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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### **SB 520 (Wilk) - Water resources: permit to appropriate: application procedure: mining use**

**Version:** March 17, 2021  
**Urgency:** No  
**Hearing Date:** April 5, 2021

**Policy Vote:** N.R. & W. 9 - 0  
**Mandate:** No  
**Consultant:** Ashley Ames

**Bill Summary:** This bill would require the State Water Resources Control Board (SWRCB) to issue a new notice and provide an opportunity for protests, or alternatively to hold a hearing or proceeding, on a permit application for specified projects.

#### **Fiscal Impact:**

- To the extent that federal contract issues are resolved for the existing project that meets the criteria of this bill, unknown but likely minor costs for the SWRCB to issue a new notice and provide an opportunity for protests, to hold a hearing, or to conduct a proceeding (see staff comments).

#### **Background:**

*Current SWRCB 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.

*CEMEX mining projects.* 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 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. However, the litigation continues.

**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 if that application is for a beneficial use or uses that include mining use.
- 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.
  - d) The SWRCB 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.

**Related Legislation:**

SB 797 (Wilk, 2020) – This bill was identical to SB 797 prior to being amended in the Senate Natural Resources and Water Committee. SB 797 was not heard in policy committee at the author's request due to the COVID-19 pandemic.

SB 146 (Wilk, 2017) – This bill 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 the Senate Natural Resources and Water Committee, but not heard at the author's request.

AB 1986 (Wilk, 2016) – This bill was nearly the same as AB 1986 prior to being amended in the Senate Natural Resources and Water Committee. AB 1986 was held on the Assembly Appropriations Committee’s suspense file.

**Staff Comments:**

*SWRCB costs.* Only one project currently under review at the SWRCB meets the criteria specified by this bill, which is the CEMEX water rights application. SWRCB notified CEMEX on November 20, 2019 that its water right application would be moved from a pending to a holding status until the federal contract issues are resolved.

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.”

Any workload for the SWRCB resulting from this bill would first require that CEMEX resolve its federal contract issues, something it has been unable to do thus far and that seems less likely to occur under the Biden Administration than it was under the previous one. Therefore, while it is possible that some SWRCB costs could be incurred, this is dependent on several factors. SWRCB has indicated that any costs resulting from this bill, should they occur, would be minor and absorbable.

*Potential California Department of Transportation (CalTrans) costs.* Some stakeholders have indicated that this bill could significantly raise costs for existing and future CalTrans projects. This is based on the assumption that, absent this bill, the CEMEX project would move forward as proposed, and that completion of the project would reduce (or avoid increases in) the costs of aggregate or raw materials purchased by CalTrans. Based on conversations with departments and stakeholders, staff believes this scenario is unlikely.

Staff also notes that, even if the CEMEX project were to move forward, its completion would take many years—regardless of this bill. CalTrans has been increasing its usage of recycled materials and other alternatives, and CalTrans’ demand for raw aggregate in the future is unclear.

Finally, many factors contribute to the costs of CalTrans projects, including the costs of aggregate and other materials. CalTrans considers these factors as part of its regular project planning process on an ongoing basis, and makes changes to projects as necessary to minimize costs. Staff agrees that there is some potential for this bill to be one of several factors that might someday raise costs for CalTrans, but any cost increase so far in the future attributed solely to this bill seems speculative at this point.