



Dedicated to protecting and improving the health and environment of the people of Colorado

**Covenant Information:**

**Covenant Date** 6/27/2005

**Self Reporting**

**Media of Concern:**

**Surface Water:**

**Ground Water:**

**Air:**

**Soil:**

**Other:**

**Covenant ID** HMC0V00019

**Site Contact Information:**

**Owner Corp:** City and County of Denver

**Contact Name:** Current Staff in this position

**Contact Address:** Manager of Denver Department of  
Environmental Health

**Contact City:** Denver

**Contact State:** CO

**Contact Zip:** 80204

**Contact Phone:**

**Contaminants of Concern:**

Nitrate, Sulphate

**Property Restrictions:**

1: no well drilling or use of groundwater

2:

3:

4:

5:

**Site Information:**

**ID:** N/A

**Name:** Former Sewage Sludge Disp. Area aka Binney Water Purification Facility

**Address:** Sections 4 & 9 Township 5 South, Range 65 West

**City:** Aurora

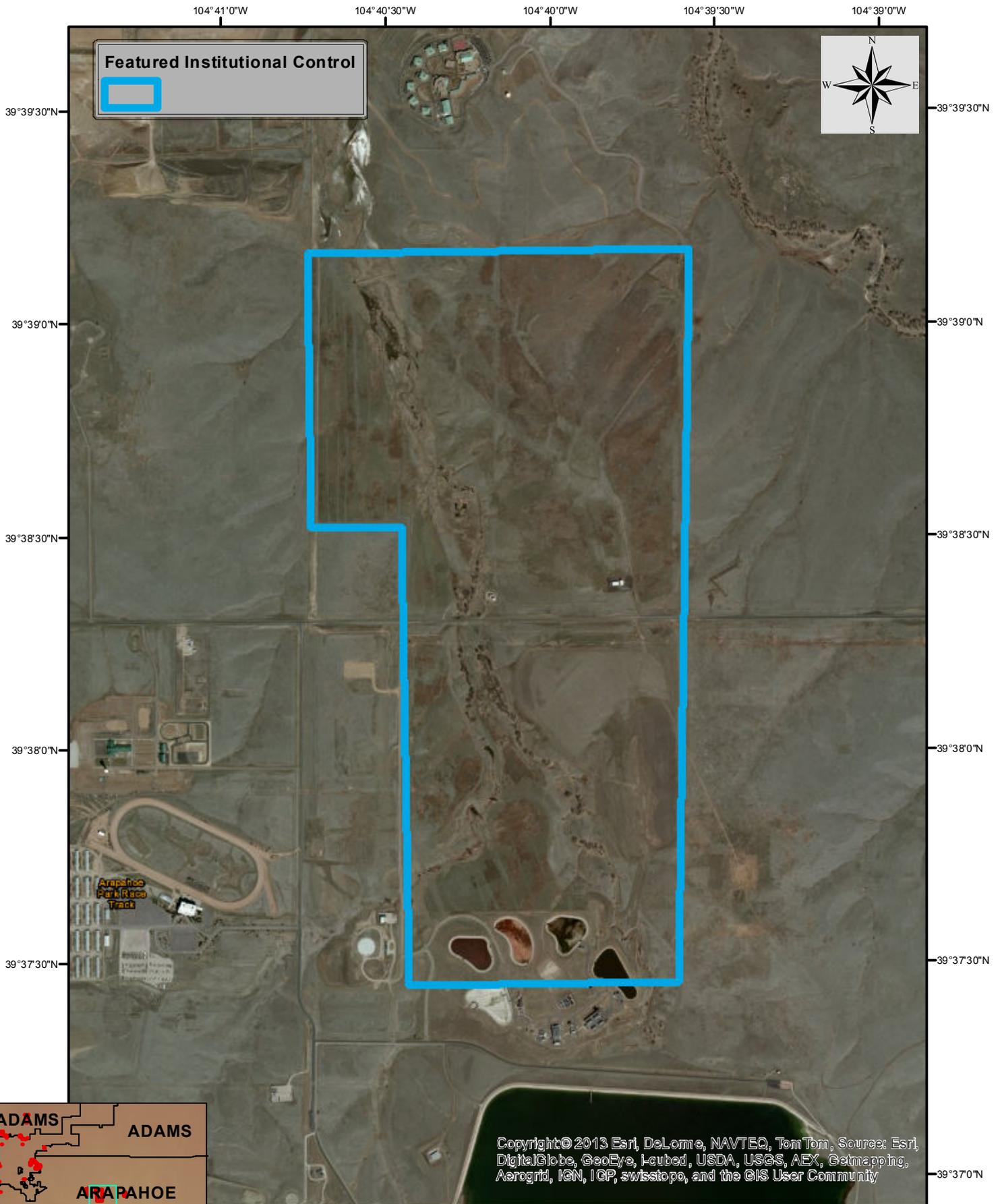
**State:** CO

**Zip:** NA

**Legal Description:**

See Covenant

# FORMER SEWAGE SLUDGE DISPOSAL AREA



HMCOV00019



5100

Arapahoe County Clerk Recorder, Nancy A. Doty  
Reception #: B5108157  
Receipt #: 5247469  
Pages Recorded: 10  
Recording Fee: \$51.00  
Date Recorded: 7/21/2005 3:07:24 PM



05-062

Recording Requested By and  
When Recorded Mail To:

RM

Department of Law/NR  
1525 Sherman Street, 5<sup>th</sup> Floor  
Denver, Colorado 80203

1-10

The property described herein is subject to an Environmental Covenant in favor of the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.

ENVIRONMENTAL COVENANT

The City and County of Denver, Colorado ("Denver"), and the City of Aurora, ("Aurora") both Colorado municipal corporations organized as home rule cities grants an Environmental Covenant ("Covenant") this 10<sup>th</sup> day of March, 2005 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, et seq. The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, Denver is the owner of certain groundwater underlying land located in Section 4 and Section 9, Township 5 South, Range 65 West of the 6<sup>th</sup> P.M., more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Groundwater"); and

WHEREAS, Aurora acquired from Denver and is the owner of certain real property located in Sections 4 and 9, Township 5 South, Range 65 West of the 6<sup>th</sup> P.M., more particularly described in Attachment B attached and incorporated herein by reference (herein after referred to as "the Sections 4 & 9 Property"); and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment against exposure to contaminants in groundwater in excess of Colorado basic standards for nitrates and sulphates (the "Contaminants") by restricting the construction of wells to drill for or pump the Groundwater and any tributary groundwater located on the Sections 4 & 9 Property, except in accordance with this Covenant.

WHEREAS, when Denver owned the Sections 4 & 9 Property, Denver allowed the Metro Wastewater Reclamation District ("Metro") to conduct a biosolids disposal operation on the Sections 4 & 9 Property, which Metro has concluded. As part of the disposal operation, Metro and the United States Geological Survey conducted a groundwater monitoring effort which included the construction of certain monitoring wells into the Groundwater. Metro has closed and abandoned the wells in accordance with the rules and regulations of the State Engineer and, as a condition of the Department's approval to closure of the biosolids disposal operation, the Department has requested that Denver execute this Covenant.

WHEREAS, in reliance upon the Department's approval to close Metro's biosolids disposal operation, Denver agrees to subject the Groundwater and Aurora agrees to subject the Section 4 & 9 Property (the Groundwater and the Sections 4 & 9 Property shall hereinafter be referred to collectively as the "Property") to this Covenant as provided in Article 15 of Title 25, Colorado Revised Statutes, which Covenant shall burden the Property and bind Denver and Aurora, their successors, assigns, and any grantees of the Property, their heirs, successors, assigns and grantees, and any users of the Groundwater, for the benefit of the Department.

NOW, THEREFORE, Denver and Aurora hereby grant this Environmental Covenant to the Department, and declare that the Groundwater as described in Attachment A and the Sections 4 & 9 Property shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 10, below, which shall run with the Property for perpetuity and be binding on Denver, Aurora and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the Groundwater. Denver, Aurora and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns shall hereinafter be referred to in this Covenant as "OWNERS." OWNERS may refer to one owner if the other owner has transferred its property subject to this covenant so that there is only one owner. Upon transfer of its right, title and interest in the Property, the grantor shall be released from any and all obligation under this Covenant arising after the transfer date, except that the grantor shall remain subject to the use restrictions in Paragraph 1.

1. Use restrictions. Until this Covenant is terminated or modified as provided herein, no new wells to drill for or pump the Groundwater or water from tributary groundwater located on the Sections 4 & 9 Property shall be constructed, except for future monitoring or remediation. Denver and Aurora shall have the right to request modification of this Covenant pursuant to paragraph 3 to allow construction of wells to pump groundwater from any of one of the restricted aquifers (the alluvial aquifer, the Dawson Aquifer or the Denver Aquifer) if it can be shown that the Contaminants no longer exceed Colorado standards for the use of that water for specific purposes or that the water will be treated so that the Contaminants do not exceed Colorado standards for a specified use; including, but not limited to, agricultural, industrial, municipal irrigation and domestic uses. This Covenant and these restrictions do not apply to the Arapahoe Aquifer, the Laramie-Fox Hills Aquifer or any aquifer other than those described herein.

2. Purpose of this Covenant. The purpose of this Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to the Contaminants that may remain in the Groundwater and alluvial groundwater on the Section 4 & 9 Property. The Covenant will accomplish this by restricting the construction of water supply wells on the Property, and by ensuring that any wells that are constructed are constructed in accordance with the Water Well Construction Rules, 2 CCR 402-2, adopted pursuant to C.R.S. 37-91-101 to 113.

3. Modifications. This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. OWNERS or their successors and assigns may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines

that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No such modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

- (a) a proposal to perform additional remedial work;
- (b) new information regarding the risks posed by the residual contamination;
- (c) information demonstrating that residual contamination has diminished;
- (d) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
- (e) other appropriate supporting information.

4. Conveyances. OWNERS shall notify the Department at least fifteen (15) days in advance of any proposed grant, transfer or conveyance of ownership of any or all of the Owners' respective property subject to this covenant.

5. Leases. OWNERS agree to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Groundwater that may be affected by the Covenant.

6. Notification for proposed construction and land use. OWNERS shall notify the Department simultaneously when submitting any application to a local or state government to construct a well into the Groundwater or tributary groundwater on the Sections 4 & 9 Property.

7. Inspections. The Department shall have the right of entry onto the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Covenant. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Property. The Department, upon OWNERS' written request, will provide OWNERS with copies of any written inspection reports, findings or other data prepared in connection with such inspections.

8. No Liability. The Department does not acquire any liability under State law by virtue of accepting this Covenant.

9. Enforcement. The Department may enforce the terms of this Covenant pursuant to §25-15-322. C.R.S. The Department may file suit in any district court having jurisdiction to enjoin actual or threatened violations of this Covenant.

10. Owner's Compliance Certification. Upon request from the Department sent to the addressee indicated below, Denver's Manager of Environmental Health and Aurora's Manager of Real Estate shall each submit an annual Report to the Department, in the form attached hereto as Attachment C, detailing their own compliance, and any lack of compliance, with the terms of this Covenant that apply to their respective city.

11. Separate Ownership. Denver and Aurora each own property subject to the terms of this covenant. This covenant imposes obligations on each city separately. The parties agree that each city shall be responsible individually for its respective obligations and shall have no responsibility or liability for the obligations of the other party.

12. Notices. Any document or communication required under this Covenant shall be sent or directed to:

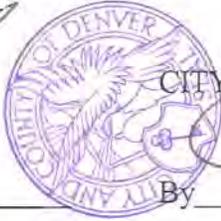
Hazardous Waste Corrective Action Unit Leader  
Hazardous Materials and Waste Management Leader  
Colorado Department of Public Health and the Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Manager of Environmental Health  
City and County of Denver  
201 West Colfax Avenue, Dept. 1009  
Denver, Colorado 80202

Manager Real Property  
City of Aurora  
15151 East Alameda Parkway, 3rd Floor  
Aurora, Colorado 80012

The Parties have caused this instrument to be executed and delivered as of \_\_\_\_\_, 2005.

ATTEST:



CITY AND COUNTY OF DENVER, COLORADO

By: [Signature]  
Clerk and Recorder,  
of the City and County of Denver

By: [Signature]  
Mayor

APPROVED AS TO FORM:  
Cole Finegan  
City Attorney

RECOMMENDED AND APPROVED:

By: [Signature]  
Manager of Environmental Health

By: [Signature]  
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: [Signature]  
Auditor  
Contract Control No. XC5A006

STATE OF COLORADO )  
 )ss:  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of February, 2005 by John W. Hickentoope on behalf of the City and County of Denver.

[Signature]  
Notary Public  
Address 201 WEST COLFAX AVE.  
DENVER, CO 80202

My commission expires: 1/21/09





## ATTACHMENT A

### Description of Groundwater

Denver's interest in or to water, water rights and rights to develop water, including tributary, nontributary and not nontributary, whether undecreed, permitted or now or hereinafter adjudicated or decreed, in and to the Dawson and Denver aquifers diverted from, used upon or appurtenant to the following land:

The North Half, the Southeast Quarter, the North Half of the Southwest Quarter and the Southeast Quarter of the Southwest Quarter of Section 4, and the East Half, and the East Half of the West Half of Section 9, all in Township 5 South, Range 65 West of the 6<sup>th</sup> Principal Meridian, County of Arapahoe, State of Colorado.

Excepting therefrom those portions conveyed in deeds recorded August 8, 1978 in Book 2826 at Page 723, November 15, 1982 in Book 3735 at Page 508, December 6, 1982 in Book 3749 at Page 650 and November 22, 1991 in Book 6306 at Page 419, in the real property records of the County of Arapahoe, State of Colorado.

## ATTACHMENT B

### Description of Sections 4 & 9 Property

The North Half, the Southeast Quarter, the North Half of the Southwest Quarter and the Southeast Quarter of the Southwest Quarter of Section 4, and the East Half, and the East Half of the West Half of Section 9, all in Township 5 South, Range 65 West of the 6<sup>th</sup> Principal Meridian, County of Arapahoe, State of Colorado.

Excepting therefrom those portions conveyed in deeds recorded August 8, 1978 in Book 2826 at Page 723, November 15, 1982 in Book 3735 at Page 508, December 6, 1982 in Book 3749 at Page 650 and November 22, 1991 in Book 6306 at Page 419, in the real property records of the County of Arapahoe, State of Colorado.

**ATTACHMENT C  
COLORADO ENVIRONMENTAL COVENANTS  
CERTIFICATION FORM**

This form provides your written statement that you are in compliance with the environmental covenants required on your property as per the agreement executed between [insert name of grantor] and the Colorado Department of Public Health and Environment pursuant to C.R.S. 25-15-317 thru 327. Section 10 of this Environmental Covenant requires that you complete and return this form annually or otherwise certify that you are or are not in compliance with your covenant.

Property Name \_\_\_\_\_  
Address of Property with covenant \_\_\_\_\_  
\_\_\_\_\_

The restrictions that apply to my property as listed in Section 4 of the Environmental Covenant Agreement include (check all that apply)

- No well drilling for drinking water
- No well drilling at all
- Land use restrictions (e.g., use restricted to commercial development)
- Perform monitoring
- Provide access to property for others to perform monitoring
- No disturbance of monitoring wells
- No earthwork or disturbance of ground surface
- No disturbance of engineered structure (e.g., disposal cell cap)
- Perform maintenance of engineered structure
- Installation of radon or soil gas vent systems on new structures
- Other (describe) \_\_\_\_\_

Sign one of the following statements:

I hereby state that I am in compliance with the Environmental Covenant Agreement, and have followed all of the restrictions and requirements contained therein.

Signature \_\_\_\_\_ Date \_\_\_\_\_

I hereby state that I am not in compliance with the Environmental Covenant Agreement, and have violated restrictions contained therein as follows (describe non-compliance)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Please return this form to: Cris Pretko or Records Center, HMWMD  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South, HMWM B2  
Denver, CO 80246-1530