

Proposed 2010 Modifications to Attachment 2—Legacy Management Requirements of the Rocky Flats Legacy Management Agreement (RFLMA) Comment Responsiveness Summary

Comments with U.S. Department of Energy (DOE), U.S. Environmental Protection Agency (EPA), and Colorado Department of Public Health and Environment (CDPHE) Responses

Note: The following table provides responses to comments submitted on the Proposed 2010 RFLMA Modifications. The Proposed Modifications were posted on the DOE Office of Legacy Management (LM) web site in July 2010, and public comments were solicited. All comments are presented **verbatim** from the letters received by DOE. Comments are numbered for easy identification and do not represent an assigned hierarchy.

No.	Comment	DOE Response
City and County of Broomfield, George Di Ciero, City and County Manager, letter dated October 19, 2010		
1	The proposed amendments to RFLMA which eliminate the test and release operations for the terminal ponds violates the terms and conditions of the Lease Agreement between the Department of Energy and Broomfield, dated September 26, 2006.	The agreement between the DOE and Broomfield is not a regulatory document. DOE is bound by federal regulations for the remedy at the Rocky Flats Site (RFS). In part, DOE’s stated intent in entering into the Water Lease Agreement with Broomfield was to “control and test the waters that flow 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.” (RFETS is an abbreviation for Rocky Flats Environmental Technology Site.) The Water Lease Agreement is therefore subordinate to the RFLMA.
2	The construction of the new monitoring points, as well as the breaching of the dams which is being considered as a separate action under the National Environmental Protection Act (NEPA) process, violates the institutional control which prohibits excavations greater than 3 feet.	See Common Concern Statement 1 and the response to Comment 7. The institutional control provisions of the Corrective Action Decision/Record of Decision (CAD/ROD) are memorialized in the Central Operable Unit (COU) Environmental Covenant (EC). Paragraph 1.b of the COU EC allows excavations greater than 3 feet for remedy-related purposes. Changing the location of monitoring points is a remedy-related purpose. The RFLMA modifications under

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		consideration do not include breaching the dams.
3	Any changes or modifications to the Institutional Controls requires a formal amendment to the Corrective Action Decision/Record of Decision (CAD/ROD) and cannot be made through a consultative process.	See Common Concern Statement 1. No changes to the institutional controls are being proposed at this time. With 4 years of experience in implementing the existing institutional controls, the RFLMA Parties are considering clarifying the institutional controls. These clarifications would be intended to maintain the protectiveness of the controls, while enhancing DOE's ability to manage site operations. Any clarifications to the institutional controls will follow all appropriate regulatory processes.
4	DOE-LM is proposing to disregard state regulations and EPA guidance documents for Applicable or Relevant and Appropriate Requirements (ARAR) by eliminating upstream surface water Points of Compliance (POC) located at the terminal ponds and moving them further downstream from the source of contamination.	See Common Concern Statement 2, and response to Comment 22. There is no ARAR that specifies the location for surface water POCs. The locations are specified in the CAD/ROD and the RFLMA. Surface water POCs (and surface water Points of Evaluation [POEs]) are required by the remedy decision.
5	The proposal to use a 12-month rolling average instead of a 30-day average to determine surface water compliance masks the variability of the monitoring data and disregards the ability to incorporate an advance warning system.	See Common Concern Statement 7. Surface water concentrations at the POCs inside the COU, which monitor the water leaving the NPL site, will be measured using both 30-day and 12-month averages. If either of these calculated values exceeds the surface water standards, CDPHE, EPA, and the communities must be notified and consultation among the RFLMA Parties is required to determine what actions may be necessary to protect surface water quality. The RFLMA Parties have agreed that, because of the chronic nature of the radionuclide standards, the 12-month rolling average will be used to measure compliance. Surface water concentrations at the POCs GS01 and GS03 at Indiana St. will continue to be measured using the 30-day and 12-month averages. GS01 and GS03 will continue to be RFLMA POCs until 2 years after the new POCs inside the COU, WALPOC and WOMPOC, replace the current POCs GS08, GS11 and GS31 as specified in the approved

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		modification of RFLMA Attachment 2, section 5.1. Requirements for POCS are enforceable under the RFLMA.
6	AOC Wells and the discharge locations for the four groundwater treatment units need to be designated as POC to adhere to state and federal regulations.	<p>See the response to Comment 22.</p> <p>There is no regulatory requirement to designate these locations as POCs. The treatment systems are designed to reduce contaminant loading to surface water and to protect surface water quality. If effluent concentrations and/or surface water performance monitoring locations exceed specified summary statistics for RFLMA surface water standards, per RFLMA Attachment 2, Figure 11, for treatment systems, then RFLMA Party consultation regarding what actions may be necessary is triggered.</p>

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7	<p>Contact Record 2010-04, dated July 15, 2010, presumes that the amendments to the RFLMA will be implemented and prematurely grants approval for DOE-LM to excavate below 3 feet for the new monitoring locations. In addition, it also assumes that the NEPA document for the dam breachings has been approved.</p>	<p>See Common Concern Statements 1 and 5.</p> <p>The CR does not presume. It just approves excavation for construction of the new flumes that were <i>proposed</i> to become POCs at some point in the future. The CR clarifies this by stating:</p> <p>“This Contact Record does not constitute approval of the proposed changes to RFLMA monitoring points discussed herein. The proposed changes to RFLMA Attachment 2 are subject to regulatory approval under RFLMA paragraph 65. The parties agreed that in accordance with RFLMA paragraph 66, the proposed changes to monitoring points will be subject to public review and comment, as discussed below.” (Page 1)</p> <p>and,</p> <p>“The RFLMA parties also agreed that the dates upon which the specific changes to monitoring locations become effective would be included in any approval decision by CDPHE and EPA regarding DOE’s proposed modification.” (Page 3)</p> <p>DOE decided that, in consideration of community feedback during the public comment period, the construction would not be done during the 2010 construction window of opportunity.</p>
8	<p>Any new monitoring points should be operated in conjunction with existing POCs (i.e. located at the terminal ponds and Indiana Street) for several years to make sure monitoring results at the proposed location are representative of both upstream and downstream conditions.</p>	<p>See Common Concern Statement 6.</p> <p>With approval of the Proposed 2010 RFLMA Attachment 2 Modifications, GS8, GS11 and GS31 will cease to be RFLMA POCs once the new POCs inside the COU (WALPOC and WOMPOC) are operational. The proposed modification deleted the Indiana St. POCs (GS01 and GS03), but the approved modification of RFLMA Attachment 2, section 5.1 retains these locations as POCs for two years after WALPOC and WOMPOC replace POCs GS08, GS11 and GS31. This approach will provide two years of RFLMA required monitoring at GS01 and GS03 during flow through operation of the terminal pond</p>

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		<p>dams. The RFLMA Parties believe that two years of water monitoring data is generally considered sufficient to provide adequately representative data, and is consistent with the CDPHE Water Quality Control Division’s March, 2011 <i>Section 303(d) Listing Methodology 2012 Listing Cycle</i> guidance for representative data. EPA or CDPHE may extend the two-year period by requiring DOE to submit a modification to this attachment in accordance with RFLMA paragraph 65 if either determines that such modification is necessary to ensure protection of human health and the environment.</p>
9	<p>No changes or revisions to the POC monitoring frequency, water quality standards, method of calculation, and compliance standards should be made until the evaluation period in the previous item above is completed and another public comment period is held.</p>	<p>See the response to Comment 8.</p>
10	<p>DOE-LM has not provided any data or modeling studies to support the statement that groundwater emerges to surface water before leaving the Central OU [RFLMA Section 5.2].</p>	<p>The statement referenced in this comment is not part of the Proposed 2010 RFLMA Modifications. It is in the original version of Attachment 2 and is not being changed.</p> <p>The statement is based on the July 2006 <i>Proposed Plan</i> summary of key points of the site physical characteristics in Section 2.0 of the RCRA Facility Investigation/Corrective Measures Study-CERCLA Remedial Investigation Feasibility Study Report for the Rocky Flats Environmental Technology Site (RI/FS). The Proposed Plan summary includes the following: “Shallow groundwater impacted by site activities emanates from the former industrial area and discharges to surface water in the drainages up gradient of the terminal ponds” (p.7). It is also based on Section 5.0, “Site Characteristics,” in the September 2006 <i>Corrective Action Decision/Record of Decision for Rocky Flats Plant (USDOE) Peripheral Operable Unit and Central Operable Unit</i>: “...the UHSU groundwater that has been impacted by site activities discharges to surface water prior to leaving the Central OU” (p. 19). (UHSU is an abbreviation for upper hydrostratigraphic unit.)</p>

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		<p>The supporting groundwater modeling studies are referenced and discussed in the June 2005 <i>Interim Measure/Interim Remedial Action for Groundwater at the Rocky Flats Environmental Technology Site</i>, as well as in RI/FS Section 2.0, “Physical Characteristics of the Study Area,” and in RI/FS Section 8.0, “Contaminant Fate and Transport.”</p>
11	<p>Broomfield wants to make sure that the remedy remains protective of human health and the environment. In addition, Broomfield would prefer to support the changes rather than taking on an adversarial position. To achieve this, we recommend that DOE-LM, USEPA, and CDPHE consider an alternative approach that uses an incremental implementation strategy and provides for greater community involvement.</p>	<p>See Common Concern Statements 3, 6, and 8. See the response to Comment 8.</p> <p>The RFLMA Parties have determined that monitoring at the new locations will continue to provide the data required to monitor remedy performance to ensure the remedy remains protective. Given the existing evaluation process as provided in RFLMA, incremental implementation for the new POC monitoring locations inside the COU is not necessary.</p>
12	<p>Broomfield requests that a working group be established to address the comments and concerns stated in this letter. No approvals or final decisions on the dam breachings or RFLMA amendments should be made until the working group has had the opportunity to reach a consensus on purpose, need, timing, and scope of the proposed changes. Broomfield will provide its vision of the roles, responsibilities, and participants of this working group in the next 4 to 6 weeks. We believe that the working group should be formally recognized and acknowledged as an amendment to RFLMA.</p>	<p>See Common Concern Statement 3.</p> <p>The RFLMA Parties have met with representatives of the local communities over the course of developing the Proposed 2010 RFLMA Modifications and during the public review and comment period. The RFLMA Parties have considered the public comments received on the proposed monitoring location changes and CDPHE and EPA have decided to approve new RFLMA monitoring locations and to eliminate others. However, the RFLMA Parties are interested in continuing the dialogue using the Rocky Flats Stewardship Council to facilitate the scheduling and dissemination of information on topics of community interest.</p>
13	<p>We have divided the remainder of this letter into three main headings: General Comments, Specific Comments, and Closing Remarks. We request that DOE-LM, USEPA, and CDPHE disposition each comment individually and would appreciate a joint meeting with each agency to review the</p>	<p>See Common Concern Statement 3.</p> <p>The RFLMA Parties have jointly considered each comment and each comment is included in this responsiveness summary.</p>

