

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://agencyanalysis.nmlegis.gov) 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:** 2/21/25*Check all that apply:***Bill Number:** SB 21JUSOriginal ☐ Correction ☐Amendment ☐ Substitute ☒**Sponsor:** Senate Judiciary Committee**Agency Name
and Code
Number:**Office of the State Engineer
550**Person Writing
Analysis:**Michelle Hunter**Short Title:** Pollutant Discharge Elimination
System Act505-795-Michelle.hunter@ose.**Phone:** 4474 **Email:** nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NFI	\$50,000	nonrecurring	GF

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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: SB 22

Duplicates/Relates to Appropriation in the General Appropriation Act: None

SECTION III: NARRATIVE

BILL SUMMARY

This bill combines former bills SB21 and SB22. It would create the law needed for New Mexico to petition the EPA to receive primacy to issue surface water discharge permits for Waters of the United States and establish a permitting framework for all surface waters in the state. The bill includes all the required elements including definitions, procedures for permitting, procedures for appeals, and processes for enforcement.

In addition, this bill would make specific changes and additions to the New Mexico Water Quality Act for the following five major purposes:

1. Adding the regulatory framework for the NMED to issue discharge permits and general permit coverage for surface waters in the state; the bill language would also allow the NMED to issue general permits for groundwater discharges. The permitting framework and the permitting legal authority have been combined in this bill instead of in separate bills.
2. Adding several definitions including those needed for a surface water permitting program and for abatement/cleanup activities. This bill establishes new definitions for a “responsible party” and a new section regarding liability of contamination. This new language is needed for clarity regarding responsibility to pay for environmental cleanup.
3. Updating the public notice requirements relating to discharge permits. The bill now has separate processes for groundwater discharge permits and surface water permits.
4. Establishing a new non-reverting fund for “neglected and contaminated sites.” – with the exception of combining this into one bill, creation of this fund is unchanged from the original bill.
5. Directing the NMED to adopt rules to govern the transfer and use of treated domestic wastewater for potable reuse. The word “domestic” is inserted before “wastewater” in the new bill. The addition of “domestic” effectively excludes any other type of wastewater (e.g., industrial wastewater).

FISCAL IMPLICATIONS

None

SIGNIFICANT ISSUES

The enactment of a permitting program allowing New Mexico to have primacy over the regulation of surface water permitting aligns with component C2 of the Governor’s 50 Year Water Action Plan.

Newly added language includes additional engagement with pueblos, tribes, and nations. In addition, a section has been added to consider information regarding violations from the public, and to have a 30-day public notice for enforcement actions associated with violations. A new provision also calls for denial of a surface water permit if the discharge will result in a state or

tribal surface water quality standard violation.

The bill now contains a provision that would require the Department to deny a permit if the EPA Regional Administrator issues a written objection pursuant to the federal act. In addition, three additional surface water permit exemptions are included for return flows from agriculture, for stormwater from oil and gas sites that does not contact any equipment (and would not be contaminated), and for silviculture activities.

This bill contains new provisions from the original bill for permit penalties for surface water to be deposited into the Water Quality Management Fund instead of the General Fund, for permit penalties for groundwater to be deposited into the Water Quality Management Fund, and for penalties associated with civil violations of the law to be deposited in the Water Quality Management Fund instead of the School Fund.

Some water rights owners who are regulated by OSE will also be subject to surface water discharge permits under the program that would be set up under this bill. The OSE will participate in the rulemaking process as necessary to ensure that surface discharge permits under this program are harmonious with existing OSE permits.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

None

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If the bill is not enacted, New Mexico will not:

1. gain authority to issue permits and regulate Waters of the US,
2. establish a fund to characterize and clean up neglected contaminated sites,
3. be able to issue groundwater general permits, nor
4. be able to use treated domestic wastewater for augmenting drinking water sources.

AMENDMENTS

None