

INTERGOVERNMENTAL AGREEMENT Rueter-Hess Drought Water Supply Pilot Plan

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is entered into among the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS ("Denver Water"), PARKER WATER AND SANITATION DISTRICT, a quasi-municipal corporation under C.R.S. §§ 32-1-101(1) and 32-1-1006(1) ("PW&SD"), EAST CHERRY CREEK VALLEY WATER AND SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("ECCV"), and the TOWN OF CASTLE ROCK, a municipal corporation of the State of Colorado, acting by and through its Castle Rock Water Enterprise ("Castle Rock Water"). Denver Water, PW&SD, ECCV, and Castle Rock Water are referred to herein each as a "Party" and collectively as the "Parties."

Recitals

WHEREAS, Denver Water owns and operates a municipal water supply system that provides water supply for inhabitants of the City and County of Denver and by contract to certain areas outside the boundaries of the City and County of Denver;

WHEREAS, PW&SD owns and operates a municipal water supply system that provides water and wastewater services for the Town of Parker and portions of unincorporated Douglas County. Rueter-Hess Reservoir ("RHR") is owned and operated by PW&SD;

WHEREAS, ECCV owns and operates a municipal water supply system that provides water and wastewater services in the eastern portions of the City of Centennial and unincorporated Arapahoe County. ECCV has agreed to use its Quebec Street Pump Station, located at 6875 Business Center Drive, Highlands Ranch, Colorado, 80130 (the "ECCV Pump Station") to transfer water under the proposed Pilot Plan (defined below) in accordance with the terms of this IGA;

WHEREAS, Castle Rock Water is an enterprise of the Town of Castle Rock and provides water and wastewater services to the residents of the Town of Castle Rock and by contract to certain areas outside the boundaries of the Town;

WHEREAS, PW&SD, ECCV, Castle Rock Water and Denver Water have a history of cooperative efforts, including agreements governing the joint use of facilities for the Water and Infrastructure Supply Efficiency ("WISE") Project, and wish to continue that cooperation to the mutual benefit of their customers and residents; and

WHEREAS, state law, especially C.R.S. § 29-1-203, encourages the cooperation of local government entities in providing legally authorized services such as water supply.

NOW THEREFORE, PW&SD, ECCV, Castle Rock Water and Denver Water agree as follows:

Article I **Operations**

1.1 **Overview.** This IGA provides the structure for a short-term pilot plan (“Pilot Plan”) exploring ways that water could be transmitted to, stored and withdrawn from RHR by way of exchange and trade in a manner consistent with the State Engineer’s Office (“SEO’s”) administration.

1.1.1 **Overview Schematics.** An overview schematic of the water infrastructure expected to be utilized as part of this Pilot Plan is shown on **Attachment A**. The details of the interconnection between the Denver Water System and WISE System are shown on **Attachment B**. The details of the ECCV Pump Station and Foothills Water Treatment Plant are shown on **Attachment C**.

1.1.2 **Pilot Plan Fill Operations.** Unless ECCV otherwise notifies Denver Water that the ECCV Pump Station is unavailable for use, Denver Water will transfer water (“Pilot Plan water”) from its distribution system into WISE infrastructure where ECCV will pump that water to PW&SD. The Pilot Plan water will be traded with PW&SD into RHR resulting in a new subaccount in RHR titled “Pilot Plan Storage Account”. By trading this water into RHR, PW&SD tracks water in RHR that would not be in the reservoir if it were not for this Pilot Plan. Prior to distributing water under this IGA, the Parties agree to establish standard operating procedures, including emergency contacts and procedures, to implement the Pilot Plan in accordance with the terms of this IGA.

1.1.3 **Pilot Plan Water Withdrawal Operations.** Denver Water will coordinate with Castle Rock Water to identify a mutually agreeable time for a transfer of water from the RHR Pilot Plan Storage Account to a Castle Rock Water RHR Storage Account and in return a transfer of a like amount of water from Castle Rock’s Chatfield Reservoir storage account to a Denver Water Chatfield Reservoir storage account. Denver Water will receive all of its Pilot Plan water back, less any losses incurred under the Pilot Plan program.

1.1.4 **Accounting.** For the purposes of SEO water rights accounting, the Pilot Plan Storage Account water, once traded to Chatfield Reservoir with Castle Rock, will maintain the characteristics of Denver’s original Pilot Plan water contributed to the Pilot Plan. The water that PW&SD consumes as part of the Pilot

Plan trade will be PW&SD's water. The water in the Castle Rock Water RHR account will have the characteristics of Castle Rock Water's water originally in Chatfield Reservoir.

