



COLORADO
Department of Public
Health & Environment

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

Covenant Information:

Covenant Date 5/7/2014

Self Reporting

Media of Concern:

Surface Water:

Ground Water:

Air:

Soil:

Other:

Institutional Control ID: RSNOT00016

Site Contact Information:

Owner Corp: Buckley AFB

Contact Name: Scott Wilson / Restoration Manager

Contact Address: 460 CES/CEAN

Contact City: Buckley AFB

Contact State: CO

Contact Zip: 80011-9546

Contact Phone: 720-897-7159

Contaminants of Concern:

Asbestos in Soil, Trichloroethene in Ground Water

Property Restrictions:

- 1: Soil: Prohibit new construction, excavation or digging unless digging permit obtained from CDPHE
- 2: Groundwater: Prohibit groundwater use from alluvium and Denver Aquifer except for environmental monitoring or testing.
- 3:
- 4:
- 5:

Site Information:

ID:

Name: Buckley Air Force Base Site 3

Address:

City:

State: CO

Zip: 80011

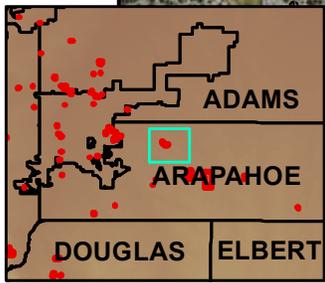
Legal Description:

See Institutional Control

BUCKLEY AFB SITE 3



RSNOT00016



RSNOT00016



RJA

SUZANNE BURDJICK
DEPT OF LAW/NRE
1300 BROADWAY 7TH FLR
DENVER, CO 80203

Reception #: D4047011, 06/03/2014 at
12:16:17 PM, 1 OF 8, N, Rec Fee \$46.00
Arapahoe County CO Matt Crane, Clerk &
Recorder

This property is subject to a notice of environmental use restrictions imposed by Colorado Department of Public Health and Environment pursuant to section 25-15-321.5, Colorado Revised Statutes

Notice of Environmental Use Restrictions

WHEREAS, the United States is the owner of certain property at Buckley Air Force Base ("Buckley AFB") whereat the Department of the Air Force ("the Air Force") exercises administrative land-holding authority and control over a portion of land commonly referred to as "Site 3," an inactive landfill of solid waste, located within the confines of Buckley AFB, more particularly described in Attachment A (the "Property"), attached hereto and incorporated herein by reference as though fully set forth; and

WHEREAS, the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department"), which is located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, is authorized to approve Notices of Environmental Use Restrictions pursuant to § 25-15-320(4)(a) of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.* 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530; and

WHEREAS, the Property is the subject of remedial action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.* ("CERCLA") that requires land use controls and restrictions for the Property, pursuant to the Final Record of Decision ("ROD") dated March 2014, to ensure protection of human health and the environment; and

WHEREAS, for purposes of indexing in the County Clerk and Recorder's office Grantor-Grantee index only, the United States shall be considered the **Grantor**, and the Department shall be considered the **Grantee**; nothing in the preceding clause shall be construed to create or transfer any right, title or interest in the Property; and

WHEREAS, the purpose of this Notice of Environmental Use Restrictions (hereinafter, "Restrictive Notice") is to ensure protection of human health and the environment by restricting the classification of the Property, activities permitted on the Property, and specifying certain procedures in order to preserve the integrity and effectiveness of the cover, the drainage and erosion controls, slope stability, and groundwater monitoring systems, including monitoring and notification of compliance; and

WHEREAS, Buckley AFB has requested that the Department approve this Restrictive Notice as provided in Article 15 of Title 25, Colorado Revised Statutes ("C.R.S.").

NOW, THEREFORE, the Department approves this Restrictive Notice pursuant to C.R.S. § 25-15-321.5. The Property shall hereinafter be subject to the following requirements set forth in paragraphs 1 through 12 below, which shall be binding on the United States, acting by and through the Air Force, and their authorized representatives, and any subsequent OWNERS and any person now or subsequently

having any right, title or interest in the Property, or any part thereof, and any person using the land, as described herein. As used in this Restrictive Notice, the term OWNER means the then current record owner(s) of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain. The term OWNER does not include any agency of the United States that does not have "custody and accountability" over the Property, as that term is described in 41 CFR 102-75.1285. A federal agency has "custody and accountability" for federal real property if it is the landholding agency to whom ownership, on behalf of the United States, is assigned or acquired.

