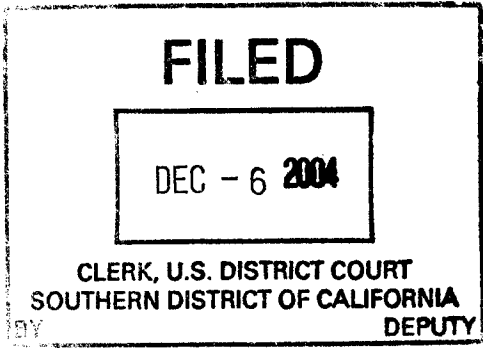


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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

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

Plaintiff,

v.

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

Defendants.

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

ORDER SETTING COMPLIANCE  
SCHEDULE

On December 5, 2003, this Court granted Plaintiff California Regional Water Quality Control Board, San Diego Region's ("Regional Board") Motion For Summary Judgment re: liability of Defendant International Boundary and Water Commission, United States Section ("USIBWC") in the above referenced action. The Court found Plaintiff had established liability against the USIBWC under the Federal Water Pollution Control Act ("Clean Water Act"), and the California Porter-Cologne Water Quality Control Act ("Porter-Cologne Act") based upon USIBWC's ongoing discharges from the International Wastewater Treatment Plant ("IWTP") through the South Bay Ocean Outfall. The Court found that USIBWC's discharges violate, and will continue to violate, effluent limitations based on secondary treatment requirements, and for acute and chronic toxicity, contained in waste discharge requirements for the IWTP , Order No. 96-50, as amended [National

1 Pollutant Discharge Elimination System Permit No. CA 0108928[ ("Order No. 96-50") issued by  
2 the Regional Board.

3 The parties have submitted a statement of stipulated facts that includes a statement that  
4 presently, advanced primary treatment of sewage from Mexico at the IWTP provides substantial  
5 mitigation of the previous uncontrolled discharges of raw, untreated sewage to waters of the United  
6 States. Any action by the Court at this time that would require USIBWC to discontinue the existing  
7 level of advanced primary treatment at the IWTP would be detrimental to public health, water  
8 quality, and the environment despite the fact that USIBWC will continue to violate effluent limits  
9 based on secondary treatment and effluent limits for toxicity until USIBWC provides secondary  
10 treatment or takes alternative measures to avoid violation of Order No. 96-50. Therefore, this Court  
11 finds that it is in the interest of the public health, water quality, and environment of the state of  
12 California to establish a schedule by which USIBWC can come into compliance with the effluent  
13 limitations contained in Order No. 96-50.

14 Accordingly, it is **ORDERED** that:

15 1. Plaintiff is entitled to an injunction under both federal and state law compelling  
16 USIBWC to comply with the effluent standards and limitations based on secondary treatment and  
17 relating to acute and chronic toxicity contained in Order No. 96-50.

18 2. USIBWC shall achieve full compliance with all effluent standards and limitations  
19 contained in Order No. 96-50 not later than September 30, 2008. USIBWC shall achieve compliance  
20 by providing secondary treatment of its effluent, or otherwise meeting the requirements contained  
21 in Order No. 96-50.

22 3. USIBWC shall publish the Draft Supplemental Environmental Impact Statement  
23 ("SEIS") for Clean Water Act Compliance for the IWTP not later than December 31, 2004, and shall  
24 publish the Final SEIS not later than August 1, 2005.

25 4. USIBWC shall issue a Record of Decision not later than October 1, 2005 defining  
26 the project(s), and identifying one or more feasible alternative projects, that USIBWC shall  
27 implement to achieve compliance with the effluent standards and limitations in Order No. 96-50.

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1           5.       USIBWC shall, on or before October 15, 2005, generate a "Critical Path Schedule"  
2 for its project(s) utilizing Critical Path Management Method ("CPMM") software to define, track,  
3 and report the design and construction phases of the project(s) selected in the Record of Decision  
4 to achieve compliance. The Critical Path Schedule for the project(s) shall include a listing and  
5 description of design and construction tasks that are required to construct, operate and manage the  
6 selected project(s) to completion on a day-to-day basis. Each task shall be described and assigned  
7 a duration in days, an early start and late start date, an early finish and late finish date, and shall be  
8 depicted in a graphic logic network representation to clearly show the tasks' relationships to the  
9 overall project and the Critical Path Schedule for completion of the project. A sufficient number of  
10 tasks shall be included in the listing to ensure that the current status of the overall project(s) shall be  
11 clearly depicted on a daily basis, so that interested persons can determine whether the project is  
12 ahead of, or behind, schedule, and the reasons for any deviations from the Critical Path Schedule.  
13 The Critical Path Schedule shall be kept up to date at least daily to ensure that it reflects the  
14 projected early and late start and finish dates for all tasks and for the project(s) accurately.

