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LB 680

SENATOR SIECK: Okay, now what if the condemnor did make a mistake and he took say thirty acres too much which was outside the law and he went through the proceeding and then the court recognized the mistake, would it be proper to come back and just take the land, and then go into another proceeding and take the land that actually was needed in the project? Would we want to hold up the project just because of this error?

SENATOR SCHMIT: I am not sure I understand.

SENATOR SIECK: Let me explain this please. For instance, if we have a hundred and sixty acres of land here that is for a project and thirty acres of that land is really not needed for that project but in the condemnation suit they decide they was going to take the whole one hundred and sixty acres. Actually that would be wrong because thirty acres was not needed so the condemnor then made an error and went to court and took too much. Well then the court says that it is an error, and if this amendment would pass, then it would have to wait two years before he could come back and condemn the portion that was actually needed?

SENATOR SCHMIT: I think the court, again I couldn't guess what the court would do, but I would suppose the court would only disallow that portion that was not subject to taking in the first place. I doubt that they would overrule the one hundred and thirty acres that was needed for the project. I don't think that there would be a problem there, Senator, because I think the court would only disallow the thirty acres that was not deemed to be for a public purpose. I think that is what has happened in the past. I do not believe that they would rule against the entire project.

SENATOR SIECK: Okay, have you seen any errors in this area in the past? This would not only cover Natural Resource Districts, this would cover the highways, the Bureau of Reclamation and the whole gamut,....

SENATOR SCHMIT: That is right.

SENATOR SIECK: ...whoever would take property by condemnation. So now we are really not talking about the Natural Resource Districts, we are talking about the whole thing.

SENATOR SCHMIT: No, we are not. It is the entire area of condemnation proceedings, the rights of the individual landowner as versus the public entity. I think the original