



SAN DIEGO  
COASTKEEPER®

November 30, 2023

San Diego Regional Water Quality Control Board  
Attn: Vicente Rodriguez  
2375 Northside Drive, Suite 100  
San Diego, CA 92108-2700

*Via Email to [SanDiego@waterboards.ca.gov](mailto:SanDiego@waterboards.ca.gov)*

**Re: CERF and San Diego Coastkeeper Comments on Tentative Time Schedule  
Order No. R9-2023-0189**

To Chair Cantú and the Members of the San Diego Regional Water Quality Control Board:

Please accept these comments regarding Tentative Time Schedule Order No. R9-2023-0189 (Tentative TSO) on behalf of the Coastal Environmental Rights Foundation (CERF) and San Diego Coastkeeper (Coastkeeper). CERF is a nonprofit environmental organization founded by surfers in 2008 for the protection and enhancement of California's coastal resources. The purposes of CERF are to aid the enforcement of environmental laws, raise public awareness about coastal environmental issues, encourage environmental activism, and generally act to defend natural resources in coastal areas. Coastkeeper is likewise a nonprofit environmental organization dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of San Diego County watersheds. To further these goals, Coastkeeper and CERF actively seek federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiate enforcement actions on behalf of themselves and their members.

The South Bay International Wastewater Treatment Plant (SBIWTP) and the associated infrastructure (Facility), owned and/or operated by the International Boundary and Water Commission, United States Section (IBWC), has long been out of compliance with its operative National Pollutant Discharge Elimination System (NPDES) Permit No. CA0108928 (Permit). As recognized by this Regional Board, IBWC has a well-documented "pattern of failing" to comply with numerous Permit requirements, which has led to devastating consequences to human health and the environment.<sup>1</sup>

The magnitude of the international transboundary sewage and wastewater crisis cannot be overstated. Over the past five years, over 100 billion gallons of transboundary flows, containing untreated sewage, chemicals, trash, and other debris have flowed from Mexico into Southern California via the Tijuana River Valley, with over 33 billion gallons of which occurred during just

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<sup>1</sup> See Cease & Desist Order R9-2021-0107.

the first half of 2023.<sup>2</sup> These same pollutants are routinely discharged into our marine environment via the Facility's South Bay Ocean Outfall. This human health, environmental justice, and ecological disaster is directly impacting public health due to highly contaminated coastal waters leading to chronic beach closures and health advisories, as well as recent studies confirming that aerosolized sewage pollutants are making people sick in Imperial Beach and nearby communities.<sup>3</sup> Polluted flows contaminated with chemical-laden sediment are also severely degrading the Tijuana River Estuary and offshore marine habitat, which in turn harm local businesses and tourism. South San Diego Bay communities have now faced over 700 consecutive days of beach closures, dating back to December 2021.<sup>4</sup>

The San Diego Regional Water Quality Control Board (Regional Board) has taken several enforcement actions against IBWC in recent years, including:

- Filing a citizen suit against USIBWC alleging violations of the federal Clean Water Act in September 2018;
- A Compliance Evaluation Inspection conducted on December 24, 2020;
- A Notice of Violation issued on February 5, 2021 (NOV R9-2021-0035);
- A Cease and Desist Order (CDO) issued on May 12, 2021 (CDO R9-2021-0107).
- An Amended CDO issued on December 8, 2021 (Amended CDO R9-2021-0220);
- Entering into a Settlement Agreement to resolve the citizen suit litigation in April of 2022, covering (1) Transboundary Flow Events, (2) IBWC failures to properly mitigate or report Transboundary Flow Events as required, and/or (3) IBWC's failure to properly operate and maintain the canyon collectors or the FCC.

