

**Consent Agenda Item 1.b**

March 20-21, 2019 Board Meeting

Case No. 18CW3195 (Water Division 1); The City of Brighton

**Summary of Water Court Application**

Applicant seeks a change of water rights, appropriative rights of exchange, and conditional appropriation of return flows.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in January 2019 to protect CWCB's instream flow water rights.

**CWCB Instream Flow Water Rights**

Instream flow water rights that may be injured cannot be specifically identified because the proposed change in place of use is to undefined extraterritorial locations to meet "contractual obligations outside of Brighton's service area."

**Potential for Injury**

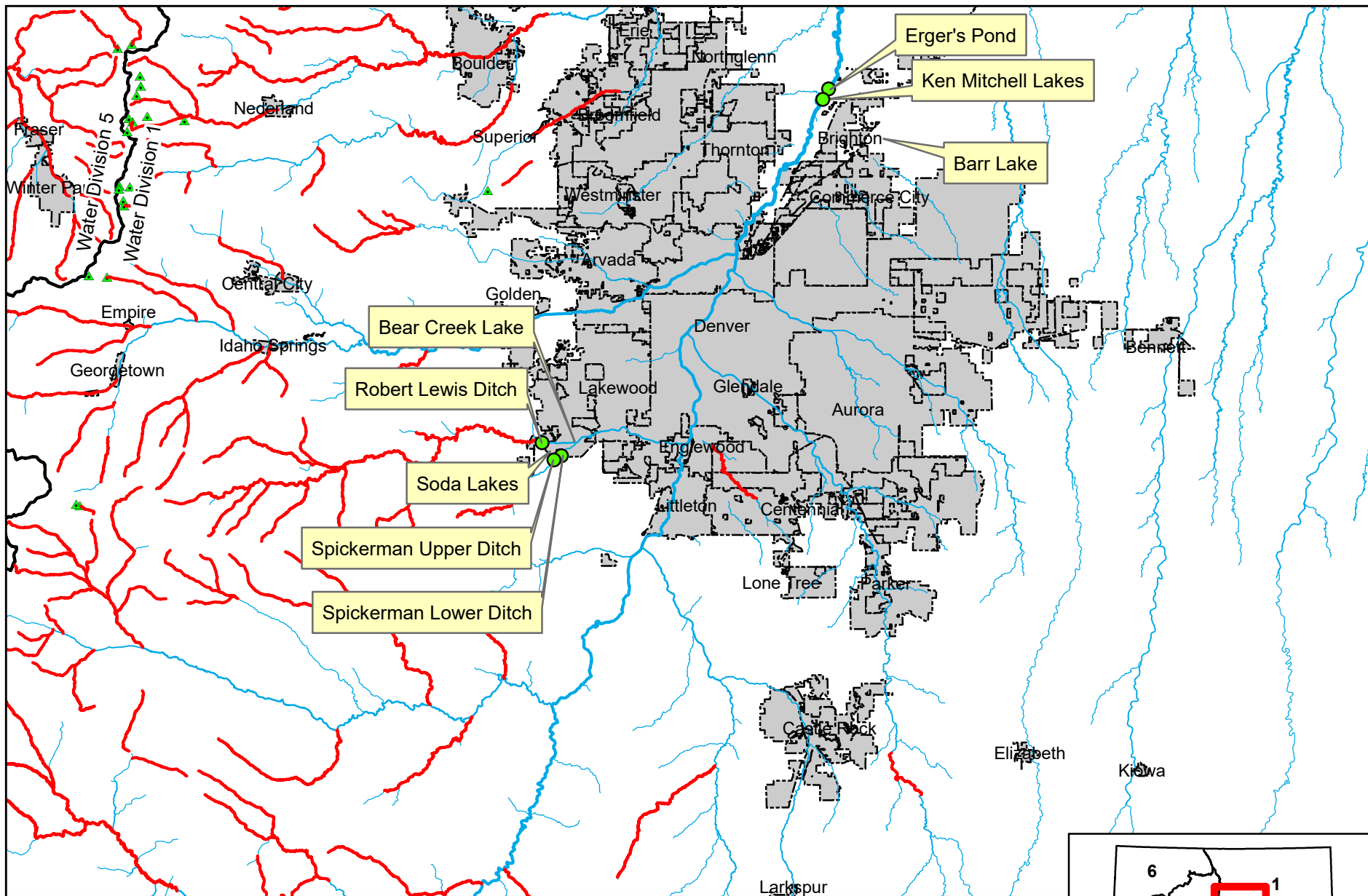
- The CWCB holds many water rights that could be injured by this application.
- Injury due to the extraterritorial uses of the changed water rights cannot be evaluated because the type of use and the place of use is undefined. Without protective terms and conditions, these uses could injure the CWCB's instream flow water rights.

