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HOUSE BILL 167

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

Pauline K. Gubbels

AN ACT

RELATING TO WATER; PROVIDING AN EXEMPTION FROM FORFEITURE FOR
CONSERVED WATER.

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 engineer, revert to
the public and shall be regarded as unappropriated public

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

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

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

D. A lawful exemption from the requirements of
beneficial use, either by an extension of time or other

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1 statutory exemption, stops the running of the four-year
2 period for the period of the exemption, and the period of
3 exemption shall not be included in computing the four-year
4 period.

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

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

15 G. Periods of nonuse when water rights are
16 acquired and placed in a state engineer-approved water
17 conservation program, by an individual or entity that owns
18 water rights, a conservancy district organized pursuant to
19 Chapter 73, Articles 14 through 19 NMSA 1978, a soil and
20 water conservation district organized pursuant to Chapter 73,
21 Article 20 NMSA 1978, an acequia or community ditch
22 association organized pursuant to Chapter 73, Article 2 or 3
23 NMSA 1978, an irrigation district organized pursuant to
24 Chapter 73, Articles 9 through 13 NMSA 1978 or the interstate
25 stream commission shall not be computed as part of the four-
year forfeiture period.

H. Conserved water resulting from a state

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1 engineer-approved conservation practice is exempt from
2 forfeiture. As used in this subsection, "conservation
3 practice" means a reasonable and quantifiable reduction of
4 the amount of water diverted and consumptively used in the
5 exercise of a valid or adjudicated water right."

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

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

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

23 B. Upon application to the state engineer at any
24 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 public interest, the state engineer may grant extensions
of time, for a period not to exceed three years for each

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1 extension, in which to apply to beneficial use the water for
2 which a permit to appropriate has been issued or a water
3 right 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 federal Food Security Act of
7 1985, P.L. 99-198, shall not be computed as part of the four-
8 year 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 individual or entity that owns
12 water rights, an artesian conservancy district, a conservancy
13 district, a soil and water conservation district organized
14 pursuant to Chapter 73, Article 20 NMSA 1978, an acequia or
15 community ditch association organized pursuant to Chapter 73,
16 Article 2 or 3 NMSA 1978, an irrigation district organized
17 pursuant to Chapter 73, Articles 9 through 13 NMSA 1978 or
18 the interstate stream commission shall not be computed as
19 part of the four-year forfeiture statute.

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

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

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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
6 forces of this country shall not be included in computing the
7 four-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.

14 I. Conserved water resulting from a state
15 engineer-approved conservation practice is exempt from
16 forfeiture. As used in this subsection, "conservation
17 practice" means a reasonable and quantifiable reduction of
18 the amount of water diverted and consumptively used in the
19 exercise of a valid or adjudicated water right."