

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-0535.01 Richard Sweetman x4333

SENATE BILL 22-114

SENATE SPONSORSHIP

Hisey and Story,

HOUSE SPONSORSHIP

Roberts and Catlin, McCluskie, Pico

Senate Committees

Agriculture & Natural Resources
Appropriations

House Committees

A BILL FOR AN ACT

101 CONCERNING FIRE SUPPRESSION PONDS, AND, IN CONNECTION
102 THEREWITH, MAKING AN APPROPRIATIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Section 1 of the bill makes legislative findings and declarations. **Section 2** allows a board of county commissioners (board) to apply to the state engineer for the designation of a pond as a fire suppression pond. The director of the division of fire prevention and control (director) in the department of public safety is required to promulgate rules to establish criteria for boards, in consultation with fire protection districts, to use to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
Amended 2nd Reading
March 30, 2022

identify and evaluate potential fire suppression ponds. For each pond that is identified and under consideration as a potential fire suppression pond, a board must provide notice of such fact to the state engineer and to interested parties included in the substitute water supply plan notification list established for the water division in which the pond is located.

Section 2 also prohibits the state engineer from draining any pond:

- While the pond is under consideration for designation as a fire suppression pond;
- If the state engineer has designated the pond as a fire suppression pond; or
- On and after the effective date of the bill, and until the date upon which the director promulgates rules, with exceptions.

Section 2 also states that a fire suppression pond and the water associated with it:

- Are not considered a water right;
- Do not have a priority for the purpose of determining water rights; and
- May not be adjudicated as a water right.

Section 3 requires the state engineer to review applications received from boards and, at the state engineer's discretion, designate ponds as fire suppression ponds. An application is presumed to be approved if the state engineer does not respond to the application within 63 days after the application is received by the state engineer. The state engineer may not designate any pond as a fire suppression pond unless the pond existed as of January 1, 1975.

Section 3 also allows the state engineer to impose reasonable requirements on a board as a condition of designating a pond as a fire suppression pond and requires a board and a fire protection district to inspect a fire suppression pond at least annually.

The designation of a pond as a fire suppression pond expires 20 years after the date of the designation. Before the expiration, the board and the fire protection district must perform a needs assessment of the pond. If the needs assessment demonstrates that the pond is in compliance with criteria established in the director's rules, the board and fire protection district shall notify the state engineer of such fact, and the state engineer shall redesignate the pond as a fire suppression pond. If the needs assessment demonstrates that the pond is not in compliance with the criteria, the board and fire protection district may either:

- Notify the state engineer that the designation of the pond as a fire suppression pond should be rescinded or allowed to expire; or
- Provide to the state engineer a plan and a timeline for bringing the pond back into compliance with such criteria.

Section 4 states that the designation of fire suppression ponds by

the state engineer does not cause material injury to vested water rights.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) Colorado is facing a wildfire crisis;

5 (b) In 2020, Colorado experienced three of the largest wildfires
6 in its history, and in 2021, the Marshall fire broke yet another record,
7 becoming the most destructive fire in Colorado history by burning more
8 than one thousand homes worth five hundred million dollars in total;

9 (c) These four recent and catastrophic wildfires burned more than
10 six hundred thousand acres, causing significant devastation and property
11 loss;

12 (d) The Colorado state forest service and the front range
13 watershed wildfire protection working group have found that
14 high-severity fires can significantly impact water quality and watershed
15 conditions;

16 (e) Recent fires have tended to be much larger and more severe
17 than those in the past, and as such, have severely damaged soils and
18 watersheds, leading to heavy erosion and sediment damage in streams;
19 and

20 (f) Functional watersheds are vital for water quality and healthy
21 ecosystems and to protect water resources from post-fire flood damage.

