

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 236

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.--

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
use to which the owner is entitled under ~~[his]~~ the owner's

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

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

18 C. In a fully appropriated system where a state
19 engineer permit has authorized a change in the place or purpose
20 of use of an adjudicated ground water right that has not been
21 lost through forfeiture or abandonment but water has not been
22 placed to beneficial use at the new place of use, the permittee
23 may lease all or any part of the water use authorized by the
24 permit, provided that only that amount of water placed to
25 beneficial use under the lease shall be accepted as satisfying

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1 the beneficial use requirement of the permit necessary to
 2 establish a water right.

3 ~~[G-]~~ D. A water use may be leased for forty years
 4 by municipalities, counties, state universities, special water
 5 users' associations, public utilities supplying water to
 6 municipalities or counties and member-owned community water
 7 systems as lessee and shall be entitled to the protection of
 8 the forty-year water use planning period as provided in Section
 9 72-1-9 NMSA 1978. A water use deriving from an acequia or
 10 community ditch organized pursuant to Chapter 73, Article 2 or
 11 3 NMSA 1978, whether owned by a water right owner under the
 12 acequia or community ditch or by the acequia or community ditch
 13 may be leased for a term not to exceed ten years."

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