

# **History of Two Ponds National Wildlife Refuge and the Preservation Foundation**

*By Richard Feely*

## **AREA BEFORE REFUGE**

The Refuge site before 1992 consisted of land zoned for agricultural use, split by the Farmer's Highline Canal and the Croke Canal. In the SW corner of the land, the Church Ditch flows briefly in and out of the area. The area East of the canals had a commercial dog kennel and two farms. One farm belonged to Evelyn Lighter, known to area residents as the 'egg lady' because she raised chickens and sold fresh eggs out of her green and white farmhouse. Her property included wetlands and a pond where, at one period, frogs were raised for commercial purposes.

The other farm, at 9210 W. 80th Ave, had two ponds (open for paid fishing), several wetlands, an apple orchard, and a horse pasture on the semi-arid high plains plateau in the southern portion of the property. Later, this property served as a veterinary clinic. This 13 acre property was destined to become the Two Ponds National Wildlife Refuge--the smallest urban wildlife refuge in the nation.

West of the canals to Kipling Street was farmland that raised alfalfa and later became a horse pasture. The Church Ditch flowed completely around the farmhouse on 78th and Kipling. In the early 1970's the agricultural land west of the canals, from 77th Dr. north to 80th Ave., was purchased by Lutheran Hospital with plans to build a facility on it. Noting too many other hospital facilities in the metro area at that time, the building was put on hold. In 1979, this land was zoned for commercial use. Two buildings were eventually built, one containing an emergency/urgent care unit, and several years later another professional building was added.

All of the farmland mentioned above, both East and West of the canals, comprise the 72 acres of the Two Ponds National Wildlife Refuge. This open space landmass consists of wetlands, ponds, semi-arid high plains flora, and irrigation canals. The property was/is a unique jewel in an urban setting, surrounded on all sides by housing developments; Club Crest on the East (1971), Sierra Estates on the South (1962), Sequoia on the North (1983), Sierra to the West (1959).

## **THE CANALS**

Slicing through the Two Ponds acreage of high prairie flora, marshes, and wetlands, are the Farmers Highline and Croke canals, making their way to Standley Lake Dam. The Farmers Highline Canal, built in the 1860s by the Arapahoe Ditch Company, flowed from Clear Creek at Golden to Van Bibber Creek in Arvada. Later in the 1870's, it was expanded by The Golden

City and Arapahoe Ditch Company to flow to Standley Lake and then onward to the Platte River near Brighton.

In 1902, Joseph Standley, Milton Smith, and Thomas Croke formed the Farmers Reservoir and Irrigation Company (FRICO) for the purpose of delivering water to farmers and cities. Standley Lake Dam was built between 1907 and 1914 as part of this system. It was said to have been the largest earthen dam in Colorado at that time. Kinnear Lake sat in the middle of what is now Standley Lake.

The Croke Canal was dug by Thomas Croke and Company specifically to fill Standley Lake Dam. It originates on the north bank of Clear Creek near Golden and flows to Standley Lake, mostly paralleling the Farmers Highline Canal. Construction began in 1902 and the first waters from the Croke Canal flowed into the Standley Lake dam in June of 1910.

During the mid and late 1930's, FRICO consolidated and took control of many ditches and laterals in this area. They achieved possession via court suits. In 1963, there was a court settlement with FRICO and the cities of Westminster and Thornton concerning Standley Lake water storage and usage. Today these cities get much of their water needs from Standley Lake.

Two Ponds retains junior rights for water from the Farmers Highline Canal. FRICO, which owns and controls Farmers Highline and Croke Canals, has the right of way next to the canals. USFWS works closely with FRICO concerning these canals that have flowed through this area, now Two Ponds National Wildlife Refuge, for over 100 years.

## HARD FOUGHT ROAD

Early in 1990, Contractors Developers Services (led by David Anderson) obtained an option to purchase the 13 acre property at 9210 W. 80th Ave from Home Federal Savings and Loan of Harlan, Iowa. The property had been foreclosed. CDS proceeded to get the necessary permits from U.S. Army Corps of Engineers to fill in up to one acre of wetlands. David Anderson sought to have the property rezoned from agriculture to business/professional and residential. In August 1990, the Arvada Planning Commission had a hearing regarding the rezoning request. Neighbors organized to contest the rezoning. The commission voted in favor of the residential zoning but denied the business/professional zoning. The request then went to City Council for approval at its September meeting. Meanwhile, the neighbors more formally organized to oppose the rezoning. Assignments were given to those speaking before City Council and members solicited support from clubs, organizations, individuals, school districts and environmental experts.

Over 100 neighbors and friends opposed to the issue packed the Arvada City Council meeting on September 3, 1990. City Council voted to deny both parts of the zoning request. However, the celebration was short lived as City Council, in the September 17, 1990 meeting, voted to reconsider the issue at the October 1st meeting.

On September 24, 1990 the Two Ponds Preservation Foundation, a non-profit corporation, was formed by citizens concerned with preserving wetlands and providing environmental education opportunities. Roger Johnson was elected president and Colorado State Senator Al Meiklejohn served as Honorary Chairman. A Certificate of Incorporation was issued by the Colorado Department of State to TWO PONDS PRESERVATION FOUNDATION, A NONPROFIT CORPORATION. DATE OF INCORPORATION - OCTOBER 12, 1990. The Foundation became a 501(c)(3) non-profit.

The following is from the Stabilize Arvada Residential Areas (SARA) newsletter, October 1990. It relates the charged atmosphere that was to take place in the Two Ponds saga and city council meetings for the next 2 years.

*“In the Two Ponds issue it is not easy to draw the line between good and bad intentions. Let us look at some of the players in the zoning melodrama. Dave Anderson is the developer. In the eyes of some he is a deeply religious man who looks the part of a country preacher. They view him as a businessman who has the right to develop his land. But to others he is cast in the role of the “bad guy.” On the other side of the issue is Bini Abbot. In her special way she champions the cause of preserving our natural habitat which we have come to take for granted. She is a seasoned veteran of the ongoing struggle to preserve the environment. Roger Johnson is one of the leaders of the neighborhood opposition. He presents the image of an entrepreneur with conviction. This man appears to devote his total being into all projects that come before him. Protecting the land that makes up the Two Ponds is a project he does not take lightly. Richard Feely is the other leader of the neighborhood opposition. He is a high school teacher who looks the role. His reasoned and intense presentations to city council are built around his belief that one has the right to expect from city government the protection of the health, safety and welfare of its citizens.”*

Over a hundred citizens packed the city council meeting of October 1, 1990. During this marathon meeting opponents to CDS’s development plan demonstrated that the soil study was inadequate, the drainage report incomplete, the wetland boundaries were improperly defined, and safety ordinances were not met. For instance, the cul-de-sac was too long, and there was only one access road. In addition, Dr. Torma-Krajewski proved that more than an acre of wetlands would be filled. Petitions with over 200 signatures protesting the development of Two Ponds were presented to the City Council. Arvada City Council voted against both rezoning requests and voted against rezoning all 13 acres as low density residential.

After the meeting, David Anderson said to Richard Feely and some neighbors, "I have never lost a rezoning issue and I am not about to lose to a bunch of 'local yokels' like you." In addition, a council member sarcastically stated, "How many bake sales will it take to finance the purchase of Two Ponds." Statements like these not only reflected the charged atmosphere over the issues, but only steeled the resolve of the Foundation members. Thus as SARA put it, the "zoning melodrama" was to continue for another 18 months.