22 (2) The general assembly also finds that:

23 (a) More resources are needed for wildfire mitigation to reduce
24 fire risk and to keep fires from becoming large and catastrophic;

25 (b) Although Colorado is committed to taking meaningful action

1 to mitigate wildfires, several remote areas in the state lack sufficient
2 resources to suppress fires without external support;

3 (c) In emergency situations, rapid action is vital and any delay
4 increases the risk of a fire becoming catastrophic;

5 (d) In the past, the general assembly has recognized the need to
6 use available water resources in a fire event and has authorized the
7 emergency use of wells for firefighting purposes;

8 (e) Using water resources to fight fires in emergencies is in the
9 public interest and may be critical in protecting life, property, and
10 infrastructure;

11 (f) When water is not available in close proximity, firefighters
12 may also rely on nearby ponds to fill fire trucks and suppress fires as
13 quickly as possible;

14 (g) Existing ponds in Colorado have proven to be critical fire
15 suppression resources, particularly in remote areas that are not equipped
16 with other fire suppression resources such as fire hydrants;

17 (h) The state engineer may order ponds to be drained or backfilled
18 if they are found to deplete streams out of priority;

19 (i) Some ponds that are subject to drainage may be critical
20 firefighting resources for remote, high-risk areas of Colorado, and if such
21 ponds are drained, firefighters could be left ill-equipped to respond to and
22 suppress fires;

23 (j) A process is necessary to preserve ponds that are deemed
24 critical for firefighting purposes; and

25 (k) Preserving fire suppression ponds will help:

26 (I) Ensure resources are available to help keep communities safe
27 in the event of structure fires, grassland fires, and other fire emergencies;

1 and

2 (II) Keep fires from becoming large and thereby protect lives,
3 homes, critical watersheds, water supply assets, infrastructure, and key
4 ecological and wildlife resources.

5 (3) Therefore, the general assembly declares that it is in the public
6 interest to create a process to identify, designate, and preserve critical fire
7 suppression ponds.

8 **SECTION 2.** In Colorado Revised Statutes, **add** 37-82-107 as
9 follows:

10 **37-82-107. Fire suppression ponds - legislative declaration -**
11 **needs assessment - notice of consideration required - restriction on**
12 **draining of ponds - rules - no water right created - repeal.** (1) THE
13 GENERAL ASSEMBLY HEREBY DECLARES THAT:

14 (a) FIRE SUPPRESSION PONDS ARE ESSENTIAL FOR THE PROTECTION
15 OF PUBLIC SAFETY AND WELFARE; AND

16 (b) BASED ON THIS DECLARATION, THE STATE ENGINEER IS
17 AUTHORIZED TO REVIEW APPLICATIONS AND DESIGNATE PONDS AS FIRE
18 SUPPRESSION PONDS IN ACCORDANCE WITH THIS SECTION.

19 (2) A BOARD OF COUNTY COMMISSIONERS, IN CONSULTATION WITH
20 ITS FIRE PROTECTION DISTRICT, MAY APPLY TO THE STATE ENGINEER
21 PURSUANT TO SECTION 37-80-124 FOR THE DESIGNATION OF A POND
22 WITHIN THE BORDERS OF THE COUNTY AS A FIRE SUPPRESSION POND.

23 (3) (a) BEFORE APPLYING FOR THE DESIGNATION OF A POND AS A
24 FIRE SUPPRESSION POND, A BOARD OF COUNTY COMMISSIONERS, IN
25 CONSULTATION WITH ITS FIRE PROTECTION DISTRICT, SHALL:

26 (I) IDENTIFY PONDS IN LOCATIONS WHERE THE OUTBREAK OF A
27 FIRE COULD RESULT IN A MAJOR WILDFIRE DISASTER;

1 (II) PERFORM A NEEDS ASSESSMENT OF EACH SUCH POND, WHICH
2 NEEDS ASSESSMENT SHALL BE COMPLETED WITHIN ONE YEAR AFTER THE
3 BOARD PROVIDES THE NOTICE DESCRIBED IN SUBSECTION (3)(a)(III) OF
4 THIS SECTION; AND

5 (III) FOR EACH POND THAT IS IDENTIFIED AND UNDER
6 CONSIDERATION AS A POTENTIAL FIRE SUPPRESSION POND, PROVIDE
7 NOTICE OF SUCH FACT TO THE STATE ENGINEER, WHICH NOTICE MUST
8 INDICATE THE LOCATION AND APPROXIMATE SURFACE AREA OF THE POND.

