



COUNTY OF SAN DIEGO

BOARD OF SUPERVISORS

1600 PACIFIC HIGHWAY, ROOM 335, SAN DIEGO, CALIFORNIA 92101-2470

AGENDA ITEM

DATE: October 22, 2024

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TO: Board of Supervisors

SUBJECT

AFFIRMATIVE LITIGATION TO FIGHT FOR A FASTER FIX FOR THE TIJUANA RIVER POLLUTION CRISIS (DISTRICTS: ALL)

OVERVIEW

Affirmative Litigation as a Tool

Affirmative litigation is a powerful tool in the fight for environmental justice, empowering communities to hold corporations accountable for damages while securing firm commitments to halt ongoing pollution and prevent future harm. A prime example is *Anderson v. PG&E* in Hinkley, CA, famously portrayed in *Erin Brockovich*. The case not only secured a \$333 million settlement for residents harmed by toxic groundwater contamination but also compelled PG&E to accelerate investments in environmental cleanup and remediation to stop further damage and prevent future contamination.

The County of San Diego (County) has a proven and aggressive track record in affirmative litigation. In 2024, we took legal action against a major ghost gun manufacturer for illegally marketing and selling machines designed to produce unlicensed, untraceable, ghost guns that threatened the safety of our communities. The County secured a staggering \$100 million settlement from opioid manufacturers for their role in the opioid epidemic, supporting the creation of new behavioral health beds and programs. In July 2024, the County took action to pursue litigation against corporate landlords who are illegally using price-fixing algorithms to drive up rent prices and displace residents.

Tijuana River Crisis

The Tijuana River pollution crisis is an environmental, public health, and national security threat driven by decades of poor maintenance and management of wastewater systems on both sides of the border. Billions of gallons of toxic pollution have flowed across the border carrying untreated sewage, industrial chemicals, sediment, and trash out through the Tijuana Estuary and into the Pacific Ocean, severely contaminating communities along our coastlines. This negligence has led

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to chronic beach closures in Imperial Beach and Coronado, along with widespread impacts to public health, fragile ecosystems, and local economic development.

South Bay International Wastewater Treatment Plant Operations

The South Bay International Wastewater Treatment Plant (SBIWTP) was built in 1996 as a key piece of infrastructure designed to treat raw sewage coming from Tijuana before it discharges into the river, estuary, and ocean. However, SBIWTP has consistently failed to meet its mandate. Decades of poor maintenance and sewage flows beyond the facility's capacity have led to over 44 billion gallons of sewage flowing into San Diego County in 2023 alone, resulting in:

- Over 500 violations of permitted discharges into the Pacific Ocean, including 130 violations of extremely hazardous and banned chemicals such as DDT and PCBs that levels thousands of times the permitted limit¹.
- Violations of limits for bacteria in the Pacific Ocean hundreds of times the limits allowed for water recreation and shellfish harvesting.
- Failure to submit reporting to provide the public with information about discharges.
- Multiple violations by the San Diego County Air Pollution Control District for noxious odors tied to the discharge of untreated wastewater.
- Failure to meet the August 15, 2024 deadline imposed by the San Diego Regional Water Quality Control Board to meet water quality standards for discharges to the Pacific Ocean.

Plans to expand the facility capacity from 25 to 50 million gallons per day are underway, but it will be years until this work is completed.

The SBIWTP is owned by the U.S. International Boundary Water Commission (USIBWC) who contracts with a private firm, Veolia North America, a French transnational company, for operations and maintenance of the facility. Together, they are responsible to ensure that SBIWTP is effectively maintained and in compliance with their permits under the National Pollutant Discharge Elimination System (NPDES) and the Clean Water Act (CWA). However, they are currently not in compliance with their permits.

Veolia has largely flown under the radar in San Diego, yet they have a troubling history of negligent actions and repeatedly sidestepping accountability in some of the most egregious water contamination disasters of our time. Their involvement in the Flint Water Crisis is just one glaring example—where they failed to identify corroding pipes, leading to devastating lead contamination and an outbreak of Legionnaires' disease. This is not an isolated incident; Veolia has faced other lawsuits for their role in multiple public health crises, including in Oklahoma, Pittsburgh, and

¹ San Diego Coastkeeper. (2024, April 16). *Environmental Groups Sue Federal Government to Spur Action in Tijuana Sewage Crisis - San Diego Coastkeeper*. San Diego Coastkeeper. <https://www.sdcoastkeeper.org/environmental-groups-sue-federal-government-to-spur-action-in-tijuana-sewage-crisis/>

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Colombia, consistently prioritizing profit over the well-being of residents. Their track record of inaction and harm raises serious alarms, especially given their integral role as operator of SBITWP.

