

1

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9 State of Arizona, *ex rel*, Henry R. Darwin,
10 Director, Arizona Department of
Environmental Quality,

11 Plaintiff,

12 v.

13 International Boundary and Water
14 Commission, United States Section;
Edward Drusina, in his official capacity
15 as Commissioner of the International
Boundary and Water Commission, United
16 States Section,

17 Defendants and Third-
Party Plaintiffs,

18 v.

19 City of Nogales, Arizona,

20 Third-Party Defendant.
21

No. CV-12-00644-TUC-FRZ

ORDER

22 The nature of this action, procedural history and posture are set forth in detail in
23 the Court's previous Orders ruling on motions for partial summary judgment (Docs. 35
24 and 85) and the Reports and Recommendations of Magistrate Judge D. Thomas Ferraro
25 in (Doc. 68), which addressed Plaintiff State of Arizona's Motion for Partial Summary
26 Judgment: Liability for Counts 2, 5, 6, 7, 8, and 9, and (Doc. 102), addressing the
27 Amended Motion of the City of Nogales for Summary Judgment on Third Party Claim,
28 which is presently before this Court for consideration.

1 The Court granted judgment on the pleadings as to Counts One, Three and Four of
2 the First Amended Complaint. (Doc. 35)

3 The Court further granted judgment summary judgment on Count Five and
4 dismissed Counts Two, Six and Seven as moot. (Doc. 85)

5 This matter has been referred to the United States Magistrate Judge for all pretrial
6 proceedings and report and recommendation in accordance with the provisions of 28
7 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2, Rules of Practice of the United
8 States District Court for the District of Arizona.

9 Magistrate Judge Ferraro issued the present Report and Recommendation (Doc.
10 102) now before the Court on December 30, 2015, following briefing and oral argument
11 on the Amended Motion of the City of Nogales for Summary Judgment on Third Party
12 Claim (Doc. 76), recommending that the motion be granted as to the First Claim, and
13 denied as to the Second Claim, which alleges that the City of Nogales is liable if the
14 USIBWC is found to be in violation of A.R.S. 49-255.01, the state statutory regulation
15 which prohibits the discharge of pollutants unless in conformance with permits issued by
16 the Arizona Department of Environmental Quality under state and federal regulations.

17 The Report and Recommendation sets forth the relevant factual background and
18 analysis applicable to the third-party claims under provisions of the Clean Water Act, 33
19 U.S.C. § 1251 *et seq.*; the Arizona Pollutant Discharge Elimination System (“AZPDES”)
20 permit program - a federally approved National Pollutant Discharge Elimination System
21 (“NPDES”) - administered by the Arizona Department of Environmental Quality
22 (ADEQ) and approved under the Equal Protection Agency (“EPA”), 33 U.S.C. § 1342(a).

23 The Report and Recommendation addresses whether the City of Nogales is
24 entitled to summary judgment on the two claims for relief raised in the Third-Party
25 Complaint under the legal standard requirements under Rule 56, Fed.R. Civ. P., applying
26 the relevant legal analysis in determining whether a genuine issue of material fact exists
27 in regard to the procedural and provisional requirements of the state and federal
28 compliance regulations at issue.

1 The parties were advised that, pursuant to Rule 72(b)(2), Fed.R.Civ.P., any party
2 may serve and file written objections within fourteen days of being served with a copy of
3 the Report and Recommendation, and a party may respond to the other party's objections
4 within fourteen days therefrom.

5 Third Party Defendant City of Nogales' Objection to Part of the Magistrate's
6 Report and Recommendation (Doc. 104) was filed on January 13, 2016, to which
7 USIBWC filed a response in opposition (Doc. 109) on February 1, 2016.

8 Upon review and consideration of all matters presented and an independent
9 review of the record herein, including the City of Nogales' objections, the Court finds
10 that the findings of the Magistrate Judge on the Amended Motion of the City of Nogales
11 for Summary Judgment on the Third Party Claim, as set forth in the Report and
12 Recommendation, shall be accepted and adopted as the findings of fact and conclusions
13 of law of this Court.

14 Based on the forgoing,

15 **IT IS HEREBY ORDERED** that the Report and Recommendation of the
16 Magistrate Judge (Doc. 102) is **ACCEPTED and ADOPTED** as the findings of fact and
17 conclusions of law by this Court; accordingly

18 **IT IS ORDERED** that the Amended Motion of the City of Nogales for Summary
19 Judgment on Third Party Claim ((Doc. 76) is **GRANTED in part** and **DENIED in part;**

20 **IT IS FURTHER ORDERED** that the City of Nogales is entitled to summary
21 judgment on the First Claim for Relief alleged in the Third-Party Complaint;

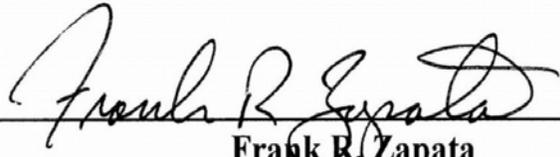
22 **IT IS FURTHER ORDERED** that summary judgment is **DENIED** as to the
23 Second Claim for Relief of the Third-Party Complaint.

24 **IT IS FURTHER ORDERED** that this case remains referred to Magistrate Judge
25 Ferraro for pretrial proceedings in accordance with the provisions of 28 U.S.C. §
26 636(b)(1) and Local Rules LRCiv 72.1 and LRCiv 72.2 on remaining Counts Eight and
27 Nine of the First Amended Complaint and the Second Claim for Relief of the Third-Party
28 Complaint.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

All filings shall be designated: **CV 12-644 TUC-FRZ (DTF)**

Dated this 22nd day of March, 2016.



Frank R. Zapata
Senior United States District Judge