Unfortunately, despite these prior enforcement actions, IBWC's rampant Permit violations have continued. On September 5, 2023 the Regional Board issued another NOV (R9-2023-0162) for approximately 208 exceedances of Permit Effluent Limitations, required reports submitted after deadlines, missing reports, and approximately 214 other violations of the 2021 Permit's Standard Provisions.<sup>5</sup> Notably, the Facility's recent exceedances encompass chemicals that have been prohibited in the United States owing to their exceptionally hazardous characteristics, such as DDT and PCBs. There have been at least 130 instances of violations involving extremely dangerous, banned chemicals within the United States. Facility discharges not only exceed the Permit's Effluent Limitations, but frequently do so by orders of magnitude. For example, a recent PCB discharge in 2023 exceeded the Permit limit by 22,122%. Likewise, a 2023 Benzidine discharge exceeded the Permit limit by 15,052%.

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<sup>2</sup> State Land Commission, Staff Report (Nov. 20, 2023).

<sup>3</sup> Courthouse News Service, *California Coastal Commissioners call for action to clean up sewage polluted Tijuana River Valley* (Oct. 11, 2023) <https://www.courthousenews.com/california-coastal-commissioners-call-for-action-to-clean-up-sewage-polluted-tijuana-river-valley/>.

<sup>4</sup> California Coastal Commission Memorandum, *Tijuana River Pollution Crisis in San Diego County* (Sept. 29, 2023); California Environmental Protection Agency, *Letter RE: Additional Resources for the Rehabilitation of the IBWC South Bay International Treatment Plant* (June 19, 2023).

<sup>5</sup> See also, Tentative TSO at Paragraph 12.

Furthermore, despite the Regional Board's prior NOV's and CDOs, the Facility remains in a shocking state of disrepair. According to IBWC's update to the Regional Board, as of September, 2023:

- Only 1 of 6 influent pumps is operable, leading to 25 MGD of untreated sewage flowing into the Tijuana River leading to permit violations and extreme contamination of the estuary;
- Only 2 of 7 Activated Sludge Tanks (ASTs) are operable, negatively impacting the quality of the effluent discharged through the Facility's ocean outfall, which fails to meet permit standards, leading to violations;
- Only 1 of 2 Waste Activated Sludge (WAS) Pumps is running (and it is running inefficiently), also resulting in partially treated sewage being discharged through ocean outfall and contributing to permit violations;
- Only 1 of 2 Unstabilized Sludge Storage Tanks (USST) are operating (and it is operating at 50% capacity), also resulting in partially treated sewage being discharged through ocean outfall and contributing to permit violations;
- 0 of 4 pumps are operable at the Hollister canyon collector pumping station, resulting in the surge tank filling with sediment, and transboundary untreated sewage flows through the canyons into the Tijuana River and Estuary, leading to permit violations;
- 1 of 5 pumps at the primary non-potable water pump station are operable, and 0 of 4 pumps are operable at the secondary pump station, hindering the ability of Facility to pump treated effluent to other plant processes, which negatively impacts all plant processes and components.<sup>6</sup>

IBWC has also failed to repair/replace Junction Box 1 (JB1), a critical piece of infrastructure that regulates flow into the SBIWTP. Because two gate valves are not operating, the SBIWTP cannot regulate the flow from Mexico and must accept all flow that is received through JB1.<sup>7</sup> The 72-inch gate valve became non-operational on August 28, 2019, and the 96-inch gate valve became non-operational on October 3, 2020. The Regional Board has been aware of this problem since at least October 2020. "Compliance with the 2021 Permit effluent limitations is unlikely until the sluice gates in Junction Box 1 have been repaired and flows into the SBIWTP are reduced to a monthly average of 25.0 MGD."<sup>8</sup>

Recognizing the criticality of repairs to JB1, the May 2021 CDO required IBWC to repair JB1 (and both sluice gates) and the influent meter by January 3, 2022. IBWC failed to meet this deadline and the December 2021 Amended CDO required repairs to JB1 to be completed

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<sup>6</sup> IBWC Presentation, *South Bay International Wastewater Treatment Plant, Plant Status Post-Tropical Storm Hilary*.

