

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 1631 (Schiavo) – As Introduced February 17, 2023

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 pending water right application for a mining operation where more than 30 years have passed since the initial application. Specifically, **this bill:**

- 1) Requires the 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.
- 2) Provides the notice and opportunity for protests on applications described in #1, above, is not required if any of the following apply:
 - a) The application is denied or canceled;
 - b) A notice and opportunity for protests has been provided within five years of final approval;
 - c) The State Water Board follows procedures for a protest to a minor application to appropriate water and allows any person to participate in such procedures without having filed a protest on the application; or
 - d) The applicant is a public entity.
- 3) Clarifies that this bill is not a limitation on the State Water Board's authority to issue a notice on a water right application if necessary to allow interested parties to protest the application or if issuing a notice is in the public interest.

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 to 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 (i.e., 40 to 60 days) (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) Specifies procedures that include a field investigation and hearing for minor applications to appropriate water. Defines a “minor application” as an application that either (a) does not involve direct diversion in excess of three cubic-feet per second or storage in excess of 200 acre-feet annually; or (b) an application by a groundwater sustainability agency for a diversion of water that was previously authorized by a temporary groundwater recharge permit (Water Code § 1345 *et seq.*).
- 5) 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, “Conservation of land and water is an issue that we can all agree on. [This bill] provides an opportunity for members of the public to highlight new concerns regarding a projects’ impacts on local water supply, habitat species, environment, and quality of life if the projects’ water appropriation applications have been pending with the State Water Resources Control Board for over 30 years.”
- 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 to 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) 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. Given that these contracts have both expired as of 2010 and 2020, it is unclear if CEMEX still has mining rights for 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.

- 3) **Arguments in support.** The City of Santa Clarita has been opposed to the CEMEX project from the beginning. Residents in the City of Santa Clarita are concerned about the increase in mining-truck associated traffic, noise, and particulate and diesel emissions.
- 4) **Arguments in opposition.** CEMEX opposes this bill arguing that it is a “not in my backyard bill” to stop a state-recognized mining project that “sets a dangerous land use precedent and stands in direct conflict with the state’s greenhouse gas emissions goals.” CEMEX points to 2018 analysis by the California Geological Society that indicates the San Fernando Valley-Saugus-Newhall region that would be served by the Soledad Canyon project has a less than 10-year supply of aggregate to meet demand. CEMEX contends that by stopping or slowing down the Soledad Canyon project, this bill will increase costs by denying necessary aggregate supplies for critically needed housing and infrastructure. CEMEX maintains that over the past 20 years it has met all challenges to this project, negotiated in good faith with the City of Santa Clarita, and made several concessions to address concerns with the project. Finally, CEMEX asserts this bill will subject the project 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” and sets a dangerous precedent that could stymie future mining projects.
- 5) **Related legislation.** SB 520 (Wilk) of 2021 was substantially similar to this bill. SB 520 died in this Committee.

SB 797 (Wilk) of 2019 was substantially similar to this bill. SB 797 died in the Senate Natural Resources and Water Committee.

SB 146 (Wilk) of 2017 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) of 2016 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

City of Santa Clarita
Santa Clarita Valley Chamber of Commerce

Opposition

CEMEX, Inc.

Oppose Unless Amended

California Building Industry Association
Construction Employers' Association
Southern California Contractors Association
United Contractors

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