

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 22-0535.01 Richard Sweetman x4333

SENATE BILL 22-114

SENATE SPONSORSHIP

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Senate Committees

Agriculture & Natural Resources
Appropriations

House Committees

Agriculture, Livestock, & Water
Appropriations

A BILL FOR AN ACT

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

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.

HOUSE
3rd Reading Unamended
May 10, 2022

HOUSE
Amended 2nd Reading
May 3, 2022

SENATE
Amended 3rd Reading
April 1, 2022

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 OR FIRE AUTHORITY, MAY APPLY TO THE
21 STATE ENGINEER PURSUANT TO SECTION 37-80-124 FOR THE DESIGNATION
22 OF A POND WITHIN THE BORDERS OF THE COUNTY AS A FIRE SUPPRESSION
23 POND.

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

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

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

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

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

- 15 (I) IDENTIFY THE REFILL MECHANISM OF THE POND, WHETHER BY:
- 16 (A) GROUNDWATER;
- 17 (B) DIVERSION ON THE STREAM CHANNEL;
- 18 (C) DIVERSION OFF THE STREAM CHANNEL; OR
- 19 (D) WELL; AND

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

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

1 STATE ENGINEER FOR THE DESIGNATION OF THE POND AS A FIRE
2 SUPPRESSION POND.

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

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

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

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

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

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

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

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

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

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

18 ==

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

22 (I) THE STATE ENGINEER;

23 (II) LOCAL GOVERNMENTS, INCLUDING COUNTIES;

24 (III) WATER PROVIDERS; ==

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

27 (V) BASIN ROUNDTABLES.

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

4 (a) ARE NOT CONSIDERED A WATER RIGHT, AS DEFINED IN SECTION
5 37-92-103 (12);

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

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

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

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

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

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

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

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

27 (2) IN CONSIDERING WHETHER TO DESIGNATE A POND AS A FIRE

1 SUPPRESSION POND, THE STATE ENGINEER SHALL:

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

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

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

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

14 (a) REVIEW THE APPLICATION; AND

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

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

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

1 (a) THE POND IS PROPERLY MAINTAINED;

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

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

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

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

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

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

1 (d) IF THE NEEDS ASSESSMENT DESCRIBED IN SUBSECTION (8)(b)
2 OF THIS SECTION INDICATES THAT THE POND NO LONGER SATISFIES THE
3 CRITERIA ESTABLISHED BY RULES PROMULGATED PURSUANT TO SECTION
4 37-82-107 (5), THE BOARD AND THE FIRE PROTECTION DISTRICT OR FIRE
5 AUTHORITY SHALL EITHER:

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

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

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

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

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

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

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

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

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

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

1 ACRES; [REDACTED]

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

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

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

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

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

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

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

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

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

15 (b) UPON RECEIVING A PETITION DESCRIBED IN SUBSECTION (11)(a)
16 OF THIS SECTION, A WATER JUDGE SHALL CONDUCT A REVIEW OF THE
17 STATE ENGINEER'S DECISION DE NOVO BASED ON THE ADMINISTRATIVE
18 RECORD.

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

24 (I) IN APPLYING FOR SUCH DESIGNATION, THE BOARD OF COUNTY
25 COMMISSIONERS DID NOT DESCRIBE A POND THAT COMPLIES WITH
26 CRITERIA ESTABLISHED BY RULES PROMULGATED BY THE DIRECTOR OF THE
27 DIVISION OF FIRE PREVENTION AND CONTROL IN THE DEPARTMENT OF

1 PUBLIC SAFETY PURSUANT TO SECTION 37-82-107 (5); OR

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

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

7 **37-92-602. Exemptions - presumptions - legislative declaration**
8 **- definitions.** (8) (a) The general assembly hereby declares that storm
9 water detention and infiltration facilities, ~~and~~ post-wildland fire facilities,
10 AND FIRE SUPPRESSION PONDS are essential for the protection of public
11 safety and welfare, property, and the environment.

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

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

15 (A) IDENTIFIED AS A POTENTIAL FIRE SUPPRESSION POND BY A
16 BOARD OF COUNTY COMMISSIONERS IN CONSULTATION WITH A FIRE
17 PROTECTION DISTRICT OR FIRE AUTHORITY PURSUANT TO SECTION
18 37-82-107; AND

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

21 (i) IF A BOARD OF COUNTY COMMISSIONERS APPLIES TO THE STATE
22 ENGINEER FOR THE DESIGNATION OF A FIRE SUPPRESSION POND PURSUANT
23 TO SECTION 37-82-107, AND THE REQUIREMENTS OF SECTION 37-80-124
24 (10) AND ANY RULES PROMULGATED BY THE DIVISION OF FIRE PREVENTION
25 AND CONTROL PURSUANT TO SECTION 37-82-107 (5) ARE SATISFIED, THE
26 PROPOSED FIRE SUPPRESSION POND IS PRESUMED TO CAUSE NO MATERIAL
27 INJURY TO THE VESTED WATER RIGHTS OF OTHERS. A HOLDER OF A

1 DECREED WATER RIGHT MAY REBUT THE PRESUMPTION BY PROVIDING
2 EVIDENCE TO THE STATE ENGINEER SUFFICIENT TO SHOW THAT MATERIAL
3 INJURY HAS OCCURRED OR WILL OCCUR TO THE DECREED WATER RIGHT.

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

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

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

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

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

23 **SECTION 6. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly; except
26 that, if a referendum petition is filed pursuant to section 1 (3) of article V
27 of the state constitution against this act or an item, section, or part of this

1 act within such period, then the act, item, section, or part will not take
2 effect unless approved by the people at the general election to be held in
3 November 2022 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor.