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HOUSE BILL 215

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

PAULINE K. GUBBELS

FOR THE WATER, UTILITIES AND NATURAL RESOURCES COMMITTEE

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. Whenever the state engineer determines that any person or legal entity has violated any requirement or prohibition of Chapter 72 NMSA 1978, any regulation adopted by the state engineer pursuant to those laws, or any condition of a permit or license issued by the state engineer pursuant to those laws, or any order entered by a court adjudicating a water right, the state engineer may, in addition to any other remedies available under law:

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1 (1) issue a compliance order stating with
2 reasonable specificity the nature of the violation and
3 requiring compliance within a specified time period or
4 assessing a civil penalty for violation of a compliance order,
5 or both; or

6 (2) commence a civil action in district court
7 for appropriate relief, including a temporary or permanent
8 injunction.

9 B. This section shall in no way be construed to
10 affect or interfere with the jurisdiction of a court or an
11 Indian nation, tribe or pueblo to enforce its orders and
12 decrees pertaining to water rights.

13 C. A compliance order issued pursuant to this
14 section may include a suspension or revocation of a permit or
15 license or portion of a permit or license issued by the state
16 engineer and, if issued for overdiversion or illegal diversion
17 of water, may require repayment of water in an amount up to
18 double the amount of the overdiversion or illegal diversion
19 and installation of a measuring device approved by the state
20 engineer prior to any future diversion of water. In
21 determining the amount of the penalty to be assessed pursuant
22 to this subsection, the state engineer shall take into account
23 the seriousness of the violation, any good-faith efforts to
24 comply with the applicable requirements and other relevant
25 factors.

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1 D. The following civil penalties may be assessed
2 by the state engineer pursuant to this section:

3 (1) for violating a compliance order issued
4 for the illegal diversion of water, up to one hundred dollars
5 (\$100) per day if no previous violation of state engineer
6 compliance orders by the violator has occurred, up to two
7 hundred fifty dollars (\$250) per day if one previous violation
8 has occurred and up to five hundred dollars (\$500) per day if
9 two or more previous violations have occurred; and

10 (2) for violating a compliance order issued
11 for the overdiversion of water or for other violations, up to
12 fifty dollars (\$50.00) per day if no previous violation of
13 state engineer compliance orders by the violator has occurred,
14 up to one hundred fifty dollars (\$150) per day if one previous
15 violation has occurred and up to five hundred dollars (\$500)
16 per day if two or more previous violations have occurred.

17 E. A compliance order issued pursuant to this
18 section shall become final unless the person or legal entity
19 named in the order:

20 (1) submits a written request no later than
21 thirty days after the order is mailed by certified mail,
22 return receipt requested, for a public hearing pursuant to
23 Section 72-2-16 NMSA 1978, and pending the issuance of the
24 final order after the hearing, the enforcement of a civil
25 penalty pursuant to the compliance order shall be suspended;

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or

(2) serves a notice of appeal upon the state engineer, in accordance with Section 72-7-1 NMSA 1978, within thirty days after receipt by certified mail, return receipt requested, of the order. Any appeal to district court shall be conducted pursuant to Chapter 72, Article 7 NMSA 1978.

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3
4
5
6 February 3, 1998

7
8 Mr. Speaker:

9
10 Your AGRICULTURE AND WATER RESOURCES COMMITTEE,
11 to whom has been referred

12
13 HOUSE BILL 215

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

- 17 1. On page 2, line 3, strike "or".
- 18
19 2. On page 2, lines 4 and 5, strike "assessing a civil
20 penalty for violation of a compliance order, or both".
- 21
22 3. On page 3, line 2, strike the colon and insert in lieu
23 thereof a comma.
- 24
25 4. On page 3, line 3, strike "(1)", after the word "a"
insert "final" and strike "issued".

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

HAGC/HB 215

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5. On page 3, line 4, strike "for the illegal diversion of water".

6. On page 3, line 9, strike "; and" and insert in lieu thereof a period.

7. On page 3, strike all of lines 10 through 16.

8. On page 3, line 23, strike "Section" and insert in lieu thereof "Sections".

9. On page 3, line 23, after "72-2-16" insert "and 72-2-17".

and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

G. X. McSherry, Chairman

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HAGC/HB 215

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4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

6
7 Date _____

8
9 The roll call vote was 7 For 0 Against

10 Yes: 7

11 Excused: Porter, Wright

12 Absent: 0

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1 **FORTY-THIRD LEGISLATURE**
2 **SECOND SESSION, 1998**

3
4 **February 13, 1998**

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6
7 **Mr. Speaker:**

8
9 **Your JUDICIARY COMMITTEE, to whom has been referred**

10 **HOUSE BILL 215, as amended**

11
12 **has had it under consideration and reports same with**
13 **recommendation that it DO PASS.**

14
15 **Respectfully submitted,**

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18
19 _____
20 **Thomas P. Foy, Chairman**

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

3 HGAC/HJC/HB 215/a

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4 Adopted _____ Not Adopted _____

6 (Chief Clerk)

(Chief Clerk)

8 Date _____

10 The roll call vote was 8 For 0 Against

11 Yes: 8

12 Excused: King, Luna, Pederson, Sanchez, Stewart

13 Absent: None

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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February 17, 1998

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Mr. President:

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Your CONSERVATION COMMITTEE, to whom has been referred

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HOUSE BILL 215, as amended

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has had it under consideration and reports same with
recommendation that it DO PASS.

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Respectfully submitted,

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Michael S. Sanchez, Chairman

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1 HGAC/HJC/HB 215/a

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2 Adopted _____ Not

3 Adopted _____

4 (Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 4 For 2 Against

11

Yes: 4

12

No: Davis, Lyons

13

Excused: Griego, Kysar, Payne, Tsosie

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Absent: None

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