



**COLORADO**  
Division of Water Resources  
Department of Natural Resources

Office of the State Engineer  
1313 Sherman St, Suite 818  
Denver, CO 80203

## Response to Reclamation Permit Application Consideration

DATE: April 21, 2016  
TO: Amy Eschberger, Environmental Protection Specialist  
CC: Division 2 Office; District 10 Water Commissioner  
FROM: Caleb Foy, P.E.  
RE: Hitch Rack Ranch Quarry, File No. M-2016-010  
Operator: Transit Mix Concrete Co.  
Contact: Andre LaRoche, (719) 475-0700  
Secs. 16, 21- 23, Twp. 16S, Rng. 67W, 6<sup>th</sup> P.M., El Paso County

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### CONDITIONS FOR APPROVAL

- ☒ The proposed operation does not anticipate exposing groundwater. Therefore, exposure of ground water must not occur during or after mining operations.
- ☒ The proposed operation will consume water by: ☐ evaporation, ☒ dust control, ☐ reclamation, ☐ water removed in the mined product, ☒ processing, ☐ other:.
- ☒ All water used on-site for mining needs shall be a legal supply of water provided by an appropriate supplier. The applicant shall confirm the legality of any proposed source of water supply with the Division of Water Resources prior to use in the operation.
- ☒ To assist in avoiding adverse impacts to water resources or vested water rights, the applicant shall consult with the local Water Commissioner (Doug Hollister, [Doug.Hollister@state.co.us](mailto:Doug.Hollister@state.co.us)) regarding any activity that might affect the flow of water to any stream system and/or ditch.
- ☒ The application materials indicate that the storm water management plan will include construction of ditches, sediment ponds, and culverts as a part of this project. The applicant should be aware that, unless the storm water detention structures can meet the requirements of a "storm water detention and infiltration facility" as defined in section 37-92-602(8), Colorado Revised Statutes, the structure may be subject to administration by this office. The applicant should review DWR's *Administrative Statement Regarding the Management of Storm Water Detention Facilities and Post-Wildland Fire Facilities in Colorado*, attached, to ensure that the notification, construction and operation of the proposed structure meets statutory and administrative requirements. The applicant is encouraged to use *Colorado Stormwater Detention and Infiltration Facility Notification Portal*, located at <https://maperture.digitaldataservices.com/gvh/?viewer=cswdif>, to meet the notification requirements.

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**COMMENTS:** The local Water Commissioner, Doug Hollister, may be contacted at (719) 227-5291 or [Doug.Hollister@state.co.us](mailto:Doug.Hollister@state.co.us) regarding legal supplies of water in the area.





## **Administrative Statement Regarding the Management of Storm Water Detention Facilities and Post-Wildland Fire Facilities in Colorado**

February 11, 2016

The Division of Water Resources (DWR) has previously administered storm water detention facilities based on DWR's "Administrative Approach for Storm Water Management" dated May 21, 2011. Since the passage of Colorado Senate Bill 15-212, that administrative approach has been superseded. This document describes SB 15-212, codified in section 37-92-602(8), Colorado Revised Statutes (C.R.S.), and how the law directs administrative requirements for storm water management. The document is for informational purposes only; please refer to section 37-92-602(8) for comprehensive language of the law.

Pursuant to section 37-92-602(8), storm water detention facilities and post-wildland fire facilities shall be exempt from administration under Colorado's water rights system only if they meet specific criteria. The provisions of SB15-212 apply to surface water throughout the state. SB15-212 *only* clarifies when facilities may be subject to administration by the State Engineer; all facilities may be subject to the jurisdiction of other government agencies and must continue to obtain any permits required by those agencies.

### **Storm Water Detention Facilities**

Pursuant to section 37-92-602(8), a storm water detention and infiltration facility ("Detention Facility") is a facility that:

- Is owned or operated by a government entity or is subject to oversight by a government entity, including those facilities that are privately owned but are required by a government entity for flood control or pollution reduction.
- Operates passively and does not subject storm water to any active treatment process.
- Has the ability to continuously release or infiltrate at least 97 percent of all of the water from a rainfall event that is equal to or less than a five-year storm within 72 hours of the end the rainfall event.
- Has the ability to continuously release or infiltrate at least 99 percent of all of the water from a rainfall event that is greater than a five-year storm within 120 hours of the end the rainfall event.
- Is operated solely for storm water management.



In addition, to qualify for the allowances provided in SB-212, the facility:

- Must not be located in the Fountain Creek watershed, unless the facility is required by or operated pursuant to a Colorado Discharge Permit System Municipal Separate Storm Sewer System Permit issued by the Department of Public Health and Environment pursuant to Article 8 of Title 25, C.R.S.
- Must not use water detained in the facility for any other purpose nor release it for subsequent diversion by the person who owns, operates, or has oversight over the facility. The facility cannot be operated as the basis for a water right, credit, or other water use right.
- Must not expose ground water.
- May include a structure or series of structures of any size.

If the Detention Facility was constructed *on or before* August 5, 2015 and meets all the requirements listed above, it does not cause material injury to vested water rights and will not be subject to administration by the State Engineer.