9 (b) IN PERFORMING A NEEDS ASSESSMENT PURSUANT TO
10 SUBSECTION (3)(a)(II) OF THIS SECTION, A BOARD OF COUNTY
11 COMMISSIONERS, IN CONSULTATION WITH ITS FIRE PROTECTION DISTRICT,
12 SHALL:

13 (I) IDENTIFY THE REFILL MECHANISM OF THE POND, WHETHER BY:

- 14 (A) GROUNDWATER;
- 15 (B) DIVERSION ON THE STREAM CHANNEL;
- 16 (C) DIVERSION OFF THE STREAM CHANNEL; OR
- 17 (D) WELL; AND

18 (II) APPLY THE CRITERIA ESTABLISHED PURSUANT TO RULES
19 PROMULGATED BY THE DIRECTOR OF THE DIVISION OF FIRE PREVENTION
20 AND CONTROL PURSUANT TO SUBSECTION (5) OF THIS SECTION.

21 (c) IF A POND THAT IS UNDER CONSIDERATION FOR DESIGNATION
22 AS A FIRE SUPPRESSION POND IS LOCATED IN WHOLE OR IN PART UPON
23 PRIVATE PROPERTY, A BOARD OF COUNTY COMMISSIONERS SHALL ACQUIRE
24 THE VOLUNTARY WRITTEN APPROVAL OF EACH OWNER OF PRIVATE
25 PROPERTY THAT ABUTS THE POND BEFORE THE BOARD APPLIES TO THE
26 STATE ENGINEER FOR THE DESIGNATION OF THE POND AS A FIRE
27 SUPPRESSION POND.

1 (d) IF A BOARD OF COUNTY COMMISSIONERS HAS NOTIFIED THE
2 STATE ENGINEER PURSUANT TO SUBSECTION (3)(a)(III) OF THIS SECTION
3 THAT A POND IS UNDER CONSIDERATION AS A FIRE SUPPRESSION POND, THE
4 BOARD SHALL NOTIFY THE STATE ENGINEER PROMPTLY IF AND WHEN THE
5 POND IS NO LONGER UNDER SUCH CONSIDERATION.

6 (4) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
7 CONTRARY, EXCEPT AS MAY BE REQUIRED TO ADDRESS DAM SAFETY
8 CONCERNS, THE STATE ENGINEER SHALL NOT ORDER ANY POND TO BE
9 DRAINED OR BACKFILLED OR PROCEED WITH ANY EXISTING ORDER TO
10 DRAIN OR BACKFILL A POND:

11 (a) IF THE STATE ENGINEER HAS RECEIVED NOTICE PURSUANT TO
12 SUBSECTION (3)(a)(III) OF THIS SECTION THAT THE POND IS UNDER
13 CONSIDERATION BY A BOARD OF COUNTY COMMISSIONERS FOR
14 DESIGNATION AS A FIRE SUPPRESSION POND, DURING THE PENDENCY OF
15 THAT CONSIDERATION;

16 (b) IF THE STATE ENGINEER HAS DESIGNATED THE POND AS A FIRE
17 SUPPRESSION POND PURSUANT TO SECTION 37-80-124 AND THE POND IS
18 OPERATING IN ACCORDANCE WITH THE DESIGNATION; OR

19 (c) (I) ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, AND
20 UNTIL THE DATE UPON WHICH THE DIRECTOR OF THE DIVISION OF FIRE
21 PREVENTION AND CONTROL PROMULGATES RULES PURSUANT TO
22 SUBSECTION (5) OF THIS SECTION; EXCEPT THAT, DURING SUCH TIME, THE
23 STATE ENGINEER MAY ENFORCE AN ORDER TO DRAIN A POND IF THE STATE
24 ENGINEER FIRST PROVIDES NOTICE OF THE ORDER TO THE BOARD OF
25 COUNTY COMMISSIONERS OF THE COUNTY IN WHICH THE POND IS LOCATED
26 AND ALLOWS THE BOARD FOURTEEN DAYS TO RESPOND.

