

HOUSE FLOOR AMENDMENT

Second Reading

BY REPRESENTATIVE Roberts

1 Amend printed bill, page 2, strike line 4 and substitute "(2)(a)(VI) and  
2 (2)(a)(VII) as follows:".

3 Page 4, line 12, after the period add "IN AN APPEAL TO THE WATER JUDGE  
4 IN THE APPLICABLE WATER DIVISION OF THE DETERMINATION MADE BY THE  
5 STATE ENGINEER PURSUANT TO THIS SECTION, THE APPLICANT HAS THE  
6 BURDEN OF PROOF THAT THE LOANED WATER RIGHT DOES NOT CAUSE  
7 INJURY TO OTHER VESTED OR CONDITIONALLY DECREED WATER RIGHTS.  
8 THE WATER JUDGE SHALL HEAR THE APPEAL ON AN EXPEDITED BASIS AND  
9 REVIEW, ON A DE NOVO BASIS, ONLY THE EVIDENCE THAT WAS TAKEN IN  
10 THE ADMINISTRATIVE PROCEEDING APPEALED FROM AND INCLUDED IN THE  
11 RECORD. THE WATER JUDGE SHALL CONSIDER EVIDENCE IN ITS  
12 DETERMINATION OF THE MATTER IF THE EVIDENCE:

13 (A) WAS WRONGLY EXCLUDED AT THE ADMINISTRATIVE  
14 PROCEEDING; OR

15 (B) EXISTED AT THE TIME OF THE ADMINISTRATIVE PROCEEDING  
16 BUT WAS DISCOVERED AFTER THE ADMINISTRATIVE PROCEEDING AND, IN  
17 THE EXERCISE OF GOOD FAITH AND REASONABLE DILIGENCE, COULD NOT  
18 HAVE BEEN MADE AVAILABLE AND OFFERED AT THE ADMINISTRATIVE  
19 PROCEEDING.

20 (VI) IT IS THE DUTY OF THE STATE ENGINEER, UPON BEING SERVED  
21 WITH A NOTICE OF APPEAL PURSUANT TO THIS SECTION, TO TRANSMIT TO  
22 THE WATER JUDGE TO WHICH THE APPEAL IS TAKEN THE PAPERS, MAPS,  
23 PLATS, FIELD NOTES, ORDERS, DECISIONS, AND OTHER AVAILABLE DATA  
24 AFFECTING THE MATTER IN CONTROVERSY OR CERTIFIED COPIES THEREOF,  
25 WHICH CERTIFIED COPIES SHALL BE ADMITTED IN EVIDENCE AS OF EQUAL  
26 VALIDITY WITH THE ORIGINALS."

27 Renumber succeeding subparagraph accordingly.

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