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	responses before any final decisions or approvals are made.	<p>The request by a commenter to review the responses to its own comments with the RFLMA regulatory agencies prior to final Agency decision does not have a foundation in regulation or policy.</p> <p>CERCLA regulations and policies outline the procedures for public review and responding to comments.</p> <p>The public comment period for the Proposed 2010 RFLMA Modifications started July 20th, 2010, and ended October 19, 2010, and included several public meetings.</p>
14	The proposed changes openly violate the institutional controls and other restrictions in the regulatory closure documents, state and federal environmental statutes, and written agreements.	See Common Concern Statement 1 and the responses to Comments 2 and 3.
15	There are no compelling technical or scientific justifications for the changes.	The rationales for the proposed RFLMA monitoring location changes are included in CR 2010-04. The remedy anticipates that the Site configuration may change over time and, as discussed in the response to Comment 4, the monitoring locations will continue to provide adequate data to determine remedy protectiveness.
16	With regulatory closure occurring less than 5 years ago, the site has not been subject to a sufficient number of wet, normal, and dry hydrologic cycles to demonstrate long-term effectiveness of the remedy.	RFLMA Attachment 2 requires DOE to perform specific monitoring and maintenance until changes to any of these requirements are approved by CDPHE and EPA. In addition, the protectiveness of the remedy is required to be evaluated through the CERCLA five-year review process. The changes to RFLMA monitoring locations will continue to allow the collection of data for evaluation of remedy performance regardless of hydrologic conditions.
17	Many of the engineered controls are not functioning as intended and the site is still undergoing physical changes.	<p>See the response to Comment 16.</p> <p>The engineering controls are functioning as intended because remedy performance standards continue to be met. The CAD/ROD recognizes that engineering controls will continue to require maintenance though time. CERCLA requires a detailed review of remedy protectiveness</p>

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		<p>every 5 years.</p> <p>Discussion of changes made or proposed for optimization is included in the RFLMA-required Annual Reports of Site Surveillance and Maintenance Activities. Monitoring data have confirmed that modifications at the groundwater treatment systems have resulted in improvements in treatment effectiveness.</p>
18	<p>To date, Broomfield has not received any satisfactory written responses from DOE-LM, USEPA, or CDPHE to repeated requests on the first two items listed above. Broomfield believes that any future changes should adequately address these very important concerns, at a minimum. Any decision to proceed without a formal response would constitute poor public policy.</p>	<p>See the responses to Comments 14 and 15.</p>
19	<p>Broomfield believes that the interim changes to operate the terminal ponds in a flow through manner and the permanent modifications to breach the dams are in direct violation of the terms and conditions of the Lease Agreement between DOE and Broomfield, dated September 26, 2006. Both modes of operation are in direct conflict to the requirement to sample and test surface water before discharges are made.</p>	<p>See the response to Comment 1.</p>
20	<p>Breaching the remaining dams and constructing new monitoring points would violate institutional control that prohibits excavations deeper than 3 feet. The CAD/ROD does not provide a process for issuing variances to the Institutional Controls. A description of the consultative process begins on page 71 of the CAD/ROD and reads: "DOE shall notify EPA and CDPHE 45 days in advance of any proposed land use changes that are inconsistent with the objectives of these institutional controls or the selected remedy/corrective action. DOE shall not modify or terminate institutional controls, implantation actions or modify land use without approval of</p>	<p>See Common Concern Statement 1 and the responses to Comments 2, 3, and 55.</p>

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	<p>EPA and CDPHE. DOE shall seek concurrence before any anticipated action that may disrupt the effectiveness of these institutional controls or any action that may alter or negate the need for the institutional controls. <u>For purposes of this CAD/ROD, DOE may not modify or terminate these institutional controls without the approval of EPA and CDPHE, by formal amendment to this CAD/ROD.</u> (Emphasis added.) Broomfield asserts that approving excavations beyond 3 feet for non-remedy related purposes constitutes a modification to the Institutional Control. Since the proposed activities create new pathways that were not evaluated in the comprehensive risk assessment, an amendment to the CAD/ROD is needed to include supplemental risk assessments for each location where excavations will occur.</p>	
21	<p>EPA guidance documents for ARARs clearly state that surface water Points of Compliance (POC) should be located at the site boundary or at the point of discharge. For the Rocky Flats site, all of the groundwater treatment units at the Rocky Flats site have been designated in the remedy as engineering controls. Therefore, regulatory points of compliance should be established at the discharge of all groundwater treatment systems to maintain consistency with EPA guidance documents and with state water quality regulations.</p>	<p>See the response to Comment 6.</p>
22	<p>Contact Record 2010-04, dated July 15, 2010, states that the Area of Concern (AOC) wells serve as the points of compliance for groundwater. The RFLMA should be revised to support this statement and maintain compliance with State WQCC Regulation No. 41. In addition, all AOC wells should be tested for the entire suite of analytes listed in Table 1 of the RFLMA.</p>	<p>See the response to Comment 6.</p> <p>The CR does not state that AOC wells serve as POCs for groundwater. The CR explains that there is no ARAR for locating surface water POCs, but by analogy to Colorado Water Quality Control Commission (WQCC) Regulation 41 concerning the criteria for establishment of POCs for groundwater in site-specific rulemaking, the surface water POCs are located close to the waste management area boundary. The arrangement of the AOC wells upgradient of the POCs provides</p>

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		<p>monitoring data to demonstrate the continued effectiveness of the remedy.</p> <p>The list of analytes and analyte groups is in RFLMA Attachment 2, Table 2. The analytes listed in Table 2 are based on evaluation of the RI/FS data and reflect the contaminants of concern in the respective source areas. The evaluation is consistent with the protocols in Colorado WQCC Regulation 41 (specifically, Section 41.6), as well as RCRA regulations (40 CFR 264, subpart F).</p>
23	<p>DOE-LM has repeatedly stated that one of its primary goals is to re-establish natural conditions at the Rocky Flats site. While this is an admirable objective to pursue, it does not address the fact that residual contamination will remain at the site for many generations to come. Broomfield believes that the current remedy (which collectively includes the institutional controls, the engineered controls, the monitoring program, and operations plan) is adequate and the changes proposed by DOE-LM do not reduce risk or provide greater protection for human health and the environment.</p>	<p>See response to Common Concern Statements 2, 8, and 9.</p>
24	<p>Currently, there are two analytical methods to determine if a violation of an enforceable standard occurs at the existing surface water POCs. A 30-day average calculation applies to the Indiana Street POC, while a less sensitive 12-month rolling is used at the POC located at the terminal ponds. Broomfield is concerned that the use of the longer timeframe will delay the timing when a reportable condition occurs. We believe that any future POCs should be based on the 30-day average since it will better reflect subtle changes in contamination levels and provide more advanced warning of increases in contaminate levels.</p>	<p>See Common Concern Statement 7 and the response to Comment 5.</p> <p>Additionally, we assume that the commenter meant to say data evaluation methods, rather than analytical methods.</p>
25	<p>The actions above are further compounded by the fact that DOE-LM has not prepared a contingency plan in the event a</p>	<p>See Common Concern Statement 8.</p>

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	compliance standard is exceeded. Instead, DOE-LM will rely on a consultative process with EPA and CDPHE to decide how to proceed with further studies or monitoring. This method of operation is unacceptable to Broomfield.	
26	In addition to the general comments discussed above, Broomfield has several specific comments of the proposed amendments to Attachment 2 of RFLMA. These changes are listed .in chronological order. Proposed additions are shown in <i>bold italic</i> typeface and proposed deletions are shown in strike through typeface.	Explanation noted. Additionally, the text from all comment letters is shown verbatim in this responsiveness summary.
27	Section 2.1 Surface Water Standards - Page 2 The existing surface water use classification of Recreation 2 at the top of the page should be replaced with the following to maintain consistency with WQCC Regulation Nos. 31 and 38: Recreation 2, and <i>Recreation N (North Walnut Creek, South Walnut Creek, and Pond C-2),</i> <i>Recreation E (Woman Creek),</i>	The RFLMA Parties agree, and the change is incorporated in the approved modification.
28	Section 2.1 Surface Water Standards - Page 2 The first full paragraph, beginning with the second sentence should be revised as follows to reflect the fact that the all previously granted temporary modifications for the site expired on December 31, 2009: If the numeric values from basic standards and the site specific standards differ, the site specific standard applies, except where temporary modifications <i>have been approved by the WQCC</i> are in place. Temporary modifications fro organic compounds, nitrate and nitrite, as listed in Table 1, have been granted through the year 2009 by the WQCC.	The RFLMA Parties agree that the reference to the expired temporary modifications should be deleted, and the change is incorporated in the approved modification. There is no need to include the suggested clause regarding the WQCC approval.

