

HOUSE FLOOR SUBSTITUTE FOR  
HOUSE BILL 580

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

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]~~ regulation, code, order or special order 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

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1 addition to any other remedies available under law, issue a  
2 compliance order stating with reasonable specificity the nature  
3 of the violation and requiring compliance within a specified  
4 time period. A compliance order shall not be effective against  
5 any party other than the person against whom the compliance  
6 order is issued.

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

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

1 or an order entered by a court adjudicating a water right.

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

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

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1 person named in the order from pursuing an informal resolution  
2 of the matter after a timely request for hearing has been made.

3 E. A compliance order may require repayment of  
4 water that was overdiverted or illegally diverted. Repayment  
5 of water may be up to double the amount of the overdiversion or  
6 illegal diversion. In determining the repayment of water  
7 beyond the amount overdiverted or illegally diverted, the state  
8 engineer shall take into consideration the seriousness of the  
9 violation, any good faith efforts to comply with the applicable  
10 requirements and any other relevant factors. Any requirement  
11 to repay water shall not be enforceable until the compliance  
12 order becomes final. Installation of a measuring device may be  
13 required prior to any future diversion of water.

14 F. Any appeal to district court shall be conducted  
15 pursuant to Chapter 72, Article 7 NMSA 1978 and shall not stay  
16 enforcement of the compliance order unless ordered by the  
17 district court.

18 ~~[F.]~~ G. After a compliance order becomes final, the  
19 state engineer may assess a civil penalty of up to one hundred  
20 dollars (\$100) per day for violation of ~~[a final]~~ the  
21 compliance order. Any civil penalty assessed shall accrue from  
22 the date of assessment of the penalty.

23 ~~[G.]~~ H. If a ~~[final compliance order is issued and~~  
24 the] person does not comply with a compliance order, the state  
25 engineer may file a civil action to enforce the compliance

1 order and receive any of the remedies provided in this section,  
2 including injunctive relief."

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

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