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HOUSE BILL 505

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Don L. Tripp

AN ACT

RELATING TO WATER; ALLOWING FOR THE FILING OF COMPLAINTS FOR
INTERFERING WITH AN ACEQUIA OR DITCH RIGHT OF WAY.

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~~ the 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

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 provided by law; provided that nothing [~~herein contained~~] in
2 this section shall be construed to prevent the owner of a
3 servient estate from making any alterations or changes in the
4 location of any ditch upon [~~his~~] the servient owner's land, so
5 long as such alteration or change of location shall not
6 interfere with the use of or access to [~~such~~] the ditch by the
7 owner of the dominant estate. For the purposes of this
8 section, the easement created pursuant to this section shall be
9 adequate to allow for reasonable maintenance, use and
10 improvements to the ditch.

11 B. In the case of a community ditch or acequia, a
12 criminal complaint for a violation of the provisions of
13 Subsection A of this section may be made by the district
14 attorney or the mayordomo or commission of the ditch or acequia
15 to the magistrate court in the county where the violation
16 occurred. Where there is no mayordomo or commission, or
17 irrigation or conservancy district with control of the ditch or
18 acequia, an affected person may file a criminal complaint for
19 violation of the provisions of Subsection A of this section in
20 the magistrate or metropolitan court in the county where the
21 violation occurred. A person convicted of violating the
22 provisions of Subsection A of this section is guilty of a
23 misdemeanor and, on conviction, the defendant shall be fined
24 not less than three hundred dollars (\$300) nor more than one
25 thousand dollars (\$1,000) or sentenced up to ninety days

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1 imprisonment in the county jail, or both. Nothing in this
2 section precludes a party from exercising any other remedies
3 provided by law.

4 C. In the case of a community ditch or acequia, in
5 addition to criminal prosecution, the district attorney or the
6 mayordomo or commission of the ditch or acequia may file a
7 civil complaint seeking a civil penalty not to exceed five
8 thousand dollars (\$5,000) for knowingly, intentionally or
9 willfully violating the provisions of Subsection A of this
10 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 district
15 attorney, mayordomo or commission of the ditch or acequia or
16 owner of the dominant estate may apply to the district court of
17 the county where the violation occurred for an injunction
18 restraining any person from violating or continuing to violate
19 the provisions of Subsection A of this section."

20 SECTION 2. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2011.