

Date of Hearing: June 17, 2021

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE  
Eduardo Garcia, Chair  
SB 520 (Wilk) – As Amended March 17, 2021

**SENATE VOTE:** 36-0

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

**SUMMARY:** This bill requires the State Water Resources Control Board (SWRCB) to re-evaluate water right applications for mining operations after 30 years from the date of application if SWRCB has not issued a final determination on the application and provide an opportunity for the public to protest the application before rendering a final determination on the application.

**EXISTING LAW:**

- 1) Establishes a process for publication, posting and mailing of public notices of applications to appropriate water (i.e. a water right). Requires that notices be published and posted, as specified, and mailed to interested persons. Authorizes 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.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal.

**COMMENTS:**

- 1) **Purpose of this bill.** According to the author, “existing law does not require additional public review on water appropriation applications the SWRCB has not rendered a final determination on, even if decades have passed since the original filing date. New information, such as that related to listed species, climate change, and hydrology, can change potential impacts of a project.”
- 2) **Background.** The SWRCB permitting and protesting process allows for members of the community and public to raise concerns about a project after submission of the application or permit. Although SWRCB processes water rights applications or petitions for permit

approval as they are submitted, the increase in water rights applications and petitions has necessitated SWRCB to give priority to projects that meet specific criteria relating to the “importance” of the application and whether the applicant is showing “demonstrated progress” towards resolving issues relating to its application. Currently, protests and petitions against the applications may be submitted within 40-60 days of the notice of application.

*CEMEX project.* This project is the sole project that will be affected by this bill. The project has a long history. In 1990, the Bureau of Land Management (BLM) awarded the CEMEX predecessor, Transit Mixed Concrete Company two back-to-back 10 year contracts (from 2000-2010 and 2010-2020) These contracts allowed Transit Mixed Concrete Company to mine up to 56 million tons of sand and gravel, also known as aggregate, on 490 acres of land near the Soledad Canyon Road and Agua Dulce Canyon road junction.

Following the BLM contract, the Federal government approved an environmental review in August 2000, the Interior Board of Land Appeals affirmed the findings in January 2002, and the county completed its review in 2004. The Transit Mixed Concrete Company was then purchased by CEMEX, a large mining company in Mexico.

In spite of these approvals, CEMEX still needed permit approval from the SWRCB and the City of Santa Clarita. Those permits have been held by the Water Board, and the City has requested the project to cease. Since 2005, CEMEX has challenged this inability to begin their contracted mining project with BLM, Congress, and other courts.

The two mining contracts have since expired, the second one expiring on July 31, 2020. Currently, CEMEX is appealing a 2020 ruling from BLM that their contract period has ended, although they were unable to begin the project.

*Need for aggregate material.* Aggregate mining is an essential process to supply concrete to new construction. A 2012 report from the California state geologist estimates that quarries in Los Angeles County and the Bay Area have permits to produce less than one-third of the aggregate that will be needed over the next 50 years. San Diego, which already imports aggregate from Mexico, is in even worse shape. Increased distance between the mining and construction site adds to the cost of construction, due to the cost of transporting the material, and can increase greenhouse gas emissions.

When making concrete, the quality of the sand and gravel determines the amount of the cement needed to complete the project – the lower the quality of materials, the larger the amount of cement needed. Using higher quality cement in smaller quantities also benefits construction with reduced risk of cracking and shrinking during the curing process.

Although the CEMEX project would provide nearby aggregate material for construction local to Southern California in land that has already been zoned for mining for nearly 50 years, the City of Santa Clarita has been opposed to the project from the beginning. Many in the City of Santa Clarita are concerned about the increase in mining-truck associated traffic, noise, particulate and diesel emissions.

*Policy Considerations.* The committee may wish to consider why such a change in precedent

is applicable to a mining project after 30 years, but not applicable to other projects within SWRCB approval.

- 3) **Arguments in support.** The City of Santa Clarita state that it is a “critical piece of legislation designed to ensure the SWRCB is in possession of the most current environmental circumstances and public input prior to a long-standing determination on water appropriation applications.”
- 4) **Arguments in opposition.** Those in opposition to this bill state this bill would continue to obstruct the progress of a project designated since 1986, as well as further create precedents that impede access to other construction materials throughout California. CEMEX states that in addition to the roadblocks this bill would place to their project, it would also result in “tens of millions of dollars in unnecessary costs to the state,” as greenhouse gas emissions and costs to transport materials would increase. They state that the project is 1.5 miles from the nearest residence, and has been working with the city for the past 20 years to begin the project but been stalled each time by the city, therefore they have not been idly waiting to begin construction for the last 30 years.
- 5) **Related legislation.**

SB 797 (Wilk), 2019-20 Session, This bill would have required the SWRCB to provide a new opportunity for protests if a permit for water appropriation was not given a final determination within 30 years from the date it was filed. Died in committee.

SB 146 (Wilk), 2017-18 Session, this bill would have prohibited the SWRCB from issuing a new permit to appropriate water from any river or stream that has a population of the unarmored three-spined stickleback fish. Died in committee.

AB 1986 (Wilk), 2015-16 Session, This bill would have required the SWRCB to provide a new opportunity for protests if a permit for water appropriation was not given a final determination within 20 years from the date it was filed. Died in appropriations committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

City of Santa Clarita  
City of Camarillo

### **Opposition**

CEMEX, Inc.  
California Construction and Industrial Materials Association

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