

**LOWER SOUTH PLATTE WATER CONSERVANCY DISTRICT AND PARKER
WATER AND SANITATION DISTRICT
PLATTE VALLEY WATER PARTNERSHIP INTERGOVERNMENTAL AGREEMENT**

THIS LOWER SOUTH PLATTE WATER CONSERVANCY DISTRICT AND PARKER WATER AND SANITATION DISTRICT PLATTE VALLEY WATER PARTNERSHIP INTERGOVERNMENTAL AGREEMENT ("the Agreement") is made and entered into this 9th day of September 2021 (the "Effective Date"), by and between the PARKER WATER AND SANITATION DISTRICT, a quasi-municipal special district organized and existing pursuant to the provisions of Title 32 of the Colorado Revised Statutes, ("PWSD") and the LOWER SOUTH PLATTE WATER CONSERVANCY DISTRICT, a water conservancy district organized and existing pursuant to the provisions of Title 37, Article 45 of the Colorado Revised Statutes, ("LSP") (individually a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, C.R.S. § 29-1-203 authorizes the Parties to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide;

WHEREAS, the Parties are authorized to operate water delivery systems to provide water service and/or augmentation water to their customers;

WHEREAS, the Parties have applied for water storage and exchange rights and a change of water rights (collectively, the "Water Rights") as described in Case No. 19CW3253, Water Division No. 1 (the "Water Court Case") and intend to develop a water storage and conveyance project (the "Project") as generally described in the Water Court Case, which, in part, is proposed to consist of the following non-exhaustive list of major shared physical components or rights to the shared use of the following major physical components (the "Shared Infrastructure"):

1. Storage of water in a reservoir to be constructed (the "Iliff Reservoir") for direct use and exchange by both PWSD and LSP and the Iliff Reservoir itself;
2. An exchange from the point(s) of discharge to the South Platte River from the Iliff Reservoir to the inlet canal for the Prewitt Reservoir for use by both PWSD and LSP;
3. A contractual right to use the Prewitt Reservoir diversion structure, inlet canal, Prewitt Reservoir, and outlet works to divert and convey the Water Rights as agreed upon by the Parties and the operator of Prewitt Reservoir;
4. A contractual right to storage capacity in the Prewitt Reservoir forebay;
5. Storage of water in another new reservoir to be constructed (the "Fremont Butte Reservoir") via a pump and two-way pipeline which will convey water from the Prewitt Reservoir Forebay to the Fremont Butte Reservoir and which will carry water back for distribution to PWSD and LSP;; and
6. A shared portion of a water delivery pipeline and pump station that will deliver water to PWSD and to LSP.

WHEREAS, in addition to the Shared Infrastructure, each Party may need to construct other physical infrastructure solely serving each Party (either the “PWSD Infrastructure” or the “LSP Infrastructure” as applicable, and collectively with the Shared Infrastructure, referred to herein as the “Project Infrastructure”);

WHEREAS, a major piece of PWSD Infrastructure will be a pipeline from Prewitt and Fremont Butte Reservoirs to PWSD’s system located in Douglas County, Colorado (“PWSD Delivery Pumpstation and Pipeline”), provided that the shared portion of the PWSD Delivery Pumpstation and Pipeline that will be used by both LSP and PWSD shall constitute Shared Infrastructure;

WHEREAS, a diagram generally depicting the major elements of the Project Infrastructure is attached hereto as **Exhibit A**;

WHEREAS, the Project Infrastructure will be used to store and convey water for PWSD ("PWSD Water") and LSP ("LSP Water"), which is contemplated to consist of the Water Rights and any other water either Party may lawfully store in or convey via the Project Infrastructure pursuant to the terms of this Agreement;

WHEREAS, PWSD's purposes for undertaking the Project are to increase its renewable water supply for its expanding customer base while preserving sufficient water for agricultural irrigation on property owned by PWSD in Logan County;

WHEREAS, LSP's purposes for undertaking the Project are to obtain additional water supplies and use of storage and conveyance facilities to better serve its constituents, program participants, and customer base;

WHEREAS, together, the Parties intend their cooperative efforts to provide additional reliable water supplies for their customers in a manner that preserves and supports agricultural uses in the South Platte River Basin by capturing South Platte River water that would otherwise leave the State of Colorado without being put to a beneficial use;

WHEREAS, due to the scope of the Project and its perpetual nature, the Parties anticipate that modifications to the current plans will be necessary and operation of the Project will need to be adjusted over time;

WHEREAS, the Parties desire to cooperate and maintain flexibility to address issues as they arise so that the Parties can best fulfill their respective goals into the future and for the Parties to establish a framework for such; and

WHEREAS, in furtherance of the Project and the Parties' goals and to set forth the terms and conditions pursuant to which the Parties will undertake the Project, the Parties find and determine that it is in their best interests to enter into this Agreement.

NOW THEREFORE, the Parties, in and for the consideration of the performance of the mutual promises set forth herein, the adequacy of which is hereby acknowledged, for themselves

and their successors, do hereby agree as follows:

ARTICLE I
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DEFINITIONS

In addition to the terms defined throughout this Agreement, the terms set forth below shall be defined as follows:

"2003 Water Rights" shall mean water rights owned by PWSD pursuant to the decree entered on July 20, 2015 in Case No. 03CW428, District Court, Water Division 1, Colorado, which although a part of the Water Court Case will remain solely owned by PWSD and are not being shared with LSP.

ARTICLE II
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WATER COURT CASE

1. The Parties affirm the Parties' Joint Representation Agreement dated December 26, 2019, including their agreement to jointly prosecute the application filed in the Water Court Case, as such may be amended by the Parties.

2. Unless otherwise agreed to by the Parties in writing, the Parties shall be responsible for their own costs and attorneys' fees associated with prosecuting the Water Court Case.

ARTICLE III
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WATER RIGHTS OWNERSHIP AND USE

1. Water Rights Ownership. PWSD and LSP shall each own an undivided one-half interest in the Water Rights, except for the 2003 Water Rights that are and shall remain the sole property of PWSD.

2. Water Rights Use. PWSD and LSP shall have the right to use their share of the Project Water as each Party deems appropriate in its sole discretion, subject to the terms of the Water Court Case and allocation provisions of this Agreement. The use, but not ownership, of all physical water available to the Parties resulting from the Water Rights (the "Project Water") shall be allocated between the Parties on at least an annual basis, provided that PWSD shall have the exclusive right to use the 2003 Water Rights. The parties shall jointly establish guidelines for allocation of use of the Project Water as between the Parties, which shall include the use of one Party's share of the Project Water by the other Party based upon Project financing considerations, need considerations, physical ability to use such water at any given time, structural considerations, and any other considerations as the Parties deem appropriate. The Parties contemplate that one Party may lease to other Party or otherwise provide permission for use by the other Party of some portion of the first Party's share of the Project Water. Such leasing or permissive use shall be considered in the allocation of Project costs between the Parties. The allocation of use of the

Project Water may change based upon agreement of the Parties. For each year that Project Water, except the 2003 Water Rights, is expected to be available for use, the Parties shall meet no later than October 1 of the year prior to the water year in which such water is expected to be available, to establish the anticipated allocation of Project Water and use of such water.

3. Compliance With Water Court Case Decree. All Project Water used by either Party shall comply with the terms of the Water Court Case decree and all applicable laws, including without limitation the decreed area of use.

ARTICLE IV

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PROJECT INFRASTRUCTURE

1. Infrastructure Ownership. All PWSD Infrastructure shall be owned by PWSD. All LSP Infrastructure shall be owned by LSP. The Parties contemplate sharing ownership and use rights to the Shared Infrastructure via a licensing arrangement pursuant to which PWSD shall own the Shared Infrastructure and LSP shall have a perpetual license to use the Shared Infrastructure or via an arrangement pursuant to which LSP will acquire an ownership percentage in the Shared Infrastructure that increases over time as LSP contributes to the costs of the Project. Prior to the commencement of design of any part of the Shared Infrastructure, the Parties shall determine actual ownership and license rights of the Shared Infrastructure as the Parties deem appropriate.

