AN ACT

RELATING TO WATER; INCREASING THE MAXIMUM PENALTY FOR A VIOLATION OF WATER LAW.

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, as amended) 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 a 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, a 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. If service by certified mail is not possible, the state engineer may serve the compliance order by process server or other effective means. Notice shall be deemed effective when delivered to the address of record of the person named in the compliance order. 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. The state engineer shall not pursue a civil penalty pursuant to Subsection G of this section for an overdiversion of a water right. This subsection shall not be construed to alter or affect any stream adjudication court orders in place prior to the effective date of this 2026 act.

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. Prior to issuing a compliance order, the state engineer shall issue a written notice of violation. After issuing a written notice of violation, the state engineer may assess a civil penalty of up to three thousand four hundred

dollars ($3,400) per day for each day during any portion of which the violation continues. If the water is sold without a permit to do so, the maximum penalty shall be double the economic benefit to the violator resulting from the violation or twenty-five dollars ($25.00) per barrel of water sold, whichever is greater. In determining the amount of the civil penalty, 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. A compliance order may require payment of the assessed civil penalty accruing from the date of the notice of violation. The civil penalty shall not be enforceable until the compliance order becomes final.

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

SECTION 2. Section 72-5A-12 NMSA 1978 (being Laws 1999, Chapter 285, Section 12) is amended to read:

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

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

exceeding:

(1) three thousand four hundred dollars ($3,400) per day of violation not directly related to the illegal recovery or use of stored water; or

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

B. An action to recover penalties pursuant to this section shall be brought by the state engineer in the district court in which the violation occurred."

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

"72-12-14. SUSPENSION OR REVOCATION OF LICENSE--APPEAL--DAMAGES.--Upon notice and after opportunity for a hearing, the state engineer may suspend or revoke a license issued pursuant to the provisions of Sections 72-12-12 through 72-12-17 NMSA 1978 for a violation of a condition of a bond maintained as a prerequisite for the license. Appeals from the decision of the state engineer may be taken to a district court in the same manner as provided for other appeals from action of the state engineer. In the event of such breach, the state engineer, on behalf of the state and any other person injured by the breach, is authorized to recover in a civil suit in the district court of the county where the well involved is located, judgment for damages sustained by reason

of the breach. In addition, the state engineer is authorized to recover on behalf of the state a civil penalty in an amount to be determined by the district court not to exceed ten thousand dollars ($10,000), and judgment for both damages and penalty shall be against the principal and sureties on the bonds."