

Raynes, Scott

From: Nims, Josh [jnims@CityofWestminster.us]
Sent: Tuesday, October 12, 2010 3:15 PM
To: Plieness, Ray; RFIInfo; Martha Rudolph
Cc: Smith, Mike; 'Lanyon, Edward'; 'Shelley Stanley'; 'David Abelson'; 'David Allen'; 'dwillett@northglenn.org'; 'bud.elliott@cityofthornton.net'; 'carl.spreng@state.co.us'; Surovchak, Scott; 'moritz.vera@epa.gov'; 'SGarcia@ci.broomfield.co.us'
Subject: Woman Creek Reservoir Authority: RFLMA Comment Letter
Attachments: Final RFLMA Comment Letter 2010-10-12.pdf; SLPP Operations Agreement.pdf

To Whom It May Concern:

Attached is a letter from the Woman Creek Reservoir Authority to provide comment on CR 2010-04, RFLMA Attachment 2 Modifications. Thank-you,

Josh Nims
President of the Board
Woman Creek Reservoir Authority



Woman Creek Reservoir Authority

*4800 W. 92nd Avenue
Westminster, Colorado 80031
Phone (303) 658-2180
FAX (303) 706-3927*

October 12, 2010

Via Email and U.S. Mail

RFLMA Attachment 2 Modification Comments
United States Department of Energy
11025 Dover Street
Suite 1000
Westminster, Colorado 80021

Re: Comments on CR 2010-04, RFLMA Attachment 2 Modification

To Whom It May Concern:

I am writing on behalf of the Woman Creek Reservoir Authority (the "Authority" or "WCRA"), a political subdivision and public corporation of the State of Colorado created under C.R.S. § 29-1-204.2. The Authority's membership consists of the Cities of Northglenn, Thornton and Westminster, each of which utilizes Standley Lake as a source of municipal drinking water supply. The Authority is the owner and operator of Woman Creek Reservoir, generally located at the intersection of Woman Creek and Indiana Street, immediately adjacent to the historical boundaries of what has been formerly known as the Rocky Flats Plant Buffer Zone. Woman Creek Reservoir is a component of the Standley Lake Protection Project, a federally funded project designed to provide an extra layer of protection to the downstream municipal drinking water supplies in Standley Lake from upstream activities at the Rocky Flats Plant site.

Woman Creek Reservoir operations contemplate the diversion of all Woman Creek flows into the reservoir, and the subsequent release of water to the Walnut Creek basin, near Great Western Reservoir, thereby severing the hydrologic connection between Woman Creek and Standley Lake. Water released from Woman Creek Reservoir then combines with the native flows in Walnut Creek and flows through portions of the communities of Broomfield and Westminster before reaching Big Dry Creek, which, in turn, flows through portions of Northglenn and Thornton until it reaches the South Platte River.

Upon completion of construction of Woman Creek Reservoir in 1996, the Authority entered into an Operations Agreement with the Department of Energy, ("DOE"), to clarify DOE's responsibility for dealing with any contaminated Woman Creek flows that might reach the Authority's reservoir. A copy of the Operations Agreement is attached.

I am writing to provide comments on the CR 2010-04, RFLMA Attachment 2 Modification proposal as described in the "Proposed Modification to Monitoring Locations at the Rocky Flats Site", released on July 20, 2010. The following comments are submitted on behalf of the Authority:

1. 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.

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.

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 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.¹ 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.

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

¹ The land related to the former Rocky Flats Plant was made up of two components: the Industrial area that is now known as the Central Operable Unit ("COU") and the buffer zone lands surrounding the COU. On information and belief, this entire property interest (both the COU and the buffer zone lands) is held in the name of the United States government. Presently, DOE maintains jurisdiction over the COU lands and the USF&W Service maintains jurisdiction over the buffer zone lands. In either instance, however, the federal government remains the underlying landowner of the entire property, not DOE or USF&W Service.

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.²

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 all flows leaving the former Rocky Flats site comply with the relevant water quality standards, since all 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.

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 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.

2. 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.

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 to the EA and maintains its strong preference for a "no action" decision. In an EA comment letter submitted prior to the RFLMA

² 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.

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.

3. At an absolute minimum, monitoring must continue under RFLMA at Indiana Street, even as a point of evaluation rather than a point of compliance.

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 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 under RFLMA and would ensure that surface water flows leaving federal lands and coming into Authority controlled facilities meet relevant standards. By requiring this monitoring under RFLMA, 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.

Summary of Authority Positions

- The Authority encourages DOE and the regulators to withdraw the proposed amendments to the RFLMA and maintain the document in the current state.
- 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.
- 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 under RFLMA, be maintained at the current Indiana Street Point of Compliance location indefinitely, or at a minimum, until the Central Operable Unit is removed from the National Priority List.