<sup>7</sup> Regional Board, *Response to Letter Dated August 2, 2023, Regarding the Tijuana River Pollution Crisis and Discharge Violations at the South Bay International Wastewater Treatment Plant (SBIWTP)* (Aug. 10, 2023).

<sup>8</sup> CDO R9-2021-0107.

“forthwith” and the influent meter to be replaced by February 13, 2023. To date, IBWC has failed to complete these repairs.

IBWC’s failure to timely repair JB1 for well over three years and counting, and the resulting excess flows into the SBIWTP, have not only caused hundreds of Permit violations, but has also contributed to the degradation and destruction of multiple pumps and tanks at the SBIWTP, as described *supra*. IBWC’s inability to control flows into the SBIWTP are a significant culprit causing the rapid degradation of multiple critical Facility components. The Facility now teeters on the brink of complete collapse – a crisis of IBWC’s own making due in significant part to its slow response to repair JB1. The costs of repairs to bring the Facility back into Permit compliance are now escalating rapidly. While the Final Programmatic Environmental Impact Statement for the USMCA Mitigation of Contaminated Transboundary Flows Project, dated November 2, 2022, did not identify any required costs for repairs at the Facility, IBWC recently estimated the cost of repairs to be around \$190 million.<sup>9</sup>

Like the preceding May 2021 CDO, and December 2021 Amended CDO, the Tentative TSO is inadequate in this time of crisis. The timelines in Table 2 of the Tentative TSO once again provide additional time for IBWC to fix problems that should have been solved years ago. In particular, Table 2 allows for the replacement of JB1 by February 10, 2025, and repairs to the influent meter by September 30, 2024. Meanwhile, the IBWC’s ongoing Permit violations are contributing to a human health and ecological catastrophe. The SBIWTP is on the brink of collapse. Numerous government agencies and interested parties have written to the President of the United States asking to declare a state of emergency. As such, the timelines in the Tentative TSO are unacceptable given the ongoing human health risk and ecological devastation. The Regional Board must use the full extent of its enforcement authority to require expedited action on the part of the IBWC to bring the Facility into full compliance with the Permit immediately.

The Tentative TSO claims that “USIBWC was unable to comply with the time schedule contained in the CDO for the repair of Junction Box 1 and the replacement of the influent meter and associated piping and valves.”<sup>10</sup> However, the Tentative TSO provides no further details or reasoning, nor does it point to any authority supporting this claim. Was IBWC *completely* unable to comply with these deadlines? If so, why was IBWC unable to do so? Could IBWC have taken a different approach to achieve the CDO deadlines? Could IBWC have required a more strict timeline from the JB1 design contractor? Again, emphasizing the ongoing crisis, IBWC must pursue all expedited actions to the limits of its authority to complete all tasks set forth in Table 2 of the Tentative TSO *immediately*, and much sooner than the interim goals currently enumerated in Table 2.

Finally, IBWC has continued to violate Permit reporting requirements without consequence.<sup>11</sup> There is no excuse for IBWC continuously missing these deadlines. Rather than require a handful

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<sup>9</sup> IBWC Presentation to the Regional Board (Sept. 13, 2023).

<sup>10</sup> Tentative TSO, Paragraph 5.

<sup>11</sup> NOV.

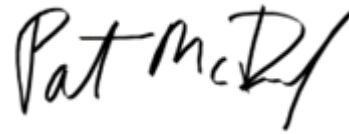
of additional updates, as proposed in the Tentative TSO, an approach which has been ineffective in past enforcement efforts, CERF and Coastkeeper request this Regional Board pursue other enforcement mechanisms to ensure IBWC's immediate compliance with the Permit.

CERF and Coastkeeper appreciate the opportunity to provide comments regarding the Tentative TSO. Please contact us if you have any questions or would like to discuss the preceding comments.

Sincerely,



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Coastal Environmental Rights Foundation



Patrick McDonough  
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San Diego Coastkeeper