

Use Agreement No.
U.S. Department of Energy
Interagency Agreement
OU 3 Offsite Program

USE AGREEMENT

This USE AGREEMENT is entered into between the UNITED STATES OF AMERICA (hereinafter referred to as the "Government"), acting through the DEPARTMENT OF ENERGY (hereinafter referred to as "DOE"), and the Church Ditch Company (hereinafter referred to as the "Grantor"),

WITNESSETH THAT:

WHEREAS, DOE, through its authorized representatives, agents, contractors, and subcontractors desires to perform, pursuant to Public Laws 95-91, Department of Energy Organization Act, and 96-463, Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended by 99-499, Superfund Amendments and Reauthorization Act of 1986, certain data-gathering, testing, exploration, and other work on the Grantor's portion of property described within Parcel "A" on the map attached hereto as Exhibit A in connection with DOE's Interagency Agreement dated January 22, 1991: and

WHEREAS, the Grantor owns and controls the property designated and described in Exhibit A;

NOW THEREFORE, it is agreed that:

1. The Grantor owns and controls certain real property (hereinafter referred to as the "Property"), designated and described in Exhibit A, and hereby grants to DOE, its authorized representatives, agents, contractors, and subcontractors without payment of any land use charge, right of entry in, across, and over the Property to carry out the environmental monitoring activities as described in Exhibit B; PROVIDED, that such right of entry is subject to existing easements for public roads and highways, public utilities, railroads and pipelines; PROVIDED FURTHER, that such grant of right of entry reserves to the Grantor, his heirs, executors, administrators,

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successors and assigns, all right, title, interest and privilege as may be used and enjoyed without interfering with or abridging the rights hereby granted to DOE, its authorized representatives, agents, contractors, and subcontractors.

2. The Government shall be responsible for any loss or destruction of, or damage to, the Grantor's real and personal property caused by the activities of DOE in exercising any of the rights hereby granted in this Use Agreement: PROVIDED, that such responsibility shall be limited to restoration of such real and personal property to a condition comparable to its condition on the effective date of the Use Agreement by techniques of back-filing, seeding, sodding, landscaping, repair or replacement, and such other methods as may be agreed to between the parties, subject to the availability of appropriated funds.
3. The provisions of this Use Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, personal representatives, successors, and assigns of the Grantor. The Grantor shall notify the Realty Officer if the Property is, or at any time during the term of the Agreement should become leased, sold, or otherwise transferred to another party. The "Realty Officer" means the person executing this Use Agreement on behalf of the Government, and any other officer or civilian employee who is properly designated Realty Officer; and the term includes, except as otherwise provided in this Use Agreement, the authorized representative of a Realty Officer acting within the limits of his authority. The Grantor shall also give written notice to any purchaser, lessee, or transferee of the applicability of the rights of the Government contained in this Use Agreement when such purchase, lease, or transfer takes place during the term of this Use Agreement.
4. The effective date of this Use Agreement shall be the date of execution by the Government. The term of this Use Agreement shall commence on the effective date hereof and shall continue for three years unless sooner terminated by the Government or Grantor by sixty-day prior written notice to the other.

5. Title to all personal property brought to the Property by DOE during the term of this Use Agreement shall remain in the Government, and such title shall not be effected by incorporation or attachment thereof to any property not owned by the Government, nor shall such personal property, or any part thereof, become a fixture or lose its identity as personal by reason of affixation to any realty. DOE shall remove all such personal property no later than 90 days after the expiration or termination of the Use Agreement.

The Grantor shall not be liable for any loss of or damage to Government-owned or Government-Furnished property, or for expenses incidental to such loss or damage, except that the Grantor shall be responsible for any such loss or damage (including expenses incidental thereto) which results from the willful misconduct, gross negligence, or lack of good faith of the Grantor.

