


## Staff Report Addendum

**Date:** August 25, 2025  
**To:** Douglas County Board of County Commissioners  
**Through:** Douglas J. DeBord, County Manager  
**From:** Terence T. Quinn, AICP, Director of Community Development   
**CC:** Eric Pavlinek, Principal Planner  
Jeanette Bare, AICP, Planning Manager  
Steven E. Koster, AICP, Assistant Director of Planning Services  
**Subject:** **Waiver of Central Services Requirement in the Commercial Zone District – 2006 Kelty Road – Supplemental Information**  
**Project File:** SP2024-081

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**Board of County Commissioners Meeting:**

**September 2, 2025 @ 2:30 p.m.**

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At its May 13, 2025 public meeting, the Board of County Commissioners voted to table the request based on concerns regarding drainage, water quality, and other components of the project, along with the possibility of improper communications from the applicants. The applicants request that the Board reconsider their zoning waiver request based on the attached supplemental information.

### **ATTACHMENTS**

Applicants' Supplemental Information

SUPPLEMENTAL MEMORANDUM

TO: Douglas County Planning Commission  
FROM: Caroline Young-Henry, Esq.  
DATE: July 8, 2025  
RE: ***Water and Sewer Waiver for 1.0 ac Property at 2006 Kelty Road, File No. SP2024-081***

At your request, we have prepared this Supplemental Memorandum to evaluate whether granting a water and sewer waiver for a 1.0 ac Property at 2006 Kelty Road (“Property”) complies with the Waivers of the Douglas County Zoning Resolution Section 122.03.2, which states, “*the granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property*”.

As demonstrated below, the existing exempt well and onsite wastewater treatment system (“OWTS”) serving the Property have been reviewed and received no objection from the appropriate regulatory agencies. Brandon and Heidi Messer (“Owners”) remain fully committed to operating in compliance with all applicable standards, permit conditions, and future review requirements. The Owners have made all good faith efforts to demonstrate that the proposed waiver meets the criteria set forth in the Zoning Resolution and should be approved.

**Facts**

On March 21, 2025, Owners of Property respectfully requested a waiver to the Commercial (C) zone district requirement that all uses shall be served by central water and sewer (“Waiver Request”). The proposed use for the Property, currently being processed under a Site Improvement Plan by Planning Services, is to convert the existing structure into a Coffee Shop. The Property is adjacent to other commercially zoned properties in Franktown that also operate on individual water and sewer waste systems. Currently, neither central water nor sewer services are located close enough for an extension, therefore it does not make sense to tie into such existing services. The Owners received a Letter on February 28, 2025 from Franktown Business Area Metropolitan District (“District”) confirming that it is not feasible for them to provide the water and sewer services to the Property<sup>1</sup>. The Owners received a Douglas County Zoning Resolution Waiver Request Staff Report (“Staff Report”) on May 1, 2025.<sup>2</sup> The Staff Report included responses from the Colorado Division of Water Resources (“DWR”), Douglas County Health Department (“DCHD”), and Douglas County Water Commission (“DCWC”). On May 13, 2025, the Owners representatives presented their Waiver Request to the Douglas County Commissioners and were granted a ‘stay’, pending further documentation evidencing compliance with Waivers of the Douglas County Zoning Resolution Section 122.03.2.

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<sup>1</sup> See Franktown Business Area Metropolitan District Letter attached at Page No. 5 herein.

<sup>2</sup> See Douglas County Zoning Resolution Waiver Request Staff Report attached at Page Nos. 6 thru 52 herein.

**Discussion of Section 122.03.2: Water Waiver**

Granting the Waiver Request will not be detrimental to the public safety, health, or welfare or injurious to other property. Water service to the Property is currently provided by an existing exempt well (Permit No. 336476)<sup>3</sup> and associated pump located on the Property. On November 7, 2024, the DWR granted an exempt permit authorizing commercial use of the well, under Policy 1985-1. This policy expressly states, *“use of water from the well may include serving the ordinary household purposes of a single-family residential unit or units on the parcel, such as an on-site proprietor’s residence or a caretaker/employee unit, provided the residential use is directly associated with the commercial business”*.

The Owners fully accept and support the terms of the Exempt Well Permit No. 336476. They reasonably relied on the DWR’s issuance of the permit as evidence that all concerns raised in the DWR’s October 10, 2024 correspondence were appropriately resolved and that no outstanding issues remain regarding public health, safety, or welfare.<sup>4</sup> The DWR’s mission, to administer Colorado’s water laws, ensure proper construction and maintenance of wells, and safeguard public safety<sup>5</sup>, further reinforces confidence that the permit was granted only after careful consideration and in full alignment with those priorities.

The DCWC provided individual comments in response to the Waiver Request on April 28, 2025. Commission Members Tricia Bernhard and Evan Ela both expressed no opposition to the Waiver Request. Member Bernhard noted that, *“[the Owners] do not have the option to connect to any kind of water district and that the water use would be minimal compared to other water wells in that area.”*<sup>6</sup> Similarly, Member Evan Ela stated that, *“unless the state finds that their demands are too high, he had no reason to oppose the project”*.<sup>7</sup> Importantly, the DWR has confirmed that the exempt well, as permitted, may lawfully serve the coffee shop, provided the use complies with the permit’s terms and conditions. The DWR has no objection to the proposed use under the current permit.<sup>8</sup>

While Commission Member Harold Smethills expressed concern regarding the increased usage of water on the property and waiver of the central water and sewer services requirement, he explicitly stated he had no objection to the coffee shop<sup>9</sup>. The Owners respectfully submit that no increase in water use is anticipated beyond what is already authorized under the existing permit. They remain fully committed to complying with all provisions of the DWR-issued permit.

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<sup>3</sup> See Well Permit No. 336476 attached at Page No. 47 herein.

<sup>4</sup> See Correspondence with Wenli Dickinson (Water Resource Engineer) and Eric Pavlinek (Douglas County Principal Planner) attached at Page Nos. 22 thru 26 herein.

<sup>5</sup> See <https://dnr.colorado.gov/divisions/division-of-water-resources>.

<sup>6</sup> See Water Commission Member Referral Comments SP2024-081- 2006 Kelty RD attached at Page No. 51 herein.

<sup>7</sup> *Id* at Page No. 51 herein.

<sup>8</sup> See Douglas County Zoning Resolution Waiver Request Staff Report attached at Page No. 7 herein.

<sup>9</sup> See Water Commission Member Referral Comments SP2024-081- 2006 Kelty RD attached at Page No. 51 herein.

Additionally, the Owners hold decreed underground water rights under Case No. 2020CW3028, which apply to the Property<sup>10</sup>. This further demonstrates their capacity to sustainably manage water resources in support of the proposed use.

### **Discussion of Section 122.03.2: Sewer Waiver**

Granting the Waiver Request related to sewer service will not adversely affect public safety, health, or welfare or injurious to other property. There is an existing septic system (“OWTS”) on the property with a current use permit (Permit No. 20059964) in place that is being evaluated for its current capacity and functionality of these proposed uses.

On February 28, 2024, The DCHD received an inspection report for the OWTS. The Owners promptly addressed and corrected the noted deficiencies by March 5, 2024, utilizing licensed repair contractor, Mathews Excavating. All non-permitted repairs were appropriately documented using the Repair Verification Form. In its April 10, 2025 response to the Waiver Request, DCHD stated “*no objection to an OWTS as the method of wastewater disposal*” for the Property. Furthermore, DCHD’s referral letter confirmed that a new Use Permit Inspection will not be required for the proposed change of use; rather, the existing OWTS must be evaluated by a certified septic designer. The Owners remain in full compliance with DCHD requirements and are committed to continuing any necessary evaluations or upgrades to the existing OWTS in accordance with County Health Department standards.

