

NOTE: The governor signed this measure on 5/29/2015.

An Act

SENATE BILL 15-212

BY SENATOR(S) Sonnenberg, Baumgardner, Cooke, Guzman, Holbert, Kefalas, Marble, Martinez Humenik, Merrifield, Neville T., Scott, Woods; also REPRESENTATIVE(S) Winter and Carver, Fields, Lebsock, Moreno, Mitsch Bush, Rosenthal, Van Winkle, Williams.

CONCERNING A DETERMINATION THAT WATER DETENTION FACILITIES DESIGNED TO MITIGATE THE ADVERSE EFFECTS OF STORM WATER RUNOFF DO NOT MATERIALLY INJURE WATER RIGHTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 37-92-602, **add** (8) as follows:

37-92-602. Exemptions - presumptions - legislative declaration - definitions. (8) (a) THE GENERAL ASSEMBLY HEREBY DECLARES THAT STORM WATER DETENTION AND INFILTRATION FACILITIES AND POST-WILDLAND FIRE FACILITIES ARE ESSENTIAL FOR THE PROTECTION OF PUBLIC SAFETY AND WELFARE, PROPERTY, AND THE ENVIRONMENT.

(b) FOR THE PURPOSES OF THIS SUBSECTION (8):

(I) A "STORM WATER DETENTION AND INFILTRATION FACILITY"

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

MEANS A FACILITY THAT IS OPERATED SOLELY FOR STORM WATER MANAGEMENT AND:

(A) IS OWNED OR OPERATED BY A GOVERNMENTAL ENTITY OR IS SUBJECT TO OVERSIGHT BY A GOVERNMENTAL ENTITY;

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

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

(D) OPERATES PASSIVELY AND DOES NOT SUBJECT THE STORM WATER RUNOFF TO ANY ACTIVE TREATMENT PROCESS.

(II) A "POST-WILDLAND FIRE FACILITY" MEANS A FACILITY THAT IS:

(A) NOT PERMANENT;

(B) LOCATED ON, IN, OR ADJACENT TO A NONPERENNIAL STREAM;

(C) DESIGNED AND OPERATED SOLELY FOR THE MITIGATION OF THE IMPACTS OF WILDLAND FIRE EVENTS; AND

(D) DESIGNED AND OPERATED TO MINIMIZE THE QUANTITY OF WATER DETAINED AND THE DURATION OF THE DETENTION OF WATER TO THE LEVELS NECESSITATED BY PUBLIC SAFETY AND WELFARE.

(c) (I) STORM WATER DETENTION AND INFILTRATION FACILITIES IN EXISTENCE ON THE EFFECTIVE DATE OF THIS SUBSECTION (8) THAT ARE OPERATED IN COMPLIANCE WITH PARAGRAPHS (b) AND (e) OF THIS SUBSECTION (8) AND POST-WILDLAND FIRE FACILITIES THAT ARE OPERATED IN COMPLIANCE WITH PARAGRAPHS (b) AND (e) OF THIS SUBSECTION (8) DO NOT CAUSE MATERIAL INJURY TO VESTED WATER RIGHTS.

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

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

(d) AN ENTITY THAT OWNS, OPERATES, OR HAS OVERSIGHT FOR A STORM WATER DETENTION AND INFILTRATION FACILITY CONSTRUCTED AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (8) SHALL, PRIOR TO OPERATION OF THE FACILITY, PROVIDE NOTICE OF THE LOCATION AND APPROXIMATE SURFACE AREA AT DESIGN VOLUME OF THE FACILITY AND THE DATA THAT DEMONSTRATES THAT THE FACILITY HAS BEEN DESIGNED TO COMPLY WITH SUB-SUBPARAGRAPHS (B) AND (C) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (8) TO ALL PARTIES ON THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST MAINTAINED BY THE STATE ENGINEER PURSUANT TO SECTION 37-92-308 (6) FOR THE WATER DIVISION IN WHICH THE FACILITY IS LOCATED.

(e) (I) WATER DETAINED OR RELEASED BY A STORM WATER

DETENTION AND INFILTRATION FACILITY OR POST-WILDLAND FIRE FACILITY SHALL NOT BE USED FOR ANY PURPOSE, INCLUDING, WITHOUT LIMITATION, BY SUBSTITUTION OR EXCHANGE, BY THE ENTITY THAT OWNS, OPERATES, OR HAS OVERSIGHT OVER THE FACILITY OR THAT ENTITY'S ASSIGNEES, AND IS AVAILABLE FOR DIVERSION IN PRIORITY AFTER RELEASE OR INFILTRATION.

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

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

(f) A PERSON WHO INSTALLED OR OPERATED A POST-WILDLAND FIRE FACILITY SHALL ENSURE THAT THE FACILITY IS REMOVED OR RENDERED INOPERABLE AFTER THE EMERGENCY CONDITIONS CREATED BY THE WILDFIRE NO LONGER EXIST.

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

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

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2015, if adjournment sine die is on May 6,

2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to the administration of facilities occurring on or after the applicable effective date of this act.

Bill L. Cadman
PRESIDENT OF
THE SENATE

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO