
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 2108
Author: Robert Rivas and Cristina Garcia
Version: 5/19/2022 **Hearing Date:** 6/16/2022
Urgency: No **Fiscal:** Yes
Consultant: Jacob O'Connor

SUBJECT: Water policy: environmental justice: disadvantaged and tribal communities

DIGEST: Requires the California State Water Resources Control Board (State Water Board) and the Regional Water Quality Control Boards (Regional Water Boards) to ensure that at least one member of the State Water Board and at least one member of each of the Regional Water Boards has specialized experience to represent environmental justice or tribal communities. Additionally, requires the State Water Board to make programmatic findings on potential environmental justice, tribal impact, and racial equity considerations, when issuing regional or statewide plans or policies, or waste discharge requirements or waivers of waste discharge requirements.

ANALYSIS:

Existing law:

- 1) Creates, within the California Environmental Protection Agency (CalEPA), the State Water Resources Control Board (State Water Board) consisting of five members appointed by the Governor and subject to confirmation by the State Senate. One of the members appointed must be an attorney qualified in the fields of water supply and water rights, one must be a registered civil engineer qualified in the fields of water supply and water rights, one must be a registered professional engineer who is experienced in sanitary engineering and is qualified in the field of water quality, and one only must be qualified in the field of water quality. One of the appointed members must also be qualified in the field of water supply and quality relating to irrigated agriculture. One member shall not be required to have specialized experience. (Water Code (WC) § 175)
- 2) Requires, pursuant to the California Safe Drinking Water Act (SDWA), State Water Board to administer provisions relating to the regulation of drinking water to protect public health, including conducting research and

demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal SDWA, adoption of enforcement regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies. (Health and Safety Code (HSC) § 116275 et seq.)

- 3) Prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from State Water Board. (WC § 13000, et seq.)
- 4) Creates nine Regional Water Boards each of which consist of seven members appointed by the Governor, and subject to confirmation by the State Senate. Each member shall be appointed on the basis of their demonstrated interest or proven ability in the field of water quality, including water pollution control, water resource management, water use, or water protection. (WC § 13201)
- 5) Delegates to California's Regional Water Boards the ability to adopt water quality standards within their region of jurisdiction. (WC § 13240)
- 6) Requires a Regional Water Board to prescribe requirements for any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area upon or receiving waters into which the discharge is made or proposed. (WC § 13269 et seq.)
- 7) Defines "environmental justice" as the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. (Public Resources Code § 30107.3)
- 8) Defines "disadvantaged community" as the entire service area of a community water system, or a community therein, in which the median household income is less than 80 percent of the statewide annual median household income level. (HSC § 116275)

This bill:

- 1) Defines, for the purpose of this legislation, "meaningful civic engagement" to include:
 - a) An opportunity for people to participate in decisions about activities that may affect their environment or health;

- b) Public contribution that may influence a regulatory agency's decision making;
 - c) Community concerns that are considered in the process;
 - d) Decision makers seeking out and facilitating the involvement of people potentially affected; and
 - e) Informing disadvantaged and tribal community members of decision maker appointment opportunities.
- 2) Requires that one of the members of the State Water Board be qualified in the field of water supply and quality relating to disadvantaged or tribal communities and not be the same member required to be qualified in the field of water supply and quality relating to irrigated agriculture.
- 3) Requires that at least one of the appointed members of each Regional Water Board have specialized experience relating to disadvantaged or tribal communities.
- 4) Requires the State Water Board and Regional Water Boards to engage in equitable and culturally relevant community outreach and engagement to meaningfully involve potentially impacted underrepresented, vulnerable, or disadvantaged communities throughout the review and permitting process for projects.
- 5) Requires the State Water Board and Regional Water Boards to hire environmental justice and tribal community coordinators, upon appropriation by the Legislature, responsible for:
- a) Adhering to related environmental justice goals, policies, and objectives;
 - b) Promoting meaningful civic engagement in the public decision-making process;
 - c) Informing permit conditions that address the needs of disadvantaged communities;
 - d) Informing regulatory mitigation and remediation before state board or regional enforcement actions; and
 - e) Soliciting and informing supplemental environmental project proposals.
- 6) Requires the State Water Board, contingent to appropriation, to:
- a) Direct resources for training of state and regional board staff to advance adherence to environmental justice goals and policies adopted by the State Water Board and Regional Water Boards;
 - b) Establish a community capacity-building stipend program to help members of the public overcome barriers to participation and promote meaningful