27 (II) THIS SUBSECTION (4)(c) IS REPEALED, EFFECTIVE JULY 1, 2023.

1 (5) (a) ON OR BEFORE MAY 1, 2023, THE DIRECTOR OF THE
2 DIVISION OF FIRE PREVENTION AND CONTROL IN THE DEPARTMENT OF
3 PUBLIC SAFETY, PURSUANT TO THE DIRECTOR'S AUTHORITY UNDER
4 SECTION 24-33.5-1203.5, SHALL PROMULGATE RULES ESTABLISHING
5 CRITERIA FOR BOARDS OF COUNTY COMMISSIONERS, IN CONSULTATION
6 WITH FIRE PROTECTION DISTRICTS, TO USE TO IDENTIFY AND EVALUATE
7 POTENTIAL FIRE SUPPRESSION PONDS, AS DESCRIBED IN SUBSECTION (3) OF
8 THIS SECTION. AT A MINIMUM, THE CRITERIA MUST REQUIRE THAT A FIRE
9 SUPPRESSION POND:

10 (I) BE READILY ACCESSIBLE BY A FIRE PROTECTION DISTRICT, FIRE
11 DEPARTMENT, OR OTHER FIREFIGHTING ENTITY;

12 (II) BE LOCATED IN THE WILDLAND-URBAN INTERFACE OR
13 ANOTHER LOCATION THAT FACES AN ELEVATED THREAT OF FIRE RISK; AND

14 (III) BE LOCATED IN AN AREA WITHOUT TIMELY OR ADEQUATE
15 ACCESS TO FIRE HYDRANTS OR OTHER WATER SUPPLIES AND WHERE THE
16 POND PROVIDES A NEEDED SUPPLY.

17

18 (b) BEFORE PROMULGATING THE RULES DESCRIBED IN SUBSECTION
19 (5)(a) OF THIS SECTION, THE DIRECTOR OF THE DIVISION OF FIRE
20 PREVENTION AND CONTROL SHALL SOLICIT AND CONSIDER INPUT FROM:

21 (I) THE STATE ENGINEER;

22 (II) LOCAL GOVERNMENTS, INCLUDING COUNTIES;

23 (III) WATER PROVIDERS;

24 (IV) FIRE PROTECTION DISTRICTS AND OTHER FIREFIGHTING
25 ENTITIES; AND

26 (V) BASIN ROUNDTABLES.

27 (6) NOTWITHSTANDING ANY PROVISION OF LAW TO THE

1 CONTRARY, A FIRE SUPPRESSION POND AND THE WATER ASSOCIATED WITH
2 IT:

3 (a) ARE NOT CONSIDERED A WATER RIGHT, AS DEFINED IN SECTION
4 37-92-103 (12);

5 (b) DO NOT HAVE A PRIORITY, AS DEFINED IN SECTION 37-92-103
6 (10); AND

7 (c) MAY NOT BE ADJUDICATED PURSUANT TO SECTION 37-92-302.

8 (7) THE DIVISION OF FIRE PREVENTION AND CONTROL IN THE
9 DEPARTMENT OF PUBLIC SAFETY, SUBJECT TO AVAILABLE
10 APPROPRIATIONS, MAY PROVIDE FINANCIAL SUPPORT TO A BOARD OF
11 COUNTY COMMISSIONERS TO FACILITATE THE BOARD'S ACQUISITION OF
12 AUGMENTATION WATER FOR PONDS THAT SATISFY THE CRITERIA
13 ESTABLISHED BY RULES PROMULGATED PURSUANT TO SUBSECTION (5) OF
14 THIS SECTION BUT ARE NOT DESIGNATED AS FIRE SUPPRESSION PONDS.

