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**HOUSE BILL 247**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Debbie A. Rodella**

**AN ACT**

**RELATING TO WATER; AMENDING SECTIONS OF THE NMSA 1978 TO  
PRESERVE ACEQUIA AND COMMUNITY DITCH WATER RIGHTS.**

**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**

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1 shall be regarded as unappropriated public water; provided,  
2 however, that forfeiture shall not necessarily occur if  
3 circumstances beyond the control of the owner have caused  
4 nonuse, such that the water could not be placed to beneficial  
5 use by diligent efforts of the owner; and provided that  
6 periods of nonuse when irrigated farm lands are placed under  
7 the acreage reserve program or conservation reserve program  
8 provided by the federal 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  
11 of notice and declaration of nonuser shall not apply to water  
12 [~~which~~] that has reverted to the public by operation of law  
13 prior to June 1, 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  
19 extension, in which to apply to beneficial use the water for  
20 which a permit to appropriate has been issued or a water right  
21 has vested, was appropriated or has been adjudicated.

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

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

17 G. Periods of nonuse when water rights are  
18 acquired and placed in a state engineer-approved water  
19 conservation program, by an individual or entity that owns  
20 water rights, a conservancy district organized pursuant to  
21 Chapter 73, Articles 14 through 19 NMSA 1978, a soil and water  
22 conservation district organized pursuant to Chapter 73,  
23 Article 20 NMSA 1978, an acequia or community ditch  
24 association organized pursuant to Chapter 73, Article 2 or 3  
25 NMSA 1978, an irrigation district organized pursuant to

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1 Chapter 73, Articles 9 through 13 NMSA 1978 or the interstate  
2 stream commission shall not be computed as part of the four-  
3 year forfeiture period.

4 H. The rights of an acequia or community ditch  
5 association to the waters of the acequia or association or  
6 their use or the lands and property owned by the acequia or  
7 association shall not be lost by the acequia or community  
8 ditch association for nonuse of waters and are exempted from  
9 the provisions of this section. "

10 Section 2. Section 73-2-22.1 NMSA 1978 (being Laws 1987,  
11 Chapter 352, Section 1) is amended to read:

12 "73-2-22.1. ACEQUIA AND COMMUNITY DITCH ASSOCIATIONS--  
13 ADDITIONAL POWERS--WATER RIGHTS ACQUISITION--NONFORFEITURE.--

14 A. Any acequia or community ditch association has  
15 the power to acquire and hold property and water rights and  
16 transfer and use the property and water rights so acquired  
17 pursuant to law.

18 B. The rights of an acequia or community ditch  
19 association to the waters of the acequia or association or  
20 their use or the lands and property owned by the acequia or  
21 association shall not be lost by the acequia or community  
22 ditch association by prescription or adverse possession or for  
23 nonuse of waters [~~except as provided in Section 72-5-28 NMSA~~  
24 ~~1978~~]. "