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10 SAN DIEGO COASTKEEPER and COASTAL ENVIRONMENTAL RIGHTS
11 FOUNDATION

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 SAN DIEGO COASTKEEPER, a non-profit
15 corporation; COASTAL
16 ENVIRONMENTAL RIGHTS
17 FOUNDATION,
a non-profit corporation,

18 Plaintiffs,

19 v.

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

27 Defendants.
28

Case No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND CIVIL
PENALTIES**

**(Federal Water Pollution Control Act,
33 U.S.C. § 1251 *et seq.*)**

1 Coastal Environmental Rights Foundation, (“CERF”) and San Diego Coastkeeper
2 (“Coastkeeper”) (collectively “Plaintiffs”), by and through their counsel, hereby allege:

3 **I. JURISDICTION AND VENUE**

4 1. This is a civil suit brought under the citizen suit enforcement provision of
5 the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act”
6 or “CWA”). *See* 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the
7 parties and this action pursuant to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. §§ 1331 and
8 2201.

9 2. On January 30, 2024, Plaintiffs issued a 60-day notice letter (“Notice
10 Letter”) to the International Boundary and Water Commission – United States Section
11 (“USIBWC”) and Veolia Water North America-West, LLC (“Veolia”), (collectively
12 “Defendants”) as the owners and/or operators of the South Bay International Wastewater
13 Treatment Plant (“SBIWTP”) located at 2995 Clearwater Way, San Diego, CA 92154,
14 appurtenant canyon collector systems, and other associated infrastructure (collectively the
15 “Facility”), regarding violations of the Clean Water Act and its National Pollutant
16 Discharge Elimination System Permit (“NPDES”) Order No. R9-2014-0009, NPDES
17 No.CA0108928, and Order No. R9-2021-0001, NPDES No. CA0108928, as amended by
18 Order No. R9-2023-0009 (“Permit”).

19 3. True and correct copies of the Notice Letter and all enclosures are attached
20 hereto as Exhibit 1 and incorporated herein. True and correct copies of the Permit and all
21 enclosures are attached hereto as Exhibit 2 and incorporated herein.

22 4. Plaintiffs mailed the Notice Letter via certified mail to (1) the Facility’s
23 physical address, 2995 Clearwater Way, San Diego, CA 92154; (2) Maria-Elena Giner,
24 the Commissioner of USIBWC at 4191 North Mesa Street, El Paso, Texas, 79902; (3)
25 Veolia’s agent for service of process in California at 330 N. Brand Boulevard, Glendale,
26 California, 91203 (4) Veolia at 120 Water Street, Suite 212, North Andover, MA 01845;
27 (5) Veolia at 53 State Street, 14th Floor, Boston MA 02109; and (6) Veolia at PO Box
28 430239, San Diego CA 92143.

1 5. Plaintiffs also mailed the Notice Letter to the Administrator of the United
2 States Environmental Protection Agency (“EPA”), the Administrator of EPA Region IX,
3 the Executive Director of the California State Water Resources Control Board (“State
4 Board”), the Executive Officer of the San Diego Regional Water Quality Control Board
5 (“Regional Board”), and U.S. Attorney General at the U.S. Department of Justice as
6 required by 40 C.F.R. § 135.2(a)(3) and 33 U.S.C. § 1365(b)(1)(A).

7 6. More than sixty (60) days have passed since the Notice Letter was served on
8 Defendants and the State and Federal agencies. Plaintiffs are informed and believe, and
9 thereon allege, that neither the EPA nor the State of California has commenced or is
10 diligently prosecuting an action to redress the violations alleged in the Notice Letter and
11 in this Complaint. *See* 33 U.S.C. § 1365(b)(1)(B). This action is not barred by any prior
12 administrative penalty under Section 309(g) of the CWA. 33 U.S.C. § 1319(g).

13 7. Venue is proper in the Southern District of California pursuant to 33 U.S.C.
14 § 1365(c)(1) because the source of the violations is located within this judicial district.

15 **II. INTRODUCTION**

16 8. USIBWC and Veolia have discharged and continue to discharge pollutants
17 such as fecal bacteria, contaminated sediment, heavy metals, and toxic chemicals, some
18 of which have been banned in the United States such as DDT, Benzidine, and
19 Polychlorinated Biphenyls (“PCBs”), into the Tijuana River and Estuary, and the Pacific
20 Ocean (collectively “Receiving Waters”) in violation of the express terms and conditions
21 of the Permit and Clean Water Act, 33 U.S.C. Section 1342.

22 9. Defendants’ long-established pattern of failing to comply with numerous
23 provisions of the Permit has resulted in devastating consequences to human health and
24 the environment.

25 10. The magnitude of the international transboundary sewage and wastewater
26 crisis cannot be overstated. Over the past five years, over 100 billion gallons of
27 transboundary flows containing untreated sewage, bacteria and viruses, heavy metals,
28 pesticides, sediment, trash, and toxic chemicals, have flowed from Mexico into Southern

1 California via the Tijuana watershed.

2 11. Defendants routinely discharge these same pollutants into the Pacific Ocean
3 via the Facility’s South Bay Ocean Outfall (“SBOO”), and into the Tijuana River and
4 Estuary via leaks and spills from their canyon collectors and other infrastructure, in
5 violation of the Permit.

6 12. This human health, environmental justice, and ecological disaster is directly
7 impacting public health, and denying local community members the right to live and
8 recreate in a safe and clean environment. Recent studies have found that aerosolized
9 sewage pollutants are often present in the air in Imperial Beach, San Ysidro and other
10 South San Diego County border communities at levels that present a likely public health
11 threat to people in those communities. **In other words, people living near or in the
12 vicinity of the Tijuana River, Tijuana River Estuary and the Facility are routinely
13 exposed to aerosolized bacterial pathogens from raw sewage. In addition, the City of
14 Imperial Beach’s public beach has been closed for more than 850 consecutive days
15 since December 2021.** Public beaches north of Imperial Beach to Coronado have also
16 been closed intermittently for hundreds of days over the past decade, due to
17 transboundary flows of raw sewage and untreated or poorly treated discharges from the
18 Facility contaminating coastal waters. Discharges contaminated with pathogens,
19 chemicals, sediment, and trash are also severely degrading the Tijuana River Estuary and
20 offshore marine habitat. This harms local businesses and tourism.

21 13. California has lost more than 95% of its coastal wetlands, further
22 underscoring the importance of protecting these waterbodies and ecosystems from
23 pollution. The Tijuana River Estuary is one of the last intact saltwater estuaries in
24 California, and accordingly holds the prestigious designation as a protected wetland
25 under the Ramsar Convention, a special status given to wetlands that provide
26 extraordinary ecosystem services. The estuary is home to numerous fish and shellfish,
27 over 370 types of birds, numerous mammal species, vital macro- and micro-invertebrates,
28 and several species at-risk for extinction and protected under the Federal and California

1 Endangered Species Acts.

2 14. Pursuant to the 1944 treaty between the United States and Mexico,
3 *Utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande*, the
4 International Boundary and Water Commission (“IBWC”) was established to resolve
5 water quality issues related to transboundary pollution from border rivers and streams.
6 The IBWC consists of two sections, the USIBWC and the Mexico Section (La Comision
7 Internacional de Limites y Aguas or “CILA”). Each section has exclusive jurisdiction and
8 control over works constructed, acquired and/or used to fulfill its treaty obligations on its
9 respective side of the international border.

10 15. To fulfill its obligations under this Treaty, USIBWC designed and built the
11 Facility to intercept and treat dry weather flows in order to protect waters in the United
12 States.

13 16. At its core, the Permit requires Defendants to capture certain dry weather
14 wastewater flows from Mexico, divert these flows to the SBIWTP, and treat them to
15 specific standards enumerated in the Permit, before discharging up to 25 million gallons
16 per day (“MGD”) through the SBOO to the Pacific Ocean. The Permit includes Effluent
17 Limitations, Receiving Water Limitations, Discharge Prohibitions, and monitoring and
18 reporting requirements, among other provisions.

