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SENATE BILL 236

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

INTRODUCED BY

Phil A. Griego

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."