- civic engagement by disadvantaged and tribal communities in the State Water Board and Regional Water Boards' decision-making process; and
- c) Develop program-specific tools to better identify, and State Water Board and Regional Water Boards' compliance assessment and enforcement actions in, disadvantaged communities.
- 7) Requires the State Water Board and Regional Water Boards to make a programmatic finding on potential environmental justice, tribal impact, and racial equity considerations when issuing regional or statewide plans or policies or waste discharge requirements or waivers. The finding shall:
- a) Be based on readily available information identified by staff or raised during the public review process;
 - b) Include a summary of the anticipated water quality impact on these communities as well as any environmental justice concerns previously raised by to the applicable Board that are within the Board's authority;
 - c) Include measures available and within the Board's authority to address the impacts of the activity or facility in a disadvantaged or tribal community.
- 8) Also requires such a finding when issuing an individual waste discharge requirement or waiver if it may impact a disadvantaged or tribal community and includes a time schedule for achieving an applicable water quality objective or other permit exemption for achieving applicable water quality objectives

Background

- 1) *The membership of the State Water Board is designed to elevate certain essential types of knowledge.* Created by the State Legislature in 1967, the five-member Board allocates water rights, adjudicates water right disputes, develops statewide water protection plans, establishes water quality standards, and guides the nine Regional Water Boards located in the major watersheds of the state. Each of the five full-time salaried board members fills a different specialized position representing agriculture water quality expertise, civil engineering expertise, sanitary engineering expertise, legal water rights expertise, and water quality expertise. The members are appointed to four-year terms by the Governor and confirmed by the Senate.
- 2) *The Regional Water Boards' membership is more loosely designed but still requires expertise.* There are nine Regional Water Boards statewide, which are semiautonomous and are comprised of seven part-time Board members appointed by the Governor and confirmed by the Senate. Regional boundaries are based on watersheds and water quality requirements are based on the unique differences in climate, topography, geology, and hydrology for each watershed.

Each Regional Board makes critical water quality decisions for its region, including setting standards, issuing waste discharge requirements, determining compliance with those requirements, and taking appropriate enforcement actions. Members of the Regional Boards are required to have demonstrated interest or proven ability in the field of water quality, including water pollution control, water resource management, water use, or water protection.

- 3) *Many disadvantaged communities have difficulty accessing the policy-making process, reducing its efficacy.* Meaningful public participation is essential to good governing because it can provide new and more comprehensive information and enhances the democratic legitimacy and accountability of the process. California has several good-governance policies in place to encourage meaningful civic engagement during the rulemaking and legislative process.

However, many of these mechanisms require expenditures of time or acquisition of expertise that can be difficult for disadvantaged communities to access. As described in the 2018 report “Public Engagement with Agency Rulemaking” by the Administrative Conference of the United States (ACUS), research has shown it is primarily regulated entities, industry groups, professional societies, and public interest organizations that have sufficient resources to make full use of these engagement opportunities. For example, a 2011 study of U.S. Environmental Protection Agency (EPA) records from 1994 to 2009 found that, on average, industry groups engaged in 170 times more informal communications with EPA than public interest players.

These barriers are particularly difficult for disadvantaged communities to overcome, both due to lack of resources and differences in the types of expertise that have historically been valued by decision makers. In order to address this problem, ACUS provides several recommendations including targeted outreach to communities to facilitate participation by both experts and members of the public who do not typically participate in rulemaking. The report also suggests “agencies should consider using personnel with public engagement training and experience to participate in both the development of their general public engagement policies as well as in planning for specific rules.”