19 17. Following decades of deferred maintenance and neglect, Defendants’
20 failures to properly maintain and operate the Facility have resulted in hundreds of
21 ongoing Permit violations.

22 18. Since November 1, 2018, the **Facility’s discharges from the SBOO have**
23 **violated Permit Effluent Limitations on over 500 occasions, including 130 instances**
24 **of violations involving extremely hazardous chemicals that have been banned in the**
25 **United States, such as DDT and PCBs.** Further, these discharges frequently exceed
26 Effluent Limits by orders of magnitude. For example, a recent PCB discharge in 2023
27 exceeded the Permit limit by 22,122%, and a 2023 benzidine discharge exceeded the
28 Permit limit by 15,052%.

1 19. Defendants also routinely discharge bacteria and pathogens far in excess of
2 the Permit's bacterial Receiving Water Limitations, intended to protect ocean waters for
3 recreation and shellfish harvesting uses.

4 20. The Permit also incorporates various Discharge Prohibitions to protect the
5 Tijuana River and Estuary from further degradation. However, through habitual dry
6 weather canyon collector spill events, Defendants routinely violate Discharge
7 Prohibitions pertaining to bacteria, nitrogen, phosphorus, lead, turbidity, dissolved
8 oxygen, and pH.

9 21. For example, between November 2020 and February 2021, there were 19
10 dry weather transboundary flows at the Stewart's Drain canyon collector resulting in the
11 discharge of over 1.2 million gallons of untreated wastewater. While Defendants
12 frequently fail to monitor or report pollutant levels in such spill events, the pollutant
13 contribution can be staggering – during a January 7, 2022 Spill Event, Enterococcus
14 levels at Stewart's Drain measured 5,000,000 cfu/100ml, over 45,000 times higher than
15 the Permit's bacterial objective of 110 cfu/100ml. **Further still, the Facility's**
16 **discharges from the SBOO into the ocean have only complied with the Permit's**
17 **bacteria objectives in six out of the last sixty-two months.**

18 22. Defendants have also regularly failed to submit self-monitoring reports,
19 depriving the public of meaningful access to information about the Facility's discharges.
20 Shockingly, the Facility has neglected to document at least 239 effluent violations as
21 mandated by the Permit. This requirement is not only a legal mandate but a crucial aspect
22 of public trust and accountability. These violations are particularly troubling given that
23 USIBWC is a federal agency that exists for the benefit and welfare of the public, and as
24 such, the public has a fundamental right to full transparency on every aspect of the
25 transboundary pollution crisis.

26 23. The types of violations enumerated above have been ongoing for many years
27 and have persisted despite numerous attempts from regulators and other parties to bring
28 Defendants into compliance with the Permit.

1 24. The San Diego Regional Water Quality Control Board (“Regional Board”),
2 the regulatory agency tasked with enforcing the Permit, issued Notices of Violation
3 (“NOVs”) to USIBWC in February 2021, September, October, November, and December
4 2023, January 2024, and February 2024; a Cease and Desist Order in May 2021, which
5 was amended in December 2021; and a Time Schedule Order in December 2023, all of
6 which are or were intended to bring the Facility into compliance with the Permit, but all
7 of which have failed to do so.

8 25. In July 2020, Congress appropriated \$300 million through the US-Mexico-
9 Canada Agreement (“USMCA”) to mitigate the transboundary flows through expansion
10 of the existing SBIWTP. In 2021, IBWC estimated that the cost to double the capacity of
11 the SBIWTP from 25 MGD to 50 MGD would be approximately \$300 million.

12 26. In July 2022, USIBWC and CILA entered into an agreement, Minute 328 of
13 the USMCA, which identified a suite of infrastructure projects on both sides of the border
14 (“Comprehensive Infrastructure Solution”). The lynchpin of the Comprehensive
15 Infrastructure Solution is the expansion of the SBIWTP, then still estimated to cost \$300
16 million.

17 27. However, in the spring of 2023, USIBWC announced that it had woefully
18 underestimated the cost of SBIWTP expansion, which would now cost \$600 million. Due
19 to years of underfunding, deferred maintenance, neglect, and poor management, the
20 SBIWTP was, and remains, in such a decrepit state that rehabilitation of the plant, just to
21 bring it back to basic operating condition, will cost at least \$150 million. The latest cost
22 estimates for the implementation of the entire Comprehensive Infrastructure Solution are
23 now nearly \$1 billion dollars.

24 28. In March 2024, Congress authorized an additional \$156 million for the
25 USIBWC’s construction projects for this fiscal year, a \$103 million increase over last
26 year’s budget.

27 29. Despite being routinely notified of its violations, and notwithstanding
28 Congress’s piecemeal funding allocations, USIBWC’s rampant Permit violations have

1 not only continued, but worsened. The entire Facility remains in a shocking state of
2 disrepair. For example, as of March 28, 2024, approximately half of the Facility's
3 influent pumps, sludge pumps, waste pumps, and other conveyance pumps are
4 completely non-operational; zero of five sedimentation tanks are operational; grit
5 chambers remain clogged; only one of two unstabilized sludge storage tanks is
6 operational; and Junction Box 1 ("JB1"), a critical piece of infrastructure designed to
7 regulate flows into the SBIWTP, has remained non-operational since August 28, 2019.
8 USIBWC estimates JB1 will not be rehabilitated until at least February 2025.

9 30. Given the magnitude of the human health and ecological consequences at
10 stake, Plaintiffs believe urgent action is necessary. In light of Defendants' history of
11 failure, a judicial decree is necessary to ensure Permit compliance. Without court
12 intervention, Defendant's Permit violations will continue to jeopardize human health,
13 pollute public beaches, and destroy the Tijuana River Estuary.

14 **III. PARTIES**

15 31. USIBWC is a federal agency and at all relevant times the Owner of the
16 Facility.

17 32. USIBWC is charged with addressing transboundary issues arising out of
18 agreements between the United States and Mexico, including, but not limited to, the
19 Treaty of 1944. Pursuant this treaty, USIBWC is responsible for addressing waste
20 entering the United States from Mexico along the Tijuana River watershed.

21 33. To fulfill its obligations, USIBWC constructed, operates, and maintains,
22 and/or contracts to operate and maintain, flood control and wastewater collection,
23 conveyance, and treatment infrastructure in the Tijuana River Valley, including the 75-
24 acre SBIWTP, five canyon collector systems, two pump stations that divert water from
25 the canyon collectors to the SBIWTP, and other appurtenant infrastructure.

26 34. Because operation of the Facility necessarily results in the discharge of
27 waste to waters of the United States USIBWC applied for and received an NPDES permit
28 from the San Diego Water Board in 2014 in order to lawfully operate the Facility

1 35. Defendant Maria-Elena Giner is the Commissioner of USIBWC and named
2 only in her official capacity.

3 36. Veolia is an active Delaware Limited Liability Company and at all relevant
4 times the Operator of Facility. Veolia contracts with USIBWC to operate and maintain
5 the SBIWTP and its associated infrastructure in San Diego, California.

6 37. Veolia is a wholly owned subsidiary of Veolia Water North America
7 Operating Services, LLC.

8 38. Plaintiff Coastkeeper is a non-profit public benefit corporation organized
9 under the laws of the State of California with its main office in San Diego, California.
10 Coastkeeper is committed to protecting and restoring San Diego's coastal and inland
11 waters and the communities who depend on them. A member of the international
12 Waterkeeper Alliance, San Diego Coastkeeper's main purpose is to preserve, enhance,
13 and protect San Diego's marine sanctuaries, coastal estuaries, wetlands, and bays from
14 illegal dumping, hazardous spills, toxic discharges, and habitat degradation.

