

SB078 L.001

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Agriculture, Natural Resources, & Energy.

SB13-078 be amended as follows:

1 Amend printed bill, page 2, line 17, strike "erroneous" and substitute
2 "but erroneously described".

3 Page 2, line 21, strike "ERRONEOUS" and substitute "BUT ERRONEOUSLY
4 DESCRIBED".

5 Page 3, line 2, strike "ORIGINAL".

6 Page 3, line 4, strike "PERMIT;" and substitute "PERMIT. A DIVERSION
7 THAT HAS BEEN IN THE SAME PHYSICAL LOCATION SINCE THE ENACTMENT
8 OF THE "ADJUDICATION ACT OF 1943", WHICH WAS REPEALED IN 1969,
9 HAS A REBUTTABLE PRESUMPTION OF HAVING BEEN LOCATED AT THE SAME
10 PHYSICAL LOCATION SINCE ITS INCEPTION."

11 Page 3, after line 9 insert:

12 "(b) A WATER RIGHT IS DEEMED TO BE DIVERTED AT ITS DECREED
13 LOCATION AND IS NOT ERRONEOUSLY DESCRIBED IF:

14 (I) WITH RESPECT TO A SURFACE WATER DIVERSION:

15 (A) THE PHYSICAL LOCATION OF THE POINT OF DIVERSION IS
16 WITHIN FIVE HUNDRED FEET OF THE DECREED LOCATION; AND

17 (B) NEITHER A NATURAL SURFACE STREAM THAT IS TRIBUTARY TO
18 THE DIVERTED STREAM NOR ANOTHER SURFACE WATER RIGHT IS LOCATED
19 BETWEEN THE DECREED LOCATION AND ITS PHYSICAL LOCATION;

20 (II) WITH RESPECT TO A GROUNDWATER DIVERSION, THE PHYSICAL
21 LOCATION OF THE POINT OF DIVERSION IS WITHIN TWO HUNDRED FEET OF
22 THE DECREED LOCATION, UNLESS THE DECREE SPECIFIES A LESSER
23 DISTANCE FOR ACCEPTABLE VARIATION IN LOCATION.

24 (c) TO PROCEED WITH A CORRECTION IN POINT OF DIVERSION
25 UNDER THIS SUBSECTION (3.6) FOR AN ESTABLISHED BUT ERRONEOUSLY
26 DESCRIBED POINT OF DIVERSION THAT IS DUE TO A CLERICAL MISTAKE IN
27 THE DECREE, BUT DOES NOT FALL WITHIN THE THREE-YEAR PERIOD SET
28 FORTH IN SECTION 37-92-304 (10) FOR THE WATER CLERK TO CORRECT THE
29 MISTAKE, THE DIVERTER OF THE ESTABLISHED BUT ERRONEOUSLY
30 DESCRIBED POINT OF DIVERSION MAY FILE A PETITION WITH THE WATER
31 CLERK FOR CORRECTION OF THE CLERICAL MISTAKE WITHIN THREE YEARS
32 AFTER THE DIVERTER BECAME AWARE OF THE MISTAKE. THE SAME
33 PROCEDURES SET FORTH IN SECTION 37-92-304 (10) APPLY TO

- 1 CORRECTIONS IN POINT OF DIVERSION UNDER THIS PARAGRAPH (c)."
- 2 Reletter succeeding paragraphs accordingly.
- 3 Page 3, line 11, strike "(3.6)," and substitute "(3.6) FOR AN ESTABLISHED
4 BUT ERRONEOUSLY DESCRIBED POINT OF DIVERSION THAT IS NOT DUE TO
5 A CLERICAL MISTAKE IN THE DECREE,".
- 6 Page 3, line 13, strike "ERRONEOUS" and substitute "BUT ERRONEOUSLY
7 DESCRIBED".
- 8 Page 3, line 15, after "IN" insert "AN ESTABLISHED BUT ERRONEOUSLY
9 DESCRIBED".
- 10 Page 3, line 19, after "IN" insert "AN ESTABLISHED BUT ERRONEOUSLY
11 DESCRIBED".
- 12 Page 3, line 22, after "IN" insert "AN ESTABLISHED BUT ERRONEOUSLY
13 DESCRIBED".
- 14 Page 4, line 7, after "IN" insert "AN ESTABLISHED BUT ERRONEOUSLY
15 DESCRIBED".
- 16 Page 4, line 16, after "PRESUMPTIONS" insert "STATED".
- 17 Page 4, line 17, strike "PARAGRAPH (c) OF".
- 18 Page 4, line 21, after "IN" insert "AN ESTABLISHED BUT ERRONEOUSLY
19 DESCRIBED".
- 20 Page 4, strike line 24 and substitute "WHICH THE ERRONEOUSLY
21 DESCRIBED POINT OF DIVERSION IS BEING CORRECTED;".
- 22 Page 4, line 25, before "POINT" insert "THE ERRONEOUSLY DESCRIBED".
- 23 Page 5, after line 8 insert:
- 24 "(III) THE STATE ENGINEER SHALL NOT CURTAIL A DIVERSION
25 BASED SOLELY ON THE FACT THAT THE POINT OF DIVERSION IS
26 ERRONEOUSLY DESCRIBED; AND
27 (IV) NOTHING IN THIS SUBSECTION (3.6) MODIFIES THE STATE



1 ENGINEER'S AUTHORITY TO MAKE DETERMINATIONS REGARDING THE
2 ADMINISTRATION OF WATER RIGHTS AND THE DISTRIBUTION OF WATER.
3 (h) DURING A CHANGE OF WATER RIGHT CASE OR AN
4 ABANDONMENT PROCEEDING, IF A POINT OF DIVERSION QUALIFIES AS AN
5 ESTABLISHED BUT ERRONEOUSLY DESCRIBED POINT OF DIVERSION
6 PURSUANT TO THIS SUBSECTION (3.6), FULL CONSIDERATION OF THE
7 HISTORICAL CONSUMPTIVE USE OF THE WATER RIGHT AT ITS PHYSICAL
8 LOCATION SHALL NOT BE DENIED DUE SOLELY TO THE FACT THAT THE
9 POINT OF DIVERSION IS NOT AT ITS DECREED LOCATION."

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