2. Phased Construction. To the extent feasible, the Parties may agree to construct portions of the Shared Infrastructure in phases to meet the Parties' planning needs and capabilities. Neither Party shall be obligated to construct any element of the Project Infrastructure, including the Shared Infrastructure, at any time unless agreed upon after the design has been completed and the cost allocation established.

3. Shared Infrastructure Planning. The Parties shall coordinate and cooperate with each other to establish specific plans and guidelines for the timing, design, permitting, and construction of Project Infrastructure, including without limitation cost allocations of such. The Parties contemplate the following, which shall serve as the initial guidelines of the Parties until refined or amended:

a. The Parties shall cooperate and coordinate with each other to negotiate agreements to accomplish the Project, to attain the right to use structures of third-parties, to accomplish permitting, and to acquire property ownership or use rights, including without limitation, an agreement with the Morgan-Prewitt Reservoir Company, Logan Irrigation District, and Iliff Irrigation District (owners of the Prewitt Reservoir) concerning the use of Prewitt Reservoir and related facilities, agreements with the owners of ditches and other facilities related to the conveyance of water to and from Iliff Reservoir as identified in the Water Court Case, ditch operators, and agreements with other governmental entities (collectively, the "Related Agreements"). Unless otherwise agreed by the Parties and prior to entering into such Related Agreements, the Parties shall be responsible for their own costs and fees related to negotiation of such. Prior to or concurrently with the execution of the Related Agreements, the Parties shall establish their respective obligations in performing the terms and conditions of such agreements, either in

the Related Agreements themselves or in separate agreements between the Parties. The Parties shall conduct their Project activities and use the Project Infrastructure in compliance with other Project-related agreements to which both Parties are parties.

b. The Parties shall cooperate and coordinate with each other for the engagement of consultants for purposes of the Water Court Case, consultants for financial planning, consultants for project permitting, and consultants for site feasibility evaluations. The Parties have agreed to the cost allocation of such consultants retained prior to the date of this Agreement. Unless otherwise agreed to by the parties and prior to retaining additional consultants, prior to or concurrently with the engagement of such additional consultants, the Parties shall establish their respective obligations in performing the terms and conditions of such engagements including without limitation cost allocations, either in the related engagement agreements themselves or in separate agreements between the Parties.

c. The Parties shall cooperate and coordinate with each other on the initial internal design work and planning of Shared Infrastructure. The Parties shall cooperate and coordinate with each other to estimate the costs for design and construction of the Shared Infrastructure and to negotiate agreements for the design and construction of Shared Infrastructure. Unless otherwise agreed to by the Parties and prior to entering into agreements for such design and construction, the Parties shall be responsible for their own costs and fees related to initial internal estimation, design work, and planning. Prior to or concurrently with the execution of any agreements for outside design or construction of Shared Infrastructure, the Parties shall establish their respective obligations in performing the terms and conditions of such agreements and for the allocation of design and construction costs. Unless agreed otherwise by the Parties in writing, PWSD shall be responsible for all costs associated with PWSD Infrastructure, LSP shall be responsible for all costs associated with LSP Infrastructure. The Parties contemplate that PWSD shall contract for the design and construction of the Shared Infrastructure in accordance with applicable law and PWSD's internal procedures and policies, and that PWSD shall pay all such related costs, subject to contribution by LSP as agreed upon by the Parties.

d. If third parties are granted rights to capacity in any element of the Shared Infrastructure, the Parties shall establish guidelines for adjustment of the Parties' cost allocations as a result of third parties' contribution to the costs of the Shared Infrastructure.

The Parties shall conduct their Project activities and use the Project Infrastructure in compliance with other Project-related agreements to which both Parties are parties.

