



June 10, 2020

Nick Nelson  
Jefferson County Planning and Zoning  
Transmission via email: [nelson@jeffco.us](mailto:nelson@jeffco.us)

Re: Conifer Commons  
Case No. 20-111200RZ  
Pt. SW ¼ of the SW ¼ of Section 13 & Pt. SE ¼ of Section 14, T6S, R71W, 6<sup>th</sup> P.M.  
Water Division 1, Water Districts 8 and 9

Dear Mr. Nelson:

We have reviewed the above referenced request for rezoning. The submitted material does not 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 comments. The comments will not address the adequacy of the water supply plan for this property or the ability of the water supply plan to satisfy any County regulations or requirements.

The subject application seeks to rezone a 47.12-acre parcel from Agricultural (A-2) to Planned Development. The subject property is currently vacant. The application proposes to subdivide the property after the rezoning has been completed. The subject parcel and the neighboring parcel to the south were previously included in a Preliminary Application for a planned residential development, case number 18-122978PA, for which our office provided comments on November 1, 2018.

The source of water supply for the proposed development was identified as the Conifer Metropolitan District. The application included a letter from the Conifer Metropolitan District (“District”) dated January 23, 2020, that agrees to provide potable domestic water and wastewater service to the project subject to the execution of an Extraterritorial Service Agreement with the District. The Conifer Metropolitan District does not appear to be a water supplier or to possess any water rights which could be used to supply water for this development. It appears that developments in the vicinity that utilize the District’s services obtain water from their own on-lot wells operated pursuant to their own decreed plan for augmentation. The commitment letter states that the District will assist in the adjudication of a water court approved augmentation plan. The applicant has secured 112.1 shares of capital stock of the Mountain Mutual Reservoir Company to use as an augmentation source for the proposed plan as evidenced by the Water Rights Purchase Agreement included in the application materials.

Since this application deals only with the rezoning of the subject parcel the adequacy of water supply will not be addressed. However, when the subdivision application for this development is submitted, the applicant should be aware that this office would be unable to comment on the potential for injury to existing water rights or the adequacy of the proposed water supply without



additional information. This office will not provide final comments on the development until after the water court decree for the augmentation plan has been signed.

The Drainage Report, prepared by Harris Kocher Smith, proposes the construction of a detention pond in the development area. The applicant should be aware that, unless the structure 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 may be subject to administration by this office. The applicant should review the Division of Water Resources’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 the *Colorado Stormwater Detention and Infiltration Facility Notification Portal*, located at <https://maperture.digitaldataservices.com/gvh/?viewer=cswdif>, to meet the notification requirements.

Should you or the applicant have any questions regarding this matter, please contact Javier Vargas-Johnson at this office for assistance.

Sincerely,



Sarah Brucker, P.E.  
Water Resources Engineer

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

Cc: Applicant (Foothills Housing 1, LLC, [SBorne@dlglaw.net](mailto:SBorne@dlglaw.net))  
Agent (PWN Architects & Planners, Inc., [tdavis@pwnarchitects.com](mailto:tdavis@pwnarchitects.com))  
Referral file no. 27167



## 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>