15 39. Plaintiff CERF is a non-profit public benefit corporation organized under the
16 laws of the State of California with its office located in Encinitas, California. CERF was
17 founded by surfers in North San Diego County and is active throughout California's
18 coastal communities. CERF was established to advocate for the protection and
19 enhancement of coastal natural resources and the quality of life for coastal residents. One
20 of CERF's primary areas of advocacy is water quality protection and enhancement.

21 40. Many of Plaintiffs' members live and/or recreate in and around the
22 Receiving Waters. Plaintiffs' members use and enjoy the Receiving Waters to fish, sail,
23 boat, kayak, paddle board, surf, swim, hike, view wildlife and scenery, and engage in
24 scientific studies and restoration efforts, among other activities.

25 41. Plaintiffs and their members have an interest in accurate information about
26 Defendants' discharges. Defendants' failure to report and monitor impedes Plaintiffs'
27 members' ability to fully use and enjoy the Receiving Waters for aesthetic, recreational,
28 scientific, educational, and spiritual purposes.

1 42. Defendants' failure to comply with the procedural and substantive
2 requirements of the Permit and the CWA results in discharges of contaminated water to the
3 Receiving Waters. Defendants' polluted discharges degrade water quality and harm
4 aquatic life in the Receiving Waters and thus impair Plaintiffs' members' use and
5 enjoyment of those waters.

6 43. Defendants' violations of the Permit and Clean Water Act at the SBIWTP are
7 ongoing and continuous. Thus, the interests of Plaintiffs' members have been and will
8 continue to be adversely affected by Defendants' failure to comply with the Clean Water
9 Act.

10 44. The relief sought herein will redress the harms to Plaintiffs' members caused
11 by Defendants' activities. Continuing commission of the acts and omissions alleged herein
12 will irreparably harm Plaintiffs' members, for which they have no other plain, speedy, or
13 adequate remedy at law.

14 45. An actual controversy exists as to the rights and other legal relations
15 between Defendants and Plaintiffs.

16 **IV. LEGAL BACKGROUND**

17 **A. The Clean Water Act.**

18 46. The Clean Water Act requires point source discharges of pollutants to
19 navigable waters be regulated by an NPDES permit. 33 U.S.C. § 1311(a); 40 C.F.R.
20 § 122.21(a).

21 47. Section 301(a) of the Clean Water Act prohibits the discharge of any
22 pollutant into Waters of the United States unless the discharge complies with the CWA.
23 Among other things, Section 301(a) prohibits discharges not authorized by, or in
24 violation of, the terms of an NPDES permit issued pursuant to Section 402 of the CWA.

25 48. "Waters of the United States" are defined as "navigable waters" and "all
26 waters which are currently used, were used in the past, or may be susceptible to use in
27 interstate or foreign commerce, including waters which are subject to the ebb and flow of
28 the tide." 33 U.S.C. § 1362(7); 40 C.F.R. § 120.2.

1 49. The “discharge of a pollutant” means, among other things, “any addition of
2 any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

3 50. The EPA interprets waters of the United States to include not only
4 traditionally navigable waters, but also other waters, including waters tributary to
5 navigable waters, wetlands adjacent to navigable waters, and intermittent streams that
6 could affect interstate commerce. *See* 40 C.F.R. § 120.2.

7 51. The CWA confers jurisdiction over waters that are tributaries to traditionally
8 navigable waters where the water at issue is relatively permanent, standing, or
9 continuously flowing. 40 C.F.R. § 120.2.

10 52. The CWA allows EPA to delegate NPDES permitting authority to states,
11 which includes determining the NPDES permit conditions. 33 U.S.C. § 1342(b).
12 California was delegated the NPDES permit program in 1973, with the San Diego
13 Regional Water Quality Control Board serving as the regulatory agency which issues the
14 NPDES permit which governs the Facility’s operations and discharges.

15 53. If granted a permit, the discharger must comply with all permit limitations
16 and terms. Each and every violation of an NPDES permit is a violation of the CWA for
17 which the permittee is liable, including liability for civil penalties. 40 C.F.R. § 122.41;
18 Permit Attachment D § 1.1.1.

19 54. Private citizens may sue under the Clean Water Act to enforce the specific
20 provisions of the Clean Water Act. 33 U.S.C. § 1365(a)(1), (f)(6).

21 **B. USIBWC’s NPDES Permit Conditions**

22 55. The Facility operates under the terms of the Permit, with which Defendants
23 must comply. Exhibit 2.

24 56. The Permit includes provisions governing, *inter alia*, (1) Effluent
25 Limitations; (2) Receiving Water Limitations; (3) Discharge Prohibitions; (4) Reporting
26 Requirements for the Self-Monitoring Reports; (5) requirement to provide access to
27 regional scientific studies; and (6) Tijuana River Valley Monitoring Report (“TRVMP”)
28 submission requirements.

1 57. “The Discharger shall at all times properly operate and maintain all facilities
2 and systems of treatment and control (and related appurtenances) which are installed or
3 used by the Discharger to achieve compliance with the conditions” of the Permit. Permit
4 Attachment D § 1.4.

5 **1. Permit Discharge Prohibitions.**

6 58. The Permit regulates the Facility’s discharges from the SBOO at Discharge
7 Point No. 001 (“DP-001”). More specifically, Section 3.1 of the Permit prohibits the
8 “discharge of waste from the Facility “not treated by a secondary treatment process and
9 not in compliance with the effluent limitations specified in section 4.1 of [the Permit], or
10 to a location other than Discharge Point No. 001, unless specifically regulated by [the
11 Permit] or separate WDRs.” Permit § 3.1.

12 59. The Permit also regulates certain Spill Events, defined as any “discharge, or
13 any other type of emission or release, of waste from any portion of the Facility due to
14 system overflow, flow stoppage, system leaks and breaks, operational failure and/or
15 infrastructure failure.” Permit § 6.3.2.1.1.1.

16 60. Spill Events do not include (1) wet weather flows that bypass the canyon
17 collectors, and (2) any portion of dry weather flows which exceed the maximum design
18 capacity of the canyon collector and are not diverted by the canyon collector. *Id.* §
19 6.3.2.1.1.2; *see also* Fact Sheet § 6.2.2.1.4. at F-50.

20 61. As such, “[a] dry weather Canyon Collector Transboundary Flow Event also
21 constitutes a Spill Event when transboundary flows less than or equal to the canyon
22 collector’s maximum design capacity are not captured by the canyon collector for
23 treatment at the SBWITP and disposal through the SBOO (i.e., dry weather canyon
24 collector Spill Event).” *Id.* § 6.3.2.1.1.2, emphasis added.

25 62. However, Defendants “shall be deemed in compliance with Discharge
26 Prohibition 3.1 with respect to dry weather canyon collector Spill Events, . . . if the
27 Discharger implements its Spill and Transboundary Flow Event Prevention and Response
28 Plan” (“Spill Prevention Plan”). Permit § 3.1.1.

1 63. This “safe-harbor” provision was added to the Permit via an amendment in
2 2023, due in part to the Facility’s numerous dry weather canyon collector Spill Events,
3 each of which were strict violations of the previous iterations of the Permit.

4 64. Discharge Prohibitions 3.2 and 3.3 require the Facility to also comply with
5 the discharge prohibitions in the *Water Quality Control Plan for the San Diego Basin*
6 (“Basin Plan”) and the *California Ocean Plan* (“Ocean Plan”). Permit §§ 3.2, 3.3.

7 65. There is no safe harbor provision for compliance with Discharge Prohibition
8 3.3, and as such, the “Spill Prevention Plan” exception does not exempt the Facility from
9 the Basin Plan discharge prohibitions.

10 66. Basin Plan Chapter 4, Waste Discharge Prohibition (5) states, in relevant
11 part: “The discharge of waste to inland surface waters, except in cases where the quality
12 of the discharge complies with applicable receiving water quality objectives, is
13 prohibited.” Basin Plan at 4-31.