4. Permitted Water Rights. The Parties may use their rights to the Shared Infrastructure to store and convey water produced from the Water Rights and PWSD's 2003 water rights. In addition, the Parties may use their rights to the Shared Infrastructure to store and convey any water permitted by law, subject to guidelines to be established jointly by the Parties, provided it does not impair the other Party's yield or negatively impact the Project as contemplated herein, and is consistent with Related Agreements.

ARTICLE V
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FINANCING

1. Feasibility. For the claims made in Case No. 19CW3253, the Parties have evaluated the legal and physical availability of water for the rights claimed, the technical and economic feasibility of the Project, the ability of the Parties to acquire rights to property needed for the Project, and the ability of the Parties to obtain permits required for the Project. With respect to the economic feasibility of the Project, the parties have evaluated the timing and costs of design, engineering, construction, land acquisition, permitting, and other project-related activity. The parties have determined that the following financing mechanisms are or are reasonably probable to be available:

- a. Leases or other water sharing arrangements between the Parties;
- b. Loans and grants, including without limitation those available from federal and state sources;
- c. Allotment contracts and other water supply contracts;
- d. Water activity enterprise charges;
- e. Tax levies and other special assessments;
- f. Bonding;
- g. Fees and rate charges;
- h. Fees for parks and recreation services; and
- i. Third-party payments for participation in the Project, including payments for use of Project capacity.

Based on the Parties initial evaluation and the financing tools that may reasonably be available, the Parties have determined there is a substantial probability that within a reasonable time the Project facilities can and will be completed and that there are multiple pathways available to finance the Project. The Parties shall continue to exercise best efforts to pursue all financing sources.

2. Pre-Construction Costs. The Parties are currently incurring and anticipate incurring additional costs prior to construction of the Shared Infrastructure. These costs are anticipated to be incurred over the next several years and will be related to Project planning, design, engineering, property acquisition, permitting, and will include payments to potential conveyance and storage facility owners, including but not limited to the Prewitt Operating Group.

- a. Incurred Pre-Construction Costs. With respect to the Project costs incurred by PWSD for the Prewitt Operating Group's legal, economic analysis, and engineering expenses and for PWSD and LSP's economic analysis, PWSD shall incur and pay such costs subject to reimbursement by LSP of one-half of their amount provided that LSP budgets for and obtains the required funds to make such reimbursement. If LSP does not budget for and obtain the funds required to make such reimbursement, the Parties shall cooperate in good faith for LSP to reimburse the funds via other available means, including those set forth in Section 3 of this Article V, below.

b. Future Pre-Construction Costs. With respect to amounts payable to the Prewitt Operating Group under Sections 6.2.1 and 6.2.2 of the agreement with the Prewitt Operating Group and prior to incurring additional pre-construction Project Costs, the Parties shall agree upon cost allocation and payment obligations of each Party. The Parties anticipate that PWSD may pay the majority of such costs subject to reimbursement by LSP of all or a portion of its future pre-construction costs via the mechanisms set forth in Section 3 of this Article V, below.

3. Construction and Post-Construction Costs. On or before completion of all work necessary to commence construction of the Shared Infrastructure, the Parties shall establish a method for allocating payment for construction of the Shared Infrastructure. If LSP is unable to satisfy its payment obligation monetarily, upon agreement by PWSD (which PWSD may grant or withhold in PWSD's sole discretion), LSP may satisfy its payment obligation with the following non-monetary contributions:

- a. The provision of LSP Water to PWSD. LSP may defer use of LSP Water and deliver it to PWSD for PWSD's sole use at a rate to be agreed upon by the Parties, provided it shall be no greater than fair market value for comparable leases.
- b. An hourly or flat fee payment for LSP operating and/or maintaining Shared and/or PWSD Infrastructure.
- c. An hourly or flat fee payment for LSP coordinating and managing alternative transfer method water leases for PWSD with local water users, which provide additional sources of water for use by PWSD.
- d. Any other non-monetary contribution agreed upon by the Parties.

The Parties shall act in good faith to adjust their cost sharing arrangements as needed to reasonably accommodate financing options.

ARTICLE VI

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OPERATION, MAINTENANCE, AND REPLACEMENT OF PROJECT INFRASTRUCTURE

1. LSP Infrastructure and PWSD Infrastructure. Each Party shall be responsible for the costs of operating, maintaining, and replacing its own infrastructure. Each Party shall operate and maintain its own infrastructure in a manner that does not impair the other Party's yield or ability to convey and store water as part of the Project.

2. Shared Infrastructure. The Parties contemplate sharing the costs of operating, maintaining, and replacing the Shared Infrastructure in proportion to their capacities in the Shared Infrastructure, subject to adjustment depending on third-party participation. The Parties shall jointly establish a structure for the assessment and payment of charges for operating, maintaining, and replacing the Shared Infrastructure.

3. Project System Losses. The Project Water shall be subject to evaporation, seepage and conveyance losses, as well as losses from measurement errors. The Parties shall jointly

establish guidelines for estimation and assessment of such losses based on a mutually agreed upon formula.

ARTICLE VII

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PROJECT DECISION-MAKING, COORDINATION, AND OPERATION

1. General. The Parties shall cooperate and coordinate regarding Project decisions in furtherance of the terms and conditions of this Agreement and the Parties' Project goals. Each Party shall designate a representative from the Party's management team as the primary contact for such Party. The representatives shall regularly communicate and coordinate all aspects of the Project. The representatives shall establish a regular meeting schedule no less than quarterly during which the Parties shall address any matters related to the Project. An annual report concerning the Project shall be prepared by the Parties for delivery to their respective Boards for review.

2. Third Party Participation.

a. The Parties anticipate third parties will participate in the Project, which may involve sharing Project Costs and Project Infrastructure. The Parties shall consult on all decisions regarding participation by third parties in the Project. Except as otherwise provided herein, neither Party shall have the right to prevent the other from entering into agreements with third parties to use Project Infrastructure that solely serves the other Party, provided such use will not impair a Party's participation in the Project or impair the ability of either Party to fully utilize its share of the Water Rights and will not be inconsistent with other Related Agreements.

b. Any contractual right granted by the Parties to third parties for the use of the Shared Infrastructure shall be subject to and strictly comply with any and all rules and regulations and guidelines issued by the Parties, and shall be subject to and subordinate to the Parties' rights to use of the Shared Infrastructure. Such right of third parties shall not in any way interfere with, limit, impair, or adversely affect the Parties' rights to use of the Shared Infrastructure, the Water Rights, or the Parties' legal or physical ability to divert, convey, or store the Parties' water rights in or through the Shared Infrastructure. Any third-party water diverted, conveyed, or stored in or by the Shared Infrastructure shall be subject to spill or release from the Shared Infrastructure before any of the Parties' water.

c. The Parties may enter into agreements with other water providers to upsize the Shared Infrastructure to convey other water providers' water that is not a result of Buy and Dry, as defined in Section 3.a. of this Article VI, and the Parties may allow third parties to use the Shared Infrastructure to store or convey water.

d. Prior to granting the right to a third party to use a Party's Infrastructure or a Party's share of the Shared Infrastructure, the other Party shall have a right of first refusal on substantially the same terms that would be provided to the third party.

3. Restrictions on Water in Shared Infrastructure - No Buy and Dry. Except as expressly permitted herein and unless the Parties agree otherwise or unless such is further limited by Related Agreements, in furtherance of the Parties' intent to develop a water project that protects agricultural activities, the sources of water that may be stored or conveyed through the Shared Infrastructure shall involve water that does not result in the permanent dry up of irrigated agricultural land ("Buy and Dry") in the counties of Morgan, Washington, Logan and Sedgwick subsequent to the date of this Agreement. The following are sources of water that shall not be considered to constitute Buy and Dry, and therefore it shall be permissible to store and convey them through the Shared Infrastructure:

- a. Water derived from the Water Rights;
- b. Water derived from PWSD's 2003 Water Rights and from any other water rights owned by PWSD as of the date of this Agreement;
- c. New Appropriations of water rights, the applications for which were filed after December 31, 2019;
- d. Water diverted pursuant to "free-river conditions"; and
- e. Water derived from Alternative Transfer Methods (ATMs), as agreed upon by the Parties.

