

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 580

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Joseph Cervantes

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

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

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
5 or interfere with the jurisdiction of ~~[an irrigation district]~~
6 a federal court or an Indian nation, tribe or pueblo to
7 enforce its orders and decrees pertaining to water rights.

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

24 D. The state engineer shall provide an opportunity
25 for the person named in the compliance order ~~[an opportunity~~

underscored material = new
[bracketed material] = delete

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

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

25 E. A compliance order may require repayment of

underscored material = new
[bracketed material] = delete

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

10 F. Any appeal to district court shall be conducted
11 pursuant to [~~Chapter 72, Article 7~~] Sections 72-2-16 and 72-7-
12 1 NMSA 1978.

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

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

21 Section 2. EFFECTIVE DATE. -- The effective date of the
22 provisions of this act is June 15, 2007.