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SENATE BILL 380

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Antoinette Sedillo Lopez

AN ACT

RELATING TO WATER; AUTHORIZING THE OFFICE OF THE STATE ENGINEER TO INSPECT PERMIT AND LICENSE HOLDER RECORDS; INCREASING THE MAXIMUM PENALTY FOR A VIOLATION OF WATER LAW; PROVIDING FOR AN ANNUAL INCREASE IN PENALTIES FOR A VIOLATION OF WATER LAW TO ACCOUNT FOR INFLATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 72, Article 2 NMSA 1978 is enacted to read:

"[NEW MATERIAL] INSPECTION OF PERMIT OR LICENSE HOLDER RECORDS.--Owners and lessees of adjudicated, declared, permitted or licensed water rights shall allow the state engineer, the water masters and their authorized assistants and agents to inspect or copy records or documents relating to authorized or unauthorized uses of water and shall furnish

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1 copies of such records or documents upon request."

2 SECTION 2. Section 72-2-18 NMSA 1978 (being Laws 2001,
3 Chapter 143, Section 1, as amended) is amended to read:

4 "72-2-18. STATE ENGINEER--ENFORCEMENT--COMPLIANCE
5 ORDERS--PENALTY.--

6 A. When a person, pursuant to a finding of fact,
7 violates a requirement or prohibition of Chapter 72 NMSA 1978,
8 a regulation, code, order or special order adopted by the state
9 engineer pursuant to Section 72-2-8 NMSA 1978, a condition of a
10 permit or license issued by the state engineer pursuant to law
11 or an order entered by a court adjudicating a water right, the
12 state engineer may, in addition to any other remedies available
13 under law, issue a compliance order stating with reasonable
14 specificity the nature of the violation and requiring
15 compliance within a specified time period. A compliance order
16 shall not be effective against ~~[any]~~ a party other than the
17 person against whom the compliance order is issued.

18 B. This section shall not be construed to affect or
19 interfere with any jurisdiction of an irrigation district,
20 conservancy district, a state court, a federal court or an
21 Indian nation, tribe or pueblo to enforce its orders and
22 decrees pertaining to water rights.

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

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

17 E. A compliance order may require repayment of
18 water that was overdiverted or illegally diverted. Repayment
19 of water may be up to double the amount of the overdiversion or
20 illegal diversion. In determining the repayment of water
21 beyond the amount overdiverted or illegally diverted, the state
22 engineer shall take into consideration the seriousness of the
23 violation, any good faith efforts to comply with the applicable
24 requirements and any other relevant factors. Any requirement
25 to repay water shall not be enforceable until the compliance

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1 order becomes final. Installation of a measuring device may be
2 required prior to any future diversion of water.

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

7 G. After [~~a compliance order becomes final~~]
8 issuing a written notice of violation, the state engineer may
9 assess a civil penalty of up to [~~one hundred dollars (\$100)~~]
10 two thousand dollars (\$2,000) per day for [~~violation of the~~
11 ~~compliance order. Any civil penalty assessed shall accrue from~~
12 ~~the date of assessment of the penalty~~] each day during any
13 portion of which the violation continues. A compliance order
14 may require that the person pay the assessed civil penalty.
15 The penalty is not enforceable until the compliance order
16 becomes final.

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

21 I. On July 1, 2024 and on July 1 of each successive
22 year, the state engineer shall adjust the maximum penalty
23 amount established in Subsection G of this section to account
24 for inflation. The amount shall be increased by the percentage
25 change in the consumer price index, not seasonally adjusted,

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1 for all urban consumers, United States city average for all
2 items, or its successor index, as published by the United
3 States department of labor for the preceding calendar year or
4 years beginning January 1, 2023. The amount of the increase,
5 if any, shall be rounded to the nearest dollar but shall not
6 exceed one hundred fifty percent of the current penalty amount.
7 By June 1, 2024 and by June 1 of each successive year, the
8 state engineer shall post on the state engineer's website the
9 maximum penalty amount for the next fiscal year."

