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THIRD READING

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Bill No: SB 520  
Author: Wilk (R), et al.  
Amended: 3/17/21  
Vote: 21

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SENATE NATURAL RES. & WATER COMMITTEE: 9-0, 3/16/21  
AYES: Laird, Jones, Allen, Eggman, Grove, Hertzberg, Hueso, Limón, Stern

SENATE APPROPRIATIONS COMMITTEE: 7-0, 4/5/21  
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

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

**SOURCE:** Author

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**DIGEST:** This bill requires 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.

**ANALYSIS:**

Existing 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 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.

This bill:

- 1) Requires 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) Provides, however, that 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.

## **Background**

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 includes 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; and
- 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 of Water Rights 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.

*It's All About CEMEX.* CEMEX is a large mining company headquartered in Mexico.

In 1990, the Bureau of Land Management (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 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 BLM, 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.

## Comments

*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.”

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, “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.”

**SUPPORT:** (Verified 4/5/21)

City of Santa Clarita

**OPPOSITION:** (Verified 4/5/21)

CEMEX Inc.

**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:** According to CEMEX, “I am writing to express CEMEX’s strong opposition to SB 520. This measure represents yet another effort to erect artificial and objectionable roadblocks designed to deny CEMEX the right to fulfill important federal mining contracts to operate its aggregate extraction project in an area of Los Angeles County outside of the city of Santa Clarita. Further, SB520 appears to be a bill of attainder as it applies to, and was specifically targeted for, a single project. The Soledad Canyon project is located in an area designated by the California Department of Conservation as a "Regionally Significant Construction Aggregate Resource" with less than five years of permitted reserves, vital to supporting the housing and infrastructure needs of the Los Angeles Basin.

“Absent the Soledad Canyon project, the Los Angeles Basin will need to obtain aggregates from more distant locations. As noted by the California Department of Conservation, “increased aggregate haul distances not only increase the cost of the aggregate to the consumer, but also increase environmental and societal impacts such as increased fuel consumption, carbon dioxide emissions, air pollution, traffic congestion and road maintenance.” This legislation has the potential to cause economic harm on every California citizen that would be felt through rising prices for housing, roads, and every other consumer end-use product that relies on aggregate materials.

“Pursuant to SB 520, the Soledad Canyon project would be subject to yet another multi-year long delay for no good reason other than to throw another roadblock in front of this much-needed aggregate site. The quest for endless delay driven by the City of Santa Clarita, who is not a project approving agency themselves, would not just be detrimental to CEMEX and this aggregate project, but to California as a whole by setting a dangerous political precedent for any project, past, present, or future, that is subject to the rigorous permitting requirements that already exist in California.”

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4/7/21 15:19:46

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