



# City of Thornton

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May 18, 2011

Mr. Thomas Pauling, Director of Site Operations  
Department of Energy  
Office of Legacy Management  
1000 Independence Avenue  
Washington, DC 20515

Dear Mr. Pauling:

This letter is a follow-up to our meeting on March 10, 2011 and your request that the City of Thornton (Thornton) write a letter framing our issues and specific requests with respect to the Department of Energy's proposed actions at Rocky Flats.

The Department of Energy currently has two separate, but related, processes moving forward which propose actions that will not only remove existing barriers but increase the likelihood of contamination moving off the former nuclear weapons facility owned by the US Government -- Rocky Flats Environmental Technology Site (RFETS) -- into downstream communities. The effect of these actions will be to transfer cleanup responsibility and liability to these same communities, of which Thornton is one.

The City is requesting the following:

- Rocky Flats Legacy Management Agreement
  - Do not phase out the Walnut Creek and Woman Creek Points of Compliance monitoring locations at Indiana Street.
  - Amend paragraph 2.1.2 in the 1996 Standley Lake Protection Project Operations Agreement as follows (new language underscored):

Pursuant to the terms of the Rocky Flats Cleanup Agreement ("RFCA"), or any successor agreements, testing of flows in Woman Creek occur at the Indiana Street Point of Compliance as that term is defined in the RFCA. In the event the Department of Energy (DOE) moves the Indiana Street Point of Compliance upstream, DOE shall routinely test surface water detained in the Woman Creek Reservoir and shall remain liable for mitigation of any contamination flowing from the original boundaries of the Rocky Flats Environmental Technology Site into Woman Creek Reservoir.

- Adaptive Management Plan
  - Do not breach Dam C-2 in the 2018-2020 timeframe as currently proposed
  - Do not operate Dam C-2 in a "flow-through" configuration in this interim period

Rocky Flats Legacy Management Agreement (RFLMA). The May 2, 2011 approved modification to the RFLMA authorizes the installation of two new Points of Compliance (POC) on DOE property (referred to in the RFLMA as the "Central Operating Unit") upstream of the existing Indiana Street POC. The modification leaves the two existing POCs at Indiana Street for Woman Creek and Walnut Creek in place on Department of Interior property (referred to in the RFLMA as the "Peripheral Operating Unit") for two more years to monitor flows.

The 1996 Standley Lake Protection Project Operations Agreement (1996 Operations Agreement), of which DOE is a party, provides that the flows from RFETS via Woman Creek are to be tested by DOE at the Indiana Street POC. Since the construction of the Woman Creek Reservoir (WCR) in 1996, all of the flows from Woman Creek have been diverted into the WCR and are retained there until the testing results are known. If DOE's testing results at the Indiana Street POC are satisfactory, the retained water is pumped into Walnut Creek. Water released into Walnut Creek flows into Big Dry Creek which runs through Thornton eventually flowing into the South Platte River at Ft. Lupton. Thornton utilizes waters from Big Dry Creek to irrigate the Thorncreek Golf Course (a municipally-owned course). From the Thorncreek Golf Course, the Big Dry Creek flows northeasterly through Thornton and the Big Dry Creek area in an important wildlife habitat area. Thornton's long-term plan is to connect the Big Dry Creek Trail through this area to the trail which exists on the west side of I-25.

If DOE's testing results at the Indiana Street POC are not in compliance with relevant standards, under the Rocky Flats Cleanup Agreement and the RFLMA, the DOE is obligated to mitigate the contamination. However, moving the POC upstream of Indiana Street to the current DOE property (Central Operable Unit) removes a significant portion of the Woman Creek drainage area which has been transferred to the Department of Interior (DOI), the soils of which are known to be contaminated, from testing oversight and increases the likelihood of contamination impacting Walnut Creek, Big Dry Creek, and ultimately the South Platte River.

DOE's recent Notification of Approved Modification to the RFLMA indicates that monitoring flows at the Indiana Street POC are not required because extensive monitoring in the DOE owned property demonstrates that this is protective of human health and the environment. Certainly we are supportive of the extensive monitoring efforts continuing in the DOE owned property, but fail to see how discontinuing testing on the property that DOE transferred to the DOI is protective of human health and the environment. This approach would lead one to believe that there is nothing that could occur on the DOI property that would cause the contamination in the soil to flow into Woman Creek and into the Woman Creek Reservoir. Given that this area is subject to periodic extreme weather conditions that could cause contaminated soil to flow into Woman Creek and into the Woman Creek Reservoir, we think this is an erroneous assumption to make. This same issue exists with Walnut Creek.

