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**SJR-22 Tijuana River Valley.** (2017-2018)

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**Senate Joint Resolution No. 22**

**CHAPTER 241**

Relative to the Tijuana River Valley.

[ Filed with Secretary of State September 11, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SJR 22, Hueso. Tijuana River Valley.

This measure would urge the federal government and the United States Section of the International Boundary and Water Commission to take immediate action to adequately address cross-border pollution in the Tijuana River Valley.

Fiscal Committee: no

WHEREAS, The Tijuana River watershed is approximately 1,700 square miles and drains to the Pacific Ocean in the United States through the Tijuana River Valley, which consists of the Tijuana River, the Tijuana River estuary, and the ocean shoreline, all located in the most southwestern portion of the City of San Diego, bounded by the residential community of San Ysidro; and

WHEREAS, The Tijuana River estuary is designated as "Wetlands of International Importance" by the United Nations pursuant to the Convention on Wetlands of International Importance especially as Waterfowl Habitat, February 2, 1971 (T.I.A.S. No. 1084, 996 U.N.T.S. 245 (amended 1982 & 1987)), popularly known as the "Ramsar Convention," and is one of the few estuaries and coastal lagoons in southern California, and the only one in the City of San Diego, not bisected by a railroad or freeway; and

WHEREAS, The Tijuana River estuary contains one of the few salt marshes remaining in California, where over 90 percent of wetlands have been lost to development; and

WHEREAS, The Tijuana River estuary provides a critical habitat for multiple endangered species and is also a critical stopover point in the Pacific Flyway for over 370 species of migratory and native birds; and

WHEREAS, The Tijuana River estuary is protected by the United States Fish and Wildlife Service and parts of the estuary, such as the Border Field State Park, are protected by the California Department of Parks and Recreation, as the Tijuana River Valley offers some of the few recreational activities that are affordable to nearby low-income communities, including disadvantaged communities and severely disadvantaged communities; and

WHEREAS, The Tijuana River, which flows east to west from Mexico and drains into the Pacific Ocean through the Tijuana River estuary, has for decades experienced an increased discharge of trash, sediment, and wastewater generated on the Mexico side, which as a result of sewage infrastructure inadequacies has created recurring pollution problems; and

WHEREAS, In February of 2017, one of the largest spills occurred, resulting in 143 million gallons of raw sewage flowing into the Tijuana River Valley; and

WHEREAS, Transboundary flows containing raw sewage, waste tires, trash, and sediment cause severe economic and environmental degradation as a result of the continued need to excavate, haul, and dispose of the pollution in the Tijuana River Valley, and those flows also result in constant beach closures that compromise the economic potential of south county beaches in the County of San Diego; and

WHEREAS, The discharge of raw sewage and other waste through the Tijuana River Valley 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; and

WHEREAS, 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, that has caused numerous health problems, such as headaches, rashes, infections, and breathing problems; and

WHEREAS, The International Boundary and Water Commission, comprising the United States Section of the International Boundary and Water Commission (USIBWC) and its Mexican counterpart, Comisión Internacional de Límites y Aguas entre México y Estados Unidos, is an international organization that exercises the rights and obligations of both governments under the Treaty for Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande (59 Stat. 1219, Treaty Series 994; hereafter "1944 Water Treaty"), a treaty which incorporates the agreement of both governments to "give preferential attention to the solution of all border sanitation problems"; and

WHEREAS, Section 313(a) of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1323(a)) requires that each federal agency or department that has jurisdiction over any property or facility, or that is engaged in any activity resulting in, or which may result in, discharge or runoff of pollutants, "shall be subject to all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as a nongovernmental entity"; and

WHEREAS, Section 7002(a)(1)(B) of the federal Resource Conservation and Recovery Act (42 U.S.C. Sec. 6972(a)(1)(B)) provides that any person may commence a civil action on his or her own behalf "against any person, including the United States and any other governmental instrumentality or agency... who has contributed or who is contributing to the past or present handling, storage, treatment transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment"; and

WHEREAS, In September of 2017, the City of San Diego, the City of Imperial Beach, the City of Chula Vista, the County of San Diego, and the Port of San Diego notified the USIBWC of their intention to sue if the USIBWC failed to take the necessary steps to address the spills and pollution in the Tijuana River Valley; and

WHEREAS, In December of 2017, the federal Department of Justice, the federal Environmental Protection Agency, the federal Department of State, the USIBWC, the Cities of Imperial Beach, San Diego, and National City, the County of San Diego, the Port of San Diego, and the San Diego Regional Water Quality Control Board met to discuss a number of project concepts to address cross-border pollution and the Tijuana River Valley that led to the development of a final project proposal that was shared with all jurisdictions; and

WHEREAS, The final project proposal was submitted to the USIBWC and required that the agency commit to implement priority projects that would control cross-border pollution in the main channel of the Tijuana River and tributary canyons, monitor and access the sources, extent, and magnitude of specific pollutants from existing and potential transboundary flows, and mitigate or restore the Tijuana River National Estuarine Research Reserve and other areas of the Tijuana River Valley; and

WHEREAS, In the three months leading up to the USIBWC's response, the transboundary flows have continued, at least 17 spills have been recorded, at least three million gallons of wastewater have been dumped, and portions of south county beaches in the County of San Diego have been closed for 40 percent of the time; and

WHEREAS, On March 1, 2018, the USIBWC notified the San Diego Regional Water Quality Control Board that "[t]he USIBWC's role under the 1944 Water Treaty does not make it the agency, that, under U.S. Law, is 'responsible for managing transboundary trash, sewage, and sediment discharge' from Mexico" and that it does not make unilateral commitments and decisions and cannot commit to projects for which it does not have an appropriation; and

WHEREAS, The USIBWC has failed repeatedly to abide by the state's water quality control standards for over 30 years, and millions of gallons of wastewater, sediment, and trash have poured into our coastal waters, with no effective diversion in place; and

WHEREAS, On March 2, 2018, after exhausting all avenues to solve the transboundary flows at the Tijuana River Valley, the City of Imperial Beach, the San Diego Unified Port District, and the City of Chula Vista filed a lawsuit against the USIBWC for their

continued lack of action in resolving cross-border pollution in the Tijuana River Valley and in protecting the health and well-being of the people of California; and

WHEREAS, The USIBWC's failure to act is a clear violation of the Federal Water Pollution Control Act and the federal Resource Conservation and Recovery Act that has endangered the lives of the people of California and threatened the environmental health and viability of the Tijuana River Valley and its diverse and unique potential as an ecological, recreational, cultural, and educational jewel of the State of California for decades; and

WHEREAS, On May 14, 2018, Attorney General Xavier Becerra and the San Diego Regional Water Quality Control Board, addressing concerns over the public health hazards posed by the spills and pollution in the Tijuana River Valley, filed with the United States Environmental Protection Agency a 60-day Notice of Intent to Sue the USIBWC for violations of the National Pollutant Discharge Elimination System (NPDES) permit granted to the USIBWC by the San Diego Regional Water Quality Control Board pursuant to the Federal Water Pollution Control Act; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature urges the federal government and the USIBWC to take immediate action to adequately address cross-border pollution in the Tijuana River Valley; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the United States Congress, to the Commissioner of the United States Section of the International Boundary and Water Commission, to the Governor, to the Attorney General, and to the author for appropriate distribution.