

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 2248 (Eduardo Garcia) – As Amended March 24, 2022

SUBJECT: Water quality: California-Mexico cross-border rivers

SUMMARY: Provides one hundred million dollars to the California Environmental Protection Agency (CalEPA) from the state's General Fund, upon appropriation by the Legislature, to address water quality problems arising in the rivers that come across the border from Mexico. Specifically, **this bill:**

- 1) Provides one hundred million dollars to CalEPA from the state's General Fund, upon appropriation by the Legislature, to address water quality problems arising in the rivers that come across the border from Mexico.
- 2) Requires that half of the one hundred million dollars provided to CalEPA shall be available for purposes consistent with the New River Water Quality, Public Health, and River Parkway Development Program.
- 3) Provides that expenditures of the funding to CalEPA shall be consistent with the work of the CalEPA Border Affairs Program to build collaboration with the federal government, the Republic of Mexico, the State of Baja California, and the Cities of Tijuana and Mexicali. Prioritizes funding to projects that have funding committed by one of these governments.
- 4) Requires the California State Water Resources Control Board (State Water Board) and CalEPA to consult and collaborate with the Legislature, including the protocol office of each house's leadership office, on cross-border collaboration and the expenditure of the funding available.
- 5) Authorizes funds to be expended for action in the State of Baja California if the action provides water quality benefits to the portions of the rivers located in California.

EXISTING LAW:

- 1) Establishes the Porter-Cologne Water Quality Control Act, which prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board. (Water Code § 1300 et seq.)
- 2) Requires the California-Mexico Border Relations Council (Council) to establish the New River Water Quality, Public Health, and River Parkway Development Program to coordinate funding for, and the implementation of the strategic plan developed by the Council. (Public Resources Code § 71103.6)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "In order to advance on the commitments the state has made and build off of the funding we have already committed to the Tijuana and New Rivers, we need to provide a substantive commitment to improving the water quality coming from our border region into our communities for years to come. While we will continue to work with our partners in Mexico, we need to ensure that we are not jeopardizing public health and are able to fully tackle the problem through infrastructure investments in our own backyard."

Tijuana River Watershed: The Tijuana River Watershed is an approximately 1,700-square mile area that straddles the U.S./Mexico border. While nearly three-quarters of the watershed are located in Mexico, it drains to the Pacific Ocean through the 8-square mile Tijuana River Valley (Valley) north of the border. The Valley is home to tidally flushed wetland, riparian, and upland habitats supporting a broad range of organisms, including threatened and endangered species, and includes a number of federally-listed historical and archaeological sites.

Land uses in the watershed are diverse, from largely undeveloped open space in the upper watershed to highly-urbanized, residential, commercial, military, and industrial areas in the lower watershed. Rapid urbanization has occurred over the past several decades, most dramatically in the city of Tijuana where more than 2.7 million people currently reside. Several large dams (Barrett and Morena in the U.S., and Rodríguez and El Carrizo in Mexico) control a large majority of the surface water flow in the watershed. While these dams provide reservoirs of potable water to support residents and associated infrastructure on both sides of the border, they also serve as traps for the downstream movement of sediment and trash to the lower watershed. Therefore, the sediment and trash produced in the 462-square mile area downstream of the dams are responsible for impacts to the Valley.

While significant improvements in wastewater treatment have, in recent years, improved water quality on both sides of the border, stormwater flows continue to bring substantial amounts of sediment, trash, and other contaminants into the Valley. The sediment and trash pollutants cause water quality impairments, threaten life and property from flooding, degrade valuable habitats, and impact recreational opportunities for residents and visitors.

International Boundary & Water Commission (IBWC): Bi-national concerns about Tijuana River water quality date back to 1934, when the United States and Mexican governments instructed the International Boundary Commission (predecessor to IBWC) to prepare a report on the Tijuana sewage problem. When the United States and Mexico signed the Water Treaty of 1944, Article III made the use of cross-border waters subject to "sanitary measures or works." The two governments also agreed to give preferential attention to the solution of all border sanitation problems.

