

72-6-3. Owner may lease use of water.

A. An owner may lease to any person all or any part of the water use due the owner under the owner's water right, and the owner's water right shall not be affected by the lease of the use. The use to which the owner is entitled under the owner's right shall, during the exercise of the lease, be reduced by the amount of water so leased. Upon termination of the lease, the water use and location of use subject to the lease shall revert to the owner's original use and location of use.

B. After application is made, notice and opportunity for hearing is provided and the application is approved, pursuant to Sections 72-6-4 through 72-6-6 NMSA 1978,

the lease may be effective for immediate use of water or may be effective for future use of the water covered by the lease; however, the lease shall not be effective to cumulate water from year to year or to substantially enlarge the use of the water in such manner that it would injure other water users. The lease shall not toll any forfeiture of water rights for nonuse, and the owner shall not, by reason of the lease, escape the forfeiture for nonuse prescribed by law; provided, however, that the state engineer shall notify both the owner and the lessee of declaration of nonuser as provided in Sections [72-5-28](#) and [72-12-8](#) NMSA 1978. The initial or any renewal term of a lease of

72-6-4. Lessee's application.

Prior to his use of such water, the lessee shall apply to the state engineer requesting approval for the use and location of use to which such water will be put. The engineer shall prescribe the form of such application and may require any information pertinent to the matter.

72-6-5. Approval.

A. The state engineer shall approve the application if the applicant has reasonably shown that his proposed use and location of use is a beneficial use and:
(1) will not impair any existing right to a greater degree than such right is, or would be, impaired by the continued use and location of use by the owner; and
(2) will not be contrary to the conservation of water within the state or detrimental to the public welfare of the state.

B. In the case of annual allotments of project water leased to a special water users' association from an irrigation district organized pursuant to [Chapter 73, Article 10](#) NMSA 1978, if the state engineer determines that the proposed changes in place and purpose of use and point of diversion comply with the rules established pursuant to Subsection G of [Section 73-10-48](#) NMSA 1978, the board of directors of the irrigation district may approve the application in accordance with the provisions of [Section](#)

72-6-6. Application; notice; protest; hearing.

A. Upon the filing of an application by a lessee, the state engineer shall cause a notice of the filing to be published once a week for three consecutive weeks in a newspaper of general circulation in the county in which the water right is situated.

B. Any owner who believes his water rights will be adversely affected by the granting of the application may file a protest. The protest shall be specific as to how the granting of the application will adversely affect his water rights. The protest shall be filed in writing with the state engineer and a copy sent to the applicant by certified mail within ten days after the last publication of notice of application.

C. If a protest is filed, the state engineer shall hold a hearing on the granting of the application, and the applicant and protestants shall be notified by the state engineer as to the date and place of the hearing.

D. If no objections are filed, the state engineer may grant the application without hearing. If no objections are filed and the state engineer denies the application, the state engineer shall hold a hearing if requested to do so by the applicant. The request shall be filed with the state engineer within ten days after the denial of the application.

E. If the state engineer grants the application but allows the applicant to use less water than the amount of water the owner would be allowed to use, the state engineer shall hold a hearing on the matter if requested to do so by the applicant. The request shall be filed with the state engineer within ten days after the granting of the application.

F. In a hearing before the state engineer, a full record and transcript of the proceeding shall be kept by him.

SB 493 (Wirth) would add language to the statute to clarify that "use of water" pursuant to a water lease can be effective only after the application for that water use lease is granted by the State Engineer. His approval includes procedures for an opportunity for protest and a public hearing. This new language simply makes reference to **sub-sections of existing language in the same statute.**



Existing statute requires an opportunity for the public to protest the application. A protest can include concerns about potential impairment of existing water rights.

Existing statute requires that, if a protest is filed, the State Engineer HOLD A HEARING.

The State Engineer can skip the public hearing ONLY IF there are no protests filed. If protests are filed, it is clear that a PUBLIC HEARING IS REQUIRED before the application to use water can be granted.