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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: DEPUTY

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

THE SURFRIDER FOUNDATION, a
California nonprofit public benefit
corporation, SAN DIEGO CHAPTER,

Plaintiff,

v.

CARLOS M. RAMIREZ an individual in
his capacity as Commissioner of the
INTERNATIONAL BOUNDARY AND
WATER COMMISSION, UNITED
STATES SECTION, et al.,

Defendants.

Case No. 99-CV-2441-BTM(JFS)
(Consolidated with Case No. 01-CV-0270)

PEOPLE OF THE STATE OF
CALIFORNIA, Ex Rel. THE REGIONAL
WATER QUALITY CONTROL BOARD
SAN DIEGO REGION,

Plaintiff,

v.

CARLOS M. RAMIREZ an individual in
his capacity as Commissioner of the
INTERNATIONAL BOUNDARY AND
WATER COMMISSION, UNITED
STATES SECTION, et al.,

Defendants.

Case No. 01-CV-0270BTM(JFS)


JOINT NOTICE OF LODGING OF
PROPOSED CONSENT DECREE

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SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

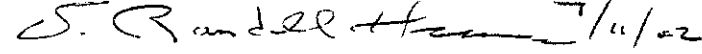
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1 Plaintiff State of California, and the United States Department of Justice, on behalf of
2 Defendant Carlos M. Ramirez, Commissioner of the International Boundary and Water Commission,
3 United States Section, hereby give notice of the lodging of the parties' proposed Consent Decree.
4 See Attachment 1. The United States Department of Justice will publish notice of the lodging of the
5 proposed Decree in the Federal Register, after which the Decree will be subject to a thirty day public
6 comment period. The State of California will publish notice of the lodging of the proposed Decree
7 in the San Diego Union Tribune and will give additional notice by sending notice to the San Diego
8 Regional Board agenda mailing list, after which the Decree will be subject to a thirty day public
9 comment period. The State of California and the United States Department of Justice will receive
10 and consider (and file with this Court) any written comments, views or allegations relating to the
11 proposed Decree, and will either withdraw or withhold their consent to the proposed Decree or will
12 request this Court to enter the Decree at the end of that process.

13
14 FOR PLAINTIFF STATE OF CALIFORNIA:

15
16  7/12/02
17 CAROL A. SQUIRE Date
18 Deputy Attorney General
19 Attorney for Plaintiff,
20 People of the State of California,
21 ex rel. the Regional Water Quality Control
22 Board, San Diego Region

23
24 FOR DEFENDANT CARLOS M. RAMIREZ, in his capacity as COMMISSIONER,
25 INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES SECTION:

26  7/11/02
27 S. RANDALL HUMM, Attorney Date
28 Environment and Natural Resources Division
United States Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

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ATTACHMENT 1

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Defendants.

Case No. 01-CV-0270BTM (JFS)

CONSENT DECREE

1 WHEREAS, the parties to this Consent Decree ("Decree") are the California Regional Water
2 Quality Control Board, San Diego Region ("Regional Board"), and Carlos M. Ramirez,
3 Commissioner of the International Boundary and Water Commission, United States Section
4 (collectively the "Settling Parties");

5 WHEREAS, the International Boundary and Water Commission, United States Section
6 ("USIBWC") operates the International Wastewater Treatment Plant ("Treatment Plant") located at
7 2415 Dairy Mart Road, San Diego County, San Diego, California, to provide treatment of
8 wastewater from the City of Tijuana and surrounding environs pursuant to Treaty Minute 283
9 between the United States and Mexico, and discharges effluent from the Treatment Plant through the
10 South Bay Ocean Outfall ("Outfall") (collectively the "Publicly Owned Treatment Works" or
11 "POTW") to waters of the United States in the Pacific Ocean within the San Diego Region;

12 WHEREAS, the Regional Board has issued waste discharge requirements regulating
13 discharges from the POTW that implement the Federal Water Pollution Control Act ("Clean Water
14 Act"), 33 U.S.C. §§ 1251 *et seq.*, and the National Pollutant Discharge Elimination System
15 ("NPDES") as Order No. 96-50, as amended, (NPDES Permit No. CA 0108928) ("NPDES Permit");

