

Date of Hearing: June 28, 2022

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:** Requires the State Water Resources Control Board (State Water Board) to issue a new notice of a water right application and provide an opportunity for protest on any water right application for a mining operation where more than 30 years have passed since the application was first submitted and the application is still pending.

**EXISTING LAW:**

- 1) Establishes a process for publication, posting, and mailing of public notices of water right applications so that potentially affected parties or the general public may have the opportunity to protest the water right application within 40-60 days. Requires that notices of a water right application be published and posted, as specified, and mailed to interested persons. Authorizes the State Water Board to cancel an application for failure to comply with notice publication and posting requirements (Water Code § 1300 *et seq.*).
- 2) Authorizes any interested person to file a written protest to a water right application within the time allowed in the notice of application, or within such further time as the State Water Board for good cause shown may allow (Water Code § 1330 *et seq.*).
- 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 State Water Board for good cause may allow (Water Code § 1333).
- 4) Authorizes the State Water Board to grant or refuse to grant a permit and reject an application after a hearing and provides that 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 (Water Code §§ 1350 and 1351).

**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 [State Water Board] 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 State Water Board permit and protest process allows for members of the public to raise concerns about an application after submission of the application or permit. Although the State Water Board processes water rights applications or petitions for permit

approval as they are submitted, the increase in water rights applications and petitions has necessitated that the State Water Board 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.

*Soledad Canyon project.* This project is the sole existing project that will be affected by this bill. The project has a long history. In 1990, the Bureau of Land Management (BLM) awarded Transit Mixed Concrete Company (CEMEX’s predecessor on the project) 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 in Soledad Canyon, located in Los Angeles County between the cities of Palmdale and Santa Clarita.

Following the BLM contract, the federal government approved an environmental review in August 2000. The federal Interior Board of Land Appeals (IBLA) – an appellate review body that reviews Department of Interior decisions – affirmed the findings in January 2002, and Los Angeles County completed its review in 2004. The Transit Mixed Concrete Company was then purchased by CEMEX, a large mining company based in Mexico. A water right application for the project has been pending at the State Water Board for over 30 years and the City of Santa Clarita requested the project to cease.

In August 2015, BLM cancelled both mining contracts for Soledad Canyon based on its view that the first contract (for the period 2000-2010) had begun in 2000 and had since expired and that the second contract (for the period 2011-2020) would expire in 2020 and that CEMEX had failed to make “reasonable progress toward commencement of production.” CEMEX appealed BLM’s decision to IBLA arguing that BLM’s decision to cancel the contracts was “arbitrary and capricious.” IBLA ruled in March 2019 that the first contract had expired and that CEMEX had violated the terms of the second contract. CEMEX challenged IBLA’s ruling in U.S. District Court and received a favorable ruling in September 2021. More recently, in May 2022, the Court vacated the BLM and IBLA decisions regarding the mining contracts, effectively reinstating CEMEX’s mining rights at Soledad Canyon.

*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.

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, and particulate and diesel emissions.

- 3) **Arguments in support.** The City of Santa Clarita states that this bill is a “critical piece of legislation designed to ensure the [State Water Board] 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.** The California Construction and Industrial Materials Association oppose this bill, arguing that it will 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 also opposes this bill asserting 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. CEMEX maintains that the project is 1.5 miles from the nearest residence, and has been working with the City of Santa Clarita 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. Finally, CEMEX argues that this bill is a “bill of attainder” and in violation of common law; “in this instance, the Legislature is singling out a single project for additional review in hopes of stopping the project from moving forward.”
- 5) **Related legislation.** SB 797 (Wilk), 2019-20 Session, would have required the State Water Board 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. SB 797 died in the Senate Natural Resources and Water Committee.

SB 146 (Wilk), 2017-18 Session, would have prohibited the State Water Board from issuing a new permit to appropriate water from any river or stream that has a population of the unarmored three-spined stickleback fish. SB 146 died in the Senate Natural Resources and Water Committee.

AB 1986 (Wilk), 2015-16 Session, would have required the State Water Board 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. AB 1986 died in the Senate Appropriations Committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Camarillo, City of  
Safe Action for The Environment, Inc.  
Santa Clarita Community College District - College of The Canyons  
Santa Clarita Valley Chamber of Commerce  
Santa Clarita Valley Water Agency  
Santa Clarita, City of  
Sierra Club California  
Sulphur Springs Union School District  
Valley Industry Association of Santa Clarita

### **Opposition**

California Building Industry Association  
California Construction & Industrial Materials Association  
CEMEX, Inc.

**Analysis Prepared by:** Pablo Garza / W., P., & W. / (916) 319-2096