
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 1642
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Urgency: No
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Hearing Date: 6/29/2022
Fiscal: Yes

SUBJECT: California Environmental Quality Act: water system well and domestic well projects: exemption

DIGEST: Exempts from CEQA, until January 1, 2028, well projects that meet specified conditions, including that the domestic well or the water system to which the well is connected has been designated as high risk or medium risk in the State Water Board's drinking water needs assessment.

ANALYSIS:

Existing law:

- 1) Under federal Safe Drinking Water Act (SDWA), authorizes the United States Environmental Protection Agency (US EPA) to set standards for drinking water quality, known as maximum contaminant levels (MCLs) and to oversee the states, localities, and water suppliers who implement those standards. (42 United States Code §§300f et seq.)
- 2) Under state law, declares it to be established state policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code §106.3)
- 3) Under the California Safe Drinking Water Act (SDWA), requires the State Water Resources Control Board (State Water Board) to adopt drinking water standards for contaminants in drinking water that are consistent with those standards set by the US EPA, as specified. (Health and Safety Code (HSC) §116365)
- 4) Under the California Environmental Quality Act (CEQA), requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated negative declaration (MND), or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA

guidelines). (Public Resources Code §21000 et seq.)

- a) Exempts from CEQA, until January 1, 2028, various water infrastructure projects, including small drinking water wells, that primarily benefit a small disadvantaged community water system or a state small water system by improving the system's water quality, supply, or reliability; encouraging water conservation; or providing safe drinking water. (PRC §21080.47)
- b) Exempts from CEQA various emergency projects, including specific actions necessary to prevent or mitigate an emergency; emergency repairs to public service facilities to maintain service, and projects to maintain to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor. (PRC §§21080(b)(2), (b)(3), (b)(4))

This bill:

- 1) Exempts from CEQA, until January 1, 2028, a well project (defined as a project for the construction, maintenance, repair, or replacement of a well or a domestic well) that meets all of the following:
 - a) The domestic well or water system to which the well is connected has been designated by the State Water Board as high risk or medium risk in the State Water Board's drinking water needs assessment.
 - b) The well project is designed to mitigate or prevent a failure of the well or the domestic well that would leave residents that rely on the well, the water system to which the well is connected, or the domestic well without an adequate supply of safe drinking water.
 - c) The lead agency determines all of the following:
 - i) The well project is not designed primarily to serve irrigation or future growth.
 - ii) The well project does not affect wetlands or sensitive habitats.
 - iii) Unusual circumstances do not exist that would cause the well project to have a significant impact on the environment.
 - iv) The well project is not located on a site that is included on the Hazardous Waste and Substances Sites List.
 - v) The well project's construction impacts are fully mitigated consistent with applicable law.
 - vi) The cumulative impact of successive reasonably anticipated projects of the same type as the well project, in the same place, over time, are not significant.

- 2) Requires, before determining that a well project is exempt from CEQA pursuant to these provisions, the lead agency to contact the State Water Board to determine whether claiming the exemption will affect the ability of the well project to receive federal financial assistance or federally capitalized financial assistance.
- 3) Requires a lead agency that determines that a well project is exempt pursuant to these provisions to file a notice of exemption, as specified.

Background

1) Background on CEQA.

- a) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a ND. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR.

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project.

- b) *What is analyzed in an environmental review?* An environmental review analyzes the significant direct and indirect environmental impacts of a proposed project and may include water quality, surface and subsurface hydrology, land use and agricultural resources, transportation and circulation, air quality and greenhouse gas emissions, terrestrial and aquatic biological resources, aesthetics, geology and soils, recreation, public services and utilities such as water supply and wastewater disposal, and cultural resources. The analysis must also evaluate the cumulative impacts of any past, present, and reasonably foreseeable projects/activities within study areas that are applicable to the resources being evaluated.
- c) *CEQA provides hub for multi-disciplinary regulatory process.* An environmental review provides a forum for all the described issue areas to

be considered together rather than siloed from one another. It provides a comprehensive review of the project, considering all applicable environmental laws and how those laws interact with one another. For example, it would be prudent for a lead agency to know that a proposal to mitigate a significant impact (i.e. alleviate temporary traffic congestion, due to construction of a development project, by detouring traffic to an alternative route) may trigger a new significant impact (i.e. the detour may redirect the impact onto a sensitive resource, such as a habitat of an endangered species or near a hospital). CEQA provides the opportunity to analyze a broad spectrum of a project's potential environmental impacts and how each impact may intertwine with one another.

- 2) *State Water Board's Drinking Water 2021 Needs Assessment*. The Needs Assessment, a report annually updated by the State Water Board, identifies public water systems, tribal water systems, and state small water systems and regions where domestic wells are at-risk of failing to sustainably provide a sufficient amount of safe and affordable drinking water. It provides a snapshot of the overall resources needed to bring failing water systems into compliance with drinking water standards and prevent at-risk water systems from failing.

According to the 2021 Needs Assessment, almost 78,000 domestic wells were assessed via modeling as at high risk of exceeding health-based drinking water standards due to their location in aquifers with high risk of groundwater contaminations. The assessment identified almost 16,000 domestic wells at medium risk. The report notes that proxy data based on modelled groundwater quality was used to reach these conclusions and that the presence of a domestic well within a high-risk area does not necessarily signify that they are accessing groundwater above primary drinking water standard, but does indicate that owners may wish to perform water quality testing.

