

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 22-0535.01 Richard Sweetman x4333

SENATE BILL 22-114

SENATE SPONSORSHIP

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Roberts and Catlin, McCluskie, Pico

Senate Committees

Agriculture & Natural Resources
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING FIRE SUPPRESSION PONDS.**

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 identify and evaluate potential fire suppression ponds. For each pond that is identified and under consideration as a potential fire suppression pond,

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.

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
26 to mitigate wildfires, several remote areas in the state lack sufficient

1 resources to suppress fires without external support;

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

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

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

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

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

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

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

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

24 (k) Preserving fire suppression ponds will help:

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

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

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

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

9 **37-82-107. Fire suppression ponds - legislative declaration -**
10 **needs assessment - notice of consideration required - restriction on**
11 **draining of ponds - rules - no water right created - repeal.** (1) THE
12 GENERAL ASSEMBLY HEREBY DECLARES THAT FIRE SUPPRESSION PONDS
13 ARE ESSENTIAL FOR THE PROTECTION OF PUBLIC SAFETY AND WELFARE,
14 PROPERTY, AND THE ENVIRONMENT.

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

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

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

24 (II) PERFORM A NEEDS ASSESSMENT OF EACH SUCH POND, WHICH
25 NEEDS ASSESSMENT SHALL BE COMPLETED WITHIN ONE YEAR AFTER THE
26 BOARD PROVIDES THE NOTICE DESCRIBED IN SUBSECTION (4) OF THIS
27 SECTION.

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

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

6 (A) GROUNDWATER;

7 (B) DIVERSION ON THE STREAM CHANNEL;

8 (C) DIVERSION OFF THE STREAM CHANNEL; OR

9 (D) WELL; AND

10 (II) APPLY THE CRITERIA ESTABLISHED PURSUANT TO RULES
11 PROMULGATED BY THE DIRECTOR OF THE DIVISION OF FIRE PREVENTION
12 AND CONTROL PURSUANT TO SUBSECTION (8) OF THIS SECTION.

13 (4) _____ FOR EACH POND THAT IS IDENTIFIED AND UNDER
14 CONSIDERATION AS A POTENTIAL FIRE SUPPRESSION POND PURSUANT TO
15 SUBSECTION (3) OF THIS SECTION, A BOARD OF COUNTY COMMISSIONERS
16 SHALL PROVIDE NOTICE OF SUCH FACT TO THE STATE ENGINEER. THE
17 NOTICE MUST INDICATE THE LOCATION AND APPROXIMATE SURFACE AREA
18 OF THE POND.

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

26 (6) IF A BOARD OF COUNTY COMMISSIONERS NOTIFIES THE STATE
27 ENGINEER PURSUANT TO SUBSECTION (4) OF THIS SECTION THAT A POND IS

1 UNDER CONSIDERATION AS A FIRE SUPPRESSION POND, THE BOARD SHALL
2 NOTIFY THE STATE ENGINEER PROMPTLY IF AND WHEN THE POND IS NO
3 LONGER UNDER SUCH CONSIDERATION.

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

9 (a) IF THE STATE ENGINEER HAS RECEIVED NOTICE PURSUANT TO
10 SUBSECTION (4) OF THIS SECTION THAT THE POND IS UNDER
11 CONSIDERATION BY A BOARD OF COUNTY COMMISSIONERS FOR
12 DESIGNATION AS A FIRE SUPPRESSION POND, DURING THE PENDENCY OF
13 THAT CONSIDERATION;

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

17 (c) (I) ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, AND
18 UNTIL THE DATE UPON WHICH THE DIRECTOR OF THE DIVISION OF FIRE
19 PREVENTION AND CONTROL PROMULGATES RULES PURSUANT TO
20 SUBSECTION (8) OF THIS SECTION; EXCEPT THAT, DURING SUCH TIME, THE
21 STATE ENGINEER MAY ENFORCE AN ORDER TO DRAIN A POND IF THE STATE
22 ENGINEER FIRST PROVIDES NOTICE OF THE ORDER TO THE BOARD OF
23 COUNTY COMMISSIONERS OF THE COUNTY IN WHICH THE POND IS LOCATED
24 AND ALLOWS THE BOARD FOURTEEN DAYS TO RESPOND.

25 (II) THIS SUBSECTION (7)(c) IS REPEALED, EFFECTIVE JULY 1, 2023.

26 (8) (a) ON OR BEFORE MAY 1, 2023, THE DIRECTOR OF THE
27 DIVISION OF FIRE PREVENTION AND CONTROL IN THE DEPARTMENT OF

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

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

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

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

15 ==
16 (b) BEFORE PROMULGATING THE RULES DESCRIBED IN SUBSECTION
17 (8)(a) OF THIS SECTION, THE DIRECTOR OF THE DIVISION OF FIRE
18 PREVENTION AND CONTROL SHALL SOLICIT AND CONSIDER INPUT FROM:

- 19 (I) THE STATE ENGINEER;
- 20 (II) LOCAL GOVERNMENTS, INCLUDING COUNTIES;
- 21 (III) WATER PROVIDERS; AND
- 22 (IV) FIRE PROTECTION DISTRICTS AND OTHER FIREFIGHTING
- 23 ENTITIES.

