

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, upon which such ditch is located, for the use of the same and it is unlawful to interfere with that easement or prevent access to the ditch by the owner of the dominant estate as provided by law; provided that nothing herein contained shall be construed to prevent the owner of a servient estate from making any alterations or changes in the location of any ditch upon his land, so long as such alteration or change of location shall not interfere with the use of or access to such ditch by the owner of the dominant estate. For the purposes

of this section, the easement created pursuant to this section shall be adequate to allow for reasonable maintenance, use and improvements to the ditch.

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

C. In the case of a community ditch or acequia, in addition to criminal prosecution, the district attorney or the mayordomo or commission of the ditch or acequia may file a civil complaint seeking a civil penalty not to exceed five thousand dollars (\$5,000) for knowingly, intentionally or willfully violating the provisions of Subsection A of this section.

D. The remedies provided for in this section shall not be construed as limiting the right of the party bringing the civil or criminal complaint from seeking damages. In addition to the remedies provided in this section, the

district attorney, mayordomo or commission of the ditch or acequia or owner of the dominant estate may apply to the district court of the county where the violation occurred for an injunction restraining any person from violating or continuing to violate the provisions of Subsection A of this section."

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

"73-2-64. INTERFERENCE WITH DITCH--ILLEGAL WATER USE--PENALTY--FAILURE TO PROSECUTE--INJUNCTIVE RELIEF.--

A. A person shall not, contrary to the order of the mayordomo or commission, cut, break, stop up or otherwise interfere with any community ditch or dam in this state, or any contra or lateral acequia thereof, or take or use water from the same contrary to such orders. A person who violates a provision of this section is guilty of a misdemeanor, and, on complaint made before the nearest magistrate court, a warrant may issue for his arrest, as in case of any other offense against the state.

B. A criminal complaint for violations of the provisions of Subsection A of this section may be made by the district attorney or the mayordomo or commission of the ditch or acequia to the magistrate court in a county where the violation occurred. Upon conviction of a violation, the defendant shall be fined not less than three hundred dollars

(\$300) or more than one thousand dollars (\$1,000) and in default of the payment of said fine, shall be confined in the county jail for a period of not less than five nor more than thirty days.

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

D. The remedies provided for in this section shall not be construed as limiting the right of the party bringing the civil or criminal complaint from seeking damages. In addition to the remedies provided in this section, the district attorney or the mayordomo or commission of the ditch or acequia may apply to the district court of the county where the violation occurred for an injunction restraining any person from violating or continuing to violate the provisions of Subsection A of this section.

E. It is the duty of the mayordomo in charge of any such ditch or acequia to prosecute in the name of the state any violation of this section whenever the mayordomo acquires knowledge thereof, and the mayordomo's failure so to do shall be deemed a misdemeanor; provided, however, that if the district attorney chooses to prosecute, the mayordomo

shall not be required to do so. On conviction of violating the provisions of this subsection, the mayordomo shall be fined in a sum not less than (\$25.00) nor more than (\$50.00) or by imprisonment in the county jail for not less than ten or more than thirty days." _____

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