## PRESERVATION FOUNDATION STRATEGIES

From September 1990 through September of 1992, members of the Foundation worked tirelessly to fulfill their goal of preserving wetlands and Two Ponds. They made personal contact and gave presentations to clubs, organizations, schools, and church groups. They lobbied local, county, state and federal workers and officials. Roger Johnson, the Foundation president, met with Senator Wirth and Representative Skaggs in Washington and won their enthusiastic support. They wrote grants and made proposals to save Two Ponds. As a result of the members' efforts, endorsements for the cause came from:

- Harold Pratt - Director of Curriculum, Jefferson County Public Schools.
- U.S. Environmental Protection Agency (*not only did the E.P.A. endorse the cause, but on April 25, 1991, it gave the Foundation the E.P.A. Regional Award for their effort*)
- Colorado Wildlife Federation
- North Jeffco Recreation District - *also sent a resolution to the U.S. Congressional delegation supporting the acquisition of Two Ponds by U.S. Fish and Wildlife Service*
- Colorado Environmental Coalition.
- Plan Jeffco
- Parr Elementary School
- Dudley Weiland environmental teacher, Peck Elementary
- Letter of support from a 13 year old boy in Colorado Springs
- Wendy Shattil and Bob Rozenski renowned nature photographers.
- Colorado Coalition of Land Trusts

These endorsements encouraged the Foundation to continue getting the message out to the public. This was accomplished by having a videotape of Two Ponds professionally produced, *TWO PONDS, A UNIQUE JEWEL*. This tape added to the slide presentations that members were already using. In February 1991, the video was presented at the Arvada Center. With approximately 130 people in attendance at this wine & cheese affair, an explanation of the Foundation and its goals was presented.

News of Two Ponds went national when Tom Brokaw had a segment on NBC Nightly News featuring Two Ponds as an example of how citizens were fighting developers and city hall to save the environment.

## CHANGE IN STRATEGIES

Beginning in November 1990, the Foundation changed its strategy and began exploring ways to save Two Ponds by purchasing the property. They explored having Jeffco Open Space purchase it. They proposed that the Colorado Division of Wildlife obtain it and encouraged the Nature Conservancy to acquire it. Roger Johnson and Rich Feely met with Dave Anderson, CDS president, and offered to buy his option on the land. All of this, to no avail. The Foundation contacted Home Federal Savings and Loan Association regarding the purchase of Two Ponds, and was rebuffed.

January 1991, The Two Ponds Preservation Foundation was made aware of the URBAN WETLAND INITIATIVE of the U.S. Fish and Wildlife Service. Board member Janet Torma-Krajewski wrote a proposal to USFW to make Two Ponds into a refuge that would save the wetlands. Service biologists reviewed the site and adjacent open space and recommended that the entire open space of about 80 acres be included in the Regional Wetland Concept Plan and be acquired under the authority of the Emergency Wetland Resource Act of 1986. This act of Congress uses royalties from offshore oil drilling to save lakes, waterways and wetlands. The Two Ponds Preservation Foundation successfully lobbied Senator Tim Wirth and Representative David Skaggs to aid in securing funding from this Act.

In mid-April of 1991, CDS/Dave Anderson submitted a new PUD-R rezoning request to the Arvada Planning Commission. Foundation members, Bini Abbott, Janet Torma-Krajewski, Helen Hauptman (Fitzpatrick) and Rich Feely showed that his development plans did not meet current zoning codes; there were safety issues with cul-de-sac setbacks; some plats were in wetlands; and there were ingress and egress problems. However, the Planning Commission, by a 4-3 vote, approved his plans contingent on multiple conditions.

From May until mid-September 1991, the Two Ponds issue took hold in the Rocky Mountain News, Denver Post, and Arvada Sentinel newspapers. Articles and editorials from both sides permeated the issues. Public hearings on the rezoning were rescheduled because CDS did not meet the posting requirements. At the urging of the Foundation and EPA, the Army Corps of Engineers suspended the Nation-wide permit to fill in some wetlands, then reinstated it 2 weeks later. In mid-August the public hearing on the rezoning request was held, but the City Council delayed their decision until mid-September. On September 16, 1991, City Council denied the

PUD-R rezoning request and instead rezoned Two Ponds as residential estates, which would drastically limit the amount of houses.

Home Federal Savings And Loan Association of Harlan, Iowa was taken over by the Resolution Trust Corporation (established by Congress to take over failed financial institutions) on September 27, 1991. It was insolvent. David Anderson had his option on Two Ponds with this financial company. RTC now controlled and honored David Anderson's option, which was to expire at midnight October 31, 1991.

