

DISTRICT COURT, WATER DIVISION 5, COLORADO

Case No. _____

IN THE MATTER OF THE APPLICATION FOR CHANGE OF WATER RIGHTS AND PLAN FOR AUGMENTATION OF FARMERS KORNER, INC. AND RICHARD AND SHEILA HENRICKSON

IN SUMMIT COUNTY

1. Applicants: Farmer's Korner, Inc.
P.O. Box 1005
Frisco, Colorado 80443
(970) 453-9572
- Richard and Sheila Henrickson
14774 Highway 9
Breckenridge, CO 80424
(970) 453-1732

2. Existing Plan for Augmentation: Farmer's Korner obtained approval in Case No. 93CW241(A) of an augmentation plan authorizing use of three wells for a central water supply for in-house use only in Highland Meadows, a 32-home residential subdivision.

3. Summary of Changes and Additional Uses: By this application, applicants seek to use water from the three wells for additional uses, including irrigation and other outdoor use in Highland Meadows, and commercial uses, including irrigation, in a 6-lot subdivision known as Alpensee 3. Applicants will also augment domestic use, including irrigation, from an existing well serving the Henrickson residence. Storage of augmentation water will be in the Henrickson Pond. The Henrickson Pond will be an alternate place of storage for augmentation water to meet certain requirements imposed in 93CW241(A).

4. Highland Meadows and Alpensee 3 are subdivisions owned by Farmers Korner located in E1/2, Sec. 1, T6S, R77W, 6th P.M., Summit County. The Henrickson property is a 14 acre pre-1972 parcel located in Sec. 7, T6S, R77W, 6th P.M., Summit County described in detail in Exhibit A.

AUGMENTATION PLAN/AMENDMENT TO EXISTING AUGMENTATION PLAN

5. Structures to be Augmented:

5.1 Farmer's Korner's wells 1 through 3, located in the SE¼SW¼, Sec.31, T5S,

R77W, 6th P.M. Summit County. These are the wells subject to 93CW241(A).

5.2 Henrickson Well, Permit No. 155958, located in the SW¼NE¼, Sec. 7, T6S,R77W, 6th P.M., Summit County, 1725 feet from the north section line, 1900 feet from the east section line.

6. Uses and Estimated Consumptive Use:

6.1 Farmers Korners Wells: In addition to the currently authorized in-house residential use in Highland Meadows:

6.1.1 Areas disturbed during construction will be revegetated with native or xeriscape plants. Temporary irrigation for establishment of revegetation will be required. Temporary irrigation will include common subdivision elements such as road cuts and utilities, plus areas on each lot disturbed in construction of individual homes. Augmentation water will be dedicated to this plan for temporary irrigation. Upon completion of revegetation, augmentation water not needed for permanent uses will be withdrawn from this plan and made available for other uses without further notice.

6.1.2 Permanent irrigation of 1000 sq. ft. of landscaping and gardens per home and other domestic outdoor uses.

6.1.3 Commercial use, including revegetation and permanent irrigation of up to 0.6 acre in Alpensee 3.

6.2 Henrickson Well: Domestic use, including stockwatering and irrigation of up to 3 acres on the Henrickson property.

6.3 Estimated Consumptive Use: approximately 6 af/yr. This estimate may be revised up or down as plans develop further or the analysis is refined, without additional notice.

7. Amounts:

7.1 Farmers Korners Wells: 100 gpm each.

7.2 Henrickson Well: 15 gpm.

8. Return Flow/Wastewater Treatment:

8.1 Wastewater from Alpensee 3 will be treated by the Breckenridge Sanitation District.

8.2 Wastewater from the Henrickson residence is treated by a septic tank/leach field system.

9. Source of Augmentation Water: Farmers Korner owns a portion of 40 a.f. of consumptive use water decreed in Case No. W-3442 from the Blue Danube Ditch No. 2, Priority date, June 20, 1919, originally adjudicated January 9, 1930, Summit County District Court.

9.1 Point of diversion: The Blue Danube Ditch No. 2 diverts from the left bank of the Blue River at a point whence the Southeast corner of Sec. 6, T5S, R77W, 6th P.M. bears 31° 10' West, 2350 feet.

9.2 Source: Blue River and its tributaries.

9.3 Uses: Domestic, municipal, industrial, commercial, recreational purposes including fishery and wildlife, manufacturing, mechanical, fire protection, and the maintenance of adequate system storage reserves.

10. Storage: Augmentation water will be stored, if necessary, in the Henrickson Pond, described as follows:

10.1 Location: NW¼NE¼, Sec. 7, T6S, R77W, 6th P.M. The center of the pond is approximately 700 feet from the north section line and 2450 feet from the east section line.

10.2 Points of Diversion: Headgate of the Blue Danube Ditch No. 2, and the pond itself.

10.3 Capacity: Current capacity is approximately 0.21 a.f. Applicants may enlarge the pond to an undetermined extent.

10.4 Source: Blue River and its tributaries, seepage and runoff from adjacent land, and springs located in the NW¼NE¼, Sec. 7, T6S, R77W, 6th P.M. Water from the Blue Danube Ditch No. 2 will be stored either by pumping into the pond or by exchange.

11. Amendment to CWCBC Condition: In 93CW241(A), Farmers Korner stipulated with the Colorado Water Conservation Board to release water from the Farmers Korner wells to the Blue River at certain times to prevent injury to the CWCBC's instream flow right. Farmers Korner proposes to amend its plan in 93CW241(A) by adding Blue Danube Ditch No. 2 water stored in the Henrickson Pond as an alternate source of augmentation water to meet this requirement.

CHANGE OF WATER RIGHTS

12. Right to be changed: Blue Danube Ditch No. 2 as described in paragraph 9.

13. Change (to extent not already covered by W-3442): Storage in the Henrickson Pond, described in paragraph 10 for augmentation uses including use in the augmentation plan described above, subject to applicable conditions from W-3442.

14. Owners of Land on which structures are located: All structures are on land owned

by Applicants.

15. Attachments: The following additional information is filed herewith and is available from the Water Clerk or from Applicants:

15.1 Description of Henrickson property.

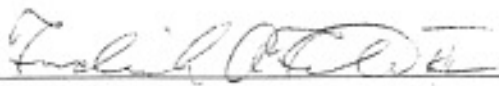
15.2 Vicinity Map

WHEREFORE, Applicants request a decree approving the above augmentation plan and amendment to augmentation plan and change of water rights and for such other and further relief as may be appropriate or desirable.

DATED this 29th day of December, 1998.

Respectfully Submitted,

PETROCK & FENDEL, P.C.

By: 
Frederick A. Fendel, III
1630 Welton Street, Suite 200
Denver, Colorado 80202
(303) 534-0702

STATE OF COLORADO)
) §
COUNTY OF Chaffee)

Robert E. Brogden, being first duly sworn upon oath, deposes and says that he is water rights consultant for Farmer's Korner, Inc., that he has read the foregoing **APPLICATION** and that the matters contained therein are true to the best of his knowledge and belief.

Robert E. Brogden
Robert E. Brogden

The above and foregoing was subscribed and sworn to before me this 27th day of September, 1998.

Witness my hand and official seal.
My commission expires: _____ My Commission Expires 12-20-2000

Donna L. [Signature]
Notary Public

(S E A L)

LOCATION OF HOUSE AND WELL

Parcel One

A portion of the Dulac placer M.S. 13802 and a portion of the Monroe place M.S. 1150 located in Sec. 7, T6S, R77W of the 6th P.M. County of Summit, State of Colorado and more particularly described as follows:

Beginning at corner No. 7 of said MS13802, said corner also known as corner no. 21 of said MS1150, being the true point of beginning; Thence S 19 degrees 58' 39" W along the 7-8 line of MS13802 a distance of 630.29', to a point on the easterly R.O.W. line of Colorado State Hiway 9; Thence N 13 degrees 59' 27" E along said R.O.W. line, a distance of 471.69'; Thence continuing along said R.O.W. along the arc of a curve to the left, a distance of 269.49', said curve having a radius of 1095.33'; Thence N 27 degrees 30' 00" W continuing along said R.O.W. line a distance of 43.84'; Thence continuing along said R.O.W. Line, along the arc of a curve to the left, a distance of 263.70' said curve having a radius of 1075.20'; Thence N 16 degrees 22' 00" W continuing along said R.O.W. line, a distance of 275.35'; Thence N 74 degrees 41' 21" E a distance of 467.62' to corner no. 7 of MS 1150; Thence S 24 degrees 57' 29" E a distance of 711.73' to corner no. 8 of MS 1150; Thence S 11 degrees 05' 00" E a distance of 797.08' to corner no. 9 of MS 1150; Thence N48 Degrees 46' 25" W, a distance of 924.38' to corner no. 21 of MS 1150, the true point of beginning, containing 14.422 acres more or less.

