

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 121

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

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; ESTABLISHING EXPEDITED HEARINGS AND FINAL RULINGS  
FOR EXPEDITED TEMPORARY LEASES; PROVIDING A JULY 1, 2025  
EFFECTIVE DATE.

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

SECTION 1. Section 72-2-20 NMSA 1978 (being Laws 2019,  
Chapter 88, Section 1) is amended to read:

"72-2-20. NOTICE OF APPLICATIONS--ONLINE POSTING--NOTICE  
BY PUBLICATION--OBJECTIONS.--When notice of an application is  
required to be provided pursuant to Section 72-5-4, 72-5A-5,  
72-6-6, 72-6-6.1, 72-12-3 or 72-12B-1 NMSA 1978:

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underscoring material = new  
~~[bracketed material]~~ = delete

1           A. if the state engineer determines that notice of  
2 an application shall be published, the state engineer shall  
3 post, within forty-five days for an application for an  
4 expedited temporary lease unless the application is defective  
5 as to form or incomplete or the applicant seeks to amend the  
6 application for the expedited temporary lease after acceptance,  
7 in which case the forty-five-day period to post the notice of  
8 an expedited temporary lease shall run from the date a  
9 corrected or amended application is filed, electronically on  
10 the state engineer's website a notice that contains the  
11 essential facts of the application, the name of the newspaper  
12 in which the applicant will be required to publish notice, the  
13 contact information for the state engineer district office  
14 where the application and supporting documentation are located  
15 and the date by which objections or protests may be filed,  
16 which shall be seventy days after the date of electronic  
17 posting on the state engineer's website;

18           B. within five days of posting electronic notice on  
19 the state engineer's website, the state engineer shall issue  
20 instructions to the applicant to publish notice of the  
21 application in a form and in the newspaper prescribed by the  
22 state engineer once a week for three consecutive weeks and  
23 requiring that the last date of publication shall be no less  
24 than ten days prior to the date by which objections or protests  
25 may be filed with the state engineer. The newspaper shall be

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1 one that is published and distributed in each county affected  
 2 by the diversion and in each county where the water will be or  
 3 has been put to beneficial use, or if there is no such  
 4 newspaper, then the newspaper shall be one of general  
 5 circulation in the stream system;

6 C. the applicant shall file with the state engineer  
 7 proof of publication as required within twenty days after the  
 8 date of the last publication. In case of failure to file  
 9 satisfactory proof of publication within the time required, the  
 10 date of the application shall be the date of receipt of proofs  
 11 of publication in proper form; and

12 D. if the last of the three consecutive weekly  
 13 publications does not occur within sixty days of the date the  
 14 state engineer electronically posts the notice on the state  
 15 engineer's website, the applicant shall request that the state  
 16 engineer prepare a new notice and electronically post the  
 17 notice as prescribed in Subsection A of this section and issue  
 18 new instructions for newspaper publication as prescribed in  
 19 Subsection B of this section."

20 SECTION 2. Section 72-6-3 NMSA 1978 (being Laws 1967,  
 21 Chapter 100, Section 3, as amended) is amended to read:

22 "72-6-3. OWNER MAY LEASE USE OF WATER.--

23 A. An owner may lease, including under an expedited  
 24 temporary lease, to any person all or any part of the water use  
 25 due the owner under the owner's water right, and the owner's

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1 water right shall not be affected by the lease of the use. The  
2 use to which the owner is entitled under the owner's right  
3 shall, during the exercise of the lease or expedited temporary  
4 lease, be reduced by the amount of water so leased. Upon  
5 termination of the lease or expedited temporary lease, the  
6 water use and location of use subject to the lease or expedited  
7 temporary lease shall revert to the owner's original use and  
8 location of use.