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

27 (a) ARE NOT CONSIDERED A WATER RIGHT, AS DEFINED IN SECTION

1 37-92-103 (12);

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

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

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

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

15 **37-80-124. State engineer - designation of fire suppression**
16 **ponds - conditional requirements - inspections - expiration of**
17 **designation - database - reviews by water courts.** (1) FOR THE
18 PURPOSES OF SECTION 37-82-107, THE STATE ENGINEER SHALL:

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

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

24 (2) IN CONSIDERING WHETHER TO DESIGNATE A POND AS A FIRE
25 SUPPRESSION POND, THE STATE ENGINEER SHALL CONSIDER WHETHER THE
26 POND SATISFIES THE CRITERIA ESTABLISHED BY RULES PROMULGATED BY
27 THE DIVISION OF FIRE PREVENTION AND CONTROL PURSUANT TO SECTION

1 37-82-107 (8).

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

5 (4) IF A BOARD OF COUNTY COMMISSIONERS SUBMITS TO THE
6 STATE ENGINEER AN APPLICATION FOR THE DESIGNATION OF A POND AS A
7 FIRE SUPPRESSION POND PURSUANT TO SECTION 37-82-107, THE
8 APPLICATION IS PRESUMED TO BE APPROVED IF THE STATE ENGINEER DOES
9 NOT RESPOND TO THE APPLICATION WITHIN SIXTY-THREE DAYS AFTER THE
10 APPLICATION IS RECEIVED BY THE STATE ENGINEER.

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

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

21 (a) THE POND IS PROPERLY MAINTAINED;

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

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

26 (7) IF THE STATE ENGINEER DENIES AN APPLICATION FOR THE
27 DESIGNATION OF A POND AS A FIRE SUPPRESSION POND, THE STATE

1 ENGINEER SHALL PROVIDE THE APPLICANT BOARD OF COUNTY
2 COMMISSIONERS THE REASONS FOR THE STATE ENGINEER'S DENIAL AND AN
3 OPPORTUNITY TO DISCUSS THE DENIAL WITH THE STATE ENGINEER.

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

7 (b) BEFORE THE EXPIRATION OF THE DESIGNATION OF A POND AS
8 A FIRE SUPPRESSION POND, THE BOARD OF COUNTY COMMISSIONERS OF THE
9 COUNTY IN WHICH THE POND IS LOCATED AND THE FIRE PROTECTION
10 DISTRICT SHALL PERFORM A NEEDS ASSESSMENT OF THE POND, AS
11 DESCRIBED IN SECTION 37-82-107 (3).

12 (c) IF THE NEEDS ASSESSMENT DESCRIBED IN SUBSECTION (8)(b) OF
13 THIS SECTION INDICATES THAT THE POND CONTINUES TO SATISFY THE
14 CRITERIA ESTABLISHED BY RULES PROMULGATED PURSUANT TO SECTION
15 37-82-107 (8), THE BOARD AND THE FIRE PROTECTION DISTRICT SHALL
16 NOTIFY THE STATE ENGINEER OF SUCH FACT, AND THE STATE ENGINEER
17 SHALL REDESIGNATE THE POND AS A FIRE SUPPRESSION POND.

18 (d) IF THE NEEDS ASSESSMENT DESCRIBED IN SUBSECTION (8)(b)
19 OF THIS SECTION INDICATES THAT THE POND NO LONGER SATISFIES THE
20 CRITERIA ESTABLISHED BY RULES PROMULGATED PURSUANT TO SECTION
21 37-82-107 (8), THE BOARD AND THE FIRE PROTECTION DISTRICT SHALL
22 EITHER:

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

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

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

4 (10) (a) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
5 CONTRARY, THE STATE ENGINEER SHALL NOT DESIGNATE ANY POND AS A
6 FIRE SUPPRESSION POND UNLESS:

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

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

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

15 (IV) THE SURFACE AREA OF THE POND DOES NOT EXCEED SIX
16 ACRES; AND

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

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

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

26 (II) A COPY OF THE APPLICATION FOR DESIGNATION OF THE POND
27 AS A FIRE SUPPRESSION POND, WHICH APPLICATION WAS SUBMITTED TO

1 THE STATE ENGINEER BY THE BOARD OF COUNTY COMMISSIONERS; AND

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

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

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

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

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

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

27 **SECTION 4.** In Colorado Revised Statutes, 37-92-602, **amend**

1 (8)(a) and (8)(b) introductory portion; and add (8)(b)(III) and (8)(i) as
2 follows:

3 **37-92-602. Exemptions - presumptions - legislative declaration**
4 **- definitions.** (8) (a) The general assembly hereby declares that storm
5 water detention and infiltration facilities, ~~and~~ post-wildland fire facilities,
6 AND FIRE SUPPRESSION PONDS are essential for the protection of public
7 safety and welfare, property, and the environment.

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

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

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

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

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

26 **SECTION 5. Act subject to petition - effective date.** This act
27 takes effect at 12:01 a.m. on the day following the expiration of the

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