**Other Objectors**

Statements of Opposition were also filed by the City and County of Denver, acting by and through its Board of Water Commissioners, City of Englewood, City of Lakewood, City of Thornton, City of Westminster, Evergreen Metropolitan District, Foothills Park and Recreation District and Bergen Ditch and Reservoir Company, Genesee Water & Sanitation District, Grant Properties I LLP and Grant Reservoir Company, Henrylyn Irrigation District, Platte Valley Irrigation Company, Public Service Company of Colorado, Red Rocks Country Club, South Adams County Water and Sanitation District, South Evergreen Water District, The Brighton Ditch Company, The Burlington Ditch, Reservoir and Land Company, The Farmers Reservoir and Irrigation Company, The Joseph W. Bowles Reservoir Company, Todd Creek Village Metropolitan District, United Water and Sanitation District, and the Zorich Family Limited Partnership.

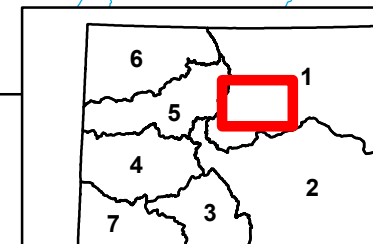
**Attorney Representing CWCB**

Philip E. Lopez, Assistant Attorney General, is assigned to this case and can be contacted at philip.lopez@coag.gov, or 720-508-6312.



March 20-21, 2019 CWCB Board Meeting  
 Consent Agenda Item 1.b: Statement of Opposition  
 Case No. 18CW3195 (Water Division 1)  
 City of Brighton

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 Miles



**DISTRICT COURT, WATER DIVISION 1, COLORADO  
NOVEMBER 2018 WATER RESUME PUBLICATION**

TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS IN WATER DIV. 1

Pursuant to C.R.S. 37-92-302, you are notified that the following is a resume of all water right applications and certain amendments filed in the Office of the Water Clerk during the month of **NOVEMBER 2018** for each County affected.