14 67. Chapter 3 of the Basin Plan sets forth numerous Water Quality Objectives
15 for receiving waters, all of which are incorporated into the Permit via Discharge
16 Prohibition 3.3.

17 68. For contact recreation waters where the salinity is greater than 1 ppt more
18 than 5 percent of the time, the receiving water limit for Enterococci is 30 cfu/100ml using
19 a six-week rolling geometric mean, or 110 cfu/100 ml statistical threshold value (“STV”)
20 not to be exceeded by more than 10 percent of the samples collected in a calendar month.
21 Basin Plan at 3-15, 3-16.

22 69. For contact recreation waters where the salinity is less than or equal to 1 ppt
23 more than 95 percent of the time, the receiving water limit for E. coli is 100 cfu/100ml
24 using a six-week rolling geometric mean, or 320 cfu/100 ml STV not to be exceeded by
25 more than 10 percent of the samples collected in a calendar month.

26 70. For waters with a beneficial use of shellfish harvesting, the median total
27 coliform concentration throughout the water column for any 30-day period shall not
28 exceed 70 organisms per 100 ml nor shall more than 10 percent of the samples collected

1 during any 30-day period exceed 230 organisms per 100 ml for a five-tube decimal
2 dilution test or 330 organisms per 100 ml when a three-tube decimal dilution test is used.
3 *Id.* at 3-16.

4 71. The Basin Plan Water Quality Objective for phosphorus in the Tijuana River
5 is 0.1 mg/L. *Id.* 3-47.

6 72. The Basin Plan Water Quality Objective for nitrogen in the Tijuana River is
7 1.0 mg/L. *Id.*

8 73. The Basin Plan Water Quality Objective for turbidity in the Tijuana River is
9 20 NTU. *Id.*

10 74. The Basin Plan states that “dissolved oxygen levels shall not be less than 5.0
11 mg/l in inland surface waters” designated with a warm freshwater habitat beneficial use.
12 One beneficial use of the Tijuana River is warm freshwater habitat. *Id.* at 3-20.

13 75. In the Tijuana Estuary, the pH shall not be depressed below 7.0 nor raised
14 above 9.0. In the Tijuana River, the pH shall not be depressed below 6.5 nor raised above
15 8.5. *Id.* at 3-21.

16 76. Chapter 3 of the Basin Plan confirms the California Toxics Rule (“CTR”) is
17 a “water quality criteria” that applies to California inland surface waters, enclosed bays,
18 and estuaries. Basin Plan at 3-34, 3-35.

19 77. The Tijuana River is an inland surface water, and the Tijuana River Estuary
20 constitutes an estuary, both of which are subject to the Basin Plan Discharge Prohibition,
21 and therefore CTR. Thus, the Facility’s discharges into the Tijuana River and Estuary
22 must also meet CTR Water Quality Objectives.

23 78. The CTR sets forth continuous and maximum levels for numerous toxic
24 pollutants, in both freshwater and saltwater environments. *See* 40 C.F.R. § 131.38.

25 **2. Permit Effluent Limitations.**

26 79. Defendants must comply with the Effluent Limitations listed in Permit
27 Section 4.1.1.1. These Effluent Limitations list pollutant parameters and the respective
28 maximum limits based on various monthly, weekly, and daily limit calculations. Permit §

1 4, Table 2.

2 80. These parameters include carbonaceous biochemical oxygen demand
3 (“CBOD”), total suspended solids (“TSS”), settleable solids, turbidity, benzidine, DDT,
4 heptachlor epoxide, hexachlorobenzene, PCBs, and toxaphene. *Id.*

5 **3. Permit Receiving Water Limitations.**

6 81. The Facility’s discharges must comply with Receiving Water Limitations in
7 Permit Section 5. *Id.* § 5.1.

8 82. Section 5 of the Permit sets forth certain Receiving Water Limitations
9 “which are based on water quality objectives contained in the Basin Plan and Ocean
10 Plan.” *Id.* § 5.1. “The discharge of waste shall not cause or contribute to violation of these
11 limitations in the Pacific Ocean.” *Id.*

12 83. “Compliance with these limitations shall be determined from samples
13 collected at stations representative of the area outside of the zone of initial dilution
14 (ZID).” *Id.*

15 84. Per Permit Section 5, the Facility must ensure that bacterial objectives are
16 maintained between the shoreline and three nautical miles out from the shoreline, and
17 throughout the water column. *Id.* § 5.1.1. To ensure this maintenance, the Permit sets
18 forth numerical objectives for both fecal coliform and Enterococci that the Facility cannot
19 exceed at the monitoring stations dictated by the Permit. Permit § 5.1.1.

20 85. For fecal coliform at any monitoring location (1) the “thirty-day geometric
21 mean of fecal coliform density [can]not [] exceed 200 CFU per 100 milliliters (mL)
22 calculated based on the five most recent samples from each site; [2] [a] single sample
23 maximum [can]not [] exceed 400 CFU per 100 mL.” *Id.* § 5.1.1.1.1.

24 86. For Enterococci, the stations cannot, on a six-week rolling geometric mean,
25 “exceed 30 CFU per 100 mL, calculated weekly” or “[a] statistical threshold value of 110
26 CFU per 100 mL not to be exceeded by more than 10 percent of samples collected in a
27 calendar month, calculated in a static manner.” *Id.* § 5.1.1.1.2.

28 87. “At all areas where shellfish may be harvested for human consumption, . . .

1 the median total coliform density (CFU) shall not exceed 70 per 100 ml throughout the
2 water column, and not more than 10 percent of the samples shall exceed 230 per 100 ml.”

3 *Id.* § 5.1.1.3.

4 **4. Permit Monitoring and Reporting Requirements.**

5 88. The Permit’s Monitoring and Reporting Program requires weekly
6 monitoring of total and fecal coliforms, and enterococcus at “shoreline” monitoring
7 locations S-4 through S-6, and S-8 through S-12, as well as the “kelp/nearshore”
8 locations of I-19, I-24, I-25, I-26, I-32, I-39, and I-40. The Permit also requires
9 monitoring of “offshore” locations I-1 to I-18, I-20 to I-23, I-27 to I-31, and I-33 to I-38.
10 Permit Monitoring and Reporting Program (“MRP”), at Table E-1.

11 89. The Permit requires the Facility to upload all self-monitoring reports to the
12 California Integrated Water Quality System (“CIWQS”). For monthly monitoring
13 reports, the deadline for submission is the first calendar month following the month of
14 sampling, and for quarterly it is May 1, August 1, November 1, and February 1. For both
15 the monthly and quarterly reports, the Facility must “arrange all reported data in tabular
16 format.” Permit MRP § 7.2.7. The data must also be “summarized to clearly illustrate
17 whether the Facility is operating with interim and/or final effluent limitations.” Permit
18 MRP § 7.2.7. The Facility must “attach a cover letter” to the self-monitoring reports,
19 which “identify[ies] violations of the waste discharge; discuss[es] corrective actions
20 taken or planned; and proposed time schedule for corrective actions.” Permit MRP §
21 7.2.7. Finally, the Facility must “add all violations . . . to CIWQS under the Violations
22 tab.” Permit MRP § 7.2.7.

23 90. The Permit requires the Facility to develop and issue a TRVMP Work Plan
24 “no later than 90 days after the effective date” of the Permit. Permit MRP § 4.2.5.

25 **V. FACTUAL BACKGROUND**

26 91. The Facility is a Federally Owned Treatment Work owned by the USIBWC.

27 92. The Facility is comprised of any devices and systems used in the storage,
28 treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid

1 nature, including but not limited to the SBIWTP, five diversion structure canyon
2 collectors, two pump stations, two junction boxes, and two outfall structures.

3 93. USIBWC contracts with Veolia to operate and maintain the Facility.

4 94. “Through the ownership and operation of the SBIWTP and appurtenant
5 canyon collector systems, the Discharger engages in acts and/or omissions that result in
6 the discharge of waste to waters of the State and U.S.” Permit Fact Sheet at F-64–65.