Parcel Two

LOCATION OF POND

A portion of the Monroe placer M.S. 1150 located in Sec. 7, T6S, R77W of the 6th P.M. County of Summit, State of Colorado and more particularly described as follows:

Beginning at Corner No. 23 of said Claim;
Thence N 31 degrees 18' 35" W 263.45' to a point lying on the line between corners No. 23 and 24 of said claim; Thence due East 749.5' to a point lying on the line between corners no. 6 and 7 of said claim; Thence S 19 degrees 23' 55" E 581.73' to said corner No. 7; Thence S 75 degrees 23' 55" W 625.22' to corner no. 22 of said claim; Thence N22 degrees 15' 46" west 521.24 feet to the point of beginning, except that portion conveyed to the Department of Highways, State of Colorado in a deed recorded July 28, 1978 under reception No. 178393, County of summit State of Colorado, containing 7.332 acres more or less.

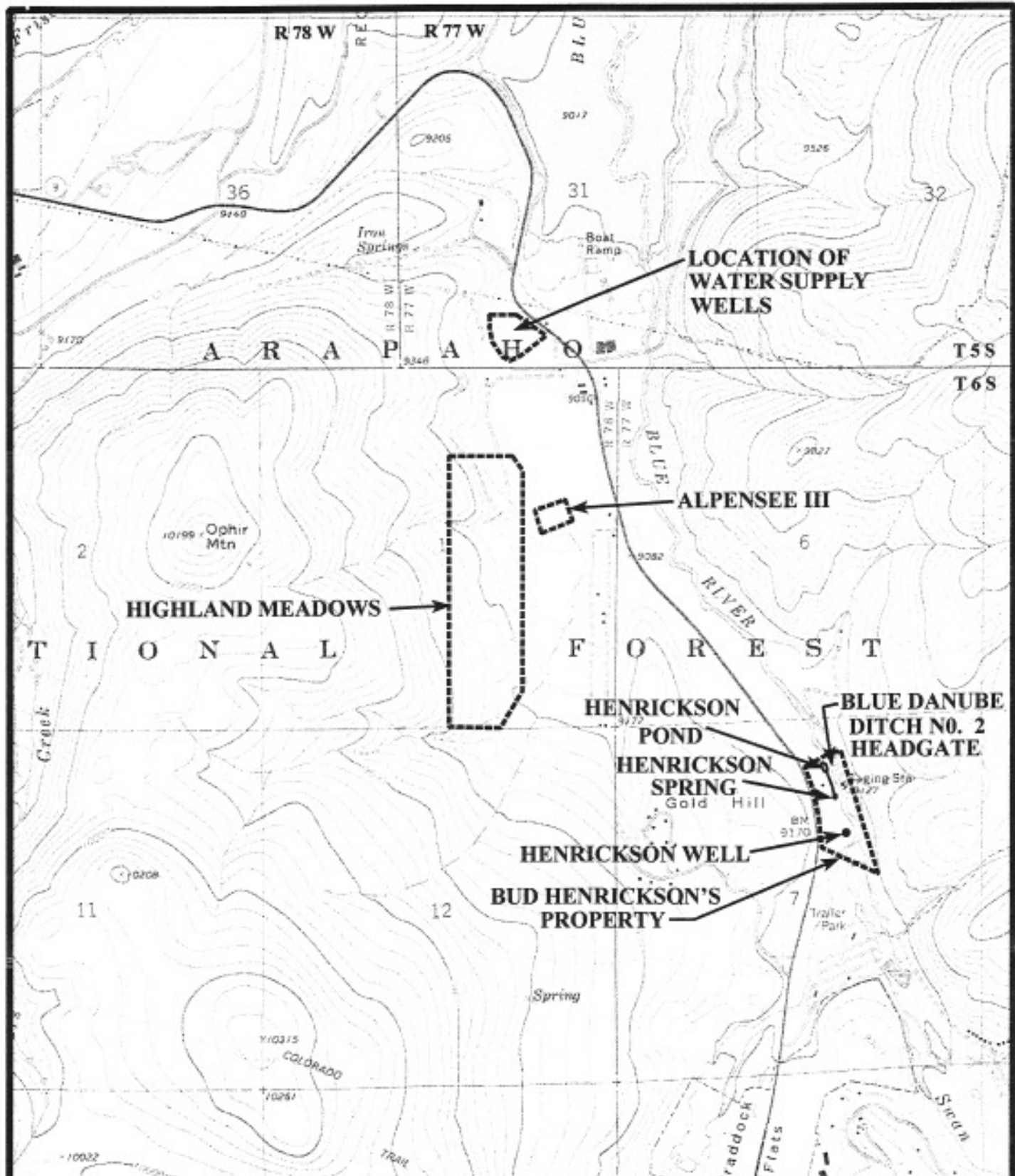


FIGURE 1
LOCATION MAP FOR FARMER'S KORNER
AND AUGMENTATION STRUCTURES
(BOUNDARIES ARE APPROXIMATE)



