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HOUSE BILL 960

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO WATER; SETTING A DEFINITE TIME WITHIN WHICH
COMPLIANCE ORDERS SHALL BE APPEALED OR FINALIZED.

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 adopted by the state engineer pursuant to those laws, 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, issue a compliance

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1 order stating with reasonable specificity the nature of the
2 violation and requiring compliance within a specified time
3 period.

4 B. This section shall not be construed to affect or
5 interfere with the jurisdiction of an irrigation district, a
6 federal court or an Indian nation, tribe or pueblo to enforce
7 its orders and decrees pertaining to water rights.

8 C. A compliance order may include an order to cease
9 the violation of a permit or license or portion of a permit or
10 license issued by the state engineer. A compliance order
11 issued for overdiversion or illegal diversion of water may
12 require repayment of water in an amount up to double the amount
13 of the overdiversion or illegal diversion and installation of a
14 measuring device prior to any future diversion of water. In
15 determining the amount of repayment of water, the state
16 engineer shall take into account the seriousness of the
17 violation, any good faith efforts to comply with the applicable
18 requirements and other relevant factors.

19 D. ~~[The state engineer shall provide for the person~~
20 ~~named in the compliance order an opportunity to contest~~
21 ~~informally the alleged violation with the office of the state~~
22 ~~engineer and a public hearing pursuant to Sections 72-2-16 and~~
23 ~~72-2-17 NMSA 1978. If the person wants a public hearing, he~~
24 ~~shall submit a written request no later than thirty days after~~
25 ~~issuance of a compliance order by certified mail, return~~

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1 ~~receipt requested, or serve a notice of appeal upon the state~~
2 ~~engineer, in accordance with Section 72-7-1 NMSA 1978, within~~
3 ~~thirty days after receipt of a compliance order. A compliance~~
4 ~~order is final upon action by the state engineer within thirty~~
5 ~~days after a public hearing or within thirty days of an appeal~~
6 ~~pursuant to Section 72-7-1 NMSA 1978.]~~ The state engineer
7 shall give notice by certified mail, return receipt requested,
8 to the person named in the compliance order of the alleged
9 violation, who shall have thirty days to contest informally the
10 alleged violation with the office of the state engineer and may
11 request within thirty days of the notice that a hearing be held
12 pursuant to Sections 72-2-16 and 72-2-17 NMSA 1978. If a
13 settlement is not reached within thirty days of the notice, the
14 compliance order shall be considered a final order, unless the
15 person aggrieved by the order has requested a hearing. A
16 person requesting a hearing shall submit a written request to
17 the state engineer, no later than thirty days after
18 notification of the issuance of the compliance order.

19 E. The state engineer shall not seek enforcement of
20 a compliance order until it is final or, if a hearing is
21 requested, until a decision is reached after the administrative
22 hearing. Any appeal to district court shall be conducted
23 pursuant to Chapter 72, Article 7 NMSA 1978.

24 F. The state engineer may assess a civil penalty of
25 up to one hundred dollars (\$100) per day for violation of a

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1 final compliance order.

2 G. If a final compliance order is issued and the
3 person does not comply, the state engineer may file a civil
4 action to enforce the compliance order and receive any of the
5 remedies provided in this section, including injunctive
6 relief. "

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