



May 15, 2018

Acting Commissioner Jose A. Nuñez
United States Acting Commissioner
International Boundary and Water Commission
United States Section
4171 North Mesa, Suite C-100
El Paso, Texas 79902-1441

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SUBJECT: Sixty-Day Notice of Intent to Sue for Violations of the Federal Water Pollution Control Act

Dear Acting Commissioner Nuñez:

The Surfrider Foundation ("Surfrider"), on behalf of our San Diego County Chapter, hereby provides this notice of its intent to sue the United States Section of the International Boundary and Water Commission ("USIBWC") for violations of the Federal Water Pollution Control Act (hereafter referred to as "the Clean Water Act" or "CWA"), 33 U.S.C. §1251 *et seq.*; and violations of the National Pollution Discharge Elimination System ("NPDES") permit it holds resulting from the operations and actions of the USIBWC in the Tijuana River Valley. As a grassroots, citizen-based public interest organization, Surfrider provides this notice pursuant to sections 505(a)(1) and 505(b)(1) of the CWA 33 U.S.C. § 1365(a)(1) and (b)(1) and its implementing regulations, 40 C.F.R. Part 135, Subpart A.

Surfrider is a "citizen" within the meaning of 33 U.S.C. § 1365(g). Surfrider is a grassroots, non-profit environmental organization dedicated to the protection and enjoyment of our ocean, waves and beaches. Surfrider's members and supporters, particularly of its San Diego County Chapter ("Chapter"), live and recreate along the coast of Southern California. As part of its mission, Surfrider is committed to addressing the renegade flows of raw untreated sewage, chemical contamination and plastics pollution that enter the Pacific Ocean through the Tijuana River Valley. Surfrider's membership represents 1680 residents of San Diego County, including residents of Imperial Beach, the city most affected by the abovementioned contamination.¹ Surfrider members include residents of Imperial Beach and Coronado, home to two beaches affected by transboundary contamination. These residents are dismayed that they and their families are unable to recreate on the beaches that are only blocks away from their homes.

¹ Like several other U.S. cities near the river, Imperial Beach has sued the federal government or federal government entities, e.g. USIBWC, for taking too little action, representing its public municipal interests. As an environmental non-profit organization, Surfrider Foundation files this citizen suit specifically to address the environmental harm to coastal resources, human health, and water quality concerns. These issues profoundly affect beachgoers and coastal recreationalists.



Surfrider members are also business owners in Imperial Beach. Closed beaches have a significant economic impact on beach businesses.

For the last decade, Surfrider has been active in advocating for clean water in the Tijuana River Valley. In 2010 Surfrider was an integral part in the formation of the Tijuana River Action Network (“Action Network”), a collaborative of grassroots-community groups and non-profits committed to address the conservation and restoration of the Tijuana River watershed through engaging outreach, education and advocating for natural resources. Surfrider was also a stakeholder involved in the drafting of Minute 320 in 2015, which USIBWC also participated in, and ultimately signed.

Surfrider has continued to be a leading member of the Action Network, and historically participated in month-long clean-up activities in the Tijuana River Valley on a yearly basis. Unfortunately, as of last year, because of health and safety concerns, such clean-up events in the Tijuana River Valley have not been able to take place.

Surfrider is also represented in the IBWC Citizens Forum (“Citizens Forum”), which facilitates the exchange of information between the USIBWC and members of the public about Commission activities in San Diego County, California. The intent of the Citizens Forum is to bring community members together enabling the free flow of information between the USIBWC, the public, environmentalists, government agencies and municipalities.

Additionally, Surfrider is an active participant in the Tijuana River Valley Recovery Team, which was formed through the leadership of the San Diego Water Board as a collaboration of more than 30 government agencies, property owners, academic and research institutions, and NGOs to present tangible solutions to the problems in the Tijuana River Valley. In the course of its participation, Surfrider has provided feedback for possible projects in the Tijuana River Valley.

The No B.S. campaign of Surfrider Foundation, San Diego County Chapter, has been designed to address the environmental issues affecting the wetland areas and beaches of the border region. Through No B.S. the Chapter has focused on raising awareness, outreach and education of this overwhelming problem. Additionally, the Chapter has formed a Network of like-minded organizations and collaborated with other NGOs and agencies on both sides of the border. Surfrider Foundation has been working through these networks to build collaboration to address the conservation and restoration of the Tijuana River Watershed.

Through the above roles and daily activities, Surfrider’s members are all too aware that the issue of clean water in the Tijuana River Valley is not being sufficiently addressed by the current level of USIBWC efforts. Surfrider values its partnerships in the Action Network, the Citizens Forum, and Tijuana River Valley Recovery Team, among others, but believes that the time has come for further action. Surfrider’s members and supporters have been adversely affected by the



USIBWC's discharges of pollutants to waters of California and the United States in violation of the Clean Water Act, as described below. Surfrider is therefore entitled to commence a civil action against USIBWC pursuant to 33 U.S.C. § 1365(a) subsequent to this sixty-day notice.

I. FACTUAL BACKGROUND

The Clean Water Act and California Porter-Cologne Water Quality Act (Porter-Cologne) both prohibit the point source discharge of pollutants to waters of the United States except as authorized by 33 U.S.C. § 1342. Clean Water Act, § 301, 33 U.S.C. § 1311, Cal. Water Code § 13376. The United States Environmental Protection Agency approved the State of California's plan to issue NPDES permits and enforce the provisions of the NPDES program to the State of California and the California State Water Resources Control Board as authorized by Chapter 5.5 of the California Water Code.²

The USIBWC is the federal government agency responsible for providing solutions to issues that arise from the application of United States – Mexico treaties relating to border sanitation and water quality. One of the areas under the purview of the USIBWC is the Tijuana River Watershed which covers around 1,750 square miles of land, three-fourths of which lies in Mexico. The remaining one-fourth lies in California. All effluent from this watershed drains into the Tijuana River Estuary located in the United States and empties into the Pacific Ocean in Imperial Beach, California. The Tijuana River flows north through highly urbanized areas in Mexico before entering into the threatened Tijuana Estuary³ and the Pacific Ocean through San Diego County in the United States. The lower 6 miles of the Tijuana River and the Tijuana River Estuary (collectively referred to as the Tijuana River Valley) are listed as impaired water bodies (referred to as "303(d) listed water bodies") pursuant to 33 U.S.C. § 1313 (Clean Water Act, § 303(d)) due to excessive levels of bacteria, heavy metals, trash, and sediment along with other pollutants. As a result of the presence of these pollutants, attainment of water quality objectives have not been met in the Tijuana River Valley and numerous designated beneficial uses are impaired, especially those associated with protection of aquatic life and human health.

² Clean Water Act, § 402, 33 U.S.C. § 1342(b), Cal. Water Code § 13370 *et seq.*

³ The Tijuana River Estuary is the largest functioning wetland in Southern California, providing habitat for at least six endangered species and many threatened species of wildlife and vegetation. It is an exceptionally rich and invaluable natural resource designated by the International Ramsar Convention as one of only 25 wetlands of international importance.

