



COLORADO
Division of Water Resources
Department of Natural Resources
Water Division 1 - Main Office

05/08/2020

To: Denver Water, Parker Water, and Castle Rock

From: Kevin Rein, State Engineer; Corey DeAngelis, Division One Engineer

Subject: Reservoir Operations by Denver Water, Parker Water, and Castle Rock related to Rueter Hess and Chatfield Reservoirs

Denver Water, Parker Water and Castle Rock,

This correspondence is to respond to our February 19, 2020 meeting regarding a short term pilot project that consists of certain proposed water operations by Denver Water, Parker Water, and the Town of Castle Rock. Specifically, the proposed operations consist of two separate methods of operation, the first related to operations between Parker Water and Denver Water and the second between Denver Water and Castle Rock. These proposed operations are summarized below and more specifically provided in documents presented by the parties titled: "Denver Water Store Water in Rueter-Hess Reservoir Pilot Plan Summary Version: January 9, 2020"; and "RH Pilot Graphic dated December 2, 2019", attached to this letter for reference.

Proposed Bookover in Rueter Hess Reservoir:

The first proposed operation is between Denver Water and Parker Water and consists of the following:

- Denver Water's reusable water in Strontia Reservoir is delivered into the WISE System to the Parker Water Rueter Hess Water Treatment Plant (RHWTP) where it takes on the character of Parker's water from an account in Rueter Hess for distribution to Parker Water users.
- On the same day, a like amount of Parker's water held in Rueter Hess Reservoir is booked over into a Pilot Project account and retains its character as Denver Water's reusable water as delivered through the WISE system. Denver's water is held in Rueter Hess pending its eventual use at a lawful place of use.

Proposed Reservoir Trade Between Denver Water and Castle Rock:

Castle Rock's reusable effluent treated at the Plum Creek wastewater treatment plant flows down Plum Creek into Chatfield Reservoir. Castle Rock and Denver Water propose that a like amount of Denver's reusable water in Rueter Hess Reservoir be traded with Castle Rock reusable water in Chatfield Reservoir. This operation may have the characteristics of what has come to be known as a "Reservoir Trade."

Although the practice of Reservoir Trades can be complicated, the basic components include recoloring equal amounts of water in two different reservoirs, giving each the character of the other, without physically delivering any water through the natural stream or, at times, without the use of a Physical Exchange.



As you may be aware, State Engineer Kevin Rein recently addressed the subject of Reservoir Trades in Water Division 2. The State Engineer provided an analysis and rationale for allowing Reservoir Trades and the associated accounting in a January 22, 2020 letter with Subject: "Reservoir Trades and Substitutions, Water Division 2" ("Division 2 Letter"). DWR finds that the operation of this proposed Reservoir Trade may have all of the relevant characteristics of reservoir trades and therefore may allow the operation, pending a full review and approval of accounting operations in Chatfield Reservoir and the additional information requested below as to any impacts to rights to store native water.

If approved as a Reservoir Trade, the operation's associated accounting should adhere to using only legally available reusable water in the reservoirs, and the parties operating the Reservoir Trade must give notice to the Division Engineer prior to executing a trade. The operation of the Pilot Project relies largely on the operational details of the Denver Water and Castle Rock accounts in Chatfield Reservoir. We are not clear as to whether the accounts allow a discrete amount of water stored in priority and at the same time, allow Castle Rock and Denver to hold other reusable water in the same accounts. And if so, are Castle Rock and Denver Water limited to an amount for the two types of water in combination? If this operation fills an account that includes native water storage in Chatfield, the ability to store the native water right may be limited as a result. We are also not sure whether you intend to operate all aspects of the pilot project on a real-time basis, where the bookover and Reservoir Trade occur instantaneously and in amounts that leave no balance of Denver Water water in Rueter Hess and no balance of Castle Rock water in Chatfield; or do you intend to accrue balances of those types of water and do the operation periodically in bulk amounts, possibly leaving a balance of water in one of the reservoirs for subsequent operations? To allow the Pilot Project's operation, the parties must provide a detailed description of how the Chatfield accounts operate and lend themselves to the Pilot Project operation.

The Division Engineer has the discretion to not allow such a Reservoir Trade when the Division Engineer determines that such a Reservoir Trade would conflict with water court decrees for the water rights involved. Further, the Division Engineer's approval of this operation does not prevent other parties from claiming injury or taking action regarding injury to vested water rights. You may prefer to have conversations with other Division 1 water users about your proposal to determine in advance whether this would cause others concern. We look forward to continuing to talk about the Pilot Project.

Sincerely,



Kevin G. Rein
State Engineer, Director



Corey T. DeAngelis
Division Engineer, Division One

enc: - "Denver Water Store Water in Rueter-Hess Reservoir Pilot Plan Summary Version: January 9, 2020"; and "RH Pilot Graphic dated December 2, 2019"
- January 22, 2020 with Subject: "Reservoir Trades and Substitutions, Water Division 2" ("Division 2 Memo)

ec: Rick Marsicek, Dener Water; Rick.Marsicek@denverwater.org
Matt Benak, Town of Castle Rock; MBenak@crgov.com
Rebecca Tejada, Parker Water & Sanitation District; tejada@pwsd.org
Russell A. Slade, Denver Water; Russ.Slade@denverwater.org

Denver Water Store Water in Rueter-Hess Reservoir Pilot Plan

Summary

Version: January 9, 2020

Background. Denver Water is investigating options for storing water in or near its service area to protect against potential future water shortages, which could be triggered by regional drought and/or significant hydrologic change, a Colorado River Compact call, water quality issues due to wildfires, or other unplanned events. Parker Water and Sanitation District (PWSD) owns and operates Rueter-Hess Reservoir (RHR), which was built with the intent of being a regional reservoir with future regional partners. Therefore, PWSD and Denver Water would like to evaluate the potential long-term benefits of storing Denver Water supplies in RHR.

Reason for a Pilot Plan. The concept of Denver Water storing water in RHR has potential significant benefits to both Parties. However, a proposed and yet-to-be defined full-scale project may require permitting and numerous intergovernmental agreements. The Parties would like to perform this small-scale Pilot Plan to better ascertain the feasibility of the concept and inform the development of a potential long-term agreement.

System Description. 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 Quebec Street Pump Station and Foothills Water Treatment Plant are shown on **Attachment C**.

Example Pilot Operations. This section provides a high-level description of the flow path of water under the Pilot Plan. No new infrastructure is required to facilitate this pilot plan.

Denver Water Fill Operations. Denver Water transfers Pilot Water into the WISE System using the existing Conduit 111 / WISE Pipeline interconnection. Next, the ECCV-owned Quebec Street Pump Station transfers this water from the low-pressure side of the WISE System (Far Western WISE Pipeline Segment) to the high-pressure side of the WISE System (Main WISE Pipeline Segment). Next, the WISE System Operator sets the RidgeGate Pipeline flow control valve to allow the water from Denver Water to be delivered into the RidgeGate Pipeline. Lastly, the RidgeGate pipeline delivers water to the RHWPF where it combines with other water treated at the RHWPF and enters PWSD's potable water distribution system.

When PWSD uses Denver Water supplies in the manner described above, PWSD has a reduced need to withdraw water supplies stored in RHR. Therefore, PWSD will book over water stored in a PWSD RHR storage account into a new PWSD subaccount titled "Pilot Plan Storage Account" that tracks PWSD water in RHR that would not be in the reservoir if it were not for PWSD's use of Denver Water supplies.

Denver Water Withdrawal Operations. Denver Water will coordinate with Castle Rock Water to identify a mutually agreeable time for Castle Rock Water to transfer water in a Castle

Rock Water Chatfield Reservoir storage account to a Denver Water Chatfield Reservoir storage account for water being transferred from the RHR Pilot Plan Storage Account to the Castle Rock Water RHR storage account. Denver Water will receive all of its water back, less any transit and evaporation losses incurred under the Pilot Plan program.

Pilot Benefits and Cost Responsibility by Party: As shown in **Table 1**, the Pilot Plan provides benefits to each Party.

PWSD will provide pilot program 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.

Denver Water will treat Pilot Water at Foothills Water Treatment Plant at their cost without reimbursement and provide this water to PWSD to maintain storage in RHR.

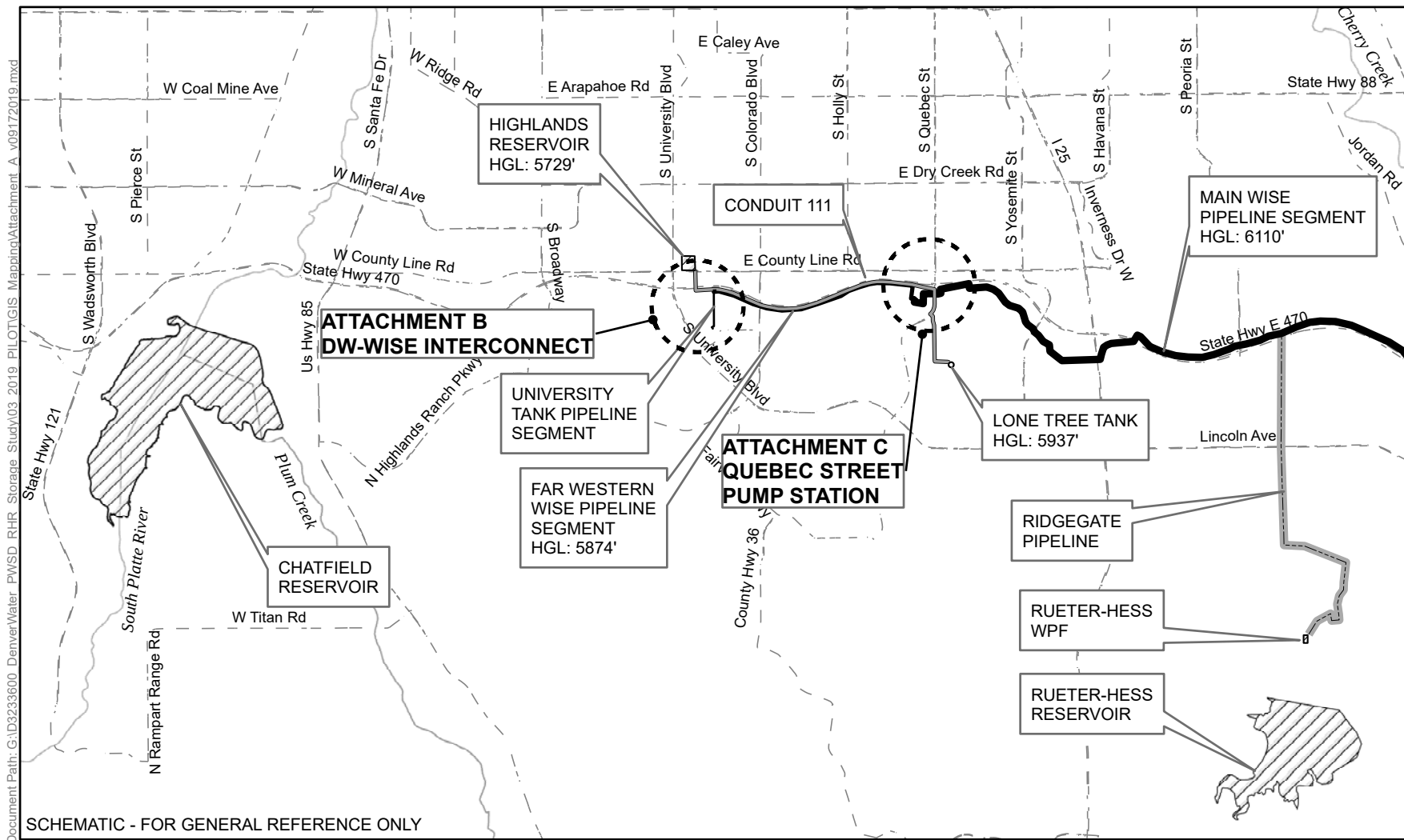
ECCV will be compensated by Castle Rock Water for pumping water under this pilot program at the Quebec Street Pump Station.

Castle Rock Water will provide use of its existing capacity in the WISE infrastructure and RidgeGate infrastructure without reimbursement from other Parties. Castle Rock Water will have water in RHR at the end of the Pilot Plan that would not otherwise be in RHR.

Table 1: Primary Pilot Plan Benefits by Party				
	PWSD	Denver Water	ECCV	Castle Rock Water
Information for long-term storage concept	x	x	x	x
Reduced Treatment Costs	x			
Information for developing pumping costs			x	
Increased Contents in RHR		x		x

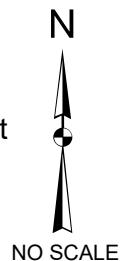
Pilot Duration and Magnitude. This Pilot is expected to last not more than 48 months from date all Parties sign a Memorandum of Intent to execute this Pilot Plan. The exact amount of Pilot Water to be transferred into and out of the Pilot Plan Storage Account is not known, but the objective of this Pilot 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.

Terms of a Long-Term Agreement will Vary from Pilot Terms. Under the limited purposes of this Pilot Plan, PWSD will not charge Denver Water a RHR Storage Use Charge. If a full-scale project is deemed feasible, PWSD will charge Denver Water a RHR Storage Use Charge. Future pump station usage fees charged by ECCV could also vary from those used under this Pilot Plan. Also, any costs paid by Castle Rock Water under this Pilot Plan may not be representative of costs to be paid by Castle Rock under longer-term future conditions.



Legend

- RidgeGate Pipeline
- University Tank Pipeline
- Far Western WISE Pipeline Segment
- Main WISE Pipeline Segment
- Conduit 111

