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# SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Henry Stern, Chair  
2021 - 2022 Regular

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<b>Bill No:</b>	SB 520	<b>Hearing Date:</b>	March 16, 2021
<b>Author:</b>	Wilk		
<b>Version:</b>	February 17, 2021		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Dennis O'Connor		

**Subject:** Water resources: permit to appropriate: application procedure

## BACKGROUND AND EXISTING LAW

Current Law:

- 1) Establishes a process for publication, posting and mailing of public notices of applications to appropriate water. Requires that notices be published and posted, as specified, and mailed to interested persons. Authorizes the State Water Resources Control Board (SWRCB) to cancel an application for failure to comply with notice publication and posting requirements.
- 2) Authorizes any interested person to file a written protest to an application to appropriate water within the time allowed in the notice of application, or within such further time as the SWRCB for good cause shown may allow.
- 3) Requires a protestant and the applicant to make a good faith effort to resolve the protest within 180 days from the date on which protests are required to be filed, or within such additional time as the SWRCB for good cause may allow. Authorizes the SWRCB to request additional information and to cancel a protest if the information is not provided.
- 4) Sets forth procedures for hearings on protested applications for appropriation. Authorizes the SWRCB to grant or refuse to grant a permit and reject an application after a hearing. No hearing is necessary on an unprotested application, or if undisputed facts support the permit and there is no disputed issue of material fact, unless the board elects to hold a hearing.

Current Process:

Generally, the SWRCB processes water right applications or petitions based on the date they were received. However, given the large number of pending water right applications and petitions, the SWRCB gives priority to projects that meet specific "importance" and "demonstrated progress" criteria.

The importance criteria include such things as the proposed application is for a project that:

- Is of regional or statewide significance;
- Assists a community in obtaining safe, clean, affordable, and accessible water;

- Addresses critical aquifer overdraft or subsidence, or other undesirable results identified by the Sustainable Groundwater Management Act;
- Will enhance conditions for fish and wildlife; etc.

The demonstrated progress criteria include such things as:

- The applicant has consulted with the California Department of Fish and Wildlife, National Marine Fisheries Service, the Regional Water Quality Control Boards, and other agencies with permitting or jurisdictional authority, and the Division has documentation of the agencies' approval or support for the proposed application or petition.
- The proposed application is consistent with the principles of the Policy for Maintaining Instream Flows in Northern California Coastal Streams.
- Review under the California Environmental Quality Act is substantially completed and the applicant has agreed to proposed mitigation measures or project modifications.

## **PROPOSED LAW**

This bill would:

- 1) Require the SWRCB to issue a new notice and provide an opportunity for protests before rendering a final determination if the board has not rendered a final determination on an application for a permit to appropriate water within 30 years from the date the application was filed.
- 2) However, the notice and opportunity for protests is not required if any of the following apply:
  - a) The application is canceled or denied.
  - b) A notice and opportunity for protests has been provided within five years prior to the board rendering a final approval.
  - c) The applicant is a public entity.

## **ARGUMENTS IN SUPPORT**

According to the author, "It is critical that the Board, as it relates to long-standing water appropriation applications, allow for the opportunity for a public hearing to consider current environmental circumstances. There are applications from the 1980's and 1990's that are pending a final determination from the Board and have not given the public an opportunity to comment, in some cases, for more than three decades."

"I have an entire generation of constituents that have not had the opportunity to participate in the Board's protest proceedings to express concerns regarding an application related to a large-scale mining project that poses significant impacts to their community's water supply and overall quality of life."

"SB 520 significantly improves the Board's processes in fully vetting long-standing appropriation applications by enabling the Board to be in possession of the most current information prior to considering whether to issue a water appropriation permit."

**ARGUMENTS IN OPPOSITION:** None received

**COMMENTS**

It's All About CEMEX. CEMEX is a large mining company headquartered in Mexico. In 1990, the BLM awarded CEMEX predecessor Transit Mixed Concrete Co. a pair of back-to-back 10-year contracts allowing the company to mine up to 56 million tons of sand and gravel on 490 acres near the junction of Agua Dulce Canyon Road and Soledad Canyon Road.

A formal mining plan had to be prepared and subjected to federal and county environmental review. The process took a decade, during which time little Transit Mixed was acquired by a bigger company, Houston-based Southdown Inc., which in turn was acquired by an even bigger company, the Mexican mining conglomerate CEMEX.

The federal government signed off on its environmental review in August 2000, and the Interior Board of Land Appeals (IBLA) affirmed the findings in January 2002. The county completed its review in 2004.

The two mining contracts were to run from 2000 to 2010, and from 2010 to 2020. The mining never started.

Instead, CEMEX has been battling the City of Santa Clarita, the Bureau of Land Management, and others in the courts, Congress, and other venues.

The two mining contracts have since expired, the second one expiring on July 31, 2020.

Still, litigation continues.

Current Status of CEMEX Application. According to SWRCB staff, "The CEMEX application is currently on hold due to its need for a new contract from the Bureau of Land Management (BLM). CEMEX is proposing to conduct mining activities on BLM land and to divert water as part of the mining operations. CEMEX must have a contract with BLM to do so. In 2015, BLM decided to cancel the CEMEX mining contract that was set to expire in July 2020. In 2019, the federal Interior Board of Land Appeals issued a decision allowing the contract to expire as scheduled."

"Despite these challenges, CEMEX continues to pursue a new contract from BLM and has not withdrawn its water right application. Due to limited staff resources, on November 20, 2019, the State Water Board notified CEMEX that its water right application would be moved from a pending to a holding status until the federal contract issues are resolved."

Known Concerns. This bill has no registered opposition. However, in years past the Association of California Water Agencies (ACWA) has raised two main issues with previous versions of this bill. First, ACWA has asserted that the SWRCB's process prevents it from issuing a permit to appropriate water without adequately considering the diversion's impact on public trust resources. Second, it has raised concerns that re-opening administrative processes as called for in this bill would further slow the already backlogged process of permit approval.

SWRCB staff have also raised concerns that reopening the hearing process will require additional resources that would likely have to be redirected from other SWRCB activities.

Collateral Damage. While this bill is focused on one water rights application, as each year passes other applications would also be affected. SWRCB staff have provided the committee the following table showing how many other permits would be affected by the bill over the next ten years:

Year	Number Of Applications To Be Renoticed	Sum Of 'Face Value' Of Applications To Be Renoticed (Acre-Feet)
2022	32	4,648
2023	5	986
2024	5	265
2025	6	534
2026	7	459
2027	3	85
2028	28	1,120
2029	20	2,165
2030	13	1,078
2031	<u>22</u>	<u>9,831</u>
Total	<u>141</u>	<u>21,171</u>

Limiting The Application Of The Bill & Its Costs. Staff is recommending two sets of amendments.

1. This bill would apply to any application for a permit to appropriate water where the final determination of the permit has not been made within 30 years from the date the application was filed. The amendment would clarify that the provision would only apply to an application for “a beneficial use or uses that include mining use.” Staff has confirmed with SWRCB staff that this would limit the bill’s application to the CEMEX application. (See Amendment 1.)
2. This bill would require the SWRCB to issue a new notice and provide an opportunity for protests before rendering a final determination, with certain exceptions. The amendment would add an additional exception – The SWRCB would not need to reopen the whole process if it holds a hearing or conducts proceedings, after public notice of the hearing or proceeding, and allows any person requesting notice of the hearing or proceedings to participate as a party in the hearing or proceeding, including the presentation of evidence, without having to have filed protests. The board would provide not less than 45 days’ written notice, in the same manner as would be provided to an unresolved protestant, to any person requesting the notice. This would allow concerned parties to formally raise their issues and present evidence before the SWRCB makes its final determination on the permit application. (See Amendment 2.)

Related Bills:

SB 797 (Wilk, 2020) – The current bill is identical to SB 797. That bill was referred to this committee, but not heard at the author's request due to the COVID-19 pandemic.

SB 146 (Wilk, 2017) – Would have prohibited the SWRCB from issuing, on or after January 1, 2018, a new permit to appropriate water from any river or stream that has, or is reasonably expected to have, a population of unarmored threespine stickleback. That bill was referred to this committee, but not heard at the author's request.

AB 1986 (Wilk, 2016) – The current bill is nearly the same as AB 1986. That bill was held on the Assembly Appropriations Committee's suspense file.

**SUGGESTED AMENDMENTS**

**AMENDMENT 1:** On page 2, line 3, after "water" insert:  
for a beneficial use or uses that include mining use

**AMENDMENT 2:** On page 2, after line 12, insert:  
(3) The board holds a hearing or conducts proceedings under Article 1.5 (commencing with Section 1345), after public notice of the hearing or proceeding, and allows any person requesting notice of the hearing or proceedings to participate as a party in the hearing or proceeding, including the presentation of evidence, without having to have filed protests. The board shall provide not less than 45 days' written notice, in the same manner as would be provided to an unresolved protestant, to any person requesting the notice.

**AMENDMENT:** On page 2, line 13, delete "(3) and insert (4)

**SUPPORT**

City of Santa Clarita

**OPPOSITION**

None Received

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