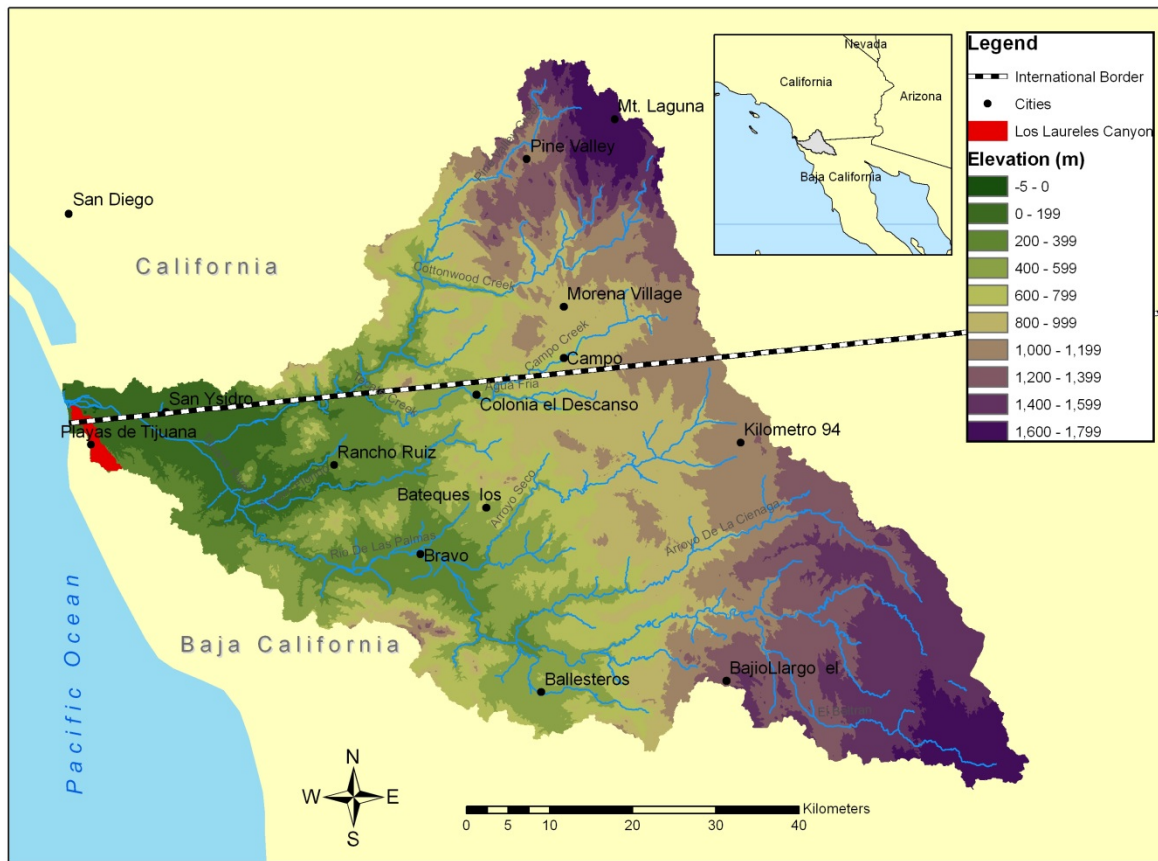


Figure 1: Tijuana Watershed Elevation Map⁴

Flows of untreated raw sewage flowing into the United States from the Tijuana River Watershed have been a looming problem since the mid-1930s. However, the problem has become dramatically worse over the last 30 years. Untreated sewage has increasingly plagued the Tijuana River Watershed along with increased plastics pollution and chemicals from unknown sources.

In 1990, both the governments of the United States and Mexico approved IBWC Minute 283 (Conceptual Plan for the International Solution to the Border Sanitation Problem in San Diego, California and Tijuana, Baja California). Minute 283 provided a general plan for the construction

⁴ https://www.waterboards.ca.gov/sandiego/water_issues/programs/tijuana_river_valley_strategy/image/MapTijuanaRiverWatershed.jpg



of a sewage collection and treatment plant, which ultimately resulted in the construction of the South Bay International Wastewater Treatment Plant (“SBIWTP”). The SBIWTP is owned and operated by the USIBWC. The SBIWTP captures up to 25 million gallons per day (MGD) of untreated raw sewage from Mexico and treats it to a secondary level before shipping it miles into the Pacific Ocean via the South Bay Ocean Outfall (“SBOO”). The SBIWTP has a capacity to treat up to 50 MGD of effluent to a secondary level.⁵

In 2012, the State of California, through the California Regional Water Quality Control Board, San Diego Region (“San Diego Water Board”) adopted Resolution No. R9-2012-0030 which endorsed a Recovery Strategy in the Tijuana River Valley that would address sewage, trash and sediment issues.

On June 26, 2014, the San Diego Water Board adopted Order No. R9-2014-0009 (NPDES No. CA0108928, as amended by Order No. R9-2014-0094)(“NPDES permit”) which serves as the waste discharge requirements and NPDES permit for the USIBWC’s discharges of secondary treated wastewater from SBIWTP to the Pacific Ocean via the SBOO.⁶ The NPDES permit defines “facilities” as SBIWTP, five canyon collectors, two pump stations, the South Bay Land Outfall (“SBLO”), SBOO, and other associated infrastructure.⁷

⁵ NPDES permit at F-6.

⁶ See Exhibit 1. Also available at

https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2014/R9-2014-0009_Amended.pdf.

⁷ NPDES permit at 3.

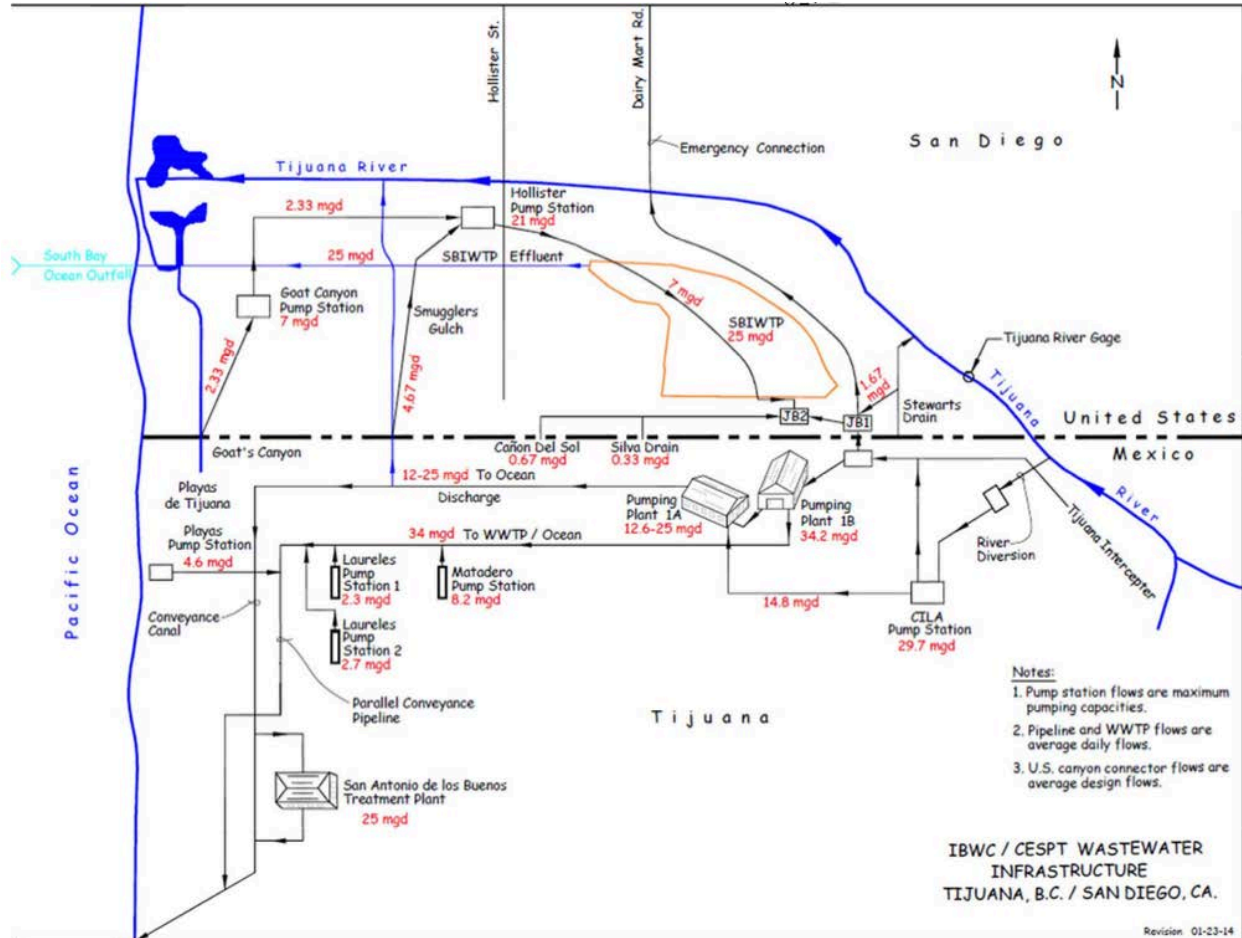


Figure 2: Wastewater Flow Schematic

In 2015, the San Diego Water Board endorsed a Five-Year Action Plan that presented tangible solutions to remediated flows of raw untreated sewage, trash and chemicals. Also in 2015, the USIBWC signed Minute 320 – General Framework for Binational Cooperation on Transboundary Issues in the Tijuana River Basin, which provided stakeholders on both sides of the border the opportunity to present solutions and projects to improve the Tijuana River Watershed. Minute 320 established a water quality work group whose mandate was to identify solutions to border contamination. Progress within this group has been slow and not lived up to the expectations originally envisioned during the Minute 320 drafting process, which Surfrider was an active participant in. The USIBWC was also privy to and a participant in all of these endeavors. Despite USIBWC participation and signature to these formal agreements, there has been no action or commitment to address any of these issues.

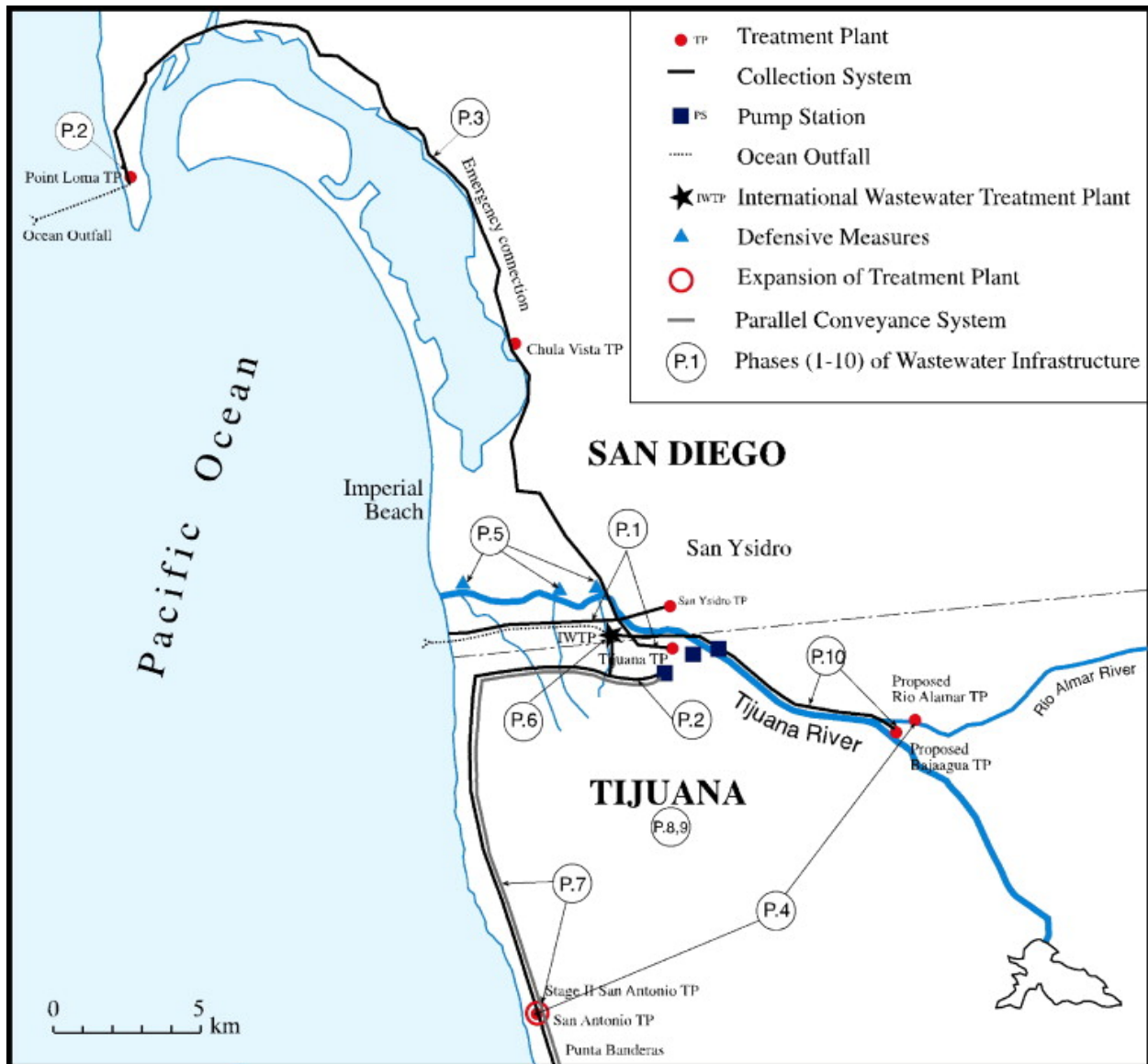


Figure 3: Tijuana River Valley Wastewater Infrastructure⁸

⁸ Itay Fischhendler, *Escaping the “polluter pays” trap: Financing wastewater treatment on the Tijuana–San Diego border*, 63:2-3 *Ecological Economics* 485-498 (2007), <https://www.sciencedirect.com/science/article/pii/S0921800906005982>. See also, <http://sunnycv.com/southbay/exhibits/sewage.html>.



A. CANYON COLLECTORS

The SBIWTP operates canyon collectors, concrete channels, and basins built to catch and divert dry weather flows from Mexico which drain north across the border to the Tijuana River. There are five canyon collector systems, which each include a detention basin designed to capture dry weather flows, a screened drain/inlet, and a gravity conveyance to SBIWTP, or pump stations. The canyon collectors are Smugglers Gulch Diversion Structure, Goat Canyon Diversion Structure, Canyon del Sol Collector, Stewart's Drain Canyon Collector, and Silva Drain Canyon Collector – All five canyon collectors are considered part of the treatment works of SBIWTP and are regulated by the NPDES permit.⁹ When properly operated and maintained and working appropriately, the collectors divert effluent to the SBIWTP for treatment and diversion to the SBOO into the Pacific Ocean and in accordance with the NPDES permit issued by the San Diego Water Board. However, on occasions when flow in the collectors exceeds the maximum design capacity¹⁰ or during rain events, the canyon collector overflow the structures and effluent continues flowing north, draining instead into the Tijuana River, directly into the Tijuana River Estuary, and the Pacific Ocean. Further, flow present in these collectors presents a health risk to personnel who patrol the United States – Mexico border. Additionally, the canyon collectors themselves have capacity constraints resulting in excess effluent flowing into the Tijuana River, Tijuana River Estuary, and towards the Pacific Ocean.

B. MAIN RIVER CHANNEL

The main river channel is a concrete lined channel that has altered the natural course of the Tijuana River. Under normal operations, wastewater travelling through the main river channel would be pumped to a Mexican treatment plant. However, when there are systems failures or power outages in Mexico, sewage, industrial waste, plastics, and other pollutants travel through the main river channel and into the Pacific Ocean. During rain events, when river flows exceed 22.8 MGD, the Mexican pump station is forced to shut down due to capacity issues and effluent is diverted into the main river channel and through the Tijuana River Valley.

⁹ NPDES permit at 3, 4.

¹⁰ The maximum design capacity for each canyon collector system is: Stewart's Drain. 1.67 MGD; Silva Drain, 0.33 MGD; Canyon del Sol, 0.67 MGD; Smugglers Gulch, 4.67 MGD; and Goat Canyon. 2.33 MGD.



Figure 4: Sewage, Chemicals, and Plastic Pollution Plague the Tijuana River Valley



II. CURRENT VIOLATIONS

A. DISCHARGES OF EFFLUENT FROM THE CANYON COLLECTORS IN VIOLATION OF THE NPDES PERMIT AND THE CWA

The NPDES permit issued by the San Diego Water Board allows the USIBWC to discharge “secondary treated wastewater” **only** into the South Bay Ocean Outfall, stating “the discharge of waste from the Facilities to a location other than Discharge Point No. 001, unless specifically regulated by this Order or separate W[aste] D[ischarge] R[equirement]’s, is prohibited.”¹¹

Further, the NPDES permit defines Flow Event Type A as “dry weather transboundary treated or untreated wastewater or other flow through a conveyance structure owned and operated by the United States Government into Smuggler Gulch, Goat Canyon, Canyon del Sol, Stewart’s Drain, or Silva Drain and not diverted into the canyon collector system for treatment at the Facility.”¹² Pursuant to its NPDES permit the USIBWC is required to self-report Flow Event Type A occurrences within 3 days.

The USIBWC self-reported the following Flow Event Type A occurrences as shown in Table A. Despite the significant number of ensuing beach closures,¹³ “Beaches Impacted” was consistently self-reported as “None.”

Table A: USIBWC Self- Reported Type A Flow Events¹⁴

Spill Flow Start - End Date	Estimated Spill Volume (Gallons)	Spill Location	Description of Spill Flow Destination	Spill Flow Failure Point	Spill Corrective Actions	Spill Flow Response Actions	Total Recovered Volume / Amount of Spill Recovered	Surface Water Impacted
2/25/2018 ~21:00 - 2/26/18 03:00	1,185,000	Tijuana River at the International Boundary	Tijuana River Channel	Pump Station CILA	None	None	0 / None	Tijuana River
2/20/2018 ~09:00 - 2/20/18 11:00	304,000	Tijuana River at the International Boundary	Tijuana River Channel	Pump Station CILA	None	None	0 / None	Tijuana River

¹¹ NPDES permit at 4.

¹² NPDES permit at 15.

¹³ See Section H.

¹⁴ The related spill reports can be found at:

https://www.waterboards.ca.gov/sandiego/water_issues/programs/tijuana_river_valley_strategy/spill_report.html and https://www.waterboards.ca.gov/sandiego/water_issues/tijuana_river_valley_strategy/spill_report.shtml.

Spill Flow Start - End Date	Estimated Spill Volume (Gallons)	Spill Location	Description of Spill Flow Destination	Spill Flow Failure Point	Spill Corrective Actions	Spill Flow Response Actions	Total Recovered Volume / Amount of Spill Recovered	Surface Water Impacted
2/10/2018 ~18:00 - 02/11/18 00:40	664,000	Tijuana River at the International Boundary	Tijuana River Channel	Pump Station CILA	None	None	0 / None	Tijuana River
2/9/2018 ~06:00 - 2/2/2018 15:20	561,000	Tijuana River at the International Boundary	Tijuana River Channel	Pump Station CILA	None	None	0 / None	Tijuana River
2/4/2018 ~08:30 - 2/04/18 13:00	100,000	Tijuana River at the International Boundary	Tijuana River Channel	Pump Station CILA	None	None	0 / None	Tijuana River
1/29/2018 ~15:00 - 1/29/2018 15:20	208,000	Tijuana River at the International Boundary	Tijuana River Channel	Pump Station CILA	None	None	0 / None	Tijuana River
10/19/2017 06:15 - 10/19/2017 08:30	1,207,000	Canyon del Sol Collector at International Boundary	Tijuana River Channel	Canon del Sol at International Boundary	None	None	0 / None	Tijuana River
10/6/2017 21:45 - 10/7/2017 10:00	4,152,000	Canyon del Sol Collector at International Boundary	Tijuana River Channel	Canon del Sol at International Boundary	None	None	0 / None	Tijuana River
6/27/2017 07:30 - 6/27/2017 20:15	5,500,000	Canyon del Sol Collector	Tijuana River Channel	unk	repaired pipeline	[no answer]	0 / None	Tijuana River
5/24/2017 undetermined	3,800	Stewart's Drain Canyon Collector	Tijuana River Channel	[no answer]	[no answer]	Increased flow to the SBIWTP	0 / None	Tijuana River

Spill Flow Start - End Date	Estimated Spill Volume (Gallons)	Spill Location	Description of Spill Flow Destination	Spill Flow Failure Point	Spill Corrective Actions	Spill Flow Response Actions	Total Recovered Volume / Amount of Spill Recovered	Surface Water Impacted
5/21/2017	1,560	Stewart's Drain Canyon Collector	Tijuana River Channel	[no answer]	PB1 Station in Mexico was shutoff and the air/vac relief valve was repaired	Increased flow to the SBIWTP during the PB1 Shutdown	0 / None	Tijuana River
4/30/2017 16:30 – 5/1/2017 13:00 ¹⁵	645,000	Goat Canyon at the International Border	Goat Canyon Sed Basins, Border Field Park Access Rd	Goat Canyon	None	None	0 / None	None
4/24/2017 12:35 - 4/24/17 12:45	12,850	Stewart's Drain Canyon Collector	Tijuana River Channel	[no answer]	Electricity to PB-1 pump station was restored.	Increased flow into the International Treatment Plant	0 / None	Tijuana River
3/1/2017 Est 08:00 - 3/1/2017 12:30 ¹⁶	145,000	Goat Canyon at the International Border	Goat Canyon Sediment Basins	Los Laureles Canyon, Tijuana Near Las Laureles II Pump Station	None, diverted to SBIWTP at 1230 3/1/2017	None	0 / None	Tijuana River

¹⁵ Based on the description of the event self-reported by USIBWC and the definitions in the NPDES permit, Surfrider contends that USIBWC misclassified this flow event as Type B rather than Type A.

¹⁶ Based on the description of the event self-reported by USIBWC and the definitions in the NPDES permit, Surfrider contends that USIBWC misclassified this flow event as Type B rather than Type A.

Spill Flow Start - End Date	Estimated Spill Volume (Gallons)	Spill Location	Description of Spill Flow Destination	Spill Flow Failure Point	Spill Corrective Actions	Spill Flow Response Actions	Total Recovered Volume / Amount of Spill Recovered	Surface Water Impacted
11/29/16 12:30 - 11/29/16 14:00 ¹⁷	200,000	Goat Canyon at the International Border	Goat Canyon Diversion and upper sed basin	Goat Canyon	None	None	0 / None	None
9/5/2016 undetermined [between 09:00 - 13:28]	390	Canyon del Sol Collector	Tijuana River Channel	[no answer]	Cleaned screen	Advise CESPT to clean debris (blankets, clothes, rags from canyon)	0 / None	Tijuana River
1/28/2016 15:00 - 1/28/16 15:20	2,238	Stewart's Drain Canyon Collector	Tijuana River Channel	[no answer]	[no answer]	[no answer]	0 / None	Tijuana River
4/19/2015	2,000	Canyon del Sol Collector	<i>The data for this spill is missing from the hyperlinked spill reports.</i>					

The total volume of the above Type A spills is at least 14,893,838 gallons.

Each occurrence listed above is a separate violation of Discharge Prohibition III.A. of the NPDES permit and Clean Water Act § 402. Each event resulted in a prohibited discharge of waste from the USIBWC's facilities that was not at the authorized discharge location, Discharge Point No. 001. Discharges of waste from these Flow Event Type A occurrences to surface waters of the United States, e.g., reaching the Tijuana River, Tijuana River Estuary, and/or the Pacific Ocean, are separate violations of Clean Water Act § 301 and California Water Code § 13376 "and therefore are subject to third party lawsuits."¹⁸

In addition, the canyon collector Flow Event Type A occurrences listed above in Table A violate Discharge Prohibition III.C. of the NPDES permit and Clean Water Act § 402 as prohibited

¹⁷ Based on the description of the event self-reported by USIBWC and the definitions in the NPDES permit, Surfrider contends that USIBWC misclassified this flow event as Type B rather than Type A.

¹⁸ NPDES permit, Attachment F at F-16-F17.



discharges of waste to land pursuant to Basin Plan Prohibition II.2., because those discharges of waste from the canyon collectors went to land and were not otherwise authorized by the San Diego Water Board pursuant to California Water Code § 13264.¹⁹

B. DISCHARGES FROM THE MAIN RIVER CHANNEL IN VIOLATION OF THE CWA

The USIBWC is violating the Clean Water Act, 33 U.S.C. §1311(a) by discharging wastewater and other pollutants from the concrete main river channel into the Tijuana River Valley. USIBWC spill reports to the San Diego Water Board demonstrate routine and substantial discharges from USIBWC's flood control conveyance into the unimproved Tijuana River Valley. USIBWC does not hold a NPDES permit for discharges of pollutants from its flood control infrastructure. Therefore all discharges from the flood control conveyance, including those listed in Table B, constitute unpermitted discharges of pollutants in violation of 33 U.S.C. § 1311(a). By maintaining jurisdiction over its flood control conveyance, USIBWC is the discharger responsible for such violations.

Table B describes dry-weather discharges from the flood control conveyance based on USIBWC self-reporting to the San Diego Water Board.²⁰ Other discharges occur during almost every single wet weather event, but USIBWC does not report wet-weather discharges to the San Diego Water Board. Despite such lack of wet-weather discharge reporting, the available dry-weather discharge data demonstrates routine sewage-filled flows that, coupled with their extremely large volume, demonstrate very serious lack of pollution-control infrastructure.

The USIBWC self-reported the following Flow Event Type B occurrences as shown in Table B. Despite the significant number of ensuing beach closures,²¹ "Beaches Impacted" was consistently self-reported as "None."

¹⁹ NPDES permit, Attachment G at G-1.

²⁰ See San Diego Regional Water Quality Control Board, International Boundary and Water Commission Spill Reports, https://www.waterboards.ca.gov/sandiego/water_issues/programs/tijuana_river_valley_strategy/spill_report.html

²¹ See Section H.

Table B: USIBWC Self- Reported Type B Flow Events²²

Spill Flow Start - End Date	Estimated Spill Volume (Gallons)	Spill Location	Description of Spill Flow Destination	Spill Flow Failure Point	Spill Corrective Actions	Spill Flow Response Actions	Total Recovered Volume / Amount of Spill Recovered	Surface Water Impacted
12/11/2017 02:45 - 12/11/2017 04:30	223,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
10/22/2017 01:15 - 10/22/2017 04:00	228,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
10/11/2017 23:00 - 10/11/2017 24:00	80,800	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
9/19/2017 03:45 - 9/19/2017 04:30	38,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
9/12/2017 23:45 - 9/13/2017 01:00	192,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
9/9/2017 - 9/10/2017	3,900,000	<i>The data for this spill is missing from the hyperlinked spill reports; the hyperlinked spill report for this spill is for the 9/12/2017 spill.</i>						
8/17/2017 00:15 - 8/17/2017 02:45	411,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River

²² The related spill reports can be found at:
https://www.waterboards.ca.gov/sandiego/water_issues/programs/tijuana_river_valley_strategy/spill_report.html
and https://www.waterboards.ca.gov/sandiego/water_issues/tijuana_river_valley_strategy/spill_report.shtml.



Spill Flow Start - End Date	Estimated Spill Volume (Gallons)	Spill Location	Description of Spill Flow Destination	Spill Flow Failure Point	Spill Corrective Actions	Spill Flow Response Actions	Total Recovered Volume / Amount of Spill Recovered	Surface Water Impacted
8/7/2017 21:15 - 8/7/2017 24:00	311,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
7/31/2017 01:30 - 7/31/2017 03:45	1,720,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
6/20/2017 0:00 - 6/21/2017 12:00	100,000	Yogurt Canyon/Border Field State Park	Border field State park access road	Playas de Tijuana	None	None	0 / None	None
6/12/2017 00:15 - 6/12/2017 1:45	66,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
6/10/2017 20:45 - 6/11/2017 00:45	161,700	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
6/9/2017 22:15 - 6/9/2017 22:45	42,800	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
5/25/2017 21:30 - 5/25/2017 22:15	335,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	Power restored at 2230 05/25/17	None	0 / None	Tijuana River
5/21/2017 13:15 - 5/21/2017:	400,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	Power restored at 1415 05/21/17	None	0 / None	Tijuana River



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4/30/2017 16:30 - 5/1/2017 13:00 ²³	645,000	Goat Canyon at the International Border	Goat Canyon Sed Basins, Border Field Park Access Rd	Goat Canyon	None	None	0 / None	None
4/24/2017 12:15 - 4/24/2017 12:35	143,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	Power restored at 1235 04/24/17	None	0 / None	None
3/1/2017 Est 08:00 - 3/1/2017 12:30 ²⁴	145,000	Goat Canyon at the International Border	Goat Canyon Sediment Basins	Los Laureles Canyon, Tijuana Near Las Laureles II Pump Station	None, diverted to SBIWTP at 1230 3/1/2017	None	0 / None	Tijuana River
2/24/2017	256,000,000	The data for this spill is missing from the hyperlinked spill reports.						

²³ Based on the description of the event self-reported by USIBWC and the definitions in the NPDES permit, Surfrider contends that USIBWC misclassified this flow event as Type B rather than Type A.

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Est 2/6/2017 unk[nown] - Est 2/23/2017 unk[nown]	Est 143,000,000	Tijuana River at the International Boundary	Tijuana River Channel	Main collector, central Tijuana near confluence of Rios Alamar and Tijuana	[no answer]	None	0 / None	Tijuana River
11/29/16 12:30 - 11/29/16 14:00 ²⁵	200,000	Goat Canyon at the International Border	Goat Canyon Diversion and upper sediment basin	Goat Canyon	None	None	0 / None	None

²⁵ Based on the description of the event self-reported by USIBWC and the definitions in the NPDES permit, Surfrider contends that USIBWC misclassified this flow event as Type B rather than Type A.

Spill Flow Start - End Date	Estimated Spill Volume (Gallons)	Spill Location	Description of Spill Flow Destination	Spill Flow Failure Point	Spill Corrective Actions	Spill Flow Response Actions	Total Recovered Volume / Amount of Spill Recovered	Surface Water Impacted
10/26/2016 [no answer] - 12/15/2016 [no answer]	920,000	Yogurt Canyon / Border Field State Park	Access road Border Field State Park	[no answer]	Mexico reported on 12/15/16 that flow from collapsed pipe had been stopped and that collapsed pipe had been repaired. Site was checked on 12/19/16 and small amount of flow was clear, probably from runoff from rain event on 12/17 and 12/18/16	IBWC used VAC truck to pump approx. 45,000 gallons to SBIWTP	45,000 / approx 45,000 gallons	None
9/8/2016 03:00 - 9/8/2016 15:15	690,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	[no answer]	None	0 / None	Tijuana River
7/4/2016 11:00 - 7/4/2016 11:15	33,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	Wiring was repaired	None	0 / None	Tijuana River
7/2/2016 08:15 - 7/2/2016 11:30	1,320,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	Wiring was repaired	None	0 / None	Tijuana River

Spill Flow Start - End Date	Estimated Spill Volume (Gallons)	Spill Location	Description of Spill Flow Destination	Spill Flow Failure Point	Spill Corrective Actions	Spill Flow Response Actions	Total Recovered Volume / Amount of Spill Recovered	Surface Water Impacted
6/30/2016 00:00 - 6/30/2016 01:00	440,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	Ruptured line was repaired	None	0 / None	Tijuana River
4/5/2016 08:00 - 4/5/2016 11:45	4,860,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	Emergency genset put in operation, power restored	[no answer]	0 / None	Tijuana River
2/12/2016 21:15 - 2/13/2016 03:45	370,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
1/29/2016 00:15 - 1/29/2016 08:30	690,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
1/26/2016 22:15 - 1/27/2016 09:45	480,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
1/25/2016 21:30 - 1/26/2016 12:00	940,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
1/24/2016 18:00 - 1/25/2016 10:00	1,440,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
1/23/2016 20:45 - 1/24/2016 12:15	2,170,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
1/23/2016 01:00 - 1/23/2016 12:00	720,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River



Spill Flow Start - End Date	Estimated Spill Volume (Gallons)	Spill Location	Description of Spill Flow Destination	Spill Flow Failure Point	Spill Corrective Actions	Spill Flow Response Actions	Total Recovered Volume / Amount of Spill Recovered	Surface Water Impacted
1/21/2016 19:15 - 1/22/2016 12:45	1,600,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
1/20/2016 18:30 - 1/21/2016 12:45	2,090,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
1/19/2016 19:45 - 1/20/2016 12:45	2,080,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	None	None	0 / None	Tijuana River
1/17/2016 17:45 - 1/19/2016 11:00	8,450,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	CESPT repaired line break 1/19/16	CESPT repaired line break 1/19/16	0 / None	Tijuana River
1/16/2016 18:30 - 1/17/2016 11:45	6,620,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	CESPT repaired line break 1/17/16	CESPT repaired line break 1/17/16	0 / None	Tijuana River
12/11/2015 09:15 - 12/11/2015 17:15	2,060,000	Tijuana River at the International Boundary	Tijuana River Channel	CILA Pump Station	CESPT cleaned screen intake by 1030 hours 12/11/15	Advised Mexico of flow, screen cleaned by CESPT	0 / None	Tijuana River
11/19/2015 07:15 - 11/19/2015 15:15	1,310,000	Tijuana River at the International Boundary	Tijuana River Channel	Saenz Canyon, approx. 1 km downstream of Rodriguez Dam, Tijuana	CESPT repaired water main by 1030 hours 11/20/15	Advised Mexico, Mexico repaired water main	0 / None	Tijuana River
10/17/2015 19:15 - 10/18/2015 07:30	1,300,000	Tijuana River at the International Border	Tijuana River	CILA Pump Station	None	None	0 / None	Tijuana River

Spill Flow Start - End Date	Estimated Spill Volume (Gallons)	Spill Location	Description of Spill Flow Destination	Spill Flow Failure Point	Spill Corrective Actions	Spill Flow Response Actions	Total Recovered Volume / Amount of Spill Recovered	Surface Water Impacted
10/14/2015 05:30 - 10/14/2015 16:00	1,124,000	Tijuana River at the International Border	Tijuana River	CILA Pump Station	None	None	0 / None	Tijuana River
10/13/2015 01:30 - 10/13/2015 18:30	1,350,000	Tijuana River at the International Border	Tijuana River	CILA Pump Station	None	None	0 / None	Tijuana River
9/19/2015 19:00 - 9/22/2015 04:00	7,729,398	Tijuana River at the International Border	Tijuana River	CILA Pump Station	None	None	0 / None	Tijuana River
8/8/2015 22:30 - 8/9/2015 02:45	109,366	Tijuana River at the International Border	Tijuana River	CILA Pump Station	Mexico was requested to increase maintenance cleaning frequency.	None	0 / None	Tijuana River
8/6/2015 01:30 - 8/6/2015 08:00	437,465	Tijuana River at the International Border	Tijuana River	CILA Pump Station	Overflow did not reach the IBWC flow energy dissipator downstream of the river gage.	None	0 / None	Tijuana River
8/3/2015 01:35 - 8/3/2015 14:30	1,592,945	Tijuana River at the International Border	Tijuana River	CILA Pump Station	Overflow did not reach the IBWC flow energy dissipator downstream of the river gage.	None	0 / None	Tijuana River



