

HOUSE BILL 121

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO WATER; CLARIFYING THAT A LEASE OF WATER UNDER A WATER RIGHT AND SUBSEQUENT USE OF THAT WATER SHALL NOT TAKE EFFECT UNTIL AFTER THE APPLICATION HAS BEEN APPROVED IN ACCORDANCE WITH LAW; MAKING A TECHNICAL CROSS-REFERENCE CORRECTION; PROVIDING A JULY 1, 2025 EFFECTIVE DATE.

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 the owner under the owner's water right, and the owner's water right shall not be affected by the lease of the use. The use to which the owner is entitled under the owner's right shall, during the exercise of the lease, be

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

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

22 C. A water use may be leased for forty years by
23 municipalities, counties, state universities, special water
24 users' associations, public utilities supplying water to
25 municipalities or counties and member-owned community water

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1 systems as lessee and shall be entitled to the protection of
2 the forty-year water use planning period as provided in Section
3 72-1-9 NMSA 1978.

4 D. A water use deriving from an acequia or
5 community ditch organized pursuant to Chapter 73, Article 2 or
6 3 NMSA 1978, whether owned by a water right owner under the
7 acequia or community ditch or by the acequia or community
8 ditch, may be leased for a term not to exceed ten years;
9 provided that pursuant to the rules or bylaws duly adopted by
10 its members, an acequia or community ditch may require that any
11 water use lease of a water right served by the acequia or
12 community ditch, or any water use lease in which a water right
13 is moved into and then served by the acequia or community
14 ditch, shall be subject to approval by the commissioners of the
15 acequia or community ditch in accordance with the procedures
16 for approval of changes in point of diversion or place or
17 purpose of use as provided in Subsection E of Section 73-2-21
18 NMSA 1978 and Sections 72-5-24.1 and 73-3-4.1 NMSA 1978.

19 E. A water use due under an adjudicated water right
20 secured to a pueblo pursuant to the settlement agreements
21 approved in Title 5 and Title 6 of the federal Claims
22 Resolution Act of 2010, P.L. No. 111-291, Sections 501-626, or
23 in the partial final judgments and decrees entered pursuant to
24 those settlement agreements, may be leased for a term,
25 including all renewals, not to exceed the term specifically

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1 authorized in that act; provided that this subsection shall not
2 apply to any water use due under any state-law based water
3 rights acquired by a pueblo or by the United States on behalf
4 of a pueblo."

5 SECTION 2. APPLICABILITY.--The provisions of this act
6 apply to an application for a lease of water filed by a lessee
7 with the state engineer on or after July 1, 2025.

8 SECTION 3. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2025.