- The Authority further requests that DOE acknowledge, in writing, that the proposed changes to the RFLMA do not 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.

- 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:

- 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, and in the Peripheral OU downstream on Woman Creek at GS-01, where Woman Creek flows leave federally controlled lands. These locations are used to demonstrate compliance with the surface-water standards in Table 1, 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 Operations Agreement is mutually amended to incorporate the relocated Woman Creek point of compliance."

- 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.

- Re-insertion of the entirety of the Boundary Wells language in paragraph 5.4.1, and conforming references throughout the document.

- 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.

- The Authority supports the positions taken, and the comments provided, by the effected downstream communities to the proposed RFLMA modifications.

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 Compliance (GS-01) on Woman Creek, consistent with the bullet points set forth above.

Thank you for the opportunity to comment on the proposed revisions to the RFLMA.

Sincerely,



Josh Nims
President
Woman Creek Reservoir Authority

cc via email: Shelley Stanley, Woman Creek Reservoir Authority Board
Ed Lanyon, Woman Creek Reservoir Authority Board
David Willett, City of Northglenn
Bud Elliot, City of Thornton
Mike Smith, City of Westminster
Shirley Garcia, City and County of Broomfield
David Allen, City and County of Broomfield
Martha Rudolph, Esq., Colorado Department of Public Health and Environment
Carl Spreng, Colorado Department of Public Health and Environment
Vera Moritz, Environmental Protection Agency
Ray Plienus, Legacy Management
Scott Surovchak, Legacy Management
Rocky Flats Stewardship Council

252

STANDLEY LAKE PROTECTION PROJECT
OPERATIONS AGREEMENT

THIS AGREEMENT is entered into effective this 21st day of August, 1996, between the Woman Creek Reservoir Authority (the "Authority"), a water authority, a body corporate and politic, a separate governmental entity, a political subdivision and a public corporation of the State of Colorado, pursuant to Section 18(2)(a) and (2)(b) of Article XIV, Constitution of the State of Colorado, and to § 29-1-204.2, Colorado Revised Statutes, as amended (the "Act") and the United States Department of Energy ("DOE").

1.0 Introduction

The Rocky Flats Environmental Technology Site ("RFETS" or "Site") is a federal government-owned, contractor-operated facility under the administrative control of the U.S. Department of Energy (DOE). The facility is located in Jefferson County, Colorado and is approximately ten (10) miles north of Golden, Colorado. The description of the RFETS is provided in Exhibit A.

Standley Lake is a storage reservoir which lies within the Woman Creek watershed and serves as the drinking water supply for approximately 200,000 people in Jefferson County, Colorado. The Cities of Westminster, Thornton and Northglenn (the "Standley Lake Cities") derive a portion of their water supplies from Standley Lake. Woman Creek flows through the RFETS Buffer Zone prior to reaching Standley Lake. Portions of the land surrounding Standley Lake, as a result of the accidental releases from the RFETS in the 1950's and 1960's, may contain low-level deposits of radionuclides.

The United States Congress authorized the DOE to use certain amounts of environmental restoration and waste management funds to reimburse the Standley Lake Cities for the cost of implementing water management programs. The Standley Lake Cities have determined to use these funds for the Standley Lake Protection Project (SLPP). The SLPP is designed to physically prevent Woman Creek flows passing through the RFETS from reaching Standley Lake, a municipal raw water supply for the Standley Lake Cities.

Funded by a DOE grant, the SLPP consists of Woman Creek Reservoir and Pipeline (WCR), the Standley Lake Wetlands Project, and the Kinnear Ditch Pipeline Project, facilities that will physically isolate Standley Lake from Woman Creek, which currently conveys flows from the RFETS into Standley Lake. The funds furnished from the DOE (e.g., DOE Grant No. DE-FG-34-91RF00116) have been used to construct the SLPP. The Standley Lake Cities have entered into a separate Intergovernmental Agreement with the Authority, whereby in consideration of a one-time lump sum payment of \$8.147 million, from the Standley Lake Cities to the Authority, the Authority agrees to own and operate the WCR and associated facilities consistent with the terms of this agreement. DOE agrees

that the payment of the \$8.147 million one-time lump sum payment by the Standley Lake Cities to the Authority constitutes a disbursement and qualifies as a reimbursable expense under the terms of the Grant.

The Authority, in connection with the implementation of the SLPP, will purchase a portion of the land surrounding Standley Lake (the "SLPP Lands"). The description of the SLPP Lands is included in Exhibit B. This surrounding land may have been subject to contamination from past airborne dispersal of radionuclides from the RFETS.

The undersigned parties enter this Agreement for the purpose of defining a common understanding for operational responsibilities for the Standley Lake Protection Project (SLPP). This Agreement facilitates the operation of the SLPP and each party acknowledges that it has the authority to enter into this Agreement.

