

LFC Requester:

Austin Davidson

**AGENCY BILL ANALYSIS - 2025 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](mailto: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: 2/1/2025

Check all that apply:

Bill Number: SB 210Original  Correction Amendment  Substitute Sponsor: Sen. Pete CamposAgency Name  
and Code

Office of the State Engineer

Number:

550

Person Writing

Analysis:

Nathaniel ChakeresShort Title: Max Penalty for Water Law

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Email Nathaniel.chakeres@oViolationPhone: 4459: se.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

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

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Indeterminate	Indeterminate	Indeterminate	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
<b>Total</b>	NFI	NFI	NFI	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: Senate Bill 210 seeks to address gaps in the State Engineer's enforcement authority to ensure that the State Engineer has the appropriate tools to ensure compliance with water laws.

First, the bill would amend 72-2-18(D) to allow for notice of a compliance order be sent by means other than certified mail.

Second, the bill would amend Sections 72-2-18, 72-5A-12, and 72-12-14 to increase the maximum penalties for violations of these sections of the water code to \$2,000 per day. The bill also would include automatic increases for these maximum penalties indexed to inflation.

Third, for illegal diverters who sell the illegally diverted water, the maximum penalty in the bill is double the economic benefit to the violator.

Fourth, while current law states 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 a violation.

Lastly, this bill would state that repayment of water be the preferred remedy for overdiversions diversions of water, limiting the OSE's ability to pursue monetary penalties to situations where overdiversions are not involved, where repayment of water is not possible, or where repayment of water is insufficient to deter future violations.

#### **FISCAL IMPLICATIONS**

Although an increase in the amount of per-day monetary penalties may bring some limited revenue to the State, the deterrent effect of the bill on water violations may actually decrease revenue from monetary penalties by decreasing the number of violations which is the desired outcome. Therefore, there would likely not be a significant fiscal impact for the State.

#### **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 \$2,000 brings OSE statutory penalties closer to the maximum penalties available in other existing environmental and natural resources statutes, and it is still well below the \$3,000 that the \$100 per-day penalty would be in today's dollars.

Changing the date from which penalties accrue is important for incentivizing violators to come into compliance in a timely manner. Currently, the OSE can only assess a \$100 per day penalty that begins accruing after a Compliance Order becomes final following a hearing (effectively a \$100 penalty). This is an ineffective deterrent to violators because it is effectively cheap to break the law. By moving the date of accrual to the date a notice of violation is issued and increasing the per-day penalty to \$2,000, violations become cost prohibitive. Similarly, increasing the maximum penalty to double the economic benefit for illegal diverters who sell illegally diverted water ensures that illegal theft of water doesn't pay.

In most enforcement cases, the OSE does not seek civil monetary penalties. Instead, it seeks the "payback" of water, which is typically effectuated by compelling water users to reduce future diversions by the quantity of water that was previously over- or illegally diverted. This remedy is fair and is usually a satisfactory deterrent against overdiversions. The bill would ensure that this remedy continues to be the preferred remedy 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; instead, they may be violations of metering or reporting requirements, or failure to comply with all regulations in the drilling of a well. Additionally, some violators of the Water Code may not have valid rights to satisfy a payback requirement. Therefore, monetary penalties are necessary to remedy these types of violations.

The reason for the amendment to service by certified mail is that it is sometimes impossible to successfully serve documents by certified mail. If a recipient refuses to receive the certified mailing, the current statute makes it unclear how notice can be effected. The amendment would enable the State Engineer to effect service in whatever manner is reasonable and effective.

Senate Bill 210 may lead to the decrease of violations of New Mexico's water laws, regulations and orders since it increases the amount of civil penalties for violators, bases the assessment upon the issuance of a written notice of violation and the continuance of a violation, and requires the civil penalty to be adjusted for inflation.

## **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 numbers of 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**

SB-185 attempts to raise the penalty of illegal Diversion of Ground Water only. It also makes it a 4<sup>th</sup> degree penalty to use water illegally.

**TECHNICAL ISSUES**

None

**OTHER SUBSTANTIVE ISSUES**

None

**ALTERNATIVES**

None

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

The existing civil penalty structure for violations of the Water Code will remain in place.

**AMENDMENTS**

None