

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

SENATE BILL 128

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Sue Wilson Beffort

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; PROVIDING AN EXEMPTION FROM FORFEITURE FOR
UNUSED WATER AS A RESULT OF PUTTING WATER- SAVING TECHNIQUES
INTO PRACTICE.

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. Except as otherwise provided in this section,
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~~ the
unused water shall, if the failure to beneficially use the

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 water persists one year after notice and declaration of nonuser
2 given by the state engineer, revert to the public and shall be
3 regarded as unappropriated public water. [~~provided, however,~~
4 ~~that~~]

5 B. Forfeiture shall not [~~necessarily~~] occur [~~if~~]
6 under the following circumstances:

7 (1) circumstances beyond the control of the
8 owner [~~have caused~~] that cause nonuse, [~~such that~~] and the
9 water could not be placed to beneficial use by diligent efforts
10 of the owner; [~~and provided that~~]

11 (2) during periods of nonuse when irrigated
12 farm lands are placed under the acreage reserve program or
13 conservation reserve program provided by the federal Food
14 Security Act of 1985, P.L. 99-198, and shall not be computed as
15 part of the four-year forfeiture period; [~~and provided,~~
16 ~~further, that~~]

17 (3) the condition of notice and declaration of
18 nonuser shall not apply to water that has reverted to the
19 public by operation of law prior to June 1, 1965; or

20 (4) if the owner puts water-saving techniques
21 into practice, including drip irrigation and low-energy
22 precision application technologies.

23 [~~B.-~~] C. Upon application to the state engineer at
24 any time and a proper showing of reasonable cause for delay or
25 for nonuse or upon the state engineer finding that it is in the

underscored material = new
[bracketed material] = delete

1 public interest, the state engineer may grant extensions of
2 time, for a period not to exceed three years for each
3 extension, in which to apply to beneficial use the water for
4 which a permit to appropriate has been issued or a water right
5 has vested, was appropriated or has been adjudicated.

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

11 ~~[D-]~~ E. A lawful exemption from the requirements of
12 beneficial use, either by an extension of time or other
13 statutory exemption, stops the running of the four-year period
14 for the period of the exemption, and the period of exemption
15 shall not be included in computing the four-year period.

16 ~~[E-]~~ F. Periods of nonuse when the nonuser of
17 acquired water rights is on active duty as a member of the
18 armed forces of this country shall not be included in computing
19 the four-year period.

20 ~~[F-]~~ G. The owner or holder of a valid water right
21 or permit to appropriate waters for agricultural purposes
22 appurtenant to designated or specified lands may apply the full
23 amount of water covered by or included in the water right or
24 permit to any part of the designated or specified tract without
25 penalty or forfeiture.

underscored material = new
[bracketed material] = del ete

1 [~~G.-~~] H. 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
4 water rights, a conservancy district organized pursuant to
5 Chapter 73, Articles 14 through 19 NMSA 1978, a soil and water
6 conservation district organized pursuant to Chapter 73, Article
7 20 NMSA 1978, an acequia or ~~community~~ ditch association
8 organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, an
9 irrigation district organized pursuant to Chapter 73, Articles
10 9 through 13 NMSA 1978 or the interstate stream ~~commission~~
11 shall not be computed as part of the four-year forfeiture
12 period.

13 [~~H.-~~] I. Water deposited in a lower Pecos river
14 basin below ~~Summer~~ lake water bank approved by the interstate
15 stream ~~commission~~ or an acequia or ~~community~~ ditch water bank
16 shall not be computed as part of the four-year forfeiture
17 period. "

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

20 "72-12-8. WATER RIGHT FORFEITURE. --

21 A. Except as otherwise provided in this section,
22 when for a period of four years the owner of a water right in
23 any of the waters described in Sections 72-12-1 through
24 72-12-28 NMSA 1978 or the holder of a permit from the state
25 engineer to appropriate any such waters has failed to apply

. 142312. 2

underscored material = new
[bracketed material] = delete

1 them to the use for which the permit was granted or the right
2 has vested, was appropriated or has been adjudicated, [~~the~~
3 ~~water rights shall be~~] if the failure to beneficially use the
4 water persists one year after notice and declaration of nonuser
5 is given by the state engineer, the water right shall be
6 forfeited and the unused water [~~so unused~~] shall revert to the
7 public and be [~~subject to further appropriation~~] regarded as
8 unappropriated public water; provided that the condition of
9 notice and declaration of nonuser shall not apply to water that
10 has reverted to the public by operation of law prior to June 1,
11 1965.

12 B. Forfeiture shall not occur if the owner puts
13 water-saving techniques into practice, including drip
14 irrigation and low-energy precision application technologies.

15 [~~B.-~~] C. Upon application to the state engineer at
16 any time and a proper showing of reasonable cause for delay or
17 for 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.-~~] D. Periods of nonuse when irrigated farm lands
24 are placed under the acreage reserve program or conservation
25 reserve program provided by the federal Food Security Act of

underscored material = new
[bracketed material] = delete

1 1985, P.L. 99-198, shall not be computed as part of the four-
2 year forfeiture period.

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

14 ~~[E-]~~ F. A lawful exemption from the requirements of
15 beneficial use, either by an extension of time or other
16 statutory exemption, stops the running of the four-year period
17 for the period of the exemption, and the period of exemption
18 shall not be included in computing the four-year period.

19 ~~[F-]~~ G. Periods of nonuse when water rights are
20 acquired by incorporated municipalities or counties for
21 implementation of their water development plans or for
22 preservation of municipal or county water supplies shall not be
23 computed as part of the four-year forfeiture statute.

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

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

3 ~~[H-]~~ I. 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 that water right or
7 permit to any part of the designated or specified tract without
8 penalty or forfeiture.

9 ~~[I-]~~ J. Water deposited in a lower Pecos river
10 basin below Summer 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. "