

SB036 L.010

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.

SB17-036 be amended as follows:

1 Amend reengrossed bill, page 2, strike line 3 and substitute "(1)(b)(III);
2 and add (3) as follows:".

3 Page 2, after line 14 insert:

4 "(3) A DISTRICT COURT, IN REVIEWING A DECISION BY THE
5 GROUNDWATER COMMISSION OR THE STATE ENGINEER, MAY HOLD A
6 LIMITED JUDICIAL INQUIRY HEARING FOR THE PURPOSES OF FINDING FACTS
7 AND JUDGING THE CREDIBILITY AND CLARIFYING THE TESTIMONY OF A
8 WITNESS WHO TESTIFIED AT THE ADMINISTRATIVE PROCEEDING. AT THE
9 JUDICIAL INQUIRY HEARING CONDUCTED PURSUANT TO THIS SUBSECTION
10 (3):

11 (a) THE DISTRICT COURT MAY REQUIRE THAT A WITNESS THAT
12 TESTIFIED AT THE ADMINISTRATIVE PROCEEDING, INCLUDING AN EXPERT
13 WITNESS, BE PRESENT TO ANSWER QUESTIONS BY THE DISTRICT COURT;

14 (b) THE DISTRICT COURT MAY REQUIRE THAT AN EXPERT WITNESS
15 THAT TESTIFIED AT THE ADMINISTRATIVE PROCEEDING PRODUCE DATA OR
16 DOCUMENTS UPON WHICH THE EXPERT WITNESS RELIED IN HIS OR HER
17 TESTIMONY, WHICH DATA OR DOCUMENTS THE DISTRICT COURT MAY
18 CONSIDER ONLY FOR PURPOSES OF DETERMINING THE CREDIBILITY AND
19 QUALIFICATIONS AS AN EXPERT OF THE EXPERT WITNESS;

20 (c) THE DISTRICT COURT SHALL ACT AS BOTH THE FINDER OF FACT
21 AND LAW WITH THE DISCRETION TO WEIGH EVIDENCE AND MAKE
22 CREDIBILITY DETERMINATIONS INDEPENDENT OF THE DETERMINATIONS
23 MADE BELOW AT THE ADMINISTRATIVE PROCEEDING;

24 (d) EXCEPT AS PROVIDED IN SUBSECTION (3)(b) OF THIS SECTION,
25 EVIDENCE THAT WAS NOT PRESENTED AND ADMITTED AT THE
26 ADMINISTRATIVE PROCEEDING SHALL NOT BE PRESENTED AT THE JUDICIAL
27 INQUIRY HEARING; AND

28 (e) THE DISTRICT COURT, IN ITS DISCRETION, MAY ALLOW BRIEFING
29 OF ISSUES, ORAL ARGUMENT, OR BOTH FROM LEGAL COUNSEL OR THE
30 PARTIES."

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