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**18CW3195 City of Brighton, 500 South 4<sup>th</sup> Avenue, Brighton, Colorado 80601, Attn: Philip Rodriguez, City Manager, (303) 655-8747.** All future correspondence and pleadings to Brent A. Bartlett, Esq., and Sara J.L. Irby, Esq., Fischer, Brown, Bartlett & Gunn, P.C., 1319 E. Prospect Road, Fort Collins, Colorado 80525, (970) 407-9000. **APPLICATION FOR CHANGE OF WATER RIGHTS, APPROPRIATIVE RIGHTS OF EXCHANGE AND CONDITIONAL APPROPRIATION OF RETURN FLOWS IN ADAMS, WELD, DOUGLAS AND JEFFERSON COUNTIES.** 2. Description of Application. The City of Brighton ("Brighton" or "Applicant") operates a municipal water and sewer system that obtains a portion of its raw water supply from tributary ground water in the South Platte and Beebe Draw basins, treats the water, and supplies the water to its customers. Out-of-priority depletions resulting from the pumping of Brighton's South Platte wells and Beebe Draw wells are augmented through Brighton's decreed South Platte and Beebe Draw well augmentation plans (Case Nos. 2000CW202 and 2003CW320). Brighton supplements the augmentation water utilized in these plans with additional sources of water described in Case Nos. 2004CW174, 2009CW144 and 2015CW3012. Collectively these decree(s) operate in an integrated fashion to augment depletions from all of Brighton's tributary wells. The principle purposes of this Application are to change the water rights represented by Applicant's ownership in the Spickerman Ditch (Upper and Lower) and the Robert Lewis Ditch, and to appropriate the return flows associated with Brighton's interest in the Spickerman and Robert Lewis water rights. **CHANGE OF WATER RIGHTS** 3. Description of water rights for which change is sought: A. Upper Spickerman Ditch: 3.14 cubic feet per second of Priority No. 12, decreed by the District Court of the Second Judicial District on February 4, 1884, with an appropriation date of November 1, 1862. The Upper Spickerman Ditch is located in the NW1/4 of Section 7, Township 5 South, Range 69 West, 6<sup>th</sup> P.M., Jefferson County, Colorado, and the source of the water is Turkey Creek, as previously changed and quantified in Case No. 1982CW473 and Case No. 2004CW197, District Court, Water Division No. 1, State of Colorado. B. Lower Spickerman Ditch: 5.13 cubic feet per second of Priority No. 18, decreed by the District Court of the Second Judicial District on February 4, 1884, with an appropriation date of June 1, 1865. The Lower Spickerman Ditch is located in the SW1/4 of Section 6, Township 5 South, Range 69 West, 6<sup>th</sup> P.M., Jefferson County, Colorado, and the source of the water is Turkey Creek, as previously changed and quantified in Case No. 1982CW473 and Case No. 2004CW197, District Court, Water Division No. 1, State of Colorado. C. Robert Lewis Ditch: 179.525 inches (4.675 cfs) of the 652.8 inches (17.0 cfs) of Priority No. 19 originally decreed by the District Court of the Second Judicial District in Civil Action No. 6832 on February 4, 1884, with an appropriation date of October 1, 1865 originally decreed for irrigation from Bear Creek with the original point of diversion located in the NW1/4 NW1/4 of Section 1, Township 5 South, Range 70 West of the 6<sup>th</sup> P.M. and was changed to the Arnett Ditch (a/k/a Harriman Ditch, a/k/a Arnett-Harriman Ditch) by decree entered February 13, 1912, in Civil Action No. 51248, as previously changed and quantified in Case No. 1984CW221, District Court, Water Division No. 1, State of Colorado. 4. Detailed description of proposed change: A. The location of the change is to any area within the service area of Brighton as such area now exists or may exist in the future, within the counties of Adams and Weld. B. The changed uses, in addition to the existing decreed uses, are for all municipal, augmentation, recharge, replacement,



exchange and substitution, either directly or following storage. Municipal uses include, but are not limited to, domestic, mechanical, manufacturing, industrial, fire protection, sewage treatment, street sprinkling, irrigation of parks, lawns, gardens and grounds, augmentation and replacement, recharge, use as a substitute supply, adjustment and regulation of municipal water systems, including further exchange with other municipal water systems and with other water users, within the City of Brighton's service area as it may exist both now and into the future and meeting contractual obligations outside of Brighton's service area. Applicant has quantified their percentage of historic diversions of the water rights described in paragraph 3, and the historical consumptive use derived therefrom, and seeks the right to fully consume such percentage when the changed water is used for the above changed purposes, including by reuse or successive use. Such right of reuse and successive use shall be conditioned upon Applicant's ability to maintain legal dominion and control over such water, and upon such notification, identification and reporting as the Division Engineer may require. C. The amount of water to be changed is the entire volume of water to which the water rights described in paragraph 3 of this application are entitled. D. Applicant seeks the right to store the water rights to be changed. The identified places of storage include the Ken Mitchell Lakes, the 124<sup>th</sup> Avenue Storage Pond, Erger's Pond, Barr Lake, Soda Lakes, and Bear Creek Lake as well as any other storage site that might be available to Brighton. The locations of these structures are as follows: 1. Ken Mitchell Lakes, located in parts of Sections 11, 12, 13, and 14, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M. 2. 124<sup>th</sup> Avenue Reservoir, located in the NE1/4 of the SW1/4 and the NW1/4 of the SE1/4 of Section 35, Township 1 South, Range 67 West of the 6<sup>th</sup> P.M. 3. Erger's Pond, which is adjacent to Cell 1 of Ken Mitchell Lakes in Section 12, Township 1 South, Range 67 West of the 6<sup>th</sup> P.M. 4. Barr Lake is within parts of Sections 15, 21, 22, 23, 26, 27, 28, 33 and 34, Township 1 South, Range 66 West of the 6<sup>th</sup> P.M. 5. Soda Lakes Reservoirs 1 and 2, located in the NW1/4, SW1/4 and SE1/4 of Section 1, Township 5 South, Range 70 West of the 6<sup>th</sup> P.M. 6. Bear Creek Lake, located in portions of Sections 31 and 32, Township 4 South, Range 69 West of the 6<sup>th</sup> P.M.; portions of Sections 5 and 6, Township 5 South, Range 69 West of the 6<sup>th</sup> P.M.; and portions of Section 1, Township 5 South, Range 70 West of the 6<sup>th</sup> P.M. E. The proposed plan of operation is to use that portion of the changed rights that the court determines historically returned to the stream system to duly replace such historically received return flows to the extent necessary to prevent injury to water rights senior in priority to the date of the filing of this application. The fully consumed portion as determined by the court shall, either on an immediate basis following diversion, or following storage, be used for all municipal purposes as above described, including contractual obligations with other municipalities, and the use for augmentation and replacement water under the Decrees for 2000CW202, 2003CW320, 2004CW174, and 2009CW144, or as substitute supply water in substitute water supply plans that may be approved by the State Engineer in regard to those four cases. **APPROPRIATIVE RIGHTS OF EXCHANGE 5.** Brighton seeks a decree for conditional appropriative rights as to the following exchanges and the providing of substitute supplies in accordance with the provisions of Sections 37-80-120(2)(3) and (4), and 37-83-104, C.R.S. 5.1.

