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AN ACT

RELATING TO WATER; PROVIDING PROCEDURES FOR PROSECUTING
VIOLATIONS OF LAWS CONCERNING THE MISUSE OF WATER AND
INTERFERENCE WITH EASEMENTS FOR OR ACCESS TO CERTAIN
IRRIGATION DITCHES; CREATING AND INCREASING PENALTIES;
PROVIDING FOR CIVIL REMEDIES.

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

Section 1. Section 73-2-5 NMSA 1978 (being Laws 1933,
Chapter 65, Section 1, as amended) is amended to read:

"73-2-5. DITCH OVER LAND OF ANOTHER--EASEMENT--RIGHT OF
SERVIENT OWNER--PENALTY.--

A. Hereafter in all cases where there has been a
continuous use of a ditch for the purposes of irrigation for
five years, it shall be conclusively presumed as between the
parties that a grant has been made by the owners of the land,
upon which such ditch is located, for the use of the same and
it is unlawful to interfere with that easement or prevent
access to the ditch by the owner of the dominant estate as
provided by law; provided that nothing herein contained shall
be construed to prevent the owner of a servient estate from
making any alterations or changes in the location of any
ditch upon his land, so long as such alteration or change of
location shall not interfere with the use of or access to
such ditch by the owner of the dominant estate. For the

1 purposes of this section, the easement created pursuant to
2 this section shall be adequate to allow for reasonable
3 maintenance, use and improvements to the ditch.

4 B. In the case of a community ditch or acequia, a
5 criminal complaint for a violation of the provisions of
6 Subsection A of this section may be made by the district
7 attorney or the mayordomo or commission of the ditch or
8 acequia to the magistrate court in the county where the
9 violation occurred. A person convicted of violating the
10 provisions of Subsection A of this section is guilty of a
11 misdemeanor and on conviction, the defendant shall be fined
12 not less than three hundred dollars (\$300) nor more than one
13 thousand dollars (\$1,000) or sentenced up to ninety days
14 imprisonment in the county jail, or both.

15 C. In the case of a community ditch or acequia, in
16 addition to criminal prosecution, the district attorney or
17 the mayordomo or commission of the ditch or acequia may file
18 a civil complaint seeking a civil penalty not to exceed five
19 thousand dollars (\$5,000) for knowingly, intentionally or
20 willfully violating the provisions of Subsection A of this
21 section.

22 D. The remedies provided for in this section shall
23 not be construed as limiting the right of the party bringing
24 the civil or criminal complaint from seeking damages. In
25 addition to the remedies provided in this section, the

1 district attorney, mayordomo or commission of the ditch or
2 acequia or owner of the dominant estate may apply to the
3 district court of the county where the violation occurred for
4 an injunction restraining any person from violating or
5 continuing to violate the provisions of Subsection A of this
6 section."

7 Section 2. Section 73-2-64 NMSA 1978 (being Laws 1923,
8 Chapter 81, Section 1) is amended to read:

9 "73-2-64. INTERFERENCE WITH DITCH--ILLEGAL WATER USE--
10 PENALTY--FAILURE TO PROSECUTE--INJUNCTIVE RELIEF.--

11 A. A person shall not, contrary to the order of
12 the mayordomo or commission, cut, break, stop up or otherwise
13 interfere with any community ditch or dam in this state, or
14 any contra or lateral acequia thereof, or take or use water
15 from the same contrary to such orders. A person who violates
16 a provision of this section is guilty of a misdemeanor, and,
17 on complaint made before the nearest magistrate court, a
18 warrant may issue for his arrest, as in case of any other
19 offense against the state.

20 B. A criminal complaint for violations of the
21 provisions of Subsection A of this section may be made by the
22 district attorney or the mayordomo or commission of the ditch
23 or acequia to the magistrate court in the county where the
24 violation occurred. Upon conviction of a violation, the
25 defendant shall be fined not less than three hundred dollars

1 (\$300) or more than one thousand dollars (\$1,000) and in
2 default of the payment of said fine, shall be confined in the
3 county jail for a period of not less than five nor more than
4 thirty days.

5 C. In addition to criminal prosecution, the
6 district attorney or the mayordomo or commission of the ditch
7 or acequia may file a civil complaint seeking a civil penalty
8 not to exceed five thousand dollars (\$5,000) for knowingly,
9 intentionally or willfully violating the provisions of
10 Subsection A of this section.

11 D. The remedies provided for in this section shall
12 not be construed as limiting the right of the party bringing
13 the civil or criminal complaint from seeking damages. In
14 addition to the remedies provided in this section, the
15 district attorney or the mayordomo or commission of the ditch
16 or acequia may apply to the district court of the county
17 where the violation occurred for an injunction restraining
18 any person from violating or continuing to violate the
19 provisions of Subsection A of this section.

20 E. It is the duty of the mayordomo in charge of
21 any such ditch or acequia to prosecute in the name of the
22 state any violation of this section whenever the mayordomo
23 acquires knowledge thereof, and the mayordomo's failure so to
24 do shall be deemed a misdemeanor; provided, however, that if
25 the district attorney chooses to prosecute, the mayordomo

1 shall not be required to do so. On conviction of violating
2 the provisions of this subsection, the mayordomo shall be
3 fined in a sum not less than twenty-five dollars (\$25.00) or
4 more than fifty dollars (\$50.00) or by imprisonment in the
5 county jail for not less than ten or more than thirty days."==

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