

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

[AgencyAnalysis.nmlegis.gov](https://www.legis.nm.gov/AgencyAnalysis) and email to billanalysis@dfa.nm.gov*(Analysis must be uploaded as a PDF)***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: 1/23/2026

Check all that apply:

Bill Number: HB 111

Original Correction Amendment Substitute

Sponsor: Rep. Kristina Ortez; Sen. Mimi Stewart; Rep. Andrea Romero; Sen. Elizabeth "Liz" Stefanics; Sen. James G. Townsend
Water Law Violation Maximum Penalty

Agency Name and Code Number:

Office of the State Engineer
550

Person Writing

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Short Title:

Phone:

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505-231-4459

SECTION II: FISCAL IMPACT**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
N/A	N/A	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
None	\$34	\$17	Nonrecurring	General Fund

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None
Duplicates/Relates to Appropriation in the General Appropriation Act: None

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 111 seeks to address gaps in the State Engineer's enforcement authority by providing the State Engineer with the appropriate tools to deter violations and ensure compliance with water laws.

First, the bill would amend Sections 72-2-18, 72-5A-12, and 72-12-14 of the Water Code to increase the maximum penalties for violations of these sections of the water code to \$3,400 per day. For compliance order violations, the bill would require the State Engineer to issue a written notice of violation before the State Engineer could assess a civil penalty for the violation.

Second, for water sold without a permit to do so, the maximum penalty in the bill is double the economic benefit to the violator or \$25 per barrel of water sold, whichever amount is greater.

Third, while current law provides that monetary penalties are not due to be paid until a hearing on a compliance order is complete, the bill would clarify that the per-day penalty accrues from the date a violator receives notice of the violation from the State Engineer.

Fourth, the bill would prohibit the State Engineer from pursuing monetary penalties for overdiversions of a water right, limiting such penalties to repayment of water, and would clarify that nothing in the bill would affect stream adjudication court orders in place prior to the effective date of the 2026 act.

Last, the bill provides several technical corrections and updates to the Water Code. It would amend 72-2-18(D) to specify the manner of service when certified mail is not possible. It would also amend 72-2-18(H) to specify that the State Engineer must file complaints to enforce compliance orders in the county where the violation occurred.

FISCAL IMPLICATIONS

An increase in the amount of per-day monetary penalties may bring some limited revenue to the State for a limited period of time as violators are brought into compliance. We estimate approximately 10 violators facing a \$3,400 penalty in FY27, and five violators facing a \$3,400 penalty in FY28, would result in a net fiscal impact of \$34,000 in FY27 and \$17,000 in FY28. Thereafter, increased compliance should reduce the number of penalties actually levied.

SIGNIFICANT ISSUES

Section 72-2-18 currently contains a maximum monetary penalty of \$100 per day for violations of the Water Code. This amount has not been increased since 1907. The penalty also does not become effective until after a compliance order becomes final, which could be months to years after the violation is discovered. This penalty is too low and too remote to be an effective deterrent. Increasing the per-day monetary penalty to \$3,400 raises the fee proportionately based on historic

inflation rates and brings the statutory penalties closer to the maximum penalties available in other existing environmental and natural resources statutes. Making penalties accrue from the date of the notice of violation incentivizes the violator to immediately cease the illegal activity.

Similarly, increasing the maximum penalty to double the economic benefit for illegal diverters who sell illegally diverted water or \$25 per barrel sold, whichever is greater, ensures that illegal theft of water doesn't pay.

In most enforcement cases, the State Engineer does not seek civil monetary penalties. Instead, if the violation is a simple overdiversion of a valid water right, the State Engineer seeks the "payback" of water, which is typically effectuated by compelling water users to reduce future diversions by up to double the quantity of water that was previously overdiverted. This remedy is fair and is generally a satisfactory deterrent against overdiversions. The bill would make this the sole available remedy that the State Engineer could pursue for overdiversions.

However, not all violations of the Water Code can be remedied through the payback of water. Some violations are not overdiversions at all; for instance, there can be illegal water use without a valid permit, violations of metering or reporting requirements in a permit, or for failure to comply with regulatory requirements for drilling of a well. Therefore, monetary penalties are necessary to remedy these types of violations.

The amendment providing an alternative to service by certified mail is necessary because sometimes it is impossible to successfully serve documents by certified mail. If a recipient refuses to receive the certified mailing, the current statute is unclear as to how notice can be effected. The amendment would enable the State Engineer to effect service in the event that certified mail is not possible. It also provides a clear definition of when notice is effective, eliminating the ambiguity in the current statute.

House Bill 111 may decrease violations of New Mexico's water laws, regulations, and orders by increasing the amount of civil penalties for violators and allowing penalties to begin accruing upon the issuance of a written notice of violation and for so long thereafter as the violation persists.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

This bill would enable the State Engineer to more effectively enforce the Water Code. It should make enforcement actions more streamlined because violators will have more incentive to resolve violations in a timely manner.

As water is becoming scarcer, the OSE is receiving increasing reports of illegal water use and well drilling, particularly to support industries like cannabis and oil and gas. It is imperative that the OSE have effective enforcement tools to deter water theft, illegal water use, and illegal well drilling.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There will continue to be a gap in the existing civil penalty structure for violations of the Water Code, and there will not be adequate remedies to deter illegal water use/theft.

AMENDMENTS

None