



PUBLIC WORKS DEPARTMENT
MEMORANDUM #2015 – 06

DATE: January 12, 2015

TO: Honorable Mayor Joyce Downing and City Council Members

FROM: John Pick, City Manager 
David Willett, Director of Public Works 

SUBJECT: Council Resolution 09
Supporting Legislation to Protect Public Regional Stormwater Management Activities

BACKGROUND

The Urban Drainage and Flood Control District (UDFCD) was established to work with local governments to address multi-jurisdictional drainage and flood control challenges in order to protect people, property and the environment.

In 2011 the Colorado Division of Water Resources (also known as the State Engineer) circulated a memo acknowledging and allowing detention and infiltration of urban runoff on individual sites for the purpose of stormwater management. The memo did not address regional stormwater management. Having been silent on regional stormwater management since 1972, the State Engineer has recently determined that regional stormwater detention constitutes a diversion of water that is subject to water rights administration and that these facilities do not fall within the scope of the *Administrative Approach for Storm Water Management*. This approach, opined by staff, seems problematic since Colorado communities have been implementing detention and infiltration of stormwater for flood control and water quality both on individual sites and regionally (i.e., watershed-scale) for decades.

In 2013 a state water commissioner challenged the City of Aspen's use of regional stormwater detention, claiming the City should augment the evapo-transpiration water losses that occur during the two to three days that the stormwater is detained. Since then, UDFCD has been corresponding with the State Engineer regarding regional stormwater detention for the sole purpose of flood control and also stormwater detention for water quality management (with or without flood control); and their respective impact on water rights. The State Engineers position threatens hundreds of existing and future regional stormwater management facilities that include elements such as flood control and/or stormwater quality for every urbanized area of the State.

After conferring with the leaders and staff of many municipal and county governments, the leadership of the UDFCD has decided that the only reasonable course of action left is to support a legislative bill, in conjunction with municipalities and counties across the state, which is intended to be introduced in the Colorado General Assembly in 2015 to adopt legislation that would exempt publicly owned regional stormwater management from administration and curtailment by the Colorado Division of Water Resources.

On December 18, 2014, the UDFCD board of directors, representing 12 Colorado municipalities and 7 counties, unanimously agreed by resolution to support this needed legislation. A copy of that resolution is attached. UDFCD has asked that all cities and counties join them in support of this movement by resolution.

BUDGET/TIME IMPLICATIONS

Support of legislation would have no impact on the City's budget.

RECOMMENDATION

Attached to this memorandum is a Resolution that, if approved, would authorize the Mayor on behalf of the City of Northglenn to support legislation developed by UDFCD to protect public regional stormwater management activities.

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Staff recommends approval of this Resolution.

STAFF REFERENCE

Kent Kisselman, PE, Engineering Manager
Pam Acre, Stormwater Coordinator

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ATTACHMENTS

- ☐ Resolution
- ☐ UDFCD Resolution

THE URBAN DRAINAGE AND FLOOD CONTROL DISTRICT

RESOLUTION NO. 69, SERIES OF 2014

(Support of Legislation to Protect Public Regional Stormwater Management Activities)

WHEREAS, management of stormwater from urban areas is essential to preserve lives, protect public health and safety, avoid damage to downstream property and stream systems, and to comply with state and federal law; and

WHEREAS, since 1972, the District (in collaboration with local governments) has recommended, planned, constructed, and maintained regional stormwater detention for downstream flood mitigation; and

WHEREAS, since 1992 the District, in collaboration with local governments and in furtherance of those local governments' compliance with their obligations under each of their Colorado Department of Public Health and Environment (CDPHE) issued MS4 Permits, has also recommended, planned, constructed, and maintained regional stormwater extended detention featuring slow release in order to remove sediment and associated pollutants and also to protect the receiving stream from degradation; and

WHEREAS, the Colorado Division of Water Resources (DWR), also known as the Office of the State Engineer, has allowed stormwater management including detention and infiltration on individual sites providing those practices conform to the May 21, 2011 DWR memorandum titled *Administrative Approach for Storm Water Management*; and

WHEREAS, having been silent on regional stormwater management since 1972, the State Engineer has recently determined that regional stormwater detention constitutes a diversion of water that is subject to water rights administration and that these facilities do not fall within the scope of the *Administrative Approach for Storm Water Management*; and

WHEREAS, the impact on stream flows of regional stormwater management facilities that are operated in accordance with modern parameters is fundamentally equivalent to individual site stormwater management; and

WHEREAS, subjecting regional stormwater management facilities to water rights administration by the State Engineer will require that stormwater management agencies obtain for each such facility a water court decree for a "plan for augmentation" or other form of water court decree; and

WHEREAS, the process for obtaining a water court decree is an adversarial, expensive, and time-consuming process, with no guarantee of success; and

WHEREAS, the State Engineer's position is unjustified and would mandate a major shift in policy and a substantial increase in the cost of managing stormwater for municipalities and counties who are required by state and federal law to provide flood protection and stormwater quality management; and

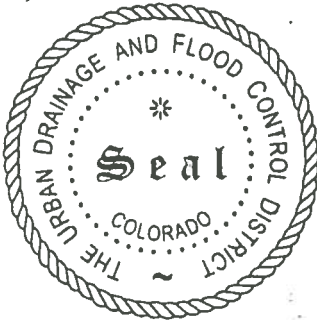
WHEREAS, the State Engineer's position threatens hundreds of existing and future regional stormwater management facilities for every urbanized area of the State since local governments will be required to divert budgeted funds away from construction of facilities to obtaining water court decrees which may not always be possible; and

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board declares that regional stormwater management for the purpose of downstream flood mitigation, sediment and pollutant removal, and protection of the receiving stream from degradation is a necessary responsibility of Colorado municipalities and counties that should not be subject to water rights administration because these facilities do not cause injury to water rights.

2. The Board declares its intent to support a bill, in conjunction with municipalities and counties within the District, which is intended to be introduced in the Colorado General Assembly in 2015 or future year to adopt legislation that would exempt publicly owned regional stormwater management from administration and curtailment by the Colorado Division of Water Resources.

(SEAL)



THE URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

Date: 12/18/14

ATTEST:


Secretary


Chairperson

WHEREAS, subjecting regional stormwater management facilities to water rights administration by the State Engineer will require that stormwater management agencies such as the City of Northglenn obtain for each such facility a water court decree for a "plan for augmentation" or other form of water court decree;

WHEREAS, the process for obtaining a water court decree is an adversarial, expensive, and time-consuming process, with no guarantee of success;

WHEREAS, the State Engineer's position is unjustified and would mandate a major shift in policy and a substantial increase in the cost of managing stormwater for municipalities such as the City of Northglenn and counties who are required by state and federal law to provide flood protection and stormwater quality management; and

WHEREAS, the State Engineer's position threatens hundreds of existing and future regional stormwater management facilities for every urbanized area of the State since local governments such as the City of Northglenn will be required to divert budgeted funds away from construction of facilities to obtaining water court decrees which may not always be possible.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The City Council declares that regional stormwater management for the purpose of downstream flood mitigation, sediment and pollutant removal, and protection of the receiving stream from degradation is a necessary responsibility of the City of Northglenn and other Colorado municipalities and counties that should not be subject to water rights administration because these facilities do not cause injury to water rights.

Section 2. The City Council declares its intent to support a bill, in conjunction with municipalities, counties and the District, which is intended to be introduced in the Colorado General Assembly in 2015 or a future year to adopt legislation that would exempt publicly owned regional stormwater management from administration and curtailment by the Colorado Division of Water Resources.

DATED at Northglenn, Colorado, this ____ day of _____, 2015.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney