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HOUSE BILL 402

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO WATER; AMENDING SECTIONS 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.--

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. Water rights placed to beneficial use  
by a lessee pursuant to Chapter 72, Article 6 NMSA 1978 shall  
constitute beneficial use of the lessor's water right. The use  
to which the owner is entitled under ~~[his]~~ the owner's right  
shall, during the exercise of the lease, be reduced by the

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1 amount of water so leased. Upon termination of the lease, the  
2 water use and location of use subject to the lease shall revert  
3 to the owner's original use and location of use.

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

18 C. A water use may be leased for forty years by  
19 municipalities, counties, state universities, special water  
20 users' associations, public utilities supplying water to  
21 municipalities or counties and member-owned community water  
22 systems as lessee and shall be entitled to the protection of  
23 the forty-year water use planning period as provided in Section  
24 72-1-9 NMSA 1978. A water use deriving from an acequia or  
25 community ditch organized pursuant to Chapter 73, Article 2 or

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1 3 NMSA 1978, whether owned by a water right owner under the  
2 acequia or community ditch or by the acequia or community ditch  
3 may be leased for a term not to exceed ten years."

4 SECTION 2. Section 72-12-7 NMSA 1978 (being Laws 1931,  
5 Chapter 131, Section 7, as amended) is amended to read:

6 "72-12-7. CHANGE OF LOCATION OF WELL--CHANGE IN USE ON  
7 APPLICATION--TEMPORARY CHANGE.--

8 A. The owner of a water right may change the  
9 location of [~~his~~] the owner's well or change the use of the  
10 water, but only upon application to the state engineer and upon  
11 showing that the change will not impair existing rights and  
12 will not be contrary to the conservation of water within the  
13 state and will not be detrimental to the public welfare of the  
14 state. An adjudicated water right that is moved from one  
15 location to a second location is not required to be placed to  
16 beneficial use if it is subsequently transferred by lease to a  
17 third location. The application may be granted only after such  
18 advertisement and hearing as are prescribed in the case of  
19 original applications.

20 B. When the owner of a water right applies for a  
21 temporary change [~~of~~] not to exceed one year for not more than  
22 three acre-feet of water to a different location or to a  
23 different use, or both, the state engineer shall make an  
24 investigation and, if the change does not permanently impair  
25 any vested rights of others, [~~he~~] the state engineer shall

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1 enter an order authorizing the change. If ~~[he]~~ the state  
2 engineer finds that the change sought might impair vested  
3 rights, ~~[he]~~ the state engineer shall order advertisement and  
4 hearing as in other cases.

5 C. If objections or protests have been filed within  
6 the time prescribed in the notice or if the state engineer is  
7 of the opinion that the permit should not be issued, the state  
8 engineer may deny the application or, before ~~[he acts]~~ acting  
9 on the application, may order that a hearing be held. ~~[He]~~ The  
10 state engineer shall notify the applicant of ~~[his]~~ the action  
11 by certified mail sent to the address shown in the  
12 application."

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