15 **SECTION 3.** In Colorado Revised Statutes, **add** 37-80-124 as
16 follows:

17 **37-80-124. State engineer - designation of fire suppression**
18 **ponds - conditional requirements - inspections - expiration of**
19 **designation - database - reviews by water courts.** (1) FOR THE

20 PURPOSES OF SECTION 37-82-107, THE STATE ENGINEER SHALL:

21 (a) REVIEW APPLICATIONS RECEIVED FROM BOARDS OF COUNTY
22 COMMISSIONERS CONCERNING THE DESIGNATION OF PONDS AS FIRE
23 SUPPRESSION PONDS; AND

24 (b) AT THE STATE ENGINEER'S DISCRETION, DESIGNATE PONDS AS
25 FIRE SUPPRESSION PONDS.

26 (2) IN CONSIDERING WHETHER TO DESIGNATE A POND AS A FIRE
27 SUPPRESSION POND, THE STATE ENGINEER SHALL:

1 (a) CONSIDER WHETHER THE NEEDS ASSESSMENT PERFORMED FOR
2 THE POND PURSUANT TO SECTION 37-82-107 (3)(a)(II) EVALUATED THE
3 CRITERIA ESTABLISHED BY RULES PROMULGATED BY THE DIVISION OF FIRE
4 PREVENTION AND CONTROL PURSUANT TO SECTION 37-82-107 (5); AND

5 (b) VERIFY THAT THE POND SATISFIES THE REQUIREMENTS
6 DESCRIBED IN SUBSECTION (10)(a)(II) OF THIS SECTION.

7 (3) THE STATE ENGINEER MAY ESTABLISH A STANDARD WRITTEN
8 OR ELECTRONIC FORM FOR BOARDS OF COUNTY COMMISSIONERS TO USE TO
9 APPLY FOR THE DESIGNATION OF A POND AS A FIRE SUPPRESSION POND.

10 (4) WITHIN ONE HUNDRED FIFTY-FOUR DAYS AFTER RECEIVING AN
11 APPLICATION TO DESIGNATE A FIRE SUPPRESSION POND, THE STATE
12 ENGINEER SHALL:

13 (a) REVIEW THE APPLICATION; AND

14 (b) AT THE STATE ENGINEER'S DISCRETION, DESIGNATE A POND AS
15 A FIRE SUPPRESSION POND, DENY THE APPLICATION, SCHEDULE A HEARING,
16 OR REQUEST ADDITIONAL INFORMATION.

17 (5) AS A CONDITION OF DESIGNATING A POND AS A FIRE
18 SUPPRESSION POND PURSUANT TO THIS SECTION, THE STATE ENGINEER
19 MAY IMPOSE REASONABLE REQUIREMENTS ON A BOARD OF COUNTY
20 COMMISSIONERS, INCLUDING REQUIREMENTS FOR MEASURING AND
21 RECORDING DEVICES.

22 (6) IF THE STATE ENGINEER DESIGNATES A POND AS A FIRE
23 SUPPRESSION POND PURSUANT TO THIS SECTION, THE BOARD OF COUNTY
24 COMMISSIONERS OF THE COUNTY IN WHICH THE POND IS LOCATED AND THE
25 FIRE PROTECTION DISTRICT SHALL INSPECT THE POND AT LEAST ANNUALLY
26 TO ENSURE THAT:

27 (a) THE POND IS PROPERLY MAINTAINED;

1 (b) ANY FIREFIGHTING INFRASTRUCTURE ASSOCIATED WITH THE
2 POND IS FUNCTIONAL; AND

3 (c) THE APPROXIMATE SURFACE AREA OF THE POND HAS NOT
4 CHANGED.