1) Use Restrictions. The Property is subject to the following restrictions:

- a. While the Air Force exercises administrative land-holding authority over the Property, the Property shall remain classified as "Restricted Open Space" as specified in § 2.12.2 of the ROD, incorporated herein by reference, under the Buckley AFB Installation Development Plan (IDP). Restricted Open Space designation will restrict and limit access to the Security Forces and Base Environmental personnel. Any changes to land use will require modification of this Restrictive Notice pursuant to paragraph 1.c. and paragraph 2, below. "Restricted Open Space" is:

[R]eserved, undevelopable land areas designated on the basis of safety requirements. Intensive use of these areas would present an unacceptable level of risk to person and property. The potential harm may be manmade or natural in its origin.

- b. While the Air Force exercises administrative land-holding authority over the Property, the administrative procedures set forth in Air Force Instructions (AFI) 32-1001, *Operations Management* and 32-1021, *Planning and Programming Military Construction (MILCON) Projects*, concerning review and approval of all projects involving construction, digging, and any other intrusive activity that disturbs subsurface soil must be followed and coordinated with installation restoration personnel. Any revisions to these AFIs are not effective with respect to the Property unless and until this paragraph is modified in accordance with the procedures set forth herein.

- c. While the Air Force exercises administrative land-holding authority over the Property, the Property is subject to the land use controls (LUCs) set forth in the ROD. Any revision of the LUCs required under the ROD are not effective with respect to the Property unless and until this Restrictive Notice is modified in accordance with the procedures set forth herein. The term "LUCs" as used in the ROD and applicable herein includes both engineering controls and institutional controls. Engineering controls are physical features, such as landfill caps and fences, that prevent disallowed land uses and exposures. Institutional controls are property, administrative, and legal controls and devices, such as digging and construction review and approval processes, that prevent disallowed uses and exposures. The following is a list from the ROD of LUCs the Air Force shall implement:

- i. Prohibit the use of groundwater from the alluvium and weathered Denver Aquifer underlying Site 3, other than for environmental monitoring or testing. The Buckley digging permit system requires all entities at Buckley AFB to file a Form No. 103 (Base Civil Engineering Work Clearance Report) with the Base Civil Engineering Division if any site work requires excavation over 6 inches into the ground. Through

this system, the drilling of groundwater wells will be restricted and prohibited within the boundary of Site 3;

- ii. Prohibit disturbing any components of the groundwater monitoring network that will be used for the long-term monitoring. The Buckley digging permit system requires all entities at Buckley AFB to file a Form No. 103 (Base Civil Engineering Work Clearance Report) with the Base Civil Engineering Division if any site work requires excavation over 6 inches into the ground. The Form No. 103 will activate the formal utility and infrastructure clearance procedures;
 - iii. Prohibit new construction within Site 3. The Buckley AFB excavation and digging permit system will maintain an access restriction that will prevent excavations within the LUC boundaries. The Buckley AFB construction review process will also maintain data that will ensure no new construction will take place within the LUC boundaries;
 - iv. Perform annual inspections of the biota populations within the extent of the landfill areas. Should the native burrowing animals create a nuisance, and evidence of waste disturbance occurs, an animal control program will be instituted, in accordance with base policy. Provisions in the land use controls will include management of burrowing animals through a deterrence program;
 - v. Post signage at Property boundaries stating "Environmental Restoration Site - Keep Out";
 - vi. Require a Work Clearance Request Form for any intrusive work on the cover or intrusive work on any adjacent areas that might expose landfill material; this is an administrative process that must be coordinated with base environmental personnel. Any intrusive work on the cover or adjacent areas shall be for maintenance purposes or purposes specifically related to the remediation of the Property;
 - vii. Enter all LUCs specified in the ROD for the site in the Buckley AFB IDP no later than 30 days after the ROD is signed; however, all LUCs are applicable upon the signing of this Restrictive Notice;
 - viii. Use the base environmental impact analysis process, which will be coordinated with base environmental personnel, to ensure all projects proposed at the site are assessed for environmental impacts, to include compliance with use restrictions and LUCs at the site;
- d. Subsequent to the time the Air Force ceases exercising administrative land-holding authority over the Property, neither OWNER nor any other person shall change the current undeveloped and restricted use of the Property.
- e. Neither the Air Force, OWNER nor any other person shall conduct any activity on the Property, including but not limited to grading, excavating, construction or drilling that could adversely affect the integrity of the cover, the effectiveness of the drainage or erosion controls, slope stability, or groundwater monitoring system. This shall not prohibit the Air Force or OWNER from conducting geotechnical or environmental investigations on the property for remedial

purposes.

- f. Subsequent to the time the Air Force ceases exercising administrative land-holding authority over the Property, land use controls and long-term management and maintenance activities set forth in the ROD and detailed in an approved Site 3 long-term monitoring and maintenance plan shall be performed by OWNER, as follows:
 - i. The long-term monitoring/compliance monitoring program for groundwater shall be performed by the OWNER and reported to the Department on an annual basis. The OWNER may request modification in accordance with Paragraph 2, based upon the results of a CERCLA mandated 5-year review;
 - ii. The earthen cover, stormwater control features, and other LUCs shall be monitored by OWNER and reported to the Department on an annual basis in accordance with the Site 3 long-term monitoring and maintenance plan. The annual monitoring will be conducted to observe and document general conditions and changes in the earthen cover. If adverse conditions exist, OWNER shall notify the Department within 48 hours, and maintenance activities shall be conducted by OWNER within 30 days; and
 - iii. OWNER shall perform annual monitoring of the conditions of the signs positioned at Property boundaries stating "Environmental Restoration Site - Keep Out." Missing, damaged, or otherwise impaired signs shall be replaced within 30 days following completion of the monitoring event.

2) Modifications. This Restrictive Notice shall remain and continue in full force and effect, and be fully binding on the United States, acting by and through the Air Force, and their authorized representatives, and all subsequent owners and successors unless modified or terminated in accordance with this paragraph and pursuant to C.R.S. § 25-15-321.5 or any successor statute. The Air Force or OWNER may request that the Department approve a modification or termination of the Restrictive Notice. A request to modify or terminate this Restrictive Notice 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 Restrictive Notice will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Restrictive Notice 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 an engineered feature or structure is no longer necessary
- e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and

- f) other appropriate supporting information.
- 3) Notification of Violations, Inconsistent Activities, and Corrective Measures. The Air Force or OWNER will notify the Department of any violation of the LUCs or any other activity that is inconsistent with the LUCs or LUC objectives, as well as any obstacles to correcting the same. The Air Force or OWNER must notify the Department as soon as practicable, but no longer than 10 days after discovery, of any activity that violates or is inconsistent with the LUC objectives or restrictions, or any other action that may interfere with the effectiveness of the LUCs. The Air Force or OWNER must take prompt measures to correct the violation or deficiency and prevent its recurrence. In this notification, the Air Force or OWNER will identify any corrective measures it has taken or any corrective measures it plans to take and the estimated time frame for completing them. For corrective measures taken after the notification, the Air Force or OWNER shall notify the Department when the measures are complete.
- 4) Conveyances. The Air Force will provide notice to the Department at least 30 days prior to any transfer, grant, sale, or other conveyance of the Property by the Air Force so that the Department can be involved in discussions to ensure that appropriate provisions are included in the transfer terms or conveyance documents. In addition to the land transfer notice and discussion provisions above, the Air Force further agrees to provide the Department with similar notice, within the same time frames, as to federal-to-federal transfer of property. The Air Force shall provide a copy of the executed deed or transfer assembly to the Department. Subsequent to the time the Air Force ceases exercising administrative land-holding authority over the Property, any OWNER shall notify the Department at least 30 days in advance of the closing on any proposed sale or other conveyance of any interest in any or all of the Property. If the entire interest is not conveyed, the Air Force or OWNER shall provide the Department a survey that shows the property being conveyed.
- 5) Notice to Lessees and Contractors. The Air Force or OWNER will inform, monitor, bind and enforce this Restrictive Notice as to all leases, licenses, permits, and contracts at this site, as well as any other authorized occupants. The Air Force or OWNER agrees to incorporate either in full or by reference the restrictions of this Restrictive Notice in any leases, licenses, permits, or other instruments granting a right to use the Property.
- 6) Notification for Proposed Construction and Land Use. The Air Force and any subsequent federal OWNER shall notify the Department within 30 days of any proposed construction or other ground-disturbing activity at the site. Any subsequent non-federal OWNER shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.
- 7) Inspections. The Department shall have the right of entry to the Property at reasonable times with prior reasonable notice for the purpose of determining compliance with the terms of this Restrictive Notice. Nothing in this Restrictive Notice shall impair any other authority the Department may otherwise have to enter and inspect the Property. The Department of Defense, the Air Force, and Buckley AFB do not relinquish any legal rights and authorities they possess regarding physical access to Buckley AFB.
- 8) Third Party Beneficiary. OWNER is a third party beneficiary with the right to enforce the provisions of this Restrictive Notice as provided in § 25-15-322, C.R.S.

- 9) No Liability. The Department does not acquire any liability under State law by virtue of approving this Restrictive Notice, nor does any third party beneficiary.
- 10) Enforcement. The Department may enforce the terms of this Restrictive Notice pursuant to C.R.S. § 25-15-322. The Air Force, and any third party beneficiaries, may file suit to enjoin actual or threatened violations of this Restrictive Notice.
- 11) Monitoring and Reporting. The Air Force is required to annually monitor and inspect all LUCs to ensure their continued implementation, effectiveness, and protectiveness. The Air Force will submit to the Department annually a written report of such monitoring and inspection. The report shall state the frequency, scope and nature of the monitoring and inspection activities and who conducted the activity, the result of the monitoring and inspection, any changes that have been made to any LUC, and violations or deviations from the LUCs and corrective actions taken or planned to address them, as well as the date it was reported to the Department. The report shall state the Air Force's determination whether the LUCs in the ROD remain in full force, whether they were fully implemented, effective and protective and that the Air Force has fully complied with all such LUCs as well as any other additional provision in the Restrictive Notice. Subsequent to the time the Air Force ceases exercising administrative land-holding authority over the Property, any OWNER shall execute and return a certification form provided by the Department, on an annual basis, detailing OWNER's compliance, and any lack of compliance, with the terms of this Restrictive Notice.
- 12) Notices. Any document or communication required under this Restrictive Notice shall be sent or directed to:

Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment

Attention: Tracie White, Unit Leader
Federal Facilities Remediation and Restoration Unit
Remediation Program
Hazardous Materials & Waste Management Division
Colorado Department of Public Health & Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

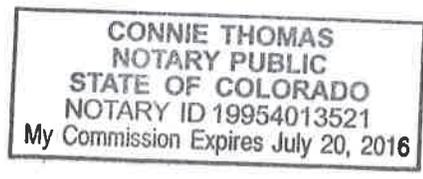
Any approval required from the Department under this Restrictive Notice shall be in writing.

By requesting the Department's approval of this Restrictive Notice, neither the United States nor the Department of the Air Force is creating a property interest, and it is not their intent to do so. Buckley AFB hereby requests that the Colorado Department of Public Health and Environment approve this Restrictive Notice this 24 day of April, 2014.

By: [Signature]

DANIEL D. WRIGHT III, Colonel, USAF
Commander
[NOTARY]

The foregoing instrument was acknowledged before me in the County of Archuleta, State of Colorado, this 24th day of April, 2014.
[Signature]
Notary Public State of Colorado



This Notice of Environmental Use Restrictions is approved and issued by the Colorado Department of Public Health and Environment this 7th day of May, 2014.

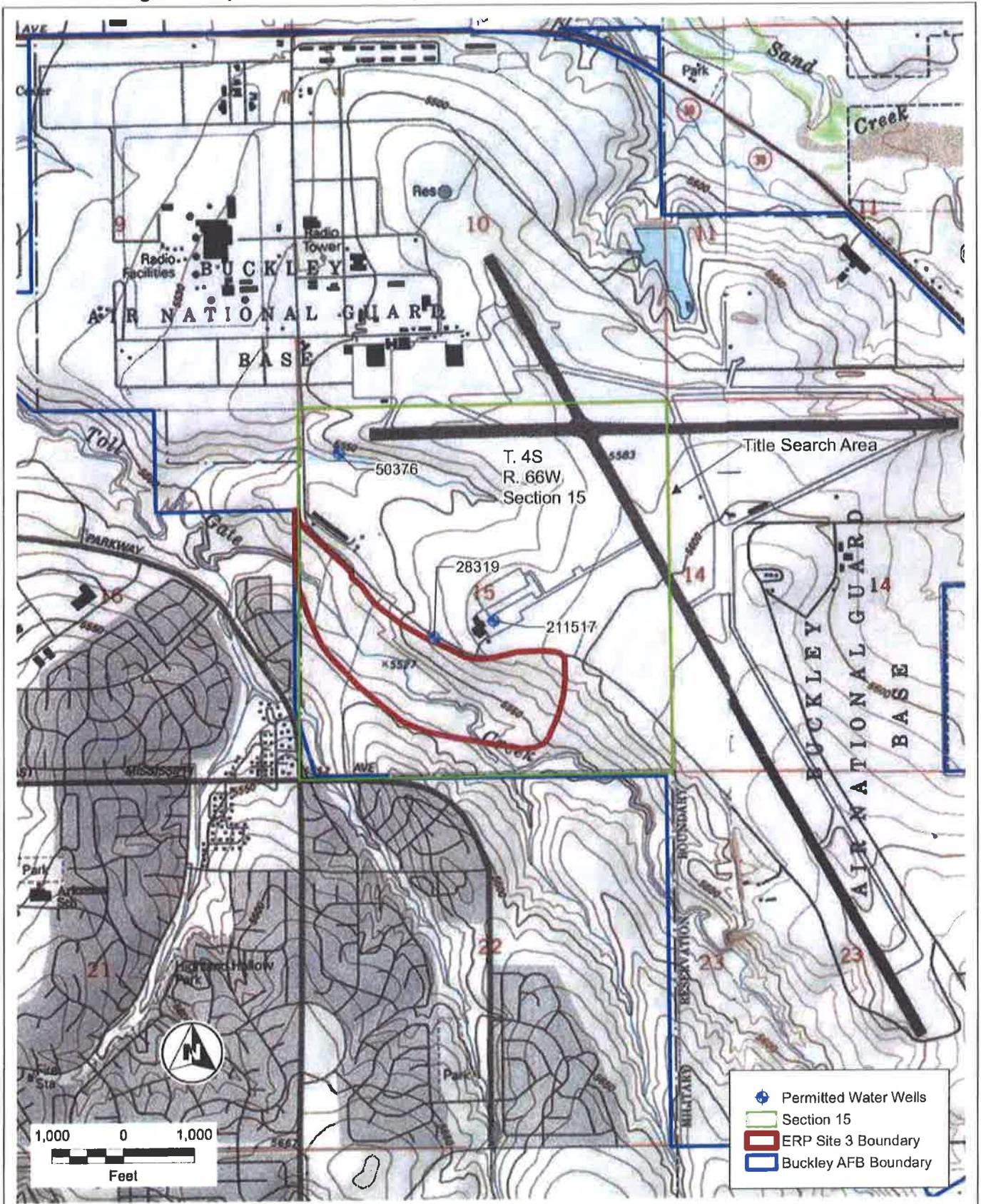
By: [Signature]

GARY W. BAUGHMAN
Director, Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment
[NOTARY]

[Signature]
4300 Cherry Creek Avenue South
Aurora CO 80246
Notary Expires - 2-29-2016



Exhibit A Legal Description: All of Township 4 S, Range 66 W, Section 15, Arapahoe County, Colorado



Attachment A
Figure 1
 Title Search Area and
 Permitted Water Wells



Site 3 - Former Base Landfill
 Buckley Air Force Base,
 Aurora, Colorado