and subsequently the Imperial Beach beachfront, surfers, beachgoers, fishermen and women, and
9 other beach and ocean users, are subjected to direct exposure via dermal contact, ingestion,
10 inhalation, or otherwise; and indirect contact, such as by consuming fish that have been exposed
11 to these materials.

12 76. Additionally, disposal of those wastes to land and water in the Valley exposes
13 land, marine, and estuarine flora and fauna to the dangers inherent in those wastes. Wildlife
14 exposure to sewage and other contaminants can result in suppression of immune system
15 response, alterations in defense mechanisms, and depression of essential biological activity that
16 can lead to susceptibility to disease and infections. Exposure pathways for wildlife in the Tijuana
17 River Valley includes, but is not limited to, dermal absorption, inhalation of dust with adsorbed
18 pollutants, inhalation of volatilized pollutants, soil ingestion, and prey ingestion.

19 **V. CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **33 U.S.C. §§ 1311(a)**

22 **Discharges of Pollutants Without a NPDES Permit in Violation of the CWA against the**
23 **International Boundary and Water Commission – United States Section.**

24 77. Plaintiffs incorporate by reference each and every allegation contained above, as
25 though set forth fully herein.

26 78. Plaintiffs are “persons” within the meaning of the Clean Water Act authorized to
27 pursue a citizen enforcement action on their own behalf.

28 79. Defendant USIBWC is a “person” within the meaning of the Clean Water Act.

1 80. Defendant USIBWC owns, operates, maintains, and/or exerts control over the flood
2 control conveyance.

3 81. The flood control conveyance is a “point source” within the meaning of the Clean
4 Water Act.

5 82. Defendant USIBWC, by its acts and omissions, has been and will continue to add
6 pollutants, including, but not limited to, trash, sediment, and sewage containing *e. coli*, total
7 coliform, and enterococcus, from the flood control conveyance to navigable waters, including, but
8 not limited to, the Tijuana River and Estuary and the Pacific Ocean.

9 83. Defendant USIBWC has not obtained a NPDES permit for discharges from the
10 flood control conveyance into navigable waters of the United States.

11 84. Defendant USIBWC has violated and is violating the Clean Water Act, 33 U.S.C.
12 § 1311(a), which prohibits the discharge of pollutants without a NPDES permit, by allowing
13 continuous discharges of wastewater and other pollutants from the flood control conveyance to
14 waters of the United States.

15 85. Defendant USIBWC’s violations of the Clean Water Act have been ongoing and
16 continuous since the flood control conveyance was constructed in 1979. These violations will
17 continue until Defendant USIBWC obtains and complies with a NPDES permit for these
18 discharges. 33 U.S.C. §§ 1311(a) & 1342.

19 86. Each day that Defendant USIBWC has discharged pollutants from the flood control
20 conveyance without a NPDES permit is a separate and distinct violation of the CWA, 33 U.S.C. §
21 1311(a).

22 87. By committing the acts and omissions alleged above, Defendant USIBWC is
23 subject to an assessment of civil penalties pursuant to CWA, 33 U.S.C. §§1319 and 1365.

24 88. This action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §
25 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm
26 Plaintiffs, for which harm they have no plain, speedy, or adequate remedy at law.

27 89. Wherefore, Plaintiffs pray for relief as set forth below.
28

1 **SECOND CAUSE OF ACTION**

2 **33 U.S.C. §§ 1311(a) & 1342**

3 **Discharges of Pollutants in Violation of the CWA and NPDES Permit CA0108928 Against**

4 **All Defendants.**

5 90. Plaintiffs incorporate by reference each and every allegation contained above, as
6 though set forth fully herein.

7 91. Defendants own, operate, maintain, and/or exert control over the canyon collectors.

8 92. The canyon collectors are “point sources” within the meaning of the Clean Water
9 Act.

10 93. Defendants, by their acts and omissions, have been and will continue to add
11 pollutants, including, but not limited to, trash, sediment, sewage, enterococcus, fecal coliforms,
12 methylene blue active substances, chromium, copper, zinc, arsenic, cadmium, lead, aldrin, DDT,
13 heptachlor, toluene, and phenol, from the canyon collectors to navigable waters, including, but not
14 limited to, the Tijuana River and Estuary and the Pacific Ocean.

15 94. Defendants have not obtained a NPDES permit for discharges from the flood
16 control conveyance into navigable waters of the United States.

17 95. Defendants have violated and are violating the Clean Water Act, 33 U.S.C. §§
18 1311(a) and 1342, which prohibit the discharge of pollutants in violation of NPDES permit.
19 NPDES permit CA0108928 (California Waste Discharge Requirement Order R9-2014-0009 as
20 amended by Order R9-2014-0094) prohibits discharges from any facility subject to the permit
21 except at the South Bay Ocean Outfall. Defendants’ discharges of wastewater and other pollutants
22 from the canyon collectors to waters of the United States are ongoing and continuous violations of
23 that discharge prohibition.

24 96. Defendants’ violations of the Clean Water Act and NPDES permit CA0108928
25 began at least as far back as 2015 and continue up to the present. These violations will continue
26 until Defendants comply with NPDES permit CA0108928 by eliminating discharges from the
27 canyon collectors. 33 U.S.C. §§ 1311(a) & 1342.

28 97. Each day that Defendants have discharged pollutants from each canyon collector in

violation of a NPDES permit is a separate and distinct violation of the Clean Water Act, 33 U.S.C. § 1311(a).