16 WHEREAS, the Clean Water Act and the NPDES Permit require that discharges from the
17 Treatment Plant comply with secondary effluent standards and limitations;

18 WHEREAS, the Settling Parties agree that the existing Treatment Plant was designed and
19 constructed to provide advanced primary treatment for an average flow of 25 million gallons per day
20 ("MGD") and that facilities for Secondary Treatment should be designed and constructed in a
21 subsequent phase of development;

22 WHEREAS, USIBWC has been unable to provide facilities for Secondary Treatment in
23 accordance with a schedule that the Regional Board incorporated into an enforcement order at the
24 time of issuance of the NPDES Permit;

25 WHEREAS, because facilities for Secondary Treatment have yet to be provided, effluent
26 discharged from the Treatment Plant consistently has exceeded certain effluent limits and treatment
27 standards set forth in the NPDES Permit;
28

1 WHEREAS, the continued operation of the Treatment Plant without Secondary Treatment
2 will cause discharges of effluent through the Outfall that will entail ongoing exceedance of certain
3 effluent limits and treatment standards set forth in the NPDES Permit and to be set forth in an
4 anticipated renewal of the NPDES Permit;

5 WHEREAS, the Settling Parties believe that providing Secondary Treatment to the
6 Treatment Plant's effluent is in the public interest;

7 WHEREAS, USIBWC is committed to operate the Treatment Plant to mitigate
8 environmental harm associated with the discharge of effluent from the Treatment Plant that exceeds
9 effluent limits and treatment standards set forth in the NPDES Permit;

10 WHEREAS, in the event that the study required by Section VII.C.3 (Review to Evaluate
11 Environmental Effects) of USIBWC's Consent Decree with the Surfrider Foundation identifies
12 significant adverse environmental effects on the marine environment caused by discharges from the
13 POTW, USIBWC intends to evaluate whether mitigation of that harm is feasible, and if so, whether
14 funding can be obtained to implement appropriate mitigation measures;

15 WHEREAS, the Settling Parties agree that it is in the public interest to enter into this Decree
16 without further adjudication of the issues contained herein;

17 WHEREAS, this Decree resolves all claims brought by the Regional Board against USIBWC
18 relating to the POTW in Case No. 01-CV-0270BTM(JFS);

19 WHEREAS, the Court finds that this Decree is a reasonable and fair settlement and that it
20 adequately protects the public interest in accordance with the federal Clean Water Act, 33 U.S.C. §§
21 1251-1387;

22 NOW THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

23
24 **I. JURISDICTION AND VENUE**

25 This Court has jurisdiction over the subject matter of this action and over the parties pursuant
26 to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a) and 28 U.S.C. § 1331. Venue is
27 proper pursuant to Section 505(c) of the Act, 33 U.S.C. § 1365(c) and 28 U.S.C. § 1391(b).

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II. GENERAL TERMS

A. This Decree applies to, is binding upon, and inures to the benefit of the Regional Board and USIBWC and their officers, directors, employees, agents, servants, successors, assigns, and designees in their official capacity.

B. For purposes of entry and enforcement of this Decree only, the Settling Parties agree that the Court has jurisdiction over any disputes pertaining to any alleged violations of this Decree.

C. The Settling Parties understand that: (a) Carlos M. Ramirez is sued in his official capacity as Commissioner of the International Boundary and Water Commission, United States Section; and (b) the obligations arising under this Decree are to be performed by USIBWC and not by Carlos M. Ramirez in his individual capacity.

D. Effective seven (7) days after the date of entry of this Decree until its termination, USIBWC shall give written notice of this Decree to any successors in interest prior to transfer of ownership, management, operation or maintenance of any portion of the POTW and shall provide a copy of this Decree to any successor in interest. USIBWC shall notify the Regional Board as specified in Section IX of this Decree (Form of Notice), of any successor in interest at least twenty-one (21) days prior to any such transfer.

E. USIBWC shall provide a copy of this Decree to each engineering, consulting, and contracting firm to be retained to perform any activities required by this Decree upon execution of any contract relating to such work, and shall provide a copy to each engineering, consulting and contracting firm already retained for such purpose.