15                   (a) The Critical Path Schedule shall include the following deadlines:

- 16                   i.       Award contract(s) for design and construction of facilities and notice  
17 to proceed with construction of facilities not later than December 19, 2005.
- 18                   ii.       Initiate design phase, if necessary, not later than December 19, 2005.
- 19                   iii.       Commence construction phase of project(s) not later than September  
20 15, 2006.
- 21                   iv.       Complete construction phase of project(s) not later than August 24,  
22 2008.
- 23                   v.       Achieve full compliance with applicable effluent standards and  
24 limitations not later than September 30, 2008.

25           6.       USIBWC shall submit the Critical Path Schedule to the Court for purposes of  
26 reviewing the schedule's reasonableness.

27           7.       If the Critical Path Schedule developed by USIBWC reveals that USIBWC can  
28 accomplish the tasks set forth in paragraph 5 above materially sooner than the deadlines delineated,

1 the Regional Board may ask the Court to exercise its discretion to impose earlier deadlines.

2 8. As soon as the Critical Path Schedule is established and until the selected project(s)  
3 is/are completed, USIBWC shall provide to the Regional Board and the Court internet-web-based  
4 real-time access to the Critical Path Schedule and all CPMM information developed or relied upon  
5 by USIBWC.

6 9. USIBWC shall rely on the CPMM to direct and manage the project(s) needed to  
7 achieve compliance with Order 96-50 and shall utilize expeditious project management principles  
8 to promote completion of the project(s) and compliance with Order No. 96-50 in the shortest  
9 possible time. The tasks and dates contained in the Critical Path Schedule shall serve as an integral  
10 means for ensuring compliance with the deadlines set forth in paragraph 5 above, or with any  
11 modifications thereafter imposed by the Court.

12 10. If USIBWC fails to meet dates contained in the Critical Path Schedule, USIBWC  
13 shall promptly make adjustments to return the project(s) to schedule. If USIBWC fails to meet the  
14 dates contained in the Critical Path Schedule that might cause USIBWC to miss any of the deadlines  
15 set forth in paragraph 5 above, or with any modifications imposed by the Court, USIBWC shall,  
16 within 10 days, meet and confer with the Regional Board regarding adjustments to the schedule of  
17 work to meet the deadlines in paragraph 5 above. USIBWC and the Regional Board shall  
18 immediately notify the Court of any scheduled meet and confer as described above and thereafter  
19 shall notify the Court of the outcome of the meet and confer. If, after meeting and conferring with  
20 the Regional Board as described above, the Regional Board determines that USIBWC will fail to  
21 meet, or if USIBWC fails to meet, any of the deadlines set forth in paragraph 5 above, or any  
22 modifications imposed by the Court, the Regional Board can seek relief from the Court, including  
23 but not limited to, coercive penalties. USIBWC can assert any and all defenses.

24 11. USIBWC has consistently achieved removal of not less than 75 percent of TSS from  
25 the wastewater treated at the IWTP using advanced primary treatment. USIBWC shall remove not  
26 less than 75 percent of TSS at any time as required by applicable effluent limitations. USIBWC shall  
27 continue to manage the advanced primary treatment process at IWTP to optimize TSS removal above  
28 75 percent while working to complete the project(s) needed for USIBWC to achieve compliance with

1 Order No. 96-50. Within 60 days from the entry of the Court's order, USIBWC shall commence an  
2 optimization study utilizing an independent third party to determine how additional TSS can be  
3 removed from the effluent from the IWTP. If the optimization study reveals that additional TSS can  
4 be removed from the effluent, USIBWC and the Regional Board shall meet and confer regarding  
5 methods for achieving additional TSS removal. If the parties cannot agree, the Regional Board can  
6 request any appropriate relief from the Court.

7 12. Plaintiff is a substantially prevailing party in this lawsuit and USIBWC shall pay  
8 Plaintiff reasonable attorneys' fees and costs.

9 13. The claim for coercive penalties is by stipulation of the parties withdrawn without  
10 prejudice and may be raised as set forth in paragraph 10.

11 14. This Order shall be a final judgment for equitable relief for all of Plaintiff's claims.  
12 The Court retains jurisdiction to enforce the terms of this Order.

*M* **IT IS SO ORDERED.** *The clerk shall enter this as a final judgment*

14  
15 Date: 12-06-2004

*Barry T. Moskowitz*  
The Honorable Barry T. Moskowitz  
United States District Judge

*12-6-04*  
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