

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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 1/31/2025 *Check all that apply:*
Prepared: _____
Bill SB 22 Original Correct
Number: _____ ion _____
 Amend Substit
 ment X ute _____

Sponsor: Peter Wirth, Kristina
 Ortiz
Agency Name and Code
Number: NMDA - 199
Person Writing Analysis: Jeff Witte
Short Title: Water Quality and Pollution
Phone: 575-294-3817
Email: Jheitz@nmda.nmsu.edu

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NFI	NFI	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

The senate conservation committee amendments to senate bill 22 (SB 22/a) modify the agricultural exemptions for a state surface water discharge permitting program. SB 22/a modifies the exception for normal farming and ranching activities to include silvicultural activities and provide specific examples of exempted agricultural activities. The amendments also add a new permitting exemption for the discharge of irrigation return flows. SB 22/a adds a new provision that prohibits the water quality control commission (WQCC) from applying agricultural exemptions to dredge and fill activities if the dredged material contains a toxic pollutant or the activity brings a surface water of the state into agricultural production where the land has not been previously farmed.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Surface water discharge permitting in New Mexico is currently regulated under the federal Clean Water Act (CWA) for waters of the United States (WOTUS). The United States environmental protection agency (EPA) issues CWA Section 402 permits for point source discharges to WOTUS under its National Pollutant Discharge Elimination System (NPDES) program. The United States army corps of engineers (USACE) issues CWA Section 404 permits for activities that discharge dredge or fill materials into WOTUS. The CWA authorizes states to assume administration of the CWA Section 402 and 404 surface water permitting programs, so long as state programs are at least as equally protective of surface water quality as the EPA and USACE permitting programs.

The CWA includes several important permitting exemptions for agricultural activities. CWA Section 402(l)(1) exempts discharges composed entirely of return flows from irrigated agriculture from point source discharge permitting under NPDES. SB 22/a adds an identical exemption for the state surface water discharge permitting program.

CWA Section 404(f)(1) provides agricultural exemptions to USACE dredge or fill discharge permitting for:

- (A) from normal farming, silviculture, and ranching activities such as plowing, seeding,

cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

SB 22/a modifies the agricultural exemptions for a state surface water permitting program, so that they more closely match the language of the CWA agricultural exemptions for Section 404 permitting. NMDA notes that the CWA exempts the “construction or maintenance of farm roads *or forest roads*,” whereas SB22/a only exempts “the construction or maintenance of farm roads” (emphasis added). The omission of forest roads could have significant impacts to agricultural operations if WQCC chooses to define farm roads narrowly. Ranchers rely on forest roads, both private and public, for their daily operations and adding a permitting requirement for all ephemeral stream crossings would create a major regulatory barrier.

SB 22/a adds exceptions to the agricultural exemptions to state permitting, prohibiting the exemptions from applying if the discharge involves toxic materials or “brings a surface water of the state into farm production where the area of the surface water had not previously been used for farming.” The latter exception relates to the recapture provision in CWA section 404(f)(2), which prevents the USACE from applying permitting exemptions if the activity results in the conversion of a WOTUS (typically a wetland) to a new use and results in a “reduction in reach/impairment of flow or circulation.” To comply with the recapture provision, the USACE only applies the exemptions for normal farming activities to established and ongoing agricultural operations.

NMDA has questions over what protocol will be applied to consider whether an area has “previously been used for farming” in the state permitting program. There may be instances where land has been historically farmed but fallowed for a long period of time, especially given the current drought. NMDA has concerns that the subjective language of this exception could create a new permitting barrier for putting these lands back into production, especially given the much broader scope of surface waters of the state versus WOTUS.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to senate bill 21 (SB 21), which establishes a permitting program under WQCC for point source discharges to WOTUS, enabling New Mexico to assume state primacy for issuing CWA Section 402 permits. SB 21 includes an identical permitting exemption to SB 22 for

discharges composed entirely of return flows from irrigated agriculture.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If SB 22 is not enacted, the Water Quality Act would not be amended. Surface water discharge permitting would continue under the existing federal regulatory framework. The current agricultural exemptions for the federal CWA Section 402 and 404 permitting programs would remain in place for discharges to WOTUS.

AMENDMENTS

NMDA recommends amending SB 22/a Section 3-T-3 to the following (changes underlined):

- (3) construction or maintenance of farm roads or forest roads in accordance with best management practices; and

This will more closely match the statutory language for exemptions under CWA Section 404(f). More explanation is provided under significant issues.