In 1979, the two governments approved "Recommendations for the Solution of the Border Sanitation Problems," in Minute No. 261, which provided that for each border sanitation problem, the IBWC would prepare a Minute that would identify the problem and the course of action for resolution. The IBWC subsequently adopted Minutes Nos. 283, 296, and 311 to address border sanitation problems on the Tijuana River, and adopted Minute No. 274 to address the water quality of the New River at Calexico.

In light of continued cross-border sanitation issues, the U.S. and Mexico created a binational interagency "Clean Water Partnership." In 1990, IBWC approved Minute No. 283, to authorize construction of a treatment plant on the Tijuana River, north of the border, called the South Bay

International Water Treatment Plant. This treatment plant has current capability of treating 25 million gallons per day (MGD), but has an expansion capability of up to 100 MGD. Once treated, water from the plant flows through a 4.5-mile, 11-foot pipe leading to the South Bay Ocean Outfall.

Tijuana River Recovery Team: The Tijuana River Recovery Team (Recovery Team) is a collaboration of more than 30 federal, state, and local agencies and other interested parties from both sides of the U.S./Mexico border focused on addressing sediment, trash, and associated environmental issues. The mission of the Recovery Team is to bring together the governmental, administrative, regulatory, and funding agencies in tandem with advice from the scientific community, the environmental community, and affected stakeholders to protect the Valley from future accumulations of trash and sediment, identify, remove, recycle or dispose of existing trash and sediment, and restore the Tijuana River floodplain to a balanced wetland ecosystem.

The Recovery Team consists of the following members and organizations: Audubon Society; California Coastal Commission; California Coastal Conservancy; California Department of Conservation, Office of Mining and Reclamation; California Department of Fish and Wildlife; California Department of Resources Recovery and Recycling; California Environmental Protection Agency; California State Parks; California State Water Resources Control Board; City of Imperial Beach; City of San Diego; County of San Diego; International Boundary and Water Commission; National Marine Fisheries Service; National Oceanic and Atmospheric Administration; OpenOceans Global; San Diego Coastkeeper; San Diego County Water Authority; San Diego Regional Water Quality Control Board; San Diego State University; Scripps Institution of Oceanography; Southern California Coastal Water Research Project; Southwest Wetlands Interpretive Association; Surfrider; Tijuana River National Estuarine Research Reserve; Tijuana River Valley Equestrian Association; U.S. Army Corps of Engineers; U.S. Bureau of Reclamation; U.S. Customs and Border Patrol; U.S. Department of Agriculture; U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; and, U.S. Navy.

Recent Developments on the Tijuana River: Water quality in the Tijuana River has deteriorated significantly in recent years. As the *San Diego Union-Tribune* reported last year, Tijuana River water pollution required closing of beaches north of the border on 295 days in 2020. Deteriorating water quality has led to both conflict and increased effort to address water quality in the Tijuana River.

New River: The New River runs through Mexicali, Baja California, and Calexico, California into the Salton Sea. For decades, this Imperial County river has been characterized as one of the most polluted rivers in the United States and remains one of the largest public health issues in the county. The Imperial County Public Health Department, Division of Environmental Health has developed its New River sampling program and has made water quality data for Imperial County Residents accessible. In 1980, the IBWC established Minute 264 which outlines water quality standards for the New River.

California Legislature's Work on Border River Water Quality: The California Legislature has been considering and addressing water quality in its border rivers (Tijuana River and New River) for the last 20 years, as water quality issues have evolved. It has passed bills to require state agency projects to improve water quality and has held informational hearings on the work of all those who strive to improve border river water quality.

After the Recovery Team issued its 2014 *Recovery Strategy: Living with the Water* report, the Assembly Committee on Environmental Safety and Toxic Materials convened two informational hearings on border rivers – one on the Tijuana River and one on the New River. Those 2015 hearings allowed legislators to hear from agencies/stakeholders on both rivers. They considered:

- 1) Cross-border projects to build collaboration with governments/communities in Mexico;
- 2) *MOU to Enhance Cooperation on Climate Change and the Environment* implementation;
- 3) Progress and challenges to implement respective strategic plans for the two rivers; and,
- 4) Potential improvements to advance river restoration and long-term management.

