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HOUSE BILL 139

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

BEN LUJAN

AN ACT

RELATING TO FORFEITURE OF WATER RIGHTS; AMENDING A SECTION OF  
THE NMSA 1978 PERTAINING TO PLACING WATER RIGHTS IN A WATER  
CONSERVATION PROGRAM

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

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1 engineer, revert to the public and shall be regarded as  
2 unappropriated public water; provided, however, that forfeiture  
3 shall not necessarily occur if circumstances beyond the control  
4 of the owner have caused nonuse, such that the water could not  
5 be placed to beneficial use by diligent efforts of the owner;  
6 and provided that periods of nonuse, when irrigated farm lands  
7 are placed under the acreage reserve program or conservation  
8 reserve program provided by the Food Security Act of 1985, P.L.  
9 99-198, shall not be computed as part of the four-year  
10 forfeiture period; and provided, further, that the condition of  
11 notice and declaration of nonuser shall not apply to water which  
12 has 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 extension,  
19 in which to apply to beneficial use the water for which a permit  
20 to appropriate has been issued or a water right has vested, was  
21 appropriated or has been adjudicated.

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

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1 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-year  
10 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 full  
14 amount of water covered by or included in the water right or  
15 permit to any part of ~~[such]~~ the designated or specified tract  
16 without penalty or forfeiture.

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

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# State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

February 6, 1997

Mr. Speaker:

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

HOUSE BILL 139

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

1. On page 1, line 11, strike "A SECTION" and insert in lieu  
thereof "CERTAIN SECTIONS".

2. On page 3, line 18, after "a" insert "state engineer-  
approved".

3. On page 3, line 18, after "program" strike the remainder  
of the line and on line 19 strike "approved by the state  
engineer, ".

4. On page 3, line 22, strike "Article 2" and insert in lieu

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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1  
2 thereof "Article 2 or 3".

3  
4 5. On page 3, after line 25, insert the following new  
5 section:

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

8  
9 "72-12-8. WATER RIGHT FORFEITURE. --

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

25 B. Upon application to the state engineer at any time  
and a proper showing of reasonable cause for delay or for nonuse  
or upon the state engineer finding that it is in the public

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

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

11           D. Periods of nonuse when water rights are acquired  
12 and placed in a state engineer-approved water conservation program  
13 ~~[adopted]~~ by an artesian conservancy district, conservancy  
14 district, ~~[or]~~ an acequia or community ditch association  
15 organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, an  
16 irrigation district organized pursuant to Chapter 73, Articles 9  
17 through 13 NMSA 1978 or the interstate stream commission shall not  
18 be computed 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 statutory  
21 exemption, stops the running of the four-year period for the  
22 period of the exemption, and the period of exemption shall not be  
23 included in  
24 computing the four-year period.

25           F. Periods of nonuse when water rights are acquired by

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

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

H. The owner or holder of a valid water right or permit to appropriate waters for agricultural purposes appurtenant to designated or specified lands may apply the full amount of water covered by or included in that water right or permit to any part of ~~[such]~~ the designated or specified tract without penalty or forfeiture. "".,

and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

---

G. X. McSherry, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Abeyta

Absent: None

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# **State of New Mexico House of Representatives**

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

February 17, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 139, as amended

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

Respectfully submitted,

---

Thomas P. Foy, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

Excused: M P. Garcia, King, Rios, Sanchez

Absent: None

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 12, 1997

Mr. President:

Your CONSERVATION COMMITTEE, to whom has been referred

HOUSE BILL 139, as amended

has had it under consideration and reports same with  
recommendation that it DO PASS, and thence referred to the  
JUDICIARY COMMITTEE.

Respectfully submitted,

\_\_\_\_\_  
Michael S. Sanchez, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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FORTY-THIRD LEGISLATURE  
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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 2 Against

Yes: 8

No: Davis, Lyons

Excused: None

Absent: None

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 17, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 139, as amended

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

Respectfully submitted,

\_\_\_\_\_  
Fernando R. Macias, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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Date \_\_\_\_\_

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Sanchez, Stockard, Vernon

Absent: None

**H0139JU1**

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