

HOUSE BILL 346

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

Matthew McQueen and Peter Wirth

AN ACT

RELATING TO WATER; PROVIDING FOR FORFEITURE OF A WATER RIGHT  
AFTER TEN YEARS OF NONUSE; ELIMINATING NOTICE REQUIREMENTS FOR  
FORFEITURE AFTER TEN YEARS OF NONUSE.

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

SECTION 1. Section 72-5-28 NMSA 1978 (being Laws 1907,  
Chapter 49, Section 42, as amended) is amended to read:

"72-5-28. FAILURE TO USE WATER--FORFEITURE.--

A. Prior to July 1, 2033, when the party entitled  
to the use of water fails to beneficially use all or any part  
of the water claimed by ~~[him]~~ the party, for which a right of  
use has vested for the purpose for which it was appropriated or  
adjudicated, except the waters for storage reservoirs, for a  
period of four years, such unused water shall, if the failure  
to beneficially use the water persists one year after notice

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1 and declaration of nonuser given by the state engineer, revert  
2 to the public and shall be regarded as unappropriated public  
3 water; provided, however, that forfeiture shall not necessarily  
4 occur if circumstances beyond the control of the owner have  
5 caused nonuse, such that the water could not be placed to  
6 beneficial use by diligent efforts of the owner; and provided  
7 that periods of nonuse when irrigated farm lands are placed  
8 under the acreage reserve program or conservation reserve  
9 program provided by the federal Food Security Act of 1985, P.L.  
10 99-198, shall not be computed as part of the four-year  
11 forfeiture period; and provided, further, that the condition of  
12 notice and declaration of nonuser shall not apply to water that  
13 has reverted to the public by operation of law prior to June 1,  
14 1965.

15 B. When the party entitled to the use of water  
16 fails to beneficially use all or any part of the water claimed  
17 by the party, for which a right of use has vested for the  
18 purpose for which it was appropriated or adjudicated, except  
19 the waters for storage reservoirs, for a period of ten years  
20 from or after July 1, 2023, such unused water shall revert to  
21 the public and shall be regarded as unappropriated public  
22 water; provided that periods of nonuse when irrigated farm  
23 lands are placed under the acreage reserve program or  
24 conservation reserve program provided by the federal Food  
25 Security Act of 1985, P.L. 99-198, shall not be computed as

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1 part of the forfeiture period; and provided further that this  
2 section shall not apply to water that has reverted to the  
3 public by operation of law prior to June 1, 1965.

4 ~~[B.]~~ C. Upon application to the state engineer at  
5 any time and a proper showing of reasonable cause for delay or  
6 for nonuse or upon the state engineer finding that it is in the  
7 public interest, the state engineer may grant extensions of  
8 time, for a period not to exceed three years for each  
9 extension, in which to apply to beneficial use the water for  
10 which a permit to appropriate has been issued or a water right  
11 has vested, was appropriated or has been adjudicated.

12 ~~[C.]~~ D. Periods of nonuse when water rights are  
13 acquired by incorporated municipalities or counties for  
14 implementation of their water development plans or for  
15 preservation of municipal or county water supplies shall not be  
16 computed as part of the ~~[four-year]~~ forfeiture ~~[statute]~~  
17 period.

18 ~~[D.]~~ E. A lawful exemption from the requirements of  
19 beneficial use, either by an extension of time or other  
20 statutory exemption, stops the running of the ~~[four-year]~~  
21 forfeiture period for the period of the exemption, and the  
22 period of exemption shall not be included in computing the  
23 ~~[four-year]~~ forfeiture period.

24 ~~[E.]~~ F. Periods of nonuse when the nonuser of  
25 acquired water rights is on active duty as a member of the

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1 armed forces of this country shall not be included in computing  
2 the [~~four-year~~] forfeiture period.

3 [~~F.~~] G. The owner or holder of a valid water right  
4 or permit to appropriate waters for agricultural purposes  
5 appurtenant to designated or specified lands may apply the full  
6 amount of water covered by or included in the water right or  
7 permit to any part of the designated or specified tract without  
8 penalty or forfeiture.

