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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.

Case No. 3:18-cv-00457-JM-JMA

FIRST AMENDED 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).

TABLE OF CONTENTS

I. INTRODUCTION

1. Plaintiffs the City of Imperial Beach ("Imperial Beach"), the San Diego Unified Port District ("Port District"), and the City of Chula Vista ("Chula Vista") (together, "Plaintiffs") have beseeched the federal government through political, diplomatic, regulatory, and administrative avenues to address devastating pollution discharges that injure the Plaintiffs and their constituents, to no avail. Plaintiffs now bring this action to halt Defendants' ongoing, severe, and dangerous violations of the Federal Water Pollution Control Act, also known as 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*.

2. Defendants the International Boundary and Water Commission – United States Section ("USIBWC") and Veolia Water North America – West, LLC ("Veolia") own and operate flood control and wastewater collection and treatment infrastructure in the Tijuana River Valley, a sprawling and largely untouched natural open space area near or adjacent to Plaintiffs' southern boundaries. In operating their infrastructure, Defendants assumed a critical responsibility: to protect local communities from pollution flowing through the Tijuana River Valley, 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 flowing from the Tijuana River Estuary into the Pacific Ocean and migrating 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 pollutants discharging from Defendants' facilities barrage the Tijuana River Valley 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. The public health risks associated with Defendants' discharges in the Tijuana River Valley and along the Imperial Beach beachfront are severe. 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 a waterway in the Valley clogged with sediment, tires, and other garbage. Pollution of this nature upends the ecological equilibrium in the Valley, requires significant manpower and expense to remediate, and presents a latent hazard of releasing toxins and other hazardous materials contained therein during subsequent wastewater flows.

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

7. Accordingly, Plaintiffs notified Defendants of their intent to sue over Tijuana River Valley pollution discharges on September 27, 2017. That notification compelled USIBWC to initiate yet another discussion of solutions in the Valley. At the resulting meeting on December 12, 2017, the San Diego Regional Water Quality Control Board ("Water Board") asked USIBWC to declare its commitment to constructing several "Priority Projects" to finally resolve pollution flowing from its facilities through the Tijuana River Valley. These projects, memorialized in a

January 26, 2018 Water Board memorandum, are not new; Defendants have been aware of the need to implement these projects for years. These projects include: (1) a pollution interception facility in or downstream of USIBWC's flood control infrastructure with a conveyance to Defendants' existing wastewater treatment facility in the Valley; (2) enhanced wastewater capture and control facilities in the hills above the Tijuana River Valley, including new infrastructure in Yogurt Canyon; and (3) a functioning water quality monitoring and assessment program. These projects would substantially prevent, if not eliminate, illegal discharges of pollutants and solid and/or hazardous wastes from Defendants' facilities.

8. USIBWC provided a response to the Water Board's memorandum on March 1, 2018. In sum, USIBWC refused to commit to any action that would curtail the routine, unlawful waste discharges from its facilities.

9. The Water Board on April 13, 2018, responded by letter to USIBWC. The Water Board's letter made clear that USIBWC is responsible for the discharge of waste from its facilities, that it is discharging wastes from those facilities in violation of the National Pollutant Discharge Elimination System (NPDES) permit it holds for the South Bay International Wastewater Treatment Plant (South Bay Plant), and that it is discharging waste from its facilities without a permit, all in dereliction of its obligations under the Clean Water Act. The Water Board clarified that the priority projects described in its memorandum are intended to address USIBWC's Clean Water Act violations.

10. On May 14, 2018, the Water Board served a Notice of Intent to Sue USIBWC for Clean Water Act Violations, and specifically violations of the South Bay Plant's NPDES permit. The Surfrider Foundation, a nonprofit environmental organization dedicated to protecting oceans and beaches, followed with its own Notice of Intent to Sue USIBWC for its Clean Water Act violations on May 15, 2018.

11. Plaintiffs bring this action to avoid continued harm to the public and the invaluable natural resources damaged by Plaintiffs' legal violations. Since the December 12, 2017 meeting, more than twenty-nine new pollution events have occurred in the Tijuana River Valley, and over

three million gallons of wastewater containing sewage, industrial wastes, pesticides, and other contaminants have passed through Defendants' facilities and emptied into the Tijuana River Valley, forcing beach closures and public health advisories for Imperial Beach beachfront users.

12. Had Defendants implemented the priority projects when their need was first-identified, virtually all the pollution events in the Valley since the December 12 meeting would have been prevented.

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

II. PARTIES

A. Plaintiffs

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

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

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

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

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

19. Additionally, such health hazards diminish the number of visitors willing to visit and spend money in Imperial Beach. Known for its miles of sandy beach and popular surf breaks, the City is injured when regulatory closures prevent the public from utilizing the City's beachfront. 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.

20. 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 Team efforts. The City would not have committed that time or expended those resources on its participation in those processes but for the pollution problems in the Tijuana River Valley arising out of Defendants' violations of the CWA and RCRA.

21. 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.

22. **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.

23. 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.

24. 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.

25. **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.

26. 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.

27. 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 to come to Chula Vista and conduct economic activity there; 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.

28. 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

29. **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.

30. 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."

31. 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.

32. **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 in Contra Costa County, California, and San Diego in 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, California. Veolia is a wholly owned subsidiary of Veolia Water North America Operating Services, LLC.

33. 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

34. 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.

35. Defendants the USIBWC and Veolia were served with a notice of the Plaintiffs' intent to sue for violations of the CWA, and notice of an imminent and substantial endangerment and the Plaintiffs' intent to sue for violations of RCRA, via certified mail and registered mail, return receipt requested, on September 27, 2017. More than ninety days have passed since Defendants each received the Notice Letter. Defendants have not remedied the CWA and RCRA violations that are the subject of the Notice Letter and this Complaint. No regulatory agency has commenced and is diligently prosecuting any action to address the contamination that is the subject

of this action. A copy of Plaintiffs' combined CWA and RCRA "Notice of Intent" letter is attached as Exhibit A.

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

37. The United States District Court for the Southern District of California has jurisdiction to, *inter alia*, order civil penalties and grant equitable relief, including but not limited to an order to comply with the CWA and applicable permits thereunder. 33 U.S.C. §§ 1319(g); 1365(a). Additionally, the Court has jurisdiction under RCRA to enjoin Defendants' conduct contributing to the imminent and substantial endangerment to human health and the environment present in the Tijuana River Valley. 42 U.S.C. § 6972(a)(2).

IV. FACTUAL ALLEGATIONS

A. The Tijuana River Valley.

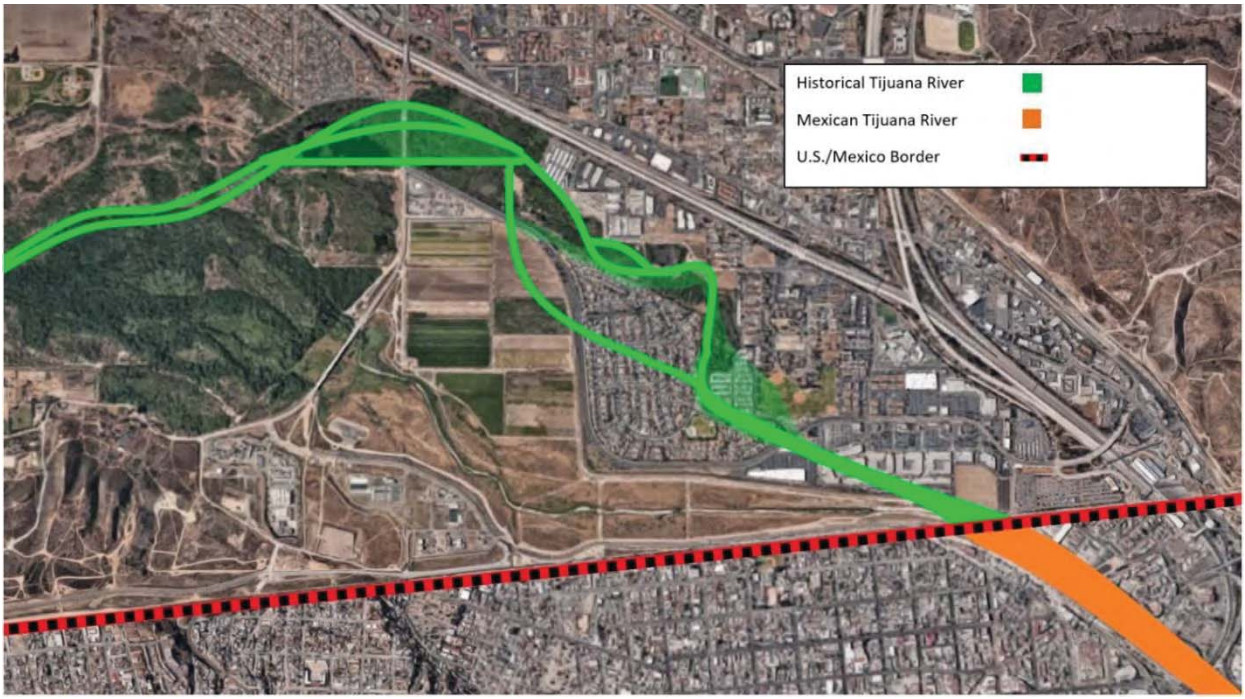
38. As used herein, "Tijuana River Valley" and "Valley" refer to the land approximately bounded by the Cities of Imperial Beach and San Diego to the north, Interstate 5 to the east, the U.S./Mexico Border to the south, and the Pacific Ocean to the west.

39. The Tijuana River 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 terrestrial and aquatic recreational opportunities.

40. The Tijuana River Estuary is also an important ecological resource. It is a marine-dominated estuary designated as a Wetland of International Importance by the Ramsar Convention in 2005. It has several sensitive habitats, such as sand dunes and beaches, vernal pools, tidal channels, mudflats, and coastal sage scrub. The Estuary contains one of the few salt marshes left in California. The Estuary provides critical habitat for several endangered species; nursery grounds for commercially-important fish species; and an essential breeding, feeding and nesting area and

a stopover point on the Pacific Flyway for both native and migratory birds. In recognition of the Tijuana River Valley's recreational and ecological importance, areas of the Valley have been protected under the California State Park System, the National Estuarine Research Reserve System, and the National Wildlife Refuge System.

41. Before IBWC constructed its discharge facilities in the Tijuana River Valley, the Tijuana River flowed uninterrupted from the U.S./Mexico Border to the northwest. The map below depicts the River's natural course in green, which meandered over time.



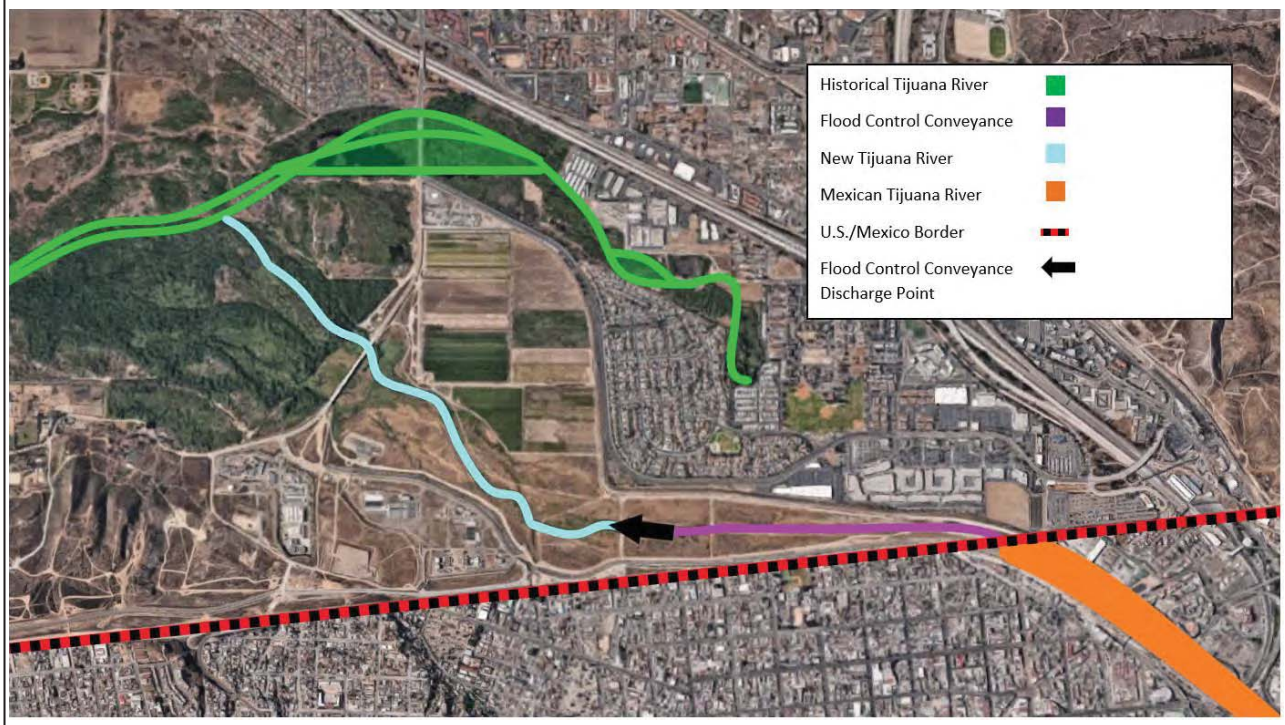
42. At all times, the historical River channel remained to the east of an elevated area that is present-day San Ysidro. After passing San Ysidro, the historical River course naturally veered to the west. From that point, the River continued in its natural, westerly course to the Tijuana River Estuary, and ultimately the Pacific Ocean.

43. In 1978, USIBWC severed the Tijuana River's course by constructing a massive concrete flood control channel designed to capture as much as 135,000 cubic feet of water per second from Mexico and began discharging sewage and other wastes from that infrastructure into an area of the Tijuana River Valley in which the River had not previously flowed. In so doing,

USIBWC significantly upended the natural hydrology of the Tijuana River Valley and caused pollution in waters wholly created by USIBWC's activities, in an area of the Tijuana River Valley that had previously avoided impact.

44. The map below depicts the present-day Tijuana River Valley and the following natural and artificial hydrological features:

- The Tijuana River's pathway through Mexico is depicted in orange. Hereinafter, the Tijuana River in Mexico is referred to as the "Mexican Tijuana River."
- USIBWC's concrete channel is indicated in purple. Hereinafter, that channel is referred to as the "USIBWC Flood Control Conveyance."
- The water body that most immediately receives USIBWC's discharges from the USIBWC Flood Control Conveyance is depicted in blue. Hereinafter, that water is referred to as the "New Tijuana River."
- What remains of the Tijuana River's natural course in the United States is depicted in green. Hereinafter, that water is referred to as the "Historical Tijuana River."



45. At the USIBWC Flood Control Conveyance's terminus, USIBWC discharges the Conveyance's contents—which, when flowing, consist of wastewater and runoff containing sewage, trash, and industrial and agricultural wastes, among other dangerous pollutants—into a largely undeveloped area of the Tijuana River Valley. These discharges have carved a new river channel, the New Tijuana River, downstream of the USIBWC Flood Control Conveyance.

46. From the USIBWC Flood Control Conveyance's discharge point, the New Tijuana River meanders northwesterly through the Tijuana River Valley. It eventually flows into the Historical Tijuana River course approximately one mile downstream of the USIBWC Flood Control Conveyance's discharge point.

47. There is not and there has not been a historical or natural hydrological connection between the Mexican Tijuana River and the New Tijuana River, which are distinct waterbodies. But for USIBWC's construction and operation of the USIBWC Flood Control Conveyance, the New Tijuana River would not exist.

48. The segment of the Historical Tijuana River upstream of its confluence with the New Tijuana River still flows despite the USIBWC Flood Control Conveyance, but is fed exclusively from runoff from adjacent lands, and not the Mexican Tijuana River.

49. The New Tijuana River, the Historical Tijuana River, the Tijuana River Estuary, and the Pacific Ocean are "navigable" in the traditional sense of the word, or are tributaries to a navigable water.