The 1996 Operations Agreement refers specifically to the Indiana Street Point of Compliance. Moving the POC without changing the provisions in the 1996 Operations Agreement could, in effect, relieve DOE of its obligation to mitigate any contamination

that may subsequently occur. The downstream communities should not be put at risk for the liability and the cost to clean-up contamination in Walnut Creek, Big Dry Creek, and ultimately to the South Platte River. The potential for contamination doesn't change just because DOE transfers property to DOI and neither does the responsibility for cleanup. The US Government has responsibility for potential contamination from the Rocky Flats Technology Site regardless of how many US Government Agencies may "own" pieces of it or be responsible for its management, or whether property is sold off to another entity.

The 1996 Operations Agreement needs to be changed to establish liability for potential contamination and responsibility for clean-up originating on RFLETS with DOE regardless what agency or entity may subsequently own all or part of RFLETS property. If DOE moves the POC, the water retained in the Woman Creek Reservoir must continue to be tested by DOE and if contamination is found, DOE is responsible for cleanup.

Adaptive Management Plan. The other process currently moving forward is the development of an Adaptive Management Plan ("AMP") to address potential options in the implementation of the actions proposed in the Draft Rocky Flats Surface Water Configuration Environmental Assessment (EA) to breach five dams: the present landfill dam on No Name Gulch; Dams A-3 and A-4 on North Walnut Creek; Dam B-5 on South Walnut Creek; and Dam C-2 near Woman Creek. The AMP process was initiated in response to continuing concerns raised by the Woman Creek Reservoir communities (Thornton, Northglenn, Westminster), the City & County of Broomfield, and others of DOE's proposal to breach the dams. Thornton did not support these proposed actions and submitted comments on the Draft EA strongly supporting the "No Action" alternative which would have left the dams intact.

The April 2011 draft AMP indicates that DOE intends to breach the dams at Pond A-3 and the present landfill dam starting in late 2011, to be completed in 2012. Breaching the terminal dams at Ponds A-4, B-5 and C-2 is proposed to be completed during the 2018 to 2020 timeframe. In the interim, Dams A-4, B-5, and C-2 are proposed to be operated in a condition to "allow surface water flow to approximate conditions before the retention ponds were constructed" as early as 2011. In this type of flow-through operation, pond water levels are maintained at an elevation which allows the outflow rates to be equivalent to the inflow rates. Dam C-2, which flows are released into Woman Creek, currently provides a critical barrier to potentially contaminated flows getting into Woman Creek and flowing into Woman Creek Reservoir. Operating Dam C-2 in a flow-through configuration will remove that barrier and, in effect, treats this as if the dam had been physically removed. Although the current proposal in the draft AMP is to evaluate potential changes at 2-year intervals beginning in 2013, operating Dam C-2 in a flow-through configuration at the same time that the POCs are moved further upstream effectively removes all of the barriers Thornton has in place to capture and mitigate potential contamination. It also has the effect of removing a significant amount of a known contaminated area on RFETS from US Government oversight and responsibility and passing that on to downstream communities.

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While we can appreciate DOE's effort to reduce on-going operating costs associated with testing and monitoring POS and operating the terminal dams, quite frankly, to us, this seems penny wise and pound foolish. We are requesting that the draft AMP be revised to leave dam C-2 in place and not operated in a flow-through condition to protect downstream communities. As a potential downstream recipient of contaminated water, we believe it is foolhardy to breach the dams and change the POC.

Thank you for the opportunity to present Thornton's position on these matters. If you have any questions, please feel free to contact me.

Sincerely,



Jack Ethredge  
City Manager

cc: Mayor and Council  
Senator Mark Udall  
Senator Michael Bennet  
Representative Jared Polis  
Nancy Stoner, Deputy Assistant Administrator, EPA  
Reggie Cheatam, Acting Director of Restoration and Re-Use, EPA  
Vera Moritz, RFLMA Coordinator, EPA  
Scott Surovchak, RFLMA Coordinator, DOE  
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Josh Nims, President, Woman Creek Reservoir Authority  
David Allen, City and County of Broomfield



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