
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 2248

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Urgency: No

Fiscal: Yes

Consultant: Gabrielle Meindl

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

DIGEST: 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.

ANALYSIS:

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)

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 be available for purposes consistent with the New River Water Quality, Public Health, and River Parkway Development Program and the other half be available for purposes consistent with the water quality projects in the Tijuana River.
- 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.

Background

- 1) *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.

- 2) *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 light of continued cross-border sanitation issues, the U.S. and Mexico created a binational interagency "Clean Water Partnership." In 1990, IBWC authorized 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.

- 3) *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.
- 4) *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.
- 5) *New River*. The New River is a transboundary river that flows from Mexicali, Mexico into the City of Calexico and drains into the Salton Sea. The New River's pollution problem dates back to the late 1940s. By the 1970's, the New River had acquired the reputation for being one of the most polluted rivers in

the U.S., with many of the pollutants posing serious human health hazards. Pollution sources have included untreated municipal sewage, trash, treated and untreated industrial discharges, treated effluent from municipal wastewater treatment plants, urban storm drainage and a variety of agricultural irrigation runoff on both sides of the border.

- 6) *Binational Technical Committee.* As part of the US/Mexico Water Treaty of 1944, the Binational Technical Committee (BTC) was established in 1994. The IBWC established teams of technical personnel and technical advisers from agencies of each country with expertise in wastewater infrastructure. The BTC serves to help identify pollution problems, oversees development and implementation of the binational sanitation projects agreed upon by Mexico and the U.S., and makes project and policy recommendations to address New River pollution from Mexico.
- 7) *Pollution problems in Mexicali.* A series of quick fix sanitation projects were implemented in various locations in Mexicali in 1992 and 2007 as part of the US/Mexico Water Treaty. These projects focused on improvements to the collection system and rehabilitation of pumping plants in 1992, and the construction of a new wastewater treatment plant in 2007. Pollution worsened due to the rapid population growth and industrial development in Mexicali. The projects implemented back in 2007 did not consider the boom in population and the capacity of the wastewater treatment plants wasn't large enough.

In 2013, new problems began to emerge in Mexicali due to collection system pipes aging, inadequate oversight of operations and maintenance, and continued sewage spills. Improvements needed in Mexicali include: rehabilitation of the wastewater treatment plants and the sewage collection system.

The failing sanitation system in Mexicali continues to discharge raw sewage and other waste into the New River, which in turn threatens the health of Calexico residents, harms wildlife and the ecosystem, and undermines Salton Sea management and restoration efforts. The proposed improvements, including installing a trash screen, piping the dirty water around the city, and pumping a portion of the treated water back into the channel to restore some of the flow, are intended to protect Calexico residents and address threats to ecosystems.

- 8) *New River Improvement Project Strategic Plan.* Other efforts to help address the New River pollution at the border include the New River Improvement Project Strategic Plan. AB 1079 (Perez, 2009), required the California-Mexico

Border Relations Council (IBWC) to create a strategic plan to study, monitor, remediate and enhance the New River's water quality to protect human health. One of the strategies proposed is the New River Improvement Project, Calexico. The design of the New River improvement Project essentially reroutes the New River over a two mile stretch to minimize the community's exposure to the polluted river. Unlike the “fixes” to Mexicali’s sanitation system that were completed by 2007 and funded by both countries, the New River Improvement Project currently is a California undertaking.

- 9) *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.

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 as follows:

- a) 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;
 - b) 2019: Appropriated \$15 million for Tijuana River pollution control;
 - c) 2020: Appropriated \$18 million from the General Fund and \$10 million from Proposition 68 water bond funds for the New River Project; and
 - d) 2021: Appropriated \$20 million to improve water quality in border rivers.
 - e) 2022: Appropriation of \$15 million for Border rivers cleanup (pending).
- 10) *U.S.-Mexico-Canada Agreement.* When Congress approved the US-Mexico-Canada Agreement (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 US government committed the funding to the US EPA to be used to address Tijuana River water quality problems. In November 2021, US Ambassador Ken Salazar and US EPA Administrator Michael S. Regan met with Mexican officials and stakeholders at the Tijuana border to discuss the results of the US 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.

