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HOUSE BILL 313

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

PAULINE K. GUBBELS

AN ACT

RELATING TO WATER; ENACTING THE WATER CONSERVATION ACT;
REQUIRING THE STATE ENGINEER TO INCORPORATE WATER CONSERVATION
INTO THE EVALUATION OF WATER RIGHT APPLICATIONS, BENEFICIAL
USE, WATER PLANNING AND GRANTS OF MONEY, LOANS, PERMITS AND
LICENSES; PROVIDING FOR WATER CONSERVATION EDUCATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 6 of this act may be cited as the "Water Conservation
Act".

Section 2. [NEW MATERIAL] FINDINGS. -- The legislature
finds that:

A. water is a limited and essential resource that
must be conserved;

B. growth, development and changing public needs

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1 are increasing demand for water and reducing available
2 supplies and conservation can provide for these needs with
3 existing water supplies;

4 C. existing and new water uses should be
5 efficient;

6 D. New Mexico is subject to periodic drought; and

7 E. every water user in the state has a duty to
8 conserve water.

9 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
10 Water Conservation Act:

11 A. "conserved water" means water no longer
12 consumptively used due to water conservation;

13 B. "consumptive use" means, for irrigated
14 agriculture, the consumptive irrigation requirement pursuant
15 to Chapter 72, Article 15 NMSA 1978; for other uses,
16 "consumptive use" means that part of a water withdrawal from a
17 surface or ground water source that is evaporated, transpired
18 or consumed and is not considered a waste of water; and

19 C. "water conservation" means an action or use of
20 a technology that reduces the amount of water withdrawn from a
21 water source, reduces consumptive use, reduces the loss or
22 waste of water, improves efficiency of water use, increases
23 recycling and reuse of water or prevents the pollution of
24 water.

25 Section 4. [NEW MATERIAL] WATER CONSERVATION

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1 GUIDELINES-- STATE ENGINEER-- POWERS AND DUTIES. --

2 A. The state engineer shall develop guidelines and
3 rules for water conservation and water conservation programs
4 and shall use water conservation as a criterion for approval
5 of applications to change point of diversion, place or purpose
6 of use or new appropriations of water.

7 B. The state engineer may approve the transfer of
8 conserved water to another point of diversion, place or
9 purpose of use pursuant to Chapter 72 NMSA 1978 if approval of
10 the transfer does not increase consumptive use.

11 C. A water right owner may place and remove
12 conserved water in a water conservation program approved by
13 the state engineer without forfeiting or losing the water
14 right.

15 Section 5. [NEW MATERIAL] WATER USE PLANNING. -- Regional
16 water plans and water use planning shall include water
17 conservation as an alternative to increased use of existing
18 supplies or development of new supplies of water and shall
19 maximize the use of water conservation to meet future
20 increased water demands. The interstate stream commission
21 shall approve no grant for water planning without adequate
22 assurances that water conservation is a priority objective of
23 the planning process.

24 Section 6. [NEW MATERIAL] PUBLIC AWARENESS-- EDUCATION
25 PROGRAM --The state engineer in cooperation with the

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1 interstate stream commission shall develop a public education
2 program to improve awareness about and encourage adoption of
3 water conservation measures. The public awareness program
4 shall include support of:

5 A. research and demonstration projects to
6 determine the most efficient water use technology and
7 measures; and

8 B. development of water conservation measures by
9 state agencies, political subdivisions and the private sector.

10 Section 7. Section 72-5-28 NMSA 1978 (being Laws 1907,
11 Chapter 49, Section 42, as amended) is amended to read:

12 "72-5-28. FAILURE TO USE WATER--FORFEITURE. --

13 A. When the party entitled to the use of water
14 fails to beneficially use all or any part of the water claimed
15 by him, for which a right of use has vested for the purpose
16 for which it was appropriated or adjudicated, except the
17 waters for storage reservoirs, for a period of four years,
18 such unused water shall, if the failure to beneficially use
19 the water persists one year after notice and declaration of
20 nonuser given by the state engineer, revert to the public and
21 shall be regarded as unappropriated public water; provided,
22 however, that forfeiture shall not necessarily occur if
23 circumstances beyond the control of the owner have caused
24 nonuse, such that the water could not be placed to beneficial
25 use by diligent efforts of the owner; and provided that

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1 periods of nonuse when irrigated farm lands are placed under
2 the acreage reserve program or conservation reserve program
3 provided by the [~~Food Security Act of 1985, P.L. 99-198~~]
4 federal Agricultural Improvement and Reform Act shall not be
5 computed as part of the four-year forfeiture period; and
6 provided, further, that the condition of notice and
7 declaration of nonuser shall not apply to water which has
8 reverted to the public by operation of law prior to June 1,
9 1965.

