

HOUSE FLOOR AMENDMENT

Second Reading

BY REPRESENTATIVE Roberts

1 Amend printed bill, page 2, line 3, strike "and (2)(a)(V);" and substitute
2 "(2)(a)(V), and (2)(b)(VIII);".

3 Page 4, after line 24 insert:

4 "(b) In determining whether injury will occur, the division
5 engineer shall ensure that the following conditions are met:

6 (VIII) When the division engineer approves or denies a proposed
7 loan, the division engineer shall serve a copy of the decision on all parties
8 to the application by first-class mail or, if ~~such~~ THE parties have so
9 elected, by electronic mail. Neither the approval nor the denial by the
10 division engineer ~~shall create~~ CREATES any presumptions ~~shift the burden~~
11 ~~of proof~~, or ~~serve~~ SERVES as a defense in any legal action that may be
12 initiated concerning the loan. ~~Any~~ AN appeal of a decision by the division
13 engineer concerning the loan pursuant to this section shall be made to the
14 water judge in the applicable water division within fifteen days after the
15 date on which the decision is served on the parties to the application. THE
16 PROPONENTS HAVE THE BURDEN OF PROOF TO DEMONSTRATE THAT THE
17 LOANED WATER RIGHT DOES NOT CAUSE INJURY TO OTHER VESTED OR
18 CONDITIONALLY DECREED WATER RIGHTS. IT IS THE DUTY OF THE DIVISION
19 ENGINEER, UPON BEING SERVED WITH A NOTICE OF APPEAL PURSUANT TO
20 THIS SECTION, TO TRANSMIT TO THE WATER JUDGE TO WHICH THE APPEAL
21 IS TAKEN THE PAPERS, MAPS, PLATS, FIELD NOTES, ORDERS, DECISIONS,
22 AND OTHER AVAILABLE DATA AFFECTING THE MATTER IN CONTROVERSY
23 OR CERTIFIED COPIES THEREOF, WHICH CERTIFIED COPIES SHALL BE
24 ADMITTED IN EVIDENCE AS OF EQUAL VALIDITY WITH THE ORIGINALS. The
25 water judge shall hear ~~such~~ THE appeal on an expedited basis AND
26 REVIEW, ON A DE NOVO BASIS, ONLY THE EVIDENCE THAT WAS TAKEN IN
27 THE ADMINISTRATIVE PROCEEDING APPEALED FROM AND INCLUDED IN THE
28 RECORD. THE WATER JUDGE SHALL CONSIDER EVIDENCE IN ITS
29 DETERMINATION OF THE MATTER IF THE EVIDENCE:

30 (A) WAS WRONGLY EXCLUDED AT THE ADMINISTRATIVE
31 PROCEEDING; OR

32 (B) EXISTED AT THE TIME OF THE ADMINISTRATIVE PROCEEDING
33 BUT WAS DISCOVERED AFTER THE ADMINISTRATIVE PROCEEDING AND, IN
34 THE EXERCISE OF GOOD FAITH AND REASONABLE DILIGENCE, COULD NOT
35 HAVE BEEN MADE AVAILABLE AND OFFERED AT THE ADMINISTRATIVE
36 PROCEEDING."

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