F. In the event that the Court does not enter this Decree, the agreement set forth herein shall be null and void.

III. DEFINITIONS

25 Unless otherwise defined herein, terms used in this Decree shall have the meaning given to
26 those terms in the federal Clean Water Act, 33 U.S.C. §§ 1251-1387, and the regulations
27 promulgated thereunder. For the purposes of this Decree, the following terms shall have the
28 meaning provided below:

1 "Applicable Effluent Standards and Limitations" means the effluent standards and limitations
2 based on secondary treatment and contained in the NPDES Permit at Paragraph B for CBOD₅ and
3 total suspended solids; the effluent standards and limitations relating to acute and chronic toxicity,
4 dioxin and ammonia in the NPDES Permit at Paragraph B; and the receiving water limitations for
5 bacterial characteristics in the NPDES Permit at Paragraph C.

6 CBOD₅ means carbonaceous biochemical oxygen demand.

7
8 "Compliance with the Applicable Effluent Standards and Limitations" means avoidance of
9 any Significant Noncompliance with the Applicable Effluent Standards and Limitations.

10 "Compliance with the Applicable Effluent Standards and Limitations" includes exceedance of those
11 standards and limitations caused by Upset, Bypass that satisfies the conditions set forth in 40 C.F.R.
12 § 122.41(m)(4)(i)(A,B, and C), or a Force Majeure event..

13 "Construction" means activities commencing after completion of Contract Award and
14 concluding with the initiation of Secondary Treatment for the Treatment Plant's effluent, which
15 include but are not limited to building a Secondary Treatment facility.

16 "Contract Award" means activities commencing after completion of Design and concluding
17 prior to Construction, which include but are not limited to preparing contract documents, awarding
18 the contract for construction, and issuing a notice to proceed.

19 "Design" means activities commencing after the signing of a Record of Decision and
20 concluding prior to Contract Award, which include but are not limited to plan, drawing, and
21 specification preparation.

22 "NPDES Permit" means Order No. 96-50 (NPDES No. CA0108928) as issued, amended
23 and/or renewed by the Regional Board.

24 "Outfall" means the South Bay Ocean Outfall.

25 "POTW" means the Treatment Plant and its connections through the South Bay Ocean
26 Outfall.

27 "Regional Board" means the California Regional Water Quality Control Board, San Diego
28 Region.

1 "Secondary Treatment Provider" means an entity under agreement or contract to USIBWC to
2 furnish Secondary Treatment for effluent from the Treatment Plant and includes any Secondary
3 Treatment Provider/Construction Contractor.

4 "Secondary Treatment Provider/Construction Contractor" means a Secondary Provider that
5 must first construct a Secondary Treatment facility before it can provide Secondary Treatment for
6 the Treatment Plant's effluent.

7 "Secondary Treatment" has the meaning provided at 40 C.F.R. § 133.102.

8 "Settling Parties" means the Regional Board and USIBWC.

9 "Significant Noncompliance" means an exceedance of the Applicable Effluent Standards and
10 Limitations in accordance with the criteria identified in Appendix 1 to this Decree, except for
11 exceedance caused by Upset, Bypass that satisfies the conditions set forth in 40 C.F.R.
12 § 122.41(m)(4)(i)(A,B, and C), or a Force Majeure event.

13 "Treatment Plant" means the South Bay International Wastewater Treatment Plant located at
14 2415 Dairy Mart Road, San Diego County, California.

15 "USIBWC" means the International Boundary and Water Commission, United States
16 Section, including Carlos M. Ramirez in his capacity as Commissioner.

17 "Upset" has the meaning provided at 40 C.F.R. § 122.41(n).

18 "Violation" means Significant Noncompliance.

19 **IV. REQUIRED ACTIONS**

20 **A. Options and Schedule for Required Actions**

21 1. On or before December 31, 2004, USIBWC shall either:

22 (a) sign a contract to construct a Secondary Treatment facility for the Treatment Plant, and in
23 no event shall such contract provide for the completion of Construction by a date later than
24 December 31, 2007; or

25 (b) sign a contract or enter into a written agreement for the provision of Secondary Treatment
26 for the Treatment Plant's effluent by a Secondary Treatment Provider, and in no event shall such
27 contract provide for the initiation of Secondary Treatment by a date later than December 31, 2007; or
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1 (c) cease Violations of the Applicable Effluent Standards and Limitations by some other
2 means, including but not limited to redirecting some or all of the treated effluent from the Treatment
3 Plant and/or instituting a partial combination of options IV.A.1(a) and/or IV.A.1(b) above.

