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HOUSE BILL 261

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

PAULINE K. GUBBELS

AN ACT

RELATING TO WATER; ENACTING A NEW SECTION OF THE NMSA 1978 TO
PROVIDE AUTHORITY TO THE STATE ENGINEER TO ISSUE COMPLIANCE
ORDERS AND OTHER ENFORCEMENT POWERS; PROVIDING A PENALTY.

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

Section 1. STATE ENGINEER-- ENFORCEMENT-- COMPLIANCE
ORDERS-- PENALTY. --

A. Whenever the state engineer determines that any
person has violated any requirement or prohibition pursuant to
Chapter 72 NMSA 1978 or Chapter 73, Article 1, 2, 9, 12 or 13
NMSA 1978, any regulation adopted by the state engineer pursuant
to those laws, or any condition of a permit or license issued by
the state engineer pursuant to those laws, or any order entered
by a court adjudicating a water right, the state engineer may:

- (1) issue a compliance order stating with

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1 reasonable specificity the nature of the violation and requiring
2 compliance immediately or within a specified time period or
3 assessing a civil penalty for any past or current violation, or
4 both; or

5 (2) commence a civil action in district court
6 for appropriate relief, including a temporary or permanent
7 injunction.

8 B. A compliance order issued pursuant to this
9 section may include a suspension or revocation of any permit or
10 license, or portion of a permit or license issued by the state
11 engineer. Any penalty assessed in the order shall not exceed
12 fifteen thousand dollars (\$15,000) per day of noncompliance for
13 each violation and, if assessed for overdiversion or illegal
14 diversion of water, may require repayment of water in an amount
15 double the amount of the overdiversion or illegal diversion and
16 installation of a measuring device approved by the state
17 engineer prior to any future diversion of water. In determining
18 the amount of any penalty to be assessed pursuant to this
19 subsection, the state engineer shall take into account the
20 seriousness of the violation, any good-faith efforts to comply
21 with the applicable requirements and other relevant factors.
22 The state engineer may adopt regulations establishing rates at
23 which monetary penalties will be assessed for varying amounts of
24 overdiversions and illegal diversions.

25 C. A compliance order issued pursuant to this

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1 section shall become final unless the person named in the order
2 submits a written request, no later than thirty days after the
3 order is mailed by certified mail, return receipt requested, for
4 a public hearing pursuant to Section 72-2-16 NMSA 1978. If a
5 person submits a request for a public hearing, the enforcement
6 of the compliance order shall be suspended pending the issuance
7 of the final order after the hearing. The hearing shall be
8 conducted pursuant to Sections 72-2-16 and 72-2-17 NMSA 1978.

9 D. Penalties collected pursuant to a compliance
10 order shall be deposited in the New Mexico irrigation works
11 construction fund.

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

February 27, 1997

Mr. Speaker:

Your AGRICULTURE AND WATER RESOURCES COMMITTEE,
to whom has been referred

HOUSE BILL 261

has had it under consideration and reports same with
recommendation that it DO NOT PASS, but that

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE
SUBSTITUTE FOR HOUSE BILL 261

DO PASS, amended as follows:

1. On page 2, line 15 after "amount" insert "up to".,
and thence referred to the ENERGY AND NATURAL RESOURCES
COMMITTEE.

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HAGC/CS/HB261

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Respectfully submitted,

G. X. McSherry, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Wright

Absent: None

M \H0261

State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 7, 1997

Mr. Speaker:

**Your ENERGY AND NATURAL RESOURCES COMMITTEE, to
whom has been referred**

**HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE
SUBSTITUTE FOR HOUSE BILL 261, as amended**

**has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.**

Respectfully submitted,

James Roger Madalena, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Ryan, Salazar

Absent: None

M \H0261

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1 FORTY-THIRD LEGISLATURE HAGC/HB 261/a
2 FIRST SESSION, 1997
3

4 March 20, 1997
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6 Mr. President:
7

8 Your CONSERVATION COMMITTEE, to whom has been referred
9 HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE
10 SUBSTITUTE FOR HOUSE BILL 261, as amended
11

12 has had it under consideration and reports same with
13 recommendation that it DO PASS, amended as follows:
14

15 1. On page 2, line 9, after "of" insert "an Indian nation,
16 tribe or pueblo or".
17

18 Respectfully submitted,
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22 _____
23 Michael S. Sanchez, Chairman
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Adopted _____ Not Adopted _____

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 1 Against

Yes: 6

No: Sanchez

Excused: Eisenstadt, Lyons, Macias

Absent: None

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