As further support, the Franktown Sub-Area policy states, “*Franktown’s primary wastewater management tools include septic tanks and leach fields. Properly managed, these systems can adequately support limited rural development as proposed in this Plan and protect groundwater in the Franktown Rural Community.*” The proposed use of the existing OWTS on the Property is consistent with this policy framework. The Owners have demonstrated a commitment to maintaining and upgrading the system in accordance with the County health standards, thereby aligning with the Sub-Area Plan’s vision for sustainable and appropriately scared rural development.

Douglas County Health Department Regulation Number 22-01, Section 3.6.B, provides that *the Department may refuse to issue a permit for the construction of an OWTS where a sewage treatment works is available within 400 feet of the nearest property line and connection can be made thereto*. In this case, the Property is approximately 6.8 miles (35,904 feet) from the nearest sewage treatment facility, which is operated by the Town of Castle Rock<sup>11</sup>. Moreover, the Franktown Business Area Metropolitan District does not currently provide water or sewer service to the properties within its boundaries.<sup>12</sup> Given the significant distance from existing infrastructure and the absence of service from the local district, connection to the centralized sewer is not feasible, and continued use of the existing OWTS represents the most practical, compliant, and sustainable solution for wastewater management on the Property.

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<sup>10</sup> See Water Opinion Letter attached at Page Nos. 17 thru 34 herein.

<sup>11</sup> See Map of Water Providers and Their Service Areas for Douglas County, CO attached at Page No. 53 herein.

<sup>12</sup> See Franktown Business Area Metropolitan District Letter on February 28, 2025 attached at Page No. 5 herein.



**Conclusion**

In conclusion, the Owners respectfully assert that the proposed use and requested waivers fully comply with the standards outlined in Section 122.03.2 of the Douglas County Zoning Resolution. The existing exempt well and OWTS have been reviewed and have received no opposition by the relevant regulatory authorities, including the Colorado Division of Water Resources and the Douglas County Health Department. The DWR has confirmed that the well, as permitted, may lawfully serve the proposed coffee shop use, and the DCHD has no objection to continued use of the existing septic system, subject only to an evaluation by a certified septic designer.

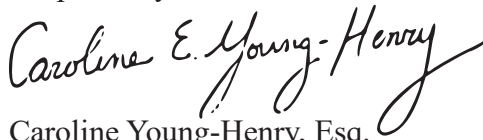
There is no evidence that granting this Waiver Request will be detrimental to public health, safety, or welfare, or injurious to other property. On the contrary, the proposed conversion of the existing structure into a coffee shop aligns with the area's existing land use character and makes efficient use of individual utility systems in a location where central water and sewer services are neither available nor feasible. The Property is also consistent with other commercially zoned parcels in Franktown operating under similar conditions.

Further, the Owners' existing water rights, confirmed exempt well permit, and functioning wastewater system provide a sound and sustainable foundation for the proposed business. Their continued cooperation with County agencies all supports the conclusion that the existing infrastructure is adequate to serve the proposed use in a safe, sustainable, and compliant manner.

The Owners recognize and support the long-term vision of extending centralized infrastructure to the area as outlined in the Comprehensive Master Plan. Until such time, they respectfully request approval of the Waiver Request as a reasonable and appropriate interim solution that supports limited rural commercial development consistent with adopted planning policies.

Please do not hesitate to reach out with any additional questions or concerns.

Respectfully,



Caroline Young-Henry, Esq.  
Shanor and Franklin, LLC  
(954)-803-9557

**FRANKTOWN BUSINESS AREA METROPOLITAN DISTRICT**

c/o Community Resource Services of Colorado LLC  
7995 E Prentice Ave., Suite 103E'  
Greenwood Village, CO 80111-2710  
(303) 381-4960

February 28, 2025

Caroline Young-Henry  
Shanor & Franklin, LLC  
600 17<sup>th</sup> Street, Suite 2800  
Denver, CO 80202-5402  
[Cyoung-henry@shanorfranklin.com](mailto:Cyoung-henry@shanorfranklin.com)

Dear Ms. Young-Henry,

Community Resource Services of Colorado (CRS) manages the Franktown Business Area Metropolitan District (District). Currently, the District does not provide water or sewer service to the properties within its boundaries.

Please let me know if you have any additional questions.

Rhonda S. Bilek  
Assistant Manager  
Franktown Business Area Metropolitan District  
c/o CRS of Colorado  
[rbilek@crsofcolorado.com](mailto:rbilek@crsofcolorado.com)  
303-381-4979



## Zoning Resolution Waiver Request Staff Report

**Date:** May 1, 2025  
**To:** Douglas County Board of County Commissioners  
**Through:** Douglas J. DeBord, County Manager  
**From:** Terence T. Quinn, AICP, Director of Community Development *TTQ*  
**CC:** Eric Pavlinek, Principal Planner  
 Jeanette Bare, AICP, Planning Manager  
 Steven E. Koster, AICP, Assistant Director of Planning Services  
**Subject:** **Waiver of Central Services Requirement in the Commercial Zone District – 2006 Kelty Road**  
**Project File:** SP2024-081

**Board of County Commissioners Meeting:**

**May 13, 2025 @ 2:30 p.m.**

### **I. EXECUTIVE SUMMARY**

The request is for a waiver of Section 1206 of the Douglas County Zoning Resolution (DCZR), which requires that all uses in the Commercial (C) zone district shall be served by a central water and sanitation facility. The applicant has an administrative Site Improvement Plan (SIP) application for a coffee shop at 2006 Kelty Road currently in process.

The applicant's representative asserts that, although central water and sanitation services cannot feasibly be extended to the property, the site can be adequately served by an existing exempt well and an on-site wastewater treatment (OWTS). The project site lies within the Franktown Business Area Metropolitan District. The applicant's representative contacted the district, which indicated that it does not provide central water and sewer service to properties within its boundaries.

### **II. APPLICATION INFORMATION**

#### **A. Applicant**

Brandon and Heidi Messer  
 PO Box 3380  
 Parker, Colorado 80116

#### **B. Applicant's Representative**

Caroline Emmons Young-Henry  
 Shanor and Franklin, LLC  
 600 17<sup>th</sup> Street, Suite 2800  
 Denver, Colorado 80202

**C. Request**

Approval of a waiver request from Section 1206 of the DCZR, which provides that all uses in the C zone district shall be served by a central water and sanitation facility. The waiver is requested in conjunction with a SIP request for a coffee shop on the parcel. The SIP is currently being processed by Planning Services. The waiver request must be approved for the applicant to move forward in the SIP process.

Water is provided by an existing exempt well and OWTS. As part of the SIP request, the waiver was sent on referral to agencies including the Colorado Division of Water Resources (DWR) and Douglas County Health Department (DCHD). DWR states that the exempt well, as permitted, can be used to serve the proposed coffee shop, and has no objections to use of the well provided that the terms and conditions of the permit are met.

The Douglas County Health Department (DCHD) referral letter indicates that the Food Service Plan review is currently underway and upon completion, an approval letter will be issued by DCHD. DCHD has no objection to an OWTS as the method of wastewater disposal for the site. A Use Permit was issued by DCHD for the sale of the property in 2024. DCHD will not require an additional Use Permit Inspection for the change of use, but instead will require the existing OWTS to be evaluated by a certified septic designer to determine if the existing septic system can accommodate the proposed commercial use. Additional permitting may be necessary based on what is found in the evaluation.

The Douglas County Water Commission reviewed the proposal at its Water Commission Meeting on Monday, April 28, 2025 and provided individual comments from three Commission members. One Commission member had concern with the increase of water usage from residential to a commercial use but did not have objection to the conversion to a coffee shop. Comments were also provided regarding the ability to waive the requirement for central water and sewer services. Two other Commission members had no opposition to the project. The comments from the Commission are included in the attachments.

