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SENATE BILL

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO WATER; INCREASING THE MAXIMUM PENALTY FOR A VIOLATION OF WATER LAW; PROVIDING FOR AN ANNUAL INCREASE IN PENALTIES FOR A VIOLATION OF WATER LAW TO ACCOUNT FOR INFLATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 72-2-18 NMSA 1978 (being Laws 2001, Chapter 143, Section 1, as amended) is amended to read:

"72-2-18. STATE ENGINEER--ENFORCEMENT--COMPLIANCE ORDERS--PENALTY.--

A. When a person, pursuant to a finding of fact, violates a requirement or prohibition of Chapter 72 NMSA 1978, a regulation, code, order or special order adopted by the state engineer pursuant to Section 72-2-8 NMSA 1978, a condition of a permit or license issued by the state engineer pursuant to law

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1 or an order entered by a court adjudicating a water right, the
2 state engineer may, in addition to any other remedies available
3 under law, issue a compliance order stating with reasonable
4 specificity the nature of the violation and requiring
5 compliance within a specified time period. A compliance order
6 shall not be effective against ~~[any]~~ a party other than the
7 person against whom the compliance order is issued.

8 B. This section shall not be construed to affect or
9 interfere with any jurisdiction of an irrigation district,
10 conservancy district, a state court, a federal court or an
11 Indian nation, tribe or pueblo to enforce its orders and
12 decrees pertaining to water rights.

13 C. A compliance order may include an order to cease
14 the violation of a requirement or prohibition of Chapter 72
15 NMSA 1978, a directive issued in accordance with the provisions
16 of Section 72-2-8 NMSA 1978, a condition of a permit or license
17 issued by the state engineer or an order entered by a court
18 adjudicating a water right.

19 D. The state engineer shall provide an opportunity
20 for the person named in the compliance order to have a hearing
21 on the alleged violation pursuant to Section 72-2-16 NMSA 1978.
22 A hearing shall be held if a written request is made to the
23 state engineer within thirty days after receipt of the notice
24 of the compliance order ~~[sent by certified mail]~~. A compliance
25 order issued pursuant to this section shall become final unless

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1 the person named in the order submits a written request for a
2 hearing to the state engineer within thirty days of receipt of
3 the order. A compliance order shall be enforceable only upon
4 becoming final. Nothing in this section shall prohibit the
5 person named in the order from pursuing an informal resolution
6 of the matter after a timely request for hearing has been made.

7 E. A compliance order may require repayment of
8 water that was overdiverted or illegally diverted. Repayment
9 of water may be up to double the amount of the overdiversion or
10 illegal diversion. In determining the repayment of water
11 beyond the amount overdiverted or illegally diverted, the state
12 engineer shall take into consideration the seriousness of the
13 violation, any good faith efforts to comply with the applicable
14 requirements and any other relevant factors. Any requirement
15 to repay water shall not be enforceable until the compliance
16 order becomes final. Installation of a measuring device may be
17 required prior to any future diversion of water.

18 F. Any appeal to district court shall be conducted
19 pursuant to Chapter 72, Article 7 NMSA 1978 and shall not stay
20 enforcement of the compliance order unless ordered by the
21 district court.

22 G. ~~[After a compliance order becomes final]~~ Prior
23 to issuing a compliance order, the state engineer may issue a
24 written notice of violation. After issuing a written notice of
25 violation, the state engineer may assess a civil penalty of up

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1 to ~~[one hundred dollars (\$100)]~~ two thousand dollars (\$2,000)
2 per day for ~~[violation of the compliance order. Any civil~~
3 ~~penalty assessed shall accrue from the date of assessment of~~
4 ~~the penalty]~~ each day during any portion of which the violation
5 continues. In determining the amount of the civil penalty, the
6 state engineer shall take into consideration the seriousness of
7 the violation, any good faith efforts to comply with the
8 applicable requirements and any other relevant factors. A
9 compliance order may require payment of the assessed civil
10 penalty accruing from the date of the notice of violation. The
11 civil penalty shall not be enforceable until the compliance
12 order becomes final.

13 H. If a person does not comply with a compliance
14 order, the state engineer may file a civil action to enforce
15 the compliance order and receive any of the remedies provided
16 in this section, including injunctive relief.

17 I. On July 1, 2025 and on July 1 of each successive
18 year, the state engineer shall adjust the maximum penalty
19 amount established in Subsection G of this section to account
20 for inflation. The amount shall be increased by the percentage
21 change in the consumer price index, not seasonally adjusted,
22 for all urban consumers, United States city average for all
23 items, or its successor index, as published by the United
24 States department of labor for the preceding calendar year or
25 years beginning January 1, 2024. The amount of the increase,

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1 if any, shall be rounded to the nearest dollar but shall not
2 exceed one hundred fifty percent of the current penalty amount.
3 By June 1, 2025 and by June 1 of each successive year, the
4 state engineer shall post on the state engineer's website the
5 maximum penalty amount for the next fiscal year."

6 SECTION 2. Section 72-5A-12 NMSA 1978 (being Laws 1999,
7 Chapter 285, Section 12) is amended to read:

8 "72-5A-12. PENALTIES.--

9 A. A person who or governmental entity that is
10 determined to be in violation of the Ground Water Storage and
11 Recovery Act or a permit issued or rules adopted pursuant to
12 the act may be assessed a civil penalty in an amount not
13 exceeding:

14 (1) [~~one hundred dollars (\$100)~~] two thousand
15 dollars (\$2,000) per day of violation not directly related to
16 the illegal recovery or use of stored water; or

17 (2) ten thousand dollars (\$10,000) per day
18 of violation directly related to the illegal recovery or use of
19 stored water.

20 B. An action to recover penalties pursuant to this
21 section shall be brought by the state engineer in the district
22 court in which the violation occurred.

23 C. On July 1, 2025 and on July 1 of each successive
24 year, the state engineer shall adjust the maximum penalty
25 amount established in Subsection A of this section to account

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1 for inflation. The amount shall be increased by the percentage
2 change in the consumer price index, not seasonally adjusted,
3 for all urban consumers, United States city average for all
4 items, or its successor index, as published by the United
5 States department of labor for the preceding calendar year or
6 years beginning January 1, 2024. The amount of the increase,
7 if any, shall be rounded to the nearest dollar but shall not
8 exceed one hundred fifty percent of the current penalty amount.
9 By June 1, 2025 and by June 1 of each successive year, the
10 state engineer shall post on the state engineer's website the
11 maximum penalty amount for the next fiscal year."

12 SECTION 3. Section 72-12-14 NMSA 1978 (being Laws 1949,
13 Chapter 178, Section 3) is amended to read:

14 "72-12-14. SUSPENSION OR REVOCATION OF LICENSE--APPEAL--
15 DAMAGES.--~~[Any license issued under the provisions of this act~~
16 ~~may be suspended or revoked by]~~

17 A. Upon notice and after opportunity for a hearing,
18 the state engineer ~~[upon notice and hearing, in the event that~~
19 ~~the license shall have violated any]~~ may suspend or revoke a
20 license issued under the provisions of Sections 72-12-12
21 through 72-12-17 NMSA 1978 for a violation of a condition of
22 [the] a bond maintained [by him] as a prerequisite for [such]
23 the license. Appeals from the decision of the state engineer
24 may be taken to [the district courts of the state] a district
25 court in the same manner [and with like effect] as [now]

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1 provided for other appeals from action of the state engineer.
2 In the event of such breach, the state engineer, on behalf of
3 the state [~~of New Mexico~~] and any other person injured
4 [~~thereby~~] by the breach, is authorized to recover in a civil
5 suit in the district court of the county where the well
6 involved is located, judgment for [~~such~~] damages [~~as may have~~
7 ~~been~~] sustained by reason [~~thereof~~] of the breach. In
8 addition, the state engineer is authorized to recover on behalf
9 of the state [~~of New Mexico~~] a civil penalty in an amount to be
10 determined by the district court [~~in which the action is tried~~]
11 not to exceed [~~(\$1,000.00)~~] ten thousand dollars (\$10,000), and
12 judgment for both damages and penalty shall be against the
13 principal and sureties [~~upon said~~] on the bonds.

14 B. On July 1, 2025 and on July 1 of each successive
15 year, the state engineer shall adjust the maximum penalty
16 amount established in Subsection A of this section to account
17 for inflation. The amount shall be increased by the percentage
18 change in the consumer price index, not seasonally adjusted,
19 for all urban consumers, United States city average for all
20 items, or its successor index, as published by the United
21 States department of labor for the preceding calendar year or
22 years beginning January 1, 2024. The amount of the increase,
23 if any, shall be rounded to the nearest dollar but shall not
24 exceed one hundred fifty percent of the current penalty amount.
25 By June 1, 2025 and by June 1 of each successive year, the

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2 maximum penalty amount for the next fiscal year."

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