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29	<p>Section 2.1 Surface Water Standards - Page 2</p> <p>The last sentence of the second paragraph should be revised as follows since Contact Record 2010- 04, dated July 15, 2010, states that Area of Concern (AOC) wells satisfy the ARAR in [WQCC] Regulation No. 41 for groundwater POCs: Exceedances of water quality standards at a surface water POC or a ground water AOC Well may be subject to civil penalties under Sections 109 and 310(c) of CERCLA.</p>	<p>See the response to Comment 22.</p> <p>The suggested change is not incorporated in the approved modification.</p>
30	<p>Section 5.0 Monitoring Requirements - Page 3</p> <p>The second sentence under the third paragraph should be revised as follows: If standard analytical methods have detection limits that are higher than the respective standard cannot attain the standard then alternative methods or PQLs will be proposed to the CDPHE for review and approval by the WQCC.</p>	<p>The suggested change is not incorporated in the approved modification. EPA and CDPHE have the authority to approve the practical quantitation levels (PQLs) for RFLMA standards.</p>
31	<p>Section 5.1 Monitoring Surface Water - Page 4</p> <p>No changes to this section should be made until such time that DOE-LM can demonstrate through concurrent sampling that the proposed POCs will be representative of the existing upstream and downstream POCs.</p>	<p>See Common Concern Statement 6 and the response to comment 8.</p> <p>The point in time when the new Woman Creek and Walnut Creek monitoring locations, WALPOC and WOMPOC, become the RFLMA POCs is described in the approved modification. Surface water collected at those POCs is representative of the water quality leaving the NPL site.</p>
32	<p>Section 5.2 Monitoring Groundwater - Page 4</p> <p>The second sentence in the Area of Concern (AOC) Wells classification should be revised as follows pursuant to WQCC Regulation No. 41: These wells are monitored as Groundwater POCs to determine whether the plume(s) may be discharging to surface water and demonstrate compliance with the water standards in Table 1.</p>	<p>See the responses to Comments 6 and 22.</p> <p>The suggested change is not incorporated in the approved modification.</p>

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33	<p>Section 5.3.3 Groundwater Treatment Systems - Page 5 The last sentence should be revised as follows since the groundwater treatment systems discharge to surface waters of the State: <i>The effluent discharge point will serve as the POC and the treatment systems will be operated and maintained to ensure the effluent meets the water standards in Table 1 standards.</i></p>	<p>See the response to Comment 6. The suggested change is not incorporated in the approved modification.</p>
34	<p>Section 5.4.1 Boundary Wells - Page 6 This section should be retained without any changes until such time the monitoring data or new groundwater studies and/or modeling show that groundwater contamination is not migrating beyond Indiana Street.</p>	<p>More than 15 years of monitoring at the well locations confirms that groundwater is not impacted at these locations by releases from former site operations. The RFLMA Parties have determined that there is no technical basis for continued monitoring groundwater at the Boundary well locations, which are outside the NPL site.</p>
35	<p>Section 5.4.2 Pre-discharge Pond Sampling - Page 6 Broomfield asserts that this paragraph should remain unchanged since a final decision to breach the dams has not been made. In addition, if DOE plans to operate the terminal ponds in a flow through condition (a proposal that we strictly oppose unless protocols and procedures are significantly revised), then at a minimum, appropriate sampling protocols and procedures need to be added to this section to specify when flow through operations will cease and then subsequently resume. These are the types of revisions, among others, which we submit are appropriate to address in the working group. Further, additional modifications and amendments to the RFLMA and Water Lease with Broomfield will be required to allow any changes to the existing test and release mode of operations for the terminal ponds.</p>	<p>See Common Concern Statement 8. See the response to Comment 1 concerning the water lease. Section 5.4.2 text has been reinstated. The text was also expanded to note that when batch-and-release operation ceases, pre-discharge sampling will not be performed. In flow-through mode, water will be continually monitored at designated POCs and will be subject to the evaluation procedures in RFLMA Attachment 2, Figure 5. If RFLMA surface water standards are exceeded, notifications are required, RFLMA Party consultation is triggered, and a determination of the appropriate mitigating actions will be made by CDPHE in consultation with EPA. The Broomfield Water Lease Agreement, paragraph 25, provides for modifications. DOE will give due consideration to any modifications of the Lease Agreement proposed by Broomfield.</p>

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36	<p>Section 6.0 Action Determinations - Page 7</p> <p>Add language that local communities are notified of all reportable conditions <u>and</u> are invited to participate in any consultative process between DOE, CDPHE, and EPA. When reportable conditions occur (except in the case of evidence of violation of institutional controls as described below), DOE will inform CDPHE, and EPA, and the downstream communities' working group within 15 days of receiving the inspection reports or validated data. Within 30 days of receiving inspection reports or validated analytical data documenting a reportable condition, DOE will submit a plan and a schedule for an evaluation to address the condition initiate the consultative process described in RFLMA Paragraph 11 to determine if mitigating actions are necessary. As part of the first step in the consultative process, DOE will submit a draft plan and proposed schedule to identify the potential source, cause, and risks associated with the reportable condition consult as described in RFLMA Paragraph 11 to determine if mitigating actions are necessary. The downstream communities working group will be invited to participate whenever the consultative process is initiated for informational purposes and to provide support if requested. Final plans and schedules to conduct further investigations and studies or for implementing any mitigating actions, if any, will be approved by CDPHE in consultation with EPA. DOE is not, however, precluded from undertaking timely mitigation to protect human health and the environment once a reportable condition has been identified.</p>	<p>See Common Concern Statement 3 and the responses to Comments 8 and 18.</p> <p>The approved modifications to Figure 5, “Points of Compliance,” and to Figure 6, “Points of Evaluation,” includes notification of the listed downstream communities and the Rocky Flats Stewardship Council if the 30-day average or 12-month rolling average concentration exceeds the RFLMA standard. The RFLMA Parties do not agree that the suggested language is needed to implement the consultative process.</p> <p>The RFLMA Parties have been, and remain, committed to meet and discuss any Rocky Flats-related topic consistent with the RFLMA Public Involvement Plan.</p> <p>The suggested language to specify that timely mitigation “to protect human health and the environment” is not needed. That is already the implementation purpose of RFLMA.</p>

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37	<p>Section 6.0 Action Determinations - Page 7 (Cont.)</p> <p>In the case of a violation of institutional controls, DOE will notify EPA, and CDPHE, <i>and the downstream communities' working group</i> within 2 days of discovering any evidence of such a violation, and at that time initiate the consultative process to address the situation. In no case will DOE notify EPA, and CDPHE, <i>and the downstream communities' working group</i> more than 10 days after the discovery of a situation that may interfere with the effectiveness of the institutional controls. DOE will notify EPA, and CDPHE, <i>and the downstream communities' working group</i> of the actions it is taking within 10 days after beginning the process to address the situation.</p>	<p>See the response to Comment 18.</p> <p>The suggested change is not incorporated in the approved modification. The RFLMA Parties do not believe issues related to institutional control (IC) violations require immediate notification of the communities on a fixed timetable.</p> <p>Existing RFLMA procedures provide the mechanism to determine appropriate corrective action upon discovery of an IC violation. These actions will be reported to the public through the means described in the RFLMA Public Involvement Plan.</p>
38	<p>Section 6.0 Action Determinations - Page 8</p> <p>The last bullet point that references Figure 13 Flowchart - Pre-discharge Pond Sampling should not be deleted.</p>	<p>See Common Concern Statement 8.</p> <p>See the response to Comment 35 concerning when batch-and-release operations cease.</p> <p>Figure 13 is retained, but provides a decision point to terminate pre-discharge sampling.</p>
39	<p>Table 1 Surface Water Standards - Pages 11 through 15</p> <p>Remove the Temporary Modifications column and delete footnotes [c] and [h].</p>	<p>The RFLMA Parties agree that the reference to the expired temporary modifications should be deleted, and the change is incorporated in the approved modification.</p>
40	<p>Table 1 Surface Water Standards - Pages 11 through 15</p> <p>Revise footnote [n] to indicate that the standard is for arsenic.</p>	<p>While footnote [n] is only in Table 1 for arsenic, the RFLMA Parties agree to add “arsenic” to the footnote and the change is incorporated in the approved modification.</p>

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41	<p>Table 2 Water Monitoring Locations and Sampling Criteria - Pages 16 through 18</p> <p><u>Points of Compliance</u> - No changes to delete the existing or construct new surface water Points of Compliance should be made until sufficient field data has been gathered to demonstrate the new proposed locations will continue to be representative of the existing monitoring sites.</p>	<p>See Common Concern Statement 6 and the response to Comments 8 and 31.</p>
42	<p>Table 2 Water Monitoring Locations and Sampling Criteria - Pages 16 through 18</p> <p><u>Boundary Wells</u> - The boundary wells should not be deleted.</p>	<p>See the response to Comment 34.</p>
43	<p>Table 2 Water Monitoring Locations and Sampling Criteria - Pages 16 through 18</p> <p><u>Present Landfill (PLF) Area</u> - Assuming the Present Landfill pond is breached and PLFPONDEFF monitoring site is deleted, there is no need to add the new surface water monitoring site designated as NNG01. The monitoring site PLFSYSEFF, which corresponds to the Present Landfill Treatment System effluent, would better serve as the compliance location since it discharges to surface waters of the State and is located as close as practical to the source of contamination.</p>	<p>See the response to Comment 8.</p> <p>The POCs for Walnut Creek are listed in Table 2 of the approved modification. The RFLMA Parties have determined that NNG01 is an appropriate location for surface water sampling in the instance of elevated levels at PLFSYSEFF as it is equivalent to the former PLFPONDEFF downstream location.</p>
44	<p>Table 2 Water Monitoring Locations and Sampling Criteria - Pages 16 through 18</p> <p><u>Present Landfill (PLF) Area</u> - Based on the preceding item above, the analytes for PLFSYSEFF should be changed from "VOCs, SVOCs, U, metals" to "<i>As required by decision rule.</i>"</p>	<p>The suggested change is not incorporated in the approved modification since the required analyte list is clear. The reference to the decision rule is to note that, in the case of 3 monthly sample result exceedances for a particular analyte at PLFSYSEFF, only the analyte(s) with exceedances will be analyzed. See RFLMA Attachment 2, Figure 11, for the decision rules.</p>
45	<p>Table 2 Water Monitoring Locations and Sampling Criteria - Pages 16 through 18</p> <p><u>Pre-discharge</u> - All three pre-discharge monitoring locations listed should be retained.</p>	<p>See Common Concern Statement 8.</p> <p>See the response to Comment 35 concerning flow-through operations, monitoring, and evaluation.</p>

No.	Comment	DOE Response
46	<p>Proposed Figure 1 Water Monitoring at Rocky Flats - Page 26 The proposed sequence and dates for the dam breachings listed in the right hand margin do not correspond to the verbal information provided by DOE. Regardless, the original figure should be retained since the justification for the new monitoring sites are based on plans to breach the terminal dams which have not been approved.</p>	<p>The proposed Figure 1 information was intended to inform the public about the proposed monitoring point locations. Because DOE is evaluating breaching the dams, the surface water configuration of the listed ponds may change, depending on the outcome of DOE's decision.</p> <p>The approved modification of Figure 1 shows the current configuration and indicates when the new POCs will become effective.</p>
47	<p>Figure 5 Points of Compliance - Page 30 No changes to the figure should be made since the changes are based on the assumption that the dams have been breached. In addition, Reportable Conditions and evaluation of compliance with remedy performance standards for Nitrate must be based on a 30-day average, not a 12-month rolling average, to adhere to the chronic standards listed in State WQCC Regulations Nos. 31 and 38.</p>	<p>RFLMA Attachment 2, Section 2.1, specifies that RFLMA surface water standards are based on the Tables in Colorado WQCC Regulations 31 and 38. Regulation 31 recognizes CDPHE's and EPA's authority to approve criteria that may be different than that adopted by the Commission.</p> <p>Regulation 31 (Section 31.11, Section 5) says: "Nothing in this regulation shall be interpreted to preclude: (a) An agency responsible for implementation of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 et seq., as amended, from selecting a remedial action that is more or less stringent than would be achieved by compliance with the statewide numerical standards established in this section, or alternative site-specific standards adopted by the commission, where a determination is made that such a variation is authorized pursuant to the applicable provisions of CERCLA."</p> <p>RFLMA Attachment 2, Figure 5, "Points of Compliance," documents the evaluation protocol approved by CDPHE and EPA for implementation of the remedy. The RFLMA Parties have determined that the approved RFLMA protocols allow for appropriate comparison of water monitoring data to Colorado water quality standards to demonstrate that water is of sufficient quality to support all uses.</p>

