

SOUTHEAST METRO STORMWATER AUTHORITY  
acting by and through  
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION 14-29

Support of Legislation to Protect Public Regional Stormwater Management Activities

WHEREAS, the Southeast Metro Stormwater Authority (SEMSWA) was formed by Intergovernmental Agreement to plan, fund, construct, acquire, operate, and maintain drainage and flood control facilities as well as to manage stormwater quality; and

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, 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 constitute 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.

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, to be introduced in the Colorado General Assembly in 2015 to adopt legislation that would exempt publically owned regional stormwater management from administration and curtailment by the Colorado Division of Water Resources.
3. Further, the Board authorizes its Executive Director to act in its behalf to carry out its intent as expressed in this Resolution.

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Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairperson

APPROVED AS TO FORM:  
Attorney for  
Southeast Metro Stormwater Authority

By \_\_\_\_\_