

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 regulation, code, order or special order adopted by the state engineer pursuant to Section 72-2-8 NMSA 1978, a condition of a permit or license issued by the state engineer pursuant to law 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 order stating with reasonable specificity the nature of the violation and requiring compliance within a specified time period. A compliance order shall not be effective against any party other than the person against whom the compliance order is issued.

B. This section shall not be construed to affect or interfere with any jurisdiction of an irrigation district, conservancy district, a state court, a federal court or an

Indian nation, tribe or pueblo to enforce its orders and decrees pertaining to water rights.

C. A compliance order may include an order to cease the violation of a requirement or prohibition of Chapter 72 NMSA 1978, a directive issued in accordance with the provisions of Section 72-2-8 NMSA 1978, a condition of a permit or license issued by the state engineer or an order entered by a court adjudicating a water right.

D. The state engineer shall provide an opportunity for the person named in the compliance order to have a hearing on the alleged violation pursuant to Section 72-2-16 NMSA 1978. A hearing shall be held if a written request is made to the state engineer within thirty days after receipt of the notice of the compliance order sent by certified mail. A compliance order issued pursuant to this section shall become final unless the person named in the order submits a written request for a hearing to the state engineer within thirty days of receipt of the order. A compliance order shall be enforceable only upon becoming final. Nothing in this section shall prohibit the person named in the order from pursuing an informal resolution of the matter after a timely request for hearing has been made.

E. A compliance order may require repayment of water that was overdiverted or illegally diverted. Repayment of water may be up to double the amount of the overdiversion

or illegal diversion. In determining the repayment of water beyond the amount overdiverted or illegally diverted, the state engineer shall take into consideration the seriousness of the violation, any good faith efforts to comply with the applicable requirements and any other relevant factors. Any requirement to repay water shall not be enforceable until the compliance order becomes final. Installation of a measuring device may be required prior to any future diversion of water.

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

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

H. If a person does not comply with a compliance order, the state engineer may file a civil action to enforce the compliance order and receive any of the remedies provided in this section, including injunctive relief."

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