

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 460

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

INTRODUCED BY

JOE M STELL

FOR THE WATER, UTILITIES AND NATURAL RESOURCES COMMITTEE

AN ACT

**RELATING TO THE FORFEITURE OF WATER RIGHTS; AMENDING CERTAIN
SECTIONS OF THE NMSA 1978 PERTAINING TO WATER CONSERVATION
PROGRAMS.**

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**

Underscored material = new
[bracketed material] = delete

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

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

23 C. Periods of nonuse when water rights are
24 acquired by incorporated municipalities or counties for
25 implementation of their water development plans or for

Underscored material = new
[bracketed material] = delete

1 preservation of municipal or county water supplies shall not
2 be computed as part of the four-year forfeiture statute.

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

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

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

18 G. Periods of nonuse when water rights are
19 acquired and placed in a state engineer-approved water
20 conservation program, by a conservancy district organized
21 pursuant to Chapter 73, Articles 14 through 19 NMSA 1978, a
22 soil and water conservation district organized pursuant to
23 Chapter 73, Article 20 NMSA 1978, an acequia or community
24 ditch association organized pursuant to Chapter 73, Article 2
25 or 3 NMSA 1978, an irrigation district organized pursuant to

. 121067. 1

Underscored material = new
[bracketed material] = delete

1 Chapter 73, Articles 9 through 13 NMSA 1978 or the interstate
2 stream commission shall not be computed as part of the four-
3 year forfeiture period."

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

6 "72-12-8. WATER RIGHT FORFEITURE. --

7 A. When for a period of four years the owner of a
8 water right in any of the waters described in Sections 72-12-1
9 through 72-12-28 NMSA 1978 or the holder of a permit from the
10 state engineer to appropriate any such waters has failed to
11 apply them to the use for which the permit was granted or the
12 right has vested, was appropriated or has been adjudicated,
13 the water rights shall be, if the failure to beneficially use
14 the water persists one year after notice and declaration of
15 nonuser given by the state engineer, forfeited and the water
16 so unused shall revert to the public and be subject to further
17 appropriation; provided that the condition of notice and
18 declaration of nonuser shall not apply to water which has
19 reverted to the public by operation of law prior to June 1,
20 1965.

21 B. Upon application to the state engineer at any
22 time and a proper showing of reasonable cause for delay or for
23 nonuse or upon the state engineer finding that it is in the
24 public interest, the state engineer may grant extensions of
25 time, for a period not to exceed three years for each

. 121067. 1

Underscored material = new
[bracketed material] = delete

1 extension, in which to apply to beneficial use the water for
2 which a permit to appropriate has been issued or a water right
3 has vested, was appropriated or has been adjudicated.

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

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

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

24 F. Periods of nonuse when water rights are
25 acquired by incorporated municipalities or counties for

Underscored material = new
[bracketed material] = delete

1 implementation of their water development plans or for
2 preservation of municipal or county water supplies shall not
3 be computed as part of the four-year forfeiture statute.

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

8 H. The owner or holder of a valid water right or
9 permit to appropriate waters for agricultural purposes
10 appurtenant to designated or specified lands may apply the
11 full amount of water covered by or included in that water
12 right or permit to any part of the designated or specified
13 tract without penalty or forfeiture. "

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
3
4
5

6 February 12, 1998
7

8 Mr. Speaker:
9

10 Your AGRICULTURE AND WATER RESOURCES COMMITTEE,
11 to whom has been referred
12

13 HOUSE BILL 460
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

17 1. On page 3, line 20, after "by" insert "an individual
18 or entity that owns water rights,".

19
20 2. On page 5, line 11, after "by" insert "an individual
21 or entity that owns water rights,".,
22

23 and thence referred to the APPROPRIATIONS AND FINANCE
24 COMMITTEE.
25

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

HAGC\HB 460

Page 8

Respectfully submitted,

G. X. McSherry, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Porter, Wright

Absent: None

123254. 2

G: \BILLTEXT\BILLW_98\H0460

Underscored material = new
[bracketed material] = delete

1 **FORTY-THIRD LEGISLATURE**
2 **SECOND SESSION, 1998**

3
4 **February 14, 1998**

5
6
7 **Mr. Speaker:**

8
9 **Your APPROPRIATIONS AND FINANCE COMMITTEE, to**
10 **whom has been referred**

11 **HOUSE BILL 460, as amended**

12
13 **has had it under consideration and reports same with**
14 **recommendation that it DO PASS.**

15
16 **Respectfully submitted,**

17
18
19
20 _____
21 **Max Coll, Chairman**

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 Page 10

4 Adopted _____ Not Adopted _____

5
6 (Chief Clerk)

(Chief Clerk)

7
8 Date _____

9
10 The roll call vote was 14 For 0 Against

11 Yes: 14

12 Excused: Bird, Heaton, Marquardt, Salazar

13 Absent: None

14
15 G:\BILLTEXT\BILLW_98\H0460

16
17
18
19
20
21
22
23
24
25
Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

Page 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

February 17, 1998

Mr. President:

Your CONSERVATION COMMITTEE, to whom has been referred

HOUSE BILL 460, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Michael S. Sanchez, Chairman

. 121067. 1

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: None

Excused: Eisenstadt, Kysar, Payne

Absent: None

H0460C01

Underscored material = new
[bracketed material] = delete