9 B. After the application is made, notice and  
10 opportunity for a hearing are provided and the application is  
11 approved in accordance with Sections 72-6-4 through 72-6-6.1  
12 NMSA 1978, the lease or expedited temporary lease may be  
13 effective for immediate use of water or may be effective for  
14 future use of the water covered by the lease or expedited  
15 temporary lease; however, the lease or expedited temporary  
16 lease shall not be effective to cumulate water from year to  
17 year or to substantially enlarge the use of the water in such  
18 manner that it would injure other water users. The lease or  
19 expedited temporary lease shall not toll any forfeiture of  
20 water rights for nonuse, and the owner shall not, by reason of  
21 the lease, escape the forfeiture for nonuse prescribed by law;  
22 provided, however, that the state engineer shall notify both  
23 the owner and the lessee of declaration of nonuser as provided  
24 in Sections 72-5-28 and 72-12-8 NMSA 1978. The initial or any  
25 renewal term of a lease of water use shall not exceed ten

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1 years, except as provided in Subsections C and [D] E of this  
2 section.

3 C. A water use may be leased, except under an  
4 expedited temporary lease, for forty years by municipalities,  
5 counties, state universities, special water users'  
6 associations, public utilities supplying water to  
7 municipalities or counties and member-owned community water  
8 systems as lessee and shall be entitled to the protection of  
9 the forty-year water use planning period as provided in Section  
10 72-1-9 NMSA 1978.

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

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1 further provided that a lease of a water right served by an  
2 acequia or community ditch shall be subject to the prohibition  
3 on expedited temporary water leases set forth in Subsection B  
4 of Section 72-6-6.1 NMSA 1978.

5 E. A water use due under an adjudicated water right  
6 secured to a pueblo pursuant to the settlement agreements  
7 approved in Title 5 and Title 6 of the federal Claims  
8 Resolution Act of 2010, P.L. No. 111-291, Sections 501-626, or  
9 in the partial final judgments and decrees entered pursuant to  
10 those settlement agreements, may be leased for a term,  
11 including all renewals, not to exceed the term specifically  
12 authorized in that act; provided that this subsection shall not  
13 apply to any water use due under any state-law based water  
14 rights acquired by a pueblo or by the United States on behalf  
15 of a pueblo."

16 SECTION 3. Section 72-6-4 NMSA 1978 (being Laws 1967,  
17 Chapter 100, Section 4) is amended to read:

18 "72-6-4. LESSEE'S APPLICATION.--Prior to [~~his~~] the use of  
19 [~~such~~] the water under a lease or an expedited temporary lease,  
20 the lessee shall apply to the state engineer requesting  
21 approval for the use and location of use to which [~~such~~] the  
22 water will be put. The state engineer shall prescribe the form  
23 of [~~such~~] the application and may require any information  
24 pertinent to the matter."

25 SECTION 4. Section 72-6-5 NMSA 1978 (being Laws 1967,

1 Chapter 100, Section 5, as amended) is amended to read:

2 "72-6-5. APPROVAL.--

3 A. The state engineer shall approve [~~the~~] an  
4 application for a lease if the applicant has reasonably shown  
5 that [~~his~~] the applicant's proposed use and location of use is  
6 a beneficial use and:

7 (1) will not impair any existing right to a  
8 greater degree than [~~such~~] the right is, or would be, impaired  
9 by the continued use and location of use by the owner; and

10 (2) will not be contrary to the conservation  
11 of water within the state or detrimental to the public welfare  
12 of the state.

13 B. In the case of annual allotments of project  
14 water leased to a special water users' association from an  
15 irrigation district organized pursuant to Chapter 73, Article  
16 10 NMSA 1978, if the state engineer determines that the  
17 proposed changes in place and purpose of use and point of  
18 diversion comply with the rules established pursuant to  
19 Subsection G of Section 73-10-48 NMSA 1978, the board of  
20 directors of the irrigation district may approve the  
21 application in accordance with the provisions of Section  
22 73-10-48 NMSA 1978."

23 SECTION 5. Section 72-6-6 NMSA 1978 (being Laws 1967,  
24 Chapter 100, Section 6, as amended) is amended to read:

25 "72-6-6. APPLICATION--NOTICE--PROTEST--HEARING--EXPEDITED

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1 HEARING AND RULING PROCESS.--

2           A. Upon the filing of an application [~~by a lessee~~]  
3 for a lease or an expedited temporary lease, the state engineer  
4 shall proceed in accordance with the provisions of Section [~~1~~  
5 ~~of this 2019 act~~] 72-2-20 NMSA 1978 regarding notice of the  
6 application.

