



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

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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 Since the passage of Colorado Senate Bill 15-212, that administrative approach has been superseded.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 SB15-212, codified in section 37-92-602(8), Colorado Revised Statutes (C.R.S.), and how the law directs administrative requirements for storm water management. This 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, except within the [Designated Ground Water Basins](#).<sup>1</sup> 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 governmental entity or is subject to oversight by a governmental entity, including those facilities that are privately owned but are required by a governmental 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 after the end of the rainfall event.
- Has the ability to continuously release or infiltrate at least 99 percent of all of

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<sup>1</sup> It is likely that the Colorado Ground Water Commission would find that at least a portion of storm runoff originating within the boundary of a designated groundwater basin is designated groundwater subject to administration by the Colorado Ground Water Commission and not subject to the exemption in SB-212.



the water from a rainfall event that is greater than a five-year storm within 120 hours after the end of the rainfall event.

- Is operated solely for storm water management.<sup>2</sup>

In addition, to qualify for the allowances provided in SB15-212, 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 groundwater.
- 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, by statute 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 in accordance with paragraph 37-92-602(8)(c)(II)(A) and (B) to determine whether the operation of the detention facility 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 the 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)(I) paragraphs (B) and (C). The State Engineer has not been given the statutory responsibility to review notices, however,

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<sup>2</sup> Precipitation Harvesting Pilot Projects, operating in accordance with section 37-60-115, C.R.S. have an allowance for integrated facilities pursuant to SB24-148.

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 may use the [Colorado Stormwater Facility Notification Portal](#).

Types of detention facilities contemplated under this statute include underground detention vaults, permanent flood detention basins, extended detention basins, and full spectrum detention basins, all of which capture runoff and release it slowly. Rooftop systems may also qualify as Detention Facilities.<sup>3</sup> Storm Water Best Management Practices (BMPs)<sup>4</sup> not contemplated above, including all Construction BMPs and non-retention BMPs, do not require notice pursuant to SB15-212 and are allowed at the discretion of the Division Engineer. 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.**

### **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 SB15-212, 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

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<sup>3</sup> Rooftop systems that are not Detention Facilities should be designed to continuously discharge the water that passes through them and should not store water for later beneficial use, unless a court decree or other administrative approval allows for such an operation.

<sup>4</sup> Best management practice: A technique, process, activity, or structure used to reduce pollutant discharges in stormwater.

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

conditions with no detention of surface water or exposure of groundwater.

- 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.**

#### **Resources and References**

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

Mile High Flood District (previously Urban Drainage and Flood Control District) 37-92-602(8) explanation memo and FAQ's, available at [www.mhfd.org](http://www.mhfd.org)

Mile High Flood District. *Urban Storm Drainage Criteria Manual* Located at: [www.mhfd.org](http://www.mhfd.org)