



## Legislation Text

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**File #:** ID-161-18, **Version:** 1

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### **..Body**

Department of Utilities

**Reference:** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, APPROVING THE WATER STORAGE AND LEASE AGREEMENT BETWEEN THE CITY OF BRIGHTON AND THE FARMER'S RESERVOIR AND IRRIGATION COMPANY (FRICO) FOR THE PROVISION OF FULLY CONSUMABLE WATER TO THE CITY OF BRIGHTON IN EXCHANGE FOR THE TEMPORARY USE OF WATER STORAGE CAPACITY BY FRICO, AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY AND TO UNDERTAKE SUCH TASKS AS MAY BE REQUIRED TO IMPLEMENT THE PROVISIONS OF THE AGREEMENT ON BEHALF OF THE CITY.

**To:** Mayor Kenneth J. Kreutzer and Members of City Council

**Through:** Philip A. Rodriguez, City Manager

**Prepared By:** Curtis Bauers, Director of Utilities

**Date Prepared:** April 16, 2018

### **PURPOSE**

To consider the approval of a Water Storage and Lease Agreement with the Farmer's Reservoir and Irrigation Company (FRICO) to allow for an annual lease of 5K water from FRICO to the City, and for the delivery of fully consumable water from FRICO to the City, during specified times, in order to fill the Erger's Pond and Cell 3 components of the Ken Mitchell Lakes Reservoir Complex, when final construction of the City's improvements to those cells are completed. In exchange for the delivery of said water from FRICO, the City will provide FRICO with storage capacity in Cell 3 from now until November 1, 2022.

### **BACKGROUND**

This Agreement is the result of negotiations between all parties for over a year. FRICO, the Burlington Ditch and Reservoir Company, and the Henrylyn Irrigation District obtained a 5,000 Acre-foot annual water supply (5K Water) of fully-consumable non-agricultural water in a Water Court Settlement with Denver Water in 1999. FRICO subsequently sold their interest in that water under option contracts with South Adams County Water and Sanitation District (SACWSD) and its developers. Thus far, SACWSD has paid for just over half of that water. FRICO still owns the other half of the water, with about 300AF more being acquired by SACWSD annually. In the meantime, FRICO has no ability to use that water in its systems or by its shareholders, and has a fairly limited market for that water.

Brighton was named in an Amendment to the Settlement Agreement as an allowable end-user of 5K Water, and a City of Brighton 2017 Water Court Application noticed in 5K Water as an acceptable supply in Brighton's Augmentation Plan. This allows Brighton to legally use 5K Water to meet the City's municipal demands. We already have a spot lease in place with FRICO for 5K Water 'if and when' available at a rate of \$300/AF.

However, the uncertainty of being able to refill Cell 1 of the Ken Mitchell Lakes Reservoir Complex after repairs and improvements to that Cell were completed was problematic. The availability of 'free river' to rapidly refill a large reservoir is extremely unpredictable, and is becoming more and more uncommon. Filling a Cell in the Ken Mitchell Complex with only our available senior agricultural water rights could take several years. This caused us to closely evaluate the future refilling of Erger's Pond after improvement to it are completed in the spring of 2019, and of Cell 3 when the improvements to it are completed (currently projected in the Capital Improvement Plan to take place between November 2022 and March 2024) as contemplated in the Ken Mitchell Lakes Reservoir Master Plan.

FRICO has short term water storage needs, and Cell 3 is currently not really usable by the City without significant capital investment in pumping infrastructure and water rights. Since completion by the City of Cell 3 is not anticipated in the Master Plan until March of 2024, storage capacity in Cell 3 does not hold much value to us until that time. Therefore, we have been able to negotiate an Agreement wherein FRICO refills Erger's Pond with fully consumable water in 2019 after the enhancements to it have been completed, and also refills Cell 3 after the City completes the improvements to it in 2024. This totals about 4,500AF of water that will come to the City free of charge. The current going rate for a spot lease of fully consumable water is about \$370/AF, and it will surely be more by 2024.

In exchange, FRICO will be allowed to use about 2100AF of the storage capacity in Cell 3 between now and November 2022 without charge. Limiting them to 2100 AF of the storage capacity will ensure that there is always at least 600AF in storage in Cell 3 simply for aesthetic purposes. FRICO will be entirely responsible for meeting the water accounting requirements in Cell 3 including covering any evaporative losses. Additionally they will be responsible for all pumping infrastructure costs they may incur, and we will negotiate if the City will acquire any pumping capacities they may install.

FRICO is also obligated to complete the dewatering of Erger's Pond by the end of May, 2018 to facilitate the Erger's Pond Augmentation Station Project work, saving the City approximately \$60,000 in utilizing another contractor to complete that dewatering.

Additionally, FRICO has agreed to make all of its 5K Water between 2018 and 2025 available to Brighton at the rate of \$120/AF (About 30% of the current market rate). This could end up being close to 10,000AF, but it carries no obligation on behalf of the City to purchase any of it. Brighton will not likely have the need or available storage for more than about half of that amount during those years.

This arrangement is particularly attractive to the City as it makes use of an asset that the City has no plans or ability to utilize until its CIP can address the completion of Cell 3. Further, it provides certainty to the timely refilling of two large reservoir cells upon their completion while providing extremely economic water supplies in the interim. The interim supplies could prove exceptionally beneficial in the event of an extended drought occurring while some of the City's storage vessels are not yet fully functional.

#### **FINANCIAL IMPACT**

There is no required financial impact to the City inherent in the Agreement. It does include the option to purchase 5K water annually at a significantly reduced rate. If the City chooses to exercise that option in any given year, the funds will come from the water operating budget of the Water Activity Enterprise. That annual decision will be based on projected augmentation need, existing storage capacity, and an analysis of any other available supplies that may meet the projected need.

#### **STAFF RECOMMENDATION**

Staff recommends the approval of the proposed resolution in order to secure supplies to refill both the Erger's Pond and Cell 3 in a timely fashion upon completion of the City's improvement projects to each of those water storage vessels.

#### **OPTIONS FOR COUNCIL CONSIDERATION**

- Approve the attached Resolution as presented
- Deny the attached Resolution as presented
- Postpone consideration of the Resolution with suggested changes

**ATTACHMENTS**

- Resolution
- FRICO-Brighton Water Storage and Lease Agreement