On September 28, 1991 CDS had Quality Paving bring in a bulldozer to cut two roads into the site. Members of the Two Ponds Preservation Foundation, Roger Johnson and Richard Feely, with authorization from the Army Corps of Engineers, confronted the driver and supervisors of the paving company, informing them of the penalty of up to \$10,000 if the wetlands were disturbed in any manner, as the permit to fill in the wetlands was suspended. The paving company then left the job. The week following, David Anderson (CDS) cut down several trees and fence posts along 80th Ave

Council member Lorraine Anderson's article in the October 24, 1991 issue of the Arvada Jefferson Sentinel explained what transpired next.

*"After the first public hearing on Two Ponds, the city council publicly told the 250 neighbors attending the meeting that they should come up with the money to purchase the land if they did not want it developed. Consequently, they formed the Two Ponds Preservation Foundation and proceeded to explore ways to purchase the property. They succeeded in getting an appropriation through Congress to preserve the Two Ponds land as well as adjoining lands with the U.S. Fish and Wildlife Service. At a special meeting U.S. Fish and Wildlife representatives told council they were definitely interested in purchasing the property but would not be able to do so before December 31<sup>st</sup>. They also stated they could not pay more than fair market value for the property based on an approved appraisal. Anderson (CDS) stated that since he could not agree with the Service on price, he would begin to move earth and breach the dams on the property. In order to preserve the property, we initiated an ordinance at our next regular meeting to force Anderson to negotiate with the city for the sale of the Two Ponds property at fair market value. Bob Frie asked Anderson if he would stop the excavation and tree cutting on the property and negotiate with those agencies that were interested in buying the property. Anderson refused Frie's offer. Frie then made the motion to preserve the property for public use".*

The motion passed 5-2. The city continued to negotiate a price for purchasing Two Ponds. In phone conversations with council members, an agreement was made to purchase the land for \$375,000. It was to be voted on at the October 28th meeting. However, councilwoman Lorraine Anderson filed a lawsuit to stop the purchase because the action violated the new Colorado

Sunshine Law. This law states that the purchase of property by the city must be discussed in public meetings or in executive sessions. The injunction was lifted and a special meeting was called for on Halloween night. CDS option expired at midnight October 31, 1991.

The Rocky Mountain News reported on the council meeting the next day, November 1, 1991 –

*“The resolution to buy the land failed 4-3. Negotiations between the city and the developer, however, led to a political battle that rose to unprecedented levels when City Council members sued each other earlier this week. Councilwoman Lorraine Anderson sued the mayor and three other council members to block finalization of the sale. In turn, Councilman Ted Terranova sued Lorraine Anderson for slander.”*

## THE LAWSUITS

Councilwoman Lorraine Anderson filed suit against the mayor and members of City Council saying that the agreement to buy the Two Ponds land from CDS was made illegally because it violated the Sunshine Act (open meeting law). An injunction was issued stopping the deal from being considered at the October 28, 1991 council meeting. Councilman Ted Terranova then filed a suit against Lorraine Anderson, which convinced Judge Polidori to require the councilwoman to post a \$175,000 bond to keep the order from being dismissed. When she failed to post the bond, the order lapsed, and Terranova called the emergency meeting for Halloween to give the deal one more shot. Both Terranova and Councilwoman Anderson dropped their claims. (Arvada Sentinel 11-7-91)

On January 28, 1992 David Anderson filed lawsuits in Jefferson County District Court. One against Arvada alleged that he had been cheated out of a deal to make good on an option contract he held with a failed Iowa savings and loan. Further, city officials purposely stalled in buying the land so that he would be pushed out of the picture.