No.	Comment	DOE Response
48	<p>Figure 6 Points of Evaluation - Page 31</p> <p>The method of calculation for all applicable analytes should be based on a 30-day average instead of the 12-month rolling average since these monitoring site are intended to serve as an early warning system. Accordingly, footnote 2 regarding the 12-month rolling average should also be deleted.</p>	<p>See Common Concern Statement 7 and the response to Comment 5.</p>
49	<p>Figure 7 Area of Concern Wells, Boundary Wells, and SWO18 - Page 32</p> <p>The existing figure should be retained as is, without any of the changes proposed by DOE.</p>	<p>See the response to Comment 34.</p> <p>The approved modification does not include Boundary wells as RFLMA monitoring locations.</p>
50	<p>Figure 11 Groundwater Treatment Systems - Page 36</p> <p>The following revisions should be made to the flow chart: Box that states "Sample PLFPONDEFF⁷ NNG01⁷ " should be deleted since there is no need to construct a new surface water monitoring site downstream of the PLFSYSEFF if the Present Landfill pond is breached. PLFSYSEFF is the appropriate monitoring location since it is where discharges to surface water occurs and it is as close as possible to the source of contamination.</p>	<p>See the response to Comment 43.</p> <p>The location NNG01 is a grab sample location. There is no construction involved for this location.</p>
51	<p>Figure 11 Groundwater Treatment Systems - Page 36</p> <p>The following revisions should be made to the flow chart: Footnote 7 should be deleted based on the preceding item above.</p>	<p>See the response to Comment 50.</p> <p>The suggested change is not incorporated in the approved modification.</p>
52	<p>Figure 11 Groundwater Treatment Systems - Page 36</p> <p>The following revisions should be made to the flow chart: PLFPONDEFF should be deleted from footnote 6 if the monitoring site is removed.</p>	<p>The suggested change is incorporated in the approved modification.</p> <p>The RFLMA Parties also noted that the GWISINFNORTH and GWISINFSOUTH locations for the PLF influent in note 4 should have been deleted in the March 2008 modification consistent with changes to Table 2 at that time. The change is now incorporated in this modification.</p>

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53	Figure 13 Pre-discharge Pond Sampling - Page 38 This figure should not be deleted and be retained.	See Common Concern Statement 8. See the response to Comment 35 concerning flow-through operations, monitoring, and evaluation.
54	Broomfield is amenable to considering flow-through operations of the terminal ponds <u>contingent upon the development of operational and performance criteria for initiating or terminating flow-through operations on a temporary or permanent basis.</u> Such criteria must be agreed upon by the downstream communities and documented in RFLMA. In addition, DOE-LM must adopt a contingency plan that outlines the physical and/or operational actions that DOE-LM will employ in the event a compliance standard is exceeded at any surface water Point of Compliance.	See Common Concern Statements 5 and 8. See the response to Comment 35 concerning flow-through operations, monitoring, and evaluation. RFLMA does not dictate how ponds operate in batch-and-release or flow-through modes. For the Surface Water Configuration Environmental Assessment, DOE has initiated an Adaptive Management Plan development process with community participation that will serve to address this comment.
55	If EPA and CDPHE approves the changes to RFLMA as proposed by DOE-LM, the level of protection provided by the remedy will be reduced, and there will be a corresponding increase in the risks associated with the site. In effect, DOE-LM's proposal will result in the following: 1. Creation of new exposure pathways that were not evaluated or considered as part of the comprehensive risk assessment in the CAD/ROD. 2. Moves existing upstream points of compliance further from the source of contamination. 3. Proposes to establish new surface water points of compliance at the confluence of multiple tributaries which would dilute concentrations and monitoring results with larger volumes of flow. 4. Adopts a less sensitive 12-month average for regulatory compliance purposes instead of keeping the 30-day average that exists at the downstream POCs. 5. Eliminates the physical capability to prevent water that	Changes in monitoring locations do not alter the fundamental effectiveness of the remedy. Response to item 1: Installing new monitoring points does not create "new exposure pathways." Evaluation of the areas proposed to be excavated for the new monitoring locations is summarized in CR 2010-04. Based on the evaluation, there is no evidence to suggest that any residual contamination poses risks above acceptable levels. Response to items 2 and 3: See Common Concern Statement 9. Response to item 4: See Common Concern Statement 7. Response to item 5: The comment is not relevant to the RFLMA proposed modifications as these are monitoring locations only, which, regardless of location, have never prevented any water from leaving the Site.

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	exceeds the standards from migrating off-site.	
56	<p>Despite our opposition to the approach taken so far, we believe that the formation of a working group would provide a forum to allow DOE-LM to meet its goals, allow CDPHE and EPA to provide continued regulatory oversight, and allow the downstream communities to establish greater confidence that the remedy will continue to remain protective of human health and the environment well into the future. Broomfield recommends the establishment of such a group to ensure the proposal and any future site changes occur in a phased manner through a collaborative and cooperative manner. This type of an approach will reaffirm our confidence in the long-term performance of the remedy and help foster a credible public image. As stated previously, we will provide a recommendation for the organizational structure of the working group in the next 4 to 6 weeks.</p>	<p>See Common Concern Statement 3 and the response to Comment 12.</p>
Woman Creek Reservoir Authority, Josh Nims, President, letter dated October 12, 2010		
57	<p>Maintaining the Indiana Street POC's is critical to ongoing Authority operations. Elimination of the Indiana Street POC's is inconsistent with DOE obligations under the Operations Agreement with the Authority.</p>	<p>The Standley Lake Protection Project Operations Agreement (SLPPOA) (1996) states that DOE is responsible for testing flows in Woman Creek “at the Indiana Street Point of Compliance, as that term is defined in the RFCA” (Rocky Flats Cleanup Agreement). When the SLPPOA was signed, the Rocky Flats National Wildlife Refuge Act had not been enacted, and the easement for a transportation corridor along the Indiana Street boundary of RFETS was not a consideration. Since the 2001 Wildlife Refuge Act, both the CAD/ROD and RFLMA have anticipated that the locations of the POCs on Indiana Street might be changed. Delisting of the peripheral operable unit by the EPA in 2007 and the transfer of the land on which the Indiana Street POC is located to the U.S. Fish and Wildlife Service have changed the conditions which existed in 1996 when the SLPPOA was signed. DOE’s proposal for relocating the Indiana Street POC on Woman</p>

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		Creek to below the C-2 dam where Woman Creek leaves the NPL site serves the same function as the POC at Indiana Street on Woman Creek. DOE will continue to “test flows” at the RFLMA POCs.
58	<p>One of the clear objectives under the Rocky Flats Cleanup Agreement of 1996 (RFCA), was that flows leaving the Rocky Flats site would meet relevant water quality standards. Under that agreement, the site itself was referred to as the Rocky Flats Environmental Technology Site ("RFETS") and was defined as "including the property owned by the United States Government, formerly known as the Rocky Flats Plant or Rocky Flats Site, and now known as the Rocky Flats Environmental Technology Site, including the Buffer Zone." See RFCA, Part 5 Definitions, Paragraph 25, subparagraph bj. July 16, 1996. In the preamble of that agreement, the parties to RFCA agreed that, "...all on-site surface water and all surface water and groundwater leaving RFETS will be of acceptable quality for all uses including domestic water supply Reliable monitoring and controls to protect water quality during storage of plutonium and other special nuclear material and wastes, and during storm events will continue. To assure the above described water quality, long-term operation and maintenance of waste management and cleanup facilities will continue." See RFCA, Preamble, Paragraph B.3.b., July 16, 1996. To satisfy these water quality objectives, the RFCA established points of compliance at Indiana Street, as well as at the relevant terminal ponds.</p>	<p>The RFLMA Parties are the same as the RFCA Parties and are thoroughly familiar with the RFCA goals and objectives that were intended to help guide the accelerated action cleanup decisions under RFCA. Thus, the consideration of the proposed modifications to RFLMA monitoring locations includes full background knowledge of the regulatory approach that resulted in cleanup and closure of Rocky Flats.</p> <p>RFLMA modifies and supersedes RFCA, and is focused on remedy implementation requirements for the NPL site (see RFLMA Part 2, “Statement of Purpose”). The RFLMA Parties have determined that surface water leaving the NPL site is of acceptable quality for all uses and that contaminated groundwater will not impact acceptable surface water quality.</p> <p>The monitoring locations in the approved modification are appropriate for evaluation of water quality as required to meet RFLMA implementation requirements.</p>
59	<p>The successor agreement to RFCA, the Rocky Flats Legacy Management Agreement, ("RFLMA") maintained the points of compliance at Indiana Street as part of the ongoing monitoring requirements. At present, points of compliance GS-01 and GS-03 under RFLMA are located on Woman and Walnut Creeks, respectively, immediately before those Creeks reach Indiana</p>	<p>See the response to Common Concern Statements 4 and 9 and the response to Comment 8.</p>

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	<p>Street (the "Indiana Street Points of Compliance"). These are the points where water flowing through the former Rocky Flats Plant Site, including the groundwater which daylights to these streams, leaves federally controlled land. Historically, the Indiana Street Points of Compliance have been used to confirm that DOE is in compliance with relevant water quality standards. The current proposal, as we understand it, is to revise the RFLMA to move these points of compliance approximately three quarters of a mile upstream onto the Central Operable Unit and no longer require DOE testing of waters leaving federally controlled lands at the Indiana Street Points of Compliance. The Authority strongly opposes any such action.</p>	
60	<p>The Indiana Street Points of Compliance provide the Authority, its downstream municipal members and Broomfield, with important assurances that the quality of water leaving the former Rocky Flats Plant Site meets relevant standards. Moving these points of compliance upstream simply means that flows off a significant portion of federal lands, (which are documented to contain some levels of plutonium), are no longer subject to compliance testing at Indiana Street. This, in turn, eliminates the Authority's ability to fully assure downstream citizens that water leaving the federal lands meets relevant standards and can safely flow through the various communities. In addition, Woman Creek is a gaining stream on the federal lands during times of the year. This is likely due, in part, to groundwater contributions from the former "buffer zone" lands that now comprise the National Wildlife Refuge. Removing compliance testing under RFLMA at the federal land boundary at the Indiana Street Point of Compliance would mean that the water gained would not be tested before leaving federal lands.</p>	<p>See Common Concern Statements 4 and 9 and the response to Comment 34.</p>