Spill Flow Start - End Date	Estimated Spill Volume (Gallons)	Spill Location	Description of Spill Flow Destination	Spill Flow Failure Point	Spill Corrective Actions	Spill Flow Response Actions	Total Recovered Volume / Amount of Spill Recovered	Surface Water Impacted
8/2/2015 02:30 - 8/2/2015 17:45	2,165,930	Tijuana River at the International Border	Tijuana River	CILA Pump Station	Overflow did not reach the IBWC flow energy dissipator downstream of the river gage.	None	0 / None	Tijuana River
7/31/2015 22:45 - 8/1/2015 09:15	846,400	Tijuana River at the International Border	Tijuana River	CILA Pump Station	Overflow did not reach the IBWC flow energy dissipator downstream of the river gage.	None	0 / None	Tijuana River
7/25/2015 12:00 - 7/27/2015 18:00	556,000	Yogurt Canyon/Border Field State Park	Access road Border Field State Park	Yogurt Canyon	CESPT located and corrected flow problem	None	unknown amount - 2 vac trucks assisting in cleanup	None



Spill Flow Start - End Date	Estimated Spill Volume (Gallons)	Spill Location	Description of Spill Flow Destination	Spill Flow Failure Point	Spill Corrective Actions	Spill Flow Response Actions	Total Recovered Volume / Amount of Spill Recovered	Surface Water Impacted
6/17/2015 12:00 - 6/17/2015 13:00	47,600	Tijuana River at the International Border	Tijuana River	CILA Pump Station	Overflow did not reach the IBWC gage downstream of the international border, was absorbed by riverbed shortly after entering US.	None	0 / None	Tijuana River
2/14/2015 16:30 - 2/16/15 04:00	172,000	Tijuana River at the International Border	Tijuana River	CILA Pump Station	None	None	0 / None	Tijuana River
2/12/2015 12:00 - 2/12/2015 21:00	53,000	Tijuana River at the International Border	Tijuana River	CILA Pump Station	None	None	0 / None	Tijuana River
2/2015	Data for three other February 2015 spills is missing from the hyperlinked spill reports.							
1/2015	Data for ten spills is missing from the hyperlinked spill reports.							

The total volume of the above Type B spills is at least 464,119,404 gallons.

C. FAILURE TO IMPLEMENT A SPILL PREVENTION AND RESPONSE PLAN

Pursuant to the NPDES permit issued by the San Diego Water Board, USIBWC is subject to Special Studies, Technical Reports and Additional Monitoring Requirements with respect to



Flow Event Type A events.²⁶ Under this requirement, the USIBWC is required to create and implement a spill prevention and response plan that would include remedial measures and be made available for public comment. The USIBWC submitted a draft of the *Spill and Transboundary Wastewater Flow Event and Prevention and Response Plan* (Spill Prevention and Response Plan), on December 22, 2014. Subsequent to the public review process, the USIBWC submitted its revised Spill Prevention and Response Plan to the San Diego Water Board on July 13, 2015. Implementation of the Spill Prevention and Response Plan should have commenced prospectively from that date.

The USIBWC's Spill Prevention and Response Plan states that for Flow Event Type A occurrences, the USIBWC is identified as the "responsible party." Once the Flow Event Type A is over, the responsible party (i.e., USIBWC) must draft an appropriate cleanup strategy including the personnel and equipment needed to complete the cleanup, and appropriate disposal of all wastewater, debris, and other contaminants.. The Spill Prevention and Response Plan also outlines specific measures to contain and cleanup the results of Flow Event Type A occurrences. These measures include collection of solid, liquid, and other debris; removal of waste by vacuum truck; and cleanup of impacted storm drains. However, the Spill Prevention and Response Plan was never implemented and there is no evidence of its application or any clean-up effort after any spill event. As seen in Table A, USIBWC's spill reports repeatedly and consistently self-report "0" or "none" volume or spill recovered, "none" for "spill response actions," and "none" for "spill corrective actions."

D. FAILURE TO COMPLY WITH MONITORING REQUIREMENTS OF NPDES PERMIT

The NPDES permit Monitoring and Reporting Program (MRP) clearly and unambiguously requires USIBWC to monitor the flow where transboundary flows pass the canyon collector system (i.e. Flow Event Type A). Monitoring of flows during dry weather through the canyon collectors without diversion to SBIWTP for treatment is necessary most importantly to determine whether designated beneficial uses in the Tijuana River and Estuary are being affected and to provide warnings of possible public health hazards from contact and non-contact recreation.²⁷ This information is also important for developing a response plan and solution to overall water impairment.

On at least November 29, 2016, March 1, 2017, and April 30, 2017, transboundary flows past the canyon collector systems resulted in the USIBWC violating MRP Provision VII.B. by failing to collect required samples and to monitor for the specific parameters listed in Table E-10 of the

²⁶ NPDES permit at 20.

²⁷ NPDES permit, Attachment E, Provision VII.B., at E-33.



MRP. Each of these failures constitutes a separate violation of Clean Water Act § 402 and California Water Code § 13383.

E. POLLUTION, CONTAMINATION, AND NUISANCE

The NPDES permit incorporates Chapter 4 of the Water Quality Control Plan for the San Diego Basin into the terms of the permit as required conditions of compliance. These required conditions are necessary in order to achieve water quality objectives and maintain designated beneficial uses. Basin Plan Prohibition II.1. prohibits the discharge of waste to waters of California in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance as defined in Water Code § 13050.²⁸

“Pollution” means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either: the waters for beneficial uses or facilities which serve these beneficial uses.²⁹ Pollution may include “contamination” defined as an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to public health through poisoning or through the spread of disease. Contamination also includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.³⁰ “Nuisance” means anything which meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; and (3) occurs during, or as a result of, the treatment or disposal of wastes.³¹

The NPDES permit requires the USIBWC to, if transboundary flows pass the USIBWC’s canyon collector system, monitor the flow for the parameters described in Table E-10 of the MRP.³² The pollutants in Table E-10 were chosen based on their threat to contact water recreation and other designated beneficial uses. Moreover, the pollutant parameters in Table E-10 of the MRP are the same parameters causing impairment to 303(d) listed water bodies, the Tijuana River and Estuary. The monthly reports for the corresponding Flow Event Type A occurrences listed above

²⁸ NPDES permit, Attachment G at G-1 (Provision II.1.).

²⁹ Cal. Water Code § 13050(l).

³⁰ Cal. Water Code § 13050(k).

³¹ Cal. Water Code § 13050(m).

³² NPDES permit, Attachment E, Provision VII.B.3, at E-34 – E-36.



in Table A.³³ contain USIBWC's self-reported sampling results of the wastewater flowing through the canyon collectors.

Based on these sample results, USIBWC's discharges of waste to waters of California and the United States on each of the occurrences listed in Table A unreasonably affect the designated beneficial uses of the Tijuana River, Tijuana River Estuary, and the Pacific Ocean and further impair the quality of these waters to a degree which creates a hazard to public health. In addition, USIBWC's creation of this public health hazard resulted in a number of beach closures at Border Field State Park (extending north from the international border to Monument Road) and the Tijuana River Slough during corresponding time periods of these Flow Event Type A occurrences resulting in a creation of a nuisance. USIBWC's discharges of waste violate its NPDES permit.

F. GOAT CANYON PUMP STATION FAILURE SPILL

The NPDES permit defines "Facilities Spill Event" as a discharge of treated or untreated wastewater or other material to the environment that occurs from the USIBWC's facilities as defined above.³⁴ According to the NPDES permit, the Goat Canyon pump station is a facility.

On February 27, 2018, approximately 54,000 gallons of untreated sewage was spilled at the Goat Canyon pump station and into the Tijuana River. The USIBWC reported that the cause of the spill was a temporary power outage that placed the Programmable Logic Control in standby mode resulting in the loss of level control for the pump station.

This facility spill event on February 27, 2018 violates Discharge Prohibition III.A. of the NPDES permit and Clean Water Act § 402 as this facility spill event constitutes a prohibited discharge of waste from a facility other than the authorized discharge location, Discharge Point 001. Discharges of waste from this Facility Spill Event reaching the Tijuana River, Estuary, and/or the Pacific Ocean are violations of Clean Water Act § 301 and California Water Code § 13376.