2.0 Collection and Containment of Water in Woman Creek Reservoir

The Authority envisions two operational scenarios for WCR: 1) normal operation (i.e., compliance with standards) and 2) event operation. Decisions to retain or release water are the sole responsibility of the Authority, in coordination with the Colorado Water Quality Control Division of the Colorado Department of Public Health and Environment ("CDPHE").

2.1 Normal Operation

1. The natural flows from Woman Creek will be diverted and collected in one of the three compartments in WCR. The compartments will have capacities of approximately 100 ac-ft each. To the extent possible, water will be stored in a different compartment in Woman Creek Reservoir every 90 days. The 90 day time frame is a goal and may vary slightly depending on Woman Creek flow and sampling frequency at the Indiana Street Point of Compliance.
2. Pursuant to the Rocky Flats Cleanup Agreement ("RFCA"), testing of flows in Woman Creek will occur at the Indiana Street Point of Compliance as that term is defined in the RFCA.
3. If, pursuant to the terms of the RFCA, DOE has been in compliance with the relevant standards at the Indiana Street Point of Compliance, the Authority may release any resulting water stored in Woman Creek Reservoir during the previous 90 day storage period without further testing or regulatory requirements.

2.2 Event Operation

1. If, pursuant to the terms of the RFCA, DOE is not in compliance with the relevant standards at the Indiana Street Point of Compliance the Authority may retain in isolation any water stored in Woman Creek Reservoir during the previous 90 days and may decide to release the water after any actions taken pursuant to a mitigation plan under RFCA are completed. DOE will notify the Authority within 3 days of receiving test results indicating that it is not in compliance with the relevant standards under the RFCA at the Indiana Street Point of Compliance.
2. Water stored in Woman Creek Reservoir that exceeds the standards at the Indiana Street Point of Compliance may need to be treated, or otherwise managed prior to release to the Walnut Creek Basin. Any such treatment or management will be undertaken pursuant to a mitigation plan under RFCA. Upon completion of any treatment requirements under the mitigation plan, the Authority may decide to release the water to the Walnut Creek Basin.
3. In no event will the Authority be held responsible for any activity required under the RFCA, (including but not limited to any testing, treating or disposition of water in Woman Creek Reservoir), resulting from an exceedance of the relevant standards at the Indiana Street Point of Compliance. To the extent any action is required under RFCA for an exceedance at the Indiana Street Point of Compliance, DOE, and not the Authority, will be solely responsible for carrying out any such required action.

3.0 DOE's CERCLA Responsibility

1. CERCLA serves as a legal and jurisdictional basis for and the scope of DOE's responsibility for the accidental releases which may have resulted in the deposition of radioactive materials on the SLPP lands.
2. Section 120(a)(2) of CERCLA, provides that all guidelines, rules, regulations, criteria for preliminary assessments, site investigations, and remedial actions are applicable to federal facilities to the same extent as they are applicable to non-federal facilities. The RFETS and a portion of the surrounding land, pursuant to the CERCLA, were placed on the NPL by the EPA in 1989.
3. The RFETS and the DOE are subject to the regulatory and legal requirements of CERCLA. Accordingly, preliminary assessments, site investigations, remedial actions, and emergency actions conducted at the

RFETS and the surrounding lands are done so under the authority of the RFCA with the DOE, the EPA, and the CDPHE. Moreover, the enforcement of CERCLA-related activities at the RFETS is done so under the authority of the RFCA.

3.1 Assurances of DOE's Continuing Responsibility

1. The DOE recognizes that:
 - (a) DOE is a Potentially Responsible Person (PRP) within the meaning of section 107(a) of CERCLA;
 - (b) DOE may be liable as a PRP for response costs associated with the cleanup of the RFETS and the SLPP Lands and that such costs may include, but not be limited to any preliminary assessments, site investigations, and remedial actions performed pursuant to the RFCA or any subsequent Cleanup Agreement entered into by DOE, EPA and CDPHE; and
 - (c) DOE may, to the extent required by CERCLA, and to the extent past radionuclide contamination is attributable to releases from the RFETS, be liable for response costs associated with the cleanup of the SLPP Lands.