**D. Process**

The waiver process is set forth in Section 122 of the DCZR. Waivers may be requested by an applicant in conjunction with any application subject to the standards or other criteria established within the DCZR. For administrative land use applications such as an SIP, a waiver request is considered by the Board at a regular public land use meeting. Section 122.03 sets forth a series of findings that must be made by the Board to approve a waiver.

**E. Location**

The project site is located in the Franktown Village Area in Franktown and is zoned Commercial. The parcel is located west of the intersection of State Highway 83 and

State Highway 86 (SH 86), on the north side of SH 86. Vicinity, zoning, and aerial maps which show site location and existing conditions are attached to the staff report.

### III. CONTEXT

#### A. Background

The property was initially developed as a residence. An SIP application to convert the property for commercial use was submitted in 2000 but was closed due to inactivity. The current property owners purchased the property in February of 2024 and propose to convert the approximate 1,500 square foot building into a coffee shop with limited retail use. An SIP application for these uses is currently in review. One of the requirements of SIP approval is the Board's approval of the central services waiver.

#### B. Adjacent Land Uses and Zoning

The project site is adjacent to other commercially zoned properties in Franktown. The following table reflects those zone districts and land uses surrounding the parcel.

**Zoning and Land Use**

Direction	Zoning	Land Use
North	Commercial	Office
South	Commercial	Residential, Restaurant, tree farm
East	Commercial	Commercial strip center
West	Commercial	Residential

### IV. STAFF ANALYSIS

A waiver must demonstrate compliance with the following provisions in order for the Board of County Commissioners to approve the request.

#### **122.03.1: The waiver does not have the effect of nullifying the intent and purpose of this Resolution.**

*Staff Comment: The intent of the central services requirement in the C zone district is to ensure that commercial uses are served by water and sewer facilities appropriate for the intensity and type of uses allowed within the district. The applicant's representative asserts that the water and sewer demands associated with the proposed uses can be met by using an existing well and an OWTS as described in their attached waiver request. The applicant estimates a water demand for the coffee shop of approximately 0.92 acre-feet a year or 25 gallons per day. This demand can be served by the existing well, which is permitted to withdraw up to 1.0 acre-feet annually from the Denver aquifer.*

#### **122.03.2: The granting of the waiver request will not be detrimental to the public safety, health, or welfare or injurious to other property.**

*Staff Comment: The applicant asserts that the existing exempt well will be operated in accordance with the State requirements allowed per the permit. The applicant may be required to obtain additional permits from the Health Department based on the findings of the evaluation of the existing septic system by a certified septic designer.*

**122.03.3: The conditions upon which the request for waiver is based are unique to the property for which the waiver is sought and are not applicable to other property.**

*Staff Comment: The waiver request is specific to the proposed, limited-scale development on the subject site as depicted on the SIP submittal (SP2024-081). While other waiver requests could be brought forward to the Board for similarly situated properties, the current waiver request is for one property with specific water and sewer demands and servicing options.*

**122.03.4: A particular non-economic hardship to the owner would result from a strict application of this resolution.**

*Staff Comment: According to the correspondence provided by the applicant's representative from the Franktown Business Area Metropolitan District, central water and sewer services are not available to serve the property. Similarly, no special districts within the vicinity of the property currently provide water and sewer services.*

**122.03.5: The waiver will not in any manner vary the provisions of the Zoning Resolution or County Building Code.**

*Staff Comment: All other zoning and building codes are applicable to the development on this site including setbacks, uses, and other development standards contained within the DCZR. All engineering standards will be met through the SIP and construction plan processes. The applicant will be required to obtain all necessary permits and approvals during the building permit phase of the project. The Building Division is currently reviewing the plans for a tenant finish. All building and fire codes will be met.*

**122.03.6: The proposed development will be in conformance with the Douglas County Master Plan.**

*Staff Comment: The site is located in a portion of the County addressed by policies within the Franktown Village Area. Master plan policies applicable to this area "Support new, and the expansion of existing, locally-owned and operated businesses" (Policy 4-1F.1), and "encourage improvements to existing properties" (Policy 4-1G.3).*

*Within the Franktown Village area, subareas are defined where specific land use policies are established. The plan does encourage non-residential development to primarily occur "in the southeast quadrant of State Highways 83 and 86, within the Community Center District" (Policy 4-1I.1).*

*In regard to wastewater service planning, the Comprehensive Master Plan notes that:*

*"Franktown's primary wastewater management tools include septic tanks and leach fields. Property managed, these systems can adequately support limited rural development as proposed in this plan and protect groundwater in the Franktown Rural Community. However, this plan supports future development on a central sewer system. Potential for a future central sewer system in Franktown rests with the ability of the Franktown Area Metropolitan District or other similar future entities, to finance a central sewer line that would ultimately serve to protect Cherry Creek and serve the Franktown Business Community."*



*Absent a central water and sanitation system, the current waiver request will accommodate the development of a low water-demand business, the owners of which may be better positioned to financially participate in longer term solutions for the services in the Franktown Village Area if development of a central water system continues to be a desirable policy objective in the Franktown area in the future.*

*Regarding wastewater management, policies applicable to the Franktown subarea encourage “establishment of a community wastewater management program for existing on-site wastewater systems” (Policy 4-1X.1), and “development of a central wastewater collection system for the village” (Policy 4-1X.3). As with water, absent a District to take on these functions, an adequately regulated OWTS system constructed to the Douglas County Health Department standards may be an acceptable means of service for a relatively low wastewater-generating business.*

#### V. STAFF ASSESSMENT

Staff has evaluated the waiver request in accordance with Section 122.03 of the Zoning Resolution. In the absence of a water and sanitation district, the proposed use may be served by individual well and a septic system. Should the Board find that the waiver standards are met, the following proposed conditions should be considered for inclusion in the motion:

1. All other standards, requirements, and permits associated with the proposed SIP application shall be met prior to final approval.
2. Any proposed changes to the site that increase water demands, shall require a subsequent waiver from the central water and sanitation requirements.
3. All commitments and promises made by the applicant or the applicant’s representative during the public meeting and/or agreed to in writing and included in the public record have been relied upon by the Board of County Commissioners in approving the application; therefore, such approval is conditioned upon the applicant’s full satisfaction of all such commitments and promises.

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www.douglas.co.us

Department of Community Development

Planning Services

**LAND USE APPLICATION***Please fill in this application form completely. An incomplete application will not be processed.*

Note: Neither the Planning Commission nor the Board of County Commissioners should be contacted regarding an open application.

OFFICE USE ONLY		PROJECT FILE #: <b>SP2024-081</b>
PROJECT NAME: <b>2006 Kelty Road</b>		PLANNING FEES: _____  ENGINEERING FEES: _____  TOTAL FEES: _____  RELATED PROJECTS: _____ _____ _____ _____ _____
PROJECT TYPE: Remodel of Existing Structure		
MARKETING NAME: Franktown Coffee (FN Coffee)		
SITE ADDRESS: 2006 Kelty Rd, Franktown, CO 80116		
OWNER(S):		
Name(s): Brandon Messer, Heidi Messer		
Address: 216 High Plains St, Castle Rock, CO 80104		
Phone: 303.903.0500		
Email: themesseremail@gmail.com		
AUTHORIZED REPRESENTATIVE (requires notarized letter of authorization if other than owner)		
Name: Action Civil Engineering and Mark De Benedictis		
Address: 9800 Mt. Pyramid Ct, Ste 400, Englewood, CO 80112		
Phone: 303.881.7000		
Email: tdenning@actioncivileng.co		

## LEGAL DESCRIPTION:

Subdivision Name: \_\_\_\_\_

Filing #: \_\_\_\_\_ Lot #: \_\_\_\_\_ Block #: \_\_\_\_\_ Section #: \_\_\_\_\_ Township: \_\_\_\_\_ Range: \_\_\_\_\_

