

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 349

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50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING FOR WATER CONSERVATION; AMENDING A SECTION OF CHAPTER
72 NMSA 1978 TO PROVIDE FOR THE STATUS OF WATER RIGHTS UNDER
LEASE.

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

SECTION 1. Section 72-6-3 NMSA 1978 (being Laws 1967,
Chapter 100, Section 3, as amended) is amended to read:

"72-6-3. OWNER MAY LEASE USE OF WATER--PERMITTED
BENEFICIAL USE.--

A. An owner may lease to any person all or any part
of the water use due ~~[him]~~ the owner under ~~[his]~~ the owner's
water right, and the owner's water right shall not be affected
by the lease of the use. The beneficial use by a lessee
pursuant to Chapter 72, Article 6 NMSA 1978 of any part of the

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underscored material = new
[bracketed material] = delete

1 water use due under the owner's water right shall constitute
2 beneficial use of that part of the owner's water right. The
3 use to which the owner is entitled under [~~his~~] the owner's
4 right shall, during the exercise of the lease, be reduced by
5 the amount of water so leased. Upon termination of the lease,
6 the water use and location of use subject to the lease shall
7 revert to the owner's original use and location of use.

8 B. The lease may be effective for immediate use of
9 water or may be effective for future use of the water covered
10 by the lease; however, the lease shall not be effective to
11 cumulate water from year to year or to substantially enlarge
12 the use of the water in such manner that it would injure other
13 water users. The lease shall not toll any forfeiture of water
14 rights for nonuse, and the owner shall not, by reason of the
15 lease, escape the forfeiture for nonuse prescribed by law;
16 provided, however, that the state engineer shall notify both
17 the owner and the lessee of declaration of nonuser as provided
18 in Sections 72-5-28 and 72-12-8 NMSA 1978. The initial or any
19 renewal term of a lease of water use shall not exceed ten
20 years, except as provided in Subsection [~~G~~] D of this section.

21 C. In a fully appropriated system where a state
22 engineer permit has authorized a change in the place or purpose
23 of use of a finally adjudicated ground water right but where it
24 has become infeasible to place the water to the permitted
25 beneficial use because of a change in circumstances beyond the

1 permittee's control, the permittee, prior to the date for
 2 filing proof of beneficial use as required by the permit or
 3 approved extension of time, may lease all or any part of the
 4 water use authorized by the permit for ten years, subject to
 5 renewal for a maximum of one more ten-year term; provided that
 6 only that amount of water placed to beneficial use under the
 7 lease shall be accepted as satisfying the beneficial use
 8 requirement of the permit necessary to establish a water right;
 9 and provided further that the water placed to beneficial use
 10 under the lease is only within the fully appropriated system
 11 and may include any beneficial use. In addition to any other
 12 notice required by law, the permittee shall give written notice
 13 of any such proposed lease to all protestants, if any, who
 14 participated in the prior permitting proceeding.

15 [~~G.~~] D. A water use may be leased for forty years
 16 by municipalities, counties, state universities, special water
 17 users' associations, public utilities supplying water to
 18 municipalities or counties and member-owned community water
 19 systems as lessee and shall be entitled to the protection of
 20 the forty-year water use planning period as provided in Section
 21 72-1-9 NMSA 1978. A water use deriving from an acequia or
 22 community ditch organized pursuant to Chapter 73, Article 2 or
 23 3 NMSA 1978, whether owned by a water right owner under the
 24 acequia or community ditch or by the acequia or community ditch
 25 may be leased for a term not to exceed ten years."

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