

# Toxic Accountability: Tort Law, Transboundary Pollution, and the Failure of Environmental Governance in the Tijuana River Crisis

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*For decades, untreated sewage from Tijuana has flowed across the U.S.-Mexico border into Southern California, exposing communities to toxic contamination and degrading protected ecosystems. Litigation efforts, however, remain fragmented and largely ineffective. This Note argues that the legal and institutional responses to the Tijuana River sewage crisis reveal deeper structural failures in environmental accountability. Responsibility is strategically splintered: sovereign states invoke jurisdictional immunities, quasi-sovereign entities like the International Boundary and Water Commission cite treaty constraints, and private contractors are left as procedurally available targets. This distribution of liability within toxic tort litigation exposes the design flaws inherent in the international treaty regime at play, a territorial framework built to administer a border rather than to govern a shared environmental space. Meanwhile, despite racially charged rhetoric, the absence of litigation against Mexico further underscores the legal and political disparities that shape transboundary environmental harm.*

*Drawing on case analysis, treaty frameworks, legal theory, and parallel global governance failures, this Note illustrates how these layered asymmetries reinforce a legal architecture in which harm is acknowledged but accountability is deferred. In an era of accelerating ecological crises, the Tijuana River litigation offers a cautionary tale: without institutional reforms that codify cross-border environmental protections, legal systems will remain reactive and piecemeal—better at narrating failure than preventing it.*

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## I. INTRODUCTION

Just miles from affluent San Diego lies Tijuana, a Mexican border city long burdened by its reputation as a “sin city” due to associations with vice, cross-border tourism, and illicit economies.<sup>1</sup> Chicana writer Gloria Anzaldúa (1987) famously described the U.S.-Mexico border as an “open wound” where the First World grates against the Third.<sup>2</sup> Demarcated by the Treaty of Guadalupe Hidalgo in 1848, the region has long been marked by flows of people, goods, and power.<sup>3</sup> Tijuana’s prominence grew during Prohibition, when Americans crossed the border in search of alcohol, cementing the city’s enduring association with illicit activity in the American imagination.<sup>4</sup> In the mid-1990s, as the North American Free Trade Agreement (NAFTA) flooded Mexican markets with cheap agricultural goods, rural livelihoods unraveled, pushing displaced workers northward toward the border.<sup>5</sup> Today, the San

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1. See generally Tim Weiner, *Tijuana Journal; Busy as Sin in Mexico, Tending to Straying Sheep*, N.Y. TIMES (May 12, 2003), <https://www.nytimes.com/2003/05/12/world/tijuana-journal-busy-as-sin-in-mexico-tending-to-straying-sheep.html> (highlighting that “[t]housands of Americans young and old come every day and every night to Tijuana” to “do things they would never think of doing in the United States”).

2. GLORIA ANZALDÚA, BORDERLANDS/LA FRONTERA: THE NEW MESTIZA 9-10 (1987) (“[A] 1950 mile-long open wound dividing a pueblo, a culture....The U.S.-Mexico border es una herida abierta where the Third World grates against the first and bleeds. And before a scab forms it hemorrhages again, the lifeblood of two worlds merging to form a third country—a border culture.”)

3. See generally EDWARD S. CASEY & MARY WATKINS, UP AGAINST THE WALL: RE-IMAGINING THE U.S.-MEXICO BORDER 16 (1st ed. 2014) (arguing that even though the border was imposed as an “expression of state power on the part of the United States, which dictated the terms of the original Treaty of Guadalupe Hidalgo,” it has never functioned as a sealed line but instead as a site of dense cross-border circulation).

4. *Id.* at 57-58 (“[Tijuana] first flourished in the 1920s, when Prohibition drove Americans to seek alcohol across the border. The rough-and-tumble town that grew up to quench this thirst resembled a frontier town in the Old West, with heavy drinking, gambling, prostitution, and cockfighting all much in evidence.”).

5. *Id.* at 16 (“After NAFTA went into effect in 1994, Mexican farmers in large numbers were forced into dire poverty because NAFTA allowed the Mexican market to be flooded by U.S. pork and U.S. government-subsidized corn, which undercut Mexican prices. Millions of farmers have had to migrate off their lands to Mexican cities and across the border to work in the United States in order to feed their families.”); Lucinda Newns, *The Sea Cannot Be Fenced: “Natural” and “Unnatural” Borders in Gloria Anzaldúa’s Borderlands/La Frontera and Amitav Ghosh’s Gun Island*, 29 INTERDISC. STUD. LITERATURE & ENVTL. 1097, 1097 (2021) (“The mid-1990s, saw a large increase of undocumented Mexicans, many them farmers, who could no longer make a living in the face of cheap American products flooding the market following the signing of the North Atlantic Free Trade Agreement (NAFTA). While welcomed by an agricultural sector eager for cheap labor, these workers spurred a backlash of anti-immigrant sentiment and the building of one of the first sections of the border fence in San Diego.”).

Diego–Tijuana border represents one of the most heavily militarized stretches of the southwestern border, complete with a steel barrier that extends several meters into the Pacific Ocean.<sup>6</sup>

Amid this visible architecture of violence, from militarization and surveillance to forced displacement, lies a less conspicuous but urgent threat: a festering sewage crisis that endangers both human and non-human communities. At just 120-miles long, the Tijuana River has reemerged as a flashpoint for transboundary pollution.<sup>7</sup> Rapid population growth and aging infrastructure on both sides of the border have overwhelmed existing sanitation systems, resulting in the regular discharge of untreated sewage into the Tijuana River and, ultimately, the Pacific Ocean.<sup>8</sup>

This Note takes the contemporary sewage crisis in the Tijuana River Basin as a lens to explore urgent questions of environmental accountability: Who bears responsibility when government-led environmental protections fail? What does accountability look like when intermediate parties like private companies are responsible for implementing critical infrastructure? And does litigation clarify or further obscure the distribution of responsibility across multiple state and non-state actors? The crisis at the U.S.-Mexico border has triggered, and at times threatened, waves of litigation targeting both public and private actors, including (1) the International Boundary and Water Commission (IBWC); (2) Veolia Water (Veolia), the private French company that has managed the South Bay International Wastewater Treatment Plant (SBIWPT) since its opening in 1997; and (3) the government of Mexico. I examine the full spectrum of legal responses to the sewage crisis—public nuisance claims, mass toxic torts, and potential claims grounded in

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6. *Id.* at 1097 (“The San Diego section remains one of the most heavily fortified stretches of the southwestern border, where the fence juts several meters into the Pacific Ocean at the incongruously named Friendship Park”).

7. *Tijuana River*, AM. RIVERS, <https://www.americanrivers.org/river/tijuana-river/> (last visited Apr. 5, 2025); see generally Serge Dedina, *The Political Ecology of Transboundary Development: Land Use, Flood Control and Politics in the Tijuana River Valley*, 10 J. BORDERLANDS STUD. 89, 89-110 (1995) (attributing the Tijuana River’s neglect to dominant assumptions that arid border environments lack biological value); Casey & Watkins, *supra* note 3, at 63-64 (noting that the Tijuana watershed was suddenly ruptured by the then newly constructed border wall in the 2000s).

8. *USIBWC Spill Events and Transboundary Flow Events from Mexico into the San Diego Region*, CAL. WATER BOARDS, [https://www.waterboards.ca.gov/sandiego/water\\_issues/programs/tijuana\\_river\\_valley\\_strategy/sewage\\_issue.html](https://www.waterboards.ca.gov/sandiego/water_issues/programs/tijuana_river_valley_strategy/sewage_issue.html) (last visited Mar. 21, 2024) (describing the chronic sewage pollution issues in the Tijuana River watershed and the state’s efforts to coordinate binational cleanup and mitigation strategies).

international law—to assess the broader structural and legal failures that produced the crisis in the first place.

I further draw on the doctrinal and procedural logics of toxic tort and treaty law to examine how environmental harm and responsibility are legally assigned in transboundary contexts. The analysis proceeds in five parts. It begins in Part 2 with the history of the Tijuana River sewage crisis and the governance frameworks that have failed to resolve it, then in Part 3 considers the limits of international instruments, the IBWC, and U.S. domestic regulation. I then turn in Part 4 to consider litigation strategies against both public and private actors, including efforts to hold Mexico accountable despite sovereign immunity and treaty constraints. In Part 5, I situate these disputes within broader comparative and theoretical frames, drawing on global parallels and critiques of tort law and treaty design.

