

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 22, 2015
Date

Committee on Agriculture, Natural Resources, & Energy.

After consideration on the merits, the Committee recommends the following:

SB15-212 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, page 2, line 11, strike "THAT:" and substitute "THAT
2 IS OPERATED SOLELY FOR STORM WATER MANAGEMENT AND:".

3 Page 2, strike line 14.

4 Page 3, strike lines 1 through 7 and substitute:

5 "(B) CONTINUOUSLY RELEASES OR INFILTRATES AT LEAST
6 NINETY-SEVEN PERCENT OF ALL OF THE WATER FROM A RAINFALL EVENT
7 THAT IS EQUAL TO OR LESS THAN A FIVE-YEAR STORM WITHIN
8 SEVENTY-TWO HOURS AFTER THE END OF THE RAINFALL EVENT;

9 (C) CONTINUOUSLY RELEASES OR INFILTRATES ALL OF THE WATER
10 FROM A RAINFALL EVENT GREATER THAN A FIVE-YEAR STORM AS QUICKLY
11 AS PRACTICABLE, BUT IN ALL CASES RELEASES OR INFILTRATES AT LEAST
12 NINETY-NINE PERCENT OF ALL OF THE WATER FROM THE RAINFALL EVENT
13 WITHIN ONE HUNDRED TWENTY HOURS AFTER THE END OF THE RAINFALL
14 EVENT; AND".

15 Page 3, strike lines 19 through 27.

16 Page 4, strike lines 1 through 14 and substitute:

17 "(c) (I) STORM WATER DETENTION AND INFILTRATION FACILITIES
18 IN EXISTENCE ON THE EFFECTIVE DATE OF THIS SECTION THAT ARE

1 OPERATED IN COMPLIANCE WITH PARAGRAPHS (b) AND (d) OF THIS
2 SUBSECTION (8) AND POST-WILDLAND FIRE FACILITIES THAT ARE
3 OPERATED IN COMPLIANCE WITH PARAGRAPHS (b) AND (d) OF THIS
4 SUBSECTION (8) DO NOT CAUSE MATERIAL INJURY TO VESTED WATER
5 RIGHTS.

6 (II) (A) THE HOLDER OF A VESTED WATER RIGHT MAY BRING AN
7 ACTION IN A COURT OF COMPETENT JURISDICTION TO DETERMINE WHETHER
8 THE OPERATION OF A STORM WATER DETENTION AND INFILTRATION
9 FACILITY CONSTRUCTED AFTER THE EFFECTIVE DATE OF THIS SECTION HAS
10 CAUSED MATERIAL INJURY TO THAT WATER RIGHT. OPERATION OF THE
11 FACILITY IN COMPLIANCE WITH PARAGRAPHS (b) AND (d) OF THIS
12 SUBSECTION (8) CREATES A REBUTTABLE PRESUMPTION THAT THE
13 FACILITY DOES NOT CAUSE MATERIAL INJURY TO VESTED WATER RIGHTS
14 IF THE OPERATION OF THE FACILITY APPROXIMATES AND DOES NOT CAUSE
15 A MATERIAL REDUCTION IN THE NATURAL HYDROGRAPH WITH RESPECT TO
16 PEAK FLOWS THAT WOULD HAVE EXISTED WITHOUT THE UPSTREAM URBAN
17 DEVELOPMENT THAT RESULTS IN THE STORM WATER BEING MANAGED BY
18 THE STORM WATER DETENTION AND INFILTRATION FACILITY.