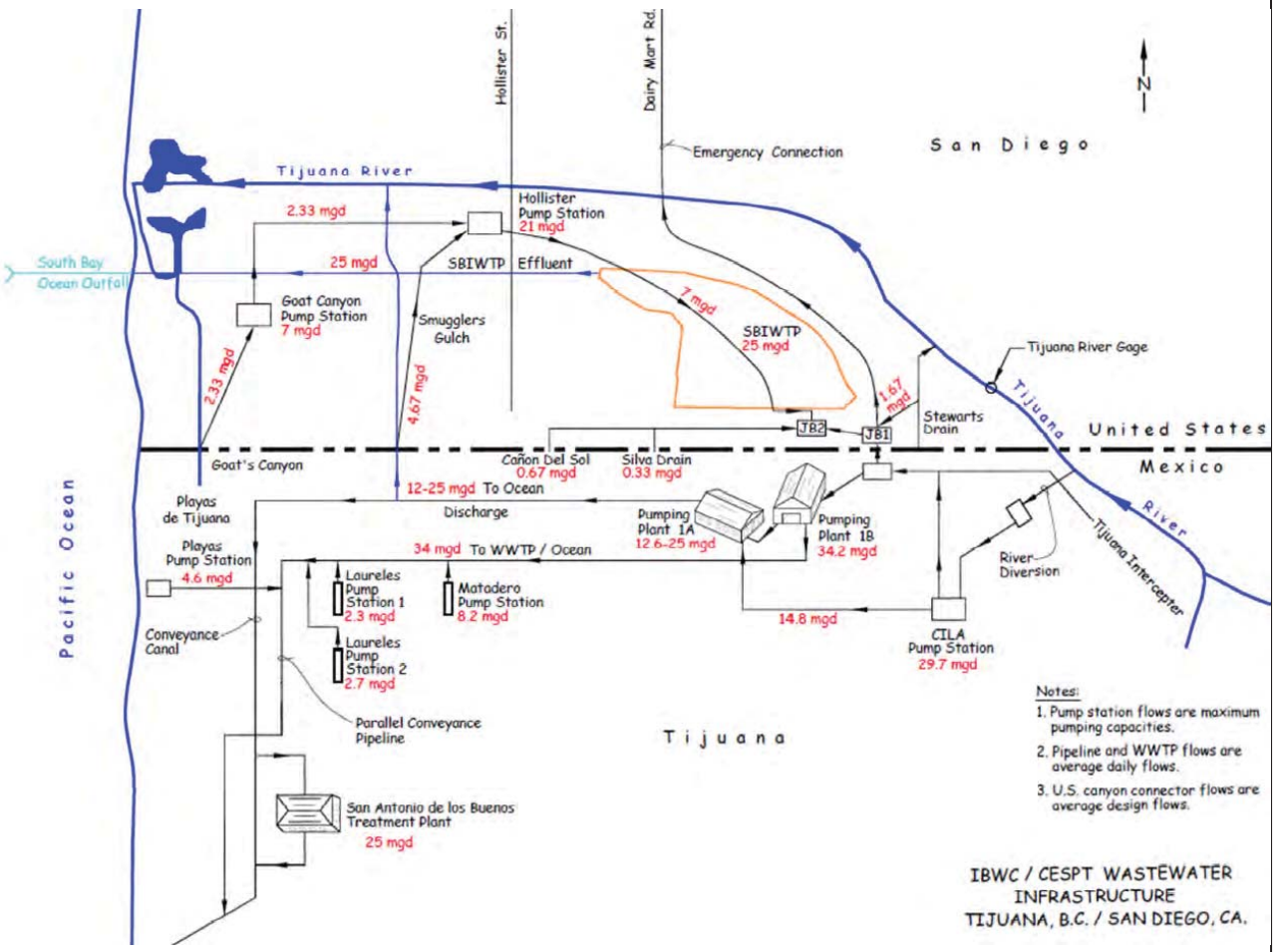
50. The Tijuana River Valley is bordered to the south by an east-west range of hills that span from the USIBWC Flood Control Conveyance to the Pacific Ocean. The U.S./Mexico border is located in these hills.

51. Fugitive wastewater, precipitation, and other water that crosses the border into the U.S. west of the USIBWC Flood Control Conveyance primarily does so at six discernible locations along the range. These "drainage points" are indicated with red arrows in the image below.

52. There are no discernible water bodies immediately upstream of Stewart's Drain, Silva Drain, or Canyon del Sol; rather these drainage points are fed by diffuse surface runoff. There are discernible water bodies immediately upstream of Smuggler's Gulch and Goat Canyon.

B. <u>USIBWC's Facilities in the Tijuana River Valley.</u>

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



54. 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 New Tijuana River, which is to the north of the Plant, and the international border, which is to the south of the Plant, and immediately west of the USIBWC Flood Control Conveyance. The Plant is depicted in the schematic above by a yellow polygon marked "SBIWTP."

55. 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").

56. The South Bay Plant 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.

57. 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.

58. The South Bay Plant is the main wastewater treatment plant in a transboundary sewage system that USIBWC co-operates with the Comisión Internacionál de Limites y Aguas ("CILA"), USIBWC's counterpart in Mexico. The primary influent to the Plant is sewage from Mexico. A pipe and pump system originating in Mexico[1] 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 discharges in U.S. waters of the Pacific Ocean, several miles off of San Diego, California.

59. Among the collection facilities in the transboundary sewage system is a diversion structure in the Mexican Tijuana River (the "CILA Diversion") designed to divert flows in the Mexican Tijuana River into the transboundary sewage system. The CILA Diversion frequently malfunctions, allowing sewage to flow past the Diversion and across the U.S./Mexico Border.

60. The USIBWC Flood Control Conveyance is a discrete concrete-lined conveyance with banked sides. It begins at the U.S./Mexico Border and ends at the point it discharges into the New Tijuana River. As described above, USIBWC captures all flows, including those containing pollutants, from the Mexican Tijuana River into the USIBWC Flood Control Conveyance at the precise moment they cross the international border into the United States. Upon capture, USIBWC conveys the flows 0.9 miles due westward to the discharge point. USIBWC has at all relevant times owned, operated, and maintained the USIBWC Flood Control Conveyance.

[1] The South Bay Plant NPDES permit does not govern any facilities in Mexico.

61. The USIBWC Flood Control Conveyance is generally dry, with a base of sediment that has built up during past flows. That sediment contains deposited pollutants that can be disturbed and resuspended when water flows through the Conveyance, and the concrete channel itself may have absorbed contaminants that can become suspended and discharge during high flow events. The Conveyance also contains a set of dirt roads and elevated lookout points that facilitate U.S. Border Patrol operations.

62. There is no permanent facility within the USIBWC Flood Control Conveyance or downstream thereof to divert USIBWC's polluted discharges for treatment and appropriate discharge. USIBWC recently constructed a temporary earthen berm at the U.S./Mexico Border to reduce the volume of Mexican Tijuana River flows that enter the Conveyance, by redirecting those flows south into the CILA Diversion. However, that berm is not designed to protect against high volume flows and may wash out with even the slightest amount of precipitation.

63. USIBWC owns and Veolia operates and maintains five "canyon collectors": Goat Canyon Diversion Structure, Smugglers Gulch Diversion Structure, Silva Drain Canyon Collector, Canyon del Sol Collector, and Stewarts Drain Canyon Collector (collectively, "canyon collectors").[2]

64. The canyon collectors are among the facilities that operate under and are subject to the South Bay Plant NPDES permit.

65. The canyon collectors are designed to capture and detain polluted wastewater at the moment it crosses the U.S./Mexico Border into the United States. Each facility shares the same basic design: each concrete collector entrance abuts the Border and spans the opening of one of the drainage points. All wastewater that crosses the Border through a wastewater portal is necessarily captured into the canyon collectors' conveyance and detention features. Either directly or via a conveyance channel, these facilities collect and direct wastewater into a shallow detention basin. Wastewater in the detention basin is then directed to a screened drain inlet ("collector inlet")

[2] There is no canyon collector at the Yogurt Canyon drainage point.

regulated by a valve. USIBWC and Veolia control whether the collector inlet is open or closed. When opened, polluted water detained in the detention basin is accepted into a pipe system and conveyed via pump or gravity to the South Bay Plant for treatment, and thereafter for discharge at the South Bay Ocean Outfall in compliance with the South Bay Plant NPDES Permit. When the collector inlets are closed, water in the detention basin cannot drain into the conveyance and treatment system, and instead overflows the detention basin and discharges into the downstream drainages.

66. The downstream waters that receive canyon collector discharges are either "navigable" in the traditional sense of the word or are tributaries to the New Tijuana River or the Historical Tijuana River, and ultimately the Estuary and 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 from USIBWC Facilities.

67. Defendants are aware that the USIBWC Flood Control Conveyance and the canyon collector contents virtually always contain pollutants and wastes. But rather than conveying those polluted flows for treatment, they permit the vast majority of that polluted water to simply escape and discharge into the Tijuana River Valley. As a result, the Tijuana River Valley, and the waters therein, including the downstream drainages west of the USIBWC Flood Control Conveyance, the New Tijuana River, the Historical Tijuana River, the Tijuana River Estuary, the Pacific Ocean, and the Imperial Beach beachfront, are polluted.

68. USIBWC routinely and frequently discharges a substantial portion, if not all, of the pollutants and solid and/or hazardous wastes that it captures from the Mexican Tijuana River and conveys through the USIBWC Flood Control Conveyance.

69. But for USIBWC's construction and operation of the USIBWC Flood Control Conveyance, no pollutants and solid and/or hazardous wastes would be added to the New Tijuana River. Indeed, the USIBWC Flood Control Conveyance collects and concentrates pollutants in runoff that might otherwise not be traceable to an identifiable source of discharge. The USIBWC

Flood Control Conveyance adds those concentrated pollutants to a sole receiving water, when they would have more generally diffused into the environment, likely mitigating their dangerous impact.

70. USIBWC controls, among other activities, the handling, transport, and disposition of pollutants and wastes it captures in the USIBWC Flood Control Conveyance as evidenced by, among other things, USIBWC's election to reroute flows away from the Historical Tijuana River to the New Tijuana River; USIBWC's ability and authority to remove pollutants and solid and/or hazardous wastes captured in sedimentation or that enter the USIBWC Flood Control Conveyance from the United States, which build up in the USIBWC Flood Control Conveyance, only to concentrate and discharge during subsequent flow events; and USIBWC's ability and authority to construct pollution control devices to prevent or mitigate USIBWC Flood Control Conveyance discharges.

71. Since 2015, hundreds of millions of gallons of wastewater have discharged from the USIBWC Flood Control Conveyance to the Tijuana River and ultimately the Pacific Ocean in discrete events, some lasting several days.

72. Exhibit B is a table listing known dry-weather discharge events from the USIBWC 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. Additionally, USIBWC discharges pollutants from the USIBWC Flood Control Conveyance during virtually every wet weather event. USIBWC's pollutant and solid and/or hazardous waste discharges from the USIBWC Flood Control Conveyance are therefore so frequent as to be ongoing and continuous.

73. USIBWC's discharges from the USIBWC Flood Control Conveyance contain 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 pollutants are conveyed via the USIBWC Flood Control Conveyance and discharged to the New Tijuana River, immediately east of the South Bay Plant. These flows do not undergo any water quality treatment

before they are discharged.

74. USIBWC Flood Control Conveyance discharges 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, which also injures Chula Vista.

75. Defendants routinely and frequently discharge a substantial portion of the pollutants and solid and/or hazardous wastes from Mexican waters or runoff that they capture, convey, and detain in the canyon collectors.

76. But for Defendants' election to restrict the volume of pollutants and solid and/or hazardous wastes they accept for treatment via the collector inlets no canyon collector overflows would occur.

77. Defendants each control operation of the collector inlets, thereby controlling the disposition of pollutants and/or hazardous wastes that they capture and detain in the canyon collectors.

78. As owner of the canyon collectors, USIBWC controls all aspects of their operation. USIBWC controls the design capacity of the canyon collectors, including the detention capacity of the collector basins, and the volume of flow accepted into the collector inlets.

79. Veolia controls the operation of the collector inlets on day-to-day basis, including when flows are present in the collectors. Further, Veolia is bound to implement a "Spill and Transboundary Wastewater Flow Event Prevention and Response Plan" which it prepared for the on behalf of USIBWC in 2014. Pursuant thereto, Veolia has the capacity and, upon request of USIBWC, responsibility under the South Bay Plant's NPDES permit to take actions to prevent or mitigate impacts of canyon collector overflows. For instance, Veolia controls whether additional measures are implemented to contain high-volume flows in the canyon collectors, such as by placing sandbags to increase their detention capacity; whether overflow is halted, such as by cleaning debris from a collector inlet or turning off a pump or closing a valve; and whether canyon collector discharges are contained in a localized area and cleaned up. Veolia has failed to contain

and clean up such discharges as required by the NPDES permit, thereby causing the presence of pollutants and/or solid and hazardous wastes in the Tijuana River Valley, including, but not limited to, in the New Tijuana River, the Historical Tijuana River, and the Estuary.

80. Since 2015, Defendants have documented that several millions of gallons of wastewater have discharged from the canyon collectors to downstream drainages that are tributary to the New Tijuana River, the Historical Tijuana River, and/or and Estuary, in hundreds of discrete events.

81. 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 permit. These spill reports describe the estimated volume of the specific discharge event, the receiving water, and results of any water quality sampling identifying constituent pollutants and solid and/or hazardous wastes.

82. Exhibit D is a table listing other discharge events at each of the canyon collectors since August 30, 2015 that Defendants documented in daily canyon collector inspection reports as required under the South Bay Plant NPDES permit. These discharges are reported as "signs of sewage overflows in [the] past 24 hours," or as flows that were observed to have broken containment from a canyon collector. Beyond these daily reports, Defendants do not investigate the cause of these discharges, do not estimate total volume of these discharges, and do not undertake water quality sampling of the discharged wastewater to identify constituent pollutants and solid and/or hazardous wastes. The receiving water for each discharge listed in Exhibit D is the downstream drainage for which the pertinent canyon collector is named.

83. Defendants' hundreds of pollutants and solid and/or hazardous waste discharges from the canyon collectors are so frequent as to be ongoing and continuous.

84. Each and every one of Defendants' discharges of pollutants from the USIBWC Flood Control Conveyance and the canyon collectors, contains pollutants and solid and/or hazardous wastes. These discharges ultimately flow downstream and into the Pacific Ocean, where

currents, tides, winds, storms, and/or other influences cause it to drift along, and deposit onto, the Imperial Beach beachfront and adjacent marine and tidal lands and waters.

D. Pollutants and Wastes Discharging from USIBWC Facilities and their Impacts.

85. Known discharges from the USIBWC Flood Control Conveyance are not regularly sampled for the complete range of water quality parameters necessary to understand the full impact of these pollution events. However, routine bacteriological sampling at Dairy Mart Bridge, which spans the New Tijuana River, indicates that, at a minimum, pollutants including *e. coli*, total coliforms, and enterococcus are present in virtually every flow event that discharges from the USIBWC Flood Control Conveyance into surface water in the riverbed.

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

87. USIBWC Flood Control Conveyance discharges also contain substantial quantities of solid waste, including, but not limited to, sediment, trash, garbage, and other refuse. Used automobile tires are particularly common component of the refuse carried by USIBWC Flood Control Conveyance discharges into the Tijuana River Valley, where they are deposited on the banks of the estuary.

88. Water quality sampling of USIBWC Flood Control Conveyance discharges during discovery will reveal that myriad other pollutants and solid and/or hazardous wastes are present in all USIBWC Flood Control Conveyance discharges, including, but not limited to, industrial wastes, pesticides, and heavy metals.

89. 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.

90. 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.

91. 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.

92. 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.

