

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 377 (Robert Rivas) – As Amended April 13, 2021

SUBJECT: Water quality: impaired waters

SUMMARY: Requires, by January 1, 2025, the State Water Resources Control Board (State Water Board) and the Regional Water Quality Control Boards (Regional Boards) to evaluate impaired state surface waters and report to the Legislature a plan to bring all water segments into attainment by January 1, 2050. Requires, by January 1, 2023, the State Water Board and Regional Water Boards to prioritize enforcement of water quality standard violations that are causing or contributing to an exceedance of a water quality standard in a surface water of the state. Specifically, **this bill**:

- 1) Requires, by January 1, 2025, the State Water Board and Regional Boards to evaluate impaired state surface waters using the most current integrated report, and report to the Legislature a plan to bring all water segments into attainment by January 1, 2050.
- 2) Requires the report to be submitted to the Legislature by the State Water Board to include existing total maximum daily load compliance schedules as of January 1, 2021.
- 3) Requires the State Water Board and Regional Water Boards to update the report to the Legislature every five years with a progress summary to the Legislature.
- 4) Creates the Waterway Recovery Account in the Waste Discharge Permit Fund. Authorizes funds within the Waterway Recovery Account to be available for the State Water Board to expend, upon appropriation by the Legislature, to bring impaired water segments into attainment.
- 5) Requires, by January 1, 2026, and subject to a future legislative act, 50 percent of the annual proceeds of the State Water Pollution Cleanup and Abatement Account to be annually transferred to the Waterway Recovery Account.
- 6) Authorizes funds in the Waterway Recovery Account to be expended by the State Water Board only for the following:
 - a) Restoration projects, including supplemental environmental projects, that improve water quality;
 - b) Best management practice research innovation and incentives to encourage innovative best management practice implementation;
 - c) Source control programs;
 - d) Identifying nonfilers;
 - e) Source identification of unknown sources of impairment;

- f) Competitive grants to fund projects and programs for municipal separate storm sewer system permit compliance requirements that would prevent or remediate pollutants, including zinc, caused by tires in the state. Priority shall be given to applicants that discharge to receiving waters with zinc levels that exceed the established total maximum daily loads and to projects that provide multiple benefits; and,
 - g) Costs of investigation, enforcement, and attorney staff and other staff associated with preparing for or attending a hearing in an administrative enforcement action.
- 7) Requires, by January 1, 2023, the State Water Board and Regional Water Boards to prioritize enforcement of water quality standard violations that are causing or contributing to an exceedance of a water quality standard in a surface water of the state.
 - 8) Requires an enforcement action taken pursuant to this bill to result in sufficient penalties, conditions, and orders to ensure the person subject to the enforcement action is no longer causing or contributing to the exceedance in a surface water quality standard in a surface water of the state.
 - 9) Requires a discharger to remain liable for ongoing water quality violations until sampling demonstrates that the discharge is no longer causing or contributing to the exceedance in a surface water of the state.
 - 10) Requires penalties obtained pursuant to the prioritization of water quality standards to be deposited into the Waterway Recovery Account.
 - 11) Requires the State Water Board and Regional Water Boards to include in the penalty recovery all costs of investigation, enforcement, and attorney staff and other staff associated with preparing for or attending a hearing in an administrative enforcement action.
 - 12) Requires costs recovered pursuant to prioritization of water quality standards to be available, upon appropriation by the Legislature, for the State Water Board to expend only for additional enforcement.

EXISTING LAW:

- 1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States and to regulate quality standards for surface waters. (33 United States Code (U.S.C.) §1251 et seq.)
- 2) Establishes the National Pollutant Discharge Elimination System (NPDES) permit program requiring the State Water Board and the nine California Regional Water Boards to prescribe waste discharge requirements which, among other things, regulate the discharge of pollutants in stormwater, including municipal stormwater systems. (33 USC § 1342)
- 3) 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 (WC) § 13000 et seq.)

- 4) Requires the State Water Board to develop a comprehensive guidance document for evaluating and measuring the effectiveness of municipal stormwater management programs and permits. (WC § 13383.9)

FISCAL EFFECT: Unknown.

COMMENTS: *Need for the bill:* According to the author:

"In 1972, Congress passed the Clean Water Act, which set a goal of restoring and maintaining clean water in all of the nation's rivers, lakes, wetlands, and other waterways by 1985. Unfortunately, five decades later, 95% of waterways in California are still polluted, or "impaired," by discharges of chemicals, sediment, or other materials into those waterways. The causes of impairment can vary greatly. A stream in the Sierra Nevada, for example, might be impaired by arsenic pollution from an abandoned mine upstream. Disadvantaged communities in the Fresno area, meanwhile, are forced to get a significant portion of their drinking water from a reservoir contaminated with mercury because the nearby San Joaquin River – which many residents also rely on for subsistence fishing – is even more polluted with mercury, pesticides, and hazardous levels of nutrients.

