

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, pursuant to a finding of fact, 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 requiring compliance within a specified time period.

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

C. A compliance order may include an order to cease the violation of a permit or license or portion of a permit or license issued by the state engineer. A compliance

order issued for overdiversion or illegal diversion of water may require repayment of water in an amount up to double the amount of the overdiversion or illegal diversion and installation of a measuring device prior to any future diversion of water. In determining the amount of repayment of water, the state engineer shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors.

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

E. The state engineer shall not seek enforcement of a compliance order until it is final. Any appeal to

district court shall be conducted pursuant to Chapter 72, Article 7 NMSA 1978.

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

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

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