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HOUSE BILL 160

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

PAULINE K. GUBBELS

FOR THE WATER, UTILITIES AND NATURAL RESOURCES COMMITTEE

AN ACT

**RELATING TO WATER CONSERVATION; AMENDING SECTIONS OF THE NMSA
1978 TO EXEMPT CONSERVED WATER FROM FORFEITURE.**

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. When the party entitled to the use of water
fails to beneficially use all or any part of the water claimed
by him, 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 and declaration of
nonuser given by the state engineer, revert to the public and**

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

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

22 C. Periods of nonuse when water rights are
23 acquired by incorporated municipalities or counties for
24 implementation of their water development plans or for
25 preservation of municipal or county water supplies shall not

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1 be computed as part of the four-year forfeiture statute.

2 D. A lawful exemption from the requirements of
3 beneficial use, either by an extension of time or other
4 statutory exemption, stops the running of the four-year period
5 for the period of the exemption, and the period of exemption
6 shall not be included in computing the four-year period.

7 E. Periods of nonuse when the nonuser of acquired
8 water rights is on active duty as a member of the armed forces
9 of this country shall not be included in computing the four-
10 year period.

11 F. The owner or holder of a valid water right or
12 permit to appropriate waters for agricultural purposes
13 appurtenant to designated or specified lands may apply the
14 full amount of water covered by or included in the water right
15 or permit to any part of [~~such~~] the designated or specified
16 tract without penalty or forfeiture.

17 G. Periods of nonuse when water rights are
18 acquired and placed in a state engineer-approved water
19 conservation program, by a conservancy district organized
20 pursuant to Chapter 73, Articles 14 through 19 NMSA 1978, an
21 acequia or ~~community~~ ditch association organized pursuant to
22 Chapter 73, Article 2 or 3 NMSA 1978, an irrigation district
23 organized pursuant to Chapter 73, Articles 9 through 13 NMSA
24 1978 or the interstate stream commission shall not be computed
25 as part of the four-year forfeiture period.

. 119820. 3

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1 H. Periods of reduction in the amount of a water
2 right diversion or use, previously authorized by the state
3 engineer or adjudged by a court of law, shall not be included
4 in computing the four-year period for forfeiture of a water
5 right; provided that the reduction occurs through an
6 intentional application of conservation practices to an
7 existing diversion or use that results in a measurable savings
8 in the amount of water consumed. Failure to put a water right
9 to beneficial use is not an intentional application of
10 conservation practices. "

11 Section 2. Section 72-12-8 NMSA 1978 (being Laws 1931,
12 Chapter 131, Section 8, as amended) is amended to read:

13 "72-12-8. WATER RIGHT FORFEITURE. --

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

. 119820. 3

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1 reverted to the public by operation of law prior to June 1,
2 1965.

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

11 C. Periods of nonuse when irrigated farm lands are
12 placed under the acreage reserve program or conservation
13 reserve program provided by the Food Security Act of 1985,
14 P.L. 99-198 shall not be computed as part of the four-year
15 forfeiture period.

16 D. Periods of nonuse when water rights are
17 acquired and placed in a state engineer-approved water
18 conservation program by an artesian conservancy district, a
19 conservancy district, an acequia or community ditch
20 association organized pursuant to Chapter 73, Article 2 or 3
21 NMSA 1978, an irrigation district organized pursuant to
22 Chapter 73, Articles 9 through 13 NMSA 1978 or the interstate
23 stream commission shall not be computed as part of the four-
24 year forfeiture statute.

25 E. A lawful exemption from the requirements of

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1 beneficial use, either by an extension of time or other
2 statutory exemption, stops the running of the four-year period
3 for the period of the exemption, and the period of exemption
4 shall not be included in computing the four-year period.

5 F. Periods of nonuse when water rights are
6 acquired by incorporated municipalities or counties for
7 implementation of their water development plans or for
8 preservation of municipal or county water supplies shall not
9 be computed as part of the four-year forfeiture statute.

10 G. Periods of nonuse when the nonuser of acquired
11 water rights is on active duty as a member of the armed forces
12 of this country shall not be included in computing the four-
13 year period.

14 H. Periods of reduction in the amount of a water
15 right diversion or use, previously authorized by the state
16 engineer or adjudged by a court of law, shall not be included
17 in computing the four-year period for forfeiture of a water
18 right; provided that the reduction occurs through an
19 intentional application of conservation practices to an
20 existing diversion or use that results in a measurable savings
21 in the amount of water consumed. Failure to put a water right
22 to beneficial use is not an intentional application of
23 conservation practices.

24 [H.] I. The owner or holder of a valid water right
25 or permit to appropriate waters for agricultural purposes

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1 appurtenant to designated or specified lands may apply the
2 full amount of water covered by or included in that water
3 right or permit to any part of the designated or specified
4 tract without penalty or forfeiture. "

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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6 January 28, 1998

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8 Mr. Speaker:

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10 Your ENERGY & NATURAL RESOURCES COMMITTEE, to
11 whom has been referred

12
13 HOUSE BILL 160

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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 AGRICULTURE & WATER RESOURCES COMMITTEE.

18 Respectfully submitted,

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23 James Roger Madalena, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HENRC/HB 160

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4 Adopted _____ Not Adopted _____

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6 (Chief Clerk)

(Chief Clerk)

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8 Date _____

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10 The roll call vote was 7 For 2 Against

11 Yes: 7

12 No: Kissner, Roberts

13 Excused: None

14 Absent: Getty, Knowles, Picraux

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