5 (7) IF THE STATE ENGINEER DENIES AN APPLICATION FOR THE
6 DESIGNATION OF A POND AS A FIRE SUPPRESSION POND, THE STATE
7 ENGINEER SHALL PROVIDE THE APPLICANT BOARD OF COUNTY
8 COMMISSIONERS THE REASONS FOR THE STATE ENGINEER'S DENIAL AND AN
9 OPPORTUNITY TO DISCUSS THE DENIAL WITH THE STATE ENGINEER.

10 (8) (a) THE DESIGNATION OF A POND AS A FIRE SUPPRESSION POND
11 PURSUANT TO THIS SECTION EXPIRES FIFTEEN YEARS AFTER THE DATE OF
12 THE DESIGNATION.

13 (b) NO SOONER THAN THREE HUNDRED SIXTY-FIVE DAYS BEFORE
14 THE EXPIRATION OF THE DESIGNATION OF A POND AS A FIRE SUPPRESSION
15 POND, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY IN WHICH
16 THE POND IS LOCATED AND THE FIRE PROTECTION DISTRICT MAY PERFORM
17 A NEEDS ASSESSMENT OF THE POND, AS DESCRIBED IN SECTION 37-82-107
18 (3), IF THE BOARD DESIRES THAT THE POND BE RECERTIFIED AS A FIRE
19 SUPPRESSION POND.

20 (c) IF THE NEEDS ASSESSMENT DESCRIBED IN SUBSECTION (8)(b) OF
21 THIS SECTION INDICATES THAT THE POND CONTINUES TO SATISFY THE
22 CRITERIA ESTABLISHED BY RULES PROMULGATED PURSUANT TO SECTION
23 37-82-107 (5), THE BOARD AND THE FIRE PROTECTION DISTRICT SHALL
24 NOTIFY THE STATE ENGINEER OF SUCH FACT, AND THE STATE ENGINEER
25 SHALL REDESIGNATE THE POND AS A FIRE SUPPRESSION POND.

26 (d) IF THE NEEDS ASSESSMENT DESCRIBED IN SUBSECTION (8)(b)
27 OF THIS SECTION INDICATES THAT THE POND NO LONGER SATISFIES THE

1 CRITERIA ESTABLISHED BY RULES PROMULGATED PURSUANT TO SECTION
2 37-82-107 (5), THE BOARD AND THE FIRE PROTECTION DISTRICT SHALL
3 EITHER:

4 (I) NOTIFY THE STATE ENGINEER THAT THE DESIGNATION OF THE
5 POND AS A FIRE SUPPRESSION POND SHOULD BE RESCINDED OR ALLOWED
6 TO EXPIRE; OR

7 (II) PROVIDE TO THE STATE ENGINEER A PLAN AND TIMELINE FOR
8 BRINGING THE POND BACK INTO COMPLIANCE WITH THE CRITERIA.

9 (9) THE STATE ENGINEER SHALL ESTABLISH A DATABASE FOR
10 THE ADMINISTRATION OF PONDS THAT ARE DESIGNATED AS FIRE
11 SUPPRESSION PONDS PURSUANT TO THIS SECTION.

12 (10) (a) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
13 CONTRARY, THE STATE ENGINEER SHALL NOT:

14 (I) DESIGNATE MORE THAN THIRTY TOTAL SURFACE ACRES OF
15 POND IN ANY COUNTY AS A FIRE SUPPRESSION POND; OR

16 (II) DESIGNATE ANY POND AS A FIRE SUPPRESSION POND UNLESS:

17 (A) THE POND EXISTED WITH THE SAME OR GREATER SURFACE
18 AREA AS OF JUNE 1, 1972;

19 (B) DECREED STORAGE RIGHTS FOR THE POND ARE LIMITED TO
20 USE WITHIN THE POND AND ONLY LIVESTOCK WATERING, WILDLIFE, OR
21 OTHER NONCONSUMPTIVE USES;

22 (C) THE POND IS NOT INCLUDED AS A STRUCTURE IN A DECREED
23 PLAN FOR AUGMENTATION, AN APPROPRIATIVE RIGHT OF EXCHANGE, OR
24 A STATE-APPROVED SUBSTITUTE WATER SUPPLY PLAN;