7           B. Any owner who believes the owner's water rights  
8 will be adversely affected by the granting of the application  
9 for a lease or an expedited temporary lease may file a protest.  
10 The protest shall be specific as to how the granting of the  
11 application will adversely affect the owner's water rights. A  
12 person who objects that the granting of an application will be  
13 contrary to the conservation of water within the state or  
14 detrimental to the public welfare of the state and who shows  
15 that the objector will be substantially and specifically  
16 affected by the granting of the application for a lease or an  
17 expedited temporary lease shall have standing to file a  
18 protest. The state and any of its branches, agencies,  
19 departments, boards, instrumentalities and institutions and a  
20 political subdivision of the state and any of its agencies,  
21 instrumentalities and institutions shall have standing to file  
22 a protest. The protest shall be filed in writing with the  
23 state engineer and a copy sent to the applicant by certified  
24 mail.

25           C. If a protest is timely filed, the state engineer



1 shall hold a hearing on the granting of the application for a  
2 lease or an expedited temporary lease, and the applicant and  
3 protestants shall be notified by the state engineer as to the  
4 date and place of the hearing.

5 D. If no [~~objections~~] protests are filed, the state  
6 engineer may grant the application for a lease or an expedited  
7 temporary lease without hearing. If no [~~objections~~] protests  
8 are filed and the state engineer denies the application, the  
9 state engineer shall hold a hearing if requested to do so by  
10 the applicant. The request shall be filed with the state  
11 engineer within ten days after the denial of the application.

12 E. If the state engineer grants the application for  
13 a lease or an expedited temporary lease but allows the  
14 [~~applicant to use less water than the amount of water the owner~~  
15 ~~would be allowed to~~] use of less water than was sought in the  
16 application, the state engineer shall hold a hearing on the  
17 matter if requested to do so by the applicant. The request  
18 shall be filed with the state engineer within ten days after  
19 the granting of the application.

20 F. An application for an expedited temporary lease  
21 shall be subject to an expedited hearing and ruling process.  
22 If a protest is filed to an application for an expedited  
23 temporary lease or a hearing is requested within ten days after  
24 the denial of the application or the granting of an application  
25 that allows the use of less water than was sought in the

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1 application, the state engineer shall hold a hearing no earlier  
2 than sixty days and no later than eighty days from the deadline  
3 to file a protest, unless all parties consent to a different  
4 hearing date. The state engineer shall make a final ruling  
5 within one hundred days from the deadline to file a protest.  
6 In a hearing on an expedited temporary lease, the applicant  
7 shall retain the burden of proving that the proposed use and  
8 location of use is a beneficial use and will not impair any  
9 existing right to a greater degree than the right is, or would  
10 be, impaired by the continued use and location of use by the  
11 owner and will not be contrary to the conservation of water  
12 within the state or detrimental to the public welfare of the  
13 state. The state engineer shall determine the appropriate  
14 manner and location of an expedited hearing and may adopt rules  
15 to carry out the expedited hearing and ruling process.

16 G. Nothing in this section shall prevent an  
17 applicant from filing an application for a non-expedited lease  
18 concurrently with, or subsequent to, the filing of an  
19 application for an expedited temporary lease; provided that the  
20 application for a non-expedited lease shall not be subject to  
21 the procedures set forth in Subsection F of this section.

22 ~~[F.]~~ H. In a hearing before the state engineer, a  
23 full record and transcript of the proceeding shall be kept by  
24 the state engineer.

25 ~~[G.]~~ I. The provisions of this section do not apply

1 to leases approved pursuant to Section 73-10-48 NMSA 1978."

