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HOUSE BILL 421

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Pauline K. Gubbels

AN ACT

RELATING TO WATER; PROVIDING FOR A PECOS RIVER BASIN WATER  
BANK TO FACILITATE COMPLIANCE WITH THE INTERSTATE COMPACT.

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

Section 1. [NEW MATERIAL] PECOS RIVER BASIN WATER BANK--  
INTERSTATE STREAM COMMISSION. --

A. The interstate stream commission may recognize  
a water bank established by an irrigation district, a  
conservancy district, an artesian conservancy district, a  
community ditch, an acequia or water user's association in the  
Pecos river basin for purposes of compliance with the Pecos  
River Compact.

B. The interstate stream commission shall adopt  
rules for recognition of a water bank that include:

(1) criteria, terms and conditions for

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1 deposit of a water right in the bank;

2 (2) terms and conditions for the accrual,  
3 pooling, exchange, assignment and conditions of the deposit of  
4 a water right;

5 (3) the procedures and criteria for pricing  
6 water transactions and fees of the bank;

7 (4) the procedures for recording and annual  
8 reporting of all transactions to the interstate stream  
9 commission and the state engineer; and

10 (5) procedures for the water bank to  
11 temporarily transfer deposited water to new places of use  
12 without formal proceedings before the state engineer.

13 C. A Pecos river basin water bank may contract  
14 with a person to accrue, pool, exchange, assign or lease water  
15 rights to facilitate compliance with the Pecos River Compact.  
16 A transaction and transfer of water by a water bank in the  
17 Pecos river basin shall:

18 (1) not impair other water rights;

19 (2) not deplete water in the system above  
20 that level that would have occurred in the absence of the  
21 transaction;

22 (3) comply with state law; and

23 (4) be within the same stream system or  
24 underground water source.

25 Section 2. Section 72-5-28 NMSA 1978 (being Laws 1907,  
. 140669. 1

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1 Chapter 49, Section 42, as amended) is amended to read:

2 "72-5-28. FAILURE TO USE WATER--FORFEITURE. --

3 A. When the party entitled to the use of water  
4 fails to beneficially use all or any part of the water claimed  
5 by him, for which a right of use has vested for the purpose  
6 for which it was appropriated or adjudicated, except the  
7 waters for storage reservoirs, for a period of four years,  
8 such unused water shall, if the failure to beneficially use  
9 the water persists one year after notice and declaration of  
10 nonuser given by the state engineer, revert to the public and  
11 shall be regarded as unappropriated public water; provided,  
12 however, that forfeiture shall not necessarily occur if  
13 circumstances beyond the control of the owner have caused  
14 nonuse, such that the water could not be placed to beneficial  
15 use by diligent efforts of the owner; and provided that  
16 periods of nonuse when irrigated farm lands are placed under  
17 the acreage reserve program or conservation reserve program  
18 provided by the federal Food Security Act of 1985, P.L. 99-198  
19 shall not be computed as part of the four-year forfeiture  
20 period; and provided, further, that the condition of notice  
21 and declaration of nonuser shall not apply to water [~~which~~  
22 that has reverted to the public by operation of law prior to  
23 June 1, 1965.

24 B. Upon application to the state engineer at any  
25 time and a proper showing of reasonable cause for delay or for

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

7 C. Periods of nonuse when water rights are  
8 acquired by incorporated municipalities or counties for  
9 implementation of their water development plans or for  
10 preservation of municipal or county water supplies shall not  
11 be computed as part of the four-year forfeiture statute.

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

21 F. The owner or holder of a valid water right or  
22 permit to appropriate waters for agricultural purposes  
23 appurtenant to designated or specified lands may apply the  
24 full amount of water covered by or included in the water right  
25 or permit to any part of the designated or specified tract

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1 without penalty or forfeiture.

2 G. Periods of nonuse when water rights are  
3 acquired and placed in a state engineer-approved water  
4 conservation program, by an individual or entity that owns  
5 water rights, a conservancy district organized pursuant to  
6 Chapter 73, Articles 14 through 19 NMSA 1978, a soil and water  
7 conservation district organized pursuant to Chapter 73,  
8 Article 20 NMSA 1978, an acequia or community ditch  
9 association organized pursuant to Chapter 73, Article 2 or 3  
10 NMSA 1978, an irrigation district organized pursuant to  
11 Chapter 73, Articles 9 through 13 NMSA 1978 or the interstate  
12 stream commission shall not be computed as part of the four-  
13 year forfeiture period.

14 H. Water deposited in a Pecos river basin water  
15 bank approved by the interstate stream commission shall not be  
16 computed as part of the four-year forfeiture period."

17 Section 3. Section 72-12-8 NMSA 1978 (being Laws 1931,  
18 Chapter 131, Section 8, as amended) is amended to read:

19 "72-12-8. WATER RIGHT FORFEITURE. --

20 A. When for a period of four years the owner of a  
21 water right in any of the waters described in Sections 72-12-1  
22 through 72-12-28 NMSA 1978 or the holder of a permit from the  
23 state engineer to appropriate any such waters has failed to  
24 apply them to the use for which the permit was granted or the  
25 right has vested, was appropriated or has been adjudicated,

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1 the water rights shall be, if the failure to beneficially use  
2 the water persists one year after notice and declaration of  
3 nonuser given by the state engineer, forfeited and the water  
4 so unused shall revert to the public and be subject to further  
5 appropriation; provided that the condition of notice and  
6 declaration of nonuser shall not apply to water ~~[which]~~ that  
7 has reverted to the public by operation of law prior to  
8 June 1, 1965.

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

17 C. Periods of nonuse when irrigated farm lands are  
18 placed under the acreage reserve program or conservation  
19 reserve program provided by the federal Food Security Act of  
20 1985, P.L. 99-198, shall not be computed as part of the four-  
21 year forfeiture period.

22 D. Periods of nonuse when water rights are  
23 acquired and placed in a state engineer-approved water  
24 conservation program by an individual or entity that owns  
25 water rights, an artesian conservancy district, a conservancy

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1 district, a soil and water conservation district organized  
2 pursuant to Chapter 73, Article 20 NMSA 1978, an acequia or  
3 community ditch association organized pursuant to Chapter 73,  
4 Article 2 or 3 NMSA 1978, an irrigation district organized  
5 pursuant to Chapter 73, Articles 9 through 13 NMSA 1978 or the  
6 interstate stream commission shall not be computed as part of  
7 the four-year forfeiture statute.

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

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

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

22 H. The owner or holder of a valid water right or  
23 permit to appropriate waters for agricultural purposes  
24 appurtenant to designated or specified lands may apply the  
25 full amount of water covered by or included in that water

1 right or permit to any part of the designated or specified  
2 tract without penalty or forfeiture.

3 I. Water deposited in a Pecos river basin water  
4 bank approved by the interstate stream commission shall not be  
5 computed as part of the four-year forfeiture period."

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