7 95. The Facility discharges treated, partially treated, and at times untreated
8 wastewater into the Pacific Ocean through the SBOO.

9 96. The Facility also routinely discharges waste via spill events, overflows, and
10 bypasses of the canyon collector systems, which continue north in the natural drainages,
11 polluting the Tijuana River Valley and Estuary, the Tijuana River, and the Pacific Ocean
12 at San Diego beaches near the mouth of the Tijuana River. This includes dry weather
13 canyon collector Spill Events, as defined by Section 6.3.2.1.1.2 of the Permit, which are
14 subject to the terms and requirements of the Permit.

15 97. The canyon collectors were constructed to divert dry weather transboundary
16 flows for treatment and discharge through the SBOO. Flows captured by the canyon
17 collectors are conveyed by gravity or via pump to the SBIWTP headworks for treatment
18 and, eventually, disposal through the SBOO. Spills, overflows, and bypasses of the
19 canyon collector systems continue north into the Tijuana River Valley and Estuary, the
20 Tijuana River, and the Pacific Ocean at San Diego beaches near the mouth of the Tijuana
21 River. *Id.* at F-5 to F-7.

22 98. The maximum design capacity for the five canyon collector systems is as
23 follows:

24 /././

25 /././

26 /././

27 /././

28 /././

**TABLE 2:
CANYON COLLECTOR SYSTEM DESIGN CAPACITIES**

Canyon Collector System	Average Flow (MGD)	Peak Flow (MGD)
Goat Canyon	2.33	7
Smuggler's Gulch	4.67	14
Canyon del Sol	0.67	2
Silva's Drain	0.33	1
Stewart's Drain	1.67	5

99. After the Facility treats the wastewater, the Facility discharges effluent first into the South Bay Land Outfall (“SBLO”) pipe. The SBLO starts at the SBIWTP and ends at the mouth of Goat Canyon, where it connects to the SBOO. *Id.* at § 2.2, at F-8. The SBOO then carries the waste over three nautical miles to its terminus, emptying into the Pacific Ocean off the coast near Imperial Beach, California. Although over three nautical miles, the pipe terminates within the waters of the United States due to its angle towards the international border.

A. The Impacted Receiving Waters

100. Receiving Waters are Waters of the United States, and thus are jurisdictional under the Clean Water Act. The Pacific Ocean is navigable in fact and used in interstate and foreign commerce. The Tijuana River and Estuary are direct tributaries to the Pacific Ocean. They are also subject to the ebb and flow of the tide, and navigable in fact. *See* 33 U.S.C. § 1362(7); 40 C.F.R. § 120.2.

101. The mouth of the Tijuana River meets the Pacific Ocean at Imperial Beach, forming an ecologically valuable estuary that forms a key part of Southern California’s coastal desert biome. The Tijuana River and Estuary serve as natural filtration systems, effectively mitigating the impact of pollutants. They also act as carbon sinks, absorbing greenhouse gases and contributing to climate mitigation efforts. These habitats provide homes for a diverse array of species and serve as vital breeding grounds for both terrestrial and aquatic migratory species. The Tijuana River Estuary is a sanctuary for

1 endangered species such as the salt marsh bird's beak and the California gnatcatcher,
2 underscoring its significance in preserving biodiversity and the delicate balance of nature.

3 102. The Imperial Beach coastal region hosts over 370 species of birds including
4 marbled godwit sanderlings, western sandpipers, double-crested cormorants, California
5 Brown Pelicans, and sensitive species such as the California terns and light-footed
6 clapper rails.

7 103. Marine life such as dolphins, whales, sea lions, sea turtles, rays, sharks,
8 octopi, and an abundance of fish visit or reside within the coastal waters into which
9 Defendants discharge.

10 104. The Water Quality Control Plan for the San Diego Basin ("San Diego Basin
11 Plan" or "Basin Plan") identifies the Beneficial Uses of water bodies in the region. The
12 Beneficial Uses for the Tijuana River include Industrial Service Supply; Contact Water
13 Recreation; Non-contact Water Recreation; Preservation of Biological Habitats of Special
14 Significance; Warm Freshwater Habitat; Wildlife Habitat; and Rare, Threatened, or
15 Endangered Species.

16 105. The Beneficial Uses for the Tijuana River Estuary include: Contact Water
17 Recreation; Non-contact Water Recreation; Commercial and Sports Fishing; Preservation
18 of Biological Habitats of Special Significance; Estuarine Habitat; Wildlife Habitat; Rare,
19 Threatened, or Endangered Species; Marine Habitat; Migration of Aquatic Organism;
20 Spawning, Reproduction, and/or Early Development; and Shellfish Harvesting.

21 106. The Beneficial Uses for the Pacific Ocean include Industrial Service Supply;
22 Navigation; Contact Water Recreation; Non-contact Water Recreation; Commercial and
23 Sports Fishing; Preservation of Biological Habitats of Special Significance; Wildlife
24 Habitat; and Rare, Threatened, or Endangered Species; Marine Habitat; Aquaculture;
25 Migration of Aquatic Organism; Spawning, Reproduction, and/or Early Development;
26 and Shellfish Harvesting.

27 107. The Tijuana River is listed as impaired under Section 303(d) of the Clean
28 Water Act for ammonia, total nitrogen, phosphorus, trace elements, benthic community

1 effects, cadmium, chlorpyrifos, diazinon, eutrophic conditions, indicator bacteria,
2 dissolved oxygen, malathion, pesticides, sedimentation/siltation, solids, surfactants,
3 synthetic organics, and trash.

4 108. The Tijuana River Estuary is listed as impaired under Section 303(d) of the
5 Clean Water Act for eutrophic conditions, nickel, lead, pesticides, thallium, toxicity,
6 turbidity, and trash.

7 109. The Pacific Ocean Shoreline at (1) Otay Valley HA, at Carnation Ave and
8 Camp Surf Jetty is impaired for indicator bacteria; (2) Imperial Beach Pier is impaired for
9 total coliform for the shellfish harvesting beneficial use, PCBs, and trash; (3) Tijuana
10 HU, at end of Seacoast Drive is impaired for indicator bacteria (enterococcus for contact
11 recreation, and total coliform for shellfish harvesting beneficial uses); (4) Tijuana HU, at
12 3/4-mile North of Tijuana River is impaired for indicator bacteria (enterococcus for
13 contact recreation, and total coliform for the shellfish harvesting beneficial uses); (5)
14 Tijuana HU, at Cortez Avenue is impaired for indicator bacteria (total coliform for the
15 shellfish harvesting beneficial use); (6) Tijuana HU, at Monument Road is impaired for
16 indicator bacteria (enterococcus, fecal coliform, and total coliform for contact recreation,
17 and total coliform for the shellfish harvesting beneficial uses); and (7) Tijuana HU, at the
18 international border is impaired for indicator bacteria (total coliform for the shellfish
19 harvesting beneficial use).

20 110. As alleged below, the Facility has failed and continues to fail to comply with
21 the Permit's effluent limitations, receiving water limitations, discharge prohibitions, and
22 monitoring and reporting requirements, among other Permit terms, violating the CWA.
23 These ongoing and continuous violations result in devastating impacts to Southern
24 California residents and ecosystems.

25 **B. Discharges in Exceedance of Permit Effluent Limitations**

26 111. As reflected in Exhibit 1, the Facility continuously fails to comply with the
27 effluent limitations required by its Permit in Section 4.1.1.1. Approximately 500 effluent
28 limitation violations have been identified between January 30, 2019, and the present. *See*

1 Notice Letter, Ex. 1, Effluent Limitations Violations.

2 112. Plaintiffs are informed, believe, and thereon allege Defendants' effluent
3 limitation violations are ongoing.