The hearing materials reviewed legislation, budget actions and potential funding related to the two rivers, including the California Border Environmental and Public Health Protection Fund.

Since the Recovery Team's 2014 report and the 2015 informational hearings, the Legislature's budget committees have reviewed programs and projects on border river water quality. State Budgets since 2017 have included appropriations for border river water quality:

- 1) 2017: Reappropriated \$2.1 million from a 2014 California Wildlife, Coastal and Park Land Conservation Fund of 1988 for acquisition of lands in the Tijuana River Valley.
- 2) 2019: Appropriated \$15 million for Tijuana River pollution control.
- 3) 2020: Appropriated \$18 million from the General Fund and \$10 million from Proposition 68 water bond funds for the New River Project.
- 4) 2021: Appropriated \$20 million to improve water quality in border rivers.

U.S.-Mexico-Canada Agreement: When Congress approved the US-Mexico-Canada Agreement in 2019, California Congressional representatives succeeded in adding \$300 million to identify infrastructure solutions to address significant negative impacts to water quality, public health, and the environment of water pollution in cross-border rivers. In 2020, the US government committed the funding to the U.S. EPA to be used to address Tijuana River water quality problems. In November 2021, US Ambassador Ken Salazar and U.S. EPA Administrator Michael S. Regan met with Mexican officials and stakeholders at the Tijuana border to discuss the results of the U.S. EPA's alternatives analysis for solutions to Tijuana River water quality issues. The results outlined a plan to address water quality on both sides of the border, throughout the watershed. The plan identifies an estimated capital cost of approximately \$627 million and approximately \$25 million for operations and maintenance.

Opportunity for improvements to the New River and Tijuana River: For the past several years the Legislature has appropriated small chunks of funding for specific purposes, some for the New River and some for the Tijuana River. This bill proposes to appropriate a larger fund with the goal of taking a more holistic approach to addressing the watersheds near the U.S. – Mexico border rather than pursuing incremental progress.

Arguments in Support: According to the Surfrider Foundation, "Surfrider is in strong support of AB 2248 because it addresses water quality in California Mexico Rivers which affects public health, coastal recreation, and unique wetland habitat in California and Baja. Beaches in San Diego are closed more than two thirds of the year regularly (including in 2021) as they are considered unsafe for recreating by Environmental Protection Agency standards for 'safe' coastal

recreation. Extreme pollution in places like Goat Canyon mean that areas near border rivers are so toxic that our volunteers used to wear protective suits to conduct cleanups and now often don't even try to clean these areas because volunteers were frequently getting sick. Additionally, U.S. Border Patrol and Navy conduct patrols and training in contaminated environments that put agents and sailors at risk. We urge the Assembly to pass AB 2248 in advance of public health and coastal recreation needs near the border."

Double-referral: Should this bill pass this Committee it will be re-referred to the Assembly Water, Parks, and Wildlife Committee.

Related legislation:

- 1) SB 507 (Hueso, Chapter 542, Statutes of 2017). Authorizes funds granted to the County of San Diego in the 2014 Budget Act to be available for development, improvement, rehabilitation, protection, restoration, and studies of natural and park lands in the Tijuana River Valley.
- 2) SCR 90 (Hueso, Chapter 80, 2014) declared the Legislature's intent to work with the Tijuana River Valley Recovery Team to take various actions to protect and preserve the Tijuana River Valley, to encourage collaboration with the team to protect and enhance our natural resources through improved management of sediment and trash, flood control, ecosystem management, and recreation and education, and to promote bilateral ties with Mexico that will be beneficial to the enhancement of one of California's most resilient ecosystems.
- 3) SB 167 (Ducheny, Chapter 333, Statutes of 2009) requires the California Department of Resources Recycling and Recovery to include additional information relating to waste tires in the California-Mexico Border Region, and authorizes funds generated by the California tire fee to be used for related border activities.

REGISTERED SUPPORT / OPPOSITION:

Support

Surfrider Foundation

Opposition

None on file.

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