

**INTERGOVERNMENTAL AGREEMENT CONCERNING REGIONAL RETURN
FLOW REPLACEMENT COORDINATION FOR THE BIG THOMPSON AND LITTLE
THOMPSON RIVER BASINS**

This Intergovernmental Agreement Concerning Regional Return Flow Replacement Coordination For the Big Thompson and Little Thompson River Basins (“IGA”) is entered into effective as of the date indicated below. The Parties to this IGA include the Little Thompson Water District (“Little Thompson”), the City of Loveland (“Loveland”), the Town of Berthoud (“Berthoud”), and the Town of Johnstown (“Johnstown”) (collectively referred to herein as the “Parties”).

RECITALS

WHEREAS, Little Thompson is a quasi-municipal corporation and political subdivision of the State of Colorado that provides water service to the residents, businesses and water users located within its boundaries, as the same may exist from time to time.

WHEREAS, Loveland is a municipal corporation of the State of Colorado that provides water service to the residents, businesses and water users located within its water service territory, as the same may exist from time to time.

WHEREAS, Berthoud is a municipal corporation of the State of Colorado that provides water service to the residents, businesses and water users located within its boundaries, as the same may exist from time to time.

WHEREAS, Johnstown is a municipal corporation of the State of Colorado that provides water service to the residents, businesses and water users located within its boundaries, as the same may exist from time to time.

WHEREAS, each of the Parties to this IGA have existing Water Court decrees, currently pending Water Court applications, or future anticipated Water Court applications involving water rights diverting from the Big Thompson River basin with return flow obligations generated thereby to locations in the Big Thompson River and/or Little Thompson River drainages, including their tributaries.

WHEREAS, each of the Parties have water sources that are or will be decreed or otherwise authorized for use to satisfy return flow obligations arising from a change of use decree, although certain Parties have or will have the ability to satisfy those return flow obligations to specific locations with greater efficiency than other Parties.

WHEREAS, each of the Parties are generally supportive of the ongoing discussions related to the 2023 update to the Colorado Water Plan and its stated desire to foster “agreements and flexibility and timing of operations that can support increased flexibility in water use within the Prior Appropriation System,” and this IGA furthers such a collaborative approach to maximize the beneficial use of the native South Platter River basin water supply; and

WHEREAS, this IGA is entered into to facilitate and frame further discussions between the Parties that the Parties intend will result in negotiated and executed intergovernmental

subagreements for lease or trade of raw water supplies between Parties for the purpose of satisfying various Parties' return flow obligations in a manner that increases efficiency and thereby provides a net benefit to each Party.

NOW THEREFORE, for the consideration and overall mutual benefits described herein, the Parties hereby agree as follows:

1. Available Return Flow Resources. Each Party hereby agrees to identify to the other Parties the sources of and potential release locations for water decreed or otherwise authorized for use to replace historical irrigation return flow obligations (collectively, the "Return Flow Resources") under the terms of this IGA. Specifically, each Party agrees to identify: (1) the source(s) of water it has or will have available for use to meet return flow obligations under this IGA; and (2) the stream segment or specific location(s) where such source(s) can be released to or is otherwise available in the Little Thompson River, Big Thompson River, or tributaries thereto using the map attached hereto as Figure 1. The intent of this IGA is to specifically describe sources and locations of structures and provide an overall framework for cooperation and related separate intergovernmental subagreements among any two or more Parties that identify the specific terms by which the Parties may trade such Return Flow Resources for use by another Party consistent with this IGA. Nothing herein precludes any Party from entering into separate agreements beyond the scope of this IGA and nothing herein obligates a Party to enter into subsequent sharing agreements.

2. Sources and Locations of Pooled Resources. The Parties' current sources and release locations as described in the preceding paragraph 1 are set forth in the attached Exhibit A. The Parties may amend and update their contribution to Exhibit A to include additional sources and locations in their discretion, so long as all amendments are consistent with the requirements of this IGA, in particular, Paragraph 8, below. Any such exhibit amendments shall be provided to each of the Parties to this IGA.

3. Use of the Return Flow Resources. Use of Return Flow Resources by any Party other than the dedicating Party shall be limited to use for replacement of return flows to the Big Thompson River, Little Thompson River, and tributaries thereto, including releases delivered at the confluence of the Big Thompson River and the South Platte River, in satisfaction of decreed return flow obligations to the Big and/or Little Thompson River basins.

4. Use in Water Court Decrees. Each Party consents to any of the other Parties' reliance upon this IGA in existing or future Water Court decrees and/or applications as a source for replacement of return flow obligations, subject to the terms of this IGA and any related subsequent subagreements between individual Parties. It is the intent of this paragraph 4 to clarify that each of the Parties may list in a Water Court decree and/or application the sources and related locations of delivery identified herein by citation to this IGA, subject to the terms of this IGA, so long as any such decree or application includes a statement clarifying that the decree itself does not create a right to use structures or water rights not owned by the relevant Party.

5. Contractual Rights Only. Any water delivered pursuant to this IGA and under subsequent subagreement is provided strictly on a contract basis. No Party shall have or claim any right of ownership of the underlying water rights provided or dedicated to the Return Flow Resources by another Party. No Party shall have the right to change the use of any other Party's underlying water rights provided or dedicated to the Return Flow Resources.

6. Consideration. Subject to the availability of water resources and coordination of water rights accounting, and as to further be described in subsequent subagreements between two or more Parties, the Parties endeavor to compensate one other for the use of Return Flow Resources by delivery or transfer of adequate raw water resources legally and physically available for the use of the receiving Party.

7. Additional Parties. Additional entities may become a party to this IGA upon the unanimous written consent of the then-existing Parties to this IGA.

8. Amendment. This IGA may be amended in writing with the unanimous written consent of the then-existing Parties. Any amendment removing sources or locations from Exhibit A may be completed with the consent of the other Parties, which shall not be unreasonably withheld. Any amendment adding sources or locations to Exhibit A may be completed unilaterally by the relevant Party, but notice of such amendment shall be provided to each of the Parties.

9. No Waiver. Nothing herein constitutes a waiver of any Party's rights under the terms of the Governmental Immunity Act. Nothing herein precludes any Party from fully participating as an opposer in any other Party's Water Court proceedings.

10. Term, Termination and Withdrawal. The term of this IGA shall be for a period of 10 years. This IGA shall automatically renew for additional 10-year terms thereafter unless any Party objects to such renewal in writing no less than six months prior to expiration of the then-current term. If a Party so objects, the remaining Parties may renew this IGA among themselves without the objecting Party's participation. This IGA may be terminated by the unanimous written consent of the then-existing Parties to the IGA. Any Party may freely withdraw from this IGA at any time with such withdrawal effective 90 days after the withdrawing Party provides notice to the remaining Parties of its intent to withdraw.

11. Separate Agreements. Nothing herein precludes any two or more Parties from entering into separate agreement(s) for the use of the Return Flow Resources or other water not included in the Return Flow Resources for the purpose of satisfying another Party's return flow obligations in whole or in part by sale or trade. Any use of any Party's water or infrastructure under the terms of this IGA must be by separate subagreement. This IGA is intended to provide a framework for cooperation and water sharing between the Parties for the purpose of satisfying each Party's return flow obligations in a manner that increases the efficiency of each Party's operations.

12. Counterparts. This IGA may be executed in counterparts, each of which will be considered to be an original, but all of which together shall constitute one and the same IGA.

[signature pages follow]

TOWN OF JOHNSTOWN

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

By: _____

Hannah Hill, Town Clerk

TOWN OF BERTHOUD

By: _____

Name: _____

Title: _____

Date: _____

CITY OF LOVELAND

Stephen C. Adams, City Manager

Date

Attest

City Clerk

Approved as to Form

Assistant City Attorney

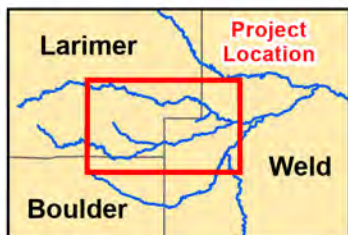
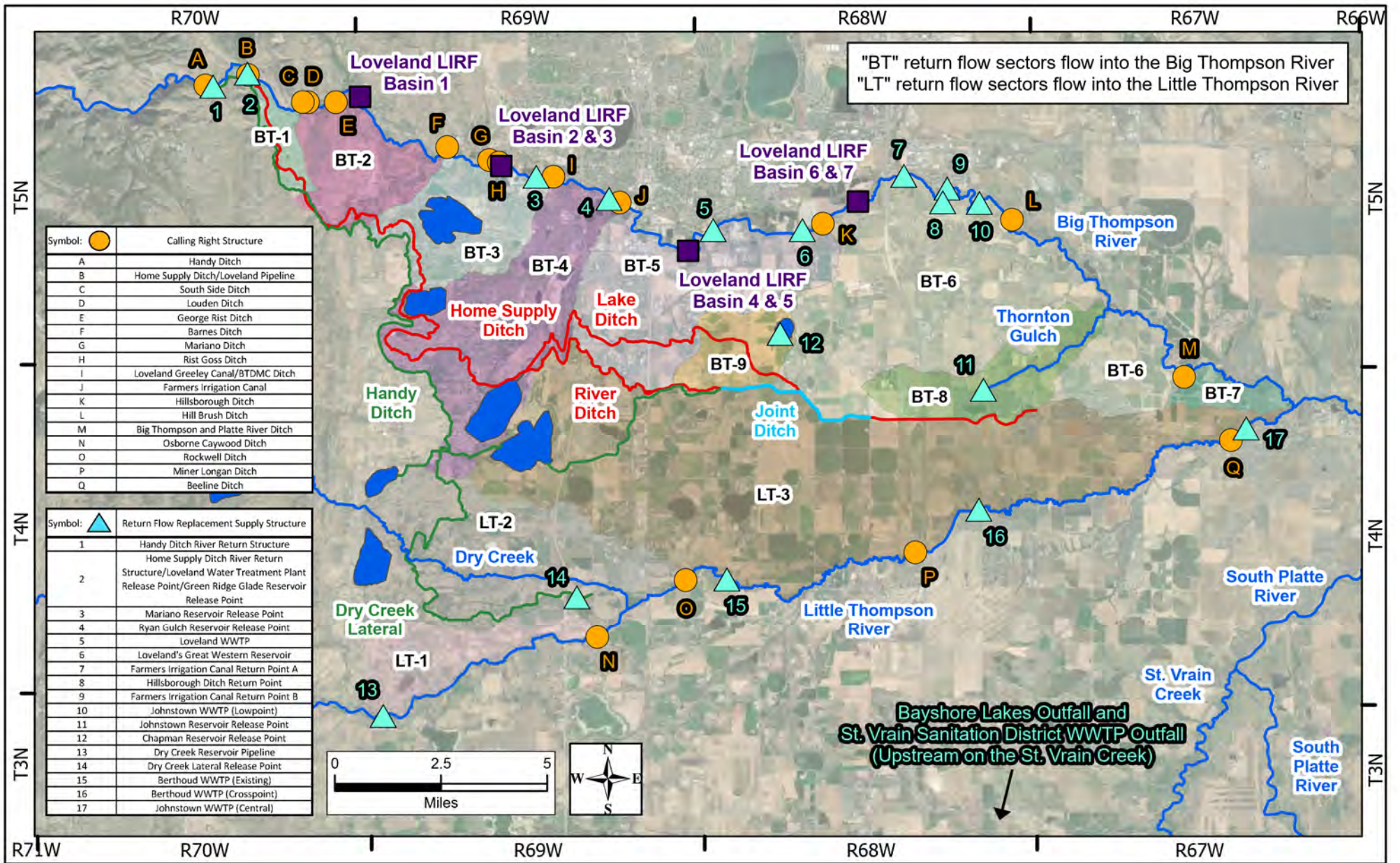
LITTLE THOMPSON WATER DISTRICT

By: _____

Name: _____

Title: _____

Date: _____



- Calling Rights
- ▲ Return Flow Release Structures
- Loveland LIRF Return Locations
- Rivers
- Home Supply System
- Handy System
- Joint Ditch
- Reservoirs

The mapping contained within this document is intended to be used for reference purposes only and is not suitable for construction and/or surveying purposes.