Ultimately, this Note argues that the legal and institutional responses to the Tijuana River sewage crisis exemplify how transboundary environmental harm evades accountability not simply through litigation strategies, but through the institutional design that structures responsibility. The toxic tort litigation applied to this crisis directs blame onto procedurally exposed actors, revealing the deeper environmental design failures of the 1944 Water Treaty. Structured to manage water allocation and sanitation rather than shared environmental stewardship, the Agreement institutionalizes a technocratic model of cooperation that continues to limit ecological accountability. As I argue in Part 6, accountability consequently becomes displaced within a legal system that privileges procedural possibility over structural responsibility. The Tijuana River shows how toxic tort law can give the illusion of remedy, even as a treaty framework indifferent to ecological justice quietly forecloses real accountability.

## II. BACKGROUND OF THE CRISIS: INFRASTRUCTURE, GEOGRAPHY, AND GOVERNANCE BREAKDOWN

The Tijuana River is a 120-mile transboundary waterway that begins in Mexico and drains into the Pacific Ocean on the coast of Southern California.<sup>9</sup> In recent years, the river has become infamous as a conduit for untreated sewage and industrial runoff

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9. *Id.*

flowing north from Tijuana into the United States, often resulting in closed beaches in Imperial Beach and Coronado and contamination of the Tijuana Estuary, a protected wetland.<sup>10</sup>

Though public attention has recently intensified, the crisis is decades old. Transboundary pollution in the Tijuana River dates back to the 1930s, but worsened in the 1980s and 1990s as Tijuana's population surged due to industrialization and cross-border migration.<sup>11</sup> Facing mounting sewage spills that overwhelmed both Mexican and U.S. infrastructure, the IBWC proposed a conceptual plan in 1990 for the construction of a wastewater treatment plant in San Diego to treat sewage originating in Mexico.<sup>12</sup> Ultimately, the plans materialized through the SBIWPT.<sup>13</sup> Completed in 1997 and operated by Veolia, a private French-based multinational corporation specializing in waste and wastewater services, the plant was intended to address the crisis by intercepting and treating cross-border sewage before it reached U.S. coastal waters.<sup>14</sup>

Like the IBWC, Veolia has come under scrutiny for its role in repeated sanitation failures in the Tijuana River basin. Notably, the company also faced litigation for its involvement in the Flint Water

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10. *Tijuana River Sewage Crisis: Causes and Consequences*, SAN DIEGO COASTKEEPER, <https://www.sdcoastkeeper.org/blog/tijuana-river-sewage-crisis-causes-consequences/> (last visited Apr. 5, 2025) (chronicling the decades-long transboundary sewage crisis at the U.S.-Mexico border, including historic leaks in the 2000s and 2010s by highlighting how institutional neglect, rapid urban growth in Tijuana, and the disrepair of U.S. treatment infrastructure have led to over 31 billion gallons of raw sewage and stormwater contaminating coastal ecosystems and closing San Diego beaches since 2023); *Tijuana Estuary Visitor Center*, CITY OF SAN DIEGO, <https://www.sandiego.org/members/parks-gardens/tijuana-estuary-visitor-center.aspx> (last visited Apr. 1, 2023); Joshua Smith, *Rains Turn Tijuana River Valley into 'Swamp of Sewage.'* *But Wetlands May Need Those Flows*, SAN DIEGO UNION TRIBUNE, <https://www.sandiegouniontribune.com/news/environment/story/2022-03-04/tijuana-river-valley-swamp-of-sewage> (last visited Apr. 1, 2023); MacKenzie Elmer, *A Dispatch from Coronado's 'Closed' Beaches*, VOICE OF SAN DIEGO (last visited Aug. 1, 2022), <https://voiceofsandiego.org/2022/08/04/a-dispatch-from-coronados-closed-beaches/>

11. Samir Halawi, *Sniffing Out Clandestine Water Pollution in the Tijuana River Valley*, GEORGETOWN ENVTL. L. REV. (2019) (arguing that given the sewage issue, the IBWC's current binational emergency notification and response system based on good faith reporting by Mexico is not working and proposes an improved mechanisms for binational monitoring and reporting of transboundary pollution).

12. Int'l Boundary & Water Comm'n, Minute No. 283: *Conceptual Plan for the International Solution to the Border Sanitation Problem in San Diego, California/Tijuana, Baja California* (July 2, 1990), <https://ibwc.azurewebsites.net/wp-content/uploads/2023/05/Min283.pdf> (proposing the construction of a wastewater treatment plant to address sewage overflows from Tijuana into San Diego coastal waters).

13. *How Veolia Helps Protect San Diego*, VEOLIA N. AM., <https://www.veolianorthamerica.com/how-veolia-helps-protect-san-diego>.

14. *Id.*

Crisis, ultimately agreeing to a \$53 million civil settlement after allegedly failing to detect and disclose toxic lead contamination in Flint's public water supply.<sup>15</sup>

The IBWC was originally established under the 1848 Treaty of Guadalupe Hidalgo to mark and maintain the U.S.-Mexico border, and later restructured under the 1944 Water Treaty to manage shared water resources.<sup>16</sup> By the 2000s, this narrow institutional mandate began to clash with growing environmental concerns and limited funding, struggling to enforce environmental standards or respond proactively to infrastructure degradation as the South Bay International Wastewater Treatment Plant (SBIWTP) repeatedly discharged untreated or partially treated wastewater into the river during heavy rains or equipment failures.<sup>17</sup>

The scale of the damage is extraordinary. Between 2015 and 2020, over 100 billion gallons of polluted water flowed into U.S. territory through the Tijuana River.<sup>18</sup> In 2022 alone, beaches in Imperial Beach were closed for an average of 200 to 300 days due to persistent sewage contamination.<sup>19</sup> The health effects have been well-documented: residents and beachgoers face increased risks of gastrointestinal illness, respiratory distress, and skin infections.<sup>20</sup> In September 2024, during a record-breaking heatwave, the San Diego County Air Pollution Control District issued a public advisory urging residents to remain indoors due to the intensified stench of sewage from the Tijuana River Valley.<sup>21</sup> Local schools cancelled

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15. DeJanay Booth-Singleton, *Boston-based engineering firm agrees to pay \$53 million to Flint residents in water crisis lawsuit*, CBS NEWS (Feb. 21, 2025), <https://www.cbsnews.com/detroit/news/company-agrees-to-53-million-in-flint-water-lawsuit/>.

16. *History of the International Boundary and Water Commission*, INT'L BOUNDARY & WATER COMM'N (Nov. 17, 2017) <https://www.ibwc.gov/about-us/history/>.

17. Phillip Musegaas, *Understanding the Tijuana River Sewage Crisis—An Overview of Causes and Consequences*, SAN DIEGO COASTKEEPER (May 2, 2024), <https://www.sdcoastkeeper.org/blog/tijuana-river-sewage-crisis-causes-consequences/>.

18. *Id.*

19. Erik Anderson, *New San Diego Ocean Water Testing Much Faster*, KPBS (May 5, 2022), <https://www.kpbs.org/news/environment/2022/05/05/new-san-diego-ocean-water-testing-much-faster>.

20. Philip Salata, *Powerhouse San Diego Law Firms Set Sights on South Bay Sewage Crisis*, INEWSOURCE (Dec. 3, 2024), <https://inewsourc.org/2024/12/03/powerhouse-san-diego-law-firms-set-sights-on-south-bay-sewage-crisis/> (reporting that plaintiffs, including residents and school districts, allege injuries such as respiratory illness, nausea, headaches, and property damage due to exposure to airborne sewage contaminants and polluted ocean water).

21. Salvador Rivera, *Researchers Halt Studies, Pull Out of Area Due to High Levels of Toxins*,

outdoor activities amid concerns about exposure to aerosolized toxins, with students reportedly experiencing headaches, asthma flare-ups, respiratory discomfort, and eye irritation.<sup>22</sup>

The ecological toll is equally alarming. The Tijuana Estuary, a designated Ramsar Wetland of International Importance, is routinely flooded with toxic water, threatening biodiversity and degrading one of the region's most vital coastal ecosystems.<sup>23</sup>

Despite the scope of the harm, the federal response has been slow and fragmented. While the Environmental Protection Agency (EPA) and IBWC issued periodic assessments and promised infrastructure upgrades, funding has been inconsistent and often delayed by bureaucratic disagreements between the United States and Mexico.<sup>24</sup> The next section will examine the international legal frameworks that structure U.S.-Mexico cooperation, and the gaps they leave in addressing crises of this magnitude.

### III. REGULATORY LANDSCAPE

The governance of the Tijuana River Basin reflects overlapping international, binational, and domestic regulatory frameworks. While litigation has emerged as a response to institutional failure, these frameworks constitute the legal backdrop against which accountability is pursued or evaded. This section offers an overview of the relevant environmental agreements, treaty regimes, and domestic regulatory authorities shaping the management of transboundary pollution in the region.