4 113. The Facility has discharged several pollutants in violation of Permit Effluent
5 Limitations including carbonaceous biochemical oxygen demand ("CBOD"), total
6 suspended solids ("TSS"), settleable solids, turbidity, benzidine, DDT, heptachlor
7 epoxide, hexachlorobenzene, PCBs, and toxaphene. *Id.*

8 114. The Facility's exceedances of Permit Effluent Limitations include toxic
9 chemicals that have been banned in the United States owing to their exceptionally
10 hazardous characteristics, such as DDT and PCBs. There have been at least 130 instances
11 of violations involving discharges of these chemicals from the Facility. *Id.*

12 115. Many of the Facility's discharges exceed applicable effluent limitations by
13 orders of magnitude, some of which are thousands of times the Permit limit. *Id.*

14 **C. Transboundary Flows in Violation of Basin Plan Discharge Prohibitions**

15 116. Plaintiffs are informed and believe, and thereon allege that canyon collector
16 transboundary flows frequently and continuously discharge into the Tijuana River Valley
17 at levels well above the Water Quality Objectives in the Basin Plan and Ocean Plan in
18 violation of Permit Discharge Prohibitions 3.2 and 3.3.

19 117. For example, during the January 7, 2022 transboundary flow event, bacteria
20 levels at Stewart's Drain exceeded Basin Plan Water Quality Objectives by orders of
21 magnitude - Enterococcus measured 5,000,000 cfu/100ml, over 45,000 times higher than
22 the Basin Plan objective, and fecal coliform measured 3,500,000 cfu/100ml, 1,750 times
23 higher than the Basin Plan objective. Exhibit 1. These extremely polluted discharges
24 flowed into the Tijuana River, Tijuana River Estuary, and eventually the Pacific Ocean at
25 the mouth of the Tijuana River.

26 118. USIBWC canyon collectors are frequently inoperable and therefore many
27 Canyon Collector Transboundary Flow Events constitute Spill Events. For example, on
28 March 7, 2023, USIBWC notified the Regional Board that the Goat Canyon and

1 Smugglers Gulch Canyon Collectors were both “out of service” due to excessive
2 sediment buildup. These canyon collectors remained offline until March 10, while 8
3 million gallons of transboundary flows reached surface waters.

4 119. Canyon Collector Daily Inspection logs show canyon collectors are routinely
5 not “operational” while flows bypass the collectors. For example, on January 2, 2022,
6 Goat Canyon was not operational and 0.375 cubic feet per second was flowing through
7 the collector from Mexico. On January 19, 2022, Goat Canyon collector was not
8 operational and 0.833 cubic feet per second bypassed the collector. *Id.* USIBWC reported
9 Spill Events on February 23, 2022 at Goat Canyon and Smuggler’s Gulch. These are just
10 a few examples of the Facility’s chronic and ongoing infrastructure issues that result in
11 frequent Spill Events.

12 120. Though IBWC failed to sample these Spill Events, the Facility has routinely
13 monitored dry weather canyon collector transboundary flows (some of which also
14 constitute Spill Events) at Stewart’s Drain. These samples consistently exceed applicable
15 Water Quality Objectives. *See*, Exhibits 5 and 6 to Notice Letter.

16 121. Plaintiffs therefore are informed, believe, and thereon allege, Spill Events at
17 Goat Canyon, Smuggler’s Gulch, and other canyon collectors similarly exceed numerous
18 Water Quality Objectives, including but not limited to those for: nitrogen, phosphorus,
19 bacteria (including Enterococcus and Fecal Coliform), lead, turbidity, dissolved oxygen,
20 and pH.

21 122. The Permit requires the Facility to comply with the Basin Plan Discharge
22 Prohibitions, and Discharge Prohibition (5) prohibits the discharge of waste unless in
23 compliance with Water Quality Objectives.

24 123. Plaintiffs are informed, believe, and thereon allege the Facility continues to
25 experience dry weather transboundary flows that constitute Spill Events and exceed
26 applicable Water Quality Objectives. USIBWC’s Spill Event discharges to the Tijuana
27 River and Tijuana River Estuary in exceedance of numerous Water Quality Objectives
28 therefore constitute ongoing Permit violations.

1 **D. Violations of the Permit Receiving Water Limitations**

2 124. Plaintiffs are informed and believe, and thereon allege that the Facility has
3 discharged and continues to discharge bacteria and pathogens far in excess of the
4 Permit’s bacterial objectives outlined in Section 5, Receiving Water Limitations. These
5 exceedances cause or contribute to the bacteria impairments of the Pacific Ocean.

6 125. There are two pathways through which the Facility discharges bacteria,
7 which negatively impacts ocean waters: (1) directly into the ocean via the SBOO, and (2)
8 via dry weather canyon collector Spill Events, which flow through the Tijuana River and
9 Estuary and into the Pacific Ocean at the mouth of the Tijuana River.

10 126. USIBWC and Veolia, as owners and/or operators of the Facility, have failed,
11 and continue to fail, to properly operate and maintain the Facility.

12 127. The Facility remains in a shocking state of disrepair. According to USIBWC
13 itself, the Facility’s multiple, ongoing infrastructure and maintenance failures have
14 resulted in the regular discharge of untreated and partially treated sewage from the SBOO
15 and canyon collectors. According to USIBWC, as of September 2023:

- 16
- 17 (a) Only one of six influent pumps was operable, leading to 25 MGD of untreated
18 sewage flowing into the Tijuana River contributing to extreme contamination of the
19 estuary;
- 20 (b) Only two of seven Activated Sludge Tanks (ASTs) were operable, negatively
21 impacting the quality of the effluent discharged through the Facility’s ocean outfall,
22 which fails to meet permit standards;
- 23 (c) Only one of two Waste Activated Sludge (WAS) Pumps was running (inefficiently),
24 also resulting in partially treated sewage being discharged through the ocean outfall;
- 25 (d) Only one of two Unstabilized Sludge Storage Tanks (USST) were operating (at 50
26 percent capacity), also resulting in partially treated sewage being discharged through
27 ocean outfall;
- 28 (e) Zero of four pumps were operable at the Hollister canyon collector pumping station,
 resulting in the surge tank filling with sediment, and transboundary untreated sewage
 flows through the canyons into the Tijuana River and Estuary;

1 (f) One of five pumps at the primary non-potable water pump station were operable,
2 and zero of four pumps were operable at the secondary pump station, hindering the
3 ability of the Facility to pump treated effluent to other plant processes, which
negatively impacts *all plant processes and components*.

4 128. On March 28, 2024, USIBWC confirmed:

5 (a) Three of six influent pumps are now operational;

6 (b) Only one of two WAS is operational;

7 (c) Only one of the USSTs and two of six pumps are operational;

8 (d) Three of four pumps are now operational at Hollister Pump Station; and

9 (e) Two of four primary non-potable pumps are operational and three of five
10 secondary non-potable pumps are operational.

11 129. Plaintiffs are informed and believe, and thereon allege that these ongoing
12 failures directly result in the regular discharge of untreated and partially treated sewage
13 through both the SBOO and canyon collectors, which correspondingly results in the
14 discharge of extremely high levels of bacteria. These discharges cause and/or contribute
15 to exceedances of the Permit's bacterial Receiving Water Limitations.

16 130. As acknowledged on numerous occasions by USIBWC, due to the Facility's
17 state of disrepair, the Facility regularly discharges untreated and partially treated sewage
18 directly into the Pacific Ocean via the SBOO.

19 131. The Facility's own effluent monitoring data, detailed in Exhibit 7 to the
20 Notice Letter, establishes that the Facility frequently discharges bacteria from the SBOO
21 at concentrations exceeding the Permit's Receiving Water Limitations.

22 132. The Facility's own receiving water monitoring data establishes that the
23 Facility's polluted SBOO discharges have caused or contributed to ongoing exceedances
24 of bacterial objectives in Permit section 5.1.1, thus violating the Permit's Receiving
25 Water Limitations. Indeed, the Facility has complied with the Permit's bacteria objectives
26 in only six months of the last sixty-two.