If the Detention Facility is constructed after August 5, 2015, meets the requirements listed above, and the operation of the detention facility does not cause a reduction to the natural hydrograph as it existed prior to the upstream development, it has a rebuttable presumption of non-injury pursuant to paragraph 37-92-602(8)(c)(II). A holder of a vested water right may bring an action in a court of competent jurisdiction to determine whether the operation of the detention facility is in accordance with paragraph 37-92-602(8)(c)(II)(A) and (B) has caused material injury. If the court determines that the vested water rights holder has been injured, the detention facility will be subject to administration.

In addition, for Detention Facilities constructed after August 5, 2015, the entity that owns, operates, or has oversight for the Detention Facility must, prior to the operation of the facility, provide notice of the proposed facility to the Substitute Water Supply Plan (SWSP) Notification List for the water division in which the facility is located. Notice must include: the location of proposed facility, the approximate surface area at design volume of the facility, and data that demonstrates that the facility has been designed to comply with section 37-92-602(8)(b) paragraphs (B) and (C). The State Engineer has not been given the statutory responsibility to review notices, however, DWR staff may choose to review notices in the course of their normal water administration duties. Not reviewing notices does not preclude the Division Engineer from



taking enforcement action in the event that the above criteria are not met in design and/or operation.

To satisfy the notification requirement, operators are encouraged to use the Colorado Stormwater Detention and Infiltration Facility Notification Portal developed by Urban Drainage and Flood Control District (“UDFCD”), located at:

<https://maperture.digitaldataservices.com/gvh/?viewer=cswdif>.

Types of detention Facilities contemplated under this statute include underground detention vaults, permanent flood detention basins,<sup>1</sup> extended detention basins,<sup>2</sup> and full spectrum detention basins.<sup>3</sup> Storm Water Best Management Practices<sup>4</sup> (BMPs) not contemplated above, including all Construction BMPs and non-retention BMPs, do not require notice pursuant to SB-212 and are allowed at the discretion of the Division Engineer. Green roofs are allowable as long as they intercept only precipitation that falls within the perimeter of the vegetated area. Green roofs should not intercept or consume concentrated flow, and should not store water below the root zone. BMPs that rely on retention, such as retention ponds and constructed wetlands, will be subject to administration by the State Engineer.

**Any detention facility that does not meet all of the statutory criteria described above, in design or operation, is subject to administration by the State Engineer.**

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<sup>1</sup> Flood detention basin: An engineered detention basin designed to capture and slowly release peak flow volumes to mitigate flooding (Urban Drainage and Flood Control, 2010).

<sup>2</sup> Extended detention basin: An engineered detention basin with an outlet structure designed to slowly release urban runoff over an extended time period (Urban Drainage and Flood Control, 2010).

<sup>3</sup> Full spectrum detention basin: An extended detention basin designed to mimic pre-development peak flows by capturing the Excess Urban Runoff Volume and release it over a 72 hour period (Urban Drainage and Flood Control, 2010).

<sup>4</sup> Best management practice: A technique, process, activity, or structure used to reduce pollutant discharges in stormwater (Urban Drainage and Flood Control, 2010).



### **Post-Wildland Fire Facilities**

Pursuant to section 37-92-602(8), a post-wildland fire facility is a facility that:

- Includes a structure or series of structures that are not permanent.
- Is located on, in or adjacent to a nonperennial stream<sup>5</sup>.
- Is designed and operated to detain the least amount of water necessary, for the shortest duration of time necessary, to achieve the public safety and welfare objectives for which it is designed.
- Is designed and operated solely to mitigate the impacts of wildland fire events that have previously occurred.

In addition, to qualify for the allowances provided in SB-212, the facility:

- Must be removed or rendered inoperable after the emergency conditions created by the fire no longer exist, such that the location is returned to its natural conditions with no detention of surface water or exposure of ground water.
- Must not use water detained in the facility for any other purpose nor release it for subsequent diversion by the person who owns, operates, or has oversight over the facility. The facility will not be operated as the basis for a water right, credit, or other water use right.

If the post-wildland fire facility meets the requirements listed above, it does not cause material injury to vested water rights. While DWR recognizes that post-wildland fire facilities are essential to the protection of public safety and welfare, property, and the environment, DWR may, from time to time, request that the person who owns, operates, or has oversight of the post-wildland fire facility supply information to DWR to demonstrate they meet the criteria set forth above.

**If a post-wildland fire facility does not meet all the criteria set forth above, it will be subject to administration by the State Engineer.**

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<sup>5</sup> DWR may use the National Hydrography Dataset or other reasonable measure to determine the classification of a stream



### **Resources and References**

Colorado Stormwater Detention and Infiltration Facility Notification Portal:

<https://maperture.digitaldataservices.com/gvh/?viewer=cswdif>

Colorado Senate Bill15-212:

[http://www.leg.state.co.us/CLICS/CLICS2015A/csl.nsf/fsbillcont3/13B28CF09699E67087257DE8006690D8?Open&file=212\\_enr.pdf](http://www.leg.state.co.us/CLICS/CLICS2015A/csl.nsf/fsbillcont3/13B28CF09699E67087257DE8006690D8?Open&file=212_enr.pdf)

United States Geological Survey National Hydrography Dataset: <http://nhd.usgs.gov/>

Urban Drainage and Flood Control District 37-92-602(8) explanation memo and FAQ's:

<http://udfcd.org/crs-37-93-6028-explanation-memo-and-faqs/>

Urban Drainage and Flood Control District. (2010). *Urban Storm Drainage Criteria Manual: Volume 3, Best Management Practices*, updated November 2015. Located at:

<http://udfcd.org/volume-three>

