EXHIBIT 6
DATE 3/27/09
SB 427

Amendments to Senate Bill No. 427
3rd Reading Copy

Requested by Senator Jesse Laslovich

For the House Natural Resources Committee

Prepared by Hope Stockwell
March 23, 2009 (2:54pm)

1. Title, page 1, line 8.
Strike: "REAL"
Insert: "SPECIAL USE"

2. Page 1, line 21.
Following: line 20
Insert: "(2) (a) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils that occurred from a petroleum storage tank, as defined in 75-11-302.

(b) The term does not include a release from the following petroleum storage tanks:

(i) a tank located at a refinery or a terminal of a refiner;

(ii) a tank located at an oil and gas production facility; or

(ii) a tank that is or was previously under the ownership or control of a railroad, except for a tank that was operated by a lessee of a railroad in the course of nonrailroad operations."
Renumber: subsequent subsections

3. Page 1, line 23.
Following: "based."
Insert: "The term includes reasonable attorney fees and costs incurred by the plaintiff."

4. Page 1, line 24.
Following: "real property"
Insert: "contaminated by a release from a petroleum storage tank, as defined in 75-11-302,"

5. Page 1, line 28.
Strike: "Damages"
Insert: "Restoration damages"
Strike: "real"
Insert: "special use"

EXHIBIT 6
DATE 3/27/09
SB 396

Amendments to Senate Bill No. 396
3rd Reading Copy

Requested by Representative Chas Vincent

For the House Natural Resources Committee

Prepared by Joe Kolman
March 23, 2009 (12:03pm)

1. Title, line 4.
Strike: "CHANGE IN"
Insert: "REPLACEMENT"

2. Page 1, line 10 through page 2, line 17.
Strike: section 1 in its entirety
Renumber: subsequent sections

3. Page 3, line 5.
Strike: "[section 1] and"
Following: "(15),"
Strike: "and"
Strike: "of this section"
Insert: ", and (18)"

4. Page 3, line 6.
Strike: "of this section"

5. Page 8, line 26 through page 9, line 6.
Strike: subsection (18) in its entirety
Insert: "(18) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of

diversion;

(viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

(ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (18)(b).

(b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.

(ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (18)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide notice of the authorization in the same manner as required in 85-2-307 for applications.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement point of diversion is not filed and completed within the time allowed or if the department determines the criteria under (18)(a) have not been met, the appropriator shall:

(A) cease appropriation of water from the replacement point of diversion pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (18) do not apply to an appropriation right abandoned under 85-2-404.

(d) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (18)(a).

(e) (i) An appropriator may file a correct and complete objection with the department alleging that the change in appropriation right for a replacement point of diversion will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for

which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.

(ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.

(iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the point of diversion."

6. Page 9, line 8 through line 9.
Strike: section 3 in its entirety

- END -