98. By committing the acts and omissions alleged above, Defendants are subject to an assessment of civil penalties for each violation pursuant to the Clean Water Act, 33 U.S.C. §§1319 and 1365.

99. This action for injunctive relief is authorized by the Clean Water Act, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiffs, for which harm they have no plain, speedy, or adequate remedy at law.

100. Wherefore, Plaintiffs pray for relief as set forth below.

THIRD CAUSE OF ACTION

42 U.S.C. § 6972(a)(1)(B)

Contribution to an Imminent and Substantial Endangerment under RCRA Against All

Defendants.

101. Plaintiffs incorporate by reference each and every allegation contained above, as though set forth fully herein.

102. Plaintiffs are “persons” within the meaning of RCRA authorized to pursue citizen enforcement actions on their own behalf.

103. Defendant USIBWC is an agency of the United States, and Defendant Veolia is a corporation, and therefore both defendants are “persons” subject to RCRA citizen enforcement for their contribution to the past or present handling, storage, treatment, transport, and/or disposal of solid and/or hazardous wastes through its facilities in the Tijuana River Valley.

104. Defendants have systematically and routinely contributed to the past and/or present handling, storage, treatment, transport, and/or disposal of hazardous and/or solid wastes in the Tijuana River Valley by collecting, detaining, conveying, and discharging those solid and/or hazardous wastes by and through operating, maintaining, and/or controlling the USIBWC flood control conveyance, canyon collectors, and other infrastructure.

105. Additionally, USIBWC has contributed and continues to contribute to the design, construction, operation, maintenance, and monitoring of the transnational wastewater collection

1 and treatment system that originates in Mexico, and therefore to the handling, storage, treatment,
2 transport and/or disposal of solid and/or hazardous wastes moving through that system. USIBWC
3 provides to its counterpart in Mexico financing, technical assistance, operating protocols, and
4 coordination in the operation of that system, and specifically the CILA diversion on the Mexican
5 side of the Tijuana River that frequently malfunctions, causing sewage and other solid and/or
6 hazardous wastes to enter the United States and discharge from the flood control conveyance.

7 106. The solid and/or hazardous wastes to which Defendants have contributed to the past
8 and/or present handling, storage, treatment, transport, and/or disposal of in the Tijuana Valley
9 include, but are not limited to, garbage and other refuse, sediment, aldrin, nitrogen, lindane,
10 chloroform, DDT, dieldrin, heptachlor, benzene, chlorobenzene, toluene, 2,4-dinitrotoluene,
11 nitrophenol, phenol, and other materials that are inherently waste-like and that were abandoned as
12 a byproduct of industrial, commercial, agricultural, and community activities, among others.

13 107. Defendants' contribution to the past and/or present handling, storage, treatment,
14 transport, and/or disposal of the aforementioned solid wastes in the Tijuana River Valley may
15 present an imminent and substantial endangerment to human health and the environment. The
16 aforementioned solid and/or hazardous wastes, due to their inherent physical and chemical
17 properties, can cause or significantly contribute to an increase in mortality or increase in serious,
18 irreversible, or incapacitating illnesses, such as cancer, as well as pose a substantial present and/or
19 potential hazard to human health and the environment when improperly handled, stored, treated,
20 transported, and/or disposed of, or otherwise improperly managed.

21 108. Defendants routinely dispose of the aforementioned solid and/or hazardous wastes
22 to topsoil or water in the Tijuana River Valley, where they are dispersed to the environment.
23 Human beings are frequently exposed to these wastes via those vectors while working in,
24 recreating in, and visiting the Tijuana River Valley and its environs. Additionally, disposal of those
25 wastes to land and water in the Valley exposes land, marine, and estuarine flora and fauna to the
26 dangers inherent in those wastes. Wastes suspended in wastewater flowing through the Tijuana
27 River and Estuary ultimately expose surfers, beachgoers, and other beach and ocean users, as well
28 as terrestrial and marine flora and fauna along the Imperial Beach beachfront.

109. The imminent and substantial endangerment to health and the environment presented by Defendants' discharges of waste in the Tijuana River Valley is now, and will continue to be present, until Defendants' illegal handling, storage, treatment, transport, and disposal of those wastes is abated, and wastes currently present in the Tijuana River Valley are removed.

110. Wherefore, Plaintiffs pray for relief as set forth below.

VI. PRAYER FOR RELIEF

WHEREFORE Plaintiffs seek judgment against these Defendants for:

1. Injunctive and equitable relief to compel Defendants to comply with CWA and RCRA, including an order enjoining Defendants' illegal discharges of pollutants and solid and/or hazardous wastes;

2. Civil penalties;

3. Costs, including reasonable attorneys' fees, court costs, and other expenses of litigation;

4. Prejudgment interest; and

5. Any other and further relief as the Court deems just, proper, and appropriate.

Dated: March 2, 2018

SHER EDLING LLP

By: /s/

Matthew K. Edling
Victor M. Sher
Timothy R. Sloane

*Attorneys for Plaintiffs the City of Imperial
Beach, the San Diego Unified Port District, and
the City of Chula Vista*

By: /s/

SAN DIEGO UNIFIED PORT DISTRICT
OFFICE OF THE GENERAL COUNSEL
Thomas A. Russell
Ellen F. Gross
John N. Carter

*Attorneys for Plaintiff the San Diego Unified
Port District*

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By: /s/

CITY OF CHULA VISTA
OFFICE OF THE CITY ATTORNEY
Glen R. Googins
Bart J. Miesfeld

Attorneys for Plaintiff the City of Chula Vista