- 4) *State Water Board Racial Equity Resolution.* The State Water Board adopted its Racial Equity Resolution (#2021-0050) by a unanimous five to zero vote on November 16, 2021. The Racial Equity Resolution cites the California Environmental Protection Agency’s 2021 Pollution and Prejudice StoryMap and CalEnviroScreen data that demonstrate that historically redlined neighborhoods are “generally associated with worse environmental conditions

and greater population vulnerability to the effects of pollution today” and that Black, Indigenous, and people of color are overrepresented in the neighborhoods that are the most environmentally degraded.

The Resolution acknowledged that historically redlined neighborhoods are generally associated with worse environmental conditions and greater population vulnerability to the effects of pollution today, and that Black, Indigenous, and people of color are overrepresented in the neighborhoods that are the most environmentally degraded. In the resolution, the State Water Board committed to making racial equity, diversity, inclusion and environmental justice central to its work, and reaffirmed its commitment to the protection of public health and beneficial uses of water bodies in all communities, and particularly in disadvantaged communities.

Comments

- 1) *Purpose of Bill.* According to the author, “Environmental justice requires that all communities are actually represented by their government, that decision makers genuinely engage with and consider community interests, and enforcement is equal for all. When communities are deprived of these opportunities, they are unable to advocate for themselves or guard against harmful environmental consequences. As a result, low-income communities of color that have historically been disregarded and excluded from political power bear disproportionately larger environmental burdens. For these reasons, it should come as no surprise that environmental justice and tribal communities are disproportionately impacted by water quality pollution.

“Through AB 2108, environmental justice will have a permanent home at the State and Regional Water Boards. This bill will require that at least one member of each Water Board carry environmental justice or tribal expertise, will reduce barriers to community engagement, and will mandate transparent environmental justice considerations at key steps in permitting and planning processes. These changes will ensure that the interests of environmental justice and tribal communities are represented and considered at the State Water Boards. For too long underserved Californians have disproportionately suffered from polluted waters. This bill will help put California on the path to achieve clean water for all.”

- 2) *Turning resolution into action.* State Water Board has made a recent resolution recognizing the historic and structural challenges faced by disadvantaged communities and committing to working to address them while making environmental justice central to their work. In the resolution they committed to

“improving communication, working relationships, and co-management practices with all California Native American Tribes” as well as “develop strategies for effectively reaching and meaningfully engaging with Black, Indigenous, and people of color communities.” This bill will help them achieve those goals by creating a framework for the Legislature to provide them funding to support staff positions committed to those actions, as well as ensure expertise in these areas will be represented on the Boards.

- 3) *This bill will require no immediate change in State Water Board leadership.* All appointments to the State Water Board are presently filled. The current member appointed to fulfill the slot for legal water rights expertise also happens to have experience in water supply and water quality relating to disadvantaged or tribal communities (as this bill requires), but without a statutory requirement, there is no guarantee that the next member in this, or any other slot, will have similar experience and expertise.
- 4) *Will fee payers shoulder the costs if appropriations end?* The tribal coordinator positions in this bill will only be created upon appropriation by the Legislature. However opponents of this bill have recently raised concerns that if the appropriation is not continuous and is not renewed, fee payers could be later left having to pay for keeping these positions filled. *The author of this bill has been working with opponents of this bill to address their concerns and should consider continuing to work with opposition and the Water Board to address these concerns as the bill continues to move through the process.*
- 5) *The reference to “underrepresented and vulnerable” communities may be unimplementable.* This bill clearly defines “disadvantaged communities” in relation to existing law, but provides no definition for underrepresented or vulnerable communities, potentially opening up the Boards to litigation for failing to meet the provisions of the bill relating to meaningfully involving potentially impacted members of these groups. ***The committee may wish to consider amending the bill to replace the reference to “underrepresented, vulnerable, or disadvantaged communities” with only “disadvantaged communities”.***
- 6) *Providing clarity and easing implementation for the Boards.* The goals of this bill are laudable, but making a programmatic finding requires time and resources. Given the large number of relatively small programs and rules a board may issue throughout a year, the breadth of requirements of this bill may slow implementation of rulemaking unnecessarily at little benefit. Furthermore many of the types of activities required by this bill are new to the State Water Board and lack definitions. ***The committee may wish to amend the bill to***

clarify the role of the tribal coordinators in informing mitigation opportunities and soliciting community recommendations for supplemental projects and that the requirement for programmatic findings applies specifically to water quality control plans, policies for water quality control, or waste discharge requirements.

- 7) *Defining “other permit exemptions”.* This bill requires a programmatic finding when a board is issuing an individual waste discharge permit in disadvantaged communities. Groups such as the California Chamber of Commerce have raised concerns about the clarity of what counts as a permit exemption, worrying that it may unnecessarily require duplication of environmental review processes for already issued permits. *The committee may wish to amend the bill to explicitly specify the requirement to make a finding applies to receiving water limitation exemptions and does not apply to the use of mixing zone or dilution credits.*
- 8) *The committee may wish to make technical amendments.*
- 9) *Committee amendments. Staff recommends the committee adopt the bolded amendments in comments 5, 6, 7, and 8 above.*

DOUBLE REFERRAL:

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Natural Resources and Water Committee.

Related/Prior Legislation

AB 2106 (R. Rivas) requires the State Water Board to modernize its Stormwater Multiple Application and Report Tracking System database by December 2024. Additionally, AB 2106 requires the State Water Board to establish a statewide commercial, industrial, and institutional national pollutant discharge elimination system (NPDES) order. AB 2106 was heard on the Assembly floor on May 25, 2022 and passed on a vote of 50-21 and ordered to the Senate.

AB 2113 (R. Rivas) would have created four new accounts in the Waste Discharge Permit Fund and, subject to a future legislative act, transfers up to a total of 50 percent of the annual proceeds from the State Water Pollution Cleanup and Abatement Account to these four new accounts for specified purposes. AB 2113 was held on suspense in the Assembly Appropriations Committee.

AB 377 (R. Rivas) would have required the State Water Board and the Regional Water 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. Would have required, 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. AB 377 died in the Assembly Appropriations Committee.

AB 685 (Eng, Chapter 524, Statutes of 2012), established in law a state policy that all residents of the state have a right to clean, affordable, and accessible water for human consumption, and directs relevant state agencies to implement the policy.

SOURCE: Author

SUPPORT:

7th Generation Advisors
Belong Wine Co.
California Coastkeeper Alliance
California Environmental Voters
California Environmental Voters (formerly Clcv)
California Trout
Center for Biological Diversity
Clean Water Action
Climate Action Campaign
Coachella Valley Waterkeeper
Coast Action Group
Coastal Environmental Rights Foundation
Community Water Center
Environmental Center of San Diego
Environmental Defense Fund
Environmental Health Coalition
Friends of The River
Greenbelt Alliance
Humboldt Baykeeper
Inland Empire Waterkeeper
Leadership Council for Justice and Accountability
Lideres Campesinas
Los Angeles Waterkeeper
Mara Hoffman
Mono Lake Committee
Monterey Coastkeeper

North Bay Jobs With Justice
Northcoast Environmental Center
Orange County Coastkeeper
Otter Project, the
Ourwaterla Coalition
Physicians for Social Responsibility - Los Angeles
Planning and Conservation League
Preserve Rural Sonoma County
Restore the Delta
Russian Riverkeeper
San Diego Coastkeeper
Santa Barbara Channelkeeper
Save California Salmon
Sierra Club California
Social Eco Foundation
Sonoma County Conservation Action
Sonoma Ecology Center
South Yuba River Citizens League
Surfrider Foundation
Tuolumne River Trust
Water Climate Trust
Waterkeeper Alliance
Western Center on Law & Poverty
Western Sonoma County Rural Alliance
Winnemem Wintu Tribe
Yuba River Waterkeeper

OPPOSITION:

Orange County Water District

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