

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 445

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

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, issue a compliance order stating with
reasonable specificity the nature of the violation and

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1 requiring compliance within a specified time period.

2 B. This section shall not be construed to affect
3 or interfere with the jurisdiction of a federal court or an
4 Indian nation, tribe or pueblo to enforce its orders and
5 decrees pertaining to water rights.

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

17 D. The state engineer shall provide for the person
18 named in the compliance order an opportunity to contest
19 informally the alleged violation with the office of the state
20 engineer and a public hearing pursuant to Sections 72-2-16 and
21 72-2-17 NMSA 1978. If the person wants a public hearing, he
22 shall submit a written request no later than thirty days after
23 issuance of a compliance order by certified mail, return
24 receipt requested, or serve a notice of appeal upon the state
25 engineer, in accordance with Section 72-7-1 NMSA 1978, within

1 thirty days after receipt of a compliance order. A compliance
2 order is final upon action by the state engineer within thirty
3 days after a public hearing or within thirty days of an appeal
4 pursuant to Section 72-7-1 NMSA 1978.

5 E. The state engineer shall not seek enforcement
6 of a compliance order until it is final. Any appeal to
7 district court shall be conducted pursuant to Chapter 72,
8 Article 7 NMSA 1978.

9 F. 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.

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

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