10 SECTION 3. Section 72-5A-12 NMSA 1978 (being Laws 1999,
11 Chapter 285, Section 12) is amended to read:

12 "72-5A-12. PENALTIES.--

13 A. A person who or governmental entity that is
14 determined to be in violation of the Ground Water Storage and
15 Recovery Act or a permit issued or rules adopted pursuant to
16 the act may be assessed a civil penalty in an amount not
17 exceeding:

18 (1) [~~one hundred dollars (\$100)~~] two thousand
19 dollars (\$2,000) per day of violation not directly related to
20 the illegal recovery or use of stored water; or

21 (2) ten thousand dollars (\$10,000) per day
22 of violation directly related to the illegal recovery or use of
23 stored water.

24 B. An action to recover penalties pursuant to this
25 section shall be brought by the state engineer in the district

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1 court in which the violation occurred.

2 C. On July 1, 2024 and on July 1 of each successive
3 year, the state engineer shall adjust the maximum penalty
4 amount established in Subsection A of this section to account
5 for inflation. The amount shall be increased by the percentage
6 change in the consumer price index, not seasonally adjusted,
7 for all urban consumers, United States city average for all
8 items, or its successor index, as published by the United
9 States department of labor for the preceding calendar year or
10 years beginning January 1, 2023. The amount of the increase,
11 if any, shall be rounded to the nearest dollar but shall not
12 exceed one hundred fifty percent of the current penalty amount.
13 By June 1, 2024 and by June 1 of each successive year, the
14 state engineer shall post on the state engineer's website the
15 maximum penalty amount for the next fiscal year."

16 SECTION 4. Section 72-12-14 NMSA 1978 (being Laws 1949,
17 Chapter 178, Section 3) is amended to read:

18 "72-12-14. SUSPENSION OR REVOCATION OF LICENSE--APPEAL--
19 DAMAGES.--[Any license issued under the provisions of this act
20 may be suspended or revoked by]

21 A. Upon notice and hearing, the state engineer
22 [upon notice and hearing, in the event that the license shall
23 have violated any] may suspend or revoke a license issued under
24 the provisions of Sections 72-12-12 through 72-12-17 NMSA 1978
25 for a violation of a condition of [the] a bond maintained [by

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1 him] as a prerequisite for [~~such~~] the license. Appeals from
2 the decision of the state engineer may be taken to [~~the~~
3 ~~district courts of the state~~] a district court in the same
4 manner [~~and with like effect~~] as [~~now~~] provided for other
5 appeals from action of the state engineer. In the event of
6 such breach, the state engineer, on behalf of the state [~~of New~~
7 ~~Mexico~~] and any other person injured [~~thereby~~] by the breach,
8 is authorized to recover in a civil suit in the district court
9 of the county where the well involved is located, judgment for
10 [~~such~~] damages [~~as may have been~~] sustained by reason [~~thereof~~]
11 of the breach. In addition, the state engineer is authorized
12 to recover on behalf of the state [~~of New Mexico~~] a civil
13 penalty in an amount to be determined by the district court [~~in~~
14 ~~which the action is tried~~] not to exceed [~~\$1,000.00~~] ten
15 thousand dollars (\$10,000), and judgment for both damages and
16 penalty shall be against the principal and sureties [~~upon said~~]
17 on the bonds.

18 B. On July 1, 2024 and on July 1 of each successive
19 year, the state engineer shall adjust the maximum penalty
20 amount established in Subsection A of this section to account
21 for inflation. The amount shall be increased by the percentage
22 change in the consumer price index, not seasonally adjusted,
23 for all urban consumers, United States city average for all
24 items, or its successor index, as published by the United
25 States department of labor for the preceding calendar year or

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1 years beginning January 1, 2023. The amount of the increase,
2 if any, shall be rounded to the nearest dollar but shall not
3 exceed one hundred fifty percent of the current penalty amount.
4 By June 1, 2024 and by June 1 of each successive year, the
5 state engineer shall post on the state engineer's website the
6 maximum penalty amount for the next fiscal year."