

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

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

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

**SUMMARY:** Provides \$100 million 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 \$100 million to CalEPA from the 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 \$100 million provided to CalEPA shall be available for purposes consistent with water quality projects for the Tijuana River and half 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 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 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 available funding.
- 5) Authorizes funds to be expended for actions in the State of Baja California if the actions provide 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).
- 3) Requires, upon an appropriation of funds from the Legislature, CalEPA and the California Natural Resources Agency (CNRA), including their subsidiary agencies, to collaborate to create a Tijuana River Valley Watershed Action Plan, known as the Tijuana River Plan, as specified (PRC § 71107).

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal.

**COMMENTS:**

- 1) **Purpose of the bill.** According to the author, “[i]n 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.”
- 2) **Background:** 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 eight-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 Tijuana metropolitan area, with a population of about 2.2 million. 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 primarily responsible for impacts to the Valley.

*Recent developments on the Tijuana River.* While significant improvements in wastewater treatment in recent years have 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, impact fish and wildlife species, and affect recreational opportunities for residents and visitors. As the *San Diego Union-Tribune* reported last year, Tijuana River water pollution required closing 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, the New River has been characterized as one of the most polluted rivers in the United States. Though discharges from U.S. sources are treated and disinfected to meet state and federal standards, the water entering the country contains raw sewage, industrial, domestic and agricultural wastes, trash and other solid pollutants, owing mostly to Mexicali’s overburdened and deteriorating infrastructure. This results in a serious threat to public health and ecosystems for wildlife and other biological resources, while hindering economic development in the Imperial Valley.

*Recent developments on the New River.* The original Strategic Plan for the New River Improvement Project, which was published in 2011, included a disinfection facility estimated

to cost over \$80 million. The project was amended in 2016 (The New River Water Quality, Public Health, and River Parkway Development Program) and instead features a pipe that encases the river as it bypasses Calexico, preventing any direct or indirect contact, as well as an automated trash screen at the border to remove solid waste. These changes lowered the estimated cost of the project to \$28 million. The project is currently in the process of environmental review and permitting.

The New River serves as a major water source for the Salton Sea, a terminal lake located in Imperial and Riverside Counties, and California's largest lake by surface area. The state is in the middle of a ten-year plan to address public health and environmental concerns at the Salton Sea resulting from the exposure of lakebed sediments as the sea shrinks. A 3,770 acre project being built at the mouth of the New River, called the Species Conservation Habitat project, relies on water from the New River to create shallow water habitat and control dust on the exposed lakebed.

*California Legislature's recent work on border river water quality.* The 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 legislation to require state agency projects to improve water quality and has held informational hearings on border river water quality and issues at the Salton Sea.

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. 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. The committee considered:

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

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, including the following:

- 2017: Re-appropriated \$2.1 million in bond funding from the California Wildlife, Coastal and Park Land Conservation Fund of 1988 for acquisition of lands in the Tijuana River Valley.

- 2019: Appropriated \$15 million for Tijuana River pollution control.
- 2020: Appropriated \$18 million from the General Fund and \$10 million from Proposition 68 bond funds for the New River Project.
- 2021: Appropriated \$20 million to improve water quality in border rivers.

*U.S.-Mexico-Canada Agreement (USMCA)*. When Congress approved the USMCA 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 federal government committed the funding to the U.S. EPA to be used to address Tijuana River water quality problems.

In November 2021, U.S. 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.

- 3) **Arguments in Support.** The County of San Diego writes in support, stating that this bill would provide critical funding for projects that address cross-border pollution. The Surfrider Foundation writes in support, stating that this bill “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.”
- 4) **Double-referral.** This bill passed out of the Environmental Safety and Toxic Materials Committee 9-0 on April 5, 2022.
- 5) **Related Legislation.** SB 1301 (Hueso), Chapter 368, Statutes of 2020, directs CalEPA and the CNRA, including their subsidiary agencies, to collaborate to create a Tijuana River Valley Watershed Action Plan, as specified, and then to consult with the U.S. and Mexican governments and specified state and local governments, to develop a common watershed action plan to address issues in the Tijuana River and its watershed.

SR 57 (Hueso), 2019-20 Session, makes findings regarding the public health and environmental impacts of the discharge of raw sewage and other waste through the Tijuana River Valley (TRV). The resolution requests that Governor Newsom explore all available state resources, where feasible, to address the sewage crisis affecting the TRV, the Tijuana River Estuary, and surrounding residents.

SJR 22 (Hueso), Resolution Chapter 241, Statutes of 2018, urges the federal government and the U.S. Section of the IBWC to take immediate action to adequately address cross-border pollution in the TRV.

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 TRV.

AB 965 (E. Garcia), Chapter 668, Statutes of 2015, requires the Council to establish the New River Water Quality, Public Health, and River Parkway Development Program to coordinate funding for, and the implementation of, the recommendations from the New River Strategic Plan.

AB 1079 (V. Manuel Perez), Chapter 382, Statutes of 2009, requires the Council to develop a strategic plan containing specific elements to guide the implementation of the New River Improvement Project in Imperial County.

SB 167 (Ducheny), Chapter 333, Statutes of 2009, requires the California Integrated Waste Management Board to include waste tires in the California-Mexico Border Region in an existing five-year plan, and authorizes funds generated by the California tire fee to be used for related border activities.

AB 2317 (Ducheny), Chapter 742, Statutes of 2000, establishes the California Border Environmental and Public Health Protection Fund to provide technical assistance for local governments and specified organizations for the purpose of identifying and resolving problems (e.g., industrial wastewater, air emissions, hazardous waste transport and disposal, human and ecological risk) affecting the public health or environmental quality in the California-Baja California border region.

**REGISTERED SUPPORT / OPPOSITION:****Support**

County of San Diego  
Surfrider Foundation

**Opposition**

None on file

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