

CHAPTER 464

WATER AND IRRIGATION

SENATE BILL 22-114

BY SENATOR(S) Hisey and Story, Danielson, Priola, Rodriguez;
also REPRESENTATIVE(S) Roberts and Catlin, McCluskie, Pico, Bennett, Bird, Boesenecker, Carver, Esgar, Exum, Herod,
Hooton, Jodeh, Lindsay, Lynch, McCormick, Michaelson Jenet, Mullica, Snyder, Titone, Woodrow.

AN ACT

CONCERNING FIRE SUPPRESSION PONDS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

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

(a) Colorado is facing a wildfire crisis;

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

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

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(2) The general assembly also finds that:

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

(b) Although Colorado is committed to taking meaningful action to mitigate wildfires, several remote areas in the state lack sufficient resources to suppress fires without external support;

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

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

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

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

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

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

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

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

(k) Preserving fire suppression ponds will help:

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

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

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

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

37-82-107. Fire suppression ponds - legislative declaration - needs

assessment - notice of consideration required - restriction on draining of ponds - rules - no water right created - repeal. (1) THE GENERAL ASSEMBLY HEREBY DECLARES THAT:

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

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

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

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

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

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

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

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

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

(A) GROUNDWATER;

(B) DIVERSION ON THE STREAM CHANNEL;

(C) DIVERSION OFF THE STREAM CHANNEL; OR

(D) WELL; AND

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

(c) IF A POND THAT IS UNDER CONSIDERATION FOR DESIGNATION AS A FIRE

SUPPRESSION POND IS LOCATED IN WHOLE OR IN PART UPON PRIVATE PROPERTY, A BOARD OF COUNTY COMMISSIONERS SHALL ACQUIRE THE VOLUNTARY WRITTEN APPROVAL OF EACH OWNER OF PRIVATE PROPERTY THAT ABUTS THE POND BEFORE THE BOARD APPLIES TO THE STATE ENGINEER FOR THE DESIGNATION OF THE POND AS A FIRE SUPPRESSION POND.

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

(4) UNLESS OTHERWISE REQUIRED BY LAW OR AS NEEDED TO ADDRESS DAM SAFETY CONCERNS, THE STATE ENGINEER SHALL NOT ORDER ANY POND TO BE DRAINED OR BACKFILLED OR PROCEED WITH ANY EXISTING ORDER TO DRAIN OR BACKFILL A POND:

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

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

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

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

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

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

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

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

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

(I) THE STATE ENGINEER;

(II) LOCAL GOVERNMENTS, INCLUDING COUNTIES;

(III) WATER PROVIDERS;

(IV) FIRE PROTECTION DISTRICTS, FIRE AUTHORITIES, AND OTHER FIREFIGHTING ENTITIES; AND

(V) BASIN ROUNDTABLES.

(6) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, A FIRE SUPPRESSION POND AND THE WATER ASSOCIATED WITH IT:

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

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

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

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

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

37-80-124. State engineer - designation of fire suppression ponds - conditional requirements - inspections - expiration of designation - database - reviews by water courts. (1) FOR THE PURPOSES OF SECTION 37-82-107, THE STATE ENGINEER SHALL:

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

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

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

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

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

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

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

(a) REVIEW THE APPLICATION; AND

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

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

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

(a) THE POND IS PROPERLY MAINTAINED;

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

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

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

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

(b) NO SOONER THAN THREE HUNDRED SIXTY-FIVE DAYS BEFORE THE EXPIRATION OF THE DESIGNATION OF A POND AS A FIRE SUPPRESSION POND, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY IN WHICH THE POND IS LOCATED AND THE FIRE PROTECTION DISTRICT OR FIRE AUTHORITY MAY PERFORM A NEEDS ASSESSMENT

OF THE POND, AS DESCRIBED IN SECTION 37-82-107 (3), IF THE BOARD DESIRES THAT THE POND BE RECERTIFIED AS A FIRE SUPPRESSION POND.

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

(d) IF THE NEEDS ASSESSMENT DESCRIBED IN SUBSECTION (8)(b) OF THIS SECTION INDICATES THAT THE POND NO LONGER SATISFIES THE CRITERIA ESTABLISHED BY RULES PROMULGATED PURSUANT TO SECTION 37-82-107 (5), THE BOARD AND THE FIRE PROTECTION DISTRICT OR FIRE AUTHORITY SHALL EITHER:

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

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

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

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

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

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

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

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

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

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

(E) THE BOARD OF COUNTY COMMISSIONERS THAT REQUESTED THE DESIGNATION HAS PROVIDED NOTICE OF THE REQUEST TO INTERESTED PARTIES INCLUDED IN THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST ESTABLISHED PURSUANT TO SECTION 37-92-308 (6) FOR THE WATER DIVISION IN WHICH THE POND IS LOCATED; AND

(F) THE STATE ENGINEER DETERMINES THAT EVIDENCE PROVIDED BY A HOLDER OF A DECREED WATER RIGHT IN RESPONSE TO THE NOTICE DESCRIBED IN SUBSECTION (10)(a)(II)(E) OF THIS SECTION WAS INSUFFICIENT TO REBUT THE PRESUMPTION OF NO MATERIAL INJURY, AS DESCRIBED IN SECTION 37-92-602 (8)(i).

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

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

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

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

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

(11) AFTER A BOARD OF COUNTY COMMISSIONERS SUBMITS AN APPLICATION TO THE STATE ENGINEER FOR THE DESIGNATION OF A FIRE SUPPRESSION POND PURSUANT TO SECTION 37-82-107, A HOLDER OF A DECREED WATER RIGHT MAY REQUEST THAT, IF THE STATE ENGINEER DESIGNATES THE POND AS A FIRE SUPPRESSION POND, THE STATE ENGINEER SHALL PROVIDE NOTICE OF THE DESIGNATION TO THE HOLDER OF THE DECREED WATER RIGHT WITHIN FOURTEEN DAYS AFTER THE DESIGNATION. IF THE STATE ENGINEER RECEIVES SUCH A REQUEST, THE STATE ENGINEER SHALL PROVIDE SUCH NOTICE.

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

(b) UPON RECEIVING A PETITION DESCRIBED IN SUBSECTION (12)(a) OF THIS SECTION, A WATER JUDGE SHALL CONDUCT A REVIEW OF THE STATE ENGINEER'S DECISION DE NOVO BASED ON THE ADMINISTRATIVE RECORD.

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

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

(5); OR

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

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

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

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

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

(A) IDENTIFIED AS A POTENTIAL FIRE SUPPRESSION POND BY A BOARD OF COUNTY COMMISSIONERS IN CONSULTATION WITH A FIRE PROTECTION DISTRICT OR FIRE AUTHORITY PURSUANT TO SECTION 37-82-107; AND

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

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

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

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

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

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

(3) For the 2022-23 state fiscal year, \$7,600 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from reappropriated funds received from the department of natural resources under subsection (1)(b) of this section. To implement this act, the office may use this appropriation to provide information technology services for the department of natural resources.

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

Approved: June 8, 2022