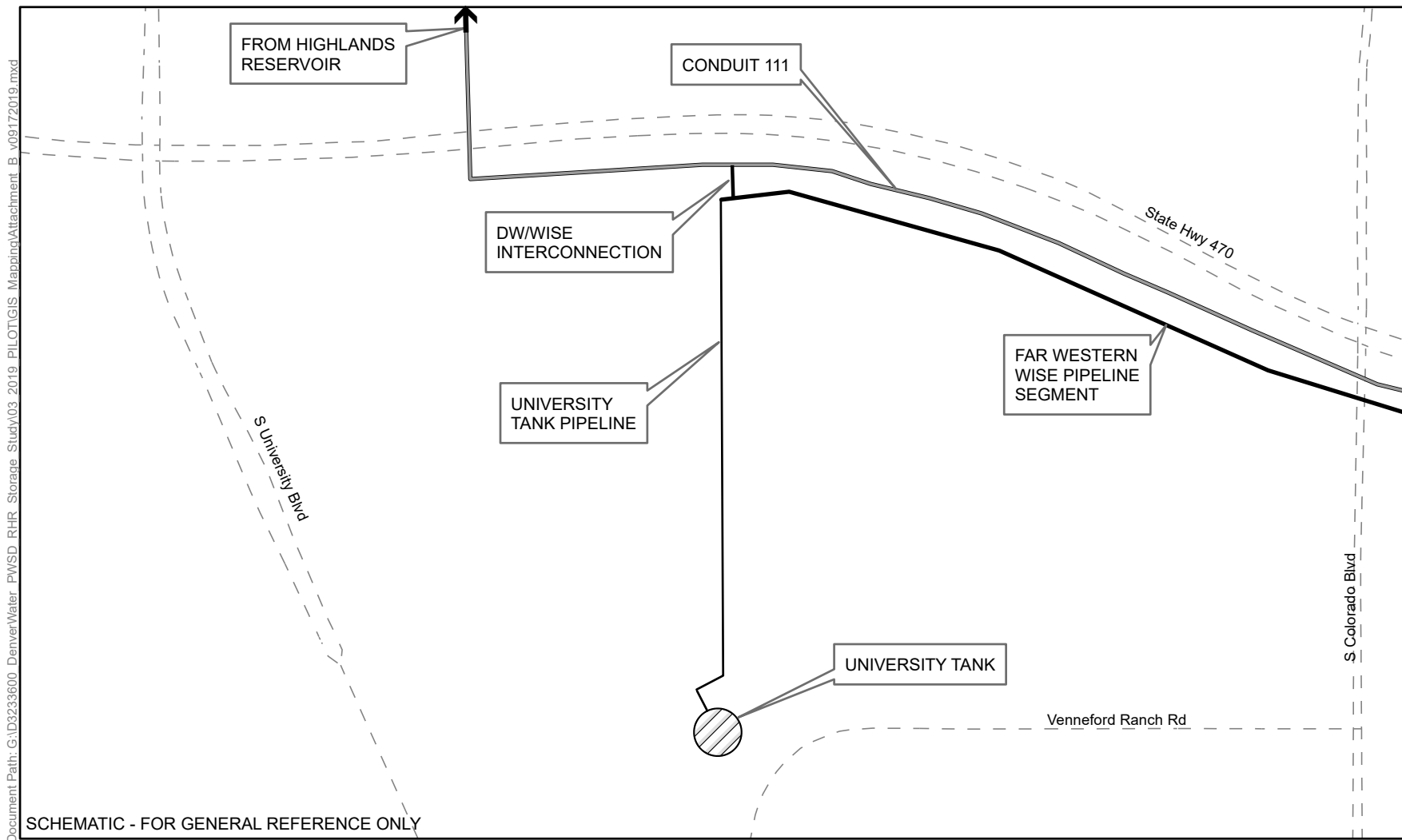


DENVER WATER STORE WATER IN RUETER-HESS RESERVOIR PILOT PLAN

ATTACHMENT A SYSTEM SCHEMATIC

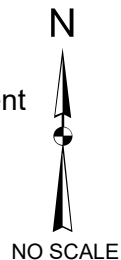
v.JANUARY 9, 2020
JACOBS ENGINEERING

DRAFT: PRE-DECISIONAL AND DELIBERATIVE



Legend

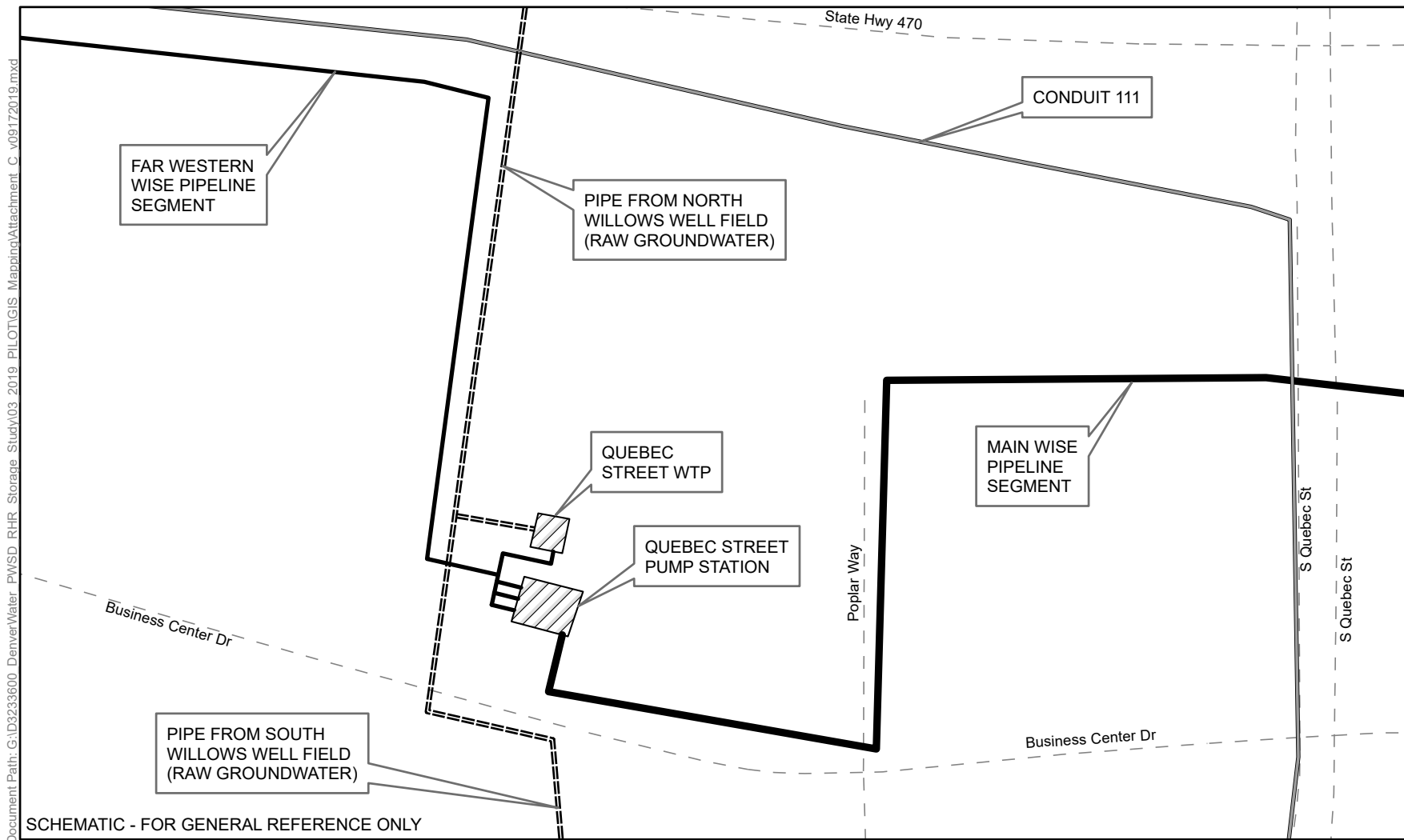
- University Tank Pipeline
- Far Western WISE Pipeline Segment
- Main WISE Pipeline Segment
- Conduit 111



DENVER WATER STORE WATER IN
RUETER-HESS RESERVOIR PILOT PLAN

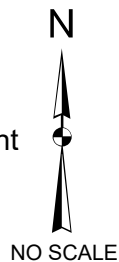
ATTACHMENT B
DENVER WATER/WISE SYSTEM
INTERCONNECTION

v. JANUARY 9, 2020
JACOBS ENGINEERING
DRAFT: PRE-DECISIONAL AND DELIBERATIVE



Legend

- Willows Well Pipelines
- Conduit 111
- Far Western WISE Pipeline Segment
- Main WISE Pipeline Segment

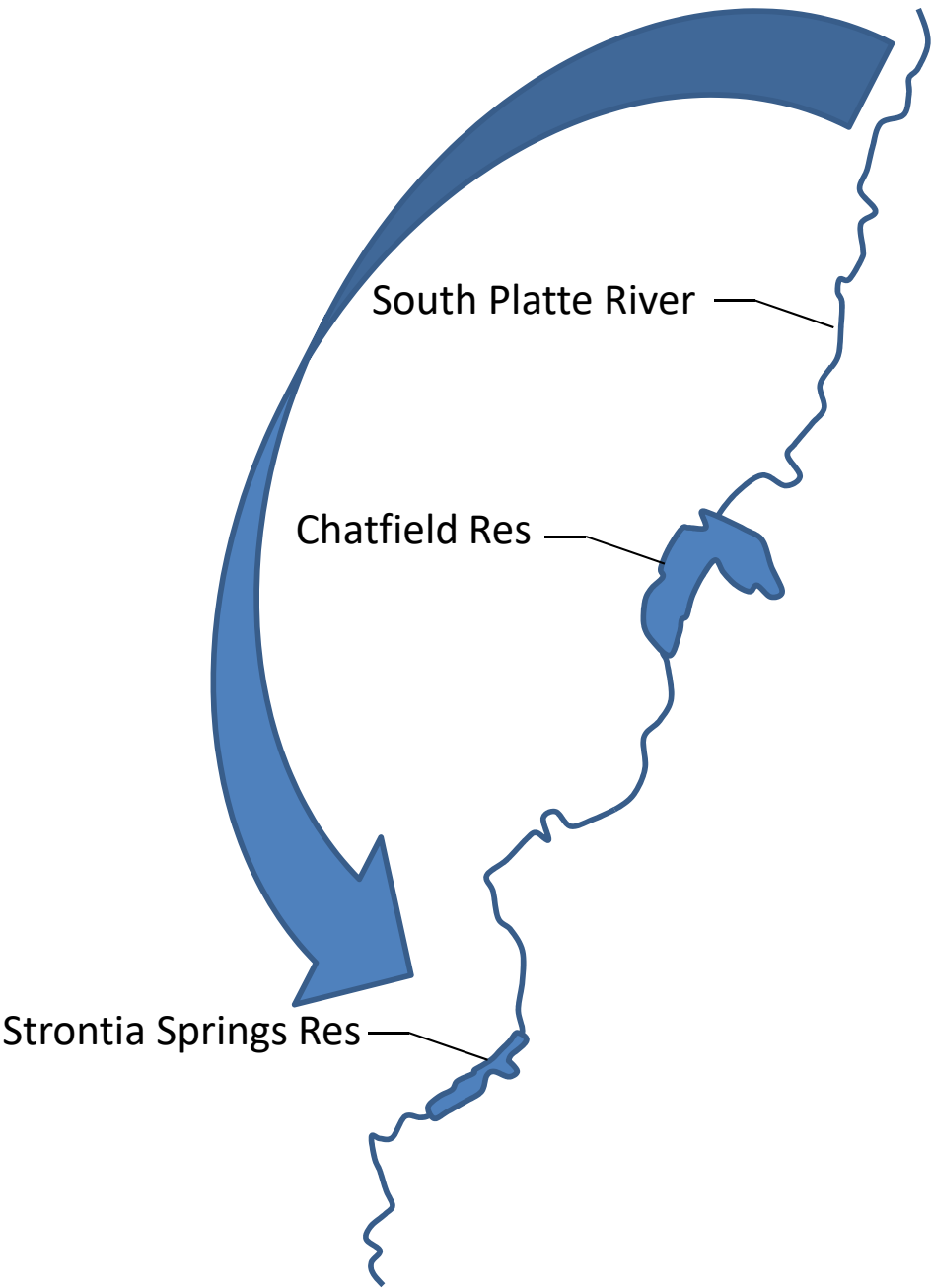


DENVER WATER STORE WATER IN
RUETER-HESS RESERVOIR PILOT PLAN

ATTACHMENT C
ECCV QUEBEC STREET
PUMP STATION

v.JANUARY 9, 2020
JACOBS ENGINEERING
DRAFT: PRE-DECISIONAL AND DELIBERATIVE

1: Denver Water exchanges reusable return flows from north of Denver to Strontia Springs Reservoir



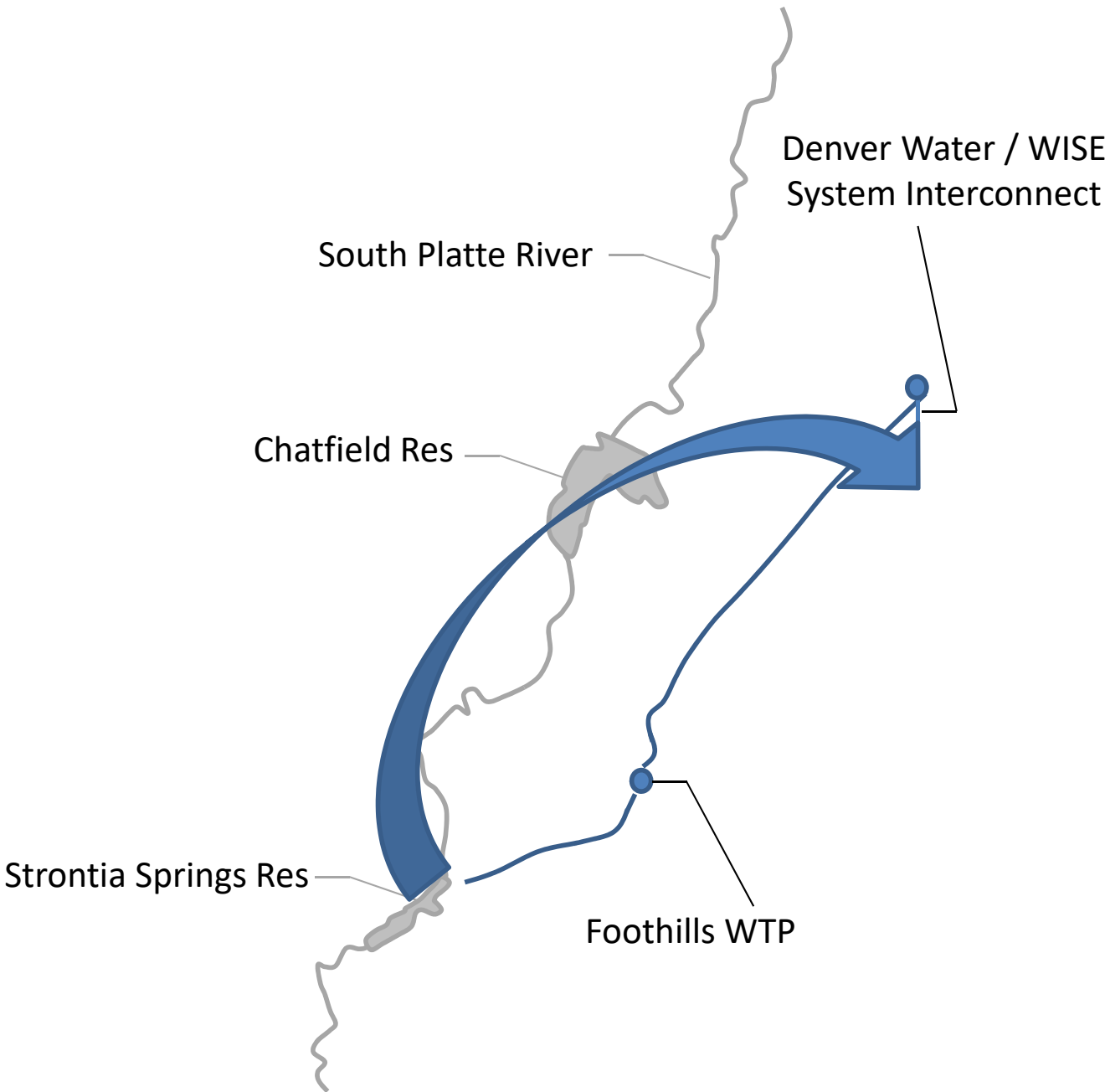
Denver Water Store Water in Rueter-Hess Reservoir Pilot Plan

Denver Water Exchanges Reusable Water to Strontia Springs Reservoir



Step 1

- 1: Denver Water exchanges reusable return flows from north of Denver to Strontia Springs Reservoir
- 2: Denver Water treats exchanged water and delivers to interconnect between Denver Water and WISE System

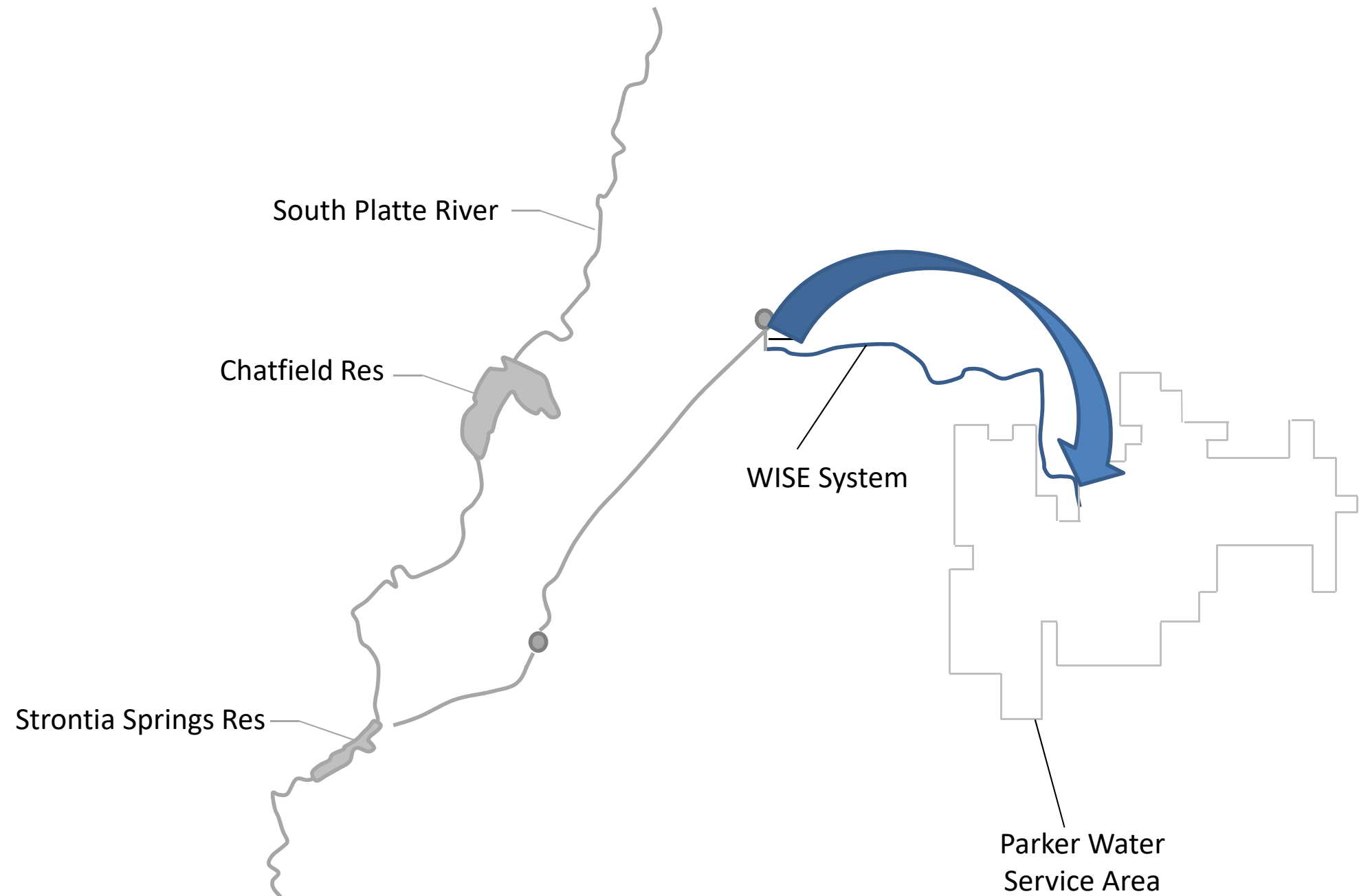


Denver Water Store Water in Rueter-Hess Reservoir Pilot Plan

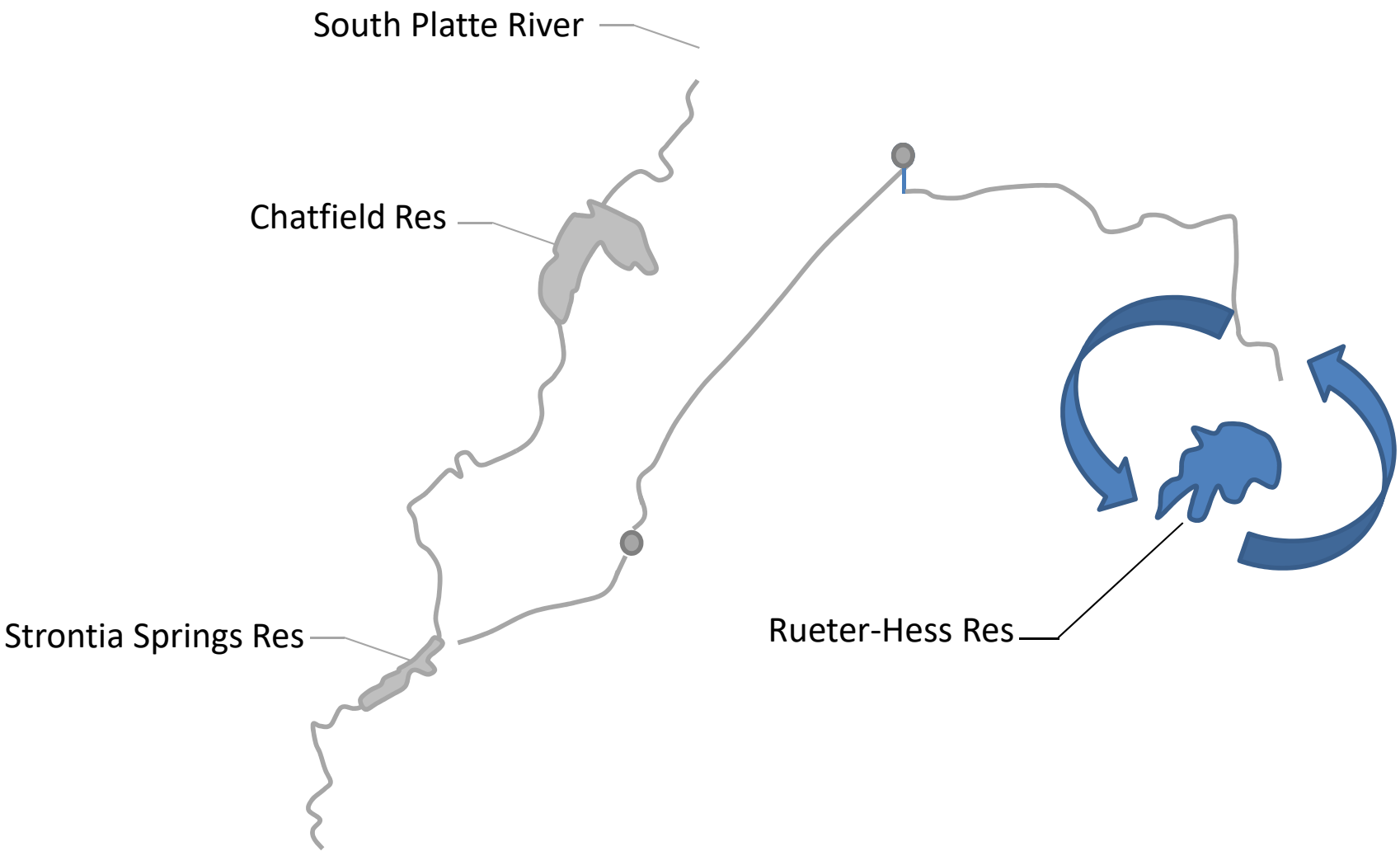
Denver Water Treats and Delivers Water to the WISE System

Step 2

- 1: Denver Water exchanges reusable return flows from north of Denver to Strontia Springs Reservoir
- 2: Denver Water treats exchanged water and delivers to interconnect between Denver Water and WISE System
- 3: WISE System is used to convey Denver Water water to PWSD potable water system



- 1: Denver Water exchanges reusable return flows from north of Denver to Strontia Springs Reservoir
- 2: Denver Water treats exchanged water and delivers to interconnect between Denver Water and WISE System
- 3: WISE System is used to convey Denver Water water to PWSD potable water system
- 4: PWSD and Denver Water perform a “Paper Trade” where: (a) PWSD uses own water rights stored in RHR as the water rights attributable to the water entering the PWSD system from Denver Water (b) PWSD and Denver Water show the water provided from Denver Water to PWSD as water stored in RHR