Exchanges Up Bear Creek A. The upstream and downstream exchange points of the reaches of the exchanges up Bear Creek are as follows: 1. Downstream Points for the Exchanges (Exchange From Points): a. Point A - The confluence of Brighton's North Storm Drain Outfall and the South Platte River, located in the SE1/4 of the SW1/4 of the SW1/4 of Section 31, Township 1 North, Range 66 West, of the 6<sup>th</sup> P.M. This is the most downstream point of the exchange reach. b. Point B - The confluence of Brighton's South Storm Drain Outfall and the South Platte River located in the SE1/4 of the NW1/4 of the NE1/4 of Section 12, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M. c. Point C - The outfall of Ken Mitchell Lake, which is located near the point where the South Platte River crosses the west line of Section 12, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M. d. Point H - The outfall of Brighton's South Platte WWTP, which is presently located in the NW1/4 of the NW1/4 of the SW1/4 of Section 6, Township 1 South, Range 66 West, of the 6<sup>th</sup> P.M. e. Point H-1 - Northern Treatment Plant located in the SE1/4 of the SW1/4 of Section 31, Township 1 North, Range 66 West, of the 6<sup>th</sup> P.M. f. Point J - 124<sup>th</sup> Avenue Reservoir Outfall, located in the NW1/4 of the SE1/4 of Section 35, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M. g. Point N - The outfall of Erger's Pond, which is located in the N1/2 of Section 12, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M. h. Point P - Bear Creek Dam and Reservoir, located in

