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HOUSE BILL 405

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Pauline K. Gubbels

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; PROVIDING 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 a person or legal entity has violated a requirement or prohibition of Chapter 72 NMSA 1978, a regulation adopted by the state engineer pursuant to those laws, or a condition of a permit or license issued by the state engineer pursuant to those laws, or an order entered by a court adjudicating a water right, the state engineer may, in addition to any other remedies available under law:

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1 (1) issue a compliance order stating with
2 reasonable specificity the nature of the violation and
3 requiring compliance within a specified time period; or

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

7 B. This section shall in no way be construed to
8 affect or interfere with the jurisdiction of a court or an
9 Indian nation, tribe or pueblo to enforce its orders and
10 decrees pertaining to water rights.

11 C. A compliance order issued pursuant to this
12 section may include a suspension or revocation of a permit or
13 license or portion of a permit or license issued by the state
14 engineer and, if issued for overdiversion or illegal diversion
15 of water, may require repayment of water in an amount up to
16 double the amount of the overdiversion or illegal diversion
17 and installation of a measuring device approved by the state
18 engineer prior to any future diversion of water. In
19 determining the amount of the penalty to be assessed pursuant
20 to this subsection, the state engineer shall take into account
21 the seriousness of the violation, any good-faith efforts to
22 comply with the applicable requirements and other relevant
23 factors.

24 D. The following civil penalties may be assessed
25 by the state engineer pursuant to this section for violating a

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1 final compliance order:

2 (1) up to one hundred dollars (\$100) per day
3 if no previous violation of state engineer compliance orders
4 by the violator has occurred;

5 (2) up to two hundred fifty dollars (\$250)
6 per day if one previous violation has occurred; or

7 (3) up to five hundred dollars (\$500) per day
8 if two or more previous violations have occurred.

9 E. A compliance order issued pursuant to this
10 section shall become final unless the person or legal entity
11 named in the order:

12 (1) submits a written request no later than
13 thirty days after the order is mailed by certified mail,
14 return receipt requested, for a public hearing pursuant to
15 Sections 72-2-16 and 72-2-17 NMSA 1978, and pending the
16 issuance of the final order after the hearing, the enforcement
17 of a civil penalty pursuant to the compliance order shall be
18 suspended; or

19 (2) serves a notice of appeal upon the state
20 engineer, in accordance with Section 72-7-1 NMSA 1978, within
21 thirty days after receipt by certified mail, return receipt
22 requested, of the order. Any appeal to district court shall
23 be conducted pursuant to Chapter 72, Article 7 NMSA 1978.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 February 11, 1999

7
8 Mr. Speaker:

9
10 Your AGRICULTURE AND WATER RESOURCES COMMITTEE,
11 to whom has been referred

12
13 HOUSE BILL 405

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 JUDICIARY COMMITTEE.

18 Respectfully submitted,

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22 _____
23 Joe M Stell, Chairman
24
25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HB 405

Page 5

4 Adopted _____ Not Adopted _____

6 (Chief Clerk)

(Chief Clerk)

8 Date _____

10 The roll call vote was 9 For 0 Against

11 Yes: 9

12 Excused: None

13 Absent: None

15 J: \99BillSWP\H0405

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1 FORTY- FOURTH LEGI SLATURE
2 FIRST SESSI ON, 1999
3

4 March 16, 1999
5

6 Mr. Presi dent:

7
8 Your CONSERVATION COMMI TTEE, to whom has been referred

9 HOUSE BILL 405
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11 has had it under consideration and reports same WITHOUT
12 RECOMMENDATION, and thence referred to the JUDI CIARY
13 COMMI TTEE.
14

15 Respectfully submi tted,
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17
18 _____
19 Fernando R. Maci as, Chai rman
20

21
22 Adopted _____

23 (Chi ef Clerk)

21
22 Not Adopted _____

23 (Chi ef Clerk)

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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Date _____

The roll call vote was 8 For 0 Against

Yes: 8

No: None

Excused: Eisenstadt, Sanchez

Absent: None

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