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HOUSE BILL 168

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY
Pauline K. Gubbels

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

(1) issue a compliance order stating with
reasonable specificity the nature of the violation and

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1 requiring compliance within a specified time period; or

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

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

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

22 D. The state engineer may assess a civil penalty
23 up to one hundred dollars (\$100) per day pursuant to this
24 section for violation of a final compliance order.

25 E. The state engineer shall not seek enforcement
of a compliance order or a fine until the order becomes final
pursuant to this section.

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

(1) submits a written request no later than thirty days after the order is mailed by certified mail, return receipt requested, for a public hearing pursuant to Sections 72-2-16 and 72-2-17 NMSA 1978, and pending the issuance of the final order after the hearing, the enforcement of a civil penalty pursuant to the compliance order shall be suspended; 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.