STATE PARCEL NUMBER(S): **2349-350-00-007**

## ZONING:

Present Zoning: Commercial/C Proposed Zoning: \_\_\_\_\_ Gross Acreage: \_\_\_\_\_

Gross Site Density (DU per AC): \_\_\_\_\_ # of Lots or Units Proposed: \_\_\_\_\_

## SERVICE PROVIDERS:

Fire District: Franktown Fire Metro District: \_\_\_\_\_ Gas: Black Hills Energy

Water: Well Sewer: Septic Electric: CORE

Roads: ☒ Public ☐ Private (please explain): \_\_\_\_\_To the best of my knowledge, the information contained on this application is true and correct. **I have received the County's information sheet regarding the Preble's Meadow Jumping Mouse.**
  
Applicant Signature


  
Date

100 Third Street, Castle Rock, Colorado 80104 • 303.660.7460

Revised 03.04.2021

SHANOR & FRANKLIN LLC

Caroline Emmons Young-Henry  
600 17th Street, Suite 2800  
Denver, CO 80202  
Phone: 954.803.9557  
cyoung-henry@shanorfranklin.com

March 21, 2025

Mr. Eric Pavlinek  
Douglas County Planning  
100 Third Street  
Castle Rock, CO 80104

March 21, 2025

RE: 1.0 ac Property at 2006 Kelty Road, File No. SP2024-081

Dear Eric:

On behalf of the owners, Brandon and Heidi Messer (“Owners”), of 2006 Kelty Road (“Property”), we are hereby respectfully requesting a waiver to the Commercial (C) zone district requirement that all uses shall be served by central water and sewer. The proposed use for the Property currently being processed is a Site Improvement Plan to convert the existing structure into a Coffee Shop. As you are aware, neither central water or sewer service is located close enough for an extension, and therefore, it does not make sense to tie into such existing services. We have received a February 28, 2025 Letter (*see attached*) from Franktown Business Area Metropolitan District (“District”) indicating that currently, it is not feasible for them to provide this service to us.

The following responses address Section 122.03 – Waivers of the County’s Zoning Resolution:

**122.03.1: The waiver does not have the effect of nullifying the intent and purpose of this Resolution;**

RESPONSE – The Commercial (C) zone district requirement is to provide central water and wastewater. However, with the previously mentioned Letter from the District, this cannot be met. The water and sewer needs of this proposal can be met with the existing well and a septic system. Owners have filed a historical use record with the Colorado Division of Water Resources and, in return, they have been issued a permit for the well (Permit No. 336476). This permit is in use today and is authorized to use 1.0 acre-feet/year.

Eric Pavlinek  
February 28, 2025

In addition, there is an existing septic system (“OWTS”) on the property with a current use permit (Permit No. 20059964) in place that is being evaluated for its current capacity and functionality of these proposed uses. The Douglas County Health Department (“DCHD”) received an inspection report for the OWTS on February 28, 2024 and promptly responded and remedied the deficient observations on March 5, 2024 using repair contractor, Mathews Excavating. All non-permitted repairs were documented on the Repair Verification Form. Further, Owners have proposed installation of a water holding tank and water booster pump on the Property in order to meet the sufficient water demands for both the water and septic system capacity. The proposed models for usage to assist with meeting water needs are the Rural Power Systems 3HP Eco-Steady Continuous Pressure Water Booster Pump and the Wentworth Grease Interceptor Trap 100 lbs./GPM. Should capacity or functionality not be adequate, then further upgrades/replacements will be completed.

**122.03.2: The granting of the waiver will not be detrimental to the public safety, health, or welfare of injurious to other property;**

RESPONSE – There is an existing well (Permit No. 336476) and associated pump located on the Property. In addition, the existing OWTS (Permit No. 20059964) will be evaluated and if necessary upgraded/replaced in accordance with the County’s Health Department standards. Therefore, neither shall be detrimental to the public safety, health, or welfare or injurious to other property.

**122.03.3: The conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought and are not applicable to other property;**

RESPONSE – We understand that if this waiver is approved that it is unique to this property.

**122.03.4: A particular non-economical hardship to the owner would result from a strict application of this Resolution;**

RESPONSE – Should the waiver not be approved, the Owners will likely not be able to open their business. The Coffee House is reliant on water and wastewater systems. The Franktown Business Area Metropolitan District has been consistent in responding to other land use applications within the District that it is not feasible for central water and sewer to be provided, as is the case with their February 28, 2025 Letter for this project.

Eric Pavlinek  
February 28, 2025

**122.03.5 The waiver will not in any manner vary the provisions of the Zoning Resolutions or County Building Code; and**

RESPONSE – If the waiver is approved, we do not believe it will vary the provisions of the Zoning Resolution of the County Building Code.

**122.03.6: The proposed development will be in conformance with the Douglas County Master Plan.**

RESPONSE: This proposed use as presented in the Site Improvement Plan application complies with the Douglas County Comprehensive Master Plan as shown in Map 4.3 of the Franktown Village Area. This map shows the Property as commercial in the “Community Center” area in the Comprehensive Master Plan (“CMP”) (*see attached*). Specifically, the CMP outlines two objectives in the Franktown’s Community Center category:

1. *Objective 4-11: Maintain and expand the diversity of local, community-commercial services.*

A coffee shop is known to attract local customers and create a sense of community. This use meets this objective.

2. *Objective 4-1J Limit the amount and intensity of industrial land uses.*

A coffee shop is not identified as an industrial use.

The Franktown Sub-Area policy states *“Franktown’s primary wastewater management tools include septic tanks and leach fields. Properly managed, these systems can adequately support limited rural development as proposed in this Plan and protect groundwater in the Franktown Rural Community.”* Without central systems available this waiver request will allow the Project to accommodate a low water usage business with one well and a OWTS system.

We appreciate your assistance with getting this waiver approved. Please let me know if you need anything further to assist.

Sincerely,



Caroline Emmons Young-Henry  
Shanor and Franklin, LLC

Eric Pavlinek  
February 28, 2025

**FRANKTOWN BUSINESS AREA METROPOLITAN DISTRICT**  
c/o Community Resource Services of Colorado LLC  
7995 E Prentice Ave., Suite 103E'  
Greenwood Village, CO 80111-2710  
(303) 381-4960

February 28, 2025

Caroline Young-Henry  
Shanor & Franklin, LLC  
600 17<sup>th</sup> Street, Suite 2800  
Denver, CO 80202-5402  
[Cyoung-henry@shanorfranklin.com](mailto:Cyoung-henry@shanorfranklin.com)

Dear Ms. Young-Henry,

Community Resource Services of Colorado (CRS) manages the Franktown Business Area Metropolitan District (District). Currently, the District does not provide water or sewer service to the properties within its boundaries.

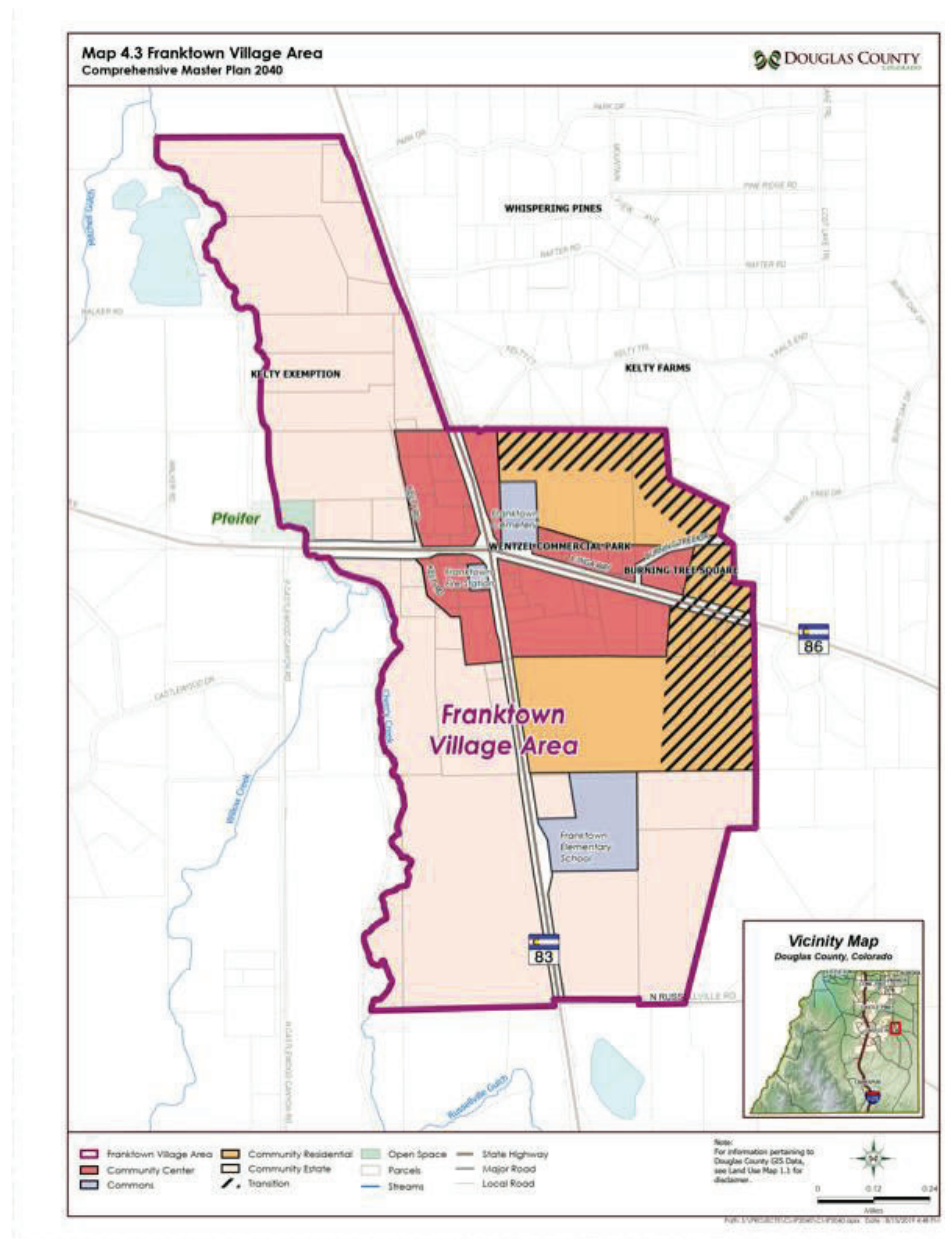
Please let me know if you have any additional questions.



Rhonda S. Bilek  
Assistant Manager  
Franktown Business Area Metropolitan District  
c/o CRS of Colorado  
[rbilek@crsofcolorado.com](mailto:rbilek@crsofcolorado.com)  
303-381-4979



Eric Pavlinek  
February 28, 2025



**SHANOR & FRANKLIN LLC**

Caroline Emmons Young-Henry  
600 17th Street, Suite 2800  
Denver, CO 80202  
Phone: 954.803.9557  
cyoung-henry@shanorfranklin.com

November 4, 2024

Applicant:  
Brandon and Heidi Messer  
PO Box 3380  
Parker, CO  
80134

Eric Pavlinek, Project Planner  
Douglas County Department of Community Development  
Email: epavlinek@douglas.co.us

RE: 2006 Kelty Road, Douglas County, Colorado: Water Supply

Eric Pavlinek:

This report is being prepared at the request of the above Applicant. The property is described as follows:

A tract of land situated in the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 35, Township 7 South, Range 66 West of the 6<sup>th</sup> Principal Meridian, Douglas County, Colorado, more particularly described as follows:

Commencing at the Southwest corner of the Southwest  $\frac{1}{4}$  of said Section 35 and considering the South line of said Southwest  $\frac{1}{4}$  to bear North 89°53'58" East with all bearings contained herein relative thereto;

Thence North 89°53'58" East along said South line a distance of 260.32 feet to the True Point of Beginning;

Thence North 89°53'58" East along said South line a distance of 300.00 feet to the extension of the West line of Parcel "B" described in Deed recorded on September 16, 1983 in Book 490 at Page 914 of the Douglas County records;

Thence North 00°06'02" West along said West line a distance of 130.00 feet;

Thence South 89°53'58" West a distance of 349.00 feet the East right-of-way line of Kelty Road;

Thence South 20°45'11" East a distance of 138.93 feet to the Point of Beginning,  
County of Douglas, State of Colorado.

Containing 1 acre, more or less

**SHANOR & FRANKLIN LLC**

Also known by street and number as 2006 Kelty Road, Franktown, CO, 80116 (“**Subject property**”)

The Subject property plat is attached hereto and consists of approximately one (1) acre.

**Ownership**

Brandon and Heidi Messer, husband and wife, (“**Applicants**”) are the owners of record of the Subject property by Special Warranty Deed dated February 26, 2024, recorded February 28, 2024 at Reception No. 2024007529, filed of record in Douglas County, Colorado (“**Special Warranty Deed**”). Brandon and Heidi Messer are also the record owners of Well Permit No. WCB-147 and the groundwater rights underlying in and under the Subject property.

Prior to the sale of the Subject property, the previous owners, Joel C. Wendler and Laura M. Wendler (“**Wendlers**”), filed an application and claim for underground water rights on February 27, 2020. Water rights were decreed in Case No. 2020CW3028 dated August 3, 2020 (“**Water Decree**”). Under the Water Decree, the Wendlers were granted the rights to groundwater in the not nontributary Upper Dawson and nontributary Denver, Arapahoe, and Laramie-Fox Hills aquifer underlying 2.1 acres.

The following average annual amounts are available for withdrawal under the Water Decree, subject to the Court’s retained jurisdiction in this matter:

<b>Aquifer</b>	<b>Saturated Thickness (feet)</b>	<b>Annual Amount (acre-feet)</b>	<b>Total Amount (acre-feet)</b>
Upper Dawson	55	.231 (NNT)	23.1
Denver	260	0.928 (NT)	92.8
Arapahoe	255	0.91 (NT)	91.0
Laramie-Fox Hills	190	0.598 (NT)	59.8

Under the Water Decree, the groundwater to be withdrawn from the Denver, Arapahoe, and Laramie-Fox Hills Aquifers is “nontributary groundwater”, as defined in C.R.S. § 37-90-103(10.5), and in the Denver Basin Rules, the withdrawal of which will not, within 100 years of continuous withdrawal, deplete the flow of a natural stream, including a natural stream as defined in C.R.S. §§ 37- 82- 101( 2) and 37- 92- 102( 1)( b), at an annual rate greater than 1/ 10 of 1% of the annual rate of withdrawal. The groundwater to be withdrawn from the Upper Dawson Aquifer is “not nontributary” as defined in C.R.S. §§ 37-990-103(10.7) and 37-90-137(9)(c.5) and will not be withdrawn without a plan for augmentation.

## SHANOR &amp; FRANKLIN LLC

The Water Decree referenced a parcel totaling 2.1 acres and includes the Subject Property and the neighboring parcel originally described as: “2.1 acres generally located in the SW/4SW/4 of Section 35, Township 7 South, Range 66 West of the 6<sup>th</sup> P.M., Douglas County, Colorado”. At the time of the Water Decree, the Wendler’s owned the Subject property (approximately 1 acre) and the parcel directly East (approximately 1.1 acres).