G. RECEIVING WATER LIMIT EXCEEDANCES

The NPDES permit establishes receiving water limitations based on water quality objectives contained in the Basin Plan and Ocean Plan and states "the discharge of waste shall not cause or contribute to violation of these limitations in the Pacific Ocean."³⁵ Specific receiving water limitations are listed below:

³³ With the exception of November 29, 2016, April 30, 2017, May 21 and 24, 2017 where the USIBWC failed to monitor and collect samples for these Flow Event Type A occurrences.

³⁴ NPDES permit, Section VI.C.2.a.i.a., p. 17.

³⁵ NPDES permit, Section V.A.1., p. 11.



30-day Geometric Mean: Based on the geometric mean of the five most recent samples from each site.

- (1) Total coliform density shall not exceed 1000 CFU/100 mL;
- (2) Fecal coliform density shall not exceed 200 CFU/100 mL;
- (3) Enterococcus density shall not exceed 35 CFU/100 mL.

Single Sample Maximums:

- (1) Total coliform density shall not exceed 10,000 CFU/100 mL;
- (2) Fecal coliform density shall not exceed 400 CFU/100 mL;
- (3) Enterococcus density shall not exceed 104 CFU/100 mL;
- (4) Total coliform density shall not exceed 1,000 CFU/100 mL when the fecal coliform/total coliform ratio exceeds 0.1.

The NPDES permit MRP requires the USIBWC to conduct shoreline water quality monitoring at designated monitoring stations in the Pacific Ocean on a weekly basis³⁶. The USIBWC submits receiving water monitoring reports to the San Diego Water Board on a monthly basis with the submission of its Monthly Report. Based on self-reported data, Surfrider alleges that on at least one occasion, June 27, 2017, the Flow Event Type A occurrence from the USIBWC's facility at Canon del Sol caused or contributed to an exceedance of the single sample maximum standard for enterococcus at receiving water monitoring station, S-5 located at the Tijuana River Slough. The USIBWC also self-reported exceedances of receiving water limitations for bacteria during the months of July 2015, January 2016, September 2016, November 2016, March through June 2017, and October 2017 when Flow Event Type A occurrences occurred. These exceedances of receiving water limitations are separate violations of Clean Water Act § 402.

H. BEACH ACCESS AND CLOSURES

The Tijuana River Valley is a beautiful recreational space. However, as discussed above, spills and contamination have significantly impacted beach and shoreline access. Figures 5 and 6 demonstrate the impacts of water quality to the region in terms of beach closures, affecting not only public access and enjoyment of coastal resources, which are directly within Surfrider's mission, but also the coastal economy and tourism values supported by a healthy watershed.

Figure 5 shows the annual number of beach closures in South San Diego County from 2003-2017. Of the overall closures, a grossly disproportionate amount has been of beaches in and on the shoreline of the Tijuana River Valley, directly affected by USIBWC facilities.

³⁶ NPDES permit, Attachment B – Map of Surf Zone, Offshore, Trawl, and Rig Fishing Stations.

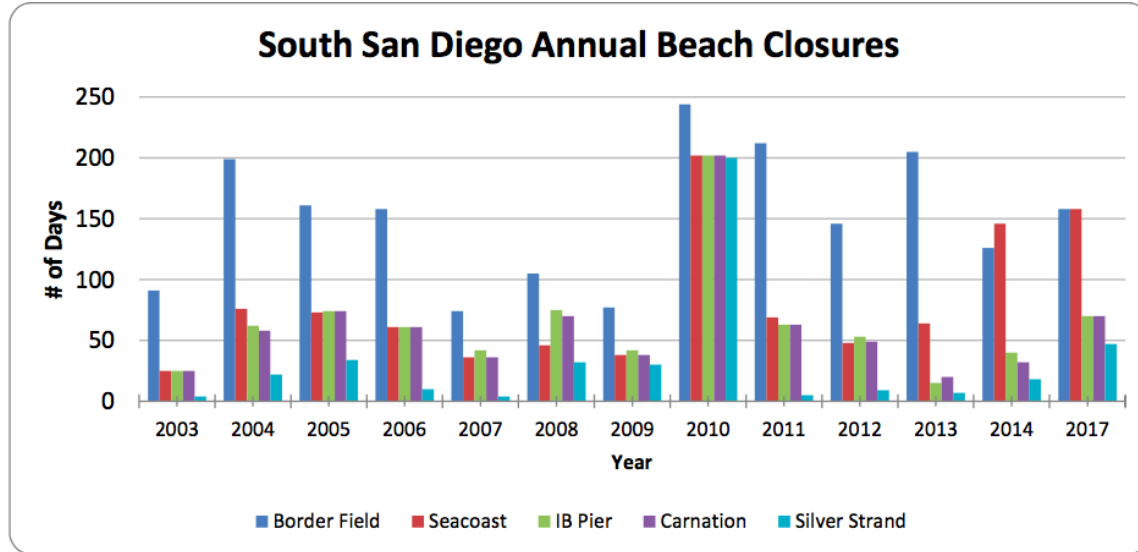


Figure 5³⁷

Beach closures in San Diego County

Selected sites, Jan. 1, 2006 - April 21, 2017

1. Tijuana Slough National Wildlife Refuge/Border Field State Park	1,414
2. Imperial Beach Pier/municipal beach	437
3. San Diego Bay region	141
4. Silver Strand	136
5. Coronado Municipal Beach	58
6. Ocean Beach	28
7. Carlsbad State Beach	22
8. Carlsbad Municipal Beach	22
9. Torrey Pines State Beach	24
10. Oceanside beaches	16
11. San Onofre State Beach	14
12. La Jolla beaches	10
13. Del Mar Beaches	10
14. Encinitas beaches	8
15. Cardiff State Beach	7

Source: San Diego County Department of Environmental Health



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Figure 6³⁸

³⁷ City of Imperial Beach

³⁸ <http://www.sandiegouniontribune.com/news/environment/sd-me-beach-closures-20170427-story.html>



The two beaches most affected by the contamination are the Tijuana Sloughs and Imperial Beach, which were closed for 167 and 64 days, respectively in 2017. Thus far, in 2018, the Tijuana Sloughs have been closed three times, for a total of 64 days and Imperial Beach has been closed three times, for a total of 10 days. The Silver Strand Shoreline has been closed twice, for a total of 7 days, and the Coronado Shoreline has been closed once, for two days.

Cumulatively, the days of beach sewage closures total 5 years out of the last 10, a 50% closure rate.³⁹ In February 2017 alone, over 143 million gallons of raw sewage were discharged into the Tijuana River. A February 2018 incident allowing an estimated 560,000 gallons of sewage-contaminated water to flow unhindered from a treatment facility in Tijuana forced beach closures and a precautionary advisory for the shoreline from the border to the northern boundary of the Tijuana Slough National Wildlife refuge after testing showed unsafe water quality.⁴⁰ These beach closures evidence steady, increasing USIBWC discharges of pollutants to California and United States waters, impacting residents, businesses, recreational activities, public safety, and natural habitats.

I. HEALTH AND SAFETY

Information available to Surfrider indicates that the discharge associated with USIBWC's industrial activities occur without adequate measures to prevent water exposure to pollutant sources, and without secondary containment or other adequate treatment measures to prevent polluted water from discharging from the USIBWC facilities. The pollutants associated with USIBWC facilities have and continue to disperse throughout the Tijuana River Valley, accumulating at the storm water discharge points. The resulting illegal discharges of polluted water impact Surfrider's members' use and enjoyment of the South County beaches, the Pacific Ocean and its tributaries by degrading the quality of the San Diego Bay, forcing beach closures, and by posing risks to human health and aquatic life. The Tijuana River Valley is also fertile and active farmland, and such prohibited discharges impact water quality and agricultural outputs, further posing risks to human health and safety.

Storm water sampling at the USIBWC facilities demonstrates that the facilities' storm water discharges contain concentrations of pollutants above the benchmark levels. These repeated and significant exceedances of Benchmark Levels demonstrate that the USIBWC has failed and continues to fail to develop and/or implement Best Management Practices to prevent the

³⁹ Thisisca.com, *A Toxic River Runs Through It: Tijuana River Valley*, <https://www.youtube.com/watch?v=VTYI3tFsU8Q>.