19 (B) THE HOLDER OF A VESTED WATER RIGHT WHO BRINGS AN
20 ACTION UNDER SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) MAY
21 REBUT THE PRESUMPTION ESTABLISHED BY SUB-SUBPARAGRAPH (A) OF
22 THIS SUBPARAGRAPH (II) WITH EVIDENCE SUFFICIENT TO SHOW THAT THE
23 OPERATION OF THE STORM WATER DETENTION AND INFILTRATION FACILITY
24 HAS CAUSED MATERIAL INJURY TO THE WATER RIGHT BY MODIFYING THE
25 AMOUNT OR TIMING OF WATER THAT WOULD HAVE BEEN AVAILABLE FOR
26 DIVERSION BY THE WATER RIGHT ABSENT THE OPERATION OF THE FACILITY
27 UNDER HYDROLOGIC CONDITIONS THAT EXISTED AS OF THE WATER RIGHT'S
28 PRIORITY DATE, EXCLUDING FLOWS RESULTING FROM DEVELOPMENT OF
29 IMPERVIOUS SURFACES WITHIN THE DRAINAGE THAT CREATED THE NEED
30 FOR THE STORM WATER DETENTION AND INFILTRATION FACILITY.

31 (d) AN ENTITY THAT OWNS, OPERATES, OR HAS OVERSIGHT FOR A
32 STORM WATER DETENTION AND INFILTRATION FACILITY CONSTRUCTED
33 AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL, PRIOR TO OPERATION
34 OF THE FACILITY, PROVIDE NOTICE OF THE LOCATION AND APPROXIMATE
35 SURFACE AREA AT DESIGN VOLUME OF THE FACILITY TO ALL PARTIES ON
36 THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST MAINTAINED BY
37 THE STATE ENGINEER PURSUANT TO SECTION 37-92-308 (6) FOR THE
38 WATER DIVISION IN WHICH THE FACILITY IS LOCATED.

39 (e) (I) WATER DETAINED OR RELEASED BY A STORM WATER
40 DETENTION AND INFILTRATION FACILITY OR POST-WILDLAND FIRE FACILITY
41 SHALL NOT BE USED FOR ANY PURPOSE, INCLUDING, WITHOUT LIMITATION,

1 BY SUBSTITUTION OR EXCHANGE, BY THE ENTITY THAT OWNS, OPERATES,
2 OR HAS OVERSIGHT OVER THE FACILITY OR THAT ENTITY'S ASSIGNEES, AND
3 IS AVAILABLE FOR DIVERSION IN PRIORITY AFTER RELEASE OR
4 INFILTRATION.

5 (II) AN ENTITY SHALL NOT RELEASE WATER DETAINED BY A STORM
6 WATER DETENTION AND INFILTRATION FACILITY OR POST-WILDLAND FIRE
7 FACILITY FOR THE SUBSEQUENT DIVERSION OR STORAGE BY THE PERSON
8 THAT OWNS, OPERATES, OR HAS OVERSIGHT OVER THE FACILITY OR THAT
9 ENTITY'S ASSIGNEES.

10 (III) THE OPERATION OF A STORM WATER DETENTION AND
11 INFILTRATION FACILITY OR POST-WILDLAND FIRE FACILITY IS NOT THE
12 BASIS FOR A WATER RIGHT, CREDIT, OR OTHER RIGHT TO OR FOR THE USE".

13 Reletter succeeding paragraph accordingly.

14 Page 4 of the bill, after line 19 insert:

15 "(g) NOTHING IN THIS SUBSECTION (8) ALTERS, AMENDS, OR
16 AFFECTS ANY OTHERWISE-APPLICABLE REQUIREMENT TO OBTAIN A STATE
17 OR LOCAL PERMIT FOR A STORM WATER MANAGEMENT FACILITY OR
18 POST-WILDLAND FIRE FACILITY CONSTRUCTED ON OR AFTER THE
19 EFFECTIVE DATE OF THIS SECTION.

20 (h) THE PROVISIONS OF THIS SUBSECTION (8) RELATING TO STORM
21 WATER DETENTION AND INFILTRATION FACILITIES DO NOT APPLY TO
22 FOUNTAIN CREEK AND ITS TRIBUTARIES, EXCEPT FOR FACILITIES REQUIRED
23 BY OR OPERATED IN COMPLIANCE WITH A COLORADO DISCHARGE PERMIT
24 SYSTEM MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT ISSUED BY
25 THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO
26 ARTICLE 8 OF TITLE 25, C.R.S."

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