

<b>LFC Requester:</b>	<b>Davidson</b>
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**AGENCY BILL ANALYSIS  
2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

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*{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}*

Check all that apply:  
**Original**    \_\_\_ **Amendment**  X   
**Correction**    \_\_\_ **Substitute**    \_\_\_

**Date** 1/22/2025  
**Bill No:** SB 22

**Sponsor:** Wirth / Ortez

**Agency Name and Code Number:** 667

**Person Writing:**  
**Analysis:** Jonas Armstrong

**Short Title:** Water Quality & Pollution

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
	\$50,000	Nonrecurring	General Fund

**REVENUE (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
	\$50,000	Nonrecurring	Neglected and Contaminated Sites Fund

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0	\$0	\$7,313	\$7,313	Recurring	Permit Fees and/or General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB21

Relates to Appropriation in the Executive Budget Recommendation

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

**Synopsis:** Senate Bill 22 (SB22A) as amended, supports the Governor's 50 Year Water Action Plan by modernizing the Water Quality Act to improve water quality protections and expand regulatory authority to promote water reuse, protect state surface waters that are no longer protected by the federal Clean Water Act, and to clean up and monitor polluted groundwater. These amendments fill regulatory gaps, enhance public involvement, and ensure stronger public health and environmental safeguards while addressing feedback from stakeholders and aligning with federal standards. Key provisions include:

- **Surface Water Permitting Program, including Dredge and Fill:** Requires the Water Quality Control Commission (WQCC) to establish regulations for surface water discharges, including discharges of dredged or fill materials. Requires the department to deny a permit if the discharge would violate a downstream state or tribal water quality standards. Prioritizes avoidance and mitigation of adverse impacts to surface water resources resulting from discharges of dredge and fill materials. Exempts certain discharges from farming, ranching, silviculture, and irrigation activities and of agricultural return flows, and of dredged or fill materials from the surface water permitting program. Enables fee collection for the permitting program.
- **General Permits:** Authorizes the issuance of a general permit to cover a group of similar discharges, such as stormwater runoff from industrial sites, pesticide applications, fish hatcheries, and wildfire recovery. Requires the department to deny a request for general permit coverage if the discharge would violate a downstream state or tribal water quality standards. Clarifies public notice requirements for general permits. General permits offer advantages like a simplified application, quicker processing time, permit consistency with similar facilities, and typically lower fees compared to individual permits.
- **Mitigation Requirements:** Introduces "compensatory mitigation" for unavoidable adverse impacts to surface water resources and authorizes the WQCC to establish regulations to offset harm caused by dredged or fill material discharges.
- **Public Notification Updates:** Expands and modernizes communication methods for draft permit notices, including electronic mail, text messages, social media, and traditional advertising.
- **Antidegradation Policy:** Strengthens protections to maintain high-quality surface waters.
- **Oil and Gas Oversight:** Shifts responsibility for surface water discharges from oil and gas facilities from the Oil Conservation Commission to the Environment Department.
- **Groundwater Protection:** Establishes WQCC authority to adopt rules for state-led response, investigation, and remediation of water pollution and soil contamination. Creates a non-reverting fund dedicated to this cleanup work. The Executive Budget Recommendation includes \$50 million to support this proposal.
- **Groundwater Liability and Liability Protections:** Clarifies cleanup and financial liability by aligning with the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) covered persons and liability defenses, which previously did not exist in state law.
- **Potable Water Reuse:** Clarifies the WQCC's authority to adopt regulations for direct potable reuse of treated wastewater, potentially benefitting more than 60 permitted

municipal and county wastewater treatment facilities in New Mexico.

### **FISCAL IMPLICATIONS**

**Surface Water Permitting Program:** At *full* program implementation of a comprehensive surface water permitting program for waters of the U.S. (SB21) and other waters of the state (this bill, SB 22), the Department estimates annual program costs to be approximately \$8 million with 60 FTE. The Department currently has 10 FTE to perform this and other clean water work, which equates to approximately \$900 thousand per year to assist the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (USACE) with regulating discharges to surface waters pursuant to the federal Clean Water Act and related administrative expenses. Therefore, the Department would need an additional \$7.1 million per year and an additional 50 FTE to implement the permitting, compliance, enforcement, dredge/fill, data management and stewardship, outreach and training, and administrative responsibilities of a comprehensive, state-administered program. This cost estimate includes the federal NPDES program (SB21) and the complimentary state program authorized by the Water Quality Act amendments in this bill (SB22) (*see* Conflict, Duplication, Companionship, Relationship section below).

Funding can be achieved through a 100% fee-based program, a 100% legislative appropriation (General Fund), or a combination of fees and appropriations sufficient to implement the program.