932000

WATER AND STORAGE EXCHANGE AND EASEMENT AGREEMENT

THIS AGREEMENT is made _____, 1999 between Farmers Korner, Inc., a Colorado corporation ("Farmers"), whose address is P.O. Box 1005, Frisco, Colorado and Richard and Sheila Henrickson ("Henrickson"), whose address is 14774 Hwy. 9, Breckenridge, Colorado 80424.

RECITALS

A. Farmers owns land identified in Exhibit A, known as Highlands Meadows and Aplensee 3 subdivisions and also owns 21.57 a.f. of consumptive use water from the Blue Danube Ditch No. 2 remaining uncommitted to other uses and another 0.8 a.f. committed to the augmentation plan in Case No. 93CW24(A)1, District Court, Water Division 5.

B. Henrickson owns land identified in Exhibit B, which includes a house served by a well with Permit No. 155958 ("Henrickson Well") and the Henrickson Pond. Henrickson's well permit currently allows household use only.

C. Farmers has excess augmentation water but requires water storage in connection with the water rights for Highland Meadows and Aplensee 3, and Henrickson has water storage available in the Henrickson Pond and requires augmentation water to allow outdoor use from the Henrickson Well.

AGREEMENT

1. Henrickson shall grant to Farmers a non-exclusive easement over, upon and across the land described in Exhibit C for the purpose of operating, maintaining, constructing and enlarging water storage in the Henrickson Pond. Farmers shall have the right to install water diversion and measuring devices, inlets, outlets, pumps and pipelines to store and release water, and, subject to Henrickson's reasonable approval, to enlarge the storage capacity of the pond and take such other actions as is reasonable in storing and releasing water. An access easement and construction easement as described in Exhibit C.

2. Farmers shall grant to Henrickson 4.5 a.f. of water per year from the Blue Danube Ditch No. 2 ("Blue Danube water") for use augmenting diversions from the Henrickson well for irrigation and other outdoor uses, subject however to reversion to Farmers in the event Henrickson ceases to irrigate all or part of the land proposed to be irrigated. Farmers shall obtain Water Court approval of an augmentation plan for the Henrickson Well to allow irrigation of the land identified in Exhibit D and shall operate the augmentation plan, all at Farmers' expense. Henrickson shall be a co-applicant for Water Court approval and shall comply with all provisions of the resulting decree.

3. Henrickson reserves the right to make non-consumptive use of water in the Henrickson Pond, subject at all times to Farmers' right to store and release water.

4. Each party shall be responsible for liability insurance for its own rights and interests in the pond and water stored therein.

5. Farmers shall maintain the Pond and all its water storage facilities. In the event of catastrophic failure, Farmers shall have the option to repair the pond or to terminate this agreement by written notice to Henrickson. If Farmers so terminates this agreement, Henrickson shall have the option to purchase the Blue Danube water less any part that has reverted to Farmers pursuant to paragraph _____. Henrickson shall give Farmers written notice of conditional intent to purchase the Blue Danube water within 60 days of notice of termination. Henrickson and Farmers shall, within 30 days, jointly select a single neutral expert to determine at Henrickson's expense, a price for the blue Danube water based on market value, who shall recommend a price within 45 days. Henrickson shall then have 30 days to exercise his option to purchase by written notice.

6. Farmers shall restore any area disturbed in construction or in its operations to its pre-existing condition. Each party shall indemnify the other against any claims, expenses and mechanics' liens arising out of performance of this agreement.

7. In the event that Henrickson ceases to irrigate all or part land from his well as provided in paragraph 2, use of any part of the Blue Danube water no longer needed shall revert to Farmers.

8. Farmers intends to develop Highland Meadows into a residential subdivision and Alpensee 3 into a commercial development. Farmers may assign this agreement to a homeowners association or other entity to administer its plans for augmentation after sale of some or all of its proposed developments. This agreement shall be assignable by either party, and shall bind and benefit the parties' heirs, successors, and assigns.

ATTEST:

FARMERS KORNER, INC.

Secretary

By: _____
Lawrence Smith, President

Richard Henrickson

Sheila Henrickson