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HOUSE BILL 437

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

G. X. MCSHERRY

AN ACT

RELATING TO THE FORFEITURE OF WATER RIGHTS; AMENDING SECTIONS OF
THE NMSA 1978 PERTAINING TO EXTENSIONS OF TIME IN WHICH TO APPLY
BENEFICIAL USE.

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, PL
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 time
18 [~~not to exceed a term of one year for each extension~~] for a
19 period not to exceed three years in which to apply to beneficial
20 use the water, for which a permit to appropriate has been issued
21 or a water right has vested, was appropriated or has been
22 adjudicated.

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

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1 of municipal or county water supplies shall not be computed as
2 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-year
11 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 full
15 amount of water covered by or included in the water right or
16 permit to any part of such designated or specified tract without
17 penalty or forfeiture.

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

. 109552. 2GJ

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

3 "72-12-8. WATER RIGHT FORFEITURE. --

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

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

. 109552. 2GJ

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1 adjudicated.

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

7 D. Periods of nonuse when water rights are acquired
8 and placed in a water conservation program adopted by an
9 artesian conservancy district, conservancy district or the
10 interstate stream commission shall not be computed as part of
11 the four-year forfeiture statute.

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

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

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

State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 1, 1996

Mr. Speaker:

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

HOUSE BILL 437

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

1. On page 2, line 19, after the word "years" insert "for
each extension".

2. On page 4, line 23, after the word "years" insert "for
each extension".,

and thence referred to the JUDICIARY COMMITTEE.

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HAGC/ HB 437

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Respectfully submitted,

G. X. McSherry, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Casey, Porter, Stell

Absent: None

H0437AG1

State of New Mexico House of Representatives

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

February 5, 1996

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 437, as amended

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

Respectfully submitted,

Cisco McSorley, Chairman

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FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

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Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: King, Luna, Sanchez, R. G., Stewart, Foy

Absent: None

H0437JC1

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SECOND SESSION, 1996

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FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

February 13, 1996

Mr. President:

Your CONSERVATION COMMITTEE, to whom has been referred

HOUSE BILL 437

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

Respectfully submitted,

TOM R. BENAVIDES, Chairman

Adopted _____ Not Adopted _____

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FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Tsosie, Vernon, Wray

Absent: 0

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

February 14, 1996

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 437, as amended

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

Respectfully submitted,

Janice D. Paster, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Underscored material = new
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FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

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Date _____

The roll call vote was 6 For 0 Against
Yes: 6
No: 0
Excused: None
Absent: Carraro, Reagan, Vernon

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