**Neglected and Contaminated Sites Program:** SB22 includes a \$50 million appropriation to the Neglected and Contaminated Sites Fund. NMED anticipates adding 7 FTE to staff the new program, costing \$1 million annually for personnel and \$200 thousand in other costs. The Department expects costs of about \$3.3 million annually for contracted site work (initial assessments, detailed assessments, planning, and clean up) once the program is established. The bill's Neglected and Contaminated Sites Fund would support these costs. While the \$50 million appropriation is a significant investment, NMED experience indicates that to effectively administer the program and successfully address these contaminated sites, an appropriation in the neighborhood of \$300 million will be necessary to facilitate long term success.

### **SIGNIFICANT ISSUES**

See below under "WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL."

### **PERFORMANCE IMPLICATIONS**

None.

### **ADMINISTRATIVE IMPLICATIONS**

Creating, hiring, and training the necessary additional FTE is a huge undertaking for the Department and will require additional administrative support. Creating a regulatory program to protect surface water quality and to clean up neglected and contaminated sites will increase the number of support staff needed to help implement the programs, including administrative, IT, human resources, financial, and legal staff. These costs are included in the fiscal analyses above.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Many proposed amendments to the Water Quality Act are related to the New Mexico Pollutant Discharge Elimination System Act (SB21) and needed authorities for the Environment Department to administer and enforce a comprehensive water quality permitting program for all types of surface waters within the State, including waters of the U.S., surface waters of the State, and wetlands, but excluding tribal waters.

The Executive Budget Recommendation includes a \$50 million general fund appropriation to support the neglected and contaminated sites work covered by HB2. While the \$50 million appropriation is a significant investment, NMED experience indicates that to effectively administer the program and successfully address these contaminated sites, an appropriation in the neighborhood of \$300 million would be necessary to facilitate long term success.

### **TECHNICAL ISSUES**

Normal farming, silviculture and ranching activities have not been defined, leaving them open to vague interpretation.

### **OTHER SUBSTANTIVE ISSUES**

None.

### **ALTERNATIVES**

None.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

**Surface Water Permitting Program:** Following the 2023 U.S. Supreme Court ruling in *Sackett v. EPA*, up to 95% of our state's surface waters have lost federal protection under the Clean Water Act. See *Sackett v. EPA*, 598 U.S. 651 (2023). These amendments are necessary to enact a state surface water discharge permitting program for surface waters of the State that are not “waters of the U.S.” (non-WOTUS) and to fully protect rivers, streams, lakes, and wetlands from the discharge of pollutants, including dredged-and-fill materials. Failure to enact these amendments will place many surface waters throughout New Mexico at risk from contamination and degradation. Water used for drinking, irrigation, recreation, livestock watering, and aquatic habitat will be vulnerable to pollution. The cost to treat water for drinking or other uses will increase as the water becomes more polluted.

**Groundwater response, investigation, and remediation:** New Mexico has more than 300 neglected contamination sites across the state. The program, fund, and funding mechanism are necessary to address abatement of water pollution and contamination of soil and soil vapor at sites without a responsible party or where liability is unresolved and the site does not meet the ranking qualifications for the federal Superfund program or other federal remediation funding. Failure to enact these groundwater protection amendments will cause contamination to remain unaddressed at hundreds of sites throughout New Mexico, threatening human health and precious environmental resources.

**Groundwater liability and liability protections:** There are currently 97 sites in the State Cleanup Program (the NMED program that requires assessment and abatement of groundwater pollution and contamination of soil and soil vapor). If the Water Quality Act amendment to clarify the liability framework is not enacted, all 97 of these sites may be able to challenge any requirement for further assessment and abatement of contamination. Failure to enact this amendment to the Water Quality Act will lead to uncertainty for property owners and

prospective purchasers, potential and prolonged litigation, and delays or failure to achieve abatement of pollution and protection of human health.

**Groundwater discharge permit conditions:** More than 700 active groundwater discharge permits are managed by NMED. Clarifying the scope of conditions that may be imposed upon permits for monitoring devices is necessary to determine if other/additional parties are responsible for observed groundwater contamination or if observed concentrations represent natural conditions. Failure to enact this amendment will make it difficult to determine if a permitted entity, or another party, is required to treat groundwater to applicable water quality standards or if they are warranted protections from liability.

#### **AMENDMENTS**

Domestic was added as a modifier to “wastewater for potable reuse” to clarify Section 2 S was not applicable to produced water from the oil and gas industry.

Section 3, part T and U were amended to mirror the agricultural exemptions listed in the federal CWA and SB21 as drafted.

NMED is in agreement with these amendments.