The intent of the parties was to convey all rights associated with the Subject Property through the Special Warranty Deed; however, there was no specific mention of water rights in the Special Warranty Deed. A water right is a property right separate and apart from the land on which it is used. *Southeastern Colorado Water Conservancy District v. Twin Lakes Associates*, 770 P.2d 1231, 1239 (Colo. 1989); *Nielson v. Newmyer*, 123 Colo. 189, 192-93, 228 P.2d 456, 458 (1951). Water rights can be bought and sold similarly to real property and can be conveyed separately from the land to which they are appurtenant. *Navajo Development Co. v. Sanderson*, 655 P.2d 1374, 1378 (Colo. 1982). Water rights can be conveyed together with the land on which they are used without specific mention in the deed itself. Whether water rights are conveyed in a deed that does not expressly mention them is a question of fact, dependent upon the intention of the grantor and the circumstances surrounding the transfer. *Kinoshita v. North Denver Bank*, 181 Colo. 183, 188, 508 P.2d 1264, 1267 (1973); *Arnett v. Linhart*, 21 Colo. 188, 190, 40 P. 355 (1895). Because water rights were not listed in the Special Warranty Deed, both parties executed an additional Special Warranty Deed (Water Right Transfer Deed) dated October 22, 2024, effective February 26, 2024, recorded October 23, 2024 at Reception No. 2024045736, filed of record in Douglas County, Colorado (“**Water Transfer Deed**”). The Water Transfer Deed references the Water Decree and reserves the neighboring parcel water rights to the seller, effectively severing the water rights in proportion to their surface rights. Applicant is therefore the holder of the groundwater rights underlying Subject property.

There appeared a discrepancy of record as to whether the well located on the Subject property was Well Permit No. 24201 or WCB-147. In accordance with *C.R.S. Section 37-90-143*, Applicants filed a Change in Owner Name/Mailing Address Form (Form No. GWS-11 08/2016) for the Well Permit No. 24201. The Form was submitted September 6, 2024 and accepted by the Colorado Division of Water Resources. Applicant subsequently retained legal counsel and received a County Referral Letter from the Division of Water Resources on October 10, 2024. “A review of [their] records indicated that Well Permit No. WCB-147, issued on July 26, 1956 for domestic use, may be the correct permit number for the well on the property. This is based upon the location of the well according to the permit file consistent with the property, the depth and pumping level of the well at the time it was drilled consistent with the report included in the referral, and a recent Pump Installation Report filed by the previous landowner stating the well was located at 2006 Kelty Road”. The use of this well is limited to its historical use that existed as of May 8, 1972 which has continued since that time, provided such uses are no greater than those uses allowed for a well permit pursuant to *C.R.S. Section 37-92-602(1)*.

In order to cure the discrepancy, Applicant re-filed a Change in Owner Name/Mailing Address Form (Form No. GWS-11 08/2016) on October 17, 2024. The Form was accepted and

**SHANOR & FRANKLIN LLC**

signed by Wenli Dickinson, staff member of the Colorado Division of Water Resources  
Department of Natural Resources, on December 18, 2024.

Additionally, Applicant has actively complied with the Division of Water Resources requests and has filed an Application for designation of Historic Use (GWS-12) and Commercial Drinking and Sanitary Well Application (GWS-57) for the WCB-147 well based upon historic domestic and commercial use, pending approval.

**Water Rights for Supply to Proposed Development**

The existing well under Permit No. WCB-147 (“**Exhibit C**”) was originally authorized for domestic use in 1956, however, it has been historically used since inception for both commercial and domestic uses, including irrigation of the one (1) acre Subject property. There was no acre feet per year water limitations placed upon the Permit in 1956. In situations where the Division does not list the assigned authorized acre footage, engineers analyze reasonable amounts of water usage based upon historical use and property size. According to the Division of Water Resources, the reasonable use of the water under the Permit WCB-147 should not exceed more than a demand use of 1.5 acre-feet per year. Applicants have proposed a use of approximately 1 acre foot (See Water Requirements below), which is more than sufficient and will not exceed the demand use approximated by the Division of Water Resources.

There is also available under the Subject property an additional .928 acre-feet/year for the Denver Aquifer for the potential drilling of a new well, based upon findings of the State Engineers office and the Applicant retention of the groundwater rights listed in the Water Transfer Deed. The use of the potential new well would allow for expanded and supplemental use in the business, home, outside lawn, and garden watering. Because they are the holder of the groundwater rights underlying the Subject property, no augmentation would be required for a new well for the Denver aquifer in that location on the Subject property. The additional amount is not required for the proposed development.

**A. Water Requirements –**

There are Four (4) structures on the property, one small residential building with one small commercial building, and three small outbuildings. Square footage, building date, and use are as follows:

- a. 1096 sq ft Residential (built in 1918) and 757 sq. ft. Retail Store (built in 1918)
- b. 240 sq ft Outbuilding (built in 1940)
- c. 318 sq. ft Outbuilding (built in 2006); used for Shed- Equipment
- d. 1,065 sq. ft. Outbuilding (built in 1918); originally used for Shed – Poultry

Based upon the GWS-57 and GWS-12 Application, Applicant has calculated the following use for the Subject property:

**SHANOR & FRANKLIN LLC**

- a. Number of Employees (2) x Number of Gallons per Employee Per Day (15) x Number of Days Employee Works Per Year (340) = 10,200 Gallons Per Year
- b. Number of Customers Per Day (85) x Number of Gallons Per Customer (10) x Number of Days Business is Open per Year (340) = 289,000 Gallons Per Year
- c. Household Use: Gallons Per Day (64) x Days Per Year (365) = 23,360 Gallons Per Year

Total amount of water required: Approximately 322,560 gallons/year. Applicants will be underneath the maximum 325,900 gallons (1 acre foot) per year and is reporting calculations at their maximum potential use of water.

**B. Water requirements – Irrigated Landscaping**

The historic use of the property allowed for the use of irrigated landscaping for surrounding grass and plants located on the Subject property. The Applicants recognize the benefits of 'zero landscaping' and have since removed a portion of the grass and replaced the area with a parking lot and planted Colorado-native shrubbery. Applicant may choose to continue watering some of the landscaping per the Historic Use Designation, pending current review and approval.

**C. Total Water Supply Requirement –**

The intended and requested small commercial and single-family residential use of the Subject property under Well Permit No. WCB-147 is sufficient to meet the demands of the project. The approximate 1-acre foot to be withdrawn for small commercial and single-family residential use pursuant to the Well Permit No. WCB-147 does not exceed the approximate 1.5-acre feet demand calculated by the Division of Water Resources. Also, there are additional amounts of Denver Aquifer groundwater available under the land which could supply the project, if required.

If you have any questions, please feel free to call.

Sincerely,  
SHANOR AND FRANKLIN, LLC

  
Caroline Emmons Young-Henry

**ATTACHMENTS:**

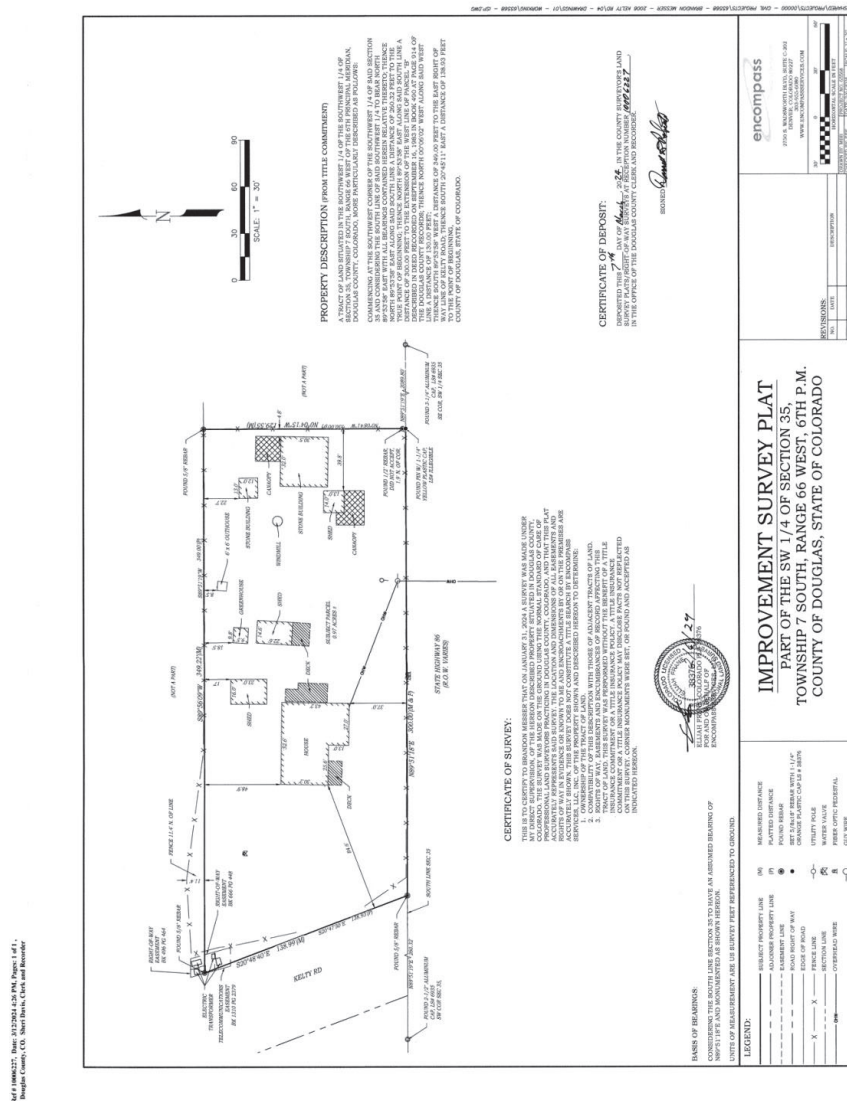
- Exhibit A: Subject Property
- Exhibit B: Special Warranty Deed (Water Right Transfer Deed)
- Exhibit C: WELL PERMIT WCB-147



**SHANOR & FRANKLIN LLC**

## ATTACHMENTS

### Exhibit A: Subject Property



## SHANOR &amp; FRANKLIN LLC

**Exhibit B: Special Warranty Deed (Water Right Transfer Deed)**

Ref: #2024045736, Date: 10/23/2024 11:35 AM,  
Pages: 1 of 13, RECORDING \$73.00  
Douglas County, CO, Sheri Davis, Clerk and Recorder

State Doc Fee:  
Recording Fee:

**SPECIAL WARRANTY DEED (Water Right Transfer Deed)**

THIS DEED, made this 22 day of October, 2024, between **Joel and Laura Wendler**, (as to Parcel One) whose legal address is PO Box 1357, Elizabeth, Colorado, 80107 ("Grantor") and **Brandon and Heidi Messer, as Joint Tenants** ("Grantee"), whose address is PO Box 3380, Parker, CO, 80134.

NOW WITNESSETH, That Grantor, for and in consideration of, ~~Five Hundred Dollars (\$500.00)~~ the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto the Grantee, Grantee's heirs and assigns forever, any and all the water and groundwater rights, together with any improvements, if any, situate, lying, underneath and being in the County of Douglas, State of Colorado, more particularly described as follows:

**(As to Water Rights on, in, and under Parcel One)**

A tract of land situated in the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 35, Township 7 South, Range 66 West of the 6<sup>th</sup> Principal Meridian, Douglas County, Colorado, more particularly described as follows:

Commencing at the Southwest corner of the Southwest  $\frac{1}{4}$  of said Section 35 and considering the South line of said Southwest  $\frac{1}{4}$  to bear North 89°53'58" East with all bearings contained herein relative thereto;

Thence North 89°53'58" East along said South line a distance of 260.32 feet to the True Point of Beginning;

Thence North 89°53'58" East along said South line a distance of 300.00 feet to the extension of the West line of Parcel "B" described in Deed recorded on September 16, 1983 in Book 490 at Page 914 of the Douglas County records;

Thence North 00°06'02" West along said West line a distance of 130.00 feet;

Thence South 89°53'58" West a distance of 349.00 feet the East right-of-way line of Kelty Road;

Thence South 20°45'11" East a distance of 138.93 feet to the Point of Beginning,

County of Douglas, State of Colorado.

Containing 1 acre, more or less

Also known by street and number as 2006 Kelty Road, Franktown, CO, 80116 ("Property")

Aquifer and Location of Groundwater: Grantees are granted the rights to groundwater in the not nontributary Upper Dawson and nontributary Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying 1 acre, located on, in, and under the **Property**, Douglas County, Colorado, as shown

SHANOR & FRANKLIN LLC

on **Exhibit A** attached hereto, as decreed in Case No. 2020CW3028 ("**Exhibit B**", **Water Decree**").

The following average annual amounts are available for withdrawal subject to the Court's retained jurisdiction in this matter:


Aquifer	Saturated Thickness (feet)	Annual Amount (acre-feet)	Total Amount (acre-feet)
Upper Dawson	55	.231 (NNT)	23.1
Denver	260	0.928 (NT)	92.8
Arapahoe	255	0.91 (NT)	91.0
Laramie-Fox Hills	190	0.598 (NT)	59.8

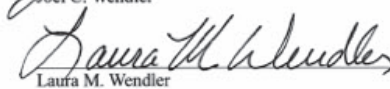
These water and ground water rights so conveyed, and the return flows therefrom, shall be separated from the original Subject Property, previously described as "2.1 acres generally located in the SW/4SW/4 of Section 35, Township 7 South, Range 66 West of the 6<sup>th</sup> P.M., Douglas County, Colorado", as shown on **Exhibit "B"**.

ALL REMAINING GROUNDWATER AMOUNTS QUANTIFIED AND NOT LOCATED ON OR UNDER THE PROPERTY DESCRIBED HEREIN IN CASE NO. 2020CW3028, DISTRICT COURT, WATER DIVISION 1, ARE EXPRESSLY RETAINED AND RESERVED BY THE GRANTOR.

**TOGETHER** with all its appurtenances, subject to the reservation described below, and warrants the title to the same against all persons claiming under Grantor, subject to any encroachments, encumbrances, violation, variation, or adverse circumstances affecting title that would be disclosed by an accurate and complete land survey of the Property not shown by Public Records.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above, but for all purposes is effective February 26, 2024.

  
Joel C. Wendler

  
Laura M. Wendler

SHANOR & FRANKLIN LLC

State of Colorado

*hw* County of ~~Douglas~~ Elbert *LW*

The foregoing instrument was acknowledged before me this 22 date of October, 2024 by  
Joel C. Wendler and Laura M. Wendler.

*DM*  
Notary Public: *Dawn Michele Millard*  
My Commission Expires: *02/06/2028*



SHANOR & FRANKLIN LLC

EXHIBIT A PROPERTY

Ref #20240701, Date: 2/20/2024 10:06 AM, Page: 1 of 2, RECORDING STREAM Due Fee \$14.00  
Electronically Recorded Douglas County, CO. Sheri Davis, Clerk and Recorder

SPECIAL WARRANTY DEED

State Doc Fee: \$135.00  
Recording Fee: \$23.50

THIS DEED is dated the 20th day of February, 2024, and is made between  
(whether one, or more than one),

Joni C. Wendler and Laura M. Wendler, as to Parcel One

the "Grantor" of the County of Douglas and State of Colorado and

Brandon Mosser and Heidi Mosser

as Joint Tenants, (whether one, or more than one), the "Grantee", whose legal address is  
P.O. Box 3380, Parker, CO 80134  
of the County of Douglas and State of Colorado.

