

Polluted Waters Trigger Call for Change

The governor is under growing pressure to give the state more authority over regional water boards. The Legislature will have the final say.

Los Angeles Times, July 4, 2004 by Miguel Bustillo

With more than a third of California's waters officially categorized as polluted — bodies as varied as Lake Tahoe and San Diego Bay — Gov. Arnold Schwarzenegger is under mounting pressure to overhaul the state's system of regulating the waste flushed from factories, farms and towns.

A model for the rest of the country when it comes to clean-air rules, California has long been struggling to protect its waterways from pollution under a decentralized system of regional water quality boards that is widely seen — even by those running it — as dysfunctional.

"Virtually every major body of water in California, the rivers, lakes and coastal areas, is now on the list," said David W. Smith, the U.S. Environmental Protection Agency's coordinator for water pollution planning in the state. "I cannot think of any major body of water that is not on the list, and that is really too bad. We really have our work cut out for us in California."

Pulled between environmental groups, which still believe regional control can best clean up tainted waters, and cities and business interests, which say a tangle of inconsistent local decisions is making it difficult to comply with water quality rules, the Schwarzenegger administration is leaning toward placing more authority in Sacramento.

The direction Schwarzenegger takes could become clear as early as next month, when a panel he convened is expected to release a long-awaited performance review of numerous state agencies. Any redesign of the water boards would have to be approved by the Legislature.

"The current system of water boards is broken," said Arthur Baggett, chairman of the state water panel. "It's not working very well, I think most people would agree. The question is what to do about it."

Increase in Problems

According to the EPA, 684 stretches of water in California, including parts of San Francisco Bay and the San Gabriel River, were considered impaired by pollution in 2002. That represented an increase of more than 30% since 1998, though EPA officials note that the rise may have to do partly with increased monitoring than dirtier waters. In some cases, the waters were considered unsafe to drink, while in others, they were deemed no longer safe for swimming or fishing.

California has tackled some of its worst water problems, such as groundwater tainted with the gasoline additive MTBE. And with rules reducing direct pollution into coastal waters, it also has dramatically improved water quality in Santa Monica Bay.

"There have been tremendous gains made. We don't have dead zones in the bay, we don't have tumors in fish anymore and I think the [state's] ocean program has had a lot to do with that," said Mark Gold, executive director of the environmental group Heal the Bay.

But in contrast to its clean-air regulations, which have cut smog-forming emissions from myriad sources, the state has failed to adopt clear rules to reduce polluted water discharges from factories, farms and city storm drains that befoul rivers and eventually sully the coastline.

Beach closures are still chronic because of ocean contamination, typically from storm water laden with oil, animal waste and pesticides. Meanwhile, many drinking water supplies are threatened by perchlorate, a rocket-fuel component found in dozens of wells around the state.

Federal law requires California to develop blueprints to clean up impaired waterways by limiting the total amount of pollution flowing into them. But state regulators are lagging and have yet to develop many of the plans.

Inconsistent Standards

Meanwhile, regulators in different parts of the state are imposing inconsistent standards on many of the cities and businesses individually responsible for contaminating waters. That has led to a wave of legal challenges.

"The mythology of California around the world is a picture of a beach on a sunny afternoon," said David Beckman, a water quality attorney for the Natural Resources Defense Council. "That is the biggest difference between California and a place like the Midwest. To a large extent, people are drawn to the state by these assets and it is in everyone's economic interest to protect them from pollution."

But when it comes to water contamination, he said, California regulators "have allowed it to happen and, once they determined it happened, they have not taken sufficient action to fix the problem."

Sacramento has tried in recent years to crack down on water polluters with mandatory fines for those who exceed the chemical limits in their water permits and with stricter cleanup standards. But tougher regulations have sparked a backlash among the targeted industries and municipalities, which complain that the rules are applied unevenly from region to region, are poorly thought out and are exorbitant.

"Someone pays for this — our ratepayers. And the question we ask ourselves is: Are we really getting a worthwhile environmental benefit for some of these things? The answer is often no," said Margie Nellor, an assistant department head at the Los Angeles County Sanitation Districts.

Nellor cited a decision by the state's regional water board in Los Angeles that would have required the county to add sophisticated chloride removal equipment to a sewer plant near Santa Clarita. The improvements, she said, would have cost up to \$350 million — all to protect a neighboring avocado ranch that had shrunk to about five acres.

Redesigning the System

Critics of the regulations may have found a sympathetic ear in the governor's administration, which is considering a redesign of the state's water protection system. It now consists of nine regional boards, which issue the bulk of water permits, and one statewide board.

One proposal, that would give all the power over permits to the state board, is strongly favored

by cities and business groups, which argue that it would lead to more consistent regulations.

"You never would construct anything like this if you sat down and tried to design a system to protect water quality," said Stuart L. Somach, a Sacramento attorney whose firm has filed many cases against state regulators and who is lobbying the administration for change.

But such changes are opposed by environmentalists and some local water quality officials, who argue that consolidating power could make it harder for neighborhood watchdogs and local officials to speak out about water pollution problems in their areas and to have a leading role in how they were resolved.

"I think the regional board has worked well and I don't believe we should be removed from decision-making," said Francine Diamond, a member of the Los Angeles water board. "I don't think the public would want to lose the local control."

Despite these strong differences, pressure is building on state officials to do something.

The California Coalition for Clean Water represents some big government and business interests, including the California Farm Bureau, the California Building Industry Assn. and the State Assn. of Counties. The coalition sent the governor a lengthy manifesto outlining the water system's problems and urging that it be rethought.

Existing water pollution requirements are "unachievable with current technologies, not clearly linked to specific health or environmental goals, or based on outmoded science," said the group's white paper, which requested an audit.

Presently, city sewer agencies and industry groups are choosing to fight water pollution rules rather than comply with them.

EPA officials say California is not expeditiously approving water permits, required to regulate polluting discharges under the Clean Water Act. According to a 2000 study by two environmental groups, 49% of the state's heavy industries were operating with expired permits because of backlogs in renewing them.

"We have struggled with the state's inability to renew permits on time," said Alexis Strauss, the EPA official who oversees the state's water programs. Strauss said staff cuts also made it hard for the state to do its duty.

In record numbers, dischargers are appealing regional board-issued water permits to the state board, which can reverse local decisions. State board members, in turn, often have agreed to compromises, angering environmentalists, who say water rules are being weakened.

One controversial compromise occurred in 2001, when a state board officials' ruling allowed two Tosco Corp. oil refineries to release more chemicals, including mercury and copper, into Suisun and San Pablo bays northeast of San Francisco.

"The state board has embraced a 'let's make a deal' mentality, not based on regulations, but based on resolving conflicts between competing groups," said Bill Jennings, head of the San Joaquin Valley environmental group Deltakeeper. "The results have been like feeding red meat to the lions. This has led to a flood of appeals."

But when disputes are still not resolved to the satisfaction of the cities and business groups, the state often is taken to court.

One case involving a sewer plant run by Burbank and Los Angeles is now before the California Supreme Court. At the heart of it is if state regulators adequately considered the cost — tens of millions of dollars, according to the cities — of their requirement that the plant reduce chemicals flowing into the concrete-lined Los Angeles River.

"With difficult budget times, these costs are taking money away from municipalities that would be better spent elsewhere," said Melissa A. Thorne, an attorney for the cities. "We should be fighting over the big water-quality issues, not whether something could be a problem at a few parts per billion."