2 SECTION 6. A new Section 72-6-6.1 NMSA 1978 is enacted to  
3 read:

4 "72-6-6.1. [NEW MATERIAL] EXPEDITED TEMPORARY LEASES--  
5 APPLICATIONS--APPROVAL--HYDROLOGIC GUIDELINES.--

6 A. The state engineer may approve an application  
7 for an expedited temporary lease if the application:

8 (1) is for the lease of an existing surface  
9 water right in an amount not in excess of fifty acre-feet of  
10 water per year consumptive use and not for a period in excess  
11 of one year following approval of the application;

12 (2) is for the lease of an existing ground  
13 water right in an amount not in excess of one hundred twenty-  
14 five acre-feet of water per year consumptive use and not for a  
15 period in excess of two years following approval of the  
16 application;

17 (3) includes an analysis by the applicant that  
18 shows that:

19 (a) the application meets the hydrologic  
20 guidelines established by the state engineer; and

21 (b) the proposed use and location of use  
22 is a beneficial use and will not impair any existing right to a  
23 greater degree than the right is, or would be, impaired by the  
24 continued use and location of use by the owner and will not be  
25 contrary to the conservation of water within the state or

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1 detrimental to the public welfare of the state; and

2 (4) is for a water basin or water use area for  
3 which the state engineer has developed hydrologic guidelines  
4 for temporary expedited leases.

5 B. This section shall not apply to and no  
6 application for an expedited temporary lease shall be made for  
7 a water right that is served by an acequia or community ditch  
8 association organized pursuant to Chapter 73, Article 2 or 3  
9 NMSA 1978, or an irrigation district organized pursuant to  
10 Chapter 73, Article 10 NMSA 1978.

11 C. An applicant for a temporary expedited lease may  
12 submit concurrent applications that seek to divert water from  
13 the same move-to point of diversion, and the applications shall  
14 be considered a single application for the purposes of  
15 calculating the limits on the total amount of water to be  
16 leased as provided in Subsection A of this section.

17 D. After the expiration of a temporary expedited  
18 lease approved under this section, no temporary expedited lease  
19 shall be approved for the same move-to point of diversion for  
20 one year after the expiration of the lease; provided that a  
21 non-expedited lease approved by the state engineer may be  
22 exercised immediately following the expiration of an expedited  
23 temporary lease.

24 E. The state engineer's acceptance of an  
25 application for an expedited temporary lease for filing does

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1 not carry the presumption that the proposed use and location of  
2 use is a beneficial use and will not impair any existing right  
3 to a greater degree than the right is, or would be, impaired by  
4 the continued use and location of use by the owner and will not  
5 be contrary to the conservation of water within the state or  
6 detrimental to the public welfare of the state.

7 F. The state engineer may develop hydrologic  
8 guidelines for water basins and water use areas where, in the  
9 state engineer's judgment, there is significant demand for  
10 expedited temporary leases; provided that nothing in this  
11 subsection shall obligate the state engineer to develop  
12 hydrologic guidelines for a particular water basin or water use  
13 area. The state engineer shall not be obligated to develop  
14 hydrologic guidelines unless sufficient funding is appropriated  
15 for that purpose. The guidelines shall explain the hydrologic  
16 model or models used to evaluate expedited temporary lease  
17 applications and describe the types of leases eligible for  
18 consideration for expedited approval. The guidelines shall be  
19 no less protective of existing water rights and interstate  
20 compact requirements than the models and criteria used in  
21 evaluating non-expedited lease applications. The draft  
22 guidelines shall be published on the state engineer's website,  
23 and any person may submit comments on the guidelines to the  
24 state engineer. After a ninety-day comment period, the state  
25 engineer shall publish and maintain the final guidelines on the

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1 state engineer's website. The state engineer may modify the  
2 final guidelines at any time by posting the modified guidelines  
3 on the state engineer's website and holding a ninety-day  
4 comment period in the same manner as draft guidelines are  
5 finalized pursuant to this subsection.

6 G. Nothing in this section shall be construed as  
7 prohibiting the owner of a water right for irrigation purposes  
8 from making changes to or reallocations of the water right to  
9 other places of use for irrigation purposes in an expedited  
10 manner or without formal proceedings before the state engineer  
11 as authorized by law."

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

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