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HOUSE BILL 794

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Joe M. Stell

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; PROVIDING FOR STATE ENGINEER ENFORCEMENT OF COMPLIANCE ORDERS.

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) 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 ~~[rule]~~ directive adopted by the state engineer pursuant to ~~[those laws]~~ Section 72-2-8 NMSA 1978, a condition of a permit or license issued by the state engineer pursuant to ~~[those laws]~~ law or an order entered by a court adjudicating a water right, the state engineer may, in addition to any other

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1 remedies available under law, issue a compliance order stating
2 with reasonable specificity the nature of the violation and
3 requiring compliance within a specified time period.

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

8 C. A compliance order may include an order to cease
9 the violation of a ~~[permit or license or portion of a permit or~~
10 ~~license issued by the state engineer. A compliance order~~
11 ~~issued for overdiversion or illegal diversion of water may~~
12 ~~require repayment of water in an amount up to double the amount~~
13 ~~of the overdiversion or illegal diversion and installation of a~~
14 ~~measuring device prior to any future diversion of water. In~~
15 ~~determining the amount of repayment of water, the state~~
16 ~~engineer shall take into account the seriousness of the~~
17 ~~violation, any good faith efforts to comply with the applicable~~
18 ~~requirements and other relevant factors] requirement or~~
19 prohibition of Chapter 72 NMSA 1978, a directive issued in
20 accordance with the provisions of Section 72-2-8 NMSA 1978, a
21 condition of a permit or license issued by the state engineer
22 or an order entered by a court adjudicating a water right.

23 D. The state engineer shall provide an opportunity
24 for the person named in the compliance order ~~[an opportunity to~~
25 ~~contest informally the alleged violation with the office of the~~

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1 ~~state engineer and a public hearing pursuant to Sections 72-2-~~
2 ~~16 and 72-2-17 NMSA 1978. If the person wants a public~~
3 ~~hearing, he shall submit a written request no later than thirty~~
4 ~~days after issuance of a compliance order by certified mail,~~
5 ~~return receipt requested, or serve a notice of appeal upon the~~
6 ~~state engineer, in accordance with Section 72-7-1 NMSA 1978,~~
7 ~~within thirty days after receipt of a compliance order. A~~
8 ~~compliance order is final upon action by the state engineer~~
9 ~~within thirty days after a public hearing or within thirty days~~
10 ~~of an appeal pursuant to Section 72-7-1 NMSA 1978.~~

11 E. ~~The state engineer shall not seek enforcement of~~
12 ~~a compliance order until it is final] to have a hearing on the~~
13 ~~alleged violation pursuant to Section 72-2-16 NMSA 1978. A~~
14 ~~hearing shall be held if a written request is made to the state~~
15 ~~engineer within thirty days after receipt of notice of the~~
16 ~~compliance order sent by certified mail. A compliance order~~
17 ~~issued pursuant to this section shall become final unless the~~
18 ~~person named in the order submits a written request for a~~
19 ~~hearing to the state engineer within thirty days of receipt of~~
20 ~~the order. Nothing in this section shall prohibit the person~~
21 ~~named in the order from pursuing an informal resolution of the~~
22 ~~matter after a timely request for hearing has been made.~~

23 E. A compliance order may require repayment of
24 water that was overdiverted or illegally diverted. Repayment
25 of water may be up to double the amount of the overdiversion or

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1 illegal diversion. In determining the repayment of water
2 beyond the amount overdiverted or illegally diverted, the state
3 engineer shall take into consideration the seriousness of the
4 violation, any good faith efforts to comply with the applicable
5 requirements and any other relevant factors. Installation of a
6 measuring device may be required prior to any future diversion
7 of water.

8 F. Any appeal to district court shall be conducted
9 pursuant to [~~Chapter 72, Article 7~~] Sections 72-2-16 and 72-7-1
10 NMSA 1978.

11 [~~F.~~] G. The state engineer may assess a civil
12 penalty of up to one hundred dollars (\$100) per day for
13 violation of a [~~final~~] compliance order.

14 [~~G.~~] H. If a [~~final compliance order is issued and~~
15 ~~the~~] person does not comply with a compliance order, the state
16 engineer may file a civil action to enforce the compliance
17 order and receive any of the remedies provided in this section,
18 including injunctive relief."

19 Section 2. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is May 18, 2006.