

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 402

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

AN ACT

RELATING TO WATER; 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  
water use due under the owner's water right shall constitute  
beneficial use of that part of the owner's water right. The

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

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

20 C. In a fully appropriated system where a state  
21 engineer permit has authorized a change in the place or purpose  
22 of use of a finally adjudicated ground water right but where it  
23 has become infeasible to place the water to the permitted  
24 beneficial use because of a change in circumstances beyond the  
25 permittee's control, the permittee may lease all or any part of

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

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