9 [~~G.~~] H. Periods of nonuse when water rights are  
10 acquired and placed in a state engineer-approved water  
11 conservation program, by an individual or entity that owns  
12 water rights, a conservancy district organized pursuant to  
13 Chapter 73, Articles 14 through 19 NMSA 1978, a soil and water  
14 conservation district organized pursuant to Chapter 73, Article  
15 20 NMSA 1978, an acequia or community ditch association  
16 organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, an  
17 irrigation district organized pursuant to Chapter 73, Articles  
18 9 through 13 NMSA 1978 or the interstate stream commission  
19 shall not be computed as part of the [~~four-year~~] forfeiture  
20 period.

21 [~~H.~~] I. Water deposited in a lower Pecos river  
22 basin below Sumner lake water bank approved by the interstate  
23 stream commission or an acequia or community ditch water bank  
24 shall not be computed as part of the [~~four-year~~] forfeiture  
25 period."

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1           SECTION 2. Section 72-6-3 NMSA 1978 (being Laws 1967,  
2 Chapter 100, Section 3, as amended) is amended to read:

3           "72-6-3. OWNER MAY LEASE USE OF WATER.--

4           A. An owner may lease to any person all or any part  
5 of the water use due the owner under the owner's water right,  
6 and the owner's water right shall not be affected by the lease  
7 of the use. The use to which the owner is entitled under the  
8 owner's right shall, during the exercise of the lease, be  
9 reduced by the amount of water so leased. Upon termination of  
10 the lease, the water use and location of use subject to the  
11 lease shall revert to the owner's original use and location of  
12 use.

13           B. The lease may be effective for immediate use of  
14 water or may be effective for future use of the water covered  
15 by the lease; however, the lease shall not be effective to  
16 cumulate water from year to year or to substantially enlarge  
17 the use of the water in such manner that it would injure other  
18 water users. The lease shall not toll any forfeiture of water  
19 rights for nonuse, and the owner shall not, by reason of the  
20 lease, escape the forfeiture for nonuse prescribed by law.

21 ~~[provided, however, that the state engineer shall notify both~~  
22 ~~the owner and the lessee of declaration of nonuser as provided~~  
23 ~~in Sections 72-5-28 and 72-12-8 NMSA 1978]~~ The initial or any  
24 renewal term of a lease of water use shall not exceed ten  
25 years, except as provided in Subsections C and D of this

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1 section.

2 C. A water use may be leased for forty years by  
3 municipalities, counties, state universities, special water  
4 users' associations, public utilities supplying water to  
5 municipalities or counties and member-owned community water  
6 systems as lessee and shall be entitled to the protection of  
7 the forty-year water use planning period as provided in Section  
8 72-1-9 NMSA 1978.

9 D. A water use deriving from an acequia or  
10 community ditch organized pursuant to Chapter 73, Article 2 or  
11 3 NMSA 1978, whether owned by a water right owner under the  
12 acequia or community ditch or by the acequia or community  
13 ditch, may be leased for a term not to exceed ten years;  
14 provided that pursuant to the rules or bylaws duly adopted by  
15 its members, an acequia or community ditch may require that any  
16 water use lease of a water right served by the acequia or  
17 community ditch, or any water use lease in which a water right  
18 is moved into and then served by the acequia or community  
19 ditch, shall be subject to approval by the commissioners of the  
20 acequia or community ditch in accordance with the procedures  
21 for approval of changes in point of diversion or place or  
22 purpose of use as provided in Subsection E of Section 73-2-21  
23 NMSA 1978 and Sections 72-5-24.1 and 73-3-4.1 NMSA 1978.