Comments

- 1) *Purpose of 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."
- 2) *More clarity needed to implement.* It would be useful to identify how the funds in the bill are supposed to be administered, and under what timeline. The bill states that funds shall be available to CalEPA, however, CalEPA is not set up to administer such a large grant program. It may make sense to direct the State Water Board to administer the program in consultation with the appropriate regional water boards.

The Committee may wish to amend the bill to make the funds available to the State Water Board for grants and direct expenditures and require the State Water Board, in consultation with CalEPA and the San Diego and Colorado River Regional Water Board, to administer the funding, including developing grant guidelines that establish a timeline for funding disbursement, project prioritization, and monitoring requirements. Further, authorize 5% of funds for administrative costs and, to accelerate the granting of funds, stipulate that the aforementioned guidelines are not subject to the Administrative Procedures Act.

- 3) *Unclear how funding agreements would be enforced.* While funds expended in a grant program on the California side of the border would be relatively simple to track and ensure work being done, funds expended in Mexico may make funding agreement enforcement more complex or unenforceable.

The Committee may wish to amend the bill to: stipulate that any grant funding for projects may be conditioned on enforceability and accountability mechanisms agreed upon by the State Water Board and the recipient federal agency; that funding recipients consent to be subject to the jurisdiction of the California courts for the purpose of enforcement of the funding agreement; and authorize the Office of the Attorney General to enforce the terms of the funding agreements, including 5% to the Office for enforcing this section.

- 4) *Is a 50/50 funding split appropriate or arbitrary?* While it seems evident that both border rivers continue to need funding for cleanup, it is unclear if a 50/50 funding split between the Tijuana and New River is appropriate. As mentioned above, the U.S.-Mexico-Canada Agreement authorized and allocated \$300 million to address Tijuana River water quality problems. An additional need of \$327 million in capital costs have been identified by US EPA to fund top priority projects along the Tijuana River. Staff was unable to determine the current cleanup funding needs for the New River and received no information from the author's office to justify the 50/50 split other than the desire of the author "that one river was not prioritized over another." Given this, ***the Committee may wish to delete the 50/50 funding split from the bill.***
- 5) *Other issues to consider moving forward.* The author should consider clarifying the relationship between the funds in the bill and funds and projects covered by the USMCA. The author should consider making these funds be allowed to fully fund, augment, or extend USMCA projects in the Tijuana River watershed in collaboration with federal and international partners.
- 6) *Committee amendments. Staff recommends the committee adopt the bolded amendments contained in comments 2, 3, and 4 above. Additionally, the committee may wish to adopt the following clarifying amendments:*
- a) ***Direct the State Water Board and CalEPA to "notify" rather than "consult and collaborate" with the leadership office of each Legislative house;***
 - b) ***Delete duplicative language regarding the work of the Border Affairs program; and***
 - c) ***Make numerous technical and conforming changes.***

Related/Prior Legislation

SB 507 (Hueso, Chapter 542, Statutes of 2017) authorized 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.

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.

SB 167 (Ducheny, Chapter 333, Statutes of 2009) required 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.

SOURCE: Author

SUPPORT:

California State Pipe Trades Council
Californians Against Waste
City of Chula Vista, Mayor Casillas Salas
City of Coronado, Mayor Richard Bailey
City of Imperial Beach
City of National City, Mayor Alejandra Sotelo-solis
Imperial Irrigation District
Outdoor Outreach
Port of San Diego
San Diego; City of
San Diego; County of
Surfrider Foundation

OPPOSITION:

None received

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."

ARGUMENTS IN OPPOSITION: None received

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