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

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

23 D. A lawful exemption from the requirements of
24 beneficial use, either by an extension of time or other
25 statutory exemption, stops the running of the four-year period

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1 for the period of the exemption, and the period of exemption
2 shall not be included in computing the four-year period.

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

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

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

21 Placement of claimed water rights in a water conservation
22 program is not evidence of the validity of the water right. "

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

25 "72-12-8. WATER RIGHT FORFEITURE. --

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

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

C. Periods of nonuse when irrigated farm lands are placed under the acreage reserve program or conservation reserve program provided by the [Food Security Act of 1985,

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1 ~~P.L. 99-198]~~ federal Agricultural Improvement and Reform Act
2 shall not be computed as part of the four-year forfeiture
3 period.

4 D. Periods of nonuse when water rights are
5 acquired and placed in a state engineer-approved water
6 conservation program by a water right owner, an artesian
7 conservancy district, conservancy district, an acequia or
8 community ditch association organized pursuant to Chapter 73,
9 Article 2 or 3 NMSA 1978, an irrigation district organized
10 pursuant to Chapter 73, Articles 9 through 13 NMSA 1978 or the
11 interstate stream commission shall not be computed as part of
12 the four-year forfeiture statute. Placement of claimed water
13 rights in a water conservation program is not evidence of the
14 validity of the water right.

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

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

25 G. Periods of nonuse when the nonuser of acquired

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1 water rights is on active duty as a member of the armed forces
2 of this country shall not be included in computing the four-
3 year period.

4 H. The owner or holder of a valid water right or
5 permit to appropriate waters for agricultural purposes
6 appurtenant to designated or specified lands may apply the
7 full amount of water covered by or included in that water
8 right or permit to any part of the designated or specified
9 tract without penalty or forfeiture. "

10 Section 9. Section 72-14-44 NMSA 1978 (being Laws 1987,
11 Chapter 182, Section 2) is amended to read:

12 "72-14-44. INTERSTATE STREAM COMMISSION--GROUNDWATER
13 APPROPRIATION--WATER RIGHTS PURCHASE--WATER PLANNING FUNDING.--

14 A. The interstate stream commission is authorized
15 to appropriate groundwater or purchase water rights on behalf
16 of any of the various regions of the state.

17 B. Nothing in this section shall be construed as
18 permitting the condemnation of water rights or as determining,
19 abridging or affecting in any way the water rights of Indian
20 nations, tribes or pueblos.

21 C. The interstate stream commission [~~is authorized~~
22 ~~to~~] may make grants or loans of funds for the purpose of
23 regional water planning. Prior to approval of any proposal by
24 a region for planning funds under this section, the commission
25 shall develop criteria for evaluating such proposals. These

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1 criteria at a minimum shall provide for:
2 (1) identification of the region requesting
3 planning funds and why it is hydrologically and politically an
4 appropriate applicant;

5 (2) use of an appropriate planning process,
6 including opportunities for participation by those Indian
7 nations, tribes or pueblos located within the various regions
8 of the state;

9 (3) reasonable proposed costs and timetables
10 for completion of the planning process;

11 (4) appropriate provisions for notice, review
12 and comment where applicable;

13 (5) adequate review of potential conflict with
14 laws relating to impact on existing water rights;

15 (6) adequate review of water conservation and
16 the effect on the public welfare; [~~and~~]

17 (7) evidence of official policy by water
18 planning entities to implement water conservation measures; and

19 [~~(7)~~] (8) identification of sources other than
20 the interstate stream commission for funding of the proposed
21 regional planning process.

22 D. A water planning region eligible for funding
23 under this section is an area within the state that contains
24 sufficient hydrological and political interests in common to
25 make water planning feasible. The state as a whole shall not

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1 be considered a water planning region for purposes of this
2 section.

3 E. No entity shall be made a part of a proposal for
4 planning funds under this section without its consent.

5 F. No funds shall be granted under this ~~[act]~~
6 section to any party ~~[or parties]~~ that ~~[are]~~ is not within a
7 water planning region. Whether a proposal for funding falls
8 within a water planning region shall be determined on a case-
9 by-case basis by the interstate stream commission after
10 consultation with the state engineer and consideration of the
11 following:

12 (1) whether the source of water and the
13 potential place of use of the water are located within the same
14 hydrologic basin; and

15 (2) if there is more than one party and the
16 parties are requesting funds on a joint basis, whether the
17 parties have demonstrated political and economic interests in
18 common by entering into a binding intergovernmental agreement
19 for carrying out the planning process. "