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	<p>The proposed modifications also eliminate the so-called boundary wells that have historically provided groundwater monitoring on the west side of Indiana Street. The Authority believes maintaining those boundary wells is an important component of RFLMA and urges that any proposal to cease boundary well operation and testing be withdrawn.</p>	
61	<p>More importantly, the Indiana Street Point of Compliance is critical to Woman Creek Reservoir operations. DOE's compliance testing at the Indiana Street Points of Compliance provides the Authority with the basis to require DOE action at Woman Creek Reservoir in the event of an exceedance. To the extent an exceedance of relevant water quality standards occurs at the Indiana Street Point of Compliance, DOE has agreed to take certain actions to address the issue. If no exceedance occurs, water is released from Woman Creek Reservoir to the Walnut Creek basin. Moving the compliance point upstream on Woman Creek undermines the assurances under RFLMA that <u>all</u> flows leaving the former Rocky Flats site comply with the relevant water quality standards, since <u>all</u> such flows would no longer be tested under the DOE proposal -- only those flows leaving the COU would be tested going forward. Without a monitoring point at Indiana Street, DOE and the regulators have lost the ability to assure the Authority and downstream communities that all water leaving federally controlled lands meets the relevant standards.</p>	<p>See Common Concern Statement 4 and the response to Comment 57.</p> <p>The new POC is the functional equivalent and does not change DOE's responsibilities under the agreement. The new POC location allows monitoring of Woman Creek water quality leaving the NPL site to determine that the remedy remains protective.</p>
62	<p>As indicated above, both the Authority and DOE are parties to the Operations Agreement which sets forth DOE's obligations for responding to an exceedance at the Indiana Street Point of Compliance. The Operations Agreement is the only direct agreement between DOE and the Authority concerning DOE response obligations. As such, it is an extremely important document to the Authority. The current proposal serves to</p>	<p>DOE is proposing to relocate the Indiana Street POC for Woman Creek, GS01. There is no proposal to discontinue monitoring water downstream of Pond C-2 before it leaves the NPL site. The Authority's anticipation of what it believes DOE is likely to argue at some unspecified time in the future misinterprets DOE's intent in proposing to relocate the Indiana Street POC and is not consistent with DOE's proposal.</p>

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	<p>undermine the Operations Agreement. It is imperative that monitoring requirements under RFLMA continue at Indiana Street. Absent such monitoring requirements under RFLMA, DOE will likely argue that the obligations under the Operations Agreement are, or could be, automatically terminated. Paragraph 7 of the Operations Agreement contemplates automatic termination of the document upon the later occurrence of two specific events; the removal of the RFETS from the National Priorities List under CERCLA or the termination of any monitoring requirements at the Indiana Street Point of Compliance in accordance with a Record of Decision for the RFETS under CERCLA. The Authority is deeply concerned that DOE will argue that the present proposed modifications to RFLMA, if adopted, constitutes one such specific event. Such a result is flatly unacceptable to the Authority.</p>	
63	<p>The proposed revisions to RFLMA must be considered in the context of the pending proposal to breach the terminal dams. To the extent the terminal dams are breached or operated in "flow through", the need for monitoring at Indiana Street as the water leaves federally controlled property is even greater. Maintaining the Indiana Street Points of Compliance under RFLMA is critical to the downstream communities and is the only way to ensure that water leaving federal lands meets standards.</p>	<p>See Common Concern Statements 4 and 5 and the response to Comment 57.</p> <p>Regardless of whether the terminal pond dams are breached in the future or if the dams are operated in flow-through mode, the water leaving the NPL site is being monitored. The approved modification provides for RFLMA monitoring locations within the NPL boundary, not the federally owned property boundary.</p>
64	<p>The Authority believes the current proposal to modify Attachment 2 of RFLMA as proposed by the regulators must be considered in concert with the pending proposal to breach certain terminal ponds on Woman and Walnut Creeks. An Environmental Assessment ("EA") has been submitted for public comment relative to terminal dam breaching activities. The Authority has participated in the public comment relative</p>	<p>See Common Concern Statements 1 and 2 and the response to Comment 57.</p> <p>The RFLMA Parties did consider the proposed changes to monitoring point locations a significant change that was subject to public review and comment in accordance with RFLMA paragraph 66. While existing agreements between DOE and the Authority are not included</p>

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	<p>to the EA and maintains its strong preference for a "no action" decision. In an EA comment letter submitted prior to the RFLMA modification proposal, the Authority requested "specific assurances from DOE and the relevant regulators that a 'breach' or any other 'alternative' considered in this process does not include or constitute a relaxation, movement, change or re-visitation of DOE's ongoing obligations for operation and monitoring of the Indiana Street Point of Compliance in the future. DOE must continue to monitor water quality at the Indiana Street Point of Compliance indefinitely. Any attempt to relax or move the point of compliance would constitute a major change to the RFLMA and would be inconsistent with DOE's existing agreements with the Authority." Clearly, the current RFLMA proposal does exactly the opposite; namely it intends to eliminate the points of compliance at Indiana Street and replace them with points of compliance a significant distance upstream. The Authority is disappointed on multiple levels at the current proposal and the means by which it has been advanced. The Authority strongly opposes this effort and encourages the RFLMA parties to withdraw the currently proposed revisions to the RFLMA.</p>	<p>in RFLMA remedy implementation, the RFLMA Parties have considered the Authority's arguments in favor of retaining GS01 and GS03 as RFLMA POCs. The RFLMA Parties have determined there is no technical or regulatory reason to maintain these locations as RFLMA POCs.</p>
65	<p>At an absolute minimum, monitoring must continue under RFLMA at Indiana Street, even as a point of evaluation rather than a point of compliance.</p>	<p>See Common Concern Statement 6 and the response to Comment 57. RFLMA POEs are established at locations upstream of POCs.</p>
66	<p>The Authority would prefer that the points of compliance known as GS-01 and GS-03 be maintained and operated indefinitely as part of DOE's ongoing obligation to ensure that surface flows leaving federally controlled lands meet relevant standards. Failing that, the Authority requests that the proposed amendments be revised to ensure that monitoring continues at GS-01, the Indiana Street Point of Compliance on Woman Creek. The Authority would be willing to accept a</p>	<p>See Common Concern Statement 6 and the response to Comments 8 and 62.</p>

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	<p>revision to GS-01 so that it is a point of evaluation under RFLMA. Under such an approach, continued monitoring requirements would be in place <u>under RFLMA</u> and would ensure that surface water flows leaving federal lands and coming into Authority controlled facilities meet relevant standards. By requiring this monitoring <u>under RFLMA</u>, rather than some unenforceable assurance by DOE, the Authority has the benefit of the federal regulators backing on the maintenance of this monitoring requirement. Moreover, it would eliminate any attempt by DOE to claim that the Operations Agreement between it and the Authority has somehow automatically terminated. As noted above, the Authority relies on its Operations Agreement with DOE to ensure that DOE remains solely responsible for any exceedances. This is a fundamental reason why the Authority opposes the proposed revisions since, with CDPHE and EPA's inherent blessing, the proposed revisions potentially give DOE an argument to avoid responsibility under its private agreement with the Authority.</p>	
67	<p>The Authority encourages DOE and the regulators to withdraw the proposed amendments to the RFLMA and maintain the document in the current state.</p>	<p>Comment noted.</p>
68	<p>On a related matter, the Authority encourages DOE and the regulators to withdraw the proposal concerning the breaching of the terminal ponds, as well as the Environmental Assessment related thereto.</p>	<p>Comment noted.</p>
69	<p>Assuming that DOE and the regulators are unwilling to withdraw the proposed RFLMA amendments and/or the terminal pond breaching proposal, the Authority requests that a point of evaluation <u>under RFLMA</u>, be maintained at the current Indiana Street Point of Compliance location indefinitely, or at a minimum, until the Central Operable Unit</p>	<p>See Common Concern Statement 6. See the response to Comments 8 and 57.</p>

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	is removed from the National Priority List.	
70	<p>The Authority further requests that DOE acknowledge, in writing, that the proposed changes to the RFLMA do <u>not</u> constitute a change in the Indiana Street Points of Compliance that would cause a termination of the existing Operations Agreement. To this end, the RFLMA should specifically reference that the proposed point of compliance at the COU boundary is the functional equivalent of the existing Indiana Street Point of Compliance for purposes of the DOE Operations Agreement. Finally, as a condition of approval of the RFLMA proposed changes, the regulators must require DOE to enter into an amendment of the existing DOE Operations Agreement that specifically identifies the new point of compliance on Woman Creek and an acknowledgment that said agreement is not automatically terminated as a result of any approved changes to RFLMA.</p>	<p>See the response to Comment 61.</p> <p>The proposed POC at the NPL site boundary is the functional equivalent of the Indiana Street POC for purposes of the SLPPOA.</p>
71	<p>Failing a complete withdrawal of the proposed RFLMA changes, (which is the Authority's preferred outcome), or the continued existence of GS-01 as an additional point of compliance under RFLMA, alternative specific suggested language changes to the RFLMA would include:</p> <p>In the second bullet of paragraph 5.1, a specific reference to GS-01 in paragraph 5.1 as a point of evaluation. The paragraph would then read, "Points of Evaluation (POEs): Located in the Central OU upstream of the ponds and POCs, <u>and in the Peripheral OU downstream on Woman Creek at GS-01, where Woman Creek flows leave federally controlled lands.</u> These locations are used to demonstrate compliance with the surface-water standards in Table 1, <u>and in the case of GS-01, additionally used for purposes of determining DOE obligations under the Standley Lake Protection Project Operations Agreement dated August 21, 1996, until such time as said</u></p>	<p>The approved modification does not incorporate the suggested text. See the responses to Comments 8, 64 and 65.</p>

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	<u>Operations Agreement is mutually amended to incorporate the relocated Woman Creek point of compliance."</u>	
72	Failing a complete withdrawal of the proposed RFLMA changes, (which is the Authority's preferred outcome), or the continued existence of GS-01 as an additional point of compliance under RFLMA, alternative specific suggested language changes to the RFLMA would include: As indicated above, the Authority opposes the elimination of the terminal ponds as contemplated in the pending EA. Therefore, the Authority supports re-insertion of the language in paragraphs 5.1 and 5.4.2 related to the terminal pond points of compliance and the pre discharge pond sampling.	See the responses to Comments 34 and 35.
73	Failing a complete withdrawal of the proposed RFLMA changes, (which is the Authority's preferred outcome), or the continued existence of GS-01 as an additional point of compliance under RFLMA, alternative specific suggested language changes to the RFLMA would include: Re-insertion of the entirety of the Boundary Wells language in paragraph 5.4.1, and conforming references throughout the document.	See the responses to Comments 34 and 35.
74	The Authority requests formation of a water working group composed of DOE, EPA, CDPHE, downstream municipal water suppliers and the Authority to discuss ongoing water quality results and related activities at the former Rocky Flats Site.	See Common Concern Statement 3 and the response to Comment 12.
75	The Authority supports the positions taken, and the comments provided, by the effected downstream communities to the proposed RFLMA modifications.	Comment noted.
76	The Authority remains in strong opposition to this proposal and urges the regulators and DOE to withdraw the proposal. Failing that, the proposal must be revised to require ongoing monitoring under RFLMA at the Indiana Street Point of	Comment noted.

