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HOUSE BILL 445

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Pauline K. Gubbels

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

**RELATING TO WATER; PROVIDING AUTHORITY TO THE STATE ENGINEER
TO ISSUE COMPLIANCE ORDERS AND OTHER ENFORCEMENT POWERS;
PROVIDING A PENALTY.**

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

**Section 1. STATE ENGINEER-- ENFORCEMENT-- COMPLIANCE
ORDERS-- PENALTY. --**

**A. When a person violates a requirement or
prohibition of Chapter 72 NMSA 1978, a rule adopted by the
state engineer pursuant to those laws, a condition of a permit
or license issued by the state engineer pursuant to those laws
or an order entered by a court adjudicating a water right, the
state engineer may, in addition to any other remedies
available under law:**

(1) issue a compliance order stating with

underscored material = new
[bracketed material] = delete

1 reasonable specificity the nature of the violation and
2 requiring compliance within a specified time period; or

3 (2) commence a civil action in district court
4 for appropriate relief, including a temporary or permanent
5 injunction.

6 B. This section shall not be construed to affect
7 or interfere with the jurisdiction of a court or an Indian
8 nation, tribe or pueblo to enforce its orders and decrees
9 pertaining to water rights.

10 C. A compliance order may include a suspension or
11 revocation of a permit or license or portion of a permit or
12 license issued by the state engineer. A compliance order
13 issued for overdiversion or illegal diversion of water may
14 require repayment of water in an amount up to double the
15 amount of the overdiversion or illegal diversion and
16 installation of a measuring device prior to any future
17 diversion of water. In determining the amount of repayment of
18 water, the state engineer shall take into account the
19 seriousness of the violation, any good faith efforts to comply
20 with the applicable requirements and other relevant factors.

21 D. The state engineer shall not seek enforcement
22 of a compliance order until the order becomes final. A
23 compliance order shall be final unless the person named in the
24 order:

25 (1) submits a written request no later than

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[bracketed material] = delete

1 thirty days after the order is mailed by certified mail,
2 return receipt requested, for a public hearing pursuant to
3 Sections 72-2-16 and 72-2-17 NMSA 1978; or

4 (2) serves a notice of appeal upon the state
5 engineer, in accordance with Section 72-7-1 NMSA 1978, within
6 thirty days after receipt by certified mail, return receipt
7 requested, of the order. Any appeal to district court shall
8 be conducted pursuant to Chapter 72, Article 7 NMSA 1978.

9 E. The state engineer may assess a civil penalty
10 of up to one hundred dollars (\$100) per day for violation of a
11 final compliance order.