The other was against Lorraine Anderson, stemming from her court actions to stop the city from consummating a deal to purchase Two Ponds in October. She requested a temporary restraining order saying the city violated the state’s open meeting laws and the city’s charter. He sought \$175,000 from her. Lorraine Anderson requested that the suit be dismissed claiming that her actions were protected under the state’s open meetings law and the First Amendment to the U.S. Constitution. May 28, 1992 Judge Polidori ruled that Councilwoman Anderson had a constitutional right to use court action to keep the city from apparently violating open meeting laws. Councilwoman Anderson then made a claim against David Anderson (CDS), requesting her attorney fees be paid by him. In the meantime, David Anderson made several attempts to get the city to settle in his lawsuit against Arvada. They were denied. Finally, the city paid David

Anderson \$5,000 to drop his claim that city officials deliberately sabotaged his efforts to develop the land. He then signed that money over to Lorraine Anderson to settle a lawyers' fee judgment she won against him. (Arvada Sentinel 2-6-92, 2-27-92, 6-4-92, 12-31-92)

In January of 2012, former Arvada City Council member Lorraine Anderson responded to THE LAWSUITS section of this paper and clarified much of what the newspaper articles failed to report. She wrote: “ *Just to set the record straight, Terranova’s law suit against me was dismissed immediately because it is impossible to slander a person by naming him in a law suit. That dismissal happened the first few minutes of the hearing. David Anderson’s claim was for “Contract Interference”.* ”

## THE CONCLUSION

David Anderson’s option on the Two Ponds property expired at midnight October 31, 1991. Resolution Trust Corp had outright ownership of the property. Thus, the U.S. Fish and Wildlife Service was able to use monies, nursed through Congress by Senator Tim Wirth and Representative David Skaggs under the authority of the Emergency Wetland Resource Act of 1986, to purchase the original 12.6 acres in May of 1992 and shortly thereafter another 9.6 acres. In June 1992, the City of Arvada passed a resolution to deed approximately 7 more acres. An additional 5.9 acres was purchased in March of 1993, and 16.5 acres in September of 1994. The final 19 + acres were acquired in December of 1998 when the Lutheran Medical Center Community Foundation was negotiating to sell the land along Kipling to Writer Corp. However, the Service had first right of refusal on the property. The Service worked through Representative David Skaggs office to get \$1.6 million until monies could be obtained from the 1998 budget. In the meantime a \$1.6 million loan from the Conservation Fund (a land trust based in Virginia that brokers land deals for federal and state governments, then is reimbursed) enabled this last parcel of land to be added to the Refuge. This final acquisition completed a journey to acquire that ‘unique jewel’ in the middle of Arvada. The journey lasted almost 10 years and was well worth the effort.

The year 2012 marks the twentieth anniversary of the Two Ponds National Wildlife Refuge, which was dedicated September 26, 1992. It stands as a legacy to what average citizens can accomplish when they come together for a common purpose. The citizens were able to meld together neighbors, school districts, clubs, organizations, city, county, state and federal governments to support this ‘jewel’ that began as the smallest National Urban Wildlife Refuge in the nation.

Many thanks to the Two Ponds Preservation Foundation and its cadre of workers and leaders who fought diligently for two years to save this land. They were the ones who lobbied Congress,

city, county and state officials and agency heads; wrote grants and solicited various groups and agencies support; spoke to clubs, church groups and civic organizations; made presentations before the planning commission & city council; unveiled the Two Ponds video at the Arvada Center; debated zoning codes and plat plans before city council; brought in experts on wetlands, fauna and flora of Two Ponds; sought out U.S. Fish and Wildlife Service and its Regional Wetland Concept Plan, involved the EPA and the Army Corps of Engineers concerning wetlands; and spent hundreds of hours over a 2 year period in these pursuits.

This core group of leaders and workers were: Bini Abbott, Richard Feely, Dan Fernandez, Helen Hauptman (Fitzpatrick), Roger Johnson, Linda Oliphant, Janet Torma-Krajewski, Jim Viles and many neighbors who wrote letters and attended City Council meetings. Without their efforts there would be no Two Ponds National Wildlife Refuge, but rather another suburban development with a few professional buildings.

\*Information for article obtained from: Arvada Sentinel, Denver Post, Rocky Mountain News, SARA Newsletter, Two Ponds Preservation Foundation minutes and notes, Jefferson County Archives & Records, Personal recollection and notes of Rich Feely.