#### A. *International and Binational Frameworks*

The Tijuana River Basin is governed primarily by the 1944 Water Treaty and the IBWC, its implementing institution.<sup>25</sup>

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BORDER REPORT (Sept. 10, 2024), <https://www.borderreport.com/news/health/south-bay-schools-cancel-outdoor-activities-as-air-quality-worsens-in-tijuana-river-valley/>.

22. *Id.*; City News Serv., *Coronado Schools Sue Plant Operator, Alleging Students, Staff Harmed by Border Sewage*, TIMES OF SAN DIEGO (Mar. 5, 2025), <https://timesofsandiego.com/education/2025/03/05/coronado-schools-sue-plant-operator-alleging-students-staff-harmed-by-border-sewage/>.

23. See generally Stephen Mumme, *The 1944 Water Treaty and the Incorporation of Environmental Values in U.S.-Mexico Transboundary Water Governance*, 112 ENVTL. SCI. & POL'Y 126-133 (Oct. 2020), [https://www.sciencedirect.com/science/article/pii/S1462901119315242?ref=pdf\\_download&fr=RR-2&rr=9a2510c00a82aaa9](https://www.sciencedirect.com/science/article/pii/S1462901119315242?ref=pdf_download&fr=RR-2&rr=9a2510c00a82aaa9).

24. Halawi, *supra* note 11.

25. Mumme, *supra* note 23; Halawi, *supra* note 11.

Established as the International Boundary Commission (IBC) under the Treaty of Guadalupe Hidalgo in 1848, the IBWC was tasked with surveying and demarcating the border.<sup>26</sup> Its mandate later expanded to include water allocation in response to rising agricultural demands on both sides of the border.<sup>27</sup> The 1944 Water Treaty formalized this shift, transforming the IBC into the International Boundary and Water Commission (IBWC) and granting it broad authority over transboundary river governance.<sup>28</sup>

Structured as a binational body, the IBWC comprises a U.S. section administered by the State Department and a Mexican section overseen by the Secretariat of Foreign Affairs that meets weekly to discuss ongoing issues.<sup>29</sup> The treaty empowers the IBWC to issue binding binational decisions, known as “minutes,” which must be approved by both national governments.<sup>30</sup>

The 1944 Water Treaty obligates the parties to conserve international reservoirs and to pursue “maximum use” of shared water resources from the Rio Grande, Colorado, and Tijuana rivers in ways that maximize regularity and utility.<sup>31</sup> Though it explicitly references agriculture, electricity generation, navigation, fishing, dam construction, and flood control, its scope is not limited to these domains. Article 3 of the Water Treaty also creates space for cooperation on emerging issues such as sanitation and pollution.<sup>32</sup>

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26. *About Us: History*, INT’L BOUNDARY & WATER COMM’N, *supra* note 16.

27. *Id.*

28. Treaty on Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Mex.-U.S., Feb 3, 1944, T.S. 994 (“a treaty between the United States of America and the United Mexican States relating to the utilization of the waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas to the Gulf of Mexico”) (hereinafter the 1944 Water Agreement); Int’l Boundary & Water Comm’n, Minute 222: Emergency Connection of the Sewage System of the City of Tijuana, Baja California, to the Metropolitan Sewage System of the City of San Diego, California (1965) (establishing emergency wastewater cooperation between the U.S. and Mexico and setting early precedent for U.S.-based sewage treatment).

29. *Id.*

30. See Int’l Boundary & Water Comm’n, Minute 283: Conceptual Plan for the International Solution to the Border Sanitation Problem in San Diego, California/Tijuana, Baja California (1990) (laying out a binational framework for sewage treatment and justifying U.S.-based infrastructure to address Mexico’s limitations).

31. Treaty on Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Mex.-U.S., art. 8, Feb. 3, 1944, T.S. 994 (“The two Governments recognize that both countries have a common interest in the conservation and storage of waters in the international reservoirs and in the maximum use of these structures for the purpose of obtaining the most beneficial, regular and constant use of the waters belonging to them.”)

32. Treaty on Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Mex.-U.S., art. 3, Feb. 3, 1944, T.S. 994 (“In matters in which the Commission may

Beyond the 1944 Water Treaty, the United States and Mexico are parties to several international and bilateral environmental agreements.<sup>33</sup> Both have signed the Convention on Biological Diversity (CBD) and the Ramsar Convention on Wetlands, conventions which respectively promote the conservation of biological diversity and the protection of wetlands of international importance.<sup>34</sup> However, since the United States has not ratified the CBD, its obligations under the treaty are not legally binding domestically, leaving only Mexico bound by its enforceable provisions.<sup>35</sup>

In addition to international instruments, the United States and Mexico are also signatories to a number of regional and bilateral agreements, including the 1993 North American Agreement on Environmental Cooperation, the 1940 Western Hemisphere Convention, and the 2018 U.S., Mexico, Canada Free Trade Agreement.<sup>36</sup> While these treaties reflect a shared commitment to transboundary environmental protection, they do not coordinate directly with the IBWC, the principal institution responsible for managing the Tijuana River Basin.<sup>37</sup>

### B. Domestic and Local Governance

Transboundary pollution in the Tijuana River basin implicates a patchwork of U.S. regulatory bodies, none of which hold full authority to address the crisis comprehensively. The California State

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be called upon to make provision for the joint use of international waters, the following order of preferences shall serve as a guide: 1. Domestic and municipal uses. 2. Agriculture and stock-raising. 3. Electrical power. 4. Other industrial uses. 5. Navigation. 6. Fishing and hunting. 7. Any other beneficial uses which may be determined by the Commission. All of the foregoing uses shall be subject to any sanitary measures or works which may be mutually agreed upon by the two Governments, which hereby agree to give preferential attention to the solution of all border sanitation problems”).

33. Mumme, *supra* note 23; Dedina, *supra* note 7.

34. Ramsar Convention on Wetlands of International Importance, Feb. 2, 1971, 996 U.N.T.S. 245. Convention on Biological Diversity, *opened for signature* June 5, 1992, 1760 U.N.T.S. 79.

35. *Id.*

36. Mumme, *supra* note 23.

37. *Id.*; See INT'L BOUNDARY & WATER COMM'N, *U.S. IBWC Organizational Structure*, <https://www.ibwc.gov/organization/> (last visited Mar. 22, 2023) (describing the Commission's structure and its focus on water quantity and sanitation); Int'l Boundary & Water Comm'n, Minute 296: Distribution of Construction, Operation and Maintenance Costs for the International Wastewater Treatment Plant Constructed Under the Agreements in Commission Minute No. 283 for the Solution of the Border Sanitation Problem at San Diego, California/Tijuana, Baja California, Mex.-U.S., Apr. 16, 1997 (suggesting that binational cooperation focuses on infrastructure cost-sharing rather than ecosystem health).

Lands Commission (SLC) oversees tide and submerged lands according to the Public Trust Doctrine, a legal principle mandating the preservation of waterways for public uses such as navigation, fishing, ecological protection, and recreation.<sup>38</sup> Transboundary pollution directly undermines this mandate by impairing access to public lands and waters, prompting the SLC in 2018 to call for federal action through the EPA.<sup>39</sup> In 2022, regional stakeholders, including federal, state, and local officials, reached a settlement in the Tijuana River Valley sewage litigation and urged the Biden administration to commit more funding to resolve the ongoing pollution crisis.<sup>40</sup>

The EPA, alongside the U.S. Section of the IBWC, plays a central role in administering the SBIWTP, while state and local agencies such as the San Diego Regional Water Quality Control Board enforce compliance through the Clean Water Act (CWA).<sup>41</sup> Local governments, including the cities of San Diego and Imperial Beach, bear much of the burden for environmental monitoring and emergency response.<sup>42</sup>

#### IV. EXPLORING LEGAL ACCOUNTABILITY

The legal response to the Tijuana River sewage crisis reveals a fractured accountability landscape.<sup>43</sup> Plaintiffs have pursued two

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38. CAL. STATE LANDS COMM'N, *Tijuana River Valley Transboundary Pollution Crisis Litigation* (n.d.), <https://www.slc.ca.gov/environmental-justice/trv-transboundary-pollution-crisis/>.

39. *Id.* (“In 2018, the Commission filed a lawsuit alongside those filed by the San Diego Water Board; the San Diego Unified Port District; the Cities of San Diego, Chula Vista, and Imperial Beach; and the Surfrider Foundation, over the pollution discharges from the USBWC’s facilities.”).

40. CAL. STATE LANDS COMM'N, *Regional Leaders Announce Settlement in Tijuana River Valley Sewage Litigation* (Apr. 12, 2022), <https://www.slc.ca.gov/collaborations/regional-leaders-announce-settlement-in-tijuana-river-valley-sewage-litigation>.