27 133. The Permit specifically explains, "[c]ompliance with these limitations shall
28

1 be determined from samples collected at stations representative of the area outside of the
2 zone of initial dilution (ZID).” The Facility’s receiving water monitoring data, as detailed
3 in Exhibit 4 of the Notice Letter, was collected in such waters outside of the ZID.

4 134. The Facility also causes or contributes to exceedances of Receiving Water
5 bacterial objectives via dry weather canyon collector Spill Events. Permit § 5.1.

6 135. The Permit itself notes that USIBWC “discharged, discharges, or is
7 suspected of discharging waste in the form of transboundary flows and other waste
8 through the canyon collector systems it owns, operates, and maintains.” Permit
9 Attachment F § 7.2.2.

10 136. “Dry weather transboundary flows at the Stewart’s Drain canyon collector
11 have been increasing in frequency due to infrastructure issues in Mexico, as well as the
12 SBIWTP. Between November 2020 and February 2021, there were 19 dry weather
13 transboundary flows at the Stewart’s Drain canyon collector resulting in the release of
14 over 1.2 million gallons of untreated wastewater to waters of the U.S. and/or State.” *Id.*

15 137. Notably, the design capacity of Stewart’s Drain is 1.67 million gallons per
16 day. As such, these nineteen dry weather transboundary flows over a three-month period
17 totaled less than the Stewart’s Drain daily capacity, strongly indicating that each of these
18 nineteen discharges of untreated wastewater constitute a dry weather canyon collector
19 Spill Event covered by the Permit. Permit Fact Sheet at F-7.

20 138. Further still, these nineteen Spill Events transpired over a short, three-month
21 period at one canyon collector. As such these events are merely illustrative, not
22 exhaustive. Plaintiffs are informed, believe, and thereon allege that these dry weather
23 canyon collector Spill Events frequently occur at multiple canyon collectors.

24 139. Moreover, each of these dry weather canyon collector Spill Events
25 discharges extremely high levels of bacteria. Although IBWC fails to collect bacterial
26 data corresponding to each such Spill Event, the Facility’s own monitoring data provides
27 several representative examples. For example, during the January 7, 2022 Spill Event,
28 Enterococcus levels at Stewart’s Drain measured 5,000,000 cfu/100ml, over 45,000 times

1 higher than the Permit's objective of 110 cfu/100ml, and Fecal Coliform measured
2 3,500,000 cfu/100ml, 8,750 times higher than the Permit's objective of 400 cfu/100ml.
3 *See* Ex. 1, Transboundary & Spill Event Bacteria Monitoring.

4 140. These heavily polluted discharges, which can total hundreds of thousands or
5 millions of gallons per day, flow into the Tijuana River, and thereafter into the Pacific
6 Ocean at the mouth of the Tijuana River. Defendants' own shoreline receiving water
7 monitoring data show consistent exceedances of the Permit's bacterial objectives.
8 Specifically, over the past five years, the Facility's shoreline monitoring stations, S-4
9 through S-6, and S-8 through S-12, reflect thousands of violations of the fecal coliform
10 and enterococci bacterial objectives of the Permit.

11 **E. Failure to Submit Self-Monitoring Reports in Accordance with Permit**
12 **Requirements**

13 141. As reflected in Exhibit 1, the Facility has failed to report the self-monitoring
14 reports in accordance with the Permit in a multitude of ways, all of which deprive the
15 public of access to information about their local waters.

16 142. The Facility does not present all testing parameters in the prescribed
17 tabulated format. Permit at Attachment E § 7.2.7.1. Since December 2020, the Facility
18 has consistently neglected to include the monthly percentage removal of CBOD and TSS
19 in the tabulated format, a mandatory requirement outlined in the Permit. Moreover, the
20 Facility has omitted reporting chronic toxicity data in the tabulated reports since 2019,
21 which is also a clear violation of the Permit. Failing to disclose these results deprives the
22 public of an opportunity to stay informed and aware of their water quality conditions.

23 143. The Facility has also neglected to document a staggering total of 239
24 effluent violations as mandated by the Permit in the specified violations tab on CIWQS.
25 Permit at Attachment at E §7.2.7.3. These omissions result in underreporting and
26 significant informational harm to Plaintiffs' members and the public.

27 144. The Facility's monitoring reports also fail to detail the corrective actions
28 taken for effluent violations within both the self-monitoring cover letter and the

1 violations tab. In a startling number of instances, amounting to at least 235 violations,
2 the Facility neglected to report infractions in either the violations tab or cover letter.
3 Consequently, corrective actions, as mandated by the Permit, were not documented, and
4 possibly not implemented.

5 145. Further, over the past five years, the Facility has consistently failed to
6 provide the necessary corrective action descriptions in the cover letter, the designated
7 location specified in the Permit for such information.

8 146. The Facility also failed to submit the August 2019 monthly self-monitoring
9 report entirely. The uploaded data represents the quarterly information only. Further, in
10 November 2019, the flow reported in the tabulated format fails to match the flow
11 reported on the cover letter. Given that the flow on the cover letter exceeds the effluent
12 limitation, and the tabulated amount does not, the conflicting information only serves to
13 confuse the public and regulators.

14 147. Lastly, numerous reports were submitted after the deadline or not at all.
15 Permit at Attachment E § 7.2.7.2.

16 148. Plaintiffs are informed, believe, and thereon allege that these reporting
17 deficiencies have not been corrected and constitute ongoing violations.

18 **F. Failure to Submit the TRVMP within 90 days of the Effective Date of**
19 **Order No. R9-2021-0001**

20 149. The TRVMP requires the Facility to set up monitoring locations, identify
21 parameters to be analyzed, for both the water column and sediment, and make a quality
22 assurance plan to meet project goals. Permit at Attachment E § 4.2.5.

23 150. The TRVMP was due 90 days after the effective date of the Permit and was
24 to be implemented 90 days after the plan's submission. USIBWC submitted a draft
25 TRVMP on March 29, 2024

26 151. Plaintiffs are informed, believe, and thereon allege, the TRVMP has not
27 been approved or implemented.

28 152. TRVMP was to provide information on the canyon collectors, which have

1 historically been a significant source of pollution into the estuary and Pacific Ocean.

2 153. Therefore, the failure to monitor and obtain data surrounding these areas
3 exacerbates the Facility's water quality impacts to the Tijuana River Valley.

4 **VI. CLAIMS FOR RELIEF**

5 **FIRST CAUSE OF ACTION**

6 **Discharges of Waste in Violation of the Permit's Effluent Limitations and the**
7 **Clean Water Act.**

8 **33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f)**

9 154. Plaintiffs incorporate the allegations contained in the above paragraphs as
10 though fully set forth herein.

11 155. Plaintiffs are persons as defined by the Clean Water Act and thus able to
12 pursue citizen enforcement.

13 156. Defendants USIBWC and Veolia are persons and responsible parties as
14 defined by the Clean Water Act.

15 157. Defendants have discharged and continue to discharge pollutants in violation
16 of the Permit's effluent limitations. Defendants have violated the Permit's effluent
17 limitations in at least 500 instances between January 30, 2019 and the present.

18 158. The discharge of pollutants in excess of a Facility's effluent limitations is a
19 violation of the Clean Water Act, 33 U.S.C. Sections 1311(a) and 1342.

20 159. Defendants' violations of the Permit and the CWA are ongoing and
21 continuous. Defendants will continue to be in violation of the Permit and CWA each day
22 they fail to comply with the Permit's Effluent Limitations.

23 160. Each of these effluent exceedances is a separate and distinct violation of
24 Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Many of these exceedances equate to
25 weeks or months of continuous violations as noted in Exhibit 1. Plaintiffs are informed,
26 believe, and thereon allege that USIBWC and Veolia were in violation for at least 1,430
27 days within the last five years.

