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HOUSE BILL 917

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO WATER; PROVIDING PROCEDURES FOR PROSECUTING VIOLATIONS OF LAWS CONCERNING THE MISUSE OF WATER AND INTERFERENCE WITH EASEMENTS FOR OR ACCESS TO CERTAIN IRRIGATION DITCHES; CREATING AND INCREASING PENALTIES; PROVIDING FOR CIVIL REMEDIES.

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

Section 1. Section 73-2-5 NMSA 1978 (being Laws 1933, Chapter 65, Section 1, as amended) is amended to read:

"73-2-5. DITCH OVER LAND OF ANOTHER--EASEMENT--RIGHT OF SERVIENT OWNER--PENALTY.--

A. Hereafter in all cases where there has been a continuous use of a ditch for the purposes of irrigation for five years, it shall be conclusively presumed as between the parties that a grant has been made by the owners of the land,

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1 upon which such ditch is located, for the use of the same and  
2 it is unlawful to interfere with that easement or prevent  
3 access to the ditch by the owner of the dominant estate as  
4 provided by law; provided that nothing herein contained shall  
5 be construed to prevent the owner of a servient estate from  
6 making any alterations or changes in the location of any ditch  
7 upon his land, so long as such [~~alternation~~] alteration or  
8 change of location shall not interfere with the use of or  
9 access to such ditch by the owner [~~or owners~~] of the dominant  
10 estate [~~or estates~~].

11 B. In the case of a community ditch or acequia, a  
12 criminal complaint for a violation of the provisions of  
13 Subsection A of this section may be made by the district  
14 attorney or the mayordomo or commission of the ditch or acequia  
15 to the magistrate court in a county where the ditch or acequia  
16 is completely or partially located. A person convicted of  
17 violating the provisions of Subsection A of this section is  
18 guilty of a misdemeanor and on conviction, the defendant shall  
19 be fined not less than three hundred dollars (\$300) nor more  
20 than one thousand dollars (\$1,000) or sentenced up to ninety  
21 days imprisonment in the county jail, or both.

22 C. In the case of a community ditch or acequia, in  
23 lieu of a criminal complaint, the district attorney or the  
24 mayordomo or commission of the ditch or acequia may file a  
25 civil complaint seeking a civil penalty not to exceed five

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1 thousand dollars (\$5,000) for knowingly, intentionally or  
2 willfully violating the provisions of Subsection A of this  
3 section.

4 D. The remedies provided for in this section shall  
5 not be construed as limiting the right of the party bringing  
6 the civil or criminal complaint from seeking damages. In  
7 addition to the remedies provided in this section, the district  
8 attorney, mayordomo or commission of the ditch or acequia or  
9 owner of the dominant estate may apply to the district court of  
10 the county where the ditch or acequia is completely or  
11 partially located or where the defendant resides for a  
12 prohibitory or mandatory injunction restraining any person from  
13 violating or continuing to violate the provisions of Subsection  
14 A of this section; provided, however, that the applicant shall  
15 not be required to post bond in seeking such injunction."

16 Section 2. Section 73-2-64 NMSA 1978 (being Laws 1923,  
17 Chapter 81, Section 1) is amended to read:

18 "73-2-64. INTERFERENCE WITH DITCH--ILLEGAL WATER USE--  
19 PENALTY--FAILURE TO PROSECUTE--INJUNCTIVE RELIEF.--[Any]

20 A. A person [not the owner or duly authorized  
21 representative of the owner of a water right in any community  
22 ditch of this state, or any such owner or representative, who]  
23 shall not, contrary to the order of the mayordomo [or  
24 commissioner or other person in charge], cut, break, stop up or  
25 otherwise interfere with any community ditch or dam in this

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1 state, or any contra or lateral acequia thereof, or take or use  
2 water from the same contrary to such orders [~~shall be~~]. A  
3 person who violates a provision of this section is guilty of a  
4 misdemeanor, and, on complaint made before the nearest [Justice  
5 of the Peace] magistrate court, a warrant shall issue for his  
6 arrest, as in case of any other offense against the state [and  
7 on].

8 B. A criminal complaint for violations of the  
9 provisions of Subsection A of this section may be made by the  
10 district attorney or the mayordomo or commission of the ditch  
11 or acequia to the magistrate court in a county where the ditch  
12 or acequia is completely or partially located. Upon conviction  
13 of a violation, the defendant shall be fined [in a sum of] not  
14 less than [(\$10.00) nor] three hundred dollars (\$300) or more  
15 than [(\$50.00)] one thousand dollars (\$1,000) and in default of  
16 the payment of said fine, shall be confined in the county jail  
17 for a period of not less than five nor more than thirty days  
18 [and].

19 C. In lieu of a criminal complaint, the district  
20 attorney or the mayordomo or commission of the ditch or acequia  
21 may file a civil complaint seeking a civil penalty not to  
22 exceed five thousand dollars (\$5,000) for knowingly,  
23 intentionally or willfully violating the provisions of  
24 Subsection A of this section.

25 D. The remedies provided for in this section shall

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1 not be construed as limiting the right of the party bringing  
2 the civil or criminal complaint from seeking damages. In  
3 addition to the remedies provided in this section, the district  
4 attorney or the mayordomo or commission of the ditch or acequia  
5 may apply to the district court of the county where the ditch  
6 or acequia is completely or partially located or where the  
7 defendant resides for a prohibitory or mandatory injunction  
8 restraining any person from violating or continuing to violate  
9 the provisions of Subsection A of this section; provided,  
10 however, that the applicant shall not be required to post bond  
11 in seeking such injunction.

12 E. It is [~~hereby made~~] the duty of the mayordomo  
13 [~~or other person~~] in charge of any such ditch or acequia to  
14 prosecute in the name of the state [~~of New Mexico~~] any  
15 violation of this [~~Act~~] section whenever he [~~shall obtain~~]  
16 acquires knowledge thereof, and his failure so to do shall be  
17 deemed a misdemeanor [~~and~~]; provided, however, that if the  
18 district attorney chooses to prosecute, the mayordomo shall not  
19 be required to do so. On conviction [~~thereof~~] of violating the  
20 provisions of this subsection, the mayordomo shall be fined in  
21 a sum not less than [~~(\$25.00) nor~~] three hundred dollars (\$300)  
22 or more than [~~(\$50.00)] one thousand dollars (\$1,000) or by~~  
23 imprisonment in the county jail for not less than ten [~~nor~~] or  
24 more than thirty days."