AB 377, the California Clean Water Act, will put the state back on track to eliminate impaired waterways and make all waters statewide suitable for conversion to drinking water, swimmable, and fishable by 2050. Specifically, the California Clean Water Act will require the State and Regional Water Boards to close permit loopholes, ensure that all dischargers are in compliance with water quality standards, and direct a larger proportion of existing funding toward cleaning up impaired waterways. The effects of this bill will be especially significant in disadvantaged communities, where water is disproportionately likely to be polluted or even undrinkable."

Federal Clean Water Act (CWA): The Federal Water Pollution Control Act of 1948 was the first major U.S. law to address water pollution. The law was amended in 1972, and became commonly known as the Clean Water Act (CWA). The federal CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the CWA, the US EPA has implemented pollution control programs, including setting wastewater standards for industrial facilities, as well as setting water quality standards for all contaminants in surface waters. The CWA made it unlawful to discharge any pollutant from a point source into navigable waters without a permit. Industrial, municipal, and other facilities must obtain a permit under the National Pollutant Discharge Elimination System in order to discharge into surface water.

National Pollution Discharge Elimination System (NPDES): As authorized by the CWA, the NPDES Permit Program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or man-made ditches. Examples of pollutants include, but are not limited to, rock, sand, dirt, and agricultural, industrial, and municipal waste discharged into waters of the United States. The NPDES Program is a federal program which has been delegated to the State of California for implementation through the State Water Board and the Regional Water Boards.

Stormwater: Stormwater is water from rain or snow melt that runs off surfaces such as rooftops, paved streets, highways, or parking lots and can carry with it pollutants such as oil, pesticides,

herbicides, sediment, trash, bacteria, and metals. The runoff can then drain directly into a local stream, lake, or bay. Often, the runoff drains into storm drains that eventually drain untreated into a local body of water. Pollution often contaminates stormwater runoff, resulting in a toxic soup of runoff entering California's water ways. Both the United States Environmental Protection Agency and the Regional Water Boards have determined that stormwater and urban runoff are significant sources of water pollution that can threaten aquatic life and public health. However, stormwater may also act as a resource and recharge groundwater when properly managed.

Stormwater pollution in California's water bodies: In Los Angeles County, approximately 100 million gallons of contaminated water and debris drain through the storm drain system each dry day. On rainy days the daily flow can increase to 10 billion gallons per day. Because stormwater drains directly into local water bodies, water bodies throughout the state are continually contaminated by various pollutants. According to the State Water Board, 1,357 of the 2,623 segments of water bodies in California contain harmful levels of one or more types of pollutants, such as bacteria, metals, and pesticides. Excessive amounts of these pollutants can detrimentally affect the environment, including the health of humans and aquatic life. For example, high levels of certain types of bacteria in a water body can cause serious illnesses, such as gastrointestinal illnesses, respiratory illnesses, and skin infections in people who come into contact with the water body.

State Water Board enforcement: The State Water Board and Regional Water Boards enforce the pollution control and cleanup requirements that are established for discharges and contaminated sites. Where violations of regulatory requirements are detected, enforcement actions of varying types and levels of stringency are taken. For the most serious violations, penalties are often imposed. The State Water Board also collaborates with federal, state, and local law enforcement, as well as other environmental agencies, to address violations. In all cases, the principal goal of enforcement is to encourage compliance with requirements so that water quality is protected. According to the State Water Board during Fiscal Year 2019-2020, there were approximately 3,820 enforcement actions, with approximately \$12 million in penalties assessed. Of this amount, approximately \$3.6 million in penalties were for NPDES wastewater or NPDES stormwater violations.

AB 377: Sets a goal for achieving state water quality standards by 2050. Instead of prescribing how to reach this goal, the bill requires the State Water Board to develop a plan by 2023 for achieving this goal. While this Plan leaves the implementation up to the State Water Board, it may also want to include options on how to meet the potential funding needs of meeting the Plan. Additionally, this bill creates a new account to fund a variety of projects to improve water quality. The new account is funded by a re-prioritization in enforcement actions that this bill also creates. It remains to be seen just how much revenue can be generated by this new enforcement effort, given that penalties totaled approximately \$3.6 million for NPDES permit violations in fiscal year 2019-2020. AB 377 requires the penalties for water quality violations to include the State Water Board's cost of bringing the enforcement action and requires that these costs be re-invested into enforcing water quality standards. This could cause there to be a perception of the state increasing staffing by aggressively enforcing water quality standards. There may be some consideration for achieving effective enforcement without causing this perception.