Congressional Delegation Secured Funding

The San Diego Congressional Delegation worked to secure critical funding needed to expand and repair the SBIWTP, directing \$300 million dollars from the Environmental Protection Agency (EPA) to fund repairs and expansions to SBIWTP in 2023, marking a significant step toward a coordinated response to the pollution crisis. In March 2024, the San Diego Congressional Delegation secured an additional \$156 million to further enhance the facility. Despite these historic funding commitments, USIBWC and Veolia have not moved fast enough and continue to discharge pollutants daily.

History of Litigation

Lawsuits were initiated in 2018 by the cities of Imperial Beach and Chula Vista, along with the Port of San Diego, and that set the stage for a wave of legal action aimed at USIBWC and Veolia. Subsequent lawsuits were also filed by the City of San Diego, the California San Diego Regional Water Quality Control Board, the California State Lands Commission, and the Surfrider Foundation for hundreds of violations of the facility's discharge permit that resulted in the Tijuana River and coastal marine water being inundated with untreated sewage and toxic chemicals. A Settlement in 2022² promised that expedited repairs would stop the pollution, but the condition of the plant has continued to allow ongoing environmental degradation from contaminants in the wastewater.

In April of 2024, San Diego Coastkeeper and Coastal Environmental Rights Foundation (CERF), filed a lawsuit against USIBWC and Veolia for continued CWA violations. In September 2024, Imperial Beach residents filed a class action suit against Veolia, citing the company's failure to curb pollution has led to declining property values across Imperial Beach. Additional cases may be forthcoming.

Action Today

The County's leadership in a lawsuit would bring greater resources, expertise, and pressure to the fight for clean water and force potential responsible parties to take faster action to stop the pollution. Today's item directs the Chief Administrative Officer in consultation with County Counsel, to explore litigation options with the explicit goal of expediting infrastructure repairs and halting the discharge of polluted wastewater. This litigation is critical. Numerous compliance deadlines have passed, and the necessary fixes are still incomplete; therefore, we must leverage our legal authority to ensure accountability for the private corporations responsible for pollution. In 2017, the County was preparing to pursue legal action over these very wastewater violations, but the previous Board opted for inaction instead. We must do better. By taking legal action today, the County demonstrates its commitment to protecting residents and the environment while pressing those responsible to address this urgent pollution crisis.

² <https://ee5-files.s3-us-west-2.amazonaws.com/publications/CBWN%20Settlement%20Agreement.all%20signatures.pdf>

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RECOMMENDATION(S)

VICE-CHAIR TERRA LAWSON-REMER AND CHAIRWOMAN NORA VARGAS

1. Direct the Chief Administrative Officer in consultation with County Counsel, to explore options to file a legal complaint or join existing litigation against any potential responsible parties, such as but not limited to, Veolia North America, for damages caused to the Tijuana River Valley, Estuary and Marine Preserve, and the surrounding communities. Litigation options should include, but not be limited to, the Clean Water Act, Clean Air Act, Endangered Species Act, Resource Conservation and Recovery Act. Return to the Board in closed session on an ongoing basis every 90 days with updates on their efforts, and options that the Board can elect to implement.

EQUITY IMPACT STATEMENT

The Tijuana River pollution and contamination have disproportionately impacted communities that have been underserved and under-resourced, such as low-income communities and communities of color. It is imperative that the County take action to ensure that these individuals have solutions to improve and protect their local waterways.

SUSTAINABILITY IMPACT STATEMENT

This board letter aligns with the County's sustainability goals by protecting the environment and fighting to eliminate hazardous substances, chemicals, and waste from our water sources and water bodies in San Diego.

FISCAL IMPACT

Funds for this request are budgeted as staff time included in the Fiscal Year 2024-26 Operational Plan in County Counsel based on existing General Purpose Revenue. There will be no change in net General Fund cost and no additional staff years. There may be future fiscal impacts associated with future related recommendations which staff would return to the Board for consideration and approval.

BUSINESS IMPACT STATEMENT

The long-term impacts of the transboundary pollutants in the Tijuana River Valley area, and subsequent beach closures have had a devastating impact on the surrounding communities up and down San Diego County's coast through decreased visitors and street traffic. It is imperative that the County utilize all of the tools within its authority, such as legal action, to help expedite the infrastructure fixes needed to mitigate this issue.

ADVISORY BOARD STATEMENT

N/A

BACKGROUND

Affirmative litigation serves as a crucial tool in the fight for social and environmental justice, enabling communities to hold polluters accountable. By pursuing legal action against corporations that contribute to harm, affected residents can seek remedies and push for systemic change that prioritize public health and environmental protections.

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The Tijuana River pollution crisis is a pressing environmental and public health disaster that has primarily been driven by excessive pollution from inadequate waste management systems on both sides of the border of the United States and Mexico. For years, billions of gallons of toxic pollution have flowed through the Tijuana River carrying untreated sewage, industrial chemicals, sediment, and trash through the Tijuana Estuary and out into the Pacific Ocean. This has resulted in beach closures in Imperial Beach and Coronado, threats to public health and the environment, as well as local economic impacts.

The South Bay International Wastewater Treatment Plant (SBIWTP) is critical for treating this wastewater before it impacts the Tijuana River, estuary, and local coastlines. Over the years, the plant has faced significant operational challenges, including aging infrastructure and inadequate capacity to manage increasing sewage flows. In 2023 alone, over 44 billion gallons of wastewater entered San Diego County. Plans are underway to fix and expand the facility's capacity from 25 million to 50 million gallons per day, but until this work is completed, raw sewage and pollutants will continue to harm our communities.

SBIWTP is owned by the USIBWC, however it relies on Veolia North America for operations and maintenance. Together, they are responsible for ensuring compliance with National Pollutant Discharge Elimination System (NPDES) and Clean Water Act (CWA) permits, but they are currently failing to meet these standards. Veolia, who has flown under the radar in San Diego, has a troubling history of negligence in major water contamination crises, including the Flint Water Crisis, where they failed to detect corroding pipes, leading to severe lead contamination and a Legionnaires' disease outbreak. This pattern extends to other public health crises in Oklahoma, Pittsburgh and Columbia, where Veolia has prioritized profits over community safety. Their record of inaction raises serious concerns, especially given their critical role in operating the SBIWTP.

Over the years, there have been a growing number of legal cases from local residents, environmental organizations, cities, and the Regional Water Quality Control Board Control Board that have targeted both the USIBWC and Veolia, due to their roles in managing cross-border water quality. These cases have alleged that these entities failed to adequately address the ongoing contamination and enforce regulations that protect the environment, as well as public health and safety. They highlight a growing frustration among communities affected by the pollution, emphasizing the need for accountability, effective remediation measures, and quicker resolve.

Lawsuits were initiated in 2018 by the cities of Imperial Beach and Chula Vista, along with the Port of San Diego, and that set the stage for a wave of legal action aimed at USIBWC and Veolia. Subsequent lawsuits were also filed by the City of San Diego, the California San Diego Regional Water Quality Control Board, the California State Lands Commission, and the Surfrider Foundation for hundreds of violations of the facility's discharge permit that resulted in the Tijuana River and coastal marine water being inundated with untreated sewage and toxic chemicals. A Settlement in 2022 promised that expedited repairs would stop the pollution, but the condition of

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The County's leadership in a lawsuit would bring greater resources, expertise, and pressure to the fight for clean water. The item today requests that the Chief Administrative Officer in consultation with County Counsel, explore options to file a legal complaint or join existing litigation against any potential responsible parties, such as but not limited to Veolia North America, for damages caused to the Tijuana River Valley, Estuary and Marine Preserve, and the surrounding communities. The explicit goal of any such litigation would be expediting infrastructure repairs and halting the discharge of polluted wastewater. By taking legal action, the County demonstrates its commitment to protecting residents and the environment while pressing those responsible to address this urgent pollution crisis.

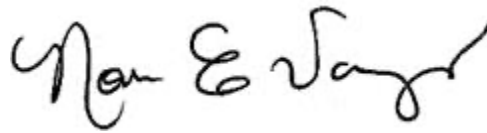
LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

This proposed action supports the Sustainability, Equity, and Justice Initiatives in the County of San Diego's 2024-2029 Strategic Plan by protecting the environment and advancing legal actions and protections against parties that are responsible for contaminants and pollution in our water sources and water bodies. This action also aims to help reduce overall health disparities in our communities by working to improve San Diego's water and air quality.

Respectfully submitted,



Terra Lawson-Remer
Supervisor, Third District



Nora Vargas
Supervisor, First District

ATTACHMENT(S)

N/A