93. The vectors for exposure to these and other hazardous wastes and pollutants that Defendants discharge from their facilities render the potential for human exposure to them an imminent and substantial endangerment to human health. Pathways to human exposure to these materials include, but are not limited to, dermal absorption, inhalation of dust with adsorbed pollutants, inhalation of volatilized pollutants, and unintended ingestion. U.S. Border Patrol agents working in the Tijuana River Valley are frequently exposed to these materials by walking through or wading in waters in the drainages, and have reported chemical burns, respiratory irritation, and other maladies. Once these pollutants and solid and/or hazardous wastes reach the New Tijuana River, and Historical Tijuana River, and the Estuary, they present an exposure risk to recreational users, such as equestrians and hikers, via inhalation and other direct exposure. Upon reaching the Pacific Ocean and subsequently the Imperial Beach beachfront, surfers, beachgoers, fishermen and women, and other beach and ocean users, are subjected to direct exposure via dermal contact, ingestion, inhalation, or otherwise; and indirect contact, such as by consuming fish that have been exposed to these materials.

94. Additionally, disposal of those wastes to land and water in the Valley exposes land,

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

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

33 U.S.C. §§ 1311(a) & 1342

Discharges of Pollutants Without a NPDES Permit in Violation of the CWA

Against the International Boundary and Water Commission – United States Section.

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

96. Plaintiffs are "persons" within the meaning of the Clean Water Act authorized to pursue a citizen enforcement action on their own behalf.

97. Defendant USIBWC is a "person" within the meaning of the Clean Water Act.

98. Defendant USIBWC owns, operates, maintains, and therefore exerts control over the USIBWC Flood Control Conveyance.

99. The USIBWC Flood Control Conveyance is a "point source" within the meaning of the Clean Water Act.

100. Defendant USIBWC, by its acts and omissions, has been and will continue to add pollutants, including, but not limited to, trash, sediment, and sewage containing *e. coli*, total coliform, and enterococcus from the USIBWC Flood Control Conveyance to navigable waters, including, but not limited to, the New Tijuana River, the Historical Tijuana River, the Tijuana River Estuary, and the Pacific Ocean.

101. Defendant USIBWC has not obtained a NPDES permit for discharges from the USIBWC Flood Control Conveyance into navigable waters of the United States.

102. Defendant USIBWC has violated and is violating the Clean Water Act, 33 U.S.C. sections 1311(a) and 1342, which prohibit the discharge of pollutants without a NPDES permit, by allowing continuous discharges of wastewater and other pollutants from the USIBWC Flood Control Conveyance to waters of the United States.

103. Defendant USIBWC's violations of the Clean Water Act have been ongoing and continuous since the USIBWC Flood Control Conveyance was constructed in 1978. These violations will continue until Defendant USIBWC obtains and complies with a NPDES permit for these discharges. 33 U.S.C. §§ 1311(a) & 1342.

104. Each day that Defendant USIBWC has discharged pollutants from the USIBWC Flood Control Conveyance without a NPDES permit is a separate and distinct violation of the CWA. 33 U.S.C. § 1311(a).

105. This action for injunctive relief is authorized by 33 U.S.C. section 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.

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

SECOND CAUSE OF ACTION

33 U.S.C. §§ 1311(a) & 1342

Discharges of Pollutants in Violation of the CWA and NPDES Permit CA0108928

Against All Defendants.

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

108. Defendants own, and/or operate and maintain, and therefore exert control over the canyon collectors.

109. The canyon collectors are "point sources" within the meaning of the Clean Water Act.

110. Defendants, by their acts and omissions, have been and will continue to add pollutants, including, but not limited to, trash, sediment, sewage, enterococcus, fecal coliforms,

methylene blue active substances, chromium, copper, zinc, arsenic, cadmium, lead, aldrin, DDT, heptachlor, toluene, and phenol, from the canyon collectors to navigable waters, including, but not limited to, the New Tijuana River, the Historical Tijuana River, the Tijuana River Estuary, and the Pacific Ocean.

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

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

113. 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).

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

115. 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.

116. 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.

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

118. Plaintiffs are "persons" within the meaning of RCRA authorized to pursue citizen enforcement actions on their own behalf.

119. 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 the USIBWC facilities in the Tijuana River Valley.

120. 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.

121. Additionally, Defendant USIBWC has contributed and continues to contribute to the design, construction, operation, maintenance, and monitoring of the transnational wastewater collection and treatment system that originates in Mexico, and therefore to the handling, storage, treatment, transport and/or disposal of solid and/or hazardous wastes moving through that system. USIBWC provides to its counterpart in Mexico financing, technical assistance, operating protocols, and coordination in the operation of that system, and specifically the CILA diversion on the Mexican side of the Tijuana River that frequently malfunctions, causing sewage and other solid and/or hazardous wastes to enter the United States and discharge from the USIBWC Flood Control Conveyance.

122. The solid and/or hazardous wastes to which Defendants have contributed to the past

and/or present handling, storage, treatment, transport, and/or disposal of in the Tijuana Valley include, but are not limited to, garbage and other refuse, sediment, aldrin, nitrogen, lindane, chloroform, DDT, dieldrin, heptachlor, benzene, chlorobenzene, toluene, 2,4-dinotrotoluene, nitrophenol, phenol, and other materials that are inherently waste-like and that were abandoned as a byproduct of industrial, commercial, agricultural, and community activities, among others.

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

124. Defendants routinely dispose of the aforementioned solid and/or hazardous wastes to topsoil or water in the Tijuana River Valley, where they are dispersed to the environment. Human beings are frequently exposed to these wastes via those vectors while working in, recreating in, and visiting the Tijuana River Valley and its environs. Additionally, disposal of those wastes to land and water in the Valley exposes land, marine, and estuarine flora and fauna to the dangers inherent in those wastes. Wastes suspended in wastewater that discharges from the Estuary into the Pacific Ocean ultimately expose surfers, beachgoers, and other beach and ocean users, as well as terrestrial and marine flora and fauna along the Imperial Beach beachfront, to these dangers.

125. 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.

126. 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, but not limited to, an order enjoining Defendants' illegal discharges of pollutants and solid and/or hazardous wastes;

2. Civil penalties against Defendant Veolia;

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: May 29, 2018

SHER EDLING LLP

By: /s/ *Matthew K. Edling*
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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2018, the foregoing document(s) was filed with the Clerk of the Court via CM/ECF. Notice of this filing will be sent by email to all registered parties by the Court's electronic filing system.

By: */s/ Matthew K. Edling*
Matthew K. Edling

EXHIBIT A

September 27, 2017

Via Certified Mail and Registered Mail, Return Receipt Requested

Edward Drusina, Commissioner
International Boundary and Water Commission – U.S. Section
4171 North Mesa, Suite C-100
El Paso, TX 79902-1441

Steve Smullen, Area Manager
Veolia Water North America – West, LLC
PO Box 430239
San Diego, CA 92143

Re: Notice of Intent to Sue for Violations of Clean Water Act & Notice of Imminent and Substantial Endangerment and Intent to Sue for Violations of the Resource Conservation and Recovery Act by International Boundary and Water Commission and Veolia Water North America – West LLC.

Dear Commissioner Drusina and Mr. Smullen:

The City of Imperial Beach, the San Diego Unified Port District ("District"), and the City of Chula Vista, by and through their counsel listed below, (collectively, "Claimants") hereby give notice to the United States Section of the International Boundary Water Commission ("IBWC") and Veolia Water North America – West, LLC ("Veolia") (collectively, "Dischargers") of imminent and ongoing violations of the federal Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, and of Claimants' intent to sue resulting from unpermitted discharges and discharges from wastewater collection facilities in violation of the National Pollution Discharge Elimination System ("NPDES") permit CA0108928 and California Waste Discharge Requirement Order R9-2014-0009 as amended by Order R9-2014-0094 (collectively, "Discharge Permit"). Additionally, Claimants hereby give notice that the IBWC's and Veolia's contribution to the handling, transport, and disposal of solid and hazardous wastes in the Tijuana River Valley constitutes an imminent and substantial endangerment to human health and the environment under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq*. This notice is without prejudice to any additional rights the Claimants may have and/or claims Claimants may assert against the IBWC, Veolia, or any other parties.

As part of an international effort to control transboundary water pollution emanating from Mexico and crossing into the United States in and around the Tijuana River Valley, the IBWC is responsible for the operation of the South Bay International Wastewater Treatment Plant ("SBIWTP" or "Plant"). IBWC contracts with Veolia for the day to day operation of SBIWTP and

the U.S-side collection facilities that divert wastewater into the Plant. As a matter of course, pollutants are frequently discharged from wastewater collection facilities called "canyon collectors" that operate under the SBIWTP Discharge Permit. Additionally, IBWC flood control infrastructure regularly discharges wastewater and pollutants into the altered course of what is now the mainstem Tijuana River. Both types of flow events cause water containing dangerous pollutants and wastes, including, but not limited to, raw sewage, metals, and chemicals (hereinafter, "wastewater") to deposit to land adjacent to the treatment works, and to discharge to the Tijuana River and Estuary, and ultimately to the Pacific Ocean. These discharges occur in violation of the Plant's Discharge Permit and in the absence of a discharge permit in violation of the CWA, and pose an imminent and substantial endangerment to human health and the environment in violation of RCRA.

The City of Imperial Beach is a California General Law City and municipal corporation, duly organized and existing by virtue of the laws of the State of California.[1] The City has the power to sue and be sued.[2] The City is located in San Diego County, and is bordered by the Tijuana River Valley to the South, the City of San Diego to the West, San Diego Bay to the North, and the Pacific Ocean to the West. Imperial Beach depends on beach and ocean access for its tourist economy, and its constituents rely on those facilities for recreation. Among other injuries, Imperial Beach is deprived of tax revenue, and its residents are deprived of the use and enjoyment of those facilities when the pollution that is the subject of this Notice causes beach closures and restrictions.

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[3] and the Charter of the City of Chula Vista. The City has the power to sue and be sued.[4] 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 Imperial Beach. Chula Vista constituents regularly use and enjoy the beach and ocean in and around Imperial Beach. Among other injuries, Chula Vista's citizens are deprived of that use and enjoyment when the pollution that is the subject of this Notice causes beach closures and restrictions.

The San Diego Unified Port District is a public entity created by the San Diego Unified Port District Act.[5] 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.[6] The 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."[7] The Port District is authorized to use its powers and authority to protect and enhance physical access, natural

[1] *See* Cal. Gov. Code § 34450, *et seq*.
[2] *Id*. at § 34501.
[3] *See id*. at § 34450, *et seq*.
[4] *Id*. at § 34501.
[5] Cal. Harb. & Nav. Code, Appendix 1, § 1 et seq.)
[6] *Id*. at § 70.
[7] *Id.* at App. 1, §§2, 4, 5, 5.5, 87.

resources, and water quality.[8] 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 Notice contaminates those resources. Among other injuries, the natural resources held in trust by the District suffer damages when such pollution is present, and the District suffers lost revenue due to beach closures and restrictions.

Each of the Claimants is located in, adjacent to, and/or near the Tijuana River and Estuary, and the Pacific Ocean, in southwestern San Diego County, California. The influx of pollutants to the Tijuana River Valley has caused ongoing, severe pollution problems that have injured property within and near the Claimants' jurisdictions. Moreover, these problems have negatively impacted the Claimants and their constituents, in part due to beach and ocean closures that threaten the public health and welfare, thereby diminishing local economic activity and tax revenue, stigmatizing and devaluing real estate in the region, causing lost business and recreational opportunities, and other impacts. The Claimants will continue to be harmed by these ongoing violations of the CWA and RCRA.

Pursuant to 33 U.S.C. § 1365(b) and 42 U.S.C. § 6972(b)(2)(A), Claimants hereby give notice of their intent to sue the IBWC and Veolia for violations of the CWA and RCRA after 60 days and 90 days of this letter, respectively, unless IBWC and Veolia enter into a binding agreement to cease all illegal discharges of pollutants and disposal of solid and hazardous wastes, and to fully and promptly remediate all current and imminent violations.

I. FACTUAL BACKGROUND

The Tijuana River watershed drains into the Tijuana River, which flows North and crosses the international border near San Ysidro, San Diego, California, eventually emptying into the Pacific Ocean at Imperial Beach, California. Water moving through the watershed crosses the international border via the Tijuana River channel into IBWC's concrete flood control conveyance that diverts the River westerly, away from its historical northerly course. Surface water also moves across the border at several canyons and ravines located to the West of the River. Fugitive wastewater from the City of Tijuana, Baja California, Mexico, is among the waters that move through the drainage. This wastewater contains multiple pollutants and wastes. This problem is exacerbated by inadequate wastewater collection facilities in Tijuana.

IBWC is the federal agency charged with addressing transboundary issues arising out of agreements between the United States and Mexico, including the Treaty of February 3, 1944, for the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande. In recognition of the sanitation problems arising out of Mexico's insufficient wastewater collection and treatment infrastructure, IBWC assumed responsibility for treating wastewater generated in Mexico. To that end, IBWC's SBIWTP treats approximately 25 million gallons per day ("Mgpd") of wastewater originating in Mexico, and is permitted to discharge that treated wastewater via the South Bay Ocean Outfall ("SBOO") – and only the SBOO[9] – which is located several miles offshore of San

[8] *Id*.

[9] California Regional Water Quality Control Board San Diego Region, Order No. R9-2014-0009 as Amended by Order No. R9-2014-0094; NPDES No. CA0108928: Waste Discharge Requirements for the United States Section of the International Boundary & Water Commission, South Bay International

Diego, California. SBIWTP has the capacity to treat twice that volume to secondary treatment standards, and a peak primary treatment capacity of up to 100 Mgpd.[10]

To address fugitive wastewater that escapes Tijuana's wastewater collection system and flows into the United States, IBWC constructed five "canyon collectors" at locations West of where the Tijuana River crosses the border. The canyon collectors are situated in natural drainage channels that are tributaries to surface waters, specifically the current course of the Tijuana River and its Estuary. As described in the Discharge Permit,

> [c]anyon collectors are concrete channels and basins designed to capture transboundary dry weather flows from Mexico in canyons and ravines draining north across the international border into the United States. There are five canyon collector systems: Goat Canyon Diversion Structure, Smugglers Gulch Diversion Structure, Silva Drain Canyon Collector, Canyon del Sol Collector, and Stewarts Drain Canyon Collector. Captured dry weather flows from these collectors are diverted to the [SBIWTP] for treatment and disposal through the SBOO. Any quantity of flows in the canyons exceeding the maximum design capacity of the canyon collectors overflows the structure and continues flowing north, potentially polluting the Tijuana River, the Tijuana River Valley and Estuary, and Pacific Ocean waters at south San Diego beaches.[11]

The canyon collectors are part and parcel to the treatment works of the SBIWTP, and are explicitly regulated by the Discharge Permit.[12] They are designed such that fugitive flows collect in a concrete channel, which directs them to a drain regulated by a valve. When flow in the channel exceeds capacity, or when the valve is closed as during rain events,[13] wastewater containing pollutants escapes from the collector and either deposits those materials adjacent to the collector facilities, or discharges them to the natural drainages, and subsequently the Tijuana River and Estuary, in violation of the Discharge Permit, the CWA, and RCRA.

Within the main river channel and in Yogurt Canyon (the westernmost transboundary drainage; IBWC has not constructed a canyon collector at this drainage), regular wastewater flow events cause severe and extensive pollution. Such events typically occur due to failures of the wastewater diversion infrastructure in Mexico, which IBWC co-manages with its Mexican counterpart, the Comision Internacional de Limites y Agua (CILA). Upon such failures, sewage, industrial waste, and other materials that should have been conveyed to the SBIWTP instead continue through the river channel, which flows into the United States and through IBWC's concrete-lined channel (hereinafter referred to as "flood control conveyance" or "conveyance").

Wastewater Treatment Plant, Discharge to the Pacific Ocean via the South Bay Ocean Outfall, 4 (2014) ("Discharge Permit").

[10] *Id.*, at F-7.

[11] *Id.*, at F-5.

[12] *Id.*, at F-38; see also 33 U.S.C. § 1292(2)(A) (the term "treatment works" means any devices and systems used in the storage, treatment, recycling, and *reclamation* of municipal sewage or industrial wastes of a liquid nature (emphasis added)).

[13] Veolia, Spill and Transboundary Flow Event Prevention and Response Plan, 7, attachment E(i) at 2 (2014).