WITNESS, that the Grantor, for and in consideration of the sum of One Million Three Hundred Thousand  
Dollars and No Cents (\$1,300,000.00), the receipt and sufficiency of which is hereby acknowledged, hereby  
grants, bargains, sells, conveys and confirms unto the Grantee and the Grantee's heirs and assigns forever, all  
the real property, together with any improvements thereon, located in the County of Douglas  
and State of Colorado, described as follows:

PARCEL ONE:

A tract of land situated in the Southwest 1/4 of the Southwest 1/4 of Section 35, Township 7 South, Range 65  
West of the 6th Principal Meridian, Douglas County, Colorado, more particularly described as follows:

Commencing at the Southwest corner of the Southwest 1/4 of said Section 35 and considering the South line of  
said Southwest 1/4 to bear North 89°32'39" East with all bearings contained herein relative thereto;  
Thence North 89°32'39" East along said South line a distance of 260.50 feet to the True Point of Beginning;  
Thence North 89°32'39" East along said South line a distance of 340.50 feet to the extension of the West line of  
Parcel "B" described in Deed recorded on September 16, 1963 in Book 159 at Page 534 of the Douglas County  
records;  
Thence North 89°32'39" West along said West line a distance of 135.00 feet;  
Thence South 89°32'39" West a distance of 340.50 feet to the East right of way line of Kelly Road;  
Thence South 20°45'11" East a distance of 138.50 feet to the Point of Beginning.  
County of Douglas, State of Colorado.

also known by street address as: 2006 Kelly Road, Fronttown, CO 80116

TOGETHER with all and singular the covenants and appurtenances thereto belonging, or in anywise  
appertaining, the meadows, commons, herds, issue and profits thereof, and all the water, right, title, interest,  
claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above described premises,  
with the covenants and appurtenances.

TO HAVE AND TO HOLD the said premises above described and described, with the appurtenances, unto  
the Grantee, and the Grantee's heirs and assigns forever. The Grantor, for the Grantor and the Grantor's heirs  
and assigns, here covenant, grant, bargain, and agree that the Grantor shall and will WARRANT THE TITLE  
and DEFEND the above described premises, in the past and present possession of the Grantee and the  
heirs and assigns of the Grantee, against all and every person or persons claiming the whole or any part thereof,  
by, through, or under the Grantor except and subject to Statutory Exceptions as defined in C.R.S. § 38-35-  
113(3)(a).

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

Joni C. Wendler

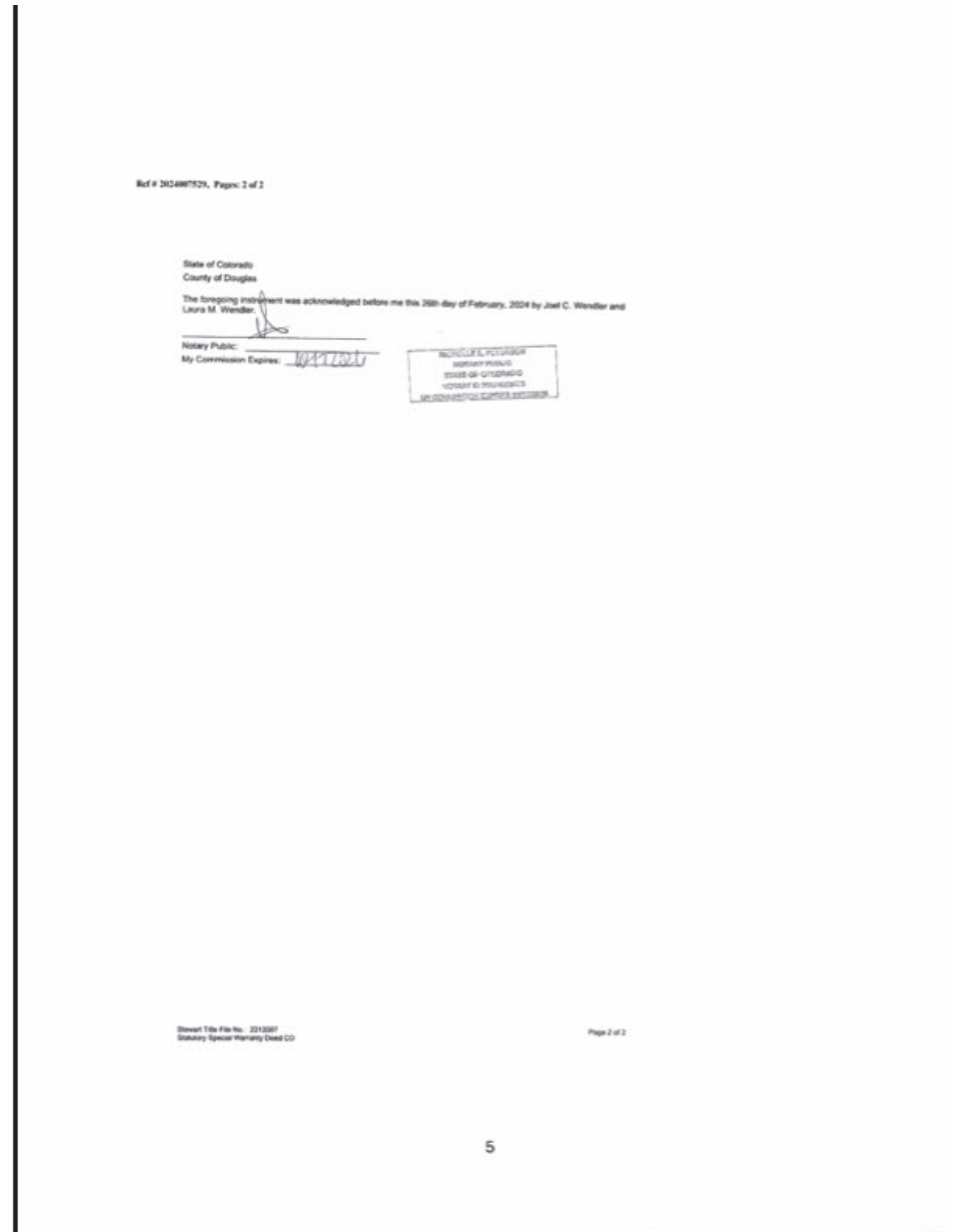
Laura M. Wendler

Stream Title File No. 20240701  
Electronic Special Warranty Deed CO



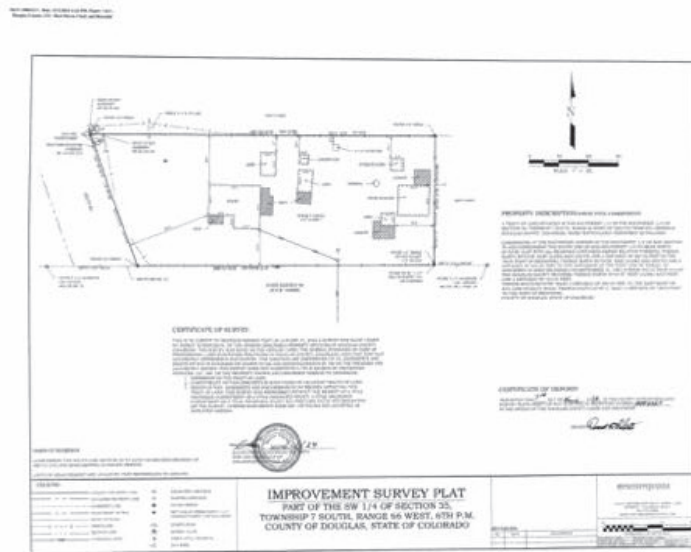
Page 1 of 2

SHANOR & FRANKLIN LLC





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EXHIBIT B", Water Decree

DISTRICT COURT, WATER DIVISION 1, COLORADO Weld County Courthouse P.O. Box 2018 Greeley, CO 80632	DATE FILED: August 20, 2020 2:02 PM CASE NUMBER: 2020CW3628 <b>▲ COURT USE ONLY ▲</b>
APPLICATION FOR UNDERGