

1 HOUSE BILL 243

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

3 INTRODUCED BY

4 Roberto "Bobby" J. Gonzales

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10 AN ACT

11 RELATING TO WATER; AMENDING A SECTION OF CHAPTER 72 NMSA 1978  
12 TO PROVIDE FOR THE STATUS OF WATER RIGHTS UNDER LEASE.

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

15 SECTION 1. Section 72-6-3 NMSA 1978 (being Laws 1967,  
16 Chapter 100, Section 3, as amended) is amended to read:

17 "72-6-3. OWNER MAY LEASE USE OF WATER--PERMITTED  
18 BENEFICIAL USE.--

19 A. An owner may lease to any person all or any part  
20 of the water use due ~~[him]~~ the owner under ~~[his]~~ the owner's  
21 water right, and the owner's water right shall not be affected  
22 by the lease of the use. The beneficial use by a lessee  
23 pursuant to Chapter 72, Article 6 NMSA 1978 of any part of the  
24 water use due under the owner's water right shall constitute  
25 beneficial use of that part of the owner's water right. The

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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 as provided  
16 in Sections 72-5-28 and 72-12-8 NMSA 1978. The initial or any  
17 renewal term of a lease of water use shall not exceed ten  
18 years, except as provided in Subsection [G] D of this section.

19 C. In a fully appropriated system where a state  
20 engineer permit has authorized a change in the place or purpose  
21 of use of a finally adjudicated ground water right but where it  
22 has become infeasible to place the water to the permitted  
23 beneficial use because of a change in circumstances beyond the  
24 permittee's control, the permittee, prior to the date for  
25 filing proof of beneficial use as required by the permit or

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