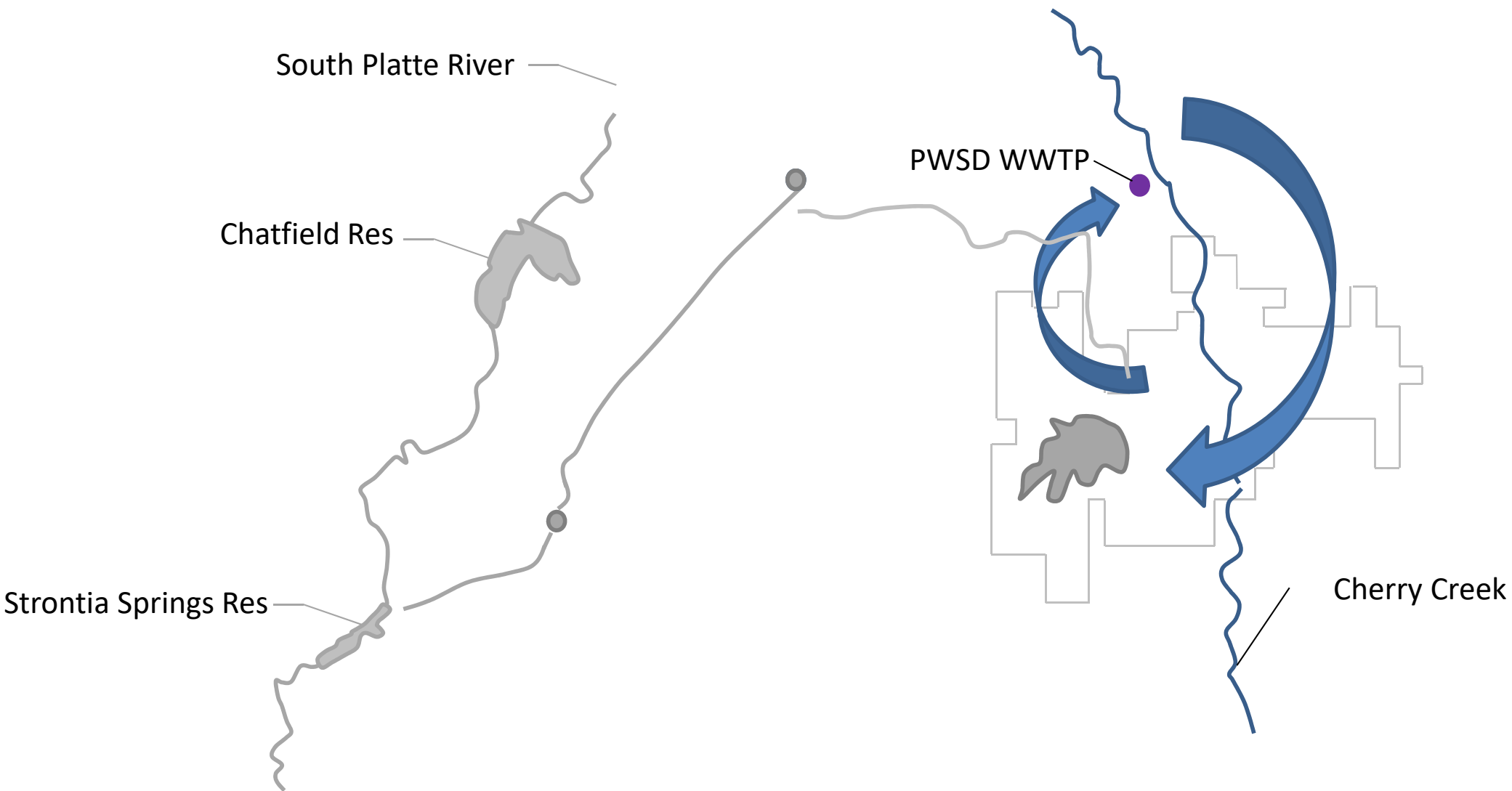


Denver Water Store Water in Rueter-Hess Reservoir Pilot Plan

Denver Water and Parker Water Perform Paper Trade Storing Denver Supplies in RHR

Step 4

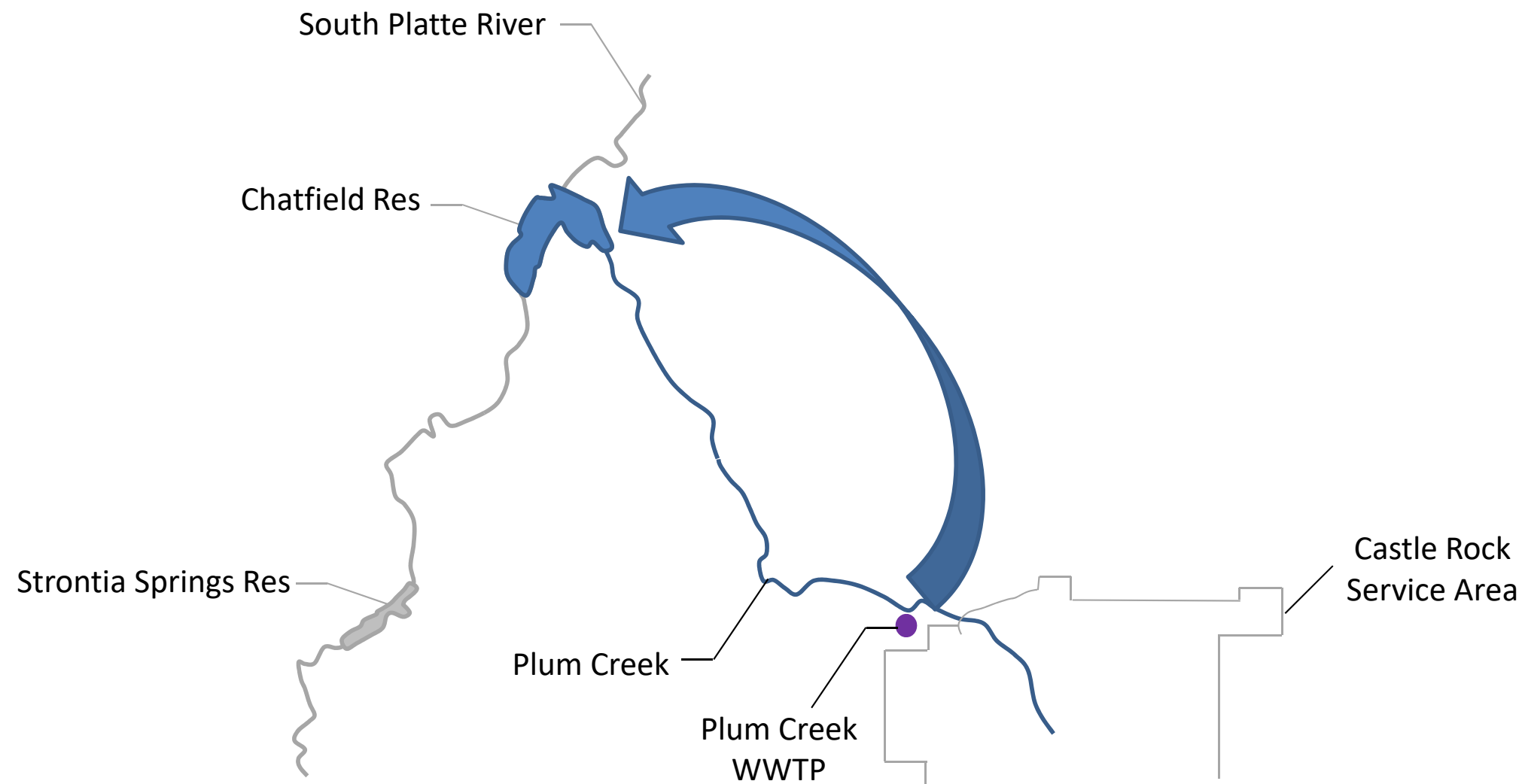
- 1: Denver Water exchanges reusable return flows from north of Denver to Strontia Springs Reservoir
- 2: Denver Water treats exchanged water and delivers to interconnect between Denver Water and WISE System
- 3: WISE System is used to convey Denver Water water to PWSD potable water system
- 4: PWSD and Denver Water perform a “Paper Trade” where: (a) PWSD uses own water rights stored in RHR as the water rights attributable to the water entering the PWSD system from Denver Water (b) PWSD and Denver Water show the water provided from Denver Water to PWSD as water stored in RHR
- 5: PWSD water is used in PWSD service area and reusable return flows are returned to Rueter-Hess Reservoir for future PWSD use



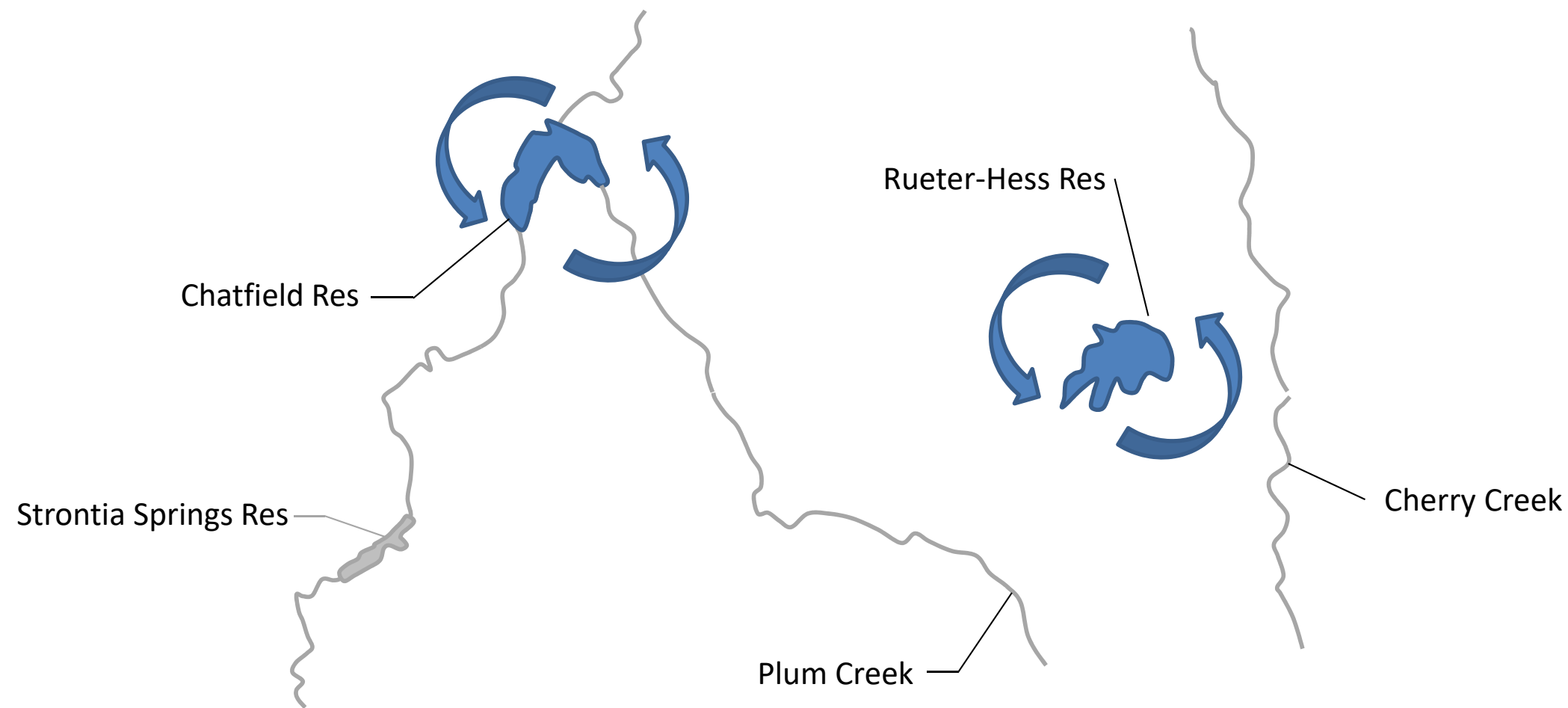
Denver Water Store Water in Rueter-Hess Reservoir Pilot Plan

Parker Water Recovers Reusable Water Using Parker Water Reusable Water Rights

- 1: Denver Water exchanges reusable return flows from north of Denver to Strontia Springs Reservoir
- 2: Denver Water treats exchanged water and delivers to interconnect between Denver Water and WISE System
- 3: WISE System is used to convey Denver Water water to PWSD potable water system
- 4: PWSD and Denver Water perform a “Paper Trade” where: (a) PWSD uses own water rights stored in RHR as the water rights attributable to the water entering the PWSD system from Denver Water (b) PWSD and Denver Water show the water provided from Denver Water to PWSD as water stored in RHR
- 5: PWSD water is used in PWSD service area and reusable return flows are returned to Rueter-Hess Reservoir for future PWSD use
- 6: Castle Rock Water allows reusable return flows from Denver Basin groundwater (that was treated at Plum Creek WWTP) to flow down Plum Creek to Chatfield Reservoir and stores this water in Castle Rock’s Chatfield Reservoir account



- 1: Denver Water exchanges reusable return flows from north of Denver to Strontia Springs Reservoir
- 2: Denver Water treats exchanged water and delivers to interconnect between Denver Water and WISE System
- 3: WISE System is used to convey Denver Water water to PWSD potable water system
- 4: PWSD and Denver Water perform a “Paper Trade” where: (a) PWSD uses own water rights stored in RHR as the water rights attributable to the water entering the PWSD system from Denver Water (b) PWSD and Denver Water show the water provided from Denver Water to PWSD as water stored in RHR
- 5: PWSD water is used in PWSD service area and reusable return flows are returned to Rueter-Hess Reservoir for future PWSD use
- 6: Castle Rock Water allows reusable return flows from Denver Basin groundwater (that was treated at Plum Creek WWTP) to flow down Plum Creek to Chatfield Reservoir and stores this water in Castle Rock’s Chatfield Reservoir account
- 7: At a mutually agreeable time, Castle Rock transfers water in Castle Rock’s Chatfield Reservoir account into Denver Water’s Chatfield Reservoir account and Denver Water transfers a like amount of water from Denver Water’s Rueter-Hess Reservoir account to Castle Rock’s Rueter-Hess Reservoir account





January 22, 2020

To: Arkansas River Basin Water Users

From: Kevin Rein, State Engineer; Bill Tyner, Division Engineer, Division 2

Subject: Reservoir Trades and Substitutions, Water Division 2

Objective of Letter

The objective of this letter is to inform Division 2 water users of the State and Division Engineers' position regarding the historical practice of Reservoir Trades and Substitutions ("Reservoir Trades"). For the purpose of this letter, Reservoir Trades is the practice of two entities identifying equal amounts of water placed in reservoirs on the same stream system and, through accounting only, trading the character of those amounts of water such that the water in each reservoir takes on all components of the water right in the other reservoir, leading to an ability to use the water more effectively, minimizing the need for infrastructure, and at times eliminating transit losses associated with the delivery of water.

On March 14, 2019, Bill Tyner contacted a small group of Arkansas River Basin ("Basin") water users by e-mail to inform them that he was reviewing the practice of "Contract Exchanges," what we now refer to as Reservoir Trades, to determine whether the practice falls within with statutory authority given the State and Division Engineers and to determine whether the practice causes injury to vested water rights. Since then, the Division of Water Resources has identified a much larger stakeholder group that includes water managers, engineers, and attorneys. Since the March 14 e-mail, Bill Tyner and I have facilitated three meetings with stakeholders to gather more information regarding the practice of Reservoir Trades. Those meetings occurred on April 3, July 2, and November 18, 2019.

Summary of Position

After reviewing the scope and magnitude of the Reservoir Trades practices historically occurring in Division 2, I have also considered statutory and case law, as well as the effects of Reservoir Trades on instream flow rights and more traditional exchange rights involving an upstream diversion and the delivery of replacement water downstream as identified in sections 37-80-120, 37-83-104, and 37-92-305, C.R.S. ("Physical Exchanges"). For the reasons set forth below, the State and Division Engineers will allow the practice of Reservoir Trades to continue, as further described below, and recognize the associated accounting for the purpose of shepherding any reservoir releases to the stream to their decreed places of use, while also encouraging continued dialogue among water users, as described below.



Background

Introduction

Although the practice of Reservoir Trades can be complicated, the basic components include recoloring equal amounts of water in two different reservoirs, giving each the character of the other, without physically delivering any water through the natural stream or, at times, without the use of a Physical Exchange. A Reservoir Trade usually uses transbasin or otherwise fully consumable water. This practice has been common in the Basin and has been done with the approval of the Division Engineer and State Engineer, including at times when there was not sufficient exchange potential in the stream, had a party desired to move the water to an upper reservoir through the use of a Physical Exchange. This practice has been used by many water users in the Basin to efficiently deliver and maximize the beneficial use of their water rights through daily water delivery operations, plans for augmentation, and Rule 14 plans, among other things. For that reason, Bill Tyner and I, along with other DWR staff, entered into the discussion of Reservoir Trades with the intent of working cooperatively to better understand the practice, any need for authority to allow it to continue, and the potential for injury to other water rights.

Legal Authority

I have evaluated the State and Division Engineers' authority to acknowledge Reservoir Trades. The General Assembly did provide for water users to move water through the stream system and associated infrastructure in certain ways. Specifically, the allowance in 37-87-102(4) affirms the right to physically release reservoir water and convey it through the natural stream, with due allowance for transit losses. Inherent in this statutory provision is the Division Engineer's administration of the released water to ensure the volume of water, with due regard for transit losses, is delivered to the intended destination. Further, through 37-83-104, the General Assembly provided for the need to take water out of priority from an upstream source and deliver a like amount to the downstream calling water right. This is the traditional exchange or Physical Exchange that is practiced regularly in Colorado.

Such a practice is also allowed under sections 37-80-120(2), (3) and (4), C.R.S. Beyond the provisions of 37-80-120 and 37-83-104, I have not identified specific authority or responsibility given to the State and Division Engineers by the General Assembly to administer a practice that provides for the change in the character of water, as accomplished by Reservoir Trades. I note that in my evaluation of Reservoir Trades, I do not compare or equate the action to that of a Physical Exchange and I do not evaluate the practice based on standards applicable to a Physical Exchange. A Physical Exchange involves the diversion of water out of priority from an upstream source while delivering an equal amount to the affected, or potentially injured downstream water right owner. I recognize that a non-consumptive use cannot expect or demand the release of water, as described and allowed by 37-87-102(4). However, I also recognize that during a Reservoir Trade, when a water user desires to not deliver water through the natural stream under that statutory allowance and instead relies on another accounting mechanism to move the water, such a mechanism needs to occur

in a manner the State and Division Engineers can acknowledge without conflicting with existing statutory and case law or specific terms and conditions of the water court decrees for the water rights involved.

Benefits, Effect on the Stream System, and Water Quality Considerations

Benefits

The practice of Reservoir Trades provides benefits to the water users in the Basin. A primary benefit is allowing municipal or quasi-municipal water providers the ability to maximize the beneficial use of their water right by making that water available to them in a reservoir where their infrastructure is most suited to use the water. An additional benefit is that through that practice, a water user eliminates the losses to the system that would have come from physically delivering the water and is able to obtain the same beneficial use of the water from the lower reservoir as it would have from the upper reservoir.

A third benefit occurs by facilitating the operations of the Voluntary Flow Management Program for the Upper Arkansas River Basin. Colorado Parks and Wildlife, Southeastern Colorado Water Conservancy District, and other recreational and economic interests in the Upper Arkansas River Basin have collaboratively designed a program whereby releases from Twin Lakes Reservoir are managed to both limit the discharge for the benefit of improving fish breeding habitat in the Arkansas River as well increasing the discharge, to the benefit of recreation. This program's operation is enhanced through Reservoir Trades and the ability to move water from Twin Lakes Reservoir to Pueblo Reservoir without physically releasing or physically exchanging water.

Effects on the Stream System

The practice of Reservoir Trades does affect flows when considering what may have occurred on the stream had water been moved by another mechanism. When water is physically released to move it from an upper reservoir to a lower reservoir, the water may benefit instream flow water rights and exchanges on the river. Through Reservoir Trades, the water is accounted for in the lower reservoir without the physical release. This change does affect the instream flow and the exchange potential on the river. In general, this has an effect on any non-consumptive use on the river.

Additionally, a Reservoir Trade that involves native water that has been stored in priority has the potential to cause water right impacts under certain conditions where that water occupies space in the reservoir. In the situation where the subject water cannot be used prior to the start of the next reservoir fill season, the volume would be carried over to the next season and counted against that year's fill.¹ A Reservoir Trade would allow the use of that water, which would create physical space and eliminate the carryover to the following season. In this scenario, the practice could allow a greater fill under a senior priority in that following season, which would impact junior water rights.

¹ See DWR Reservoir Administration Guidelines

The lack of a physical release may also affect recharge to the stream alluvium. This is a valid consideration, however, assuming that water that is moved upstream through a Reservoir Trade would have been instead accomplished by a Physical Exchange, the total amount of water delivered would be the same over the course of time, resulting in the alluvial recharge component being primarily a matter of timing.

Water Quality

The Reservoir Trades practice does have a water quality component. For the Arkansas River below Pueblo Reservoir, the water quality is lower than the upper part of the river and the degradation of water quality continues downstream. Through a Reservoir Trade, a party often takes higher-quality water from higher in the basin when their right to water was acquired lower in the basin. This is an incidental benefit and is advantageous to the water provider. At the same time, that same volume of higher quality water is no longer released to the lower part of the river where its release would incrementally improve the water quality on the lower part of the river. Since the objective of this document is only to give direction on the State and Division Engineers' administrative allowance of Reservoir Trades, the question of appropriate water quality considerations will be addressed in a separate effort.

The Question of Potential for Injury

The State and Division Engineers are bound to administer the use of water to ensure no injury. The potential for injury usually arises from an action or proposed action by a water user, for example, a change of water right with return flow obligations, an out-of-priority diversion, or a Physical Exchange. These actions when taken by water users will deplete the stream. If that depletion impacts vested water rights, the water user taking the action may need to mitigate that impact to prevent injury. However, in the case of Reservoir Trades, the question is whether a practice that eliminates the need to put water in the stream, thereby reducing stream flows that otherwise would be enjoyed by non-consumptive uses in the stream, constitutes injury.

It is the alteration of what would have occurred that gives rise to the question of injury to vested water rights. While the General Assembly has given the Division Engineer the authority to “order the total or partial *discontinuance* of any diversion in his (or her) division to the extent that the water being diverted is required by persons entitled to use water under water rights having senior priorities,”² the General Assembly has not given the Division Engineer the authority to order the *release* of water for the same purpose unless the water was unlawfully or improperly stored or the release is required by a water court decree or substitute water supply plan.

Position and Recommendations

I have considered statutory and case law, as well as the effects of Reservoir Trades on instream flow rights, physical exchanges, or other non-consumptive uses. I find no basis to administratively preclude the practice strictly on the consideration of legal authority or the effects created on the stream system by Reservoir Trades. The exception to this is when the Reservoir Trade occurs using native water stored in

² Section 37-92-502(2)(a), C.R.S.

priority when there is potential that the ability to use the water through a Reservoir Trade may allow for greater storage the following season.

Allowance for Reservoir Trades; Transbasin or Fully Consumable Changed Water Rights

Therefore, in consideration of the longstanding practice of Reservoir Trades and the resulting significant benefits to water users in the Arkansas River Basin, the State and Division Engineers will allow the practice of Reservoir Trades, and the associated accounting, that includes only *transbasin or fully-consumable changed* water rights in the reservoirs as long as the parties operating the Reservoir Trade give prior notice to the Division Engineer. The Division Engineer has the discretion to not allow such a Reservoir Trade when the Division Engineer determines that such a Reservoir Trade would conflict with an explicit term or condition in the water court decrees for the water rights involved. The Division Engineer will post notice of Reservoir Trades on the Arkansas Basin Water Operations Dashboard.

Allowance for Reservoir Trades; Native Water Stored in Priority

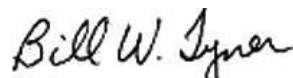
Further, the State and Division Engineers will allow the practice of Reservoir Trades and the associated accounting that includes *native water stored in priority according to its water right* in a reservoir only if the parties operating the Reservoir Trade submit notice to the Division Engineer requesting evaluation of the Reservoir Trade involving native water stored in priority. The Division Engineer has the discretion to not allow such a Reservoir Trade when the Division Engineer determines injury will occur due specifically to the potential that the ability to use the water through a Reservoir Trade may allow for greater storage through a senior storage right the following season or that such a Reservoir Trade would conflict with an explicit term or condition in the water court decree for that water right. The Division Engineer will post notice of Reservoir Trades on the Arkansas Basin Water Operations Dashboard.

I encourage the entities that practice Reservoir Trades to be receptive to outreach and discussions with any party that operates a non-consumptive use in the potentially affected stream reaches and I encourage the parties that operate those non-consumptive uses to contact the entities operating Reservoir Trades when they become aware of their proposed operations. I believe that through that communication, all parties may be able to cooperate in defining the details of the Reservoir Trades such that they continue to provide their intended benefits without causing injury.

Sincerely,



Kevin G. Rein
State Engineer, Director



Bill Tyner
Division Engineer, Division 2