41. *Id.*; U.S. ENV'T PROT. AGENCY, *National Pollutant Discharge Elimination Permit Basics* (June 3, 2025), <https://www.epa.gov/npdes/npdes-permit-basics>; U.S. ENV'T PROT. AGENCY, *Summary of the Clean Water Act* (May 22, 2025), <https://www.epa.gov/laws-regulations/summary-clean-water-act>.

42. CAL. STATE LANDS COMM'N, *supra* note 40.

43. Scott Ridout, *Tijuana River: The Largest Sewage Spill We've Ever Seen*, SURFRIDER FOUND. (Mar. 3, 2017), <https://www.surfrider.org/coastal-blog/entry/tijuana-river-the-largest-sewage-spill-weve-ever-seen/>; *Lawsuit Filed Against Operators of South Bay International Water Treatment Plant*, NBC SAN DIEGO (Nov. 18, 2024), <https://www.nbcsandiego.com/news/local/lawsuit-south-bay-international-water-treatment-plant-operators/3679532/>; Joshua Emerson Smith, *South Bay Cities, Port Slap Feds with Clean Water Act Lawsuit for Failure to Contain Sewage from Tijuana*, SAN DIEGO TRIBUNE (June 1, 2019),

primary paths: public tort actions against the U.S. Section of the IBWC and mass tort litigation against Veolia. These diverging approaches reflect not only different theories of liability, but also different goals. Public torts seek regulatory compliance and injunctive relief, while mass torts demand monetary compensation for personal and property injury.

This section maps these legal strategies and their underlying theories, beginning with a detailed analysis of the public and mass tort litigation that has unfolded since 2015. While public tort suits allege institutional failures by a treaty-bound federal agency, mass tort claims frame the crisis as a failure of corporate responsibility and operational care. Together, they illustrate how environmental harm is distributed across legal categories and how actors attempt to evade liability through appeals to jurisdiction, immunity, and contract. Section IV.A examines the contours and stakes of this bifurcated litigation strategy, and Section IV.B turns to the near-absence of legal action against Mexico, exploring the structural barriers that sovereign immunity and treaty design pose in cross-border environmental harm.

#### A. *Toxic Tort Litigation—Public Tort and Mass Tort*

The legal response to the Tijuana River sewage crisis reveals the structural and doctrinal limitations of both public and mass tort litigation in addressing transboundary environmental harm. Examining both strands of litigation illuminates how accountability becomes diffused across institutional actors as reflected in Table 1. Public tort litigation has largely focused on the IBWC's alleged violations of the CWA, specifically its failure to comply with the National Pollutant Discharge Elimination System (NPDES) permit program as seen in Table 1. Under the CWA, it is unlawful to discharge pollutants into navigable waters from a point source, a discernable conveyance such as a pipe, without a valid NPDES permit.<sup>44</sup> In *City of Imperial Beach v. USIBWC*, municipal plaintiffs alleged that the IBWC violated the CWA by allowing untreated sewage and industrial waste from Mexico to flow through canyon collectors, conveyance structures designed to divert flows occurring in the canyons along the border to the SBIWTP, into U.S. waters

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<https://www.sandiegouniontribune.com/news/environment/sd-me-ib-lawsuit-20180301-story.html>.

44. U.S. ENV'T PROT. AGENCY, *NPDES Permit Basics*, <https://www.epa.gov/npdes/npdes-permit-basics> (last visited Jan. 10, 2026).

without proper permits.<sup>45</sup> These claims were echoed in *Surfrider Foundation v. IBWC, California ex rel. Regional Water Quality Control Board v. IBWC*, and *San Diego Coastkeeper v. USIBWC*, where environmental and state plaintiffs also sought injunctive relief under the CWA.<sup>46</sup> Although these cases settled without monetary relief, they mandated improved monitoring and notification protocols, spotlighting the structural limits of public torts in securing environmental justice from quasi-sovereign entities.

Mass tort claims, by contrast, have concentrated on Veolia's alleged mismanagement of the SBIWTP. Plaintiffs, including residents, school districts, and environmental groups, allege that Veolia failed to maintain the facility in accordance with health and safety standards, resulting in noxious odors, airborne contamination, and exposure to raw sewage.<sup>47</sup> Unlike the IBWC, Veolia is not shielded by sovereign immunity and is a more viable defendant for seeking compensatory damages under negligence and tort theories.

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45. Complaint at 4-5, *City of Imperial Beach, et al. v. IBWC*, No. 3:18-cv-00457-JM-JLB (S.D. Cal. Mar. 2, 2018).

46. See *Surfrider Found. v. Int'l Boundary & Water Comm'n*, No. 18CV1621 JM(LL), 2021 WL 2714954 (S.D. Cal. July 17, 2019); *Cal. ex rel. Reg'l Water Quality Control Board, et al. v. Int'l Boundary & Water Comm'n*, No. 18CV2050 JM(LL), 2021 WL 2714672 (S.D. Cal. Sep. 4, 2018); *San Diego Coastkeeper v. U.S. Int'l Boundary & Water Comm'n*, No. 24-cv-00663-JES-VET, 2025 WL 509303 (S.D. Cal. June 14, 2024).

47. See *Partlow v. Veolia Water W. Operating Servs., Inc.*, No. 3:2024-cv-02162 (S.D. Cal. filed Nov. 18, 2024); *Coronado Unified Sch. Dist. v. Veolia Water W. Operating Servs.*, No. 3:25-cv-01513 (S.D. Cal. filed Sep. 12, 2025); *Coronado USD Sues Veolia for South Bay Treatment Plant Sewage Discharges*, CITY NEWS SERV. (Mar. 5, 2025), <https://www.kpbs.org/news/health/2025/03/05/coronado-usd-sues-veolia-for-south-bay-treatment-plant-sewage-discharges>.

Case	P(s)	D(s)	Legal Theory	Tort Type	Alleged Harm	Status	Defendant's Defiance
City of Imperial Beach v. IBWC (2018)	Imperial Beach, Chula Vista, Port of San Diego	IBWC	Clean Water Act (CWA)	Public	Cross-border discharges, NPDES violations	Settled (2022)	Claimed lack of operational control; attributed upstream flows to Mexico
Surfrider Foundation v. IBWC (2018)	Surfrider Foundation	IBWC	CWA Citizen Suit	Public	NPDES violations	Settled (2022)	Argued limitations under international treaty structure
People of the State of California v. IBWC (2018)	San Diego Regional Water Quality Control Board	IBWC	NPDES enforcement	Public	Unlawful discharges into US waters	Active	Claimed sovereign immunity; deferred to EPA coordination
San Diego Coastkeeper v. IBWC & Veolia (2023)	SD Coastkeeper, Coastal Environmental Rights Foundation	IBWC, Veolia	CWA & state environmental violations	Public	Hazardous discharges, permit violations, aerosolization	Active	Veolia deflects liability to IBWC, IBWC cites treaty constraints
Partlow v. Veolia (2024)	South Bay residents	Veolia	Negligence, toxic tort	Mass	Personal injury, airborne pollutants, property loss	Active	Denied negligence; raised government contractor defense; blamed upstream countries
Coronado USD v. Veolia (2025)	Coronado Unified School District	Veolia	Negligence, toxic tort	Mass	Exposure to airborne sewage contaminants	Active	Denied direct causation; pointed upstream flows and IBWC oversight

Table 1: Litigation Since 2015 Addressing the Tijuana River Sanitation Crisis

Though Veolia is a private entity, it invoked the government contractor defense derived from *Boyle v. United Technologies Corp.*, arguing that it operated SBIWTP according to precise government specifications and thereby should not be held liable for harms arising from that compliance.<sup>48</sup> Courts have extended this defense beyond products liability to public infrastructure contexts, including environmental cases.<sup>49</sup> Plaintiffs contend, however, that Veolia retained significant operational discretion and failed to take basic precautions, distinguishing this situation from one of mere federal compliance.

Veolia's role in the Tijuana River crisis has drawn frequent comparisons to its role in the Flint Water Crisis, where the City of Flint, in a cost-cutting measure, switched its water supply to the Flint River.<sup>50</sup> Marked by insufficient testing, official denial, and a delayed governmental response, the transition disproportionately harmed Flint's majority-Black residents, who endured discolored and foul-smelling water linked to hair loss, rashes, and other health issues. In Flint, the court recognized that Veolia's conduct plausibly contributed to the plaintiffs' injuries but rejected claims that the company acted as a state actor under the nexus test "for having a sufficiently close relationship with Government Defendants."<sup>51</sup> The key distinction is that in Flint, Veolia acted as a technical consultant, whereas in Tijuana, Veolia holds an operational role under federal contract, heightening its exposure to tort liability.<sup>52</sup>

Ultimately, these cases illustrate how public and mass torts respond differently to environmental crises shaped by both legal structure and institutional complexity. The IBWC emphasizes Mexico's sovereign role and limited treaty-based enforcement powers, while Veolia presents itself as a contractor bound by government directives. Responsibility is splintered across multiple sovereign and non-sovereign actors as each actor points to another as the

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48. See *Boyle v. United Techs. Corp.*, 487 U.S. 500 (1988) (recognizing a government contractor defense where the contractor followed precise federal specifications and disclosed known risks).

