

SENATE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

March 3, 2022

Committee on Agriculture & Natural Resources.

After consideration on the merits, the Committee recommends the following:

SB22-114 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

- 1 Amend printed bill, page 4, strike lines 5 through 9 and substitute "use
- 2 available water resources in a fire event and has authorized the emergency
- 3 use of wells for firefighting purposes;
- 4 (e) Using water resources to fight fires in emergencies is in the
- 5 public interest and may be critical in protecting life, property, and
- 6 infrastructure;".

- 7 Page 4, strike lines 16 through 18 and substitute:
- 8 "(h) The state engineer may order ponds to be drained or
- 9 backfilled if they are found to deplete streams out of priority;".

- 10 Page 6, line 13, strike "(9)" and substitute "(8)".

- 11 Page 6, line 14, strike "(a)".

- 12 Page 6, strike lines 17 through 27 and substitute "SHALL PROVIDE NOTICE
- 13 OF SUCH FACT TO THE STATE ENGINEER. THE NOTICE MUST INDICATE THE
- 14 LOCATION AND APPROXIMATE SURFACE AREA OF THE POND."

- 15 Page 7, strike lines 1 through 11.

- 16 Renumber succeeding subsections accordingly.

- 17 Page 8, line 7, strike "37-80-124;" and substitute "37-80-124 AND THE
- 18 POND IS OPERATING IN ACCORDANCE WITH THE DESIGNATION;".

- 19 Page 8, line 11, strike "(9)" and substitute "(8)".

- 1 Page 8, lines 12 and 13, strike "POND, WHICH ORDER EXISTS ON THE
2 EFFECTIVE DATE OF THIS SECTION," and substitute "POND".
- 3 Page 8, line 17, strike "(8)(c)" and substitute "(7)(c)".
- 4 Page 8, strike lines 25 through 27 and substitute "THIS SECTION. AT A
5 MINIMUM, THE CRITERIA MUST REQUIRE THAT A FIRE SUPPRESSION POND:
6 (I) BE READILY ACCESSIBLE BY A FIRE PROTECTION DISTRICT, FIRE
7 DEPARTMENT, OR OTHER FIREFIGHTING ENTITY;
8 (II) BE LOCATED IN THE WILDLAND-URBAN INTERFACE OR
9 ANOTHER LOCATION THAT FACES AN ELEVATED THREAT OF FIRE RISK; AND
10 (III) BE LOCATED IN AN AREA WITHOUT TIMELY OR ADEQUATE
11 ACCESS TO FIRE HYDRANTS OR OTHER WATER SUPPLIES AND WHERE THE
12 POND PROVIDES A NEEDED SUPPLY."
- 13 Page 9, strike lines 1 through 19.
- 14 Page 9, line 21, strike "(9)(a)" and substitute "(8)(a)".
- 15 Page 10, after line 8 insert:
16 "(10) THE COLORADO WATER CONSERVATION BOARD OR THE
17 DIVISION OF FIRE PREVENTION AND CONTROL IN THE DEPARTMENT OF
18 PUBLIC SAFETY, SUBJECT TO AVAILABLE APPROPRIATIONS, MAY PROVIDE
19 FINANCIAL SUPPORT TO A BOARD OF COUNTY COMMISSIONERS TO
20 FACILITATE THE BOARD'S ACQUISITION OF AUGMENTATION WATER FOR
21 PONDS THAT SATISFY THE CRITERIA ESTABLISHED BY RULES
22 PROMULGATED PURSUANT TO SUBSECTION (8) OF THIS SECTION BUT ARE
23 NOT DESIGNATED AS FIRE SUPPRESSION PONDS."
- 24 Page 10, line 13, strike "**database.**" and substitute "**database - reviews**
25 **by water courts.**".
- 26 Page 10, line 24, strike "(9)." and substitute "(8)".
- 27 Page 12, line 11, strike "(9)," and substitute "(8)".
- 28 Page 12, line 17, strike "(9)," and substitute "(8)".
- 29 Page 12, line 24, strike "DISCRETE".
- 30 Page 12, line 27, after "(10)" insert "(a)".
- 31 Page 13, strike lines 2 and 3 and substitute "FIRE SUPPRESSION POND

1 UNLESS:

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

4 (II) DECREED STORAGE RIGHTS FOR THE POND ARE LIMITED TO USE
5 WITHIN THE POND AND ONLY LIVESTOCK WATERING, WILDLIFE, OR OTHER
6 NONCONSUMPTIVE USES;

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

10 (IV) THE SURFACE AREA OF THE POND DOES NOT EXCEED SIX
11 ACRES; AND

12 (V) THE BOARD OF COUNTY COMMISSIONERS THAT REQUESTED
13 THE DESIGNATION HAS PROVIDED NOTICE OF THE REQUEST TO INTERESTED
14 PARTIES INCLUDED IN THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION
15 LIST ESTABLISHED PURSUANT TO SECTION 37-92-308 (6) FOR THE WATER
16 DIVISION IN WHICH THE POND IS LOCATED.

17 (b) THE NOTICE DESCRIBED IN SUBSECTION (10)(a)(V) OF THIS
18 SECTION MUST INCLUDE:

19 (I) THE RESULTS OF THE NEEDS ASSESSMENT CONDUCTED FOR THE
20 POND PURSUANT TO SECTION 37-82-107 (3)(a)(II);

21 (II) A COPY OF THE APPLICATION FOR DESIGNATION OF THE POND
22 AS A FIRE SUPPRESSION POND, WHICH APPLICATION WAS SUBMITTED TO
23 THE STATE ENGINEER BY THE BOARD OF COUNTY COMMISSIONERS; AND

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

28 (11) (a) WITHIN THIRTY-FIVE DAYS AFTER THE STATE ENGINEER
29 DESIGNATES A POND AS A FIRE SUPPRESSION POND, A HOLDER OF A
30 DECREED WATER RIGHT MAY FILE WITH THE WATER CLERK OF THE WATER
31 DIVISION IN WHICH THE FIRE SUPPRESSION POND IS LOCATED A PETITION
32 FOR REVIEW OF THE STATE ENGINEER'S DECISION.

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

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

42 (I) IN APPLYING FOR SUCH DESIGNATION, THE BOARD OF COUNTY
43 COMMISSIONERS DID NOT DESCRIBE A POND THAT COMPLIES WITH

1 CRITERIA ESTABLISHED BY RULES PROMULGATED BY THE DIRECTOR OF THE
2 DIVISION OF FIRE PREVENTION AND CONTROL IN THE DEPARTMENT OF
3 PUBLIC SAFETY PURSUANT TO SECTION 37-82-107 (8); OR

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

6 Page 13, strike line 5 and substitute "(8)(a) and (8)(b) introductory
7 portion; and **add** (8)(b)(III) and (8)(i) as".

8 Page 13, line 13, strike "THAT" and substitute "WITH WATER THAT MAY BE
9 USED IN A FIRE EMERGENCY, WHICH POND".

10 Page 13, strike lines 19 through 26 and substitute:

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

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