6. The Government shall have unlimited rights in all technical data first produced or specifically used in the performance of the work and experiments in connection with this Use Agreement. Further, technical reports from DOE contractors or subcontractors shall be required for delivery to the Government and shall be made available to the public without restriction. For the purposes of this Use Agreement, the terms "technical data" and "unlimited rights" shall have the same meaning as provided in 927.401/Department of Energy Acquisition Regulation (DEAR).
7. DOE shall obtain all necessary permits or licenses and abide by all applicable Government, state, and local laws, regulations, and ordinances.
8. If the Property is subject to any leases, subleases, or assignments of rights, the Grantor shall obtain the consent of the lessors, lessees, sublessees, and assignees as appropriate, to enter into this Use Agreement. Such consent shall be evidenced by their signatures in the space provided on the signature page.

In WITNESS WHEREOF, the parties hereto have executed this Use Agreement in several counterparts.

GRANTOR:

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

By: *R. Neal Penfold*
President,
Church Ditch Co.

By: *Steven R. Schiesswohl*
Steven R. Schiesswohl
RFO Realty Officer
Property & Information
Management Branch

Rocky Flats Office
P.O. Box 928
Golden, Colorado
80402-0928

Date: March 31, 1992

Date: 4/11/92

Concurred by EG&G Rocky Flats, Inc.
DOE Contractor, contract number
DE-AC04-90DP62349

By: *[Signature]*

Title: _____

Date: 5/20/92

Consented to:

Names

Interest

Signature

EXHIBIT A

R. 69 W.

R. 70 W.

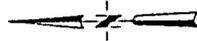


U.S. Department of Energy
Rocky Flats Plant

OU3 RFI/RI
Sampling Activities
Church Ditch Co.

■ Surface Water sta. (SW)

▲ Sediment station (SD)



Scale: 1 inch = 2500 feet

EXHIBIT B

OU 3 RFI/RI SAMPLING ACTIVITY DESCRIPTION - CHURCH DITCH COMPANY

The planned OU 3 sampling activities are detailed in the RFI/RI Work Plan. The Work Plan outlines the purpose, objectives, rationale and methods used to evaluate the presence or absence of contamination within OU 3. The Work Plan is based on the requirements of the Interagency Agreement (IAG) between the Department of Energy (DOE), the Environmental Protection Agency (EPA) and the State of Colorado Department of Health (CDH).

OU 3 sampling activities will begin during April, 1992 and are scheduled for completion by spring of 1993. A Final RFI/RI Report which details the results and conclusions from this study is scheduled for completion in January, 1994. The Use Agreement period is extended for three years to cover any follow up activities that may be required during development of the Final RFI/RI Report.

The map, enclosed in this correspondence, shows locations of sampling activities. Field adjustments could be made at the time of sampling to adjust specific sampling locations. All sample locations will be surveyed and marked with a metal survey pin, prior to, or during the sampling event. The following Table 1 lists the sample type, sample number and approximate true state planer coordinates for sample locations.

Sampling activities will not adversely effect environmental resources. OU 3 sampling activities on Church Ditch Company property involve collection of sediment and surface water. The following paragraphs provide a general description of the sampling activities.

SEDIMENT SAMPLING

Sediment sampling involves removing a cross section of sediment with a hand scoop across the ditch. The depth of the sample is approximately five inches. The map sample number designation is SD.

SURFACE WATER SAMPLING

Surface water sampling involves removing approximately two liters of water from a sample location. The map sample number designation is SW.

Table 1. List of sample type, sample number and approximate coordinates of known sample locations for OU 3RFI/RI. Coordinates are based on the true state plane coordinate system.

<u>SAMPLE TYPE</u>	<u>SAMPLE NUMBER</u>	<u>NORTH COORDINATE</u>	<u>EAST COORDINATE</u>
Sediment	SD00492	751,120	2,101,200
	SD02292	739,720	2,095,500
	SD02492	750,600	2,100,300
Surface Water	SW00592	740,160	2,095,400
	SW00692	750,760	2,099,960
	SW00292	751,300	2,100,000