28 161. By committing the acts and omissions alleged above, Defendant Veolia is

1 subject to an assessment of civil penalties for each and every violation of the CWA
2 occurring from January 30, 2019 to the present pursuant to Sections 309(d) and 505 of
3 the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

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

8 163. Wherefore, Plaintiffs pray for relief as set forth below.

9 **SECOND CAUSE OF ACTION**

10 **Discharges in Violation of the Permit's Section 3 Discharge Prohibitions and**
11 **Clean Water Act.**

12 **33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f)**

13 164. Plaintiffs incorporate the allegations contained in the above paragraphs as
14 though fully set forth herein.

15 165. Defendants have failed and continue to fail to comply with Permit Discharge
16 Prohibition 3.2 and 3.3. Specifically, Defendants' discharges exceed applicable Ocean
17 Plan and Basin Plan bacterial objectives set for the Receiving Waters, which include the
18 Tijuana River Valley and Estuary, the Tijuana River, and the Pacific Ocean at San Diego
19 beaches near the mouth of the Tijuana River.

20 166. Defendants' discharges cause and/or contribute to exceedances of the
21 applicable water quality standards of the Receiving Waters.

22 167. Discharging pollutants in excess of a permit's discharge prohibition is a
23 violation of the Clean Water Act, 33 U.S.C. Sections 1311(a) and 1342.

24 168. By committing the acts and omissions alleged above, Defendant Veolia is
25 subject to an assessment of civil penalties for each and every violation of the CWA
26 occurring from January 30, 2019 to the present pursuant to Sections 309(d) and 505 of
27 the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

28 169. This action for injunctive relief is authorized by the Clean Water Act, 33

1 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will
2 irreparably harm Plaintiffs, for which harm they have no plain, speedy, or adequate
3 remedy at law.

4 170. Wherefore, Plaintiffs pray for relief as set forth below.

5 **THIRD CAUSE OF ACTION**

6 **Discharges in Violation of the Permit's Receiving Water Limitations in Section 5**
7 **and the Clean Water Act.**

8 **33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f)**

9 171. Plaintiffs incorporate the allegations contained in the above paragraphs as
10 though fully set forth herein.

11 172. The Facility has discharged and continues to discharge bacteria and
12 pathogens far in excess of the Permit's bacterial receiving water limitations ("Surface
13 Water Limitations") in Permit Section 5.

14 173. The Facility discharges bacteria: (1) directly into the ocean via the SBOO at
15 DP-001, and (2) via dry weather canyon collector Spill Events, which flow through the
16 Tijuana River and Estuary and into the Pacific Ocean at the mouth of the Tijuana River.

17 174. Plaintiffs are informed and believe, and thereon allege that Defendants have
18 violated and continue to violate Permit Section 5 requirements at the Facility during each
19 canyon collector Spill Event.

20 175. Defendants have violated and continue to violate Permit Section 5
21 requirements each and every time the Facility discharges waste at the SBOO which
22 exceeds the bacterial objectives.

23 176. Plaintiffs are informed and believe, and thereon allege that Defendant's
24 aforementioned discharges cause and/or contribute to the bacteria impairments of the
25 Receiving Waters.

26 177. The discharge of pollutants in excess of a permit's surface water limitations
27 is a violation of the Clean Water Act, 33 U.S.C. Sections 1311(a) and 1342.

28 178. Plaintiffs are informed and believe, and thereon allege, that Defendants have

1 been in violation of the Permit's Surface Water Limitations for most months since at least
2 January 30, 2019. Defendants' violations of the Permit's Surface Water Limitations and
3 the CWA are ongoing and continuous. Defendants will continue to be in violation of the
4 Permit and the CWA each day they fail to meet Surface Water limitations at the Facility.

5 179. Each day Defendants operate the Facility without complying with its Permit
6 Surface Water Limitations is a separate and distinct violation of Section 301(a) of the
7 CWA 33 U.S.C. §1311(a).

8 180. By committing the acts and omissions alleged above, Defendant Veolia is
9 subject to civil penalties for each and every violation of the CWA occurring since
10 January 30, 2019. 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

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

15 182. Wherefore, Plaintiffs pray for relief as set forth below.

16 **FOURTH CAUSE OF ACTION**

17 **Failure to Submit Self-monitoring Reports in Accordance with Permit**
18 **Requirements**

19 **33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f)**

20 183. Plaintiffs incorporate the allegations contained in the above paragraphs as
21 though fully set forth herein.

22 184. Defendants have failed to upload all self-monitoring reports to CIWQS as
23 required by the Permit at Attachment E Section 7.2.1. Defendants have submitted reports
24 late, failed to attach cover letters with the required information, and failed to add all
25 effluent violations to the CIWQS violations tab.

26 185. Plaintiffs are informed, believe, and thereon allege that Defendants'
27 monitoring and reporting violations, as alleged herein, are ongoing.

28 186. Defendants will continue to be in violation of the Permit and the CWA each

1 and every day they fail to monitor and report in the manner prescribed by the Permit.

2 187. Failure to comply with a CWA permit condition is a violation of the Clean
3 Water Act, 33 U.S.C. Sections 1311(a) and 1342.

4 188. Each day that Defendants operate the Facility without complying is a
5 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

6 189. By committing the acts and omissions alleged above, Defendant Veolia is
7 subject to an assessment of civil penalties for each and every violation of the CWA
8 occurring since January 30, 2019. 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

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

13 191. Wherefore, Plaintiffs pray for relief as set forth below.

14 **FIFTH CAUSE OF ACTION**

15 **Failure to Submit the TRVMP Within 90 Days of the Effective Date of**
16 **Order No. R9-2021-0001.**

17 **33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f)**

18 192. Plaintiffs incorporate the allegations contained in the above paragraphs as
19 though fully set forth herein.

20 193. The Facility failed to develop and implement the TRVMP work plan as
21 required by the Permit at Attachment E Section 4.2.5.

22 194. Defendants will continue to be in violation of the Permit and the CWA each
23 and every day they fail to comply with the Permit's Tijuana River Valley monitoring
24 requirements.

25 195. Defendants will continue to be in violation of the Permit and the CWA each
26 and every day they fail to monitor and report in the manner prescribed by the Permit.
27 Failure to comply with an NPDES permit condition is a violation of the Clean Water Act,
28 33 U.S.C. Sections 1311(a) and 1342.

1 196. This violation of the Permit’s monitoring requirements is a separate and
2 distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). By committing the
3 acts and omissions alleged above, Defendant Veolia is subject to an assessment of civil
4 penalties for its violation of the CWA occurring since September 29, 2021. 33 U.S.C. §§
5 1319(d), 1365, and 40 C.F.R. § 19.4.

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

10 198. Wherefore, Plaintiffs pray for relief as set forth below.

11 **VII. RELIEF REQUESTED**

12 199. Plaintiffs respectfully request that this Court grant the following relief:

13 a. A court order declaring Defendants have violated and are in violation of
14 Sections 301(a) and (b) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and (b), for
15 discharging pollutants from the Facility in violation of a permit issued pursuant to
16 Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and for failing to comply with the
17 other substantive and procedural requirements of the Permit as set forth within this
18 Complaint;

19 b. A court order enjoining Defendants from discharging pollutants from the
20 Facility in violation of the Clean Water Act and the Permit;

21 c. A court order requiring Defendants to implement affirmative injunctive
22 measures designed to eliminate Defendants’ violations of the substantive and procedural
23 requirements of the Permit and the Clean Water Act as authorized by U.S.C. section
24 1365(a);

25 d. A court order assessing civil monetary penalties against Defendant Veolia;

26 e. A court order awarding Plaintiffs their reasonable costs of suit, including
27 attorney, witness, expert, and consultant fees, as permitted by Section 505(d) of the Clean
28 Water Act, 33 U.S.C. § 1365(d); and

1 f. Any other relief the Court deems appropriate.

2 Dated: April 11, 2024

3 Respectfully submitted,

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