portions of Sections 31 and 32, Township 4 South, Range 69 West, of the 6<sup>th</sup> P.M.; portions of Sections 5 and 6, Township 5 South, Range 69 West, of the 6<sup>th</sup> P.M.; and portions of Section 1, Township 5 South, Range 70 West, of the 6<sup>th</sup> P.M. i. Point Q - The Upper Spickerman (aka Spickerman) Ditch historical headgate located in the NW1/4 of Section 7, Township 5 South, Range 69 West, of the 6<sup>th</sup> P.M., Jefferson County, Colorado, and the source of the water is Turkey Creek, as previously changed and quantified in Case No. 2004CW197, District Court, Water Division No. 1, State of Colorado. This headgate is no longer administered, so the water will be measured and administered at a new USGS streamgaging station located on Turkey Creek in the SW1/4 of Section 6, Township 5 South, Range 69 West, of the 6<sup>th</sup> P.M. j. Point R - The Lower Spickerman Ditch historical headgate is located in the SW1/4 of Section 6, Township 5 South, Range 69 West, of the 6<sup>th</sup> P.M., Jefferson County, Colorado, and the source of the water is Turkey Creek, as previously changed and quantified in Case No. 2004CW197, District Court, Water Division No. 1, State of Colorado. This headgate is no longer administered, so the water will be measured and administered at a new USGS streamgaging station located on Turkey Creek in the SW1/4 of Section 6, Township 5 South, Range 69 West, of the 6<sup>th</sup> P.M. 2. Upstream Points for the Exchanges (Exchange To Points): a. Point P - Bear Creek Dam and Reservoir, located in portions of Sections 31 and 32, Township 4 South, Range 69 West, of the 6<sup>th</sup> P.M.; portions of Sections 5 and 6, Township 5 South, Range 69 West, of the 6<sup>th</sup> P.M.; and portions of Section 1, Township 5 South, Range 70 West, of the 6<sup>th</sup> P.M. b. Point S - Arnett-Harriman Ditch, located on the south bank of Bear Creek, NE1/4 of the NE1/4 of Section 2, Township 5 South, Range 70 West, of the 6<sup>th</sup> P.M. B. Sources of Substitute Supply. Water made available by operation of Brighton's plan for augmentation decreed in Case No. 2000CW202, water made available by operation of Brighton's plan for augmentation decreed in Case No. 2003CW320, water available pursuant to the change of water rights decreed in Case No. 2004CW174, water available pursuant to the change of water rights decreed in Case No. 2009CW144, water stored in Ken Mitchell Lakes under Case No. 1992CW018, water stored in 124<sup>th</sup> Avenue Storage Pond under Case No. 2002CW234, water stored in Erger's Pond under Case Nos. 1998CW257 and 2008CW105, water made available to Brighton under contractual agreements, water made available to Brighton under free river conditions, and water available pursuant to the change of waters decreed herein. C. Date of Appropriation. November 30, 2018. D. Amount Claimed. The maximum simultaneous exchange rate to Bear Creek Dam and Reservoir will be limited to 226.9 c.f.s. CONDITIONAL. The maximum simultaneous exchange rate to the Arnett-Harriman Ditch headgate will be limited to 60.0 cfs. The individual exchanges and claimed amounts are shown in the exchange matrix attached hereto as Exhibit A. E. Claimed uses. Those uses described in paragraph 4, above. 5.2. Exchanges on the South Platte River A. The upstream and downstream exchange points of the reaches of the exchanges along the South Platte River are as follows: 1. Downstream Points for the Exchanges (Exchange From Points): a. Point B - The confluence of Brighton's South Storm Drain Outfall and the South Platte River located in the SE1/4 of the NW1/4 of the NE1/4 of Section 12, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M. b. Point C - The outfall of Ken Mitchell Lake, which is located near the point where the South Platte River crosses the west line of Section 12, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M. c. Point H - The outfall of Brighton's South Platte WWTP, which is presently located in the NW1/4 of the NW1/4 of the SW1/4 of Section 6, Township 1 South, Range 66 West, of the 6<sup>th</sup> P.M. d. Point H-1 - Northern Treatment Plant located in the SE1/4 of the SW1/4 of Section 31, Township 1 North, Range 66 West, of the 6<sup>th</sup> P.M. e. Point J - 124<sup>th</sup> Avenue Reservoir Outfall, located in the NW1/4 of the SE1/4 of Section 35, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M. f. Point N - The outfall of Erger's Pond, which is located in the N1/2 of Section 12, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M. 2. Upstream Points for the Exchanges (Exchange To Points): a. Point D-1 - Ken Mitchell Reservoir Pump Station Inlet Pipe, located on the east bank of the South Platte River, in the SE1/4 of Section 11, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M., at a point whence the Southwest Corner of said Section 11 bears approximately South 86° West, approximately 4,160 feet, in Adams County. B. Point D-2 - Ken Mitchell Reservoir Pump Station Inlet Pipe, located on the east bank of the South Platte River, in the NW1/4 of the SE1/4 of Section 14, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M., at a point whence the Southwest Corner of said Section 14 bears approximately South 69° West, approximately 4,000 feet, in Adams County. c. Point E -



