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May 30, 2001

Farmer's Korner, Inc.
Attn: Larry Smith, President
P.O. Box 1005
Frisco, CO 80443

RE: *Title to Water Rights*

Dear Mr. Smith:

At your request, I have examined title to the water rights described below, which are to be conveyed by Farmers Korner, Inc. to the Alpengsee Water District and used by the District to serve the residents and businesses of the Highland Meadows and Alpengsee Filing No. 3 subdivisions. This opinion is intended for and may be relied upon by both Farmers Korner, Inc. and Alpengsee Water District.

I. DESCRIPTION OF WATER RIGHTS

1. Plan for augmentation decreed by the District Court, Water Division 5 in Case Nos. 93CW241(A) and 98CW296. These two cases together permit use of water from up to three wells located as described therein to serve in-house uses in Highland Meadows (93CW241(A)) and irrigation use in Highland Meadows and in-building and irrigation uses in Alpengsee Filing No. 3 (98CW296). These are referred to below as the "augmentation plans."

2. 3.28 acre feet of consumptive use water from the Blue Danube Ditch No. 2, priority date June 20, 1919, originally decreed January 9, 1930 and modified in Case No. W-3442, District Court, Water Division 5 and in the augmentation plans. Of the 3.28 acre feet, 2.71 acre feet are to be deeded, and 0.57 acre feet are to be leased to the District. In Case No. W-3442, the use of the water was changed from irrigation to various other uses including municipal and domestic uses. 115 acre feet per year is owned by others and was changed to use at new points of diversion. 40 acre feet per year was retained for use associated with Farmers Korner's property. These 3.28 acre feet per year are part of the 40 acre feet reserved. This is referred to below as the "Blue Danube Water."

3. 0.42 acre feet of augmentation water to be released from Dillon Reservoir pursuant to the agreement of December 1, 1994, between Farmers Korner, Inc. and The City and County of Denver, acting by and through its Board of Water Commissioners, the agreement date February 8, 1993, between Farmers Korner, Inc. and the Board of County Commissioners of Summit County, and the September 18, 1995 agreement between the City and County of Denver, acting by and through its Board of Water Commissioners and the Board of County Commissioners of Summit County. This is referred to below as the "Dillon Storage Water."

As discussed below, use of these water rights is subject to a number of conditions and limitations contained in the above decrees and agreements.

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II. MATERIALS EXAMINED

4. Water Court decrees in Case Nos. W-3442, 93CW241(A) and 98CW296, District Court Water Division 5.

5. Easement and Water Storage Agreement between Farmers Korner, Inc. and Richard and Sheila Henriksen recorded at Reception No. 607555, Summit County Clerk and Recorder.

6. Search of Grantor/Grantee indexes of the Summit County Clerk and Recorder's Office from June 1, 1973 through December 28, 2000.

III. STATUS OF TITLE

Based strictly upon review of the above-described materials and subject to the limitations below, it is my opinion title to the water rights is vested as of 5:00 p.m. December 28, 2000 in Farmers Korner, Inc., a Colorado corporation.

IV. ENCUMBRANCES, CONTRACTS, DEEDS OF TRUST

7. The Blue Danube water and the Dillon storage water are encumbered by a deed of trust dated June 16, 1999 for the benefit of the Firststate Bank of Colorado, recorded at Reception No. 5995591, Summit County Clerk and Recorder, and by a "Modification and Extension of Promissory Note/Deed of Trust" for the benefit of Firstier Bank, dated August 17, 2000, recorded at Reception No. 631034, Summit County Clerk and Recorder. (The Firstier Bank's deed of trust recites that it modifies the Firststate Bank of Colorado deed of trust. I suspect, but did not confirm, that "Firststate Bank of Colorado" and "Firstier Bank" are one and the same institution.)

Requirement: Obtain partial releases from both deeds of trust for 3.28 a.f./yr. of Blue Danube water and the 0.42 a.f. of Dillon storage water.

8. Henriksen Agreement - The 98CW296 water rights require use of storage capacity in the Henriksen Pond. The pond is on an easement over property owned by Richard and Sheila Henriksen. The easement agreement requires Farmers Korner to operate and maintain the Pond for its own benefit and for the benefit of the Henriksens' property. The decree in Case No. 98CW296 contains the requirements for augmentation of the Henriksens' well.

Requirement: None. Alpanse Water District will be subject to the requirements of the easement agreement and will assume responsibility for operating the augmentation plan for the benefit of Henriksens' property.

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V. CONDITIONS IMPOSED BY DECREES

The decrees in Case Nos. W-3442, 93CW241(A) and 98CW296 contain a number of conditions and limitations that affect or may affect how the water rights are used and the system is operated. Some conditions may be subject to different interpretations by other water users, by the owners of other portions of the same water rights, or by state administrative officials. Both 93CW241(A) and 98CW296 are subject to statutory retained jurisdiction which may allow the cases to be reopened and their conditions modified. While these are not technically "title" issues, these matters affect the nature of the water rights. You are strongly cautioned to read and understand all the conditions and requirements of the water rights decrees.

VI. OTHER LIMITATIONS

9. Any title opinion for water rights requires exercise of judgment as to the records to be examined, and some balancing of thoroughness and the time and expense involved with the likely risks of an adverse claim to title. In this case, I have not examined title records all the way back to the initiation of the earliest water rights. I have examined twenty seven years of records. This is more than the period of the statute of limitations for any adverse claim. The time period includes three water rights court cases in which notice of Farmers Korner's and its predecessor's claim of ownership was published in Summit County without exciting any adverse claim to the rights. This opinion is, therefore, limited to the effects of documents contained in the records for the period examined. There is some risk of adverse claims dating back before the period examined.

10. Specifically excepted from the scope of this opinion are all matters related to the validity of the decrees for the water rights and ownership of the wells and any appurtenant facilities, the facilities of the Blue Danube Ditch No. 2, the water distribution system and any easements, rights of way, or other interests in lands upon which any such facilities are located. No search of the Summit County tax records has been made for this opinion. This opinion relates to record title to the water rights and no opinion is expressed as to the yield of any rights or the quantity or quality of water available from time to time.

11. The Dillon storage rights are contract rights. Contract rights to water have mixed characteristics of real and personal property. The Summit County records are records of instruments affecting real property. To the extent the Dillon storage rights may have been treated as personal property and transferred or encumbered by an assignment of contract rights, as opposed to a recorded deed, there is no readily available means to discover such instrument. Therefore, the existence or effect of any unrecorded assignment of the contracts is also excepted from the scope of this opinion.

Very truly yours,



Frederick A. Fendel, III

FAF/bh
Enclosure