

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 7, 2013
Date

Committee on Agriculture, Natural Resources, & Energy.

After consideration on the merits, the Committee recommends the following:

SB13-078 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 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- 8 OF THE "ADJUDICATION ACT OF 1943", WHICH WAS REPEALED IN 1969,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;

1 (II) WITH RESPECT TO A GROUNDWATER DIVERSION, THE PHYSICAL
2 LOCATION OF THE POINT OF DIVERSION IS WITHIN TWO HUNDRED FEET OF
3 THE DECREED LOCATION, UNLESS THE DECREE SPECIFIES A LESSER
4 DISTANCE FOR ACCEPTABLE VARIATION IN LOCATION.

5 (c) TO PROCEED WITH A CORRECTION IN POINT OF DIVERSION
6 UNDER THIS SUBSECTION (3.6) FOR AN ESTABLISHED BUT ERRONEOUSLY
7 DESCRIBED POINT OF DIVERSION THAT IS DUE TO A CLERICAL MISTAKE IN
8 THE DECREE, BUT DOES NOT FALL WITHIN THE THREE-YEAR PERIOD SET
9 FORTH IN SECTION 37-92-304 (10) FOR THE WATER CLERK TO CORRECT THE
10 MISTAKE, THE DIVERTER OF THE ESTABLISHED BUT ERRONEOUSLY
11 DESCRIBED POINT OF DIVERSION MAY FILE A PETITION WITH THE WATER
12 CLERK FOR CORRECTION OF THE CLERICAL MISTAKE WITHIN THREE YEARS
13 AFTER THE DIVERTER BECAME AWARE OF THE MISTAKE. THE SAME
14 PROCEDURES SET FORTH IN SECTION 37-92-304 (10) APPLY TO
15 CORRECTIONS IN POINT OF DIVERSION UNDER THIS PARAGRAPH (c).".

16 Reletter succeeding paragraphs accordingly.

17 Page 3, line 11, strike "(3.6)," and substitute "(3.6) FOR AN ESTABLISHED
18 BUT ERRONEOUSLY DESCRIBED POINT OF DIVERSION THAT IS NOT DUE TO
19 A CLERICAL MISTAKE IN THE DECREE,".

20 Page 3, line 13, strike "ERRONEOUS" and substitute "BUT ERRONEOUSLY
21 DESCRIBED".

22 Page 3, line 15, after "IN" insert "AN ESTABLISHED BUT ERRONEOUSLY
23 DESCRIBED".

24 Page 3, line 19, after "IN" insert "AN ESTABLISHED BUT ERRONEOUSLY
25 DESCRIBED".

26 Page 3, line 22, after "IN" insert "AN ESTABLISHED BUT ERRONEOUSLY
27 DESCRIBED".

28 Page 4, line 7, after "IN" insert "AN ESTABLISHED BUT ERRONEOUSLY
29 DESCRIBED".

30 Page 4, line 16, after "PRESUMPTIONS" insert "STATED".

31 Page 4, line 17, strike "PARAGRAPH (c) OF".

1 Page 4, line 21, after "IN" insert "AN ESTABLISHED BUT ERRONEOUSLY
2 DESCRIBED".

3 Page 4, strike line 24 and substitute "WHICH THE ERRONEOUSLY
4 DESCRIBED POINT OF DIVERSION IS BEING CORRECTED;".

5 Page 4, line 25, before "POINT" insert "THE ERRONEOUSLY DESCRIBED".

6 Page 5, after line 8 insert:

7 "(III) THE STATE ENGINEER SHALL NOT CURTAIL A DIVERSION
8 BASED SOLELY ON THE FACT THAT THE POINT OF DIVERSION IS
9 ERRONEOUSLY DESCRIBED; AND

10 (IV) NOTHING IN THIS SUBSECTION (3.6) MODIFIES THE STATE
11 ENGINEER'S AUTHORITY TO MAKE DETERMINATIONS REGARDING THE
12 ADMINISTRATION OF WATER RIGHTS AND THE DISTRIBUTION OF WATER.

13 (h) DURING A CHANGE OF WATER RIGHT CASE OR AN
14 ABANDONMENT PROCEEDING, IF A POINT OF DIVERSION QUALIFIES AS AN
15 ESTABLISHED BUT ERRONEOUSLY DESCRIBED POINT OF DIVERSION
16 PURSUANT TO THIS SUBSECTION (3.6), FULL CONSIDERATION OF THE
17 HISTORICAL CONSUMPTIVE USE OF THE WATER RIGHT AT ITS PHYSICAL
18 LOCATION SHALL NOT BE DENIED DUE SOLELY TO THE FACT THAT THE
19 POINT OF DIVERSION IS NOT AT ITS DECREED LOCATION."

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