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	Compliance (GS-01) on Woman Creek, consistent with the bullet points set forth above.	
City of Westminster, J. Brent McFall, City Manager, letter dated October 19, 2010		
77	Westminster strongly opposes the proposed RFLMA modifications. Retention of the existing POCs at Indiana Street ensures that all flows leaving the federal lands comply with applicable water quality standards. Westminster encourages DOE and the regulators to withdraw the current proposal.	See Common Concern Statement 4 and the response to Comment 58.
78	The proposed RFLMA modification was released with Contact Record 2010-04 which provides the detailed rationale for the proposed changes to RFLMA. The Contact Record describes one of the primary reasons for proposing the RFLMA modification for relocating the POCs is based on the dam breaching actions proposed in the Draft Rocky Flats Surface Water Configuration Environmental Assessment ("EA"). Westminster, along with numerous other affected governments, submitted comments opposing the EA proposed actions before the public comment deadline on June 1, 2010. To date, the disposition of all public comments and the final EA have not been released; therefore, we conclude that release of the proposed RFLMA modification for public comment is premature. In providing comments on the proposed RFLMA modification, the public is forced to make assumptions about the final EA decision that may not be accurate. The published version of the proposed RFLMA modification does not accurately reflect the verbal proposals DOE has offered since the draft EA and RFLMA modification documents were released for public comment. The public is not fully informed about DOE's current intentions regarding the surface water configuration and management at the Site.	See Common Concern Statement 5 and the response to Comment 46. The EA is evaluating the impacts of DOE's proposed action to breach the remaining dams. Whether or not DOE conducts the proposed action, the proposal did provide an impetus for the RFLMA Parties to consider changes to the downstream monitoring locations at this time.
79	The City of Westminster respectfully requests that DOE withdraw the proposed modification to RFLMA Attachment 2	See Common Concern Statements 1 and 2 and the responses to Comments 2, 3, and 7.

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	<p>due to unresolved issues associated with the rationale for the proposal. We contend that DOE's current proposal is premature for the following reasons:</p> <p>The construction of the new POC monitoring stations in the Woman Creek and Walnut Creek drainages below the terminal ponds may be in violation of Institutional Control #2, which prohibits excavation below three feet for purposes that are not remedy-related. DOE could propose modification of the institutional controls by a formal amendment to the Corrective Action Record/Record of Decision (CAD/ROD), which in turn would require modification of the Environmental Covenant (EC) and RFLMA. The process of modifying the institutional controls could be a lengthy process subject to public comment. The resolution of this issue and the subsequent impact on the current RFLMA proposal cannot be assumed or predicted.</p>	
80	<p>We contend that DOE's current proposal is premature for the following reasons:</p> <p>Contact Records 2010-02 (dam breaching) and 2010-04 (POC relocation) were approved by CDPHE. The City of Westminster encourages CDPHE to recognize the inconsistencies and ambiguities associated with the two interrelated proposals and withdraw approval of the aforementioned contact records. If approval of the contact records is withdrawn or the new POCs cannot be constructed as proposed, there is not sufficient cause for proposing the RFLMA modification as currently presented for public comment.</p>	See Common Concern Statement 1 and the response to Comment 7.
81	<p>While we contend the RFLMA modification proposal is premature, Westminster will not forego the first opportunity to provide public comment on the RFLMA document since it was adopted in 2007. Our comments are based on all information provided or referenced in the document released</p>	Comment noted.

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	for public comment.	
82	<p>Westminster has significant concern about the basic premise of the proposal to relocate the POCs from the Indiana Street locations to the Central Operating Unit ("COU") boundary. Contact Record 2010-04 details DOE's rationale for the RFLMA proposal to modify monitoring locations. One reason suggests that deletion of the Peripheral Operating Unit ("POU") from the National Priority List requires moving the Indiana Street POCs to the COU boundary. Westminster contends that modifying the monitoring locations is not required for the stated reason, as DOE retains the right to access the Indiana Street POCs because the CAD/ROD states <i>"The selected remedy/corrective action will be implemented through a modification to the Rocky Flats Environmental Covenant (DOE 2006b) to include all of the institutional controls required for the Central OU, through DOE retention of jurisdiction for or access to any real property to be used in carrying out the final response action (that is, the Central OU and designated monitoring points outside the Central OU), and through an interagency agreement/corrective action order among DOE, EPA and CDPHE."</i> (Emphasis added.)</p> <p>The text in RFLMA itself (February 2007) defines the Rocky Flats Site to include United States Government owned property and provides a map delineating the Site boundary in document Attachment 1, which encompasses both the COU and the POU acreages. Westminster contends that the POCs should be retained at the current locations until such time as active construction of the Jefferson County Parkway forces the relocation. Options for relocating the monitoring stations will be evaluated at that time</p>	<p>See Common Concern Statement 4 and the response to Comment 8.</p> <p>The RFLMA Parties agree that the deletion of the POU from the NPL does not <i>require</i> moving the Indiana Street POCs. Contact Record 2010-04 does not state that the locations must be moved or that DOE no longer has access to them. It does state that, because these monitoring locations are well outside the NPL site in an area that has been deleted from the NPL, RFLMA monitoring at these locations for remedy compliance purposes may be discontinued.</p> <p>The RFLMA Parties have determined that moving the POC locations within the boundary of the NPL site is appropriate.</p>
83	Similarly, the boundary wells, also located on the POU at Indiana Street, currently serve as the last point to measure	See Common Concern Statement 4 and the response to Comment 34.

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	<p>groundwater leaving the Site. DOE contends in RFLMA that <i>"all contaminated groundwater emerges to surface water before leaving the Central OU."</i> Without reference wells located outside the COU boundary, DOE cannot ensure this assertion will remain accurate over time. There are no groundwater wells located downstream of the ponds on the COU. Westminster insists that monitoring at the existing boundary well locations should be retained at the current frequency until such time as active construction of the Jefferson County Parkway forces the relocation. Options for relocating the monitoring stations will be evaluated at that time.</p>	
84	<p>Westminster is a principle member of the Woman Creek Reservoir Authority (Authority). The Authority's comments provided for the proposed RFLMA modification thoroughly detail our concerns about moving the POCs; as such, we support the Authority's opposition to elimination of GS-01 as the Point of Compliance.</p>	<p>Comment noted.</p> <p>See the responses to Comments 57 through 76.</p>
85	<p>DOE maintains that the state and federal guidance for locating groundwater POCs as close as possible to the "waste management area" boundary is also applicable to surface water POCs; however, DOE fails to cite state and federal documents that support this claim. If DOE's assertion is correct, it would follow that dilution of surface water downstream of the "waste management area" by supplemental surface water flows from surrounding drainages could jeopardize accurate assessment of the affected areas. For example, the proposed new WOMAN POC will result in significant dilution of the South Interceptor Ditch ("SID") flows measured at SW027 (SID above Pond C-2) by as much as 2000%. The 2009 annual flow at SW027 was 4.35 acre-feet and the 2009 annual flow at GS59 (closest upstream location from Pond C-2 on Woman Creek) was</p>	<p>See Common Concern Statement 9, and comment 22.</p>

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	177.54 acre feet. The new WOMAN POC is planned to be located downstream from current POC GS31, just below the confluence with Woman Creek, thus combining the flows from SW027 and GS59. The current monitoring location at GS01 adequately provides the compliance data encompassing all flows leaving the Site. Note the 2009 annual flow at GS01 was 217.22 acre-feet.	
86	As stated in Contact Record 2010-04, ... <i>Under CERCLA guidance, compliance with surface water ARARs is measured at an appropriate point considering groundwater impacts to surface water within the NPL site boundary.</i> The same Contact Record further describes how the plans to notch the dams, rather than completely removing them, will effectively capture alluvial groundwater and direct it towards the surface water flowing through the notches. If this assessment is correct, what constraints preclude using or modifying the existing POC locations downstream of the terminal ponds (e.g. GS31 below Pond C-2) as the POC when operating the pond in a flow through configuration? The current POCs downstream of the terminal ponds are even closer to the "waste management area" than the proposed new POCs. The current POCs at Indiana Street, in conjunction with the POEs upstream of the terminal ponds and the current POCs below the terminal ponds, provide a clear picture of any contaminant migration.	See the response to Comment 7. See the response to Comment 35 concerning flow-through operations, monitoring, and evaluation. The approved modification describes the criteria for designating the new Woman Creek and Walnut Creek flume locations as the RFLMA POCs after they are installed.
87	Lacking any response to comments provided on the EA, Westminster must again provide comment regarding our contention that construction of the new POCs in the Woman and Walnut Creek drainages violates Institutional Control #2. The CAD/ROD, Environmental Covenant and RFLMA reference Institutional Control #2: <i>"Excavation, drilling and other intrusive activities below a depth of three feet are</i>	See Common Concern Statement 1 and the responses to Comments 2 and 7.

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	<p><i>prohibited, except for remedy-related purposes and routine or emergency maintenance of existing utility easements, in accordance with pre-approved procedures." The CAD/ROD states "These controls will extend throughout the Central OU" and "will run with the Property in perpetuity and be binding on DOE and all parties having any right, title or interest in the Property. "</i></p>	
88	<p>To reinforce our position regarding the issue, the following statements paraphrase portions of a memo from Daniel S. Miller (First Assistant Attorney General -Colorado) to Ken Salazar (Attorney General - Colorado) on April 10, 2002 regarding a legal analysis of the federal government's obligation to comply with Colorado's environmental covenant law:</p> <p>Colorado Senate Bill 01-145 (SB 145) took effect on July 1, 2001 creating a statutory "environmental covenant" as a mechanism for enforcing use restrictions imposed in connection with remediation of contaminated sites. Use restrictions are imposed or relied upon in an environmental remedial decision to protect human health and the environment.</p> <p>Institutional controls are required when cleanup levels are set based on land use restrictions being in place. This typically occurs when the party responsible for the cleanup wants to reduce its cleanup costs.</p> <p>In the event of an actual or threatened violation of an environmental covenant, the Department (CDPHE) may issue an administrative order requiring compliance with the terms of the covenant, or may ask the attorney general to file suit for appropriate injunctive relief.</p> <p>SB 145 also allows other entities that have an interest in ensuring the covenant is not violated to sue for appropriate</p>	Comment noted.

