

1 SENATE BILL 435

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Peter Wirth

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10 AN ACT

11 RELATING TO WATER; CLARIFYING THAT A LEASE OF A WATER RIGHT AND
12 SUBSEQUENT USE OF WATER SHALL NOT TAKE EFFECT UNTIL AFTER THE
13 APPLICATION HAS BEEN APPROVED IN ACCORDANCE WITH LAW; DECLARING
14 AN EMERGENCY.

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

17 SECTION 1. Section 72-6-3 NMSA 1978 (being Laws 1967,
18 Chapter 100, Section 3, as amended by Laws 2014, Chapter 45,
19 Section 2 and by Laws 2014, Chapter 48, Section 2) is amended
20 to read:

21 "72-6-3. OWNER MAY LEASE USE OF WATER.--

22 A. An owner may lease to any person all or any part
23 of the water use due the owner under the owner's water right,
24 and the owner's water right shall not be affected by the lease
25 of the use. The use to which the owner is entitled under the

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underscored material = new
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1 owner's right shall, during the exercise of the lease, be
2 reduced by the amount of water so leased. Upon termination of
3 the lease, the water use and location of use subject to the
4 lease shall revert to the owner's original use and location of
5 use.

6 B. After application is made, notice and
7 opportunity for hearing is provided and the application is
8 approved, pursuant to Sections 72-6-4 through 72-6-6 NMSA 1978,
9 the lease may be effective for immediate use of water or may be
10 effective for future use of the water covered by the lease;
11 however, the lease shall not be effective to cumulate water
12 from year to year or to substantially enlarge the use of the
13 water in such manner that it would injure other water users.
14 The lease shall not toll any forfeiture of water rights for
15 nonuse, and the owner shall not, by reason of the lease, escape
16 the forfeiture for nonuse prescribed by law; provided, however,
17 that the state engineer shall notify both the owner and the
18 lessee of declaration of nonuser as provided in Sections
19 72-5-28 and 72-12-8 NMSA 1978. The initial or any renewal term
20 of a lease of water use shall not exceed ten years, except as
21 provided in Subsections C and D of this section.

22 C. A water use may be leased for forty years by
23 municipalities, counties, state universities, special water
24 users' associations, public utilities supplying water to
25 municipalities or counties and member-owned community water

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1 systems as lessee and shall be entitled to the protection of
2 the forty-year water use planning period as provided in Section
3 72-1-9 NMSA 1978. A water use deriving from an acequia or
4 community ditch organized pursuant to Chapter 73, Article 2 or
5 3 NMSA 1978, whether owned by a water right owner under the
6 acequia or community ditch or by the acequia or community
7 ditch, may be leased for a term not to exceed ten years.

8 D. A water use due under an adjudicated water right
9 secured to a pueblo pursuant to the settlement agreements
10 approved in Title 5 and Title 6 of the federal Claims
11 Resolution Act of 2010, P.L. No. 111-291, Sections 501-626, or
12 in the partial final judgments and decrees entered pursuant to
13 those settlement agreements, may be leased for a term,
14 including all renewals, not to exceed the term specifically
15 authorized in that act; provided that this subsection shall not
16 apply to any water use due under any state-law based water
17 rights acquired by a pueblo or by the United States on behalf
18 of a pueblo."

19 SECTION 2. EMERGENCY.--It is necessary for the public
20 peace, health and safety that this act take effect immediately.