The conveyance terminates 0.9 miles downstream of the border, at which point wastewater discharges, without undergoing any water quality treatment, into what has become the altered course of the Tijuana River (since construction of the flood control infrastructure) immediately East of the SBIWTP.[14]

These transboundary pollution discharges are often highly destructive, given their volume and given that they typically flow through the unlined main river channel directly into the Tijuana Estuary at Yogurt Canyon. Although the point at which the flood control conveyance discharges occur is located within a stone's throw of the SBIWTP, the SBIWTP does not detain that pollution or divert it into the SBIWTP for treatment – despite the frequency of transboundary pollution events that warrant such infrastructure. Accordingly, that untreated wastewater and its constituent wastes and pollutants simply deposit into the River Valley, or flow through the River, where they pool on riverbanks, invade private property, and flow eventually to the Pacific.

II. CLEAN WATER ACT VIOLATIONS

a. The CWA and Applicable Discharge Prohibitions.

A primary purpose of the Clean Water Act is to eliminate all discharges of pollutants to navigable waters.[15] The National Pollution Discharge Elimination System (NPDES) is a permitting program under the Clean Water Act that allows discharges of pollutants under certain conditions.[16] The Clean Water Act defines a "discharge of a pollutant" as the addition of any pollutant to navigable waters from a point source.[17] Discharge of a pollutant without or in violation of a NPDES permit is a violation of the Clean Water Act.[18] Federal entities, including IBWC, are subject to the Clean Water Act and state implementation thereof.[19]

The Clean Water Act defines a point source as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container…"[20] The canyon collectors include concrete channels and conveyances that collect and transport wastewater from one point to another, and therefore are point sources within the meaning of the Clean Water Act. The flood control conveyance is also a point source. It is a discrete concrete channel with banked sides, which extends from the U.S./Mexico border to approximately 0.9 miles downstream of the border. It was constructed to redirect river flows away from the natural river course, where high flows would injure residential areas, to mostly uninhabited lowlands outside of the natural river course.

"Navigable waters" are defined as the "waters of the United States, including the territorial seas." Discharges from the concrete flood control conveyance enter the Tijuana Riverbed in its

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[14] IBWC, Tijuana River Flood Control Project (TRFCP), *available at* https://www.ibwc.gov/Mission_Operations/TJ_River_FCP.html.
[15] 33 U.S.C. § 1251(a)(1).
[16] *See, e.g.,* 33 U.S.C. § 1342.
[17] 33 U.S.C. § 1362(12).
[18] 33 U.S.C. § 1311(a).
[19] 33 U.S.C. § 1323.
[20] 33 U.S.C. § 1362(14).

altered course, and flow through to main River channel and Estuary, and ultimately the Pacific Ocean. Discharges from the canyon collectors enter the Tijuana River and/or Estuary directly, or enter ravines and natural drainages that are tributaries of those receiving waters. Each of these waterways is a navigable water within the meaning of the Clean Water Act because it is "navigable" in the traditional sense of the word, or because it is a tributary to a navigable water that significantly affects the physical, biological and chemical integrity that navigable water.[21]

The Discharge Permit prohibits the discharge of pollutants from the SBIWTP facility at any point source other than the SBOO.[22] Any discharge of pollutants from the canyon collectors is a discharge other than from the SBOO, and is therefore a violation of the Discharge Permit.

b. Description of Continuing and Imminent CWA Violations.

i. Unpermitted Discharges from the Concrete Flood Control Conveyance

IBWC spill reports to the San Diego Regional Water Quality Control Board (the "Board") demonstrate routine and substantial discharges from IBWC's flood control conveyance into the unimproved Tijuana River Valley, including to areas that, prior to construction of the flood control conveyance, were not part of the natural river course.[23] Because IBWC does not hold a NPDES permit for discharges of pollutants from its flood control infrastructure, all discharges from the flood control conveyance, including those listed in Table 1, constitute unpermitted discharges of pollutants in violation of 33 U.S.C. § 1311(a). IBWC, which maintains jurisdiction over its flood control conveyance, is the discharger responsible for such violations.

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

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[21] *See, e.g., N. Cal. River Watch v. City of Healdsburg,* 496 F.3d 993, 996 (9th Cir.2007) (interpreting *Rapanos v. United States*, 547 U.S. 715 (2006)) (ponds that seeped into a river significantly affected the physical, biological, and chemical integrity of the river and were therefore navigable waters within meaning of CWA); *Cal. Sportfishing Protection Alliance v. Chico Scrap Metal, Inc.*, 124 F.Supp.3d 1007, 1017-18 (E.D. Cal. 2015) (ravine flowing into creek flowing into river was a navigable water); *Eoff v. E.P.A.*, 2015 WL 2405658 (E.D. Ark. 2015) (seasonal creek with 20 flow events per year is a water of the United States); *U.S. v. HVI Cat Canyon, Inc.*, 213 F.Supp.3d 1249, 1266-71 (discussing the liberal interpretation of "waters of the United States" standard).

[22] *See* Discharge Permit at 1, Table 2 (naming only one discharge location under the permit, i.e. the SBOO).

[23] San Diego Regional Water Quality Control Board, International Boundary and Water Commission Spill Reports *available at* http://www.swrcb.ca.gov/sandiego/water_issues/tijuana_river_valley_strategy/spill_report.shtml.

Table 1 describes known dry-weather discharges from the flood control conveyance based on IBWC reporting to the San Diego Regional Water Quality Control Board.[24] Additional discharges occur during virtually every wet weather event, but IBWC does not report wet weather discharges to the Board. Despite that lack of reporting, the available data demonstrates routine sewage-laden flows that, coupled with their substantial volume, demonstrate an extremely grave lack of pollution-control infrastructure.

Table 1 – Wastewater Flow Events via Flood Control Conveyance and Yogurt Canyon

Date	Volume (Gal.)	Vector	Description
9/12/2017	192,000	Flood Control Conveyance	Malfunction of level sensors at Pump Station CILA
9/9/2017	3.9 million	Flood Control Conveyance	Water system overflow exceed capacity of Pump Station CILA
8/17/2017	121,000	Flood Control Conveyance	Clogged intake screens at CILA diversion
8/7/2017	76,000	Flood Control Conveyance	Clogged intake screens at CILA diversion
7/31/2017	1.72 million	Flood Control Conveyance	Power fluctuations at Pump Station CILA forced shutdown of that facility
6/12/2017	66,000	Flood Control Conveyance	Capacity of Pump Station CILA exceeded
6/10/2017	161,670	Flood Control Conveyance	Capacity of Pump Station CILA exceeded
6/9/2017	42,800	Flood Control Conveyance	Capacity of Pump Station CILA exceeded
5/25/2017	335,000	Flood Control Conveyance	Shutdowns at Pump Station CILA
5/21/2017	400,000	Flood Control Conveyance	Traffic accident resulting in shutdown at pump station CILA
2/24/2017	256 million	Flood Control Conveyance	Failure at Diversion/pump station CILA
7/4/2016	33,000	Flood Control Conveyance	Unknown
7/2/2016	1.32 million	Flood Control Conveyance	Unknown
4/5/2016	4.86 million	Flood Control Conveyance	Unknown
2/12/2016	370,000	Flood Control Conveyance	River flow exceeded capacity of pump station CILA
1/2016	27.28 million	Flood Control Conveyance	Eleven distinct spills attributable to potable water line break and pump station capacity exceedance

[24] San Diego Regional Water Quality Control Board, International Boundary and Water Commission Spill Reports *available at* http://www.swrcb.ca.gov/sandiego/water_issues/tijuana_river_valley_strategy/spill_report.shtml.

Table 1 – Wastewater Flow Events via Flood Control Conveyance and Yogurt Canyon			
Date	**Volume (Gal.)**	**Vector**	**Description**
12/11/2015	2.06 million	Flood Control Conveyance	Clogged intake screen at CILA diversion
11/19/2015	1.31 million	Flood Control Conveyance	Clogged intake screen at CILA diversion
10/17-18/2015	1.3 million	Flood Control Conveyance	Motor pump failure at pump station CILA
10/14/2015	1.124 million	Flood Control Conveyance	Motor control failure at pump station CILA
10/13/2015	1.35 million	Flood Control Conveyance	Pump failures
9/19-22/2015	7.74 million	Flood Control Conveyance	Pump station CILA breakdowns
8/1-8/2015	Unknown	Flood Control Conveyance	Five distinct spills due to clogged intake screens at diversion
2/3-16/2015	Unknown	Flood Control Conveyance	Five distinct spills due to trash clog at diversion intake screen.
1/2015	Unknown	Flood Control Conveyance	Ten distinct spills due to trash clog at diversion intake screen.

ii. Canyon Collector Discharges in Violation of Discharge Permit

IBWC's monthly reports to the San Diego Regional Water Quality Control Board and documentation of daily inspections of the canyon collectors describe nearly continuous unpermitted discharges from the canyon collectors. Each of the discharges listed in Table 2 constitutes an illegal discharge in violation of the Discharge Permit and the Clean Water Act. Thus, the standard violated for each of the wastewater discharge events listed in Table 2 is California Waste Discharge Requirement R9-2014-00094 as amended by R9-2014-0094, NPDES Permit No. CA0108928, at section III. A., and 33 U.S.C. § 1311(a). IBWC as owner of the SBIWTP treatment works and Veolia as operator of the SBIWTP treatment works are the dischargers responsible for the discharges listed.

Water quality samples of these discharges are collected infrequently. There are more than three hundred documented discharges since August 2015. While sampling data is available for only eight discharges, the pollutants present in each of the sampled discharges are largely uniform. This demonstrates a likelihood that these pollutants are present in virtually all the unsampled discharges. Indeed, the Discharge Permit contemplates that wastewater flows entering the canyon collectors and discharged therefrom are attributable to many sources, including wastewater effluent treated in Mexico (and not necessarily to the standards required by the Clean Water Act), potable water leaks, sewer line leaks and spills, discharges from unsewered areas, and other failures and breakdowns of the wastewater collection infrastructure in Mexico, and therefore requires sampling for specific pollutant parameters likely to be present in those discharges when

sampling takes place.[25] The wastewater discharges described in Table 2 contain several pollutants, including, at a minimum, biological oxygen demand; total suspended solids; total dissolved solids; turbidity; Ph; total Nitrogen; total Phosphorous; enterococcus; fecal coliforms and other coliforms; dissolved oxygen; pesticides; surfactants; priority pollutants as specified in 40 C.F.R. § 131.38; toxics; and likely many others.

Despite data gaps, the very fact of these discharges is evidence of a disturbing pattern of untreated wastewater emptying to the natural drainages that are tributaries to the Tijuana River, Estuary, and Pacific Ocean. Despite the regularity with which the discharges occur and are documented, nothing has been done to remedy the underlying cause: insufficient capacity at the canyon collectors to handle typical and expected wastewater flows through the natural drainages – despite the fact that the SBIWTP is operating below capacity and could have treated this wastewater had it been captured.[26] Until the canyon collectors have been retrofitted to handle normal wastewater flows, in wet or dry weather, pollutants will continue to discharge from SBIWTP facilities and ultimately to the Pacific Ocean.

Claimants note that the data presented below is incomplete: records of canyon inspections date back only to 2015, when daily canyon collector inspections became obligatory under the Discharge Permit as renewed on August 1, 2014. The canyon collectors are known to have regularly discharged wastewater prior to 2015.

Table 2 represents Type A and Facilities Spills that were reported in IBWC's monthly report.[27] The pollutants present in each of these discharges are listed, where sampling data is available from CIWQS. The receiving water is indicated.

Table 2 – Canyon Collectors Overflows with Spill Reports

Date	Location	Gallons (est.)	Pollutants Present[28]	Receiving Water
6/27/2017	Canyon del Sol	<5,500,000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; Methylene Blue Active Substances; pH; P; TDS; total N; TSS; turbidity; Cr; Cu; bromodichloromethane; bromoform; chloroform; dibromochloromethane; 2,4,6-trichlorophenol; bis(2-ethylhexyl)phthalate; butyl benzyl	Tijuana River

[25] Discharge Permit at E-33.
[26] *See id.* at F-7.
[27] Data from monthly spill report letters unless otherwise noted. Available at http://ciwqs.waterboards.ca.gov/ciwqs/readOnly/PublicReportEsmrAtGlanceServlet?inCommand=reset (search for facility name "South Bay International Wastewater Treatment Plant").
[28] From sampling data attached to IBWC Monthly available on CIWQS, unless otherwise noted.

Table 2 – Canyon Collectors Overflows with Spill Reports				
Date	**Location**	**Gallons (est.)**	**Pollutants Present[28]**	**Receiving Water**
			phthalate; Di-n-butyl phthalate; asbestos structures; 2,3,7,8-TCDD	
	Canyon del Sol	<5,500,000	Sampling report not posted to CIWQS as of 9/19/17	Tijuana River
5/24/2017	Stewart's Drain	3,800	No samples recovered[29]	Tijuana River
5/21/2017	Stewart's Drain	1,560	No samples recovered[30]	Tijuana River
4/30/2017	Goat Canyon	645,000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; pH; P; TDS; total N; TSS; turbidity; Cu; Ni; Pb; chloroform; 1,4-dochlorobenzene; tetrachloroethene; toluene; Hg; Sb; Ar; Be; Cd; Cr; Pb; Se; Ag; Tl; Zn; Aldrin; HCH-gamma (Lindane); 4,4-DDT; Dieldrin; Heptachlor; benzene; chlorobenzene; 1,1-dichloroethene; toluene; trichloroethene	Goat Canyon Drainage
4/24/17	Stewart's Drain	12,850	Enterococcus; Fecal Coliforms; Total Coliforms; BOD; DO; Methylene blue; pH; P; TDS; total N; TSS; turbidity; Cu; Ni; Zn; chloroform; 1,4-Dichlorobenzene; tetrachloroethene; toluene;	Tijuana River
3/1/2017	Goat Canyon	145,000	Ammonia as N; BOD; Carbonaceous BOD; Chlorine; floatables; Methylene blue; pH; P; TSS; TDS; turbidity; VSS; Al; Cu; Fe; Mg; Ni; Zn; trash	Goat Canyon Drainage
9/5/2016	Canyon Del Sol	390	Enterococcus; fecal coliforms; total coliforms; BOD; DO; pH; P; TDS; total N; TSS; turbidity; Ni; Sb; Zn; TCE; Hg; Ar; Be; Cd; Cr; Cu; Pb; Se; Ag; Tl; Zn; benzene; chlorobenzene; 1,1-dichloroethene; toluene; trichloroethene; acenaphthene; 2-chlorophenol; 4-chloro-3-methylphenol; 1,2-dichlorobenzene; 2,4-	Canyon del Sol drainage

[29] IBWC, Monthly Spill Report for May 2017 (June 30, 2017).
[30] *Id.*

Table 2 – Canyon Collectors Overflows with Spill Reports				
Date	**Location**	**Gallons (est.)**	**Pollutants Present[28]**	**Receiving Water**
			dinitrotoluene; 4-nitrophenol; N-nitrosodi-n-propylamine; pentrahchlorophenol; phenol; pyrene; 1,2,4-trichlorobenzene	
1/28/2016	Stewart's Drain	2,200	Enterococcus; fecal coliforms; total coliforms; BOD; DO; methylene blue active substances; pH; P; TDS; total N; TSS; turbidity; Cu; Hg; Ni; Zn; bromodichloromethane; chloroform; dibromochloroethane; 1,4-dichlorobenzene; tetrachloroethene; toluene	Stewart's Drain Drainage
4/19/2015	Canyon Del Sol	2,000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; methylene blue active substances; pH; P; TDS; total N; TSS; turbidity; Cu; Ni; Zn; Sb; Ar; Be; Cd; Cr; Pb; Se; Ag; Tl; Hg; Aldrin; HCH-gamma (Lindane); 4,4-DDT; Dieldrin; Heptachlor; benzene; chlorobenzene; 1,1-Dichloroethene; toluene; trichloroethene; Acenaphthene; 2-chlorophenol; 4-chlor-3-methylphenol; 1,4-dichlorobenzene; 2,4-dinitrotoluene; 4-nitrophenol; N-nitrosodi-n-propylamine; pentrahchlorophenol; phenol; pyrene; 1,2,4-trichlorobenzene	Tijuana River

Table 3 describes discharges from the canyon collectors that were documented in daily inspection reports, but not in IBWC's monthly Monitoring Results reports. These discharges are reported by inspectors as either "signs of sewage overflows in [the] past 24 hours," or as flows that were observed to have broken containment from the canyon collector. Beyond the daily canyon collector inspection reports, there is no investigation by the dischargers as to the cause of these discharges, no estimate of the total volume of the discharge, no estimate of the volume of the discharge that flowed to the Tijuana River and beyond, and no water quality sampling of the discharged wastewater to identify constituent pollutants. The receiving water for each discharge in Table 3 is the natural drainage channel for which the pertinent canyon collector is named, which are tributaries to the Tijuana River or Estuary, and ultimately the Pacific Ocean. The Dischargers are invited to refer to their Daily Canyon Collector Inspection Reports to pinpoint each of the discharges listed below.