49. See *In re Katrina Canal Breaches Litig.*, 620 F.3d 455 (5th Cir. 2010).

50. Melissa Denchak, *Flint Water Crisis: Everything You Need to Know*, NAT. RES. DEF. COUNCIL (July 1, 2025), <https://www.nrdc.org/stories/flint-water-crisis-everything-you-need-know>.

51. *In re Flint Water Cases*, No. 17-12942, 2020 WL 1822304 (E.D. Mich. Apr. 10, 2020) (addressing claims in *Marble v. Snyder* as part of broader multidistrict litigation over the Flint water crisis).

52. *Id.*

source of failure. These circular defenses reveal a recurring pattern in transboundary litigation: harm is acknowledged, but responsibility is endlessly deferred.

Litigation has become the public's last resort, a symptom of institutional paralysis. The IBWC, originally established to facilitate binational cooperation over boundary waters, has proven itself ineffective as a dispute resolution body. Its limited authority, outdated mandate, and structural dependence on both governments make it ill-suited to address complex environmental crises. As a result, citizens, school districts, and environmental organizations have turned to the courts to secure basic protections.<sup>53</sup>

Private entities like Veolia have become attractive legal targets since they lack the sovereign defenses that shield public actors. Unlike the IBWC or the U.S. government, Veolia cannot invoke the Foreign Sovereign Immunities Act (FSIA) or the protections under the Federal Tort Claims Act (FTCA).<sup>54</sup> The FTCA governs when and how the federal government can be sued in tort and includes a broad "discretionary function" exception barring liability for actions involving governmental judgment or policy choice such as treaty implementation or federal infrastructure funding.<sup>55</sup> These doctrines insulate sovereign actors, even when compelling evidence suggests federal inaction exacerbated cross-border harm.

This dynamic creates a legal environment where accountability hinges on procedural availability. The result is a doctrinal distortion: private actors absorb the burden of accountability, while sovereign entities evade scrutiny behind jurisdictional and statutory shields. As litigation against the IBWC has demonstrated, such legal barriers foreclose meaningful accountability. In transboundary

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53. Tammy Murga, *Veolia Faces New Lawsuit Over Sewage Crisis. This Time from Coronado Unified School District*, SAN DIEGO UNION TRIBUNE (Mar. 5, 2025), <https://www.sandiegouniontribune.com/2025/03/04/veolia-faces-new-lawsuit-over-sewage-crisis-this-time-from-coronado-unified-school-district/>; Philip Salata, *San Diego County to Weigh Suing Wastewater Company Over Tijuana River Sewage Crisis*, INEWSOURCE (Oct. 23, 2024), <https://inewsourc.org/2024/10/23/tijuana-river-sewage-san-diego-lawsuit-veolia/>.

54. Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602–1611 (2018) (establishing that foreign states are generally immune from suit in U.S. courts, subject to limited exceptions such as for commercial activities or certain tortious acts occurring within the United States); Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671–2680 (2018) (waiving sovereign immunity in limited circumstances to permit suits against the United States for torts committed by federal employees acting within the scope of their employment).

55. CONG. RSCH. SERV., R43462, TORT SUITS AGAINST FEDERAL CONTRACTORS: SELECTED LEGAL ISSUES (Mar. 31, 2014), <https://www.everycrsreport.com/reports/R43462.html>.

contexts already colored by enforcement gaps and geopolitical asymmetries, this structure reinforces systemic failures rather than remedying them.

Citizen suits under the CWA provide one of the few viable paths to compel federal compliance with statutory duties, such as operating without NPDES permits. Yet these suits are confined to procedural enforcement and do not address deeper failures of coordination, funding, or binational governance. They function downstream of neglect, offering remedies that are often too narrow to reshape the upstream institutional landscape.

Emergent legal claims, such as those grounded in aerosolized exposure to sewage and airborne pathogens, signal the evolution of environmental litigation.<sup>56</sup> These claims underscore the inadequacy of traditional legal categories since courts remain reluctant to stretch doctrine to meet these novel challenges, leaving plaintiffs to navigate a landscape where legal innovation outpaces institutional willingness.

Though tort law can yield settlements, injunctive relief, and short-term improvements, it cannot reform binational institutions, modernize outdated treaties, or create lasting accountability structures. The Tijuana River litigation reveals the limits of relying on adversarial, fragmented legal systems to solve transboundary ecological crises. Until legal regimes evolve to recognize shared responsibility and codify enforceable environmental cross-border protections, tort litigation will remain an imperfect substitute for meaningful environmental governance.

#### B. *A Case for Holding Mexico Accountable*

Although much of the political rhetoric surrounding the Tijuana River crisis places blame squarely on Mexico, legal efforts to sue the Mexican state have been virtually non-existent, given the absence of any viable framework for transboundary accountability. In exploring the limited legal pathways that might exist, this section cautions against attempts to hold Mexico accountable—particularly in light of the racially and politically charged discourse surrounding the crisis, which the next section examines in greater

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56. Salata, *supra* note 20 (writing that aerosolization is becoming a new frontier within environmental litigation, especially in light of recent reports from the Scripps Institution of Oceanography and the University of Texas at Austin raising public health concerns about aerosolized pollutants emanating from the river).

depth. Ultimately, such efforts circle back to the 1944 Water Treaty and its structural inefficiencies, most notably its failure to facilitate meaningful environmental cooperation.

Under the Foreign Sovereign Immunities Act (FSIA), foreign governments are generally immune from suit in U.S. courts unless a specific statutory exception applies.<sup>57</sup> Environmental harm that originates in another country but impacts U.S. territory does not typically fall within these exceptions.<sup>58</sup> The FSIA provides a few narrow windows to sovereign immunity, including commercial activity exceptions, tortious acts occurring within the United States, and expropriation of property in violation of international law.<sup>59</sup> None of these provisions, however, clearly apply to cross-border sewage discharge by a sovereign government. Even if plaintiffs attempted to sue Mexican agencies for negligence or nuisance, the claims would almost certainly be dismissed on sovereign immunity grounds.<sup>60</sup>

Additionally, treaty frameworks provide no private right of action. The 1944 Water Treaty, in addition to the La Paz Agreement and the Ramsar Convention, does not contain enforcement mechanisms for affected individuals or local governments.<sup>61</sup> As a result, injured parties in California have no forum for compelling

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57. Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602–1611 (2018).

58. *Id.* at § 1605(a)(5) (excluding from its waiver of immunity claims “based upon the exercise or performance or the failure to exercise or perform a discretionary function”).

59. *Id.*

60. *See Sahu v. Union Carbide Corp.*, 548 F.3d 59 (2d Cir. 2008) (affirming dismissal of claims against Union Carbide for the 1984 Bhopal gas disaster on the grounds that plaintiffs failed to show actionable misconduct by the U.S. parent company; the case underscores how U.S. courts often decline jurisdiction over foreign environmental harms due to corporate separateness and forum concerns); *See also Jam v. Int’l Fin. Corp.*, 139 S. Ct. 759 (2019) (holding that international organizations like the IFC are not absolutely immune and can be sued under the same exceptions as foreign states under the FSIA, but leaving open whether the tortious acts alleged, pollution from a power plant in India, fit within those exceptions; illustrates both the potential and limits of piercing immunity in cases of transboundary environmental harm).

61. 1944 Water Agreement, *supra* note 28; Ramsar Convention, *supra* note 34; *Emergencies Policy Workgroup*, U.S. ENV’T PROT. AGENCY (Feb. 11, 2025), <https://www.epa.gov/usmexicoborder/emergencies-policy-workgroup> (describing binational efforts under the 1983 La Paz Agreement to prepare for and respond to environmental emergencies along the U.S.-Mexico border); *Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area*, Mex.-U.S., Aug. 14, 1983, T.I.A.S. No. 10827 (establishing a framework for environmental cooperation between the U.S. and Mexico, including obligations to prevent and respond to transboundary pollution incidents) (hereinafter La Paz Agreement).

Mexico's compliance or seeking damages.