Comments

- 1) *Purpose of Bill*. According to the author, "AB 1642 will streamline vital water well projects to mitigate or prevent the failure of a drinking water well that is designated as high risk or medium risk by the State Water Resources Control Board. Due to the time-sensitive nature of domestic water well projects, it is necessary to streamline these projects to ensure that residents maintain access to safe and clean drinking water."
- 2) *Look before you leap*. Often groups will seek a CEQA exemption to expedite construction of a particular type of project and reduce costs. Providing an

exemption, however, can overlook the benefits of environmental review: to inform decisionmakers and the public about project impacts, identify ways to avoid or significantly reduce environmental damage, disclose to the public reasons why an agency approved a project if significant environmental impacts are identified, and increase public participation in the environmental review and planning processes.

CEQA is a process. It does not dictate the outcome of a project but rather is a disclosure mechanism that guarantees public involvement and transparency in the project approval process. A CEQA exemption takes away that guarantee. Absent CEQA, a project is assumed to be “fine as is,” without consideration of community concerns or the potential for improvement through public input. Absent CEQA, public participation can vary jurisdiction to jurisdiction and project to project, or sometimes, not be included at all. How can decisionmakers and the public be aware of impacts, mitigation measures, and alternatives of an exempt action? CEQA is the messenger that helps provide responsible, informed planning.

“CEQA operates, not by dictating pro-environmental outcomes, but rather by mandating that ‘decision makers and the public’ study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions. ... In other words, CEQA does not care what decision is made as long as it is an informed one.” (Citizens Coalition Los Angeles v. City of Los Angeles (2018) 26 Cal. App. 5th 561, 577.)

- 3) *Couldn't one of these existing exemptions apply?* CEQA offers various statutory and categorical exemptions for which a well project could already be eligible.
 - a) *Applicable statutory exemptions.* The following statutory exemptions could apply to a well project for which this bill seeks to create a CEQA exemption for:
 - Specified water infrastructure projects, *including small drinking water wells*, that primarily benefit a small disadvantaged community water system or a state small water system by improving the system's water quality, supply, or reliability; encouraging water conservation, or; providing safe drinking water. (PRC §21080.47)
 - Emergency projects, including specific actions necessary to prevent or mitigate an emergency; emergency repairs to public service facilities necessary to maintain service; and projects to maintain,

repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor. (PRC §§21080(b)(2), (b)(3), (b)(4))

b) *Applicable categorical exemptions.* In addition to statutory exemptions, CEQA Guidelines include categorical exemptions that could apply to well projects. These include:

- Class 1 (Section 15301) consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. This exemption specifically includes “restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety.”
- Class 2 (Section 15302) consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. This exemption specifically includes “replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.”

Unlike statutory exemptions, categorical exemptions are not absolute. A categorical exemption may be denied or challenged if any of the following apply:

- Project results in damage to scenic resources within a highway officially designated as a state scenic highway.
- Project site is on a hazardous waste site.
- Project may cause substantial adverse change to a historical resource.
- Significant effect on the environment due to unusual circumstances.
- Significant cumulative impacts from projects of the same type.
- For certain categorical exemptions, impacts on a uniquely sensitive environment.

4) *One more, for good measure.* The Legislature has declared that access to safe and affordable drinking water is a basic human right. According to background information provided by the author, a California Supreme Court

Case *Protecting Our Water and Environmental Resources v. County of Stanislaus*, has resulted in more county governments treating well replacement projects as “discretionary,” and therefore subject to CEQA. It seems that AB 1642 seeks to address that. However, AB 1642 also seems to describe a project that may already be eligible for an already existing CEQA exemption. Given the various CEQA exemptions that a well project may already qualify for, it is unclear what an additional CEQA exemption would help solve.

After reaching out to various stakeholder groups, committee staff was unable to obtain examples of specific well projects that that would be exempt from CEQA under AB 1642 but did not qualify for one of the already existing exemptions. According to one stakeholder group, one potential issue could be a contaminated well needing to drill deeper to reach uncontaminated water, thereby increasing the depth of the well. Because the well would be increasing in capacity, the well may not be eligible for the Class 2 categorical exemption. However, in that case, it would appear that such a project, due to the contamination issues, would be eligible for the emergency exemption.

If the committee would like to reinforce that these types of projects should be exempt from CEQA, the committee may wish to amend the bill to require the lead agency, when filing the notice of exemption, to also include information on whether the other CEQA exemptions could have also applied or, if the other exemptions did not apply, why the exemptions were inapplicable.

- 5) ***Committee amendments. Staff recommends the committee adopt the bolded amendments contained in comments 4 above.***

Related/Prior Legislation

SB 974 (Hurtado, Chapter 234, Statutes of 2020) exempts from the CEQA certain water infrastructure projects for small disadvantaged community water systems or state small water systems that improve the water system’s water quality, water supply, or water reliability; encourage water conservation; or provide safe drinking water service to existing residences within a disadvantaged community.

SOURCE: Author

SUPPORT:

Association of California Water Agencies (ACWA)
 California Association of Realtors
 California Municipal Utilities Association
 California Water Association

Rural County Representatives of California (RCRC)

OPPOSITION:

None received

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