1.2 Pilot Cost Responsibility by Party

1.2.1 PW&SD will provide Pilot Plan storage space in RHR at no cost and (in conjunction with Castle Rock Water) use its existing capacity in the WISE infrastructure and RidgeGate infrastructure without reimbursement from other Parties.

1.2.2 Denver Water will treat its Pilot Plan water at Foothills Water Treatment Plant at its cost without reimbursement.

1.2.3 ECCV will be compensated by Castle Rock Water for the use of the ECCV Pump Station to pump water under this Pilot Plan as follows:

1.2.3.1 Utility Payment: For all months where ECCV pumps Pilot Plan water pursuant to this IGA, the monthly electric bill for the ECCV Pump Station will be split pro-rata between ECCV and Castle Rock Water based on the respective volume of Pilot Plan water passing through the ECCV Pump Station that month (i.e. Castle Rock Water's portion) in comparison to the total amount of water pumped through the ECCV Pump Station during that same month. If pumping of Pilot Plan water occurs at any time in the "Summer Months," defined as June 1 through September 30, a single additional charge will be imposed in October of that year at the rate of \$1,533 times the "Peak Pilot Plan Flow" water that was pumped during the Summer Months. Peak Pilot Plan Flow is defined as the highest flow that occurred over a 15-minute period, measured as million gallons per day. For example, a peak flow of 1.5 million gallons per day occurring at any time during the Summer Months (for a period of at least 15 minutes) would result in an additional charge of \$2,299.50 (\$1,533X1.5).

1.2.3.2 Administrative Payment: Castle Rock Water will pay ECCV \$400.00 for each month during which Pilot Plan water is pumped on any day during said month (the "Administrative Payment").

1.2.3.3 Invoicing: ECCV will invoice Castle Rock Water for amounts due to ECCV under this Section 1.2.3 on a monthly basis for any month in which Pilot Plan water is pumped. Castle Rock Water agrees to pay ECCV within sixty (60) days of the date of ECCV's invoice.

1.2.4 Castle Rock Water will provide use of its existing capacity in the WISE infrastructure and RidgeGate infrastructure without reimbursement from other Parties.

1.3 Pilot Duration, Magnitude, and Other Limitations.

1.3.1 Magnitude. The exact amount of Pilot Plan water to be transferred into and out of the Pilot Plan Storage Account is not known, but the objective of this Pilot Plan is to test relatively small amounts of water transfers. Likely between 500 and 1,000 acre-feet of water will be transferred into and out of RHR over the entire Pilot Plan duration.

1.3.2 No Denver Water Obligation. Denver Water expects to have sufficient water available for the Pilot Plan operation. However, Denver Water is not obligated to offer any amount of water under the Pilot Plan project to allow flexibility for unplanned drought conditions or other scenarios.

1.3.3 No PW&SD Obligation. PW&SD expects to have sufficient operational flexibility to accept and store water within reasonable limits. However, PWSD is not obligated to accept or store any amounts of water during the Pilot Plan project.

1.3.4 No ECCV Obligation. ECCV expects to have sufficient operational flexibility to use the ECCV Pump Station to pump Pilot Plan water through WISE infrastructure. However, ECCV is not obligated to pump any amounts of Pilot Plan water during the Pilot Plan project. No ECCV water will be used, consumed, or otherwise transferred as part of this IGA.

1.3.5 Castle Rock Water Obligation. Castle Rock Water expects to have sufficient operational flexibility to trade water in a Castle Rock Water Chatfield Reservoir storage account for water in the RHR Pilot Plan Storage Account but is not obligated to trade any amounts during the Pilot Plan project.

1.3.6 Cost for General Coordination. At various times during the operation of the Pilot Plan, the Parties will be required to coordinate as needed to accomplish the operational and accounting objectives defined herein. The Parties agree that the time spent by the staff of each respective Party will be the responsibility of that Party and no Party shall recover those expenses from any other Party, with the exception of the Administrative Payment charged by ECCV to Castle Rock during any month that water is delivered through the ECCV Pump Station.

1.3.7 Compliance with Laws. In the event any Party receives notice of or is otherwise cited for non-compliance with any federal, state, or local statute, laws, ordinances, regulations, rules, judgments, or decrees related to this Pilot Plan or otherwise in connection with this IGA and the activities hereunder, the receiving Party shall immediately provide notice of the same to the other Parties. ECCV may then immediately cease pumping water under this IGA until such time as the alleged non-compliance has been resolved, and any Party may begin termination proceedings in accordance with Article II below.