⁴⁰ City News Service, *Sewage-contaminated runoff prompts beach closure*, (Feb. 11, 2018, 8:30 PM) <http://www.sandiegouniontribune.com/news/public-safety/sd-me-sewage-spill-20180211-story.html>.



exposure of pollutants to storm water and to prevent discharges of polluted storm water from the USIBWC facilities, in violation of Effluent Limitations in Table 4 of the NPDES permit.⁴¹

As summarized in Table C and documented in USIBWC's Spill Reports to the San Diego Water Board, canyon collector discharges contain pollutants, hazardous wastes, and/or solid wastes including, *inter alia*, garbage and refuse; discarded solid, semisolid, and liquid materials from commercial, industrial, residential, and agricultural operations and activities; metals, including, but not limited to, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, and zinc; pesticides, including aldrin, dichlorodiphenyltrichloroethane (DDT), dieldrin, heptachlor, and lindane; solvents, including benzene, trichloroethene, and toluene; and many others.

Table C – Canyon Collectors Overflows with Spill Reports

Date	Location	Gallons (est.)	Pollutants Present ⁴²	Receiving Water
6/27/2017	Canyon del Sol	<5,500, 000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; Methylene phthalate; Di-n-butyl phthalate; asbestos structures; 2,3,7,8-TCDD 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; 1,2,3,4,5,6-hexachlorocyclohexane; 2,3,7,8-TCDD	Tijuana River
5/24/2017	Stewart's Drain	3,800	No samples recovered ⁴³	Tijuana River
5/21/2017	Stewart's Drain	1,560	No samples recovered ⁴⁴	Tijuana River

⁴¹ NPDES permit at 5.

⁴² As self-reported from sampling data attached to IBWC Monthly available on CIWQS, unless otherwise noted.

⁴³ IBWC, Monthly Spill Report for May 2017 (June 30, 2017).

⁴⁴ IBWC, Monthly Spill Report for May 2017 (June 30, 2017).

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-dichlorobenzene; 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-dinitrotoluene;	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 (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; pentrahydrochlorophenol; phenol; pyrene; 1,2,4-trichlorobenzene	Tijuana River
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Exposure to the pollutants, solid wastes, and hazardous wastes contained in canyon collector discharges presents a grave threat to human health. Table D describes the human health effects of exposure to a selection of the materials that USIBWC has reported are present in discharges from the canyon collectors. Further, many of the contaminants USIBWC is discharging to the Tijuana River Valley break down very slowly, if at all, and accumulate in the environment. Even after the wastewater discharge that initially deposited the materials (slowly) subsides, subsequent disruption of reservoirs by pollutants, hazardous wastes, and solid wastes leave long-lasting impact.



Table D – Certain Health Hazards of Subject Wastewater Discharges

Waste Material	Human Health Impacts⁴⁵
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
Ammonia	When swallowed, ammonia can cause burns in the mouth and throat. Skin exposure to ammonia causes burns and open sores as well as severe eye burns or blindness.
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.
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.
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,

⁴⁵ See Agency for Toxic Substances and Disease Registry, U.S. Center for Disease Control, *Toxic Substances Portal – Public Health Statements*, <https://www.atsdr.cdc.gov/substances/index.asp>.

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
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.
Dichlorobenzenes	Dichlorobenzenes can affect the skin, liver, eyes, renal system, and child development, particularly of the nervous system.
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.
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.
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.

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
Tetrachlorethane	Tetrachlorethane affects the liver and respiratory system. Lower amounts of tetrachlorethane in water can cause liver damage. Large amounts can cause shallow breathing, faint pulse, decreased blood pressure, and unconsciousness.
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.
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.
Zinc	Zinc affects the digestive system, the hematological system, and the respiratory system. Symptoms of high zinc exposure include stomach cramps, nausea, and vomiting.

Human occupants, business employees, and recreational users of the Tijuana River Valley are exposed to the above-discussed pollutants and contaminants through dermal absorption, inhalation of volatilized pollutants, inhalation of dust with adsorbed pollutants, and unintended ingestion of polluted or contaminated organisms. Even 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. One of the U.S. Border Patrol contractors conducting testing of the area even fell ill after his first day on site.⁴⁶

Surfrider members include residents and business owners in Imperial Beach who have fallen ill from such pollutants and wastes. For example, dozens have fallen ill from exposure to sewage-

⁴⁶ The Coronado Times, *Flesh Eating Bacterial Infection Extinguishes the Dreams of a Former Border Patrol Agent*, (Mar. 10, 2018) <https://coronadotimes.com/news/2018/03/10/flesh-eating-bacterial-infections-extinguishes-dreams-former-border-patrol-agent/>.



contamination,⁴⁷ including Imperial Beach Mayor Serge Dedina after surfing in contaminated waters,⁴⁸ Surfrider was forced to cancel our annual clean-up in the Tijuana River Valley in the fall of 2017 due to health and safety concerns, and the Chapter anticipates doing the same this year. Once these pollutants and solid and/or hazardous wastes reach the Tijuana River and 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. Bacteria levels are simply too high and the exposure to these and other hazardous wastes and pollutants in the Tijuana River Valley and canyon collectors constitute an imminent and substantial endangerment to human health.

Surfrider members who visit the affected beaches and coastal areas are also negatively affected by the degradation of natural habitat and detrimental impacts to threatened and endangered species. The Tijuana River Valley is a diverse natural habitat. The Tijuana Estuary is the largest coastal wetland in Southern California. Especially when over 90% of California's coastal marshes have been lost to development, these wetlands are critical wildlife habitats and work as natural water filters. Sewage and industrial waste from Tijuana are flooding the estuary, killing it, and affecting the natural filtration capabilities of the Estuary for the Tijuana River Valley. With sewage comes *E. coli*, vibrio, salmonella, and intestinal parasites, making the area toxic and unsafe for life.⁴⁹

III. RELIEF AND PENALTIES SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Surfrider Foundation seeks the permanent end to the Clean Water Act violations set forth in this notice, including the egregious water pollution violations that result in beach closure and

⁴⁷ Joshua Emerson Smith, *New beach closures issued from Tijuana River sewage*, (Nov. 8, 2017, 1:20 PM) <http://www.sandiegouniontribune.com/news/environment/sd-me-beaches-closed-20171108-story.html>.

⁴⁸ Joshua Emerson Smith, *Imperial Beach officials say shoreline hit by Tijuana sewage without warning, residents fall ill*, (Nov. 1, 2017, 2:05 PM) <http://www.sandiegouniontribune.com/news/environment/sd-me-tj-sewage-spill-20171101-story.html>.

⁴⁹ Disposal of those wastes to land and water in the Tijuana River Valley also exposes land, marine, and estuarine flora and fauna to the inherent dangers of such wastes. Wildlife exposure to sewage and other contaminants can result in suppression of immune system response, alteration of defense mechanisms, and depression of essential biological activity. These individually or in combination increase the susceptibility of wildlife to disease and infections. Wildlife in the Tijuana River Valley cannot avoid being exposed to the above-discussed pollutants and wastes through, *inter alia*, dermal absorption, inhalation of volatilized pollutants, inhalation of dust contaminated with adsorbed pollutants, ingestion of contaminated and polluted plants and organisms including prey, and soil ingestion.



swimmer and surfer health risks. Specifically, Surfrider demands injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and will seek declaratory relief, and such other relief as permitted by law.

In addition to injunctive relief, pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of a notice of intent to file suit letter. These provisions of law authorize civil penalties of up to \$52,414 per day per violation for all Clean Water Act violations. 40 C.F.R. § 19.4, Table 2. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Surfrider will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

IV. PERSONS RESPONSIBLE FOR VIOLATIONS

The SBIWTP,⁵⁰ flood control conveyance and all of the canyon collectors are owned by the United States International Boundary and Water Commission. Therefore, USIBWC is responsible for the Clean Water Act violations as described herein.

V. PERSONS GIVING NOTICE

Surfrider Foundation, by and through its attorneys McDermott Will & Emery LLP, gives this Notice of Intent to Sue pursuant to 33 U.S.C. section 1365(b).

Surfrider Foundation's contact information is as follow:

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The name, address, and phone number for Surfrider's legal counsel, who are giving notice on behalf of Surfrider are:

Angela T. Howe, Esq.
Legal Director

⁵⁰ The SBIWTP and the canyon collectors are operated by Veolia Water North America – West, LLC (Veolia), under an operations and maintenance agreement with the USIBWC (<https://www.veolianorthamerica.com/en/media/media/newsroom/federal-agency-u-s-international-boundary-and-water-commission-renews-long-term-operations-and-maintenance-agreement-veolia>). Therefore any operations and maintenance performed by Veolia is at the bequest and on behalf of the USIBWC.



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Please direct all correspondence to Surfrider related to this notice to Surfrider's legal counsel.

VI. CONCLUSION

Surfrider is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Surfrider will be able to file a



citizen suit under Section 505(a) of the Clean Water Act for the USIBWC's violations of the NPDES permit at USIBWC facilities.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela T. Howe".

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