4 **B. Negotiation of Compliance Deadline.**

5 1. In the event that USIBWC opts to fulfill its compliance obligations under either
6 subsections IV.A.1(a) or IV.A.1(b) above, USIBWC shall notify the Regional Board in accordance
7 with Section IX of this Decree (Form of Notice) no later than 20 days after the date USIBWC
8 executes the relevant contract or agreement, and, provided the Treatment Plant is continuing the
9 discharge of pollutants, thereafter shall commence Secondary Treatment no later than December 31,
10 2007, and shall achieve Compliance with the Applicable Effluent Standards and Limitations by a
11 date to be negotiated by the Settling Parties, and as appropriate the Secondary Treatment Provider,
12 but in no event shall such date extend beyond September 30, 2008.

13 2. Within 60 days from the date that USIBWC furnishes notice in accordance with
14 subsection IV.B.1 above, the Settling Parties shall commence negotiations over a schedule for
15 USIBWC to achieve Compliance with the Applicable Effluent Standards and Limitations that
16 accounts for (a) the time needed for USIBWC to complete Construction of a Secondary Treatment
17 facility and to initiate Secondary Treatment, in the event that USIBWC proceeds under Section
18 IV.A.1(a) above; or (b) the time needed for the Secondary Treatment Provider to initiate Secondary
19 Treatment of effluent from the Treatment Plant, including the time needed for Construction of any
20 facilities by the Secondary Treatment Provider, in the event USIBWC proceeds under Section
21 IV.A.1(b).

22 3. If the USIBWC executes a contract with a Secondary Treatment Provider/Construction
23 Contractor in accordance with Section IV.A.1.(b) above, upon request of the Settling Parties, the
24 Secondary Treatment Provider/Construction Contractor shall be joined as a defendant in this action
25 pursuant to Rule 19(a) of the Federal Rules of Civil Procedure to ensure timely Construction of any
26 facilities that the Secondary Treatment Provider must complete to provide Secondary Treatment for
27 effluent from the Treatment Plant. USIBWC may petition the Court for joinder of the Secondary
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1 Treatment Provider/Construction Contractor for good cause shown in the event that the Regional
2 Board withholds its consent to the joinder.

3 4. In the event that the Settling Parties, and the Secondary Treatment Provider/Construction
4 Contractor as appropriate, are able to reach agreement on the terms of a Construction schedule and a
5 date for Compliance with the Applicable Effluent Standards and Limitations, the Settling Parties,
6 and the Secondary Treatment Provider/Construction Contractor as appropriate, shall move the Court
7 to incorporate the schedule and date into this Decree. In the event that the Settling Parties, and the
8 Secondary Treatment Provider/Construction Contractor as appropriate, are unable to reach
9 agreement, any Settling Party may invoke the dispute resolution procedures set forth in Section VII
10 of this Decree (Dispute Resolution).

11 5. USIBWC shall provide to the Regional Board a Notice of Commencement of Secondary
12 Treatment no later than 60 days after the date that Secondary Treatment is initiated for effluent from
13 the Treatment Plant.

14 **C. Compliance Reports**

15 Beginning with the first full calendar year following the date of entry of this Decree,
16 USIBWC shall submit semi-annual reports to the Court and the Regional Board regarding the
17 progress of the Treatment Plant to achieve Compliance with the Applicable Effluent Standards and
18 Limitations. The Reports are due on or before March 31 and September 30 of each year. Such
19 reports shall include the following:
20

- 21 1. Descriptions of the activities taken during the previous six months to achieve
22 Compliance with the Applicable Effluent Standards and Limitations; and
- 23 2. A schedule of activities and anticipated expenditures for the coming year to achieve
24 Compliance with the Applicable Effluent Standards and Limitations.

25 **V. REMEDY FOR NONCOMPLIANCE**

26 If USIBWC fails to take an action required by this Decree, the Regional Board may seek
27 appropriate relief from the Court. USIBWC reserves any and all defenses.
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VI. FORCE MAJEURE

A. For purposes of this Decree, a Force Majeure event is any occurrence arising from causes outside the control of USIBWC that delays or prevents compliance with this Decree despite USIBWC's best efforts to fulfill its obligations. USIBWC's exercise of its "best efforts to fulfill its obligations" includes using best efforts to anticipate and to address the effects of any potential Force Majeure event (1) as it is occurring and (2) following the potential Force Majeure event, such that delay is minimized to the greatest extent possible.

