

1 HOUSE BILL 472

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO WATER RIGHTS ADMINISTRATION; PROVIDING DEFINITIONS;
12 LIMITING LIVESTOCK WATER RIGHTS HOLDERS; PROHIBITING THE STATE
13 ENGINEER FROM ENFORCING OR ADMINISTERING CONDITIONS PLACED ON
14 PERMITTED LAND TO REQUIRE TRANSFER OF PRIVATE WATER RIGHTS TO A
15 GOVERNMENT LAND MANAGEMENT AGENCY EXCEPTING SALES OF WATER
16 RIGHTS; EXEMPTING LIVESTOCK WATER RIGHTS FROM FORFEITURE WHERE
17 THE RIGHT IS APPURTENANT TO LAND UNDER A CURRENT LEASE OR
18 PERMIT.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

23 "72-1-1. [~~151-101.~~] NATURAL WATERS--PUBLIC.--All natural
24 waters flowing in streams and water courses, whether [~~such be~~]
25 they are perennial or torrential, within the limits of the

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1 state [~~of New Mexico~~] belong to the public and are subject to
2 appropriation for beneficial use. [~~A "water course" is hereby~~
3 ~~defined to be any river, creek, arroyo, canyon, draw, or wash~~
4 ~~or any other channel having definite banks and bed with visible~~
5 ~~evidence of the occasional flow of water.]"~~

6 SECTION 2. A new Section 72-1-1.1 NMSA 1978 is enacted to
7 read:

8 "72-1-1.1. [NEW MATERIAL] DEFINITIONS.--As used in
9 Chapter 72 NMSA 1978:

10 A. "beneficial user" means a person who puts a
11 water right to beneficial use and does not mean an owner of
12 leased or permitted land where the beneficial use occurs as a
13 component of the lease or permit;

14 B. "permitted land" means land leased through a
15 permit with a government land management agency; and

16 C. "water course" means any river, creek, arroyo,
17 canyon, draw, wash or any other channel having definite banks
18 and bed with visible evidence of the occasional flow of water."

19 SECTION 3. A new Section 72-1-1.2 NMSA 1978 is enacted to
20 read:

21 "72-1-1.2. [NEW MATERIAL] LIVESTOCK WATER RIGHT LIMITED
22 TO BENEFICIAL USER.--A lessor or permitting agency of land may
23 not acquire a water right to water livestock unless the lessor
24 or permitting agency is a beneficial user."

25 SECTION 4. Section 72-2-8 NMSA 1978 (being Laws 1967,

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1 Chapter 246, Section 1) is amended to read:

2 "72-2-8. ADMINISTRATIVE REGULATIONS, CODES, INSTRUCTIONS,
3 ORDERS--PRESUMPTION OF CORRECTNESS--PROHIBITED ACTIONS.--

4 A. The state engineer may adopt regulations and
5 codes to implement and enforce any provision of any law
6 administered by [~~him~~] the state engineer and may issue orders
7 necessary to implement [~~his~~] decisions and to aid [~~him~~] in the
8 accomplishment of [~~his~~] the state engineer's duties. In order
9 to accomplish its purpose, this provision is to be liberally
10 construed.

11 B. Directives issued by the state engineer shall be
12 in form substantially as follows:

13 (1) regulations are written statements of the
14 state engineer of general application to the public,
15 implementing statutes, prescribing procedures and interpreting
16 and exemplifying the statutes to which they relate;

17 (2) codes are written standards and
18 specifications governing design and construction of dams;

19 (3) orders are written statements of the state
20 engineer to implement [~~his decision~~] the state engineer's
21 decisions; and

22 (4) special orders are written statements
23 defining the declared boundaries of underground streams,
24 channels, artesian basins, reservoirs or lakes.

25 C. To be effective, a regulation, code or special

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1 order issued by the state engineer shall be reviewed by the
2 attorney general or other legal counsel of the [~~state~~
3 ~~engineer's~~] office of the state engineer prior to being filed
4 as required by law and the fact of [~~his~~] the state engineer's
5 review shall be indicated [~~thereon~~] on the regulation, code or
6 special order.

7 D. To be effective, a regulation or code shall
8 first be issued as a proposed regulation or proposed code and
9 filed for public inspection in the office of the state engineer
10 along with the findings of fact that, in the opinion of the
11 state engineer, justify the regulation or code. Distribution
12 shall also be made to each district and field office for public
13 inspection and to each of the persons [~~on~~] in the file of
14 interested persons [~~hereinafter~~] mentioned in Subsection G of
15 this section. After the proposed regulation or code has been
16 on file for one month, [~~he~~] the state engineer shall publish it
17 or, if it is lengthy, a resume of it, in not less than five
18 newspapers of general circulation in the state, once a week for
19 two consecutive weeks, with the statement that there will be a
20 hearing on the proposed regulation or code on a day set in the
21 publication, which hearing shall be not more than thirty days
22 nor less than twenty days after the last publication. The
23 hearing shall be held in Santa Fe, and any person who is or may
24 be affected by the proposed regulation or code may appear and
25 testify.

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1 E. Special orders may be promulgated without prior
2 notice and hearing, but the state engineer shall, within ten
3 days of promulgation of a special order, set a date for a
4 hearing on the special order and publish notice of the public
5 hearing in the same manner required [~~above~~] in Subsection D of
6 this section.

7 F. In addition to filing copies of regulations as
8 required by law, the state engineer shall maintain in [~~his~~] the
9 office of the state engineer duplicate official sets of current
10 regulations, codes and special orders, which sets shall be
11 available for inspection by the public.

12 G. The state engineer shall develop and maintain a
13 file of names and addresses of individuals and professional,
14 agricultural and other groups having an interest in the
15 promulgation of new, revised or proposed regulations and shall
16 at convenient times distribute to these persons all such
17 regulations, making such charges [~~therefor~~] as will defray the
18 expense incurred in their physical preparation and mailing.

19 H. Any regulation, code or order issued by the
20 state engineer is presumed to be in proper implementation of
21 the provisions of the water laws administered by [~~him~~] the
22 state engineer.

23 I. The state engineer shall state the extent to
24 which regulations, codes and orders will have retroactive
25 effect and, if no such statement is made, they will be applied

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1 prospectively only.

2 J. The state engineer shall not enforce or
3 administer a condition placed on permitted land that:

4 (1) requires the full or partial transfer of
5 title of water rights to a government land management agency
6 excepting provisions in a contract for sale or lease of water
7 or water rights; or

8 (2) restricts the use or alienability of water
9 rights as a condition to a right of way, special use permit or
10 other authorization by the government agency to use lands under
11 its jurisdiction.

12 K. Notwithstanding the provisions of Subsection J
13 of this section, nothing in this section shall be construed to:

14 (1) alter the state engineer's authority to
15 enforce and administer the terms and conditions of a court
16 decree; or

17 (2) grant, expand, contract or limit the legal
18 authority of any state or local government related to
19 permitting or regulatory action in connection with land use or
20 other permitting approvals or authorizations."

21 SECTION 5. Section 72-9-3 NMSA 1978 (being Laws 1907,
22 Chapter 49, Section 74, as amended) is amended to read:

23 "72-9-3. STOCK WATER.--

24 A. Any stockmen or stock owners desiring to impound
25 any of the surface waters of the state for watering of

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1 livestock shall apply to the state engineer on a form
2 prescribed by the state engineer. If the capacity of the
3 proposed impoundment is ten acre-feet or less, the applicant
4 shall meet the requirements of this section. If the capacity
5 of the proposed impoundment exceeds ten acre-feet, the
6 applicant shall meet the requirements of filing applications
7 for the appropriation and use of water pursuant to Section
8 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978.

9 B. Upon the filing of an application pursuant to
10 this section, if the state engineer finds that the capacity of
11 the proposed impoundment is ten acre-feet or less, will not be
12 on a perennial stream and will be used for watering of
13 livestock as defined in Subsection [D] E of this section, the
14 state engineer shall issue a permit to the applicant to impound
15 and use the waters applied for; provided that as part of an
16 application for an impoundment on state or federal land, the
17 applicant submits proof that the applicant is legally entitled
18 to place livestock on the state or federal land where the water
19 is to be impounded and has been granted access to the site and
20 has permission to occupy the portion of the state or federal
21 land as is necessary for the impoundment.

22 C. This section shall only apply to impoundments
23 constructed for the watering of livestock after the effective
24 date of this 2004 act.

25 D. A beneficial user with a permit under this

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1 section shall have a right of access to the land where the
2 water is to be impounded to develop and maintain the
3 impoundment and to maintain the beneficial use appurtenant to
4 the land.

5 ~~[D-]~~ E. As used in this section, "livestock" means
6 "livestock" as defined in Section 77-2-1.1 NMSA 1978 and this
7 section applies only to the impoundment of surface water for
8 the purpose of watering livestock. Watering of livestock does
9 not include an impoundment of surface or ground water in any
10 amount for fishing, fish propagation, recreation or aesthetic
11 purposes, which shall require a permit pursuant to Section
12 72-5-1 NMSA 1978. In determining whether an impoundment will
13 be used for the watering of livestock, the state engineer may
14 consider the maximum amount of water required per livestock
15 unit and shall take into account regional and climatic
16 conditions that affect consumption."

17 **SECTION 6.** Section 72-5-28 NMSA 1978 (being Laws 1907,
18 Chapter 49, Section 42, as amended) is amended to read:

19 "72-5-28. FAILURE TO USE WATER--FORFEITURE.--

20 A. When the party entitled to the use of water
21 fails to ~~[beneficially]~~ use beneficially all or any part of the
22 water claimed by ~~[him]~~ the party, for which a right of use has
23 vested for the purpose for which it was appropriated or
24 adjudicated, except the waters for storage reservoirs, for a
25 period of four years, ~~[such]~~ the unused water shall, if the

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

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

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

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

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

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

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

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

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1 Chapter 73, Article 2 or 3 NMSA 1978, an irrigation district
2 organized pursuant to Chapter 73, Articles 9 through 13 NMSA
3 1978 or the interstate stream commission shall not be computed
4 as part of the four-year forfeiture period.

5 H. Water deposited in a lower Pecos river basin
6 below Sumner lake water bank approved by the interstate stream
7 commission or an acequia or community ditch water bank shall
8 not be computed as part of the four-year forfeiture period.

9 I. This section shall not apply to a water right
10 for livestock watering on leased or permitted land as long as
11 the lease or permit remains in effect."

12 SECTION 7. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2017.