24 E. A water use due under an adjudicated water right  
25 secured to a pueblo pursuant to the settlement agreements

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1 approved in Title 5 and Title 6 of the federal Claims  
2 Resolution Act of 2010, P.L. No. 111-291, Sections 501-626, or  
3 in the partial final judgments and decrees entered pursuant to  
4 those settlement agreements, may be leased for a term,  
5 including all renewals, not to exceed the term specifically  
6 authorized in that act; provided that this subsection shall not  
7 apply to any water use due under any state-law based water  
8 rights acquired by a pueblo or by the United States on behalf  
9 of a pueblo."

10 SECTION 3. Section 72-12-8 NMSA 1978 (being Laws 1931,  
11 Chapter 131, Section 8, as amended) is amended to read:

12 "72-12-8. WATER RIGHT FORFEITURE.--

13 A. Prior to July 1, 2033, when for a period of four  
14 years the owner of a water right in any of the waters described  
15 in Sections 72-12-1 through 72-12-28 NMSA 1978 or the holder of  
16 a permit from the state engineer to appropriate any such waters  
17 has failed to apply them to the use for which the permit was  
18 granted or the right has vested, was appropriated or has been  
19 adjudicated, the water rights shall be, if the failure to  
20 beneficially use the water persists one year after notice and  
21 declaration of nonuser given by the state engineer, forfeited  
22 and the water so unused shall revert to the public and be  
23 subject to further appropriation; provided that the condition  
24 of notice and declaration of nonuser shall not apply to water  
25 that has reverted to the public by operation of law prior to

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1 June 1, 1965.

2 B. When for a period of ten years from or after  
3 July 1, 2023, the owner of a water right in any of the waters  
4 described in Sections 72-12-1 through 72-12-28 NMSA 1978 or the  
5 holder of a permit from the state engineer to appropriate any  
6 such waters has failed to apply the waters to the use for which  
7 the permit was granted or the right has vested, was  
8 appropriated or has been adjudicated, the water rights shall be  
9 forfeited and the water so unused shall revert to the public  
10 and be subject to further appropriation; provided that this  
11 section shall not apply to water that has reverted to the  
12 public by operation of law prior to June 1, 1965.

13 ~~[B.]~~ C. Upon application to the state engineer at  
14 any time and a proper showing of reasonable cause for delay or  
15 for nonuse or upon the state engineer finding that it is in the  
16 public interest, the state engineer may grant extensions of  
17 time, for a period not to exceed three years for each  
18 extension, in which to apply to beneficial use the water for  
19 which a permit to appropriate has been issued or a water right  
20 has vested, was appropriated or has been adjudicated.

21 ~~[C.]~~ D. Periods of nonuse when irrigated farm lands  
22 are placed under the acreage reserve program or conservation  
23 reserve program provided by the federal Food Security Act of  
24 1985, P.L. 99-198, shall not be computed as part of the [~~four-~~  
25 ~~year~~] forfeiture period.

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1           ~~[D.]~~ E. Periods of nonuse when water rights are  
2 acquired and placed in a state engineer-approved water  
3 conservation program by an individual or entity that owns water  
4 rights, an artesian conservancy district, a conservancy  
5 district, a soil and water conservation district organized  
6 pursuant to Chapter 73, Article 20 NMSA 1978, an acequia or  
7 community ditch association organized pursuant to Chapter 73,  
8 Article 2 or 3 NMSA 1978, an irrigation district organized  
9 pursuant to Chapter 73, Articles 9 through 13 NMSA 1978 or the  
10 interstate stream commission shall not be computed as part of  
11 the ~~[four-year]~~ forfeiture ~~[statute]~~ period.

12           ~~[E.]~~ F. A lawful exemption from the requirements of  
13 beneficial use, either by an extension of time or other  
14 statutory exemption, stops the running of the ~~[four-year]~~  
15 forfeiture period for the period of the exemption, and the  
16 period of exemption shall not be included in computing the  
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18           ~~[F.]~~ G. Periods of nonuse when water rights are  
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10 basin below Sumner lake water bank approved by the interstate  
11 stream commission or an acequia or community ditch water bank  
12 shall not be computed as part of the [~~four-year~~] forfeiture  
13 period."

14 SECTION 4. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2023.