B. If the Regional Board, after consultation with USIBWC, agrees that a delay in performance is, or was, caused by a Force Majeure event, the time for performance shall be extended by the amount of time of the delay caused by the Force Majeure event, with notice to the Court.

C. When circumstances are occurring or have occurred which may delay the completion of any requirement of this Decree due to a Force Majeure event, USIBWC shall so notify the Regional Board, in writing, within fifteen (15) days after USIBWC learns of the delay or the anticipated delay. The notice shall describe the basis for USIBWC's contention, if asserted, that USIBWC experienced a Force Majeure event, the anticipated length of the delay, the precise cause or causes of the delay if known, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. USIBWC shall include with the notice available documentation supporting its claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude USIBWC from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure to comply.

D. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section VII (Dispute Resolution) shall apply, and USIBWC shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

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VII. DISPUTE RESOLUTION

A. The dispute resolution procedures of this Section shall be the exclusive mechanism available for resolving disputes between the Settling Parties concerning the actions identified in Section IV (Required Actions) of this Decree. The dispute resolution procedures under this Section shall be a mechanism available to the Settling Parties for resolving all other disputes that arise under or with respect to this Decree.

B. A Settling Party shall invoke the dispute resolution procedures of this Section by notifying the other Settling Party in writing of the matter(s) in dispute and of the Party's intention to resolve the dispute under this Section. The Settling Parties shall then attempt to resolve the dispute informally for a period of thirty (30) calendar days from the date of the notice.

C. If the Settling Parties cannot resolve a dispute by the end of the period of informal negotiations, the Settling Party invoking the dispute resolution provision shall provide its position(s) on the issues in dispute and the reasons therefore in writing to the other Settling Party. Within thirty (30) days of receiving that written statement, the opposing Settling Party shall provide its position(s) on the issues in dispute and the reasons therefore in writing to the other Settling Party. The Settling Party invoking the dispute resolution provision may then file a motion for the Court to resolve the dispute and shall fax-serve the motion. The Settling Parties shall jointly apply to the Court for an expedited hearing schedule on the motion. Any opposition to the motion shall be filed with the clerk and fax-served on the moving Settling Party's attorneys not later than 20 days from receipt of the motion. The opposition may also include an alternative proposal for a resolution of the dispute. Any reply memorandum in support of the motion must be filed with the clerk, and fax-served on the opposing Settling Party's attorneys, not later than 10 days from receipt of the opposition.

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VIII. RELEASE AND RESERVATIONS BY THE REGIONAL BOARD

A. Subject to the reservations contained in Paragraphs VIII.B through VIII.E immediately below, the Regional Board releases, discharges, and covenants not to assert (by way of commencement of any action, the joinder of the United States, including USIBWC, in an existing action, or in any other fashion), any and all contentions, claims, causes of action, suits or demands of

1 any kind whatsoever, in law or in equity, which the Regional Board has had, may now have, or
2 hereafter may have against USIBWC and the United States based upon matters which were asserted,
3 or could have been asserted, in Civil Action No. 01-CV-0270BTM (JFS) relating to the lack of
4 Secondary Treatment for effluent discharged from the Treatment Plant or exceedances of the
5 Applicable Effluent Standards and Limitations.

6 B. Except as expressly set forth in this Consent Decree, nothing in this Decree shall
7 constitute or be construed as a satisfaction or release from liability for any claims relating to
8 USIBWC's past, current, or future operation of the POTW, including liability for noncompliance
9 with interim effluent standards and limitations, other than the Applicable Effluent Standards and
10 Limitations, set forth in any Cease and Desist Order adopted after the approval of this Decree by the
11 Court. The Regional Board agrees not to seek remedies that involve the modification or addition of
12 infrastructure to the POTW for any noncompliance with such interim effluent standards and
13 limitations.