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	injunctive relief.	
89	<p>Westminster acknowledges the provision in the CAD/ROD allowing DOE to propose land use changes to CDPHE and EPA with 45 days advance notice. CDPHE and EPA may approve the proposed changes by formal amendment to the CAD/ROD. An amendment to the CAD/ROD may result in opening the CAD/ROD for public comment. The resolution of this issue and the subsequent impact on the RFLMA cannot be assumed or predicted.</p> <p>Westminster contends that the current monitoring locations adequately evaluate remedy performance.</p>	<p>See Common Concern Statement 1 and the responses to Comments 2 and 3.</p> <p>The RFLMA Parties are not proposing any land use changes or changes to the remedy institutional controls. The RFLMA Parties have determined the Proposed 2010 RFLMA Modifications and the approved changes to RFLMA monitoring locations do not significantly change or fundamentally alter the remedy selected with respect to scope, performance, or cost, and therefore do not require an amendment to the CAD/ROD. (See CERCLA implementing regulations, 40 <i>Code of Federal Regulations</i> 300.435, “Remedial Design/Remedial Action, Operation and Maintenance.”)</p> <p>The RFLMA Parties did determine that the Proposed 2010 RFLMA Modifications entailed changes to certain activities DOE must perform as requirements of RFLMA (i.e., operating, maintaining, sampling, and evaluating results for RFLMA monitoring locations) that were subject to public review and comment, under RFLMA paragraph 66.</p>
90	<p>In the event the terminal ponds are operated in a flow through condition, Westminster insists the sampling locations in each terminal pond must be retained for predischarge sampling if the dam valves were closed due to concerns regarding release of contaminants off the COU. The ability to close the dam valves is a protective measure advocated by the downstream communities in the case of an unforeseeable event. The specific circumstances requiring terminal pond sampling can be determined during discussions with the RFLMA parties and the downstream communities.</p>	<p>See Common Concern Statement 5.</p> <p>See the response to Comment 35 concerning flow-through operations, monitoring, and evaluation.</p> <p>Additionally, to clarify the procedures at the RFS, predischarge sampling in the current ponds is conducted via a grab sample, and not through a designated well or monitoring station. The sampling locations in the terminal ponds are determined by the level of water in each pond, and therefore there is no set sampling location. If the dams are operated in a flow-through configuration, and the valves were closed for any purpose, the level of the water remaining or accumulating in the dams would dictate any sampling location.</p>

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91	<p>Compliance with surface water standards is based on the Colorado Water Quality Control Commission ("WQCC") regulations. Westminster contends that DOE's protocols for evaluating compliance with the RFLMA Table 1 standards at POCs do not adhere to current WQCC regulations for the following analytes:</p> <p>Segment 5 - uranium and nitrate Segments 4a and 4b - plutonium, americium, uranium and nitrate</p>	See the response to Comment 47.
92	<p>The WQCC Regulation #38 allows for use of the 12-month flow-weighted rolling average concentration (computed monthly) <u>only</u> for Segment 5 and <u>only</u> for plutonium and americium. Westminster requests clarification on DOE's rationale regarding the application of the current RFLMA protocols for evaluating compliance with surface water standards at the Site.</p>	See Common Concern Statement 7 and the responses to Comments 5 and 47.
93	<p>Revise Table 1 to remove all references to the expired Temporary Modifications. All associated language in the RFLMA text should be removed.</p>	See the response to Comment 28.
94	<p>Westminster strongly opposes the proposed plan to relocate the Points of Compliance. We appreciate the efforts of the RFLMA Parties to dialogue about the issues in an attempt to resolve concerns and clarify information and positions. DOE and CDPHE have committed to a water working group to further explore Site issues with the downstream communities. We fully support this effort and intend to actively participate.</p>	See Common Concern Statement 3 and the response to Comment 12.

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City of Northglenn, Joyce Downing, Mayor, letter dated October 19, 2010		
95	Northglenn requests that the RFLMA parties (DOE, EPA, and CDPHE) withdraw the proposal due to unresolved issues associated with the rationale for the proposal as outlined in this letter. Furthermore, Northglenn requests that a committee comprised of asset holders and RFLMA parties be formed to resolve issues related to water quality. Baring these outcomes, the City's comments are outlined below.	See Common Concern Statement 3 and the response to Comment 12.
96	It is Northglenn's belief that the construction of the new Point of Compliance monitoring stations in the Woman Creek and Walnut Creek drainages may be in violation of Institutional Control #2 which prohibits excavation below three feet for purposes that are not remedy-related. Any proposal to modify the institutional controls would require amending the Corrective Action Record/Record of Decision (CAD/ROD), the Environmental Covenant ("EC") and the RFLMA. Amendments to the CAD/ROD, similarly to the RFLMA, are a public process. The Colorado Department of Public Health and Environment ("CDPHE") has approved Contact Records 2010-02 (dam breach) and 2010-04 (revision of monitoring points); each with provisions requiring excavation below three feet for purposes that are not remedy-related. The Department is urged to rescind approval of the aforementioned contact records.	See Common Concern Statement 1 and the responses to Comments 2 and 3.
97	At the time of writing, the final decision on the Environmental Assessment (EA) for dam breaching has not been issued. As a result, public comment on the EA has not been addressed. The two documents (RFLMA and EA) are related, answers to EA questions have a bearing on the proposed RFLMA changes. The disconnect between the two documents, creates a concern for Northglenn that some of our comments submitted in this letter may not be applicable. Furthermore, Northglenn is concerned that the RFLMA Attachment 2 Modifications,	See Common Concern Statement 5 and the responses to Comments 7 and 35.

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	presupposes the breaching of the dams. Case in point, pre-discharge pond sampling has been eliminated in the RFLMA Attachment 2 Modification document, yet the determination to breach the dams has not been made.	
98	Northglenn has previously expressed concern over the lack of a contingency plan in our comment letter related to the dam breaching EA; those concerns will not be reiterated in this letter. Northglenn does however, disagree with the statement made by the regulators at the August 10, 2010 public meeting, that sensitive water quality standards at the POC's, up gradient and down gradient water quality sampling, the Standley Lake Protection Project facilities and replacement of Broomfield's drinking water source are considered a contingency plan.	See Common Concern Statement 8.
99	The existing points of compliance (POC), GS-01 and GS-03, both at Indiana Street, have a long and rigorous water quality record. Historically, these POC's have been used to confirm that all relevant water quality standards are being met. The DOE's proposal is to move these points of compliance approximately three quarters of a mile upstream to the Central Operable Unit boundary, abandon the Indiana Street Points of Compliance, and construct new points of compliance on DOE retained land. The regulatory justification for moving the POC's to the Central Operable Unit is not given. Before abandoning a long and rigorous water quality record for a new, untried location, Northglenn requests that the DOE supply a copy of the document directing them to locate monitoring sites on DOE retained land. Maintaining the points of compliance at their current locations provides our citizens with assurances that water leaving the former Rocky Flats Site meets relevant water quality standards.	See Common Concern Statements 2 and 4 and the response to Comment 8.

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100	<p>Groundwater use designation for the Site is surface water protection. Currently, groundwater samples are filtered (Site Operations Guide, Doc. No. S03037-2.0). Regulation 41, Radioactive Materials Standards Table, footnote 2 states: Radionuclide samples for these materials should be analyzed using unfiltered (total) samples. The footnote refers to Americium and Plutonium 239/240, identified in the table. The City requests that this apparent disconnect be addressed <i>prior to adopting any changes to the RFLMA, Attachment 2.</i></p>	<p>The RFLMA Parties agree that the cited regulation specifies unfiltered samples. However, RFLMA Attachment 2, Table 2, “Water Monitoring Locations and Sampling Criteria,” footnote * provides, “Samples of ground water collected for plutonium and americium analysis will be filtered in the field using a 0.45 µm in-line filter.” Colorado WQCC Regulation 41 (and Regulation 31) recognizes CDPHE and EPA authority to approve criteria that may be different than that adopted by the Commission.</p> <p>Section 41.5, Section C (5) (a)a. provides, “ Nothing in this regulation shall be interpreted to preclude: a. An agency responsible for implementation of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601, et seq., as amended, from selecting a remedial action and a point of compliance that are more or less stringent than would be achieved by compliance with the statewide numerical standards established in this subsection, or alternative site-specific standards adopted by the Commission, where a determination is made that such a variation is authorized pursuant to the applicable provisions of CERCLA”.</p> <p>The technical reason the analysis of filtered samples for groundwater is used is that these contaminants migrate in groundwater when dissolved. The dissolved data provides a better indication of actual groundwater contaminant migration potential that may impact surface water. Also, low levels of residual surface soil contamination could be a source of cross-contamination in the well introduced during the sampling process. This was observed at locations monitored for plutonium and americium north of former Building 771, and it was shown in samples collected in 2005 that filtering the sample eliminates the potential for erroneous conclusions based on nonrepresentative data.</p> <p>While no change was proposed for the RFLMA Attachment 2, Table 2,</p>