Article II **Pilot Plan Termination**

2. Pilot Plan Termination

2.1.1 **Expiration.** Unless extended by amendment signed by all Parties, or earlier terminated in accordance with the provisions of this IGA, the Pilot Plan will terminate on December 31, 2024.

2.1.2 **Early Termination.** The Pilot Plan will terminate 90 days after issuance of notice from any Party to all other Parties indicating that Party's desire to terminate this IGA (the "Termination Notice") and including the effective date of termination of the IGA, which shall be ninety (90) days from the date of issuance of the Termination Notice. Under this scenario, Denver Water would have 90 days to coordinate with Castle Rock Water to complete all needed storage trades.

2.1.3 **Water Left in Pilot Plan Storage Account after Termination.** It is the intent of all Parties to not have any water left in the Pilot Plan Storage Account upon termination of the Pilot Plan. If there is water left in the Pilot Plan Storage Account after termination, Denver Water and Castle Rock Water will continue to cooperatively move water to the Castle Rock RHR Storage account and Denver Water Chatfield Reservoir storage account after the end date of the Pilot Plan until the Pilot Plan Storage Account is zero with no additional deliveries of Pilot Plan water.

Article III **Special Provisions**

3.1 **Approvals.** The Parties will work together to obtain all necessary authorizations and approvals as may be required to effectuate the deliveries of water under Article II, including any approvals required from the State and Division Engineer's Office for Water Division One; provided, however, ECCV shall have no responsibility or obligation to obtain any approvals or authorizations, or share in the costs thereof, not specifically related to or necessitated by the ECCV Pump Station. The Parties agree to comply with all requirements of such approvals or terminate this IGA in accordance with **Article II**.

3.2 **Use of Water.** Under this Pilot Plan, each Party is only using its own water rights, and no Party is transferring their water for use by another Party.

Article IV **General Provisions**

4.1 **No Operating Obligation.** Nothing herein shall be deemed or construed

as creating any obligation on any Party to operate their respective facilities in any particular manner, so long as such Party complies with the express terms of this IGA.

4.2 Denver Charter Provisions. This IGA is made under and in accordance with Article X of the Charter of the City and County of Denver, which controls the operation of the Denver Municipal Water System.

4.3 Governmental Immunity Act. The Parties understand and agree that they are relying upon, and have not waived, the monetary limitations, and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as it may be amended from time to time.

4.4 No Assignment. No right hereunder may be assigned by any Party.

4.5 Waiver. No waiver of any of the provisions of this IGA shall be deemed to constitute a waiver of any other of the provisions of this IGA, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder

4.6 Remedies. None of the remedies provided for under this IGA need to be exhausted or exercised as a prerequisite to any Party's pursuit of further relief to which it may be entitled.

4.7 No Exclusive Right. Nothing in this IGA shall be construed as a grant by any Party of any exclusive right or privilege.

4.8 Governing Law and Venue. The Parties agree that this IGA and all matters arising out of or relating to this IGA, are governed by and construed in accordance with, the laws of the State of Colorado. Venue for any dispute over any issue resulting from this IGA shall be in the District Court for the County where the principal place of business of the defending Party is located; provided, however, if more than one Party is defending against litigation, venue will be in the District Court for Douglas County.

4.9 Representatives and Notice. All notices must be in writing and (a) delivered personally, (b) sent by electronic mail, delivery receipt requested, (c) sent by United States certified mail, postage prepaid, return receipt requested ("US Mail"), or (d) placed in the custody of a nationally recognized overnight carrier for next day delivery ("Carrier"), and will be deemed given (i) when received, if delivered personally, (ii) on the day sent if sent during regular business hours (9 a.m. to 5 p.m.), otherwise on the next day at 9 a.m., if sent by electronic mail, (iii) 4 days after deposit, if sent by US Mail, or (iv) the next business day after deposited with a Carrier during business hours on a business day. All notices shall be delivered to the

following addresses, or such other address as is provided by one Party to the other in accordance with this section. The Parties representatives, to accept or give any request, approval, notice or the like provided for by this IGA shall be:

Denver Water's Representative shall be:

Richard B. Marsicek, P.E.
Water Resource Planning Manager
Denver Water Department
1600 W. 12th Ave.
Denver, Colorado 80204-3412
Email: rick.marsicek@denverwater.org

PW&SD's representative shall be:

Rebecca Tejada, P.E.
Director of Engineering
18100 E. Woodman Dr.
Parker, CO 80134
Email: rtejada@pwsd.org

Castle Rock Water's representative shall be:

Matthew J. Benak, PE
Water Resources Manager
175 Kellogg Court
Castle Rock, CO 80109
Ph. (720) 733-6037
Email: mbenak@crgov.com

ECCV's representative shall be:

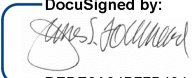
David J. Kaunisto
East Cherry Creek Valley Water and Sanitation District
6201 S. Gun Club Rd
Aurora, CO 80016
Email: dkaunisto@eccv.org

4.10 Integration. The Parties agree that this IGA shall be construed and enforced as the fully integrated expression of their contract with respect to the matters and subjects addressed herein. No express or implied covenant not specifically set forth herein shall be deemed to be a part of this IGA.

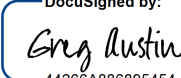
4.11 Effective Date. This IGA will become effective ("effective date") on the date it is fully executed by all Parties.

IN WITNESS WHEREOF, PW&SD, ECCV, Castle Rock Water and Denver Water have executed this Intergovernmental Agreement with its exhibits.

ATTEST:

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By: 
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Secretary

CITY AND COUNTY OF DENVER
acting by and through its
BOARD OF WATER COMMISSIONERS

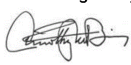

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President

DATE: 1/21/2021

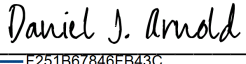
REGISTERED AND COUNTERSIGNED:
CITY AND COUNTY OF DENVER

APPROVED:


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By: 
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Chief External Affairs Officer

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By:  
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Timothy M. O'Brien, CPA
Auditor


APPROVED AS TO FORM:

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By: 
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Office of General Counsel


PARKER WATER AND SANITATION DISTRICT,
a Colorado special district

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Ron R. Redd, P.E., District Manager

Date: 12/16/2020

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ATTEST: 
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Rebecca Tejada, P.E., Director of Engineering

ATTEST:

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Lisa Anderson, Town Clerk

TOWN OF CASTLE ROCK,
acting by and through its Water Enterprise


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Jason Gray, Mayor


Date: 1/11/2021

Approved as to form:

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Michael J. Hyman, Town Attorney

Approved as to content:

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Mark Marlowe, Director, Castle Rock Water

**EAST CHERRY CREEK VALLEY WATER AND
SANITATION DISTRICT**, a quasi-municipal
corporation and political subdivision of the State
of Colorado

By: _____
David J. Kaunisto, District Manager

Date: _____

ATTEST:

Scott Nieber, Operations Manager

ATTEST:

TOWN OF CASTLE ROCK,
acting by and through its Water Enterprise

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Date: _____

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director, Castle Rock Water

**EAST CHERRY CREEK VALLEY WATER AND
SANITATION DISTRICT**, a quasi-municipal
corporation and political subdivision of the State
of Colorado

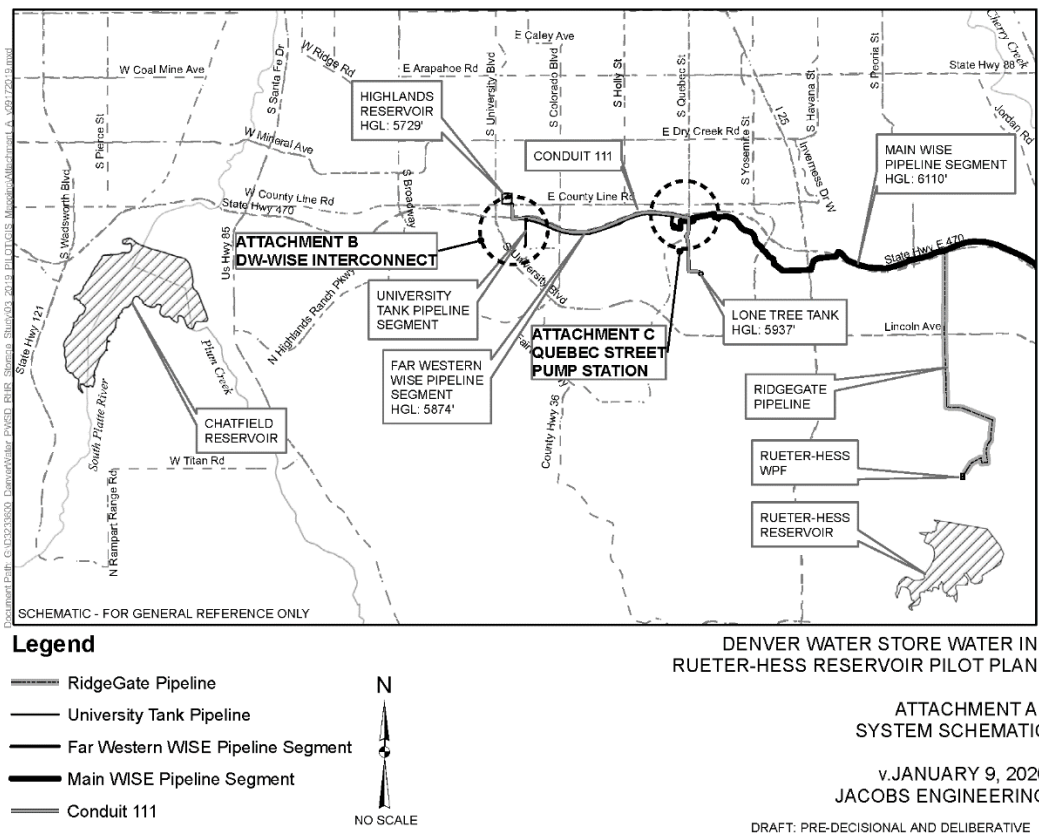
By: 
David J. Kaunisto, District Manager

Date: 12/17/2020

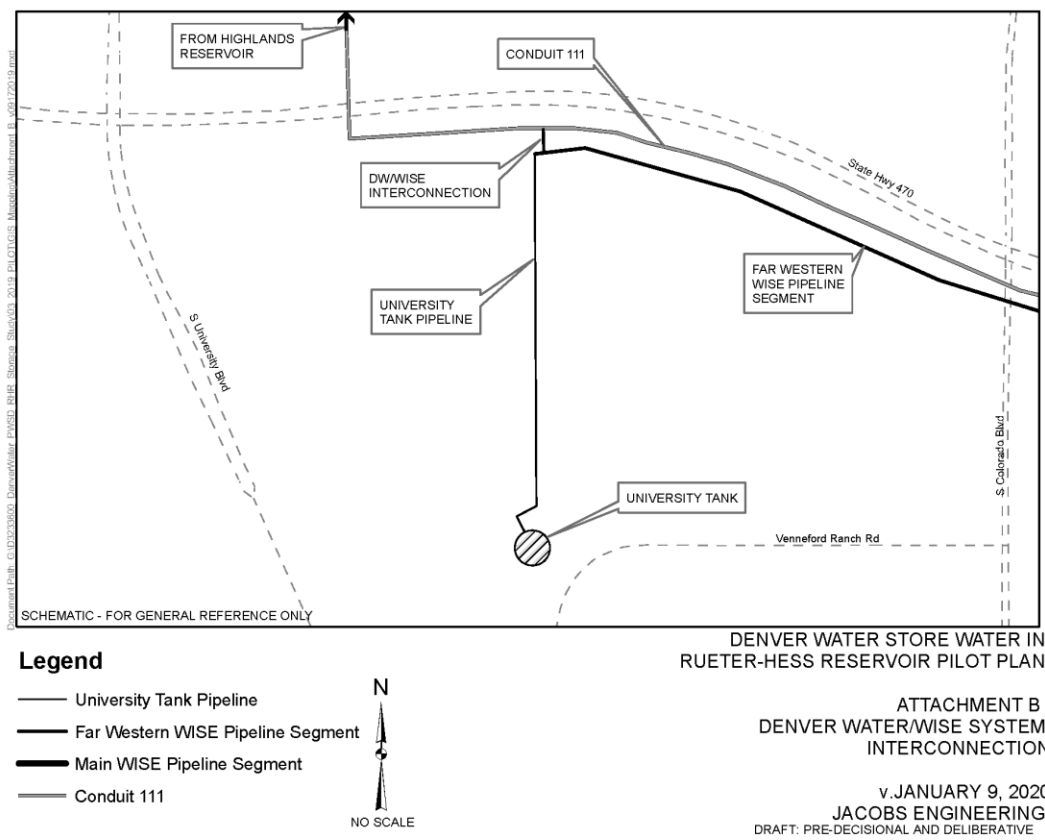
ATTEST: 

Scott Nieber, Operations Manager
Richard Maestas, Business Services Manager

ATTACHMENT A



ATTACHMENT B



ATTACHMENT C