Recent developments in international environmental law suggest possible, but aspirational, points of leverage. The 1992 Convention on the Law of the Non-Navigational Uses of International Watercourses (Watercourses Convention) and the 1997 Convention on the Protection and Use of Transboundary Watercourses and International Lakes—foundational instruments governing international rivers (Water Convention)—establish principles of equitable and reasonable use and an obligation to prevent transboundary harm.<sup>62</sup> Though the United States and Mexico are not parties to either, these conventions reflect an evolving customary norm in international law.<sup>63</sup> Litigants may use these instruments rhetorically to frame Mexico's obligation to mitigate transboundary harm.

However, invoking these emerging international norms raises complex questions about their interaction with the 1944 Water Treaty. As a treaty that predates modern environmental conventions, it lacks ecological provisions and omits any reference to biodiversity or transboundary environmental harm.<sup>64</sup> Through subsequent IBWC minutes, particularly Minute 283, the United States assumed concrete responsibilities for cross-border sanitation, including the construction and operation of the SBIWTP to treat a portion of Tijuana's sewage.<sup>65</sup> From an international law standpoint, these obligations complicate efforts to cast Mexico as the sole party responsible for the pollution crisis. The tension between older treaty commitments and evolving environmental norms implicates interpretive principles such as *lex posterior* under Article 30

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62. Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Mar. 17, 1992, 1936 U.N.T.S. 269, art. 7; Convention on the Law of the Non-Navigational Uses of International Watercourses, Aug. 17, 2014, 2999 U.N.T.S. 77, art. 2.

63. UN-Water, *UN-Water Policy Brief on the United Nations Global Water Conventions: Fostering Sustainable Development and Peace* 16 (Dec. 1, 2020) ("Presentation of substantive norms (equitable and reasonable utilization, and no significant harm): While both conventions use different wording, they offer the same package of substantive norms that reflect customary international law, namely the principle of equitable and reasonable utilization, and the duty to take all appropriate measures to prevent significant harm. The Water Convention offers more detailed guidance on the type of measures that might be deemed appropriate in preventing significant harm; whereas the Watercourses Convention includes a list of factors and circumstances that should be taken into account when determining what constitutes an equitable and reasonable use of an international watercourse.")

64. See Mumme, *supra* note 23.

65. See IBWC, *supra* note 16.

of the Vienna Convention on the Law of Treaties.<sup>66</sup>

These barriers do not simply insulate Mexico from liability but rather they reveal how transboundary environmental harm falls through the cracks of both domestic and international law. Accountability has no jurisdictional home, not because Mexico defies regulation, but because the treaty framework was never built to accommodate environmental governance. The absence of a pathway, therefore, is an intended feature of a system focused on sanitation, not conservation.

While more recent international frameworks like the 1997 Water Convention affirm the “no significant transboundary harm” principle, neither the United States nor Mexico is a party, rendering its provisions inapplicable as binding law. Similarly, the binding La Paz Agreement of 1983 establishes a broad framework for environmental cooperation in the border region but lacks specific enforcement mechanisms or a private right of action.<sup>67</sup> Although these instruments help articulate emerging environmental norms, they cannot substitute for treaty-based obligations or provide a viable cause of action in domestic courts. As such, Minute 283 remains the most concrete expression of shared responsibility, but it does not constitute a full delegation of liability. While the United States agreed to treat specific sewage flows, Mexico remained responsible for investing in and maintaining its domestic infrastructure, underscoring that the arrangement was one of cooperation, not unilateral obligation.

Despite the scale of the Tijuana River sewage crisis, U.S. litigants face steep legal obstacles in bringing claims against Mexico. The 1944 Water Treaty lacks environmental provisions and establishes the IBWC as the principal implementation body. Courts would likely prioritize this treaty over newer frameworks like the UNECE and UN Water Conventions, particularly since neither the United States nor Mexico has ratified them. Though the La Paz Agreement sets out cooperative goals for border environmental protection, it offers no enforcement mechanisms or private right of action. Sovereign immunity under the FSIA further insulates Mexico from suit, as environmental damage originating abroad

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66. Vienna Convention on the Law of Treaties art. 30, May 23, 1969, 1155 U.N.T.S. 331 [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) (providing that when successive treaties relate to the same subject matter, the earlier or later treaty generally prevails, *lex posterior derogat legi priori*).

67. See La Paz Agreement, *supra* note 61.

generally falls outside FSIA's narrow exceptions.

The question of accountability is a paradox. Even when the harms are transboundary, the law remains territorially bounded as Mexico cannot be held accountable in U.S. courts, and the treaty mechanisms that bind the two countries offer no avenue for ecological redress. The impotence of accountability is not accidental but structural: an outcome of a treaty designed for water allocation and sanitation, not environmental governance. This futility points to a deeper flaw: attempts to address accountability will always miss the heart of the issue as treaty design is the source of governance failure. Section 5 turns to this design problem directly, showing how the 1944 Water Treaty institutionalizes technical cooperation while ignoring environmental and public health dimensions altogether.

#### V. TREATY DESIGN AS LEGAL INERTIA: THE 1944 WATER TREATY AND THE FAILURE OF ENVIRONMENTAL GOVERNANCE

The Tijuana River litigation exposes a fundamental legal failure in the governance of transboundary environmental harms. Chief among the culprits is the 1944 Water Treaty, which remains the foundational agreement governing shared water resources between the two nations. Although the treaty authorizes cooperative management of the Colorado, Rio Grande, and Tijuana rivers, it contains no provisions addressing environmental protection or biodiversity. This omission has enabled the IBWC—the binational body established under Article 3 of the treaty—to focus narrowly on sanitation without regard for ecological integrity. As Mumme notes, the treaty omits “any reference to the environment” and “also fail[s] to address several important transboundary water matters” that were recognized even in 1944.<sup>68</sup>

Article 8 obligates the parties to manage river waters “for the most beneficial, regular and constant use” but lists only agricultural, flood control, and industrial applications and not environmental ones.<sup>69</sup> Although Article 3 allows for the IBWC's jurisdiction to expand to “other joint works” by mutual consent, the Commission has historically declined to use this authority to address biodiversity concerns.<sup>70</sup> The Tijuana River Estuary, a Ramsar-

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68. Mumme, *supra* note 23 at 127.

69. See 1944 Water Treaty, *supra* note 31 at art. 8.

70. *Id.* at art. 3.

listed wetland of international significance, does not appear in any IBWC reports or minutes.<sup>71</sup>

From the 1970s through the 1990s, a series of IBWC minutes entrenched a technocratic sanitation agenda. Minute 261 (1979) required the Commission to give “preferential attention to the solution of all border sanitation problems.”<sup>72</sup> When Mexico later expressed financial limitations, Minute 270 (1985) urged it to “find the sufficient funds” to carry out infrastructure upgrades.<sup>73</sup> Eventually, Minute 283 (1990) authorized the construction of the SBIWTP in California to process Mexican sewage and included a clause permitting emergency diversions across the border.<sup>74</sup> Yet these measures only reinforced the IBWC’s preference for U.S.-based solutions and failed to ensure systemic investment in Mexican infrastructure.<sup>75</sup>

This approach contrasts sharply with modern environmental agreements like the CBD, which identifies biodiversity as the “common concern of humankind” and obligates developed nations to provide financial assistance to developing countries for environmental implementation.<sup>76</sup> While not binding on the IBWC, the

71. Casey & Watkins, *supra* note 3 at 57.

72. Int’l Boundary & Water Comm’n, *Minute 261: Recommendations for Solution of the Border Sanitation Problem at San Diego, California/Tijuana, Baja California* (Sep. 24, 1979) <https://ibwc.azurewebsites.net/wp-content/uploads/2023/05/Min261.pdf> (instructing the IBWC to give “preferential attention” to border sanitation issues, with no mention of biodiversity or ecosystem management).

73. Int’l Boundary & Water Comm’n, *Minute 270: Recommendations for the First Stage Treatment and Disposal Facilities for the Solution of the Border Sanitation Problem at San Diego, California/Tijuana, Baja California* (Apr. 30, 1985) <https://ibwc.azurewebsites.net/wp-content/uploads/2023/05/Min270.pdf> (urging Mexico to secure funding for sanitation infrastructure, again omitting any biodiversity or conservation-related obligations); WORLD BANK, *The World Bank in Mexico* (Apr. 6, 2023), <https://www.worldbank.org/en/country/mexico/overview#3>.

74. Int’l Boundary & Water Comm’n, *supra* note 12.

75. Int’l Boundary & Water Comm’n, *Minute 328: Sanitation Infrastructure Projects in San Diego, California–Tijuana, Baja California for Immediate Implementation and for Future Development* (July 19, 2022) <https://www.ibwc.gov/wp-content/uploads/2022/11/Min328.pdf> (identifying future infrastructure needs but continuing to frame the problem as a matter of sewage control, not ecological preservation).

