

Colorado Legislative Council Staff Fiscal Note

**STATE
FISCAL IMPACT**

Drafting Number: LLS 15-0889	Date: April 10, 2015
Prime Sponsor(s): Sen. Sonnenberg Rep. Winter	Bill Status: Senate Agriculture Fiscal Analyst: Clare Pramuk (303-866-2677)

BILL TOPIC: STORM WATER FACILITIES NOT INJURE WATER RIGHTS

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue		
State Expenditures	Minimal workload increase.	
FTE Position Change		
Appropriation Required: None.		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill specifies that storm water detention and infiltration facilities, and post-wildland fire facilities that detain water for environmental and public safety purposes, do not injure vested water rights. Water detained by these facilities cannot be applied to any beneficial use or used to form the basis for any claim to or for the water.

A storm water detention and infiltration facility is owned or operated by a governmental entity or an operator that is subject to government oversight. The facility operates passively and is designed to continuously release or infiltrate all of the water from rainfall events greater than a 5-year storm as quickly as practicable, but in no event over 120 hours. For rainfall events equal to or less than a 5-year storm, water must be released or infiltrated within 72 hours.

A post-wildland fire facility mitigates the impact of wildland fires, is not permanent, and must be removed or rendered inoperable after the emergency conditions created by the wildfire are no longer present. It is designed and operated to minimize the quantity of water detained and the duration of the water detention to the levels necessitated by public safety and welfare.

Under current law, a water right holder can claim injury against the owner or operator of a water detention facility covered by this bill. With this bill, if a facility meets the requirements of the bill, it does not legally cause injury to vested water rights.

Background

The Division of Water Resources (DWR) in the Department of Natural Resources (DNR) recognizes that, by necessity, land development requires the detention of storm water. Specifically, DWR allows detention of storm runoff from individual sites under development as long as the runoff is detained for no more than 72 hours. With that understanding, DWR does not take enforcement actions in situations where storm water detention meets that standard.

State Expenditures

This bill gives statutory recognition to the DWR's current administration of water rights in storm water facilities and further addresses storm water management for post-wildland fire facilities. This change is compatible with DWR's current administration of storm water runoff, and therefore, does not result in an increased workload.

Under current law, a water right holder can claim injury against a storm water detention facility to the DWR or water court. This bill is expected to reduce the incidence of those claims by clarifying which facilities do not cause legal injury. A water right holder can still bring a claim of injury to water court rebutting the assertion that a facility is covered by the bill, but this is similar to the current legal environment and can be addressed within existing appropriations.

Effective Date

The bill takes effect August 5, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Judicial Department

Natural Resources