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		<p>footnote * in the Proposed 2010 RFLMA Modifications, the RFLMA Parties have determined that uranium needs to be added to the footnote to document approval of filtered samples for the same technical reason discussed above. The approved modification includes uranium in footnote *.</p>
101	<p>Page iii</p> <ul style="list-style-type: none"> • Modification to Section 5 - It is unclear, in this table or in the figures located at the end of the document, whether the new POC's will have the full enforceability as GS-01 and GS-03. • Modification to Figure 1, Water Monitoring Locations deleting PLFPONDEFF and replacing with NNGS01 will allow for volatilization and potential dilution to occur between the treatment facility and the new sampling location. This is not a true measure of how well the treatment facility is working nor is it protective of the environment. • Modification to Figure 5 - Northglenn requests DOE provide documentation from the Water Quality Control Regulations that allows using the 85% in setting a nitrate standard. Multiple groundwater treatment facilities exist on site. The Site's groundwater use classification is surface water protection. Given this, why isn't the nitrate standard measured at the treatment plant outfall(s)? This would be an excellent way to determine how well the treatment plant is operating and support the use designation. 	<p>Bullet 1: Yes, the new POCs are subject to full enforceability.</p> <p>Bullet 2: NNG01 will essentially fulfill the same monitoring objective as the NPFPONDEFF, as both locations will monitor the effluent from the PLF Pond. Sampling at NNG01 will still be triggered based on results at the PLFSYSEFF location and according to the current RFLMA protocols.</p> <p>Bullet 3: Nitrate is measured at the Solar Ponds Plume Treatment System (SPPTS) effluent location, SPOUT. Evaluation of treatment system effluent is done in accordance with RFLMA Attachment 2, Figure 11, and monitoring locations and analytes have not changed for the SPPTS in the approved modification.</p> <p>The application of the 85th percentile of the data is consistent with the Colorado WQCC Regulation 31, "The Basic Standards and Methodologies for Surface Water," in determining existing water quality for several analytes, including nitrate. See Colorado WQCC Regulation 31, Section 31.5 (20).</p>
102	<p>Page 3, Sec 5.0</p> <p>Northglenn requests to be notified of changes in sampling protocols, methodology, and documents related to water quality monitoring as these documents have bearing on statistical interpretation of the data.</p>	<p>The RFLMA Parties will continue to inform downstream communities and the public in accordance with the RFLMA Public Involvement Plan regarding any proposed changes to RFLMA monitoring protocols</p>

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103	<p>Page 4, Sec 5.1 Provide ARAR documentation supporting the justification for moving the POC's to the COU boundary.</p>	<p>See the response to Common Concern Statement, and Comment 4.</p>
104	<p>Page 6, Sec 5.4.1 Northglenn disagrees with eliminating the Boundary Wells located at Indiana Street. These wells, with their corresponding surface water POC's, are the last data collection point before water leaves the historic Rocky Flats boundary. This is an important sampling site to our citizens and to the Woman Creek Reservoir Authority. Northglenn recognizes that the wells are located in a transportation right of way and that it might be necessary to move or remove these wells in the future. Until that time, the required once a year monitoring hardly seems a hardship.</p>	<p>See the response to Comment 34.</p>
105	<p>Page 30, Figure 5 Are the calculated value and compliance value equivalent in their regulatory meaning. If they are equivalent, for clarity of record and legacy documentation, Northglenn requests language in the RFLMA to this effect. Please cite the WQCC Regulation allowing the setting of a nitrate standard at 85%.</p>	<p>See the response to Comment 101 to address the 85% nitrate standard.</p> <p>The calculated value is the 85th percentile of the averages for nitrate. The change from "Compliance Value" was made because this term is not defined in RFLMA and the RFLMA Parties determined that the use of calculated value was clearer. Compliance with the RFLMA standard specified in RFLMA Attachment 2, Figure 5, is determined using the calculated value.</p>
106	<p>Page 32, Figure 7 Northglenn objects to the deletion of the Boundary Wells. The DOE performs groundwater flow calculations to estimate movement of pollutant plumes. Northglenn requests the DOE consider our recommendation (detailed in the next sentence) rather than discontinuing monitoring if the two most recent sampling results do not exceed the standard. Northglenn requests that the DOE use flow calculations to determine when the pollutant might reach the well. If the pollutant plume is not measured within the modeled/estimated time, then the flow</p>	<p>No changes were proposed for AOC or Sentinel wells and none are included in the approved modifications. The RFLMA Parties will continue to inform downstream communities and the public in accordance with the RFLMA Public Involvement Plan regarding any proposed changes to RFLMA monitoring locations.</p> <p>The flowchart would allow AOC well monitoring to be discontinued if monitoring is no longer required at up gradient (Evaluation and Sentinel) wells. This comment appears to agree with the decision logic in RFLMA Attachment 2, Figure 7. Note also that whether monitoring</p>

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	<p>chart would serve as the determinant as to whether sampling should be discontinued. It is Northglenn's understanding that the well monitoring program (Evaluation, Sentinel, & Area of Concern Wells) is designed to work in a series, from the source (Evaluation wells) to "early warning" (Sentinel wells) and finally, the Area of Concern Wells serving as the last point where groundwater is tested prior to day lighting as surface water. If this understanding is correct, and given that site hydrology is moving from surface to groundwater, changes in location, monitoring frequency or constituents, to AOC and Sentinel wells has the potential to impact surface water. Northglenn also requests to be notified of any proposed changes to AOC and Sentinel wells.</p>	<p>may be discontinued is not automatic, but is the subject of RFLMA Parties consultation.</p>
107	<p>Page 33, Figure 8 Two criteria are used to determine whether to discontinue monitoring. Our comments/questions are related to these criteria. Northglenn requests clarification as to the rationale for setting the uranium standard at 240 ug/L or pre-CY05 whichever is higher. Northglenn requests clarification as to the rationale for allowing an indeterminate trend at the 95% confidence level as a monitoring "out". We request clarification on the minimum number of years and sample size DOE uses for trending.</p>	<p>No changes were proposed for Sentinel wells and none are included in the approved modifications.</p> <p>This comment contains three separate parts, the details of which are addressed individually below. The point each part of this comment has in common is that the decisions referenced by the comment were discussed and finalized through numerous preclosure meetings and consultations with the RFLMA regulators and stakeholders as a part of Water Working Group efforts to develop the final 2005 versions of the RFCA-era Integrated Monitoring Plans (IMPs) and evaluation of groundwater conditions. Having thus demonstrated their utility and RFLMA regulator and community acceptance, these final approaches were incorporated into the RFLMA.</p> <p>1. The uranium threshold (not standard) is based on the results of high-resolution isotopic analysis of uranium from wells across the Site, and it is intended to highlight a distinction between normal and off-normal conditions. As is widely demonstrated by water quality data, groundwater in many regions of Colorado, including the Rocky Flats area, has elevated levels of natural uranium; it is therefore important to</p>

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		<p>be able to easily and cost-effectively differentiate between high natural uranium and concentrations of uranium that may be related to contamination from former operations. The reference to pre-2005 data has the same objective. For additional background, see the 2005 IMP Background Document, Rev. 1 (September, 2005).</p> <p>2. A statistically-significant indeterminate trend signals neither increasing nor decreasing concentrations, and at Rocky Flats is often (though not always) due to a prevalence of nondetects in the data. An analyte that is typically not detected is suitable for elimination from the analytical suite, assuming the detection limit is appropriate. However, it should be stressed that the reference to a “monitoring ‘out’” is not entirely accurate, as proposals to modify or discontinue monitoring still must meet the scrutiny and approval of the regulators via the consultative process. Simply identifying an indeterminate trend, in and of itself, does not allow the DOE to decide to exit the corresponding monitoring.</p> <p>3. The minimum number of years and the sample size used for trending is based on statistical requirements. Recommendations regarding how many data points are required vary in the published literature. The minimum size of a data set for some trending methods is four data points per season, implying at least four years of data be available before trend analysis can be attempted. Based on technical recommendations for statistical trending of groundwater data at the Site, a minimum of eight regularly scheduled, routine sampling events defined by the RFLMA monitoring frequencies specified in Attachment 2 are required. This prevents misuse of the statistical test, for example by merely collecting samples as quickly as possible and using the resulting data to evaluate concentration trends. Instead, the normal monitoring schedule (e.g., quarterly, semiannual, biennial) must be followed to compile the required samples. By reducing uncertainty in this manner, any trend identified through the statistical test is more likely to be representative of actual conditions.</p>

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108	Page 34, Figure 9 Same questions as Figure 8 on the criteria.	See the response to Comment 107. No changes were proposed for Evaluation wells and none are included in the approved modifications.
109	Page 35, Figure 10 Northglenn requests to be notified of proposed changes to RCRA wells.	No changes were proposed for RCRA wells and none are included in the approved modifications.
110	Northglen Requests: DOE withdraw the proposed modifications to the RFLMA Attachment 2 and maintain the document in the current state.	Comment noted.
111	Northglen Requests: DOE withdraw the dam breaching EA and CDPHE rescind the contact record related to breaching terminal dams until such time as the inconsistencies between the RFLMA and the EA can be worked out.	Comment noted. See the response to Comment 7.
112	Northglen Requests: The formation of a working group composed of downstream communities, USFWS, and the regulators for the purpose of discussing and reaching agreements on water quality issues.	See Common Concern Statement 3 and the response to Comment 12.
113	Failing complete withdrawal of the proposed RFLMA Attachment 2 Modification, Northglenn requests written responses to our questions and concerns. The City supports the positions taken, and the comments provided, by the affected downstream communities.	This table constitutes the response to each individual comment. Additionally, where applicable, common concern statements have been prepared and responses to these comments are also being supplied with this table.
Jefferson County Public Health, Mark B. Johnson, JD, MPH, Executive Director, letter dated August 10, 2010, and letter dated October 12, 2010		
114	We are requesting a written response to our letter dated August 10, 2010, and reiterated in this October 12, 2010 letter.	This table constitutes the response to each comment. Additionally, where applicable, common concern statements have been prepared and responses to these comments are also being supplied with this table.
115	(From the August 10 letter) At this time we feel that the removal of these features if premature. ...we are of the opinion that a sound public health case for the removal of these	See Common Concern Statement 5 and the response to Comment 55.

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	features has not been made. While not part of the final remedy, it is our understanding that these features serve in some manner to protect human health and the environment of the communities located downstream of Rocky Flats.	
116	(From the August 10 letter) Until the DOE-LM can clearly demonstrate with a long term record of compliance that they can consistently meet the performance standards set for the off-site migration of the contaminants of concern, we request that the terminal ponds A-4, B-5, C-2, and the present Landfill Pond be retained and that the existing point of compliance and enforcements standards be maintained.	See Common Concern Statements 2 and 6.
117	(From the August 10 letter) We request that the terminal dams be safely operated and maintained in a manner that protects the downstream communities.	See Common Concern Statement 1. All the remaining Site dams are maintained and inspected in accordance with the applicable regulations for dam safety promulgated by the Colorado State Engineer.
118	(From the August 10 letter) We request that DOE-LM adhere to the conditions set forth in the Environmental Covenants dated December 4, 2006, held by the Colorado Department of Public Health and Environment for this property concerning excavation below the 3-feet criteria for the proposed activities. (from the October 12 letter) Jefferson County Public Health asks that CDPHE rescind the two Contact Records that address breaching the dams and constructing monitoring stations.	See Common Concern Statement 1 and the responses to Comments 2 and 3.
119	(From the October 12 letter) We request that CDPHE refrain from approving any further requests by DOE-LM for any excavations not related to the remedy for depths greater than 3 feet.	See Common Concern Statement 1 and the responses to Comments 2 and 3.