Arguments in Support: According to numerous organizations including the California Coast Keeper Alliance, Clean Water Action, and the Natural Resources Defense Council,

"The undersigned organizations advocate for the protection of environmental and public health, water quality, and a resilient water future. On behalf of the undersigned organizations, we write in support of the Assembly Bill 377, the California Clean Water Act to put California back on track to restore all of its waterways by 2050.

California has long been a leader in environmental protection, yet 95% of all assessed rivers, lakes, bays, and wetlands are plagued by a wide range of pollutants including pesticides, metals, pathogens, trash, sediment, or are otherwise impaired by excess diversions and modifications of our waterways. California's communities are left to feel the brunt and shoulder the cost of this ongoing pollution with water that is unsafe to recreate in and expensive to treat. Our state cannot ensure a resilient climate future without clean rivers, streams, and a healthy coast. Action is needed to protect California's foundational ecosystems, help prevent the undue and preventable loss of native and endemic species, and prevent families from getting sick from toxic chemicals and bacteria when they visit California's rivers, lakes, and beaches. Californians have waited fifty years for the state to fulfill its mandate to restore our waters – thirty-six years past the original deadline imposed by the federal Clean Water Act. The time is now for California to act. AB 377 will help California realize its water quality objectives and prevent our clean water laws and regulations from being mere words on a page."

Arguments in Opposition: According to numerous organizations including the California Farm Bureau, California Chamber of Commerce, and the Wine Institute,

"While we appreciate the intent of recent amendments to resolve concerns in opposition, we remain opposed because this bill would dramatically and fundamentally change current State and regional water board authority with respect to how they regulate discharges under the Porter-Cologne Water Quality Control Act (Porter-Cologne) to protect water quality. We share the concern of the author and the sponsor for protecting water quality and the beneficial uses it supports. This must include ensuring that water quality is suitable for agricultural uses, available for clean affordable drinking water to all Californians and protects aquatic species. This occurs by balancing all the needs placed on California's waters, which is the approach taken by the California Legislature when it adopted the Porter-Cologne Act. This bill would ignore that balance and would significantly impact the ability of those in agriculture to comply with water board requirements and programs, which would result in significantly increasing costs of compliance (if compliance is even possible) that would provide little or no benefit to the environment or the public. This bill is so broad based that the unintended, yet monumental, consequences hamper any realistic effort to achieve the stated goals of the sponsors and proponents. In short, we are very concerned with the substantial practical and costly impacts that could result from AB 377. Nonetheless, we appreciate your willingness to meet with us to discuss and resolve these concerns and we look forward to a productive dialogue in the weeks and months ahead."

REGISTERED SUPPORT / OPPOSITION:

Support

California Coastkeeper Alliance (SPONSOR)
All Good LLC

American Rivers
Amigos De Los Rios
Azul
Battle Creek Alliance
Belong Wine Co.
California Alliance of Nurses for Healthy Environments
California Coastal Protection Network
California League of Conservation Voters
California Marine Sanctuary Foundation
California Native Plant Society
California Outdoor Recreation Partnership
California Sportfishing Protection Alliance
California Wilderness Coalition (CALWILD)
Californians Against Waste
Campovida
Carmel River Steelhead Association (CRSA)
Center for Biological Diversity
Channel Islands Surfboards
Chico Bag
Citizens Committee to Complete the Refuge
Clean Water Action
Coachella Valley Waterkeeper
Coast Action Group
Coastal Environmental Rights Foundation
Community Water Center
Defenders of Wildlife
Desal Response Group
Earth Friendly Products
Earth Law Center
Endangered Habitats League
Environmental Action Committee of West Marin
Environmental Defense Center
Environmental Justice Coalition for Water
Fly Fishers International
Food & Water Watch
Friends of Ballona Wetlands
Friends of Gualala River
Friends of Harbors, Beaches and Parks
Half Moon Bay Brewing
Heal the Bay
Hog Island Oyster Company, Inc.
Humboldt Baykeeper
Humboldt Distillery
Inland Empire Waterkeeper
Johnson's Beach Resort
Karuk Tribe
Klean Kanteen
Leadership Counsel for Justice & Accountability
Lisa Kaas Boyle, Esq.

Los Angeles Neighborhood Land Trust
Los Angeles Waterkeeper
Los Cerritos Wetlands Land Trust
Mara Hoffman
Mavericks Brewing
Mixte Communications
Monterey Coastkeeper
Natural Resources Defense Council (NRDC)
Orange County Coastkeeper
OurWaterLA Coalition
Paddle Sports Centers
Pashko
Patagonia Inc.
Peak Design
Planning and Conservation League
Plastic Pollution Coalition
Residents for Responsible Desalination
Restore the Delta
Roots of Change
Russian Riverkeeper
Samudra Skin & Sea
San Diego Coastkeeper
San Francisco Baykeeper
San Fransyco
Sand Cloud
Santa Barbara Channelkeeper
Save Our Shores
Sea Forager
Seventh Generation Advisors
Shelter Company
Sierra Club California
Smiley's Saloon & Hotel
South Yuba River Citizens League
Southern California Watershed Alliance
Stewards of The Coast and Redwoods
Surfdurt
Surfrider Foundation
Surfrider Foundaton, Santa Barbara Chapter
The Last Plastic Straw
The Otter Project
Upstream
Waterkeeper Alliance
Wholly H2O
Wildcoast
Women's International League for Peace and Freedom
Yuba River Waterkeeper

Opposition

Agricultural Council of California
Alameda Countywide Clean Water Program
Almond Alliance of California
American Pistachio Growers
Association of California Cities-Orange County
Association of California Egg Farmers
Association of California Water Agencies (ACWA)
California Association of Sanitation Agencies
California Association of Winegrape Growers
California Building Industry Association (CBIA)
California Business Properties Association
California Chamber of Commerce
California Citrus Mutual
California Construction & Industrial Materials Association
California Cotton Ginners and Growers Association
California Council for Environmental & Economic Balance (CCEEB)
California Farm Bureau Federation
California Fresh Fruit Association
California Grain and Feed Association
California Independent Petroleum Association (CIPA)
California League of Food Processors
California League of Food Producers
California Manufacturers & Technology Association
California Municipal Utilities Association (CMUA)
California Pear Growers Association
California Poultry Federation
California Rice Commission
California Rice Industry Association
California Seed Association
California Special Districts Association
California State Association of Counties (CSAC)
California Stormwater Quality Association
California Strawberry Commission
California Walnut Commission
Calleguas Municipal Water District
Carlsbad; City of
Chemical Industry Council of California
City of Agoura Hills
City of Bell
City of Campbell
City of Del Mar
City of Hidden Hills
City of Menifee
City of Monte Sereno
City of Norco
City of Oceanside
City of Orinda

City of Rancho Palos Verdes
City of Roseville
City of San Jacinto
City of San Pablo
City of Santee
City of Signal Hill
City of Sunnyvale
City of Thousand Oaks
Community Water Systems Alliance
Corcoran Irrigation District
County of Napa
Cucamonga Valley Water District
Desert Water Agency
East Valley Water District
Eastern Municipal Water District
El Dorado Irrigation District
Family Winemakers of California
Fresno Irrigation District
Fresno Metropolitan Flood Control District
Gateway Water Management Authority
Grower Shipper Association of Santa Barbara & San Luis Obispo Counties
Grower-Shipper Association of Central California
Helix Water District
Indian Wells Valley Water District
Industrial Environmental Association
Inland Empire Utilities Agency
Irvine Ranch Water District
Kings River Conservation District
Lafayette; City of
League of California Cities
Los Angeles County Division, League of California Cities
Los Cerritos Channel Watershed Group
Lower Los Angeles River Watershed Management Group
Lower San Gabriel River Watershed Management Group
Marin Countywide Stormwater Program
Mesa Water District
Metropolitan Water District of Southern California
Milk Producers Council
Moldex-Metric, Inc.
Northern California Water Association
Oakdale Irrigation District
Olivenhain Municipal Water District
Orange County Water District
Pacific Egg & Poultry Association
Rancho California Water District
Regional Water Authority
Riverside County Flood Control & Water Conservation District
Russian River Watershed Association
San Bernardino; County of

San Gabriel Valley Council of Governments
San Joaquin River Exchange Contractors
Santa Ana Watershed Project Authority
Santa Clara Valley Urban Runoff Pollution Prevention Program
Southern California Water Coalition
Thousand Oaks; City of
Three Valleys Municipal Water District
Torrance; City of
Town of Danville
U.S. Tire Manufacturers Association
Upper San Gabriel Valley Municipal Water District
Valley Ag Water Coalition
Valley Center Municipal Water District
Ventura Countywide Stormwater Quality Management Program
Vista Irrigation District
Walnut Creek; City of
Walnut Valley Water District
Waste Management
Western Agricultural Processors Association
Western Growers Association
Western Municipal Water District
Western Plant Health Association
Western States Petroleum Association
Wine Institute

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