



Department of Energy

Washington, DC 20585

February 15, 2011

Mr. George DiCiero
Broomfield City and County Manager
One DesCombes Drive
Broomfield, CO 80020

SUBJECT: Response to letter to dated November 19, 2010, referencing the Lease Agreement Between Department of Energy and the City and County of Broomfield

Dear Mr. DiCiero:

This correspondence is in response to your letter of November 19, 2010, stating your concerns with the proposed dam breach and the Water Lease Agreement.

In February 2005, the Colorado State Engineer requested that DOE file an application for water storage rights for water detained in the man-made ponds on Walnut Creek and Woman Creek at Rocky Flats. DOE complied and filed an application for storage rights in these ponds in early 2008. DOE also filed a plan for augmentation to replace out-of-priority depletions of water in the ponds. While the application is pending, and because the ponds for which the storage rights were sought were already in existence, Colorado Water Law requires that the applicant develop a Substitute Water Supply Plan (SWSP). The SWSP contains the accounting process to measure and augment out-of-priority depletions of water in the ponds. In order to "replace depletions to Walnut Creek resulting from out-of-priority storage of water in the holding ponds" at Rocky Flats, DOE and the City and County of Broomfield entered into a Lease Agreement in September 2006. The Lease Agreement provides that DOE provide a scheduled accounting of depletions from selected ponds on Walnut Creek to Broomfield. Broomfield then supplied water to augment the depletions as reported by DOE to Walnut Creek. DOE paid Broomfield in advance for this water.

The Lease Agreement acknowledges that DOE is compelled to report in accordance with the SWSP and to operate Rocky Flats in accordance with the Corrective Action Decision/Record of Decision (CAD/ROD) and Rocky Flats Legacy Management (RFLMA):

“WHEREAS DOE's intent in entering into this agreement with Broomfield is to comply with the water law and regulations of the State of Colorado as they apply to the holding ponds at RFETS; to control and test the water that flows through the holding ponds at RFETS in the manner agreed upon by DOE, EPA, and CDPHE; and to provide Broomfield with means to replace depletions to Walnut Creek resulting from out-of-priority storage of water in the holding ponds at RFETS;”.



Other than requiring pre-discharge sampling of Ponds A-4, B-5, and C-2, the CAD/ROD and RFLMA are silent on operation of the ponds. And the requirement for pre-discharge sampling is not a guarantee that the ponds will remain in operation for any specified period of time.

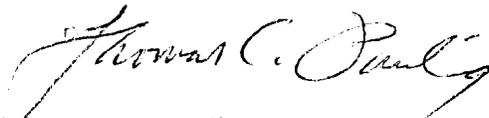
The Lease Agreement, paragraph 7, Payment, provides "DOE shall pay two million-four hundred thousand dollars (\$2,400,000) to Broomfield ... as consideration for this Lease Agreement". This is contrary to your letter that, " part of DOE's consideration in the Lease Agreement for the receipt of the water is the maintenance of the ponds, dams, and testing methodologies at the Rocky Flats Site and requires water capture at the dams, testing, and release of water following such testing." The only consideration in the Lease Agreement is the monetary compensation.

Paragraph 9, Release of water from holding ponds by DOE, clearly states the sampling and releasing of water by DOE will be done in accordance with RFLMA. This is consistent with DOE's intent stated in the preamble, "to control and test the water that flows through the holding ponds in the manner agreed upon by DOE, EPA and CDPHE."

DOE does not read the Water Lease Agreement to require that "the existing ponds, dams, and monitoring requirements be maintained for the term of the Lease Agreement through September 2036." as was stated in your letter.

Please contact me at (202) 586-1782 or Scott Surovchak at (720) 377-9682 if you have any questions.

Sincerely,



Thomas C. Pauling
Director, Office of Site Operations
Office of Legacy Management

cc:

Jane Powell, DOE
Scott Surovchak, DOE
Martha Rudolph, CDPHE
Carl Spreng, CDPHE
James Martin, USEPA
Vera Moritz, USEPA
rc-rocky.flats