14 C. The release set forth in Paragraph VIII.A above does not apply to the Regional Board
15 seeking appropriate relief by motion to the Court, pursuant to Section VII.A (Dispute Resolution) of
16 this Decree, for USIBWC's failure to take actions required by this Decree.

17 D. The Regional Board reserves the right to assert claims in a new action that are based on
18 (i) events, including violations of the Applicable Effluent Standards and Limitations, which occur
19 after termination of this Decree pursuant to Section XII (Termination of Decree); and (ii) future
20 exceedances of the Applicable Effluent Standards and Limitations caused by unforeseen events in
21 the United States and/or Mexico, including but not limited to significant changes in the operation of
22 the Treatment Plant, for which the application of Secondary Treatment will not achieve Compliance
23 with the Applicable Effluent Standards and Limitations. USIBWC reserves any and all defenses to
24 such claims.

25 E. In addition, nothing in this Decree is intended or shall be construed to preclude the
26 Regional Board from exercising its authority under any statute, regulation, ordinance or other law.
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IX. FORM OF NOTICE

Unless otherwise specified, or as may be changed from time to time, all reports, notices or any other written communications required to be submitted under this Decree shall be sent to the respective parties at the following addresses:

As to the Regional Board:

Carol Squire
Deputy Attorney General
110 W. A St
Suite 1100
P.O. Box 85266
San Diego, CA 92101

John H. Robertus
Executive Officer
California Regional Water Quality Control Board,
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

As to the United States:

Mario Lewis
Legal Advisor/General Counsel
United States Section, International Boundary and Water Commission
4171 N. Mesa
Suite C-310
El Paso, Texas 79902

and

Chief
Environmental Defense Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

Other:

Robert Moyer
Senior Assistant Regional Counsel
United States Environmental Protection
Agency - Region IX
San Diego Border Office
610 W. Ash Street
Suite 905
San Diego, California 92101

1 Michelle C. Kremer
2 Deputy Executive Director/Legal Director
3 The Surfrider Foundation
4 122 South El Camino Real, PMB 67
5 San Clemente, California 92672

6 Surfrider Foundation
7 San Diego County Chapter
8 c/o Chapter Chairman
9 P.O. Box 1511
10 Solana Beach, California, 92075

11 Marco A. Gonzalez
12 Law Offices of Marco A. Gonzalez
13 2924 Emerson Street, Ste. 220
14 San Diego, CA 92106

15 Rory Wicks
16 Law Offices of Rory R. Wicks
17 625 Broadway, Suite 1400
18 San Diego, California 92101

19 Notifications of communications shall be deemed submitted on the date they are postmarked
20 and sent by certified mail, return receipt requested, or deposited with an overnight mail/delivery
21 service.

22 **X. MODIFICATION AND EXTENSIONS**

23 A. This Decree contains the entire agreement of the Settling Parties and shall not be
24 modified by any prior oral or written agreement, representation or understanding. Except as set
25 forth in Paragraph X.B immediately below, this Decree may be modified only by written agreement
26 of the Settling Parties and approval by the Court.

27 B. Any dates set forth in this Decree may be extended by written agreement of the
28 Settling Parties and notice to the Court. To the extent the Settling Parties are not able to agree to an
extension, USIBWC may invoke the dispute resolution procedures set forth in Section VII (Dispute
Resolution).

C. Any motion to modify the dates set forth in this Decree shall be
accompanied by a motion for expedited consideration. The Settling Parties to this Decree shall join
in any such motion for expedited consideration.

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XI. CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of this Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction, modification, implementation or execution of this Decree.

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XII. TERMINATION

The Court shall terminate this Decree upon motion of any party after USIBWC has complied with Section IV (Required Actions) and, provided USIBWC opts to fulfill its compliance obligations under either subsections IV.A.1(a) or IV.A.1(b), the Treatment Plant has maintained Compliance with the Applicable Effluent Standards and Limitations for a period of one (1) year following service of the Notice of Commencement of Secondary Treatment pursuant to subsection IV.B.5 of this Decree. Upon termination of this Decree, this case shall be dismissed with prejudice.

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XIII. SIGNATORIES

A. The signatories for the parties certify that they are fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such parties to this document.

B. The parties shall identify on the attached signature pages the name, address, telephone number and fax number of an agent who is authorized to accept service by mail on the party's behalf with respect to all matters arising under or related to this Decree.