ARTICLE VIII

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TERM AND TERMINATION

1. The term of this Agreement shall be perpetual, subject to termination by mutual written agreement of the Parties.

ARTICLE IX

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MISCELLANEOUS

1. Assignment. Except as set forth herein, neither this Agreement, nor any of a Party's rights, obligations, duties or authority hereunder, may be assigned in whole or in part without the prior written consent of the other Party, which consent shall not unreasonably be withheld. The Parties agree that the following grounds of refusal would be reasonable: assignee's inability to meet financial obligations of the assigning Party, or insufficiently shared goals with the assignee. Any attempted assignment without approval of the other Party shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment, nor the waiver of any right to withhold consent to any subsequent assignment.

2. Relationship of Parties. This Agreement does not and shall not be construed as creating a relationship of joint ventures or partners between the Parties. Neither of the Parties shall have any right or authority to act on behalf of or bind the other Party.

3. Modification. This Agreement may be modified, amended, changed or terminated, in whole or in part, only by an agreement in writing duly authorized and executed by the Parties. No consent of any third party shall be required for the negotiation and execution of any such

agreement.

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

5. Integration. This Agreement contains the entire agreement between the Parties and no statement, promise or inducement made by any Party or the agent of any Party that is not contained in this Agreement shall be valid or binding.

6. Severability. Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase or work herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Agreement.

7. No third-party beneficiaries. There are no third-party beneficiaries of this Agreement.

8. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado.

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Agreement. In addition, the parties agree to recognize signatures of this Agreement transmitted by telecopy or email as if they were original signatures.

10. Remedies. In addition to all remedies allowed at law or equity and those set forth in this Agreement, either Party may terminate this Agreement for a material breach by the other Party. In the event a Party alleges the other Party is in breach or default of this Agreement, the non-defaulting party shall first notify the defaulting party in writing of such default and specify the exact nature of the alleged default in such notice. Except in the case of non-payment of amounts due, the defaulting party shall have thirty (30) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies hereunder, provided that: (i) such default is capable of being cured, (ii) the defaulting party has commenced such cure within said 30-day period, and (iii) the defaulting party diligently prosecutes such cure to completion. If such default is not of a nature that can be cured in such thirty (30) day period, corrective action must be commenced within such period by the defaulting party and thereafter diligently pursued.

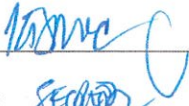
11. No Waiver of Governmental Immunity. The Parties, their directors, officers, agents and employees are relying upon and do not waive or abrogate, or intend to waive or abrogate by any provision of this Agreement the monetary limitations or any other rights immunities or protections afforded by the Colorado Governmental Immunity Act, C.R.S Section 24-10-101 et seq. as the same may be amended.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date set forth herein as evidenced by signature of each of the Parties.


PARKER WATER & SANITATION DISTRICT
A Colorado special district and political subdivision

By: 
Darcy Beard, Chair

ATTEST:


Title: Secretary

**LOWER SOUTH PLATTE WATER
CONSERVANCY DISTRICT**

By: 
Ken Fritzer, President

ATTEST:


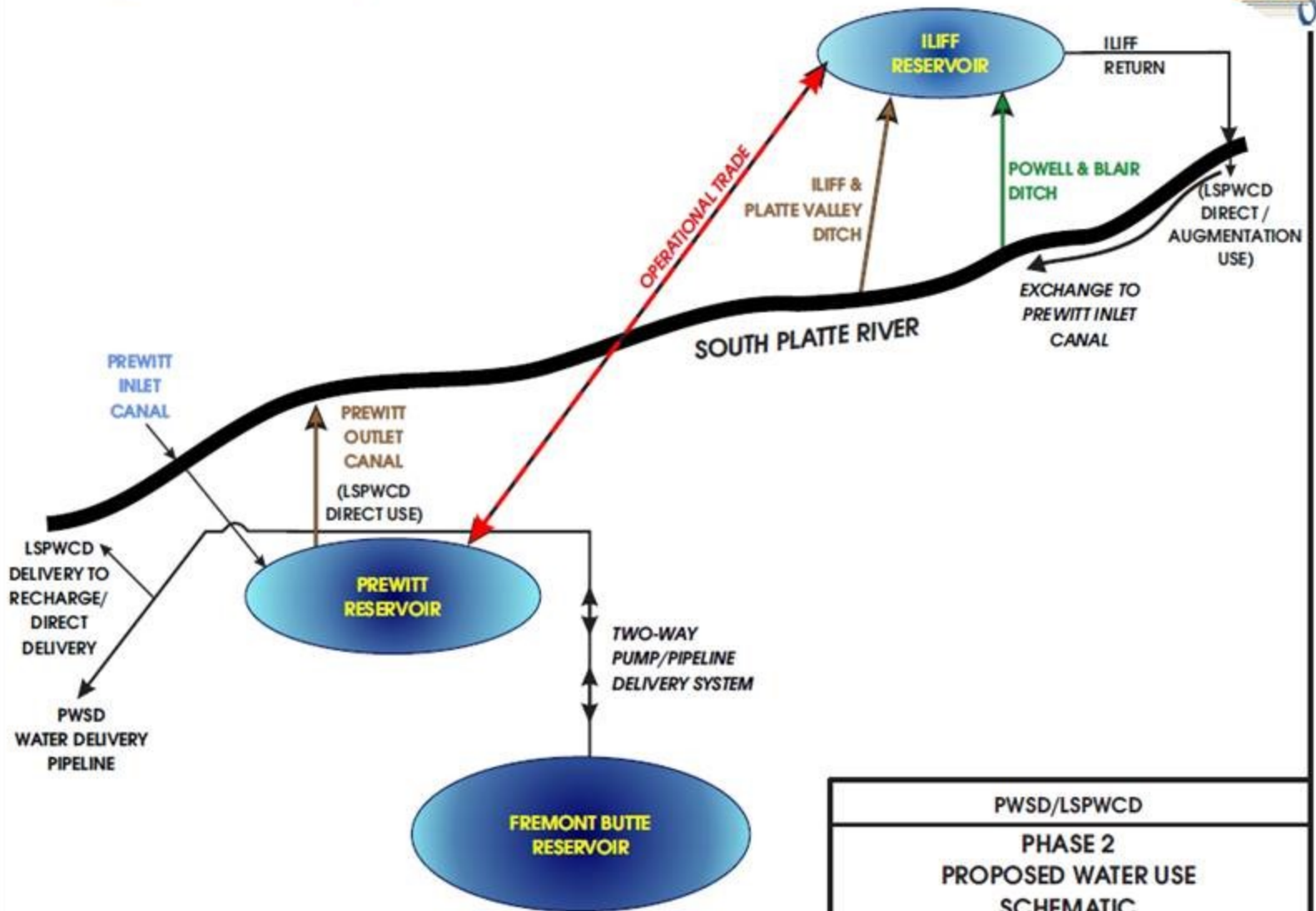

Title: Secretary / Manager

EXHIBIT A

PROJECT INFRASTRUCTURE DIAGRAM



PWS/LSPWCD	
PHASE 2 PROPOSED WATER USE SCHEMATIC	
File Name: Phase 2 Schematic.cdr	Date: 06/24/2020
Project No.: 1489-20	Drawn By: VAL
	Fig. No.: 9