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
1	5/19/2017	Smuggler's Gulch
2	5/7/2017	Goat Canyon
3	5/7/2017	Smuggler's Gulch
4	5/7/2017	Canyon del Sol
5	5/7/2017	Silva Drain
6	5/7/2017	Stewart's Drain
7	4/29/2017	Canyon del Sol
8	3/1/2017	Smuggler's Gulch
9	2/28/2017	Goat Canyon
10	2/28/2017	Smuggler's Gulch
11	2/27/2017	Goat Canyon
12	2/27/2017	Canyon del Sol
13	2/27/2017	Stewart's Drain
14	2/27/2017	Smuggler's Gulch
15	2/27/2017	Silva Drain
16	2/26/2017	Smuggler's Gulch
17	2/20/2017	Goat Canyon
18	2/20/2017	Smuggler's Gulch
19	2/19/2017	Goat Canyon
20	2/19/2017	Canyon del Sol
21	2/19/2017	Stewart's Drain
22	2/19/2017	Smuggler's Gulch
23	2/19/2017	Silva Drain
24	2/18/2017	Goat Canyon
25	2/18/2017	Canyon del Sol
26	2/18/2017	Stewart's Drain
27	2/18/2017	Smuggler's Gulch
28	2/18/2017	Silva Drain
29	2/12/2017	Goat Canyon
30	2/7/2017	Goat Canyon
31	2/7/2017	Canyon del Sol
32	2/7/2017	Stewart's Drain
33	2/7/2017	Smuggler's Gulch
34	2/7/2017	Silva Drain
35	1/24/2017	Goat Canyon
36	1/24/2017	Smuggler's Gulch
37	1/24/2017	Canyon del Sol
38	1/24/2017	Silva Drain
39	1/24/2017	Stewart's Drain
40	1/23/2017	Goat Canyon
41	1/23/2017	Smuggler's Gulch
42	1/23/2017	Canyon del Sol

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
43	1/23/2017	Silva Drain
44	1/23/2017	Stewart's Drain
45	1/22/2017	Goat Canyon
46	1/22/2017	Smuggler's Gulch
47	1/22/2017	Canyon del Sol
48	1/22/2017	Silva Drain
49	1/22/2017	Stewart's Drain
50	1/21/2017	Goat Canyon
51	1/21/2017	Smuggler's Gulch
52	1/20/2017	Goat Canyon
53	1/20/2017	Canyon del Sol
54	1/20/2017	Stewart's Drain
55	1/20/2017	Smuggler's Gulch
56	1/20/2017	Silva Drain
57	1/19/2017	Goat Canyon
58	1/19/2017	Canyon del Sol
59	1/19/2017	Stewart's Drain
60	1/19/2017	Smuggler's Gulch
61	1/19/2017	Silva Drain
62	1/14/2017	Goat Canyon
63	1/14/2017	Canyon del Sol
64	1/14/2017	Stewart's Drain
65	1/14/2017	Smuggler's Gulch
66	1/14/2017	Silva Drain
67	1/13/2017	Goat Canyon
68	1/13/2017	Canyon del Sol
69	1/13/2017	Stewart's Drain
70	1/13/2017	Smuggler's Gulch
71	1/13/2017	Silva Drain
72	1/12/2015	Goat Canyon
73	1/12/2017	Smuggler's Gulch
74	1/12/2017	Canyon del Sol
75	1/11/2017	Goat Canyon
76	1/10/2017	Goat Canyon
77	1/10/2017	Canyon del Sol
78	1/9/2017	Canyon del Sol
79	1/8/2017	Goat Canyon
80	1/8/2017	Stewart's Drain
81	1/6/2017	Goat Canyon
82	1/6/2017	Canyon del Sol
83	1/6/2017	Stewart's Drain
84	1/6/2017	Smuggler's Gulch
85	1/2/2017	Goat Canyon

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
86	1/1/2017	Goat Canyon
87	1/1/2017	Smuggler's Gulch
88	1/1/2017	Canyon del Sol
89	1/1/2017	Silva Drain
90	1/1/2017	Stewart's Drain
91	12/31/2016	Goat Canyon
92	12/31/2016	Smuggler's Gulch
93	12/31/2016	Canyon del Sol
94	12/31/2016	Silva Drain
95	12/30/2016	Goat Canyon
96	12/30/2016	Smuggler's Gulch
97	12/30/2016	Stewart's Drain
98	12/27/2016	Goat Canyon
99	12/25/2016	Goat Canyon
100	12/25/2016	Smuggler's Gulch
101	12/24/2016	Goat Canyon
102	12/24/2016	Smuggler's Gulch
103	12/24/2016	Stewart's Drain
104	12/23/2016	Goat Canyon
105	12/23/2016	Smuggler's Gulch
106	12/23/2016	Canyon del Sol
107	12/23/2016	Silva Drain
108	12/23/2016	Stewart's Drain
109	12/22/2016	Goat Canyon
110	12/22/2016	Smuggler's Gulch
111	12/22/2016	Canyon del Sol
112	12/22/2016	Silva Drain
113	12/22/2016	Stewart's Drain
114	12/17/2016	Canyon del Sol
115	12/17/2016	Silva Drain
116	12/17/2016	Stewart's Drain
117	12/17/2016	Goat Canyon
118	12/17/2016	Smuggler's Gulch
119	12/16/2016	Goat Canyon
120	12/16/2016	Smuggler's Gulch
121	12/16/2016	Canyon del Sol
122	12/16/2016	Silva Drain
123	12/16/2016	Stewart's Drain
124	11/28/2016	Goat Canyon
125	11/28/2016	Smuggler's Gulch
126	11/28/2016	Canyon del Sol
127	11/28/2016	Silva Drain
128	11/28/2016	Stewart's Drain

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
129	11/27/2016	Goat Canyon
130	11/27/2016	Smuggler's Gulch
131	11/27/2016	Canyon del Sol
132	11/27/2016	Silva Drain
133	11/27/2016	Stewart's Drain
134	11/22/2017	Goat Canyon
135	11/22/2017	Smuggler's Gulch
136	11/22/2017	Canyon del Sol
137	11/22/2017	Silva Drain
138	11/22/2017	Stewart's Drain
139	11/21/2016	Goat Canyon
140	11/21/2016	Smuggler's Gulch
141	11/21/2016	Canyon del Sol
142	11/21/2016	Silva Drain
143	11/21/2016	Stewart's Drain
144	11/20/2016	Silva Drain
145	9/22/2016	Goat Canyon
146	9/22/2016	Smuggler's Gulch
147	9/22/2016	Stewart's Drain
148	9/21/2016	Goat Canyon
149	9/21/2016	Smuggler's Gulch
150	9/21/2016	Canyon del Sol
151	9/21/2016	Silva Drain
152	9/21/2016	Stewart's Drain
153	9/20/2016	Goat Canyon
154	9/20/2016	Smuggler's Gulch
155	9/20/2016	Canyon del Sol
156	9/20/2016	Silva Drain
157	9/20/2016	Stewart's Drain
158	7/7/2016	Silva Drain
159	5/8/2016	Goat Canyon
160	5/8/2016	Smuggler's Gulch
161	5/8/2016	Canyon del Sol
162	5/8/2016	Silva Drain
163	5/8/2016	Stewart's Drain
164	5/7/2016	Goat Canyon
165	5/7/2016	Smuggler's Gulch
166	5/7/2016	Canyon del Sol
167	5/7/2016	Silva Drain
168	5/7/2016	Stewart's Drain
169	5/6/2016	Goat Canyon
170	5/6/2016	Smuggler's Gulch
171	5/6/2016	Canyon del Sol

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
172	5/6/2016	Silva Drain
173	5/6/2016	Stewart's Drain
174	4/10/2016	Goat Canyon
175	4/10/2016	Smuggler's Gulch
176	4/10/2016	Canyon del Sol
177	4/10/2016	Silva Drain
178	4/10/2016	Stewart's Drain
179	4/8/2016	Goat Canyon
180	4/8/2016	Smuggler's Gulch
181	4/7/2016	Goat Canyon
182	4/7/2016	Smuggler's Gulch
183	4/7/2016	Silva Drain
184	4/7/2016	Stewart's Drain
185	3/12/2016	Goat Canyon
186	3/12/2016	Smuggler's Gulch
187	3/12/2016	Canyon del Sol
188	3/12/2016	Silva Drain
189	3/12/2016	Stewart's Drain
190	3/9/2016	Goat Canyon
191	3/8/2016	Goat Canyon
192	3/8/2016	Smuggler's Gulch
193	3/8/2016	Canyon del Sol
194	3/8/2016	Silva Drain
195	3/8/2016	Stewart's Drain
196	3/7/2016	Goat Canyon
197	3/7/2016	Smuggler's Gulch
198	3/7/2016	Canyon del Sol
199	3/7/2016	Silva Drain
200	3/7/2016	Stewart's Drain
201	3/6/2016	Goat Canyon
202	3/6/2016	Smuggler's Gulch
203	3/6/2016	Canyon del Sol
204	3/6/2016	Silva Drain
205	3/6/2016	Stewart's Drain
206	2/2/2016	Goat Canyon
207	2/1/2016	Goat Canyon
208	2/1/2016	Smuggler's Gulch
209	2/1/2016	Canyon del Sol
210	2/1/2016	Silva Drain
211	2/1/2016	Stewart's Drain
212	1/31/2016	Canyon del Sol
213	1/31/2016	Silva Drain
214	1/31/2016	Stewart's Drain

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
215	1/29/2016	Stewart's Drain
216	1/24/2016	Canyon del Sol
217	1/24/2016	Stewart's Drain
218	1/16/2016	Goat Canyon
219	1/10/2016	Goat Canyon
220	1/10/2016	Smuggler's Gulch
221	1/9/2016	Goat Canyon
222	1/9/2016	Smuggler's Gulch
223	1/9/2016	Canyon del Sol
224	1/9/2016	Silva Drain
225	1/9/2016	Stewart's Drain
226	1/8/2016	Goat Canyon
227	1/8/2016	Smuggler's Gulch
228	1/8/2016	Canyon del Sol
229	1/8/2016	Silva Drain
230	1/8/2016	Stewart's Drain
231	1/7/2016	Goat Canyon
232	1/7/2016	Smuggler's Gulch
233	1/7/2016	Canyon del Sol
234	1/7/2016	Silva Drain
235	1/7/2016	Stewart's Drain
236	1/6/2016	Goat Canyon
237	1/6/2016	Smuggler's Gulch
238	1/6/2016	Canyon del Sol
239	1/6/2016	Silva Drain
240	1/6/2016	Stewart's Drain
241	1/5/2016	Goat Canyon
242	1/5/2016	Smuggler's Gulch
243	1/5/2016	Canyon del Sol
244	1/5/2016	Silva Drain
245	1/5/2016	Stewart's Drain
246	1/4/2016	Goat Canyon
247	1/4/2016	Smuggler's Gulch
248	1/4/2016	Canyon del Sol
249	1/4/2016	Silva Drain
250	1/4/2016	Stewart's Drain
251	12/29/2015	Goat Canyon
252	12/29/2015	Smuggler's Gulch
253	12/29/2015	Stewart's Drain
254	12/28/2015	Goat Canyon
255	12/23/2015	Goat Canyon
256	12/23/2015	Smuggler's Gulch
257	12/23/2015	Canyon del Sol

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
258	12/23/2015	Silva Drain
259	12/23/2015	Stewart's Drain
260	12/22/2015	Goat Canyon
261	12/22/2015	Smuggler's Gulch
262	12/22/2015	Canyon del Sol
263	12/22/2015	Silva Drain
264	12/22/2015	Stewart's Drain
265	12/20/2015	Goat Canyon
266	12/20/2015	Smuggler's Gulch
267	12/19/2015	Goat Canyon
268	12/19/2015	Smuggler's Gulch
269	12/14/2015	Goat Canyon
270	12/14/2015	Smuggler's Gulch
271	12/14/2015	Canyon del Sol
272	12/14/2015	Silva Drain
273	12/14/2015	Stewart's Drain
274	11/28/2015	Goat Canyon
275	11/28/2015	Smuggler's Gulch
276	11/28/2015	Canyon del Sol
277	11/28/2015	Silva Drain
278	11/28/2015	Stewart's Drain
279	11/27/2015	Goat Canyon
280	11/27/2015	Smuggler's Gulch
281	11/16/2015	Goat Canyon
282	11/15/2015	Goat Canyon
283	11/15/2015	Smuggler's Gulch
284	11/15/2015	Canyon del Sol
285	11/15/2015	Stewart's Drain
286	11/10/2015	Goat Canyon
287	11/10/2015	Smuggler's Gulch
288	11/4/2015	Canyon del Sol
289	11/4/2015	Stewart's Drain
290	11/1/2015	Goat Canyon
291	10/6/2015	Goat Canyon
292	10/6/2015	Smuggler's Gulch
293	10/6/2015	Canyon del Sol
294	10/6/2015	Silva Drain
295	10/6/2015	Stewart's Drain
296	10/5/2015	Goat Canyon
297	10/5/2015	Smuggler's Gulch
298	10/5/2015	Canyon del Sol
299	10/5/2015	Silva Drain
300	10/5/2015	Stewart's Drain

Table 3 – Other Canyon Collector Overflows		
#	**Date**	**Canyon Collector**
301	9/17/2015	Goat Canyon
302	9/17/2015	Smuggler's Gulch
303	9/16/2015	Goat Canyon
304	9/16/2015	Smuggler's Gulch
305	9/16/2015	Canyon del Sol
306	9/16/2015	Silva Drain
307	9/16/2015	Stewart's Drain
308	9/15/2015	Goat Canyon
309	9/15/2015	Smuggler's Gulch
310	9/15/2015	Canyon del Sol
311	9/15/2015	Silva Drain
312	9/15/2015	Stewart's Drain
313	8/30/2015	Goat Canyon

c. CWA Monitoring Violations.

i. Monitoring Requirements

The Discharge Permit contains substantial monitoring and reporting requirements that trigger when treated or untreated wastewater discharges from the SBIWTP other than from the SBOO. Pertinent here, discharges from the canyon collector systems are classified in two ways:

1. Facilities Spill Events are defined as "discharges of treated or untreated wastewater or other material from the Discharger's facilities, including, but not limited to, the entire wastewater conveyance [system] … owned and operated by the Discharger.".

2. Type A Flow Events are "dry weather transboundary treated or untreated wastewater or other flow through a conveyance owned and operated by the United States Government into Smuggler[sic] Gulch, Goat Canyon, Canyon del Sol, Stewart's Drain, or Silva Drain and not diverted into the canyon collector system for treatment at the [SBIWTP]."[31] While these classifications trigger distinct monitoring and reporting requirements for the discharges, both are violations on the Discharge Permit's prohibition against discharges except at the SBOO.

Under the plain language of the Permit, a dry weather discharge from a canyon collector conveyance may be both a Facilities Spill Event and a Type A Flow Event. Wet weather discharges from the canyon collector systems fall under the definition of Facilities Spill Events. Each type of discharge event induces distinct, but overlapping, monitoring and reporting requirements.

