SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 2248 (Eduardo Garcia) - Water quality: California-Mexico cross-border rivers

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Urgency: No
Hearing Date: August 1, 2022

Policy Vote: E.Q. 7 - 0
Mandate: No
Consultant: Ashley Ames

Bill Summary: This bill would provide $100 million to the State Water Resources Control Board (Water Board) from the General Fund, upon appropriation by the Legislature, to address water quality problems arising in California-Mexico cross-border rivers.

Fiscal Impact:

- Cost pressure of $100 million (General Fund) for the Legislature to provide an appropriation to the Water Board. Of this amount, the Water Board estimates costs of up to $2.475 million for State Water Board and Regional Water Board efforts to administrate the fund and provide project oversight.
- The Department of Justice (DOJ) indicates that its costs are unknown but could potentially be significant (General Fund). The Department anticipates there may be unfunded enforcement-related costs (above the 5% earmarked for cost reimbursement to the Department) pertaining to the outlined funding agreements. Actual DOJ costs would depend on several factors, including the number and complexity of resulting funding agreements the Department would need to enforce, the nature of the legal dispute at issue, and the involved parties.

Background:

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.

I*nternational 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.

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.

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 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.

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.

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.

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.

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:

- 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;
- 2019: Appropriated $15 million for Tijuana River pollution control;
- 2020: Appropriated $18 million from the General Fund and $10 million from Proposition 68 water bond funds for the New River Project; and
- 2021: Appropriated $20 million to improve water quality in border rivers.
- 2022: Appropriation of $15 million for Border rivers cleanup (pending).

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.

Proposed Law: This bill would provide $100 million to the Water Board from the General Fund, upon appropriation by the Legislature, to address water quality problems arising in California-Mexico cross-border rivers. Specifically, this bill would:

1. Make $100,000,000 available from the General Fund, upon appropriation by the Legislature in the annual Budget Act or another statute, to the Water Board for grants and direct expenditures to address water quality problems arising in California-Mexico cross-border rivers.
2. Require the funding to be available for purposes consistent with the New River Water Quality, Public Health, and River Parkway Development Program and water quality projects for the Tijuana River.
3. Make 5% of the funding available for the administrative costs of the Water Board in implementing these provisions and 5% available for the costs of the Office of the Attorney General in enforcing these provisions.
4. Require the Water Board, in consultation with the California Environmental Protection Agency, the San Diego Regional Water Quality Control Board, and the Colorado River Basin Regional Water Quality Control Board, to administer the funding, as specified.
5. Require expenditures to be consistent with the work of the California Environmental Protection Agency Border Affairs Program, and require priority for the funding to be given to projects that have funding committed by the United States, the Republic of Mexico, the State of Baja California,or the City of Tijuana or Mexicali.

6. Authorize grant funding to be conditioned on enforceability and accountability mechanisms agreed upon by the Water Board and the recipient, as prescribed, and would authorize funding to be provided for activities or projects in the State of Baja California under certain circumstances.
7. Require the Water Board and the California Environmental Protection Agency to notify the leadership office in each house of the Legislature on cross-border collaboration and the expenditure of the funding.

Related 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.

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