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XIII. COUNTERPARTS

This Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

XIV. COMPLIANCE WITH OTHER LAWS

No provision of this Decree shall be interpreted as or constitute a commitment or requirement that USIBWC obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in contravention of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706, the Clean Water Act, 33 U.S.C. §§ 1251 et seq., or in contravention of the Tijuana River Valley

1 Estuary and Beach Sewage Cleanup Act of 2000, P.L. 106-457, or of any other law or regulation,
2 either substantive or procedural.

3 **XV. COSTS OF SUIT**

4 A. The United States shall pay reasonable attorneys fees and costs incurred by the
5 Regional Board with respect to this Civil Action and Decree. The parties will attempt to reach
6 agreement as to the appropriate amount of the recovery, if any. If they are unable to do so, the
7 Regional Board may file an application with the Court for the recovery of reasonable fees and costs
8 within ninety (90) days of entry of this Decree, or by such later date as set by the Court upon motion
9 or otherwise. USIBWC shall have forty-five (45) days to respond to the Regional Board's fee
10 request. USIBWC reserves all defenses and contentions with respect to any such claim.

11 B. USIBWC shall bear its own attorneys' fees and costs.

12 C. Should the Court determine that USIBWC has violated the terms and conditions of
13 this Decree, the Regional Board contends that the United States shall be liable to the Regional Board
14 for any attorneys fees and costs of litigation incurred by the Regional Board in an action against
15 USIBWC with respect to such violations of the Decree. USIBWC reserves all defenses and
16 contentions with respect to any such claim.

17 **XVI. APPLICABLE LAW**

18 This Decree shall be governed and construed under the laws of the United States.

19 **XVII. THIRD-PARTY BENEFICIARIES**

20 Nothing in this Decree shall be construed to make any other person or entity not executing
21 this Decree a third-party beneficiary to this Decree.

22 **XVIII. PUBLIC COMMENT**

23 The parties agree that final approval by the Regional Board and the United States and entry
24 of this Decree shall be subject to public comment and consideration of any comments following
25 notice of the lodging of this Decree. The Regional Board and the United States reserve the right to
26 withhold or withdraw their consent to the entry of this Decree if changed circumstances subsequent
27 to lodging of the Decree or the comments received indicate to the Regional Board or to the United
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States that the proposed judgment is inappropriate, improper, or inadequate. In the event that the Regional Board or the United States withholds or withdraws its consent, this entire agreement shall be null and void. The Regional Board's and the United States' decision to withhold or withdraw its consent shall not be subject to judicial review.

JUDGMENT DATED AND ENTERED THIS _____ DAY OF _____, 2002.

HON. BARRY TED MOSKOWITZ
UNITED STATES DISTRICT JUDGE

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FOR PLAINTIFF STATE OF CALIFORNIA:

DATE: _____, 2002

JOHN H. MINAN
Chair, Regional Water Quality Control Board
San Diego Region

DATE: _____, 2002

GARY M. STEPHANY
Member, Regional Water Quality Control Board,
San Diego Region

DATE: _____, 2002

CAROL A. SQUIRE
Deputy Attorney General
Attorney for Plaintiff,
People of the State of California,
ex rel. the Regional Water Quality Control
Board, San Diego Region

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FOR DEFENDANT CARLOS M. RAMIREZ, in his capacity as COMMISSIONER,
INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES SECTION:

DATE: _____, 2002

CARLOS M. RAMIREZ
Commissioner
INTERNATIONAL BOUNDARY AND WATER
COMMISSION, UNITED STATES SECTION

DATE: _____, 2002

S. RANDALL HUMM, Attorney
Environmental Defense Section
United States Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

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APPENDIX 1

Significant Noncompliance (SNC) Criteria for
National Pollutant Discharge Elimination System Violations

1. Effluent Violations of Monthly Average Limits

a. TRC Violations

A 40% exceedance of specific pollutant limits listed in Exhibit A or a 20% exceedance of a specific pollutant limit from Exhibit B at a given discharge point for any two or more months during the two consecutive quarter review period is SNC.

b. Chronic Violations

Violation of any monthly effluent limit at a given pipe by any amount for any four or more months during the two consecutive quarter review period is SNC.