Additionally, both Type A and Facilities Spill Events *of any volume* that reach surface waters and/or a drainage channel tributary to a surface water that are not fully captured and returned to the SBIWTP are classified as Category 1 discharges.[32] Dischargers are under extensive reporting requirements in the immediate aftermath of a Category 1 discharge, including preliminary and certified spill reports to the Regional Board, DEH, local municipalities, and other interested parties within three and fifteen days of the spill, respectively.[33] The specific information required in these reports is listed in the Discharge Permit.[34]

The dischargers must also submit monthly status reports on the general operations of the SBIWTP, including on whether Type A or Facilities Spill events occurred that month. The specific information that must be included for each type of spill is identified in the Discharge Permit. [35]

ii. Monitoring Violations

Each of the discharges listed in Table 2 is underreported, having been reported only in the Daily Canyon Collector Inspection Reports. The Dischargers are in violation of the Discharge

[31] *See id*., VI. C. 2. a., at 17-18.
[32] *Id*., VI. D. 2. d. i. a., at 28 (emphasis added).
[33] *See id*., VI. D. 2. d. iii – iv, at 29-31.
[34] *Id*.
[35] *Id*., VI. C. 2. a., 17-18.

Permit sections VI. C. 2. d. iii. and iv. for each spill from SBITWP treatment works facilities, including the canyon collectors, listed above, for which no preliminary and/or certified report containing the information identified in those sections was submitted to the Regional Board, and other relevant stakeholders.

III. IMMINENT AND SUBSTANTIAL ENDANGERMENT UNDER RCRA

To the extent that the wastewater flows described herein are not subject to a NPDES permit, they are illegal under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq*. Like those described in Table 2, canyon collector discharges deposit solid and/or hazardous waste near the collectors. Transboundary wastewater discharge events through the flood control conveyance and Yogurt Canyon dispose of solid and/or hazardous wastes in and near the River Valley. RCRA provides that:

> any person [may] commence a civil action on his own behalf . . . against any person, including the United States and any other governmental instrumentality or agency. . . who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment . . .[36]

This provision explicitly allows the consideration of environmental or health effects arising from waste and authorizes suit any time there may be a present threat – an imminent and substantial endangerment – to health or environment.[37]

a. IBWC and Veolia are Subject to RCRA Enforcement.

IBWC and Veolia are "persons" subject to RCRA citizen suit enforcement. RCRA explicitly defines "person" to include "corporation[s]" and "each department, agency and instrumentality of the United States."[38] Veolia is a corporation. IBWC is organized as an agency of the United States. They therefore meet the definition of a person subject to suit under RCRA. Moreover, the citizen suit provisions explicitly make the federal government subject to RCRA citizen enforcement actions.[39]

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[36] 42 USC § 6972(a)(1(B).
[37] *Meghrig v. KFC Western, Inc*., 516 U.S. 479, 485 (1996).
[38] 42 USC § 6903(15).
[39] 42 USC § 6972(a)(1(B).

b. The Wastewater Discharging to the Tijuana River Valley Contains Solid and Hazardous Wastes.

The wastewater constituents that deposit near the canyon collectors or flow through the concrete flood control conveyance and Yogurt Canyon constitute solid or hazardous waste within the meaning of RCRA. "Solid waste" includes "any garbage, refuse, sludge from a waste treatment plant . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities."[40]

> The term "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may: (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.[41]

Although RCRA excludes from its coverage disposal of domestic sewage and industrial waste that would be subject to a NPDES permit,[42] the wastewater that is the subject of this notice frequently discharges to land, rendering the Clean Water Act NPDES permitting program inapplicable to those discharges.

The wastewater flows that sweep through the City of Tijuana bring with them industrial waste, pesticides, metals, and other discarded solid waste materials that ultimately flow into the United States. Moreover, sampling of these flow events show them to contain several acute hazardous and/or toxic solid wastes as defined by RCRA and U.S. Environmental Protection Agency regulations.[43] These include, but are not limited to:

- Aldrin (P004)
- Nitrogen (P076, P078)
- Lindane (U129)
- Chloroform (U044)
- DDT (U061)
- Dieldrin (P037)
- Heptachlor (P059)
- Benzene (U019)
- Chlorobenzene (U037)

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[40] 42 U.S.C. § 6903(27).
[41] 42 U.S.C. § 6903(5).
[42] *See* 42 U.S.C. § 6903(27) (The term solid waste "does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of Title 33…").
[43] *See* 40 C.F.R. § 261.30 (defining hazardous wastes as solid waste); 40 CFR § 261.33 (listing hazardous and toxic wastes; EPA hazardous waste number listed parenthetically).

- Toluene (U220)
- 2,4-dinitrotoluene (U105)
- Nitrophenol (U170)
- Phenol (U188)

The wastes found in these flows pose a substantial present and potential hazard to human health or the environment when disposed of improperly. These substances, which broadly include pathogens, metals, industrial process chemicals, and others, are known to cause acute illness, increased risk of cancer, death, and other maladies in humans. Human exposure to these contaminants is likely when, after they are discharged to land, subsequent flow events wash residuals into the Tijuana River and Estuary, and the Pacific Ocean. The materials contained in the canyon collector discharges are hazardous and solid wastes within the meaning of RCRA.

c. IBWC and Veolia Have Contributed and Continue to Contribute to the Handling, Transportation, and Disposal of Hazardous Wastes from the Canyon Collectors.

IBWC and Veolia have and continue to contribute to the handling and transport of solid and/or hazardous wastes contained in transboundary wastewater influent from the moment such influent enters the canyon collector system, and during the flow of that material through IBWC-owned and Veolia-operated conveyance structures toward the canyon collector drains. These are described in detail in Tables 2 and 3. IBWC and Veolia have contributed and continue to contribute to the disposal[44] of solid and/or hazardous wastes contained in the transboundary wastewater when that wastewater overflows, leaks, or spills from the conveyance structures and is deposited on land or into the Tijuana River and/or Estuary, or to the natural drainages that are tributaries to those waters.

d. IBWC Has Contributed and Continues to Contribute to the Handling, Transportation, and Disposal of Hazardous Wastes Via Yogurt Canyon and the Flood Control Conveyance.

The failure of existing wastewater collection, conveyance, and treatment facilities in Mexico is the overwhelming cause of transboundary wastewater flow events in the concrete flood control conveyance and Yogurt Canyon. Table 1, above, lists the most recent of these events in the flood control conveyance; Table 4, below, describes additional reported discharges from Yogurt Canyon, an unimproved drainage to the West of the canyon collectors, near International Friendship Park. Most of these events are attributable to failures of existing diversion facilities in the Tijuana River from which IBWC collects the wastewater it treats at SBIWTP – including, but not limited to, the known incapacity of the CILA diversion structure and CILA pump station to capture wet weather or emergency flows and move them into the wastewater conveyance

[44] 42 USC § 6903(3) (defining "disposal" as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

infrastructure. The discharges in Tables 1 and 4 deposit solid and/or hazardous wastes onto land and into the Tijuana River and Estuary in violation of RCRA.

Table 4 – Wastewater Flow Events via Yogurt Canyon			
Date	**Volume (Gal.)**	**Vector**	**Description**
6/20/2017	100,000	Yogurt Canyon	Clogged manhole at Playas de Tijuana
10/26/2016	875,000	Yogurt Canyon	Unknown
7/2015	Unknown	Yogurt Canyon	Unknown

IBWC is integral to the design, construction, operation, maintenance, and monitoring of the CILA diversion and the rest of the transnational wastewater collection, conveyance, and treatment system. To that end, IBWC spends (1) substantial sums ensuring the collection and treatment of wastewater from Mexico; (2) provides technical expertise in the design and operation of such facilities; (3) develops operating protocols for existing wastewater collection facilities in Mexico; (4) coordinates with CILA on the operation of the entire transnational wastewater collection, conveyance, and treatment infrastructure; and (5) represents the United States' interests in addressing transnational pollution issues. Moreover, IBWC through its operation of the flood control conveyance, moves and discharges solid and hazardous wastes from the flood control conveyance into the unlined portion of the Tijuana River Valley in the United States, including those discharges described in Table 1. Such activities contribute to the handling and transport of solid and/or hazardous waste in Mexico, and the handling, transport and disposal of solid and/or hazardous waste in the United States, including those wastewater disposal events that are the subject of this Notice as described in Tables 1 and 4.

e. The Wastewater Discharges to the Tijuana River Valley are Imminent and Substantial Endangerments to Human Health and the Environment.

Human and environmental exposure to the toxins, pesticides, and other solid and/or hazardous wastes contained in discharges from the canyon collectors and via flood control conveyance and Yogurt Canyon warrant extreme concern. The nature of this threat is grave: many of these waste materials are known contributors to irreversible and/or incapacitating illnesses, can cause or contribute to increases in mortality. Table 5 describes the health effects of exposure to some, but not all, of the waste materials that are known to be contained in the wastewater flow events that are the subject of this Notice.

Table 5 – Certain Health Hazards of Subject Wastewater Discharges[45]	
Waste Material	**Human Health Impacts**
Aldrin/dieldrin	Long term exposure can result in headaches, dizziness, irritability, vomiting, or uncontrollable muscle movements. Some sensitive people seem to develop a

[45] All information from the Agency for Toxic Substances and Disease Registry, U.S. Center for Disease Control, Toxic Substances Portal – Public Health Statements, available at https://www.atsdr.cdc.gov/substances/index.asp

Table 5 – Certain Health Hazards of Subject Wastewater Discharges[45]	
Waste Material	**Human Health Impacts**
	condition in which Aldrin or dieldrin causes the body to destroy its own blood cells. EPA has determined that Aldrin and dieldrin are probable human carcinogens. Animal studies show that these substances can cause changes to the nervous system, reproductive system, kidneys, and liver and reduce the ability to fight infection. Acute exposure can cause convulsions and death.
DDT	Ingestion, inhalation and topical exposure affects the nervous system, causing excitability, tremors, seizures, sweating, headache, nausea, vomiting, and dizziness. People exposed for a long time to small amounts of DDT had some changes in the levels of liver enzymes in the blood. Studies have showed reductions in the duration of lactation and increased chance of having a pre-term baby.
Benzene	Acute exposure can result in death. Lower levels can cause drowsiness, dizziness, rapid heart rate, headaches, tremors, confusion, and unconsciousness. Ingestion can cause vomiting, irritation of the stomach, dizziness, sleepiness, convulsions, rapid heart rate, coma, and death. Topical exposure can cause redness and sores. Benzene causes problems in the tissues that form blood cells, especially the bone marrow. These effects can disrupt normal blood production and cause a decrease in important blood components, anemia, excessive bleeding, and leukemia. Reproductive hazards include irregular menstruation, decreased ovary size, low birth weight, and bone damage in fetuses.
Toluene	Incoordination, cognitive impairment, and vision and hearing loss may become permanent with repeated exposure. Exposure during pregnancy may lead to retardation of mental abilities and growth in children. Other health effects of potential concern may include immune, kidney, liver, and reproductive effects. Reproductive effects include spontaneous abortion.
Arsenic	Large oral doses in water cause death. Other effects include decreased production of red and white blood cells, which may cause fatigue, abnormal heart rhythm, blood-vessel damage resulting in bruising, and impaired nerve function causing a “pins and needles” sensation in your hands and feet. Skin changes include darkened skin and the appearance of small “corns” or “warts” on the palms, soles, and torso, and are often associated with changes in the blood vessels of the skin. Arsenic is a known carcinogen, and may cause skin, liver, bladder, and lung cancers.
Antimony	Antimony in drinking water can cause vomiting and abdominal pain. Stomach ulcers have been seen in animals exposed to antimony in drinking water for several months. Antimony can also cause eye irritation if it gets in the eye. Lung cancer has been observed in some studies of workers, and mice breathing high concentrations of antimony.
Lead	Long-term exposure of adults to lead at work has resulted in decreased performance in some tests that measure functions of the nervous system. Lead exposure may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people. Lead exposure may also cause anemia. At high levels of exposure,

Table 5 – Certain Health Hazards of Subject Wastewater Discharges[45]	
Waste Material	**Human Health Impacts**
	lead can severely damage the brain and kidneys in adults or children and ultimately cause death. In pregnant women, high levels of exposure to lead may cause miscarriage. High-level exposure in men can damage the organs responsible for sperm production. It is probably carcinogenic to humans.
Cadmium	Eating food or drinking water with very high cadmium levels severely irritates the stomach, leading to vomiting and diarrhea, and sometimes death. Eating lower levels of cadmium over a long period of time can lead to a build-up of cadmium in the kidneys. If the build-up of cadmium is high enough, it will damage the kidneys. Exposure to lower levels of cadmium for a long time can also cause bones to become fragile and break easily.
Thallium	Thallium affects the nervous system, lung, heart, liver, and kidney if large amounts are eaten or drunk for short periods of time. Temporary hair loss, vomiting, and diarrhea can also occur and death may result after exposure to large amounts of thallium for short periods. Thallium can be fatal from a dose as low as 1 gram.
Mercury	Exposure to mercury can cause permanent brain damage, with symptoms such as personality changes (irritability, shyness, nervousness), tremors, changes in vision (constriction (or narrowing) of the visual field), deafness, muscle incoordination, loss of sensation, and difficulties with memory. Mercury damages the kidneys, as well as the stomach and intestines, producing symptoms of nausea, diarrhea, or severe ulcers.
Heptachlor	Studies have shown a number of harmful health effects when animals were fed heptachlor. The effects observed in animals include damage to the liver, excitability, and decreases in fertility. Animals fed heptachlor throughout their lifetime had more liver tumors than animals that ate food without heptachlor. EPA and the International Agency for Research on Cancer have classified heptachlor as a possible human carcinogen.
Phenol	Ingestion of liquid products containing concentrated phenol can cause serious gastrointestinal damage and even death. Application of concentrated phenol to the skin can cause severe skin damage. Short-term exposure to high levels of phenol has caused irritation of the respiratory tract and muscle twitching in animals. Longer-term exposure to high levels of phenol caused damaged to the heart, kidneys, liver, and lungs in animals.

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. Any discharged material that flows into the canyon collectors, and necessarily near the drainages that are tributary to the Tijuana River and Estuary, has the potential to be swept into those drainages and discharged to those waters. Once in those waterways and/or deposited on land downstream, recreators in the River and Estuary can potentially be exposed, as can surfers, beachgoers and other beach and ocean users in Imperial Beach and elsewhere in California.

IV. PERSONS RESPONSIBLE FOR VIOLATIONS

The flood control conveyance and all of the canyon collectors are owned by the U.S. Section of the International Boundary and Water Commission. The SBIWTP and the canyon collectors are operated by Veolia Water North America – West, LLC. Therefore, IBWC and Veolia are responsible for the Clean Water Act and Resource Conservation and Recovery Act violations as described herein.

V. RELIEF SOUGHT & PENALTIES

The Claimants seek permanent cessation of the violations set forth herein and the resulting water pollution entering their jurisdictions and impacting their property and constituents. Claimants believe that a negotiated settlement that includes provisions for immediate design and construction of infrastructural upgrades, a compliance schedule, compliance monitoring, and other provisions, would be superior to litigation. However, Claimants are prepared to litigate these violations.

If the parties are unable to reach an enforceable settlement within 60 days of this notice letter, the Claimants intend to file suit in the United States District Court for the Southern District of California under the Clean Water Act. The Claimants will seek injunctive relief, civil penalties, fees, and costs of the litigation, and any other relief allowable by the court. Clean Water Act violators are subject to civil penalties of up to $52,414.00 per violation per day for each violation of the Clean Water Act.[46]

Additionally, the Claimants intend to initiate RCRA litigation if these matters are not resolved within 90 days of this Notice letter.[47] The Claimants will seek abatement of the imminent and substantial endangerment, fees, costs, and any other relief allowable by the court.

VI. PERSONS GIVING NOTICE

The City of Imperial Beach, by and through its attorneys Sher Edling LLP, gives this Notice of Intent to Sue pursuant to 33 U.S.C. section 1365(b) and 42 U.S.C. section 6972(a)(1)(B). The City's contact information is as follows:

825 Imperial Beach Blvd.
Imperial Beach, CA 91932
Tel: (619) 423-8300

The name, address, and phone number for the City's legal counsel, who is giving notice on behalf of the City, is:

[46] 40 CFR § 19.4, Table 2.
[47] 42 USC § 6972(B)(2)(A).

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Please direct all correspondence to the City of Imperial Beach related to this notice to Sher Edling LLP.