76. . . Convention on Biological Diversity arts. 1, 20, June 5, 1992, 1760 U.N.T.S. 79, <https://www.cbd.int/doc/legal/cbd-en.pdf>; WORLD COMM’N ON ENV’T & DEV., REPORT OF THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT: *Our Common Future* (Oxford Univ. Press 1987) <http://un-documents.net/our-common-future.pdf>; Françoise Burhenne-Guilmin, *Biodiversity and International Law: Historical Perspectives and Present Challenges: Where Do We Come From, Where Are We Going?*, in BIODIVERSITY CONSERVATION, LAW AND LIVELIHOODS: BRIDGING THE NORTH-SOUTH DIVIDE 3 (Michael Jeffery, Jeremy Firestone & Karen Bubna-Litic eds., 2009); Nicholas Robinson, *Legal*

CBD provides a normative framework that highlights the treaty's failure to incorporate conservation equity. Unlike the CBD, the 1944 Water Treaty neither acknowledges capacity asymmetries nor creates institutional mechanisms for equitable burden-sharing.

The IBWC's failure is not merely legal but political. Its institutional culture reflects a broader U.S. posture that frames sewage pollution as a Mexican failing. This narrative resonates with xenophobic rhetoric that treats transboundary flows—whether of people or pollutants—as invasive threats. Following the passage of NAFTA, migration increased and was met by anti-immigration policies in the United States that equated border management with national security.<sup>77</sup> Rhetoric calling for wall construction and heightened policing found a mirror in environmental policy that treated pollution as an invasion rather than a shared responsibility.<sup>78</sup> The most militarized section of the U.S.-Mexico border, between San Diego and Tijuana, is also the site of the IBWC's most heightened governance.<sup>79</sup> From physical walls to wastewater plants, the emphasis has been on containment rather than cooperation.<sup>80</sup>

Environmental scholars have critiqued this logic as an example of “compartmentalized thinking,” the tendency of international environmental law to separate rivers, wetlands, oceans, and species

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*Stewardship of Mountain Regions: The Emerging Ecoregime*, in BIODIVERSITY CONSERVATION, LAW AND LIVELIHOODS: BRIDGING THE NORTH-SOUTH DIVIDE (Michael I. Jeffery, Jeremy Firestone & Karen Bubna-Litic eds., 2009) [https://assets.cambridge.org/97805218/85034/excerpt/9780521885034\\_excerpt.pdf](https://assets.cambridge.org/97805218/85034/excerpt/9780521885034_excerpt.pdf).

77. See News, *supra* note 5; U.S. ENV'T PROT. AGENCY, *EPA Announces Holistic Approach to Address Water Pollution from the Tijuana River Watershed*, (Mar. 23, 2023) <https://www.epa.gov/newsreleases/epa-announces-holistic-approach-address-water-pollution-tijuana-river-watershed> (demonstrating that U.S. Senator Dianne Feinstein, U.S. Representative Mike Levin, and San Diego Mayor Todd Gloria have each independently reiterated that Americans have been “plagued with toxic pollution from Mexico for too long”); Amelia Cheatham, Claire Klobucista & Diana Roy, *How the U.S. Patrols Its Border*, COUNCIL ON FOREIGN REL. (July 28, 2025), <https://www.cfr.org/backgrounders/how-us-patrols-its-borders>.

78. Margaret Cantú-Sánchez, Candace León-Zepeda & Norma Elia Cantú eds., *TEACHING GLORIA E. ANZALDÚA: PEDAGOGY AND PRACTICE FOR OUR CLASSROOMS AND COMMUNITIES* (Univ. of Ariz. Press 2020).

79. U.S. DEP'T OF HOMELAND SEC., *The Border Wall System is Deployed, Effective, and Disrupting Criminals and Smugglers* (2020), <https://www.dhs.gov/news/2020/10/29/border-wall-system-deployed-effective-and-disrupting-criminals-and-smugglers>; Glenn Kessler, *President Trump's nonsensical claim that Mexico is paying for the wall*, WASH. POST (Jan. 8, 2019), <https://www.washingtonpost.com/politics/2019/01/08/president-trumps-desperate-nonsensical-claim-that-mexico-is-paying-wall/>.

80. News, *supra* note 5; Andreas Kotsakis, *The Use of Biodiversity in International Law: A Genealogy of Genetic Gold* (Routledge 2021) [https://kar.kent.ac.uk/96867/1/Kotsakis\\_previewpdf\\_2021.pdf](https://kar.kent.ac.uk/96867/1/Kotsakis_previewpdf_2021.pdf); See Cantú-Sánchez, León-Zepeda, and Cantú, *supra* note 78.

into discrete legal regimes.<sup>81</sup> As a result, while the Ramsar Convention protects the Tijuana Estuary, and the 1944 Water Treaty regulates river flows, neither addresses the full ecological system in which the pollution crisis unfolds.<sup>82</sup> This splintered governance structure mirrors the piecemeal nature of tort litigation, which is ill-suited to address the systemic causes of transboundary environmental degradation.

In sum, the 1944 Water Treaty's failure to account for environmental protection, coupled with the IBWC's institutional conservatism, has produced a governance regime that displaces accountability, entrenches inequality, and sidelines ecological health. As litigation continues, it becomes increasingly clear that legal reform, whether through treaty renegotiation, statutory innovation, or doctrinal development, is necessary to reimagine transboundary governance for the twenty-first century.

## VI. STRUCTURAL MYOPIA OF TORT LAW: FROM TIJUANA TO THE WORLD

The failures of the 1944 Water Treaty and the IBWC are mirrored at the doctrinal level by tort law itself. Just as the treaty regime displaces accountability through structural asymmetry, tort law narrows it through procedural form. This section now turns from institutional design to doctrinal myopia, tracing how tort litigation reproduces the same dynamics of evasion within the domestic legal system.

Scholars of toxic torts have long acknowledged the field's preoccupation with proximate causes, legally cognizable injuries, and procedurally available defendants. Building on these insights, this Note uses the conceptual logics of toxic tort law to examine how harm is parsed, responsibility narrowed, and liability assigned in the Tijuana River crisis. Grounding the analysis in this theoretical terrain makes it possible to read the litigation as symptomatic of broader structural dynamics. The comparative examples that follow reinforce this critique: across transboundary environmental disputes, toxic tort litigation tends to absorb institutional failure into familiar doctrinal forms, obscuring the diffuse, collective, and

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81. Christine Klein, *Compartmentalized Thinking and the Clean Water Act*, 38 GEO. WASH. J. ENERGY & ENVTL. L. (2013) <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1362&context=facultypub>.

82. Ramsar, *Tijuana River National Estuarine Research Reserve* (Feb. 2, 2005), <https://rsis Ramsar.org/rsis/1452>.

often geopolitical nature of the underlying harm.

#### A. *Global Patterns of Evasion*

The Tijuana River crisis is not an isolated anomaly but rather a paradigmatic example of how transboundary environmental harm plays out in a disjointed legal landscape. Other high-profile environmental disasters around the world reveal similarly constrained avenues for redress, where tort litigation often chases available defendants rather than achieving structural justice.

One global parallel can be drawn to the Bhopal Gas Disaster in India in 1984.<sup>83</sup> A catastrophic gas leak at a Union Carbide India Ltd. (UCI) pesticide plant released methyl isocyanate, killing thousands and injuring over half a million. Although Union Carbide Corporation (UCC), a U.S.-based parent company, now owned by Dow Chemical, was widely believed to be complicit in the plant's design and management, transnational litigation failed to deliver accountability.<sup>84</sup> U.S. courts denied the litigants attempts to hold the parent company responsible, dismissing the claims via summary judgement by arguing that the litigants had insufficient evidence that UCC either directly caused the contamination or had sufficient control over UCI to be held liable under common tort law.<sup>85</sup> Like Veolia in the Tijuana litigation, the parent corporation argued that it was not responsible for operational failures abroad, highlighting the difficulty of attributing liability across corporate and sovereign lines.

Closer to the United States, the Columbia River Treaty between the United States and Canada demonstrates the consequences of excluding ecological justice from treaty design.<sup>86</sup> Signed in 1964 to

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83. *Sahu v. Union Carbide Corporation*, No. 99 CIV 11315 (S.D.N.Y. filed 1999).