25 (D) THE SURFACE AREA OF THE POND DOES NOT EXCEED SIX
26 ACRES; AND

27 (E) THE BOARD OF COUNTY COMMISSIONERS THAT REQUESTED

1 THE DESIGNATION HAS PROVIDED NOTICE OF THE REQUEST TO INTERESTED
2 PARTIES INCLUDED IN THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION
3 LIST ESTABLISHED PURSUANT TO SECTION 37-92-308 (6) FOR THE WATER
4 DIVISION IN WHICH THE POND IS LOCATED.

5 (b) THE NOTICE DESCRIBED IN SUBSECTION (10)(a)(II)(E) OF THIS
6 SECTION MUST INCLUDE:

7 (I) THE RESULTS OF THE NEEDS ASSESSMENT CONDUCTED FOR THE
8 POND PURSUANT TO SECTION 37-82-107 (3)(a)(II), INCLUDING A SUMMARY
9 OF FINDINGS;

10 (II) A COPY OF THE APPLICATION FOR DESIGNATION OF THE POND
11 AS A FIRE SUPPRESSION POND; AND

12 (III) A STATEMENT THAT A HOLDER OF A DECREED WATER RIGHT
13 HAS ONE HUNDRED FORTY DAYS AFTER THE SUBMISSION OF THE
14 APPLICATION TO PROVIDE EVIDENCE OF MATERIAL INJURY TO THE STATE
15 ENGINEER, AS DESCRIBED IN SECTION 37-92-602 (8)(i).

16 (c) IN SUBMITTING AN APPLICATION FOR THE DESIGNATION OF A
17 POND AS A FIRE SUPPRESSION POND, A BOARD OF COUNTY
18 COMMISSIONERS MUST INCLUDE WITH THE APPLICATION EVIDENCE THAT
19 THE BOARD PROVIDED THE NOTICE DESCRIBED IN SUBSECTION
20 (10)(a)(II)(E) OF THIS SECTION.

21 (11) (a) WITHIN SEVENTY DAYS AFTER THE STATE ENGINEER
22 DESIGNATES A POND AS A FIRE SUPPRESSION POND, A HOLDER OF A
23 DECREED WATER RIGHT MAY FILE WITH THE WATER CLERK OF THE WATER
24 DIVISION IN WHICH THE FIRE SUPPRESSION POND IS LOCATED A PETITION
25 FOR REVIEW OF THE STATE ENGINEER'S DECISION.

26 (b) UPON RECEIVING A PETITION DESCRIBED IN SUBSECTION (11)(a)
27 OF THIS SECTION, A WATER JUDGE SHALL CONDUCT A REVIEW OF THE

1 STATE ENGINEER'S DECISION DE NOVO BASED ON THE ADMINISTRATIVE
2 RECORD.

3 (c) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
4 CONTRARY, A WATER JUDGE MAY NULLIFY THE STATE ENGINEER'S
5 DESIGNATION OF A POND AS A FIRE SUPPRESSION POND IF, AFTER
6 CONSIDERING THE ENTIRE RECORD, INCLUDING ANY EVIDENCE OF
7 MATERIAL INJURY, THE JUDGE FINDS THAT:

8 (I) IN APPLYING FOR SUCH DESIGNATION, THE BOARD OF COUNTY
9 COMMISSIONERS DID NOT DESCRIBE A POND THAT COMPLIES WITH
10 CRITERIA ESTABLISHED BY RULES PROMULGATED BY THE DIRECTOR OF THE
11 DIVISION OF FIRE PREVENTION AND CONTROL IN THE DEPARTMENT OF
12 PUBLIC SAFETY PURSUANT TO SECTION 37-82-107 (5); OR

13 (II) THE STATE ENGINEER'S DECISION DID NOT ACCORD WITH THE
14 REQUIREMENTS SET FORTH IN SUBSECTION (10) OF THIS SECTION.

