



April 15, 2024

Kari Parsons, Project Manager  
El Paso Planning and Community Development  
Transmission via EDARP Portal: [epcdevplanreview.com](http://epcdevplanreview.com)

**Re: File No.: SKP234, Southern Colorado Dual-Service Rail Park Sketch Plan**  
Parts of Sections 12-14 and 23-26, T16S, R66W and parts of Sections 19 and 30, T16S, R65W, 6<sup>th</sup> P.M.  
Water Division 2, Water District 10  
DWR Assigned Referral No. 31287

Dear Kari Parsons:

We have received the referral for the Southern Colorado Rail Park Sketch Plan which proposes a new railroad spur to service Fort Carson and associated industrial and commercial uses. The project is located on several properties composed of approximately 3,108.91 acres. The proposed water supply is service provided by City of Fountain.

This referral does not appear to qualify as a “subdivision” as defined in section 30-28-101(10)(a), C.R.S. Therefore, pursuant to the State Engineer’s March 4, 2005 and March 11, 2011 memorandums to county planning directors, this office will only perform a cursory review of the referral information and provide informal comments. The comments do not address the adequacy of the water supply plan for this project or the ability of the water supply plan to satisfy any county regulations or requirements. In addition, the comments provided herein cannot be used to guarantee a viable water supply plan or infrastructure, the issuance of a well permit, or physical availability of water.

Proposed water uses are industrial and commercial with an annual water demand of 723.5 acre-feet/year. The proposed water supply is service provided by City of Fountain. A letter dated June 1, 2023 from the City states that water service to the property if it is annexed into the City of Fountain and that sanitary sewer services may be provided. This office has no comments on the proposed water supply.

The referral states that there are several old ponds used for livestock watering on the subject properties. If the ponds are a reservoir created by a dam and qualify as a livestock watering tank (LSWT) under sections 35-49-101 through 116, C.R.S., then use of such ponds may be allowed so long as they are permitted with this office as LSWTs ([form DRS-11](#)). The Applicant should refer to the attached *Beginner’s Guide to Livestock Water Tanks*, attached, for further information. Otherwise, if the ponds utilize surface water only, they must be decreed for such use and water may only be diverted and used in priority; if the ponds expose groundwater, they must also be covered by a court-approved augmentation plan. The applicant and/or landowner should coordinate with the Water Commissioners, Lonnie Spady and Elizabeth Nosker to ensure the ponds are in compliance.


The application materials also indicate that stormwater detention structure(s) may be constructed as a part of this project. The Applicant should be aware that unless the structure(s) can meet the requirements of



a “storm water detention and infiltration facility” as defined in section 37-92-602(8), C.R.S., the structure(s) 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* to meet the notification requirements, located at <https://maperture.digitaldataservices.com/gvh/?viewer=cswdif>.

Please contact [Wenli.Dickinson@state.co.us](mailto:Wenli.Dickinson@state.co.us) or 303-866-3581 x8206 with any questions.

Sincerely,

  
Wenli Dickinson, P.E.  
Water Resource Engineer

Attachment: *Administrative Statement Regarding the Management of Storm Water Detention Facilities and Post-Wildland Fire Facilities in Colorado*  
*Beginners Guide to Livestock Water Tanks*

Ec: North Lead Water Commissioner, District 10, Lonnie Spady ([Lonnie.Spady@state.co.us](mailto:Lonnie.Spady@state.co.us))  
Deputy Water Commissioner, District 10, Elizabeth Nosker ([Elizabeth.Nosker@state.co.us](mailto:Elizabeth.Nosker@state.co.us))



## COLORADO

### Division of Water Resources

Department of Natural Resources

1313 Sherman Street, Room 821  
Denver, CO 80203

## 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>





## Beginners Guide to Livestock Water Tanks October 2019

Livestock water tank applications are reviewed by the State Engineer in accordance with sections 35-49-101 through 116, C.R.S. The structures must meet a range of requirements including:

1. Located on a normally dry stream channel.
2. Volume capacity of 10 acre-feet or less.
3. The dam has a vertical height of less than fifteen feet as measured from the lowest point along the centerline of the dam to the crest of the spillway.
4. The dam has an outlet conduit that allows all water to be released.
5. Only surface water from the natural drainage may be used to fill the structure (i.e. no ditch water or groundwater).
6. The only use of water in the structure is for livestock watering. If livestock are not currently located on the property, the State Engineer may consider the property size, zoning, HOA, and other applicable information and will only register tanks located on land that may reasonably qualify as range that supports livestock.

Structures are to be constructed in accordance with standard specifications, which are included with the application, Form No. DRS-11.

### Normally Dry Stream Requirement

A normally dry stream is usually identified on a contour map as a dry draw or small valley where water would drain in response to a storm event. To qualify, the State Engineer requires the stream to be dry 80% of the year. The tank may not expose groundwater.

### Administration of Livestock Water Tanks

- Pursuant to section 35-49-105, tanks have a rebuttable presumption that there is no injury to adjudicated water rights.
- Tanks are chronologically numbered in the order of approval in concert with erosion control dams located within the watershed of the dry stream. The numbering determines the priority of right between the structures.
- Whenever inflow occurs, tanks may fill and store water to the full volume of 10 acre-feet so that water in the tank is available until it is consumed by livestock, is lost to evaporation and/or seepage, or an outlet release is made.

It is the policy of the state of Colorado to encourage and improve range conditions for livestock within its borders through the construction of watering tanks, to provide a system of priorities of right of use thereof, and to protect adjudicated water rights and the public interest by providing an official record and reasonable public supervision of such watering tanks. Section 35-49-102, Colorado Revised Statutes

