

**Water Rights - Jefferson Heights - Original Plat Vs 1972 Amended**  
**Email to JHLOA President by Garver Brown**  
**Circa April 2026**  
**Water Commissioner - Division 1, District 23**

"The primary difference lies in how well permits are issued to the various lots by the Colorado Division of Water Resources. Depending on when lots in a subdivision were subdivided, there are different requirements to obtain a well permit for each lot. Subdivisions created after Senate Bill 35 was passed in 1972 are required to obtain a court decreed plan of augmentation before individual well permits can be issued to individuals owning those lots. Lots which were subdivided prior to SB 35 do not need a plan of augmentation to receive a well permit. Those permits are considered to be exempt, meaning that they are exempted from administration under Colorado law, so long as the water uses are within the conditions of use which are listed on the individual well permit.

The Jefferson Heights Amended 1972 lots were subdivided after SB 35. That means they are required to have an augmentation plan. The augmentation plan uses senior water rights to replace well depletions so the wells can continue to operate when they would normally be called out (shut down) because a senior appropriator downstream is not receiving their decreed amount of water, and has requested that an administrative call be placed at the location of their diversion. The augmentation plan supplies water to the downstream calling right by leaving a portion of a transferred water right in the stream, or by releasing water from a reservoir, recharge pond, etc. I have attached a copy of the Jefferson Heights Amended 1972 plan, W7797, to this email (**Referenced Plan: Jefferson Heights Amended 1972 Plan (W7797) - [\[View Document\]](#)**). The plan, decreed by the Water Court, details how the original water right, the Whitten Ditch, was changed to allow for the replacement of stream depletions caused by the cumulative pumping of the subject wells. The recharge pond which you identified in your email is a component of this plan. Depending upon the number of active wells in the Jefferson Heights Amended 1972 subdivision, a calculated amount of water is required to be measured into the small pond, which then slowly returns to Michigan Creek via subsurface flow, in order to replace the non irrigation season depletions caused by the wells. The irrigation season depletions are covered by leaving a portion of the original right in Michigan Creek at the historic diversion point. It should be noted that the augmentation plan requires there to be a subdivision property owner's association which will incorporate the restrictions on water use in the decree into the covenants of the subdivision, granting powers of enforcement to the association.

The only water right affecting lots within Jefferson Heights subdivision is the portion of the Whitten Ditch which is used in the W7797 plan to replace the well depletions from the Amended 1972 lots. As I mentioned, SB 35 is the reason that subdivisions are required to obtain water rights in over appropriated areas of Colorado. Well Permits are not considered to be water rights. They are permits to use water, and the water uses are limited to the

conditions of approval listed on the permit. Generally, all well permits in Jefferson Heights, whether they are exempt or non-exempt, are limited to in house use only within a single family equivalent unit. No irrigation, stock, or any other outside uses are permitted under the conditions of approval. If a well owner desires to use their well for uses which are not permitted under their well permit, it may be possible to legally use the well for additional uses by obtaining additional augmentation from several sources in our area. HASP and North Fork Associates are two groups which have augmented well uses in District 23. Here are links to their websites for more info:"

<https://www.haspwater.com/>

<https://www.northforkassociates.org/>

Questions or concerns? Contact Garver Brown

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