15 **SECTION 4.** In Colorado Revised Statutes, 37-92-602, **amend**
16 (8)(a) and (8)(b) introductory portion; and add (8)(b)(III) and (8)(i) as
17 follows:

18 **37-92-602. Exemptions - presumptions - legislative declaration**
19 **- definitions.** (8) (a) The general assembly hereby declares that storm
20 water detention and infiltration facilities, ~~and~~ post-wildland fire facilities,
21 AND FIRE SUPPRESSION PONDS are essential for the protection of public
22 safety and welfare, property, and the environment.

23 (b) ~~For the purposes of~~ AS USED IN this subsection (8):

24 (III) "FIRE SUPPRESSION POND" MEANS A POND WITH WATER THAT
25 MAY BE USED IN A FIRE EMERGENCY, WHICH POND HAS BEEN:

26 (A) IDENTIFIED AS A POTENTIAL FIRE SUPPRESSION POND BY A
27 BOARD OF COUNTY COMMISSIONERS IN CONSULTATION WITH A FIRE

1 PROTECTION DISTRICT PURSUANT TO SECTION 37-82-107; AND

2 (B) DESIGNATED AS A FIRE SUPPRESSION POND BY THE STATE
3 ENGINEER PURSUANT TO SECTION 37-80-124.

4 (i) IF A BOARD OF COUNTY COMMISSIONERS APPLIES TO THE STATE
5 ENGINEER FOR THE DESIGNATION OF A FIRE SUPPRESSION POND PURSUANT
6 TO SECTION 37-82-107, AND THE REQUIREMENTS OF SECTION 37-80-124
7 (10) AND ANY RULES PROMULGATED BY THE DIVISION OF FIRE PREVENTION
8 AND CONTROL PURSUANT TO SECTION 37-82-107 (5) ARE SATISFIED, THE
9 PROPOSED FIRE SUPPRESSION POND IS PRESUMED TO CAUSE NO MATERIAL
10 INJURY TO THE VESTED WATER RIGHTS OF OTHERS. A HOLDER OF A
11 DECREED WATER RIGHT MAY REBUT THE PRESUMPTION BY PROVIDING
12 EVIDENCE TO THE STATE ENGINEER SUFFICIENT TO SHOW THAT MATERIAL
13 INJURY HAS OCCURRED OR WILL OCCUR TO THE DECREED WATER RIGHT.

14 **SECTION 5. Appropriation.** (1) For the 2022-23 state fiscal
15 year, \$19,428 is appropriated to the department of natural resources for
16 use by the executive director's office. This appropriation is from the
17 general fund. To implement this act, the department may use this
18 appropriation as follows:

19 (a) \$11,828 for the purchase of legal services.

20 (b) \$7,600 for the purchase of information technology services.

21 (2) For the 2022-23 state fiscal year, \$11,828 is appropriated to
22 the department of law. This appropriation is from reappropriated funds
23 received from the department of natural resources under subsection (1)(a)
24 of this section. To implement this act, the department of law may use this
25 appropriation to provide legal services for the department of natural
26 resources.

27 (3) For the 2022-23 state fiscal year, \$7,600 is appropriated to the

1 office of the governor for use by the office of information technology.
2 This appropriation is from reappropriated funds received from the
3 department of natural resources under subsection (1)(b) of this section. To
4 implement this act, the office may use this appropriation to provide
5 information technology services for the department of natural resources.

6 **SECTION 6. Act subject to petition - effective date.** This act
7 takes effect at 12:01 a.m. on the day following the expiration of the
8 ninety-day period after final adjournment of the general assembly; except
9 that, if a referendum petition is filed pursuant to section 1 (3) of article V
10 of the state constitution against this act or an item, section, or part of this
11 act within such period, then the act, item, section, or part will not take
12 effect unless approved by the people at the general election to be held in
13 November 2022 and, in such case, will take effect on the date of the
14 official declaration of the vote thereon by the governor.