
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2019 - 2020 Regular

Bill No: SR 57
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Consultant: Gabrielle Meindl
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Fiscal: No

SUBJECT: The Tijuana River

DIGEST: This resolution makes findings regarding the public health and environmental impacts of the discharge of raw sewage and other waste through the Tijuana River Valley (TRV). It also 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.

ANALYSIS:

Existing federal law under the Clean Water Act (CWA):

- 1) Establishes the structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.
- 2) Makes it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained.
- 3) Establishes the National Pollutant Discharge Elimination System (NPDES) permit program to regulate point source discharges of pollutants into US waters. An NPDES permit sets specific discharge limits for point sources discharging pollutants into US waters and establishes monitoring and reporting requirements as well as special conditions.
- 4) Authorizes states to implement and enforce the NPDES permit program as long as the state's provisions are as stringent as the federal requirements. In California, the State Water Resources Control Board (SWRCB) is the delegate agency responsible for the NPDES permit program.

Existing state law, under the Porter-Cologne Water Quality Control Act (Porter-Cologne):

- 5) Establishes the SWRCB and regional water quality control boards to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations.

This resolution:

- 1) Describes the international importance of the Tijuana River Estuary as a waterfowl habitat, critical for multiple endangered species.
- 2) States that the Tijuana River and the Tijuana River Estuary are identified on the list of impaired waters developed pursuant to Section 303(d) of the federal Clean Water Act.
- 3) States that the Tijuana River has for more than 30 years experienced substantial discharges of trash, sediment, and wastewater generated as a result of sewage infrastructure inadequacies.
- 4) Describes how transboundary flows containing raw sewage, waste tires, trash, and sediment cause severe economic and environmental degradation and result in beach closures that compromise the economic potential of beaches in the southern parts of the County of San Diego.
- 5) States that the discharge of raw sewage and other waste through the TRV poses serious public health risks from untreated and partially treated human and industrial wastewater that contains toxins and bacterial and viral pathogens, such as hepatitis and enteroviruses, which have been detected in the surf zone of the Tijuana River during wet weather.
- 6) States that the International Boundary and Water Commission (IBWC) and the federal government have repeatedly failed to stop transboundary flows and protect local communities from massive pollutant discharge.
- 7) Maintains that the only way to effectively restore and protect environmental and human health issues in the TRV is to address transboundary flows of trash and sediment at the source, requiring binational cooperation.
- 8) States that in the month of June 2019 alone, the IBWC has reported at least six sewage flows from Mexico, discharging more than an additional 6,000,000 gallons into neighboring waters and communities and the City of San Diego has declared a continued state of emergency since 1993 as a result of the

escalated discharge of raw sewage from Tijuana, Mexico.

9) Calls upon the Senate to:

a. Request Governor Newsom to:

- i. explore all available state resources, where feasible, to address the sewage crisis affecting the TRV, the Tijuana River Estuary, and surrounding residents;
- ii. look into the emergency that currently exists in the Tijuana River Valley due to the sewage crisis;
- iii. Support the San Diego congressional delegation's request sent to the IBWC on July 3, 2019, to take action immediately;

b. Recognize the challenges that arise due to the need for cooperation from our federal agencies and binational partners.

Background

- 1) *Pollution problems in the TRV.* The Tijuana River watershed straddles the international border between the United States and Mexico. The Tijuana River flows through highly urbanized areas in Mexico before entering into the Tijuana Estuary and the Pacific Ocean through San Diego in the United States. The Tijuana Estuary is the largest functioning wetland in southern California, providing habitat for at least six endangered species and many threatened species of wildlife and vegetation. It is an exceptionally rich and invaluable natural resource designated as a "Wetlands of International Importance" by the United Nations. The lower six miles of the Tijuana River and the Tijuana Estuary (collectively referred to as the Tijuana River Valley) are listed as impaired water bodies (referred to as "303(d) listed water bodies) pursuant to the CWA due to excessive levels of bacteria, heavy metals, trash, and sediment among other pollutants. As a result of the presence of these pollutants, water quality objectives are not attained in the TRV and numerous designated beneficial uses are impaired; most importantly, those associated with protection of aquatic life and protection of human health.

The San Diego Water Board is required to develop total maximum daily loads (TMDLs), or an alternative approach with comparable results, for all impaired waters. A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality objectives. Pursuant to

State Policy, when adopting TMDLs, the Water Board must also identify an implementation strategy designed to attain the TMDL and water quality objectives and restore beneficial uses in impaired waters.

- 2) *The International Boundary and Water Commission (IBWC)*. Pursuant to a 1944 Treaty entered into by the United States and Mexico, the IBWC was created and authorized to work to address and resolve water quality issues at border and transborder rivers and streams. The IBWC consists of two sections – the United States Section (USIBWC) and the Mexico Section. Each section has exclusive jurisdiction and control on its respective side of the border over works constructed, acquired, or used in the fulfillment of its obligations under the 1944 Treaty.
- 3) *IBWC Minute 283 and the NPDES Permit*. Pursuant to the 1944 Treaty, the U.S. and Mexico Sections can amend the treaty by issuing Minutes, which must be approved by both countries. IBWC Minute 283 titled “Conceptual Plan for the International Solution to the Border Sanitation Problem in San Diego, California/Tijuana, Baja California, approved on July 2, 1990 by both governments, provided the framework for designing, constructing, and operating an international sewage collection system and secondary treatment plant to attempt to mitigate the significant threat to beneficial uses caused by uncontrolled and untreated discharges of waste across the border. Minute 283 laid the foundation for the construction and operation of the South Bay International Wastewater Treatment Plant (SBIWTP), a secondary treatment sewage plan owned by the USIBWC and initiated concrete actions to address the uncontrolled sewage that continuously flows from Mexico to the United States.

The San Diego Water Board’s early regulation of the SBIWTP in 1996 after the facility’s initial construction was the Board’s first border-related priority to address significant cross-border flows of untreated sewage and associated water quality and public health risks posed by the above mentioned pollutants. On June 26, 2014, the San Diego Water Board adopted updated waste discharge requirements and NPDES permit for the USIBWC’s discharges of secondary treated wastewater from the SBIWTP to the Pacific Ocean.

- 4) *Sedimentation and Trash*. With the sewage treatment plant on-line to mitigate the single greatest threat, the San Diego Water Board turned its attention to its next and current highest border priority, the restoration of TRV due to excessive sedimentation and trash. In addition to their direct impacts, sediment and trash also convey numerous other pollutants to the river and estuary due to the strong tendency of many pollutants to bind to sediment particles and trash.

For this reason, reduction of sediment and trash flows will also reduce the introduction of numerous other pollutants to the Valley. Accordingly in 2007, the San Diego Water Board initiated the development of a sedimentation and trash TMDL for the TRV, and the USEPA funded a preliminary investigation of the problem.

- 5) *Tijuana River Valley Recovery Team*. The San Diego Water Board convened its first sediment and trash workshop with stakeholders in June 2009 which led to the creation of the TRV Recovery Team (Recovery Team or TRVRT), a consensus-based collaboration of over thirty federal, state, and local government agencies, environmental and science communities, and other interested organizations and stakeholders from both sides of the border. Common amongst all members was the desire to address sediment and trash flows which degrade valuable estuarine and riparian habitats, threaten life and property from flooding, and impact recreational opportunities for residents and visitors in the TRV.
- 6) *Recovery Strategy*. In January 2012, the TRVRT published its “Recovery Strategy: Living with the Water.” The purpose of the Recovery Strategy is twofold. First, it is intended to be a concise summary of the first phase of actions to cleanup the Valley and restore its beneficial uses. Second, it is intended to outline the steps in a way that will allow stakeholders, policy makers, and potential funding sources have a clear understanding of both the problems and the solutions that will allow the Recovery Team to achieve its vision and mission. Finally, the Recovery Strategy acknowledges that resolution to the sediment and trash problems will require partnerships between the U.S. and Mexico to provide watershed-based solutions. The Recovery Team recognizes that source control and pollution prevention activities are often the best and most economically feasible long-term solutions to sediment and trash and other water quality problems.

The Recovery Team identified seven Priority Action Areas for work in the initial phase of Recovery: (1) Partner with Mexico to Implement Optimum, Watershed-based Solutions; (2) Understand How Water, Sediment and Trash Flow; (3) Reduce Sources of Sediment and Trash; (4) Implement Sediment and Trash Capture Devices in the Watershed; (5) Fund and Perform Ongoing Operations and Maintenance (O&M); (6) Involve and Inform the Community in Mexico and U.S.; and (7) Protect and Enhance Natural Resources.

- 7) *State sues the USIBWC*. Despite decades of working with the USIBWC towards a solution, it has repeatedly failed to stop transboundary flows and protect local communities from massive pollutant discharge. As a result, on

May 14, 2018, the California Attorney General and the San Diego Water Board submitted a 60-Day Notice of Intent to Sue the USIBWC for violations of the CWA and the USIBWC's NPDES permit for allowing more than 12 million gallons of wastewater, since 2015, that flows from the Tijuana River Watershed in Mexico into California to go untreated.

- 8) *2019/2020 Budget*: Item 3760-101-6088 in the 2019 Budget Act AB 74, (Ting), Chapter 23, Statutes of 2019, appropriates \$15,000,000 for the Tijuana River Border Pollution Control Project, to the State Coastal Conservancy, payable from the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Fund. AB 74 specifies that, of this amount, not more than \$1,500,000 may be used for program delivery costs, and not more than \$750,000 may be used for planning and monitoring costs.
- 9) *San Diego Congressional Delegation Request to USIBWC*. On July 3, 2019, the San Diego Congressional delegation sent a letter to the USIBWC requesting immediate action to reduce the impact of sewage flows in the TRV following reports of approximately 6 million gallons of sewage entering the United States through the TRV during the month of June 2019.

Comments

- 1) *Purpose of Bill*. According to the author, "In 2017, I authored SB 507, a bill that sought to find tangible solutions to pollution at the Tijuana River Valley by authorizing the use of funds for a "Needs and Opportunities Assessment". That assessment is nearly complete and a preliminary report and project list is available with input from federal, state, and local stakeholders. As such, I requested \$15 million dollars from the state to address transboundary flows coming from Mexico. SR 57 will continue on this effort in order to ensure that available resources be used for the purpose of addressing these dangerous transboundary flows affecting our southernmost coast."

Related/Prior Legislation

SB 690 (Hueso) would require the State Coastal Conservancy, when expending any funds for the purposes of addressing transboundary flows and pollution in the Valley, to the extent feasible, to prioritize those projects identified in studies on the Valley that are required by statute. This bill is currently pending on the Senate Floor.

SB 507 (Hueso, Chapter 542, Statutes of 2017) appropriated \$500,000 to the County of San Diego to conduct an update to the 2012 Tijuana River Valley

Recovery Team's "Recovery Strategy: Living with the Water" to include issues related to wastewater and runoff and a study focused on the improvement and protection of natural lands, including the main river channel, in the TRV.

SCR 90 (Hueso, Resolution Chapter 80, Statutes of 2014) declared the Legislature's intent to work with the TRV Recovery Team to take various actions to protect and preserve the TRV, to encourage collaboration with the team to protect and enhance our natural resources through improved management of sediment and trash, flood control, and ecosystem management.

SOURCE: Author

SUPPORT:

None received

OPPOSITION:

None received

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