2. The DOE agrees with the Authority that:
 - (a) Cleanup, decontamination, and restoration activities will be conducted properly and safely in accordance with the RFCA or any subsequent Cleanup Agreement entered into by DOE, EPA and CDPHE;
 - (b) All waste materials and special nuclear materials will be managed in accordance with applicable law so as to reduce or eliminate risks to the environment and public health and safety;
 - (c) DOE will take all necessary steps within the limits of federal law to satisfy any obligation or liability arising from its status as a PRP, and acknowledges that assumption of title to the SLPP is a potential component of remedial options;
 - (d) DOE will assume all costs for cleanup or other remedial actions required under CERCLA for past radionuclide contamination or any

other hazardous contaminate that is attributable to releases from the site;

- (e) If appropriated funds are not available to fulfill its obligations or liabilities as a PRP, DOE will use its best efforts to obtain timely funding to meet such obligations or liabilities; however, nothing herein shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

3. DOE recognizes its continuing responsibilities under existing environmental statutes to prevent and remediate contamination from RFETS. If the grant funds are exhausted from uses specified in this Agreement and radioactive and/or hazardous materials remain at the RFETS, DOE or its successor agrees to consult with the Authority regarding whether continued operation of the project is in the best interest of the government. If the parties agree that continued operation is necessary, DOE will use its best efforts, within the limits of federal law, to ensure continued operation of the SLPP. Best efforts may include under appropriate circumstances as determined by DOE (in consultation with the Authority) the following:

- (a) forthwith acceptance of ownership of the SLPP Lands and all operation and maintenance obligations set forth in this Agreement; or
- (b) assumption of all SLPP operation and maintenance obligations set forth in this Agreement; or
- (c) commitment to pay for all operation and maintenance obligations set forth in this Agreement or to reimburse the Authority or its successor for all such costs; or
- (d) commitment to pay a third party for all future operation and maintenance obligations set forth in this Agreement; or
- (e) any other negotiated resolution or settlement between the Authority and DOE; and/or
- (f) obtaining funding necessary to achieve the continued operation and maintenance of the SLPP.

Notwithstanding the examples of "best efforts" outlined above, nothing herein shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341.

4.0 Performance Provisions

1. The undersigned parties hereby agree to abide by the terms and conditions of this Operations Agreement.

2. The undersigned parties expressly reserve any and all rights which may exist under any federal or state law, including, but not limited to any and all rights associated with any past and/or future contamination events at any component of the Standley Lake Protection Project.

5.0 General Provisions

1. The terms and obligations outlined in this agreement shall be binding within the limits of applicable law on the undersigned parties, their assigns, transferees, successor and any subsequent purchasers of any portion of the RFETS and/or WCR.

2. Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any circumstance, shall not affect the validity of the remainder of this Agreement.

3. This Agreement may not be amended or modified except by an amendment in writing signed by all of the Parties.

4. It is the understanding and intent of the undersigned parties that DOE (and not the Authority or the Standley Lake Cities) will be solely responsible for any action required under RFCA as a result of an exceedance of the relevant standards at the Indiana Street Point of Compliance under the RFCA. To the extent that RFCA is ever amended, superseded or replaced by a subsequent interagency agreement or record of decision under CERCLA, DOE agrees to work with the Authority to ensure that DOE (and not the Authority or the Standley Lake Cities) remains solely responsible for ensuring protective water quality levels at the Indiana Street Point of Compliance.

5. Notwithstanding the terms of the RFCA, DOE agrees to use its best efforts to timely and adequately address any exceedances of water quality standards arising at Woman Creek Reservoir that result from activities at the RFETS.

6. The waiver of any breach of any of the provisions of this Agreement by any of the Parties shall not constitute a continuing waiver or a waiver of any subsequent breach by said Party either of the same or of another provision of this Agreement.

7. This Agreement shall terminate when the Parties unanimously agree in writing to termination. Absent mutual agreement of the Parties to terminate the Agreement, this Agreement shall terminate automatically upon either 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, whichever occurs later. Nothing in this Agreement shall be construed to restrict the Standley Lake Cities or the Authority from taking any action to ensure the continued viability of the SLPP and the WCR, such as seeking federal funds to continue operation.

8. The effective date of this Agreement shall be the date on which the last party signs this Agreement. The undersigned verify that they have the authority to enter into this Agreement.

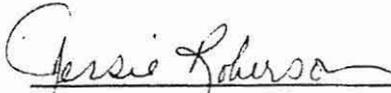
9. The parties hereto understand and agree that the Authority, and its officers and employees, are relying on, and do not waive or intend to waive, by an provision of this agreement, any right, immunity, or protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as it is from time to time amended, or otherwise available to the Authority, its officers, or employees.

10. Any notices required to be given in writing by a party to the others pursuant to this Agreement shall be deposited in the United States mail, first class postage prepaid, return receipt requested, addressed as follows:

Woman Creek Reservoir Authority
Jim Landeck, President
c/o City of Northglenn
11701 Community Center Drive
Northglenn, Colorado 80233-1099

U.S. Department of Energy
Manager
Rocky Flats Field Office
Rocky Flats Environmental Technology Site
Post Office Box 928
Golden, Colorado 80402-0928

Dated this 19TH day of August, 1996.



Manager, Rocky Flats Field Office
Department of Energy



President, Woman Creek Reservoir Authority