Ken Mitchell Reservoir Inlet, located on the east bank of the South Platte River, in the SE1/4 of Section 14, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M., at a point whence the Southwest Corner of said Section 14 bears approximately South 88°30' West, approximately 3,190 feet, in Adams County. d. Point E – A point where the South Platte River crosses the South line of Section 23, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M., in Adams County. This is an approximation of the upstream limit of the reach of the South Platte River that is depleted by pumping of applicant's South Platte wells. e. Point G – The Fulton Ditch headgate located in the NE1/4 of the NE1/4 of the SE1/4 of Section 17, Township 2 South, Range 67 West, of the 6<sup>th</sup> P.M., in Adams County. f. Point I - the United Diversion Facility No. 3, located on the east bank of the South Platte River in the SW1/4 of Section 26, Township 1 South, Range 67 West, of the 6<sup>th</sup> P.M., in Adams County. g. Point M - the Burlington Canal Headgate, located on the east bank of the South Platte River in the SW1/4 of the NE1/4, Section 14, Township 3 South, Range 68 West, of the 6<sup>th</sup> P.M., in Adams County, Colorado, at a point approximately 3,084 feet east of the West line and 2,327 feet south of the North line of Section 14; latitude 039°47'30.97"N, longitude 104°58'0.92"W. In Case No. 2002CW403, affirmed by the Colorado Supreme Court in Case No. 2009SA133, the Court determined that the Globeville Area Flood Control Project structure constituted a new point of diversion for the Burlington Ditch at a point on the east bank of the South Platte River in the NE1/4 of the SW1/4 of Section 14, Township 3 South, Range 68 West, of the 6<sup>th</sup> P.M. The headgate is located at approximately latitude 039°47'24.69"N, longitude 104°58'9.97" W. The UTM coordinates are approximately NAD 1983 UTM Zone 13N 502616.89E 4404471.42N. B. Sources of Substitute Supply. Water made available to Brighton under contractual agreements, water made available to Brighton under free river conditions, and water available pursuant to the change of water rights decreed herein. C. Date of Appropriation. November 30, 2018. D. Amount Claimed. The maximum simultaneous exchange rate for Brighton's exchanges on the South Platte River using the water rights that are the subject of this change application will be limited to 99.5 c.f.s. CONDITIONAL. The individual exchanges and claimed amounts are shown in the exchange matrix attached hereto as Exhibit B. E. Claimed uses. Those uses described in paragraph 4, above. **CLAIM OF APPROPRIATION OF RETURN FLOWS** 6. Claim of Appropriated Return Flows. When the calling right downstream of the water rights described in paragraph 3 are junior to November 30, 2018, or there is no call from downstream of the headgates of the water rights described in paragraph 3, Applicant seeks the rights to use, reuse, successively use, and use to extinction, for all of the purposes described in paragraph 4, above, the historical return flow portion of water rights described in paragraph 3. A. Appropriation Information. 1. Date of Appropriation. November 30, 2018. 2. How Appropriation was Initiated. The appropriation date is based upon the date the Application in this case was filed. 3. Date Water First Applied to Beneficial Use. Not applicable. 4. Source. Turkey Creek and Bear Creek. 5. Amount Claimed. Any and all amounts of returns determined to be attributable to Brighton's water rights described in paragraph 3, CONDITIONAL. 6. Claimed uses. Those uses described in paragraph 4, above. 7. Names and addresses of owners of land on which structures are located. All structures are owned by Brighton except as follows: The Robert Lewis Ditch rights are carried in the Arnett-Harriman Ditch, and the Arnett-Harriman Ditch is owned by the Denver Water Board, 1600 W. 12<sup>th</sup> Avenue, Denver, CO 80209. Soda Lakes Reservoir and Mineral Water Company is the owner and operator of Soda Lakes and is managed by the Denver Water Board, 1600 W. 12<sup>th</sup> Avenue, Denver, CO 80209. The Upper Spickerman Ditch headgate is located on property owned by the United States of America, Deed #2852-238, Jefferson County, Colorado. The Lower Spickerman Ditch headgate is located on property owned by Jefferson County, Colorado, Alice M. Risley, and Colorado Christian University and Hilltop Investments. Barr Lake Reservoir is owned by the Farmers Reservoir and Irrigation Company, 80 South 27<sup>th</sup> Avenue, Brighton, CO 80601. Bear Creek Lake is owned by the Army Corps of Engineers, Omaha District, 1616 Capital Avenue, Suite 9000, Omaha, NE 68102 and is under a 50-year lease with the City of Lakewood, 480 S. Allison Pkwy. Lakewood, CO 80226. WHEREFORE, Brighton requests the Court enter a decree granting the change of water rights, the conditional appropriation of rights of exchange, conditional appropriation of return flows, and for such other relief as the Court deems proper. 11 pages.