The San Diego Unified Port District, by and through its General Counsel, gives this Notice of Intent to Sue pursuant to 33 U.S.C. section 1365(b) and 42 U.S.C. section 6972(a)(1)(B). The Port District's contact information is as follows:

3165 Pacific Highway
San Diego, CA 92101
Tel: (619) 686-6200

The name, address, and phone number for the Port District's legal counsel, who is giving notice on behalf of the Port District, is:

Thomas A. Russell
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Please direct all correspondence to the San Diego Unified Port District related to this notice to the Port District's General Counsel.

The City of Chula Vista, by and through the City Attorney for the City of Chula Vista, gives this Notice of Intent to Sue pursuant to 33 U.S.C. section 1365(b) and 42 U.S.C. section 6972(a)(1)(B). The City's contact information is as follows:

276 Fourth Avenue
Chula Vista, CA 91910
Tel: (619) 691-5031

The name, address, and phone number for the City's legal counsel, who is giving notice on behalf of the City, is:

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Please direct all correspondence to the City of Chula Vista related to this notice to the City Attorney.

VII. CONCLUSION

Please contact the undersigned if you have questions concerning this letter or the Clean Water Act and Resource Conservation and Recovery Act violations described herein. We look forward to resolving this matter as soon as possible.

Sincerely,

MATTHEW K. EDLING

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Veolia Water North America-West, LLC
Agent for Service of Process
CT Corporation System (C0168406)
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Los Angeles, CA 90017

EXHIBIT B

Exhibit B

Wastewater Flow Events via Flood Control Conveyance			
Date[1]	**Volume (Gal.)**	**Vector**	**Description**
3/29/2018	109,000	Flood Control Conveyance	Pump station exceedance
2/26/2018	1.185 million	Flood Control Conveyance	Electrical and mechanical equipment failures at Pump Station CILA
2/20/2018	304,000	Flood Control Conveyance	Maintenance at Pump Station CILA requiring facility shutdown
2/15/2018	Unknown	Flood Control Conveyance	Unknown
2/10/2018	665,000	Flood Control Conveyance	Electrical issues affecting operation of motors and pumps at Pump Station CILA
2/9/2018	560,000	Flood Control Conveyance	Electrical power failure at Pump Station CILA
2/4/2018	100,000	Flood Control Conveyance	Water line rupture in Mexico
1/29/2018	208,000	Flood Control Conveyance	Electrical malfunction at Pump Station CILA
1/9/2018	Unknown	Flood Control Conveyance	Pump Station CILA capacity exceeded
10/22/2017	228,000	Flood Control Conveyance	Capacity of Pump Station CILA exceeded
10/11/2017	81,000	Flood Control Conveyance	Clogged intake screens at CILA diversion
9/19/2017	38,000	Flood Control Conveyance	Clogged intake screens at CILA diversion
9/12/2017	192,000	Flood Control Conveyance	Malfunction of level sensors at Pump Station CILA
9/9/2017	3.9 million	Flood Control Conveyance	Water system overflow exceeded capacity of Pump Station CILA
8/17/2017	411,000	Flood Control Conveyance	Clogged intake screens at CILA diversion
8/7/2017	311,000	Flood Control Conveyance	Clogged intake screens at CILA diversion
7/31/2017	1.72 million	Flood Control Conveyance	Power fluctuations at Pump Station CILA forced shutdown of that facility

[1] The date listed represents the date a flood control conveyance discharge initiated or was first reported. Many of these discharges occurred over the course of several consecutive days.

Exhibit B

Wastewater Flow Events via Flood Control Conveyance			
Date[1]	**Volume (Gal.)**	**Vector**	**Description**
6/12/2017	66,000	Flood Control Conveyance	Capacity of Pump Station CILA exceeded
6/10/2017	161,670	Flood Control Conveyance	Capacity of Pump Station CILA exceeded
6/9/2017	42,800	Flood Control Conveyance	Capacity of Pump Station CILA exceeded
5/25/2017	335,000	Flood Control Conveyance	Shutdowns at Pump Station CILA
5/21/2017	400,000	Flood Control Conveyance	Traffic accident resulting in shutdown at pump station CILA
2/24/2017	256 million	Flood Control Conveyance	Failure at Diversion/pump station CILA
7/4/2016	33,000	Flood Control Conveyance	Unknown
7/2/2016	1.32 million	Flood Control Conveyance	Unknown
4/5/2016	4.86 million	Flood Control Conveyance	Unknown
2/12/2016	370,000	Flood Control Conveyance	River flow exceeded capacity of pump station CILA
1/2016	27.28 million	Flood Control Conveyance	Eleven distinct spills attributable to potable water line break and pump station capacity exceedance
12/11/2015	2.06 million	Flood Control Conveyance	Clogged intake screen at CILA diversion
11/19/2015	1.31 million	Flood Control Conveyance	Clogged intake screen at CILA diversion
10/17-18/2015	1.3 million	Flood Control Conveyance	Motor pump failure at pump station CILA
10/14/2015	1.124 million	Flood Control Conveyance	Motor control failure at pump station CILA

Exhibit B

Wastewater Flow Events via Flood Control Conveyance			
Date[1]	**Volume (Gal.)**	**Vector**	**Description**
10/13/2015	1.35 million	Flood Control Conveyance	Pump failures
9/19-22/2015	7.74 million	Flood Control Conveyance	Pump station CILA breakdowns
8/1-8/2015	Unknown	Flood Control Conveyance	Five distinct spills due to clogged intake screens at diversion
2/3-16/2015	Unknown	Flood Control Conveyance	Five distinct spills due to trash clog at diversion intake screen.
1/2015	Unknown	Flood Control Conveyance	Ten distinct spills due to trash clog at diversion intake screen.

EXHIBIT C

Exhibit C

Canyon Collector Overflows with Spill Reports				
Date	**Location**	**Gallons (est.)**	**Pollutants Present[1]**	**Receiving Water**
10/19/2017	Canyon del Sol	1,207,000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; Methylene Blue Active Substances; pH; P; TDS; total N; TSS; turbidity; bromodichloromethane; bromoform; chloroform; dibromochloromethane; 2,3,7,8-TCDD; asbestos structures;	New Tijuana River
10/7/2017	Canyon del Sol	4,152,000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; pH; P; TDS; total N; TSS; turbidity; bromodichloromethane; bromoform; chloroform; dibromochloromethane; 2,3,7,8-TCDD; asbestos structures	New Tijuana River
6/27/2017	Canyon del Sol	5,500,000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; Methylene Blue Active Substances; pH; P; TDS; total N; TSS; turbidity; Cr; Cu; bromodichloromethane; bromoform; chloroform; dibromochloromethane; 2,4,6-trichlorophenol; bis(2-ethylhexyl)phthalate; butyl benzyl phthalate; Di-n-butyl phthalate; asbestos structures; 2,3,7,8-TCDD	New Tijuana River
5/24/2017	Stewart's Drain	3,800	No samples recovered[2]	New Tijuana River
5/21/2017	Stewart's Drain	1,560	No samples recovered[3]	New Tijuana River
4/30/2017	Goat Canyon	645,000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; pH; P; TDS; total N; TSS; turbidity; Cu; Ni; Pb; chloroform; 1,4-dochlorobenzene; tetrachloroethene; toluene; Hg; Sb; Ar; Be; Cd; Cr; Pb; Se; Ag; Tl; Zn; Aldrin; HCH-gamma (Lindane);	Goat Canyon Drainage

[1] From sampling data attached to IBWC Monthly available on CIWQS, unless otherwise noted.
[2] IBWC, Monthly Spill Report for May 2017 (June 30, 2017).
[3] *Id*.

Exhibit C

Canyon Collector Overflows with Spill Reports				
Date	**Location**	**Gallons (est.)**	**Pollutants Present[1]**	**Receiving Water**
			4,4-DDT; Dieldrin; Heptachlor; benzene; chlorobenzene; 1,1-dichloroethene; toluene; trichloroethene	
4/24/17	Stewart's Drain	12,850	Enterococcus; Fecal Coliforms; Total Coliforms; BOD; DO; Methylene blue; pH; P; TDS; total N; TSS; turbidity; Cu; Ni; Zn; chloroform; 1,4-Dichlorobenzene; tetrachloroethene; toluene;	New Tijuana River
3/1/2017	Goat Canyon	145,000	Ammonia as N; BOD; Carbonaceous BOD; Chlorine; floatables; Methylene blue; pH; P; TSS; TDS; turbidity; VSS; Al; Cu; Fe; Mg; Ni; Zn; trash	Goat Canyon Drainage
9/5/2016	Canyon Del Sol	390	Enterococcus; fecal coliforms; total coliforms; BOD; DO; pH; P; TDS; total N; TSS; turbidity; Ni; Sb; Zn; TCE; Hg; Ar; Be; Cd; Cr; Cu; Pb; Se; Ag; Tl; Zn; benzene; chlorobenzene; 1,1-dichloroethene; toluene; trichloroethene; acenaphthene; 2-chlorophenol; 4-chloro-3-methylphenol; 1,2-dichlorobenzene; 2,4-dinitrotoluene; 4-nitrophenol; N-nitrosodi-n-propylamine; pentrahchlorophenol; phenol; pyrene; 1,2,4-trichlorobenzene	Canyon del Sol drainage
1/28/2016	Stewart's Drain	2,200	Enterococcus; fecal coliforms; total coliforms; BOD; DO; methylene blue active substances; pH; P; TDS; total N; TSS; turbidity; Cu; Hg; Ni; Zn; bromodichloromethane; chloroform; dibromochloroethane; 1,4-dichlorobenzene; tetrachloroethene; toluene	Stewart's Drain Drainage
4/19/2015	Canyon Del Sol	2,000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; methylene blue active substances; pH; P; TDS; total N; TSS; turbidity; Cu; Ni; Zn; Sb; Ar; Be; Cd; Cr; Pb; Se; Ag; Tl; Hg; Aldrin; HCH-gamma	New Tijuana River

Exhibit C

Canyon Collector Overflows with Spill Reports				
Date	**Location**	**Gallons (est.)**	**Pollutants Present[1]**	**Receiving Water**
			(Lindane); 4,4-DDT; Dieldrin; Heptachlor; benzene; chlorobenzene; 1,1-Dichloroethene; toluene; trichloroethene; Acenaphthene; 2-chlorophenol; 4-chlor-3-methylphenol; 1,4-dichlorobenzene; 2,4-dinitrotoluene; 4-nitrophenol; N-nitrosodi-n-propylamine; pentrahchlorophenol; phenol; pyrene; 1,2,4-trichlorobenzene	

EXHIBIT D

Exhibit D

Other Canyon Collector Overflows		
#	**Date**	**Canyon Collector**
1.	3/23/2018	Goat Canyon
2.	3/18/2018	Goat Canyon
3.	3/18/2018	Smuggler's Gulch
4.	3/18/2018	Canyon Del Sol
5.	3/18/2018	Silva Drain
6.	3/18/2018	Stewart's Drain
7.	3/17/2018	Goat Canyon
8.	3/17/2018	Canyon Del Sol
9.	3/17/2018	Stewart's Drain
10.	3/15/2018	Canyon Del Sol
11.	3/15/2018	Silva Drain
12.	3/11/2018	Goat Canyon
13.	3/11/2018	Smuggler's Gulch
14.	3/11/2018	Canyon Del Sol
15.	3/11/2018	Silva Drain
16.	3/11/2018	Stewart's Drain
17.	2/27/2018	Goat Canyon
18.	12/21/2017	Canyon del Sol
19.	12/21/2017	Silva Drain
20.	12/21/2017	Stewart's Drain
21.	11/8/2017	Stewart's Drain
22.	11/8/2017	Silva Drain
23.	11/8/2017	Canyon del Sol
24.	11/8/2017	Smuggler's Gulch
25.	11/8/2017	Goat Canyon
26.	11/7/2017	Stewart's Drain
27.	11/7/2017	Silva Drain
28.	11/7/2017	Canyon del Sol
29.	11/7/2017	Smuggler's Gulch
30.	11/7/2017	Goat Canyon
31.	10/19/2017	Canyon del Sol
32.	10/7/2017	Canyon del Sol
33.	5/19/2017	Smuggler's Gulch
34.	5/7/2017	Goat Canyon
35.	5/7/2017	Smuggler's Gulch
36.	5/7/2017	Canyon del Sol
37.	5/7/2017	Silva Drain
38.	5/7/2017	Stewart's Drain
39.	4/29/2017	Canyon del Sol
40.	3/1/2017	Smuggler's Gulch
41.	2/28/2017	Goat Canyon
42.	2/28/2017	Smuggler's Gulch
43.	2/27/2017	Goat Canyon

Exhibit D

Other Canyon Collector Overflows		
#	**Date**	**Canyon Collector**
44.	2/27/2017	Canyon del Sol
45.	2/27/2017	Stewart's Drain
46.	2/27/2017	Smuggler's Gulch
47.	2/27/2017	Silva Drain
48.	2/26/2017	Smuggler's Gulch
49.	2/20/2017	Goat Canyon
50.	2/20/2017	Smuggler's Gulch
51.	2/19/2017	Goat Canyon
52.	2/19/2017	Canyon del Sol
53.	2/19/2017	Stewart's Drain
54.	2/19/2017	Smuggler's Gulch
55.	2/19/2017	Silva Drain
56.	2/18/2017	Goat Canyon
57.	2/18/2017	Canyon del Sol
58.	2/18/2017	Stewart's Drain
59.	2/18/2017	Smuggler's Gulch
60.	2/18/2017	Silva Drain
61.	2/12/2017	Goat Canyon
62.	2/7/2017	Goat Canyon
63.	2/7/2017	Canyon del Sol
64.	2/7/2017	Stewart's Drain
65.	2/7/2017	Smuggler's Gulch
66.	2/7/2017	Silva Drain
67.	1/24/2017	Goat Canyon
68.	1/24/2017	Smuggler's Gulch
69.	1/24/2017	Canyon del Sol
70.	1/24/2017	Silva Drain
71.	1/24/2017	Stewart's Drain
72.	1/23/2017	Goat Canyon
73.	1/23/2017	Smuggler's Gulch
74.	1/23/2017	Canyon del Sol
75.	1/23/2017	Silva Drain
76.	1/23/2017	Stewart's Drain
77.	1/22/2017	Goat Canyon
78.	1/22/2017	Smuggler's Gulch
79.	1/22/2017	Canyon del Sol
80.	1/22/2017	Silva Drain
81.	1/22/2017	Stewart's Drain
82.	1/21/2017	Goat Canyon
83.	1/21/2017	Smuggler's Gulch
84.	1/20/2017	Goat Canyon
85.	1/20/2017	Canyon del Sol
86.	1/20/2017	Stewart's Drain

Exhibit D

Other Canyon Collector Overflows		
#	**Date**	**Canyon Collector**
87.	1/20/2017	Smuggler's Gulch
88.	1/20/2017	Silva Drain
89.	1/19/2017	Goat Canyon
90.	1/19/2017	Canyon del Sol
91.	1/19/2017	Stewart's Drain
92.	1/19/2017	Smuggler's Gulch
93.	1/19/2017	Silva Drain
94.	1/14/2017	Goat Canyon
95.	1/14/2017	Canyon del Sol
96.	1/14/2017	Stewart's Drain
97.	1/14/2017	Smuggler's Gulch
98.	1/14/2017	Silva Drain
99.	1/13/2017	Goat Canyon
100.	1/13/2017	Canyon del Sol
101.	1/13/2017	Stewart's Drain
102.	1/13/2017	Smuggler's Gulch
103.	1/13/2017	Silva Drain
104.	1/12/2015	Goat Canyon
105.	1/12/2017	Smuggler's Gulch
106.	1/12/2017	Canyon del Sol
107.	1/11/2017	Goat Canyon
108.	1/10/2017	Goat Canyon
109.	1/10/2017	Canyon del Sol
110.	1/9/2017	Canyon del Sol
111.	1/8/2017	Goat Canyon
112.	1/8/2017	Stewart's Drain
113.	1/6/2017	Goat Canyon
114.	1/6/2017	Canyon del Sol
115.	1/6/2017	Stewart's Drain
116.	1/6/2017	Smuggler's Gulch
117.	1/2/2017	Goat Canyon
118.	1/1/2017	Goat Canyon
119.	1/1/2017	Smuggler's Gulch
120.	1/1/2017	Canyon del Sol
121.	1/1/2017	Silva Drain
122.	1/1/2017	Stewart's Drain
123.	12/31/2016	Goat Canyon
124.	12/31/2016	Smuggler's Gulch
125.	12/31/2016	Canyon del Sol
126.	12/31/2016	Silva Drain
127.	12/30/2016	Goat Canyon
128.	12/30/2016	Smuggler's Gulch
129.	12/30/2016	Stewart's Drain

Exhibit D

Other Canyon Collector Overflows		
#	**Date**	**Canyon Collector**
130.	12/27/2016	Goat Canyon
131.	12/25/2016	Goat Canyon
132.	12/25/2016	Smuggler's Gulch
133.	12/24/2016	Goat Canyon
134.	12/24/2016	Smuggler's Gulch
135.	12/24/2016	Stewart's Drain
136.	12/23/2016	Goat Canyon
137.	12/23/2016	Smuggler's Gulch
138.	12/23/2016	Canyon del Sol
139.	12/23/2016	Silva Drain
140.	12/23/2016	Stewart's Drain
141.	12/22/2016	Goat Canyon
142.	12/22/2016	Smuggler's Gulch
143.	12/22/2016	Canyon del Sol
144.	12/22/2016	Silva Drain
145.	12/22/2016	Stewart's Drain
146.	12/17/2016	Canyon del Sol
147.	12/17/2016	Silva Drain
148.	12/17/2016	Stewart's Drain
149.	12/17/2016	Goat Canyon
150.	12/17/2016	Smuggler's Gulch
151.	12/16/2016	Goat Canyon
152.	12/16/2016	Smuggler's Gulch
153.	12/16/2016	Canyon del Sol
154.	12/16/2016	Silva Drain
155.	12/16/2016	Stewart's Drain
156.	11/28/2016	Goat Canyon
157.	11/28/2016	Smuggler's Gulch
158.	11/28/2016	Canyon del Sol
159.	11/28/2016	Silva Drain
160.	11/28/2016	Stewart's Drain
161.	11/27/2016	Goat Canyon
162.	11/27/2016	Smuggler's Gulch
163.	11/27/2016	Canyon del Sol
164.	11/27/2016	Silva Drain
165.	11/27/2016	Stewart's Drain
166.	11/22/2017	Goat Canyon
167.	11/22/2017	Smuggler's Gulch
168.	11/22/2017	Canyon del Sol
169.	11/22/2017	Silva Drain
170.	11/22/2017	Stewart's Drain
171.	11/21/2016	Goat Canyon
172.	11/21/2016	Smuggler's Gulch

Exhibit D

Other Canyon Collector Overflows		
#	**Date**	**Canyon Collector**
173.	11/21/2016	Canyon del Sol
174.	11/21/2016	Silva Drain
175.	11/21/2016	Stewart's Drain
176.	11/20/2016	Silva Drain
177.	9/22/2016	Goat Canyon
178.	9/22/2016	Smuggler's Gulch
179.	9/22/2016	Stewart's Drain
180.	9/21/2016	Goat Canyon
181.	9/21/2016	Smuggler's Gulch
182.	9/21/2016	Canyon del Sol
183.	9/21/2016	Silva Drain
184.	9/21/2016	Stewart's Drain
185.	9/20/2016	Goat Canyon
186.	9/20/2016	Smuggler's Gulch
187.	9/20/2016	Canyon del Sol
188.	9/20/2016	Silva Drain
189.	9/20/2016	Stewart's Drain
190.	7/7/2016	Silva Drain
191.	5/8/2016	Goat Canyon
192.	5/8/2016	Smuggler's Gulch
193.	5/8/2016	Canyon del Sol
194.	5/8/2016	Silva Drain
195.	5/8/2016	Stewart's Drain
196.	5/7/2016	Goat Canyon
197.	5/7/2016	Smuggler's Gulch
198.	5/7/2016	Canyon del Sol
199.	5/7/2016	Silva Drain
200.	5/7/2016	Stewart's Drain
201.	5/6/2016	Goat Canyon
202.	5/6/2016	Smuggler's Gulch
203.	5/6/2016	Canyon del Sol
204.	5/6/2016	Silva Drain
205.	5/6/2016	Stewart's Drain
206.	4/10/2016	Goat Canyon
207.	4/10/2016	Smuggler's Gulch
208.	4/10/2016	Canyon del Sol
209.	4/10/2016	Silva Drain
210.	4/10/2016	Stewart's Drain
211.	4/8/2016	Goat Canyon
212.	4/8/2016	Smuggler's Gulch
213.	4/7/2016	Goat Canyon
214.	4/7/2016	Smuggler's Gulch
215.	4/7/2016	Silva Drain

Exhibit D

Other Canyon Collector Overflows		
#	**Date**	**Canyon Collector**
216.	4/7/2016	Stewart's Drain
217.	3/12/2016	Goat Canyon
218.	3/12/2016	Smuggler's Gulch
219.	3/12/2016	Canyon del Sol
220.	3/12/2016	Silva Drain
221.	3/12/2016	Stewart's Drain
222.	3/9/2016	Goat Canyon
223.	3/8/2016	Goat Canyon
224.	3/8/2016	Smuggler's Gulch
225.	3/8/2016	Canyon del Sol
226.	3/8/2016	Silva Drain
227.	3/8/2016	Stewart's Drain
228.	3/7/2016	Goat Canyon
229.	3/7/2016	Smuggler's Gulch
230.	3/7/2016	Canyon del Sol
231.	3/7/2016	Silva Drain
232.	3/7/2016	Stewart's Drain
233.	3/6/2016	Goat Canyon
234.	3/6/2016	Smuggler's Gulch
235.	3/6/2016	Canyon del Sol
236.	3/6/2016	Silva Drain
237.	3/6/2016	Stewart's Drain
238.	2/2/2016	Goat Canyon
239.	2/1/2016	Goat Canyon
240.	2/1/2016	Smuggler's Gulch
241.	2/1/2016	Canyon del Sol
242.	2/1/2016	Silva Drain
243.	2/1/2016	Stewart's Drain
244.	1/31/2016	Canyon del Sol
245.	1/31/2016	Silva Drain
246.	1/31/2016	Stewart's Drain
247.	1/29/2016	Stewart's Drain
248.	1/24/2016	Canyon del Sol
249.	1/24/2016	Stewart's Drain
250.	1/16/2016	Goat Canyon
251.	1/10/2016	Goat Canyon
252.	1/10/2016	Smuggler's Gulch
253.	1/9/2016	Goat Canyon
254.	1/9/2016	Smuggler's Gulch
255.	1/9/2016	Canyon del Sol
256.	1/9/2016	Silva Drain
257.	1/9/2016	Stewart's Drain
258.	1/8/2016	Goat Canyon

Exhibit D

Other Canyon Collector Overflows		
#	**Date**	**Canyon Collector**
259.	1/8/2016	Smuggler's Gulch
260.	1/8/2016	Canyon del Sol
261.	1/8/2016	Silva Drain
262.	1/8/2016	Stewart's Drain
263.	1/7/2016	Goat Canyon
264.	1/7/2016	Smuggler's Gulch
265.	1/7/2016	Canyon del Sol
266.	1/7/2016	Silva Drain
267.	1/7/2016	Stewart's Drain
268.	1/6/2016	Goat Canyon
269.	1/6/2016	Smuggler's Gulch
270.	1/6/2016	Canyon del Sol
271.	1/6/2016	Silva Drain
272.	1/6/2016	Stewart's Drain
273.	1/5/2016	Goat Canyon
274.	1/5/2016	Smuggler's Gulch
275.	1/5/2016	Canyon del Sol
276.	1/5/2016	Silva Drain
277.	1/5/2016	Stewart's Drain
278.	1/4/2016	Goat Canyon
279.	1/4/2016	Smuggler's Gulch
280.	1/4/2016	Canyon del Sol
281.	1/4/2016	Silva Drain
282.	1/4/2016	Stewart's Drain
283.	12/29/2015	Goat Canyon
284.	12/29/2015	Smuggler's Gulch
285.	12/29/2015	Stewart's Drain
286.	12/28/2015	Goat Canyon
287.	12/23/2015	Goat Canyon
288.	12/23/2015	Smuggler's Gulch
289.	12/23/2015	Canyon del Sol
290.	12/23/2015	Silva Drain
291.	12/23/2015	Stewart's Drain
292.	12/22/2015	Goat Canyon
293.	12/22/2015	Smuggler's Gulch
294.	12/22/2015	Canyon del Sol
295.	12/22/2015	Silva Drain
296.	12/22/2015	Stewart's Drain
297.	12/20/2015	Goat Canyon
298.	12/20/2015	Smuggler's Gulch
299.	12/19/2015	Goat Canyon
300.	12/19/2015	Smuggler's Gulch
301.	12/14/2015	Goat Canyon

Exhibit D

Other Canyon Collector Overflows		
#	**Date**	**Canyon Collector**
302.	12/14/2015	Smuggler's Gulch
303.	12/14/2015	Canyon del Sol
304.	12/14/2015	Silva Drain
305.	12/14/2015	Stewart's Drain
306.	11/28/2015	Goat Canyon
307.	11/28/2015	Smuggler's Gulch
308.	11/28/2015	Canyon del Sol
309.	11/28/2015	Silva Drain
310.	11/28/2015	Stewart's Drain
311.	11/27/2015	Goat Canyon
312.	11/27/2015	Smuggler's Gulch
313.	11/16/2015	Goat Canyon
314.	11/15/2015	Goat Canyon
315.	11/15/2015	Smuggler's Gulch
316.	11/15/2015	Canyon del Sol
317.	11/15/2015	Stewart's Drain
318.	11/10/2015	Goat Canyon
319.	11/10/2015	Smuggler's Gulch
320.	11/4/2015	Canyon del Sol
321.	11/4/2015	Stewart's Drain
322.	11/1/2015	Goat Canyon
323.	10/6/2015	Goat Canyon
324.	10/6/2015	Smuggler's Gulch
325.	10/6/2015	Canyon del Sol
326.	10/6/2015	Silva Drain
327.	10/6/2015	Stewart's Drain
328.	10/5/2015	Goat Canyon
329.	10/5/2015	Smuggler's Gulch
330.	10/5/2015	Canyon del Sol
331.	10/5/2015	Silva Drain
332.	10/5/2015	Stewart's Drain
333.	9/17/2015	Goat Canyon
334.	9/17/2015	Smuggler's Gulch
335.	9/16/2015	Goat Canyon
336.	9/16/2015	Smuggler's Gulch
337.	9/16/2015	Canyon del Sol
338.	9/16/2015	Silva Drain
339.	9/16/2015	Stewart's Drain
340.	9/15/2015	Goat Canyon
341.	9/15/2015	Smuggler's Gulch
342.	9/15/2015	Canyon del Sol
343.	9/15/2015	Silva Drain
344.	9/15/2015	Stewart's Drain

Exhibit D

Other Canyon Collector Overflows		
#	**Date**	**Canyon Collector**
345.	8/30/2015	Goat Canyon

EXHIBIT E

Exhibit E

Certain Health Hazards of Subject Wastewater Discharges[1]	
Waste Material	**Human Health Impacts**
Aldrin/dieldrin	Long term exposure can result in headaches, dizziness, irritability, vomiting, or uncontrollable muscle movements. Some sensitive people seem to develop a condition in which Aldrin or dieldrin causes the body to destroy its own blood cells. EPA has determined that Aldrin and dieldrin are probable human carcinogens. Animal studies show that these substances can cause changes to the nervous system, reproductive system, kidneys, and liver and reduce the ability to fight infection. Acute exposure can cause convulsions and death.
DDT	Ingestion, inhalation and topical exposure affects the nervous system, causing excitability, tremors, seizures, sweating, headache, nausea, vomiting, and dizziness. People exposed for a long time to small amounts of DDT had some changes in the levels of liver enzymes in the blood. Studies have showed reductions in the duration of lactation and increased chance of having a pre-term baby.
Benzene	Acute exposure can result in death. Lower levels can cause drowsiness, dizziness, rapid heart rate, headaches, tremors, confusion, and unconsciousness. Ingestion can cause vomiting, irritation of the stomach, dizziness, sleepiness, convulsions, rapid heart rate, coma, and death. Topical exposure can cause redness and sores. Benzene causes problems in the tissues that form blood cells, especially the bone marrow. These effects can disrupt normal blood production and cause a decrease in important blood components, anemia, excessive bleeding, and leukemia. Reproductive hazards include irregular menstruation, decreased ovary size, low birth weight, and bone damage in fetuses.
Toluene	Incoordination, cognitive impairment, and vision and hearing loss may become permanent with repeated exposure. Exposure during pregnancy may lead to retardation of mental abilities and growth in children. Other health effects of potential concern may include immune, kidney, liver, and reproductive effects. Reproductive effects include spontaneous abortion.
Arsenic	Large oral doses in water cause death. Other effects include decreased production of red and white blood cells, which may cause fatigue, abnormal heart rhythm, blood-vessel damage resulting in bruising, and impaired nerve function causing a “pins and needles” sensation in your hands and feet. Skin changes include darkened skin and the appearance of small “corns” or “warts” on the palms, soles, and torso, and are often associated with changes in the blood vessels of the skin. Arsenic is a known carcinogen, and may cause skin, liver, bladder, and lung cancers.
Antimony	Antimony in drinking water can cause vomiting and abdominal pain. Stomach ulcers have been seen in animals exposed to antimony in drinking water for several months. Antimony can also cause eye irritation if it gets in the eye. Lung

[1] All information from the Agency for Toxic Substances and Disease Registry, U.S. Center for Disease Control, Toxic Substances Portal – Public Health Statements, available at https://www.atsdr.cdc.gov/substances/index.asp

Exhibit E

Certain Health Hazards of Subject Wastewater Discharges[1]	
Waste Material	**Human Health Impacts**
	cancer has been observed in some studies of workers, and mice breathing high concentrations of antimony.
Lead	Long-term exposure of adults to lead at work has resulted in decreased performance in some tests that measure functions of the nervous system. Lead exposure may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people. Lead exposure may also cause anemia. At high levels of exposure, lead can severely damage the brain and kidneys in adults or children and ultimately cause death. In pregnant women, high levels of exposure to lead may cause miscarriage. High-level exposure in men can damage the organs responsible for sperm production. It is probably carcinogenic to humans.
Cadmium	Eating food or drinking water with very high cadmium levels severely irritates the stomach, leading to vomiting and diarrhea, and sometimes death. Eating lower levels of cadmium over a long period of time can lead to a build-up of cadmium in the kidneys. If the build-up of cadmium is high enough, it will damage the kidneys. Exposure to lower levels of cadmium for a long time can also cause bones to become fragile and break easily.
Thallium	Thallium affects the nervous system, lung, heart, liver, and kidney if large amounts are eaten or drunk for short periods of time. Temporary hair loss, vomiting, and diarrhea can also occur and death may result after exposure to large amounts of thallium for short periods. Thallium can be fatal from a dose as low as 1 gram.
Mercury	Exposure to mercury can cause permanent brain damage, with symptoms such as personality changes (irritability, shyness, nervousness), tremors, changes in vision (constriction (or narrowing) of the visual field), deafness, muscle incoordination, loss of sensation, and difficulties with memory. Mercury damages the kidneys, as well as the stomach and intestines, producing symptoms of nausea, diarrhea, or severe ulcers.
Heptachlor	Studies have shown a number of harmful health effects when animals were fed heptachlor. The effects observed in animals include damage to the liver, excitability, and decreases in fertility. Animals fed heptachlor throughout their lifetime had more liver tumors than animals that ate food without heptachlor. EPA and the International Agency for Research on Cancer have classified heptachlor as a possible human carcinogen.
Phenol	Ingestion of liquid products containing concentrated phenol can cause serious gastrointestinal damage and even death. Application of concentrated phenol to the skin can cause severe skin damage. Short-term exposure to high levels of phenol has caused irritation of the respiratory tract and muscle twitching in animals. Longer-term exposure to high levels of phenol caused damaged to the heart, kidneys, liver, and lungs in animals.