2. Effluent Violations of Non-Monthly Average Limits*

TRC and chronic SNC criteria are the same as for monthly average violations as described in section 1. a. and b. above. However, the following caveat also applies:

When a parameter has both a monthly average and a non-monthly average limit, a facility would only be considered in SNC for the non-monthly limits if the monthly average is also violated to some degree (but less than SNC).

3. Other Effluent Violations

Any effluent violation that causes or has the potential to cause a water quality or human health problem is SNC.

4. Non-Effluent Violations

Any unauthorized bypass, unpermitted discharge, or pass through of pollutants which causes or has the potential to cause a water quality problem (e.g., fish kills, oil sheens) or health problems (e.g., beach closings, fishing bans, or other restrictions of beneficial uses) is SNC. In the case of POTWs implementing Approved Pretreatment Programs, failure to implement or enforce those programs is SNC.

*NOTE: Non-monthly average SNC applies to all maximum and all average (other than monthly average) statistical base codes.

5. Permit Schedule Violations

Any failure to start construction, end construction, or attain final compliance within 90 days of the scheduled date is SNC. Also, all pretreatment schedule milestones missed by 90 days or more are SNC.

6. Permit Reporting Violations

Discharge Monitoring Reports, POTW Pretreatment Performance Reports, and the Compliance Schedule Final Report of Progress (i.e., whether final compliance has been attained) that are not submitted at all or are submitted 30 or more days late are SNC.

7. Enforcement Orders

a. Judicial Order

Any violation of a Judicial Order is SNC.

b. Administrative Order (AO)

Any violation of an effluent limit (or other water quality/health impact) established in an AO is SNC. However, when an AO limit is as stringent as an applicable permit limit, the facility is SNC only if the permit effluent SNC criteria, set out in number 1-3 above, are met.

Any unauthorized bypass, unpermitted discharge or pass-through of pollutants which cause or has the potential to cause a water quality problem or human health problem is SNC.

Any schedule or reporting violations listed above in sections 5 and 6 respectively are SNC.

Any violations of narrative requirements or any other violation of concern to the Director is SNC.

Exhibit A
SNC Conventional Pollutants
(40% exceedance of limit)

Group I Pollutants-TRC=1.4

<i>Oxygen Demand</i>	<i>Minerals</i>
Biochemical Oxygen Demand	Calcium
Chemical Oxygen Demand	Chloride
Total Oxygen Demands	Fluoride
Total Organic Carbon	Magnesium
Other	Sodium
	Potassium
<i>Solids</i>	Sulfur
Total Suspended Solids	Sulfate
(Residues)	Total Alkalinity
Total Dissolved Solids	Total Hardness
(Residues)	Other Minerals
Other	
	<i>Metals</i>
<i>Nutrients</i>	Aluminum
Inorganic Phosphorus Compounds	Cobalt
Inorganic Nitrogen Compounds	Iron
Other	Vanadium
<i>Detergents and Oils</i>	
MBAS	
NTA	
Oil and Grease	
Other detergents or algicides	

Exhibit B
SNC Toxic Pollutants
(20% exceedance of limit)

Group II Pollutants-TRC=1.2

Metals (all forms)
Other metals not specifically listed under Group I

Inorganic
Cyanide
Total Residual Chlorine

Organics
All organics are Group II except those specifically listed
under Group I.3

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 12th day of July, 2002, I caused the foregoing JOINT NOTICE
3 OF LODGING OF PROPOSED CONSENT DECREE to be served by first-class mail, post-prepaid,
4 upon the following:

5 Rory Wicks
6 Law Offices of Rory R. Wicks
7 625 Broadway
8 Suite 1400
9 San Diego, California 92101

10 Marco A. Gonzalez
11 Law Offices of Marco A. Gonzalez
12 215 South Highway 101
13 Suite 200
14 Solana Beach, California 92075

15 Casey Gwinn
16 Anita M. Noone
17 Ted Bromfield
18 Office of the City Attorney
19 1200 Third Avenue, Suite 1100
20 San Diego, CA 92101

21 Catherine M. Stites
22 James J. Dragna
23 McCutchen, Doyle, Brown & Enersen
24 355 South Grand Avenue
25 Suite 4400
26 Los Angeles, California 90071

27 

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CAROL A. SQUIRE
Deputy Attorney General