

## 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 ~~serves~~ 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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