84. Jayanth Krishnan, *Bhopal in the Federal Courts: How Indian Victims Failed to Get Justice*, FACULTY SCHOLARSHIP AT INDIANA UNIV. MAURER SCH. OF L. (Spring 2020), <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=3946&context=facpub> (arguing that Indian victims of the Bhopal gas disaster were denied justice in U.S. courts, which dismissed their claims in favor of litigation in India, where compensation was inadequate and delayed—demonstrating how transnational tort law often fails to provide meaningful remedies for mass harms involving foreign plaintiffs).

85. See *Sahu v. Union Carbide Corporation*, *supra* note 83.

86. Treaty Between the United States of America and Canada Relating to Cooperative Development of the Water Resources of the Columbia River Basin, U.S.-Can., Jan. 17, 1961, <https://permanent.access.gpo.gov/gpo68848/crt2014-2024review/www.crt2014-2024review.gov/Files/International%20Documents%20ColumbiaRiverTreaty.pdf> (establishing a legal framework for the construction and operation of dams for hydropower and flood control without ecological or social mitigation provisions).

manage hydropower and flood control, the agreement resulted in the construction of massive dams that inundated approximately 110,000 hectares, displacing Indigenous communities and severely damaging ecosystems on both sides of the border.<sup>87</sup> At the time, public consultation and mitigation efforts were minimal, disenfranchising the local population.<sup>88</sup> As in the Tijuana context, early treaty frameworks prioritized technical cooperation over environmental or human rights concerns. Current renegotiations, prompted by Indigenous advocacy and climate concerns, are attempting to address these omissions, offering a rare example of how outdated treaties might evolve to incorporate ecological and co-sovereignty principles.<sup>89</sup>

These global parallels reinforce that tort law, while symbolically potent, is structurally limited in achieving environmental justice across borders. Where sovereign actors are insulated from suit and treaty bodies lack enforcement mechanisms, litigation tends to focus on those without legal protections, typically private contractors, rather than confronting the systemic failures at the heart of transboundary crises.

#### B. *Doctrinal Limits of Tort Law*

The Tijuana River sewage crisis illustrates a core limitation of toxic tort law: while it can secure remedies for individual plaintiffs, it is poorly suited to confront the structural failures that produce transboundary environmental harm. Mass torts may offer pathways to justice for bodily injury or property damage, but they tend to

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87. British Columbia Ministry of Energy, Mines and Petroleum Resources, *Columbia River Treaty: About the Treaty*, GOV'T OF BRITISH COLUMBIA, <https://engage.gov.bc.ca/columbiarivertreaty/about/> (last visited Jan. 20, 2026) (noting that “[t]he Treaty dams and reservoirs inundated 1110,000 hectares (270,000 acres) of Canadian ecosystems, displaced more than two thousand residents as well as First Nations, communities and infrastructure, and impacted farms, tourism and forestry activities. First Nations and public consultation and mitigation at the time could be considered inadequate to non-existent by today’s standards, and feelings of hurt remain to this day.”)

88. Dan Ritzman & Robin Everett, *New Columbia River Treaty Must Prioritize Local Tribes and Ecological Concerns*, TRUTHOUT (Nov. 24, 2023), <https://truthout.org/articles/new-columbia-river-treaty-must-prioritize-local-tribes-and-ecological-concerns/> (arguing that the 1964 treaty prioritized flood control and hydropower over ecosystem function or Indigenous rights, and that the federal negotiations conducted in the aimed to address such omissions).

89. NW. POWER & CONSERVATION COUNCIL, *Columbia River Treaty*, <https://www.nwcouncil.org/reports/columbia-river-history/columbiarivertreaty> (last visited Jan. 20, 2026).

focus narrowly on proximate causes and legally vulnerable actors often leaving institutional dysfunction, such as the failures of the IBWC or the constraints of the 1944 Water Treaty, unaddressed.

Legal theorist Upendra Baxi cautions against treating mass torts as a coherent doctrinal field. He argues that they represent “heterogeneous trajectories of human violation” and rely on narrow legal framings—negligence, strict liability, products liability—that obscure the deeper political and infrastructural roots of harm.<sup>90</sup> In the Tijuana context, this doctrinal reductionism limits courts’ ability to assess state complicity or treaty-based governance failures. As Baxi notes, “the law of civil wrongs (torts) and regime of conflict of laws remain problematic because they don’t address the structures of their production.”<sup>91</sup>

Environmental legal scholars echo this concern. André Nollkaemper’s concept of “cluster litigation” captures how environmental harm often spawns fragmented legal actions across jurisdictions.<sup>92</sup> In the Tijuana case, lawsuits target the IBWC, Veolia, and speculatively, Mexico—none of which, individually, can resolve the full scope of institutional or ecological harm.

Joshua Sachs offers a complementary critique, identifying the structural failures of international environmental liability regimes. He argues that tort remedies in this space have faltered due to conflicts between developed and developing states, high transaction costs, and treaties that impose overly stringent liability standards.<sup>93</sup> These observations map directly onto the Tijuana case: United States and Mexican officials have used treaty arrangements to diffuse responsibility, leaving contractors like Veolia as the most legally exposed actors. Sachs stresses that “tort remedies can play an important role” but “enhancing [it’s] role in international environmental law is far more challenging than the use in domestic suits.”<sup>94</sup>

This body of scholarship provides a framework for understanding how the Tijuana litigation organizes legal responsibility. Rather

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90. See Upendra Baxi, *Mass Torts, Multinational Enterprise Liability and Private International Law*, 276 RECUEIL DES COURS 321 (1999), <https://referenceworks.brill.com/display/entries/HACO/A9789041113948-02.xml?language=en>.

91. *Id.* at 322.

92. See generally André Nollkaemper, *Cluster-Litigation in Cases of Transboundary Environmental Harm*, in *TRANSBOUNDARY ENVIRONMENTAL POLLUTION: THE CASE OF CHINA* (Michael Faure et al. eds., 2008).

93. Noah Sachs, *Beyond the Liability Wall: Strengthening Tort Remedies in International Environmental Law*, 55 UCLA L. REV (2008).

94. *Id.* at 903.

than offering a critique of tort law itself, this Note draws on its doctrinal logics—proximate cause, sovereign immunity, and procedural availability—to trace how Veolia emerged as the primary defendant. Positioned between federal directives and treaty constraints, Veolia becomes accessible to courts in ways that state and binational actors do not. This selective legibility illustrates the broader claim of this Note: that toxic tort doctrine, while not inherently flawed, helps reveal how environmental harm is parsed and institutional failure obscured in transboundary contexts.

That said, mass tort litigation has produced tangible benefits. It has generated media attention, spotlighted infrastructure neglect, and pressured agencies to respond. Yet without accompanying institutional reforms—modernizing the 1944 Water Treaty, empowering the IBWC with enforcement authority, or embedding ecological principles into cross-border governance—such litigation will remain reactive and incomplete.

## VII. CONCLUSION

The Tijuana River sewage crisis underscores the profound limitations of toxic tort law in addressing large-scale, transboundary environmental harms. This Note has traced how affected communities have turned to tort litigation as a mechanism of final recourse in the face of institutional paralysis, suggesting a fractured accountability landscape. The IBWC, Veolia, and the Mexican state deflect blame to one another, while the structural causes of pollution persist.

The crisis highlights a core dynamic within toxic tort litigation: private actors like Veolia become litigation targets due to their lack of sovereign immunity and proximity to harm. Public actors, particularly the United States and the Mexican government, remain largely insulated. Claims against the IBWC are limited by statutory immunities and narrow remedies, and suits against Mexico are foreclosed by sovereign immunity and the absence of enforceable transboundary obligations. In this sense, tort law mirrors the treaty regime it seeks to fill: displacing accountability through structural design and targeting proximate actions while leaving systemic causes untouched. Tort law thus pursues accountability where it is procedurally possible, not necessarily where it is normatively warranted, creating the appearance of legal remedy even as the underlying system that produced the harm remains intact.

At the international level, the failure of the 1944 Water Treaty

to incorporate ecological commitments or accountability mechanisms reflects the broader incapacity of treaty regimes to manage contemporary environmental crises. The IBWC's institutional design reinforces geopolitical imbalances and prioritizes technocratic sanitation over ecological governance. Meanwhile, anti-immigration politics have infused cross-border environmental governance with securitized and racist logics, framing cross-border pollution as invasion rather than shared responsibility.

The legal response to the Tijuana River sewage crisis illuminates the deeper failures of the 1944 Water Treaty—a regime designed to manage water allocation and sanitation, not shared ecological stewardship. The legal system shifts responsibility away from the institutions that produced the harm and toward the actors most easily brought before a court. In this way, toxic tort litigation offers the promise of accountability while a treaty system never designed for ecological justice silently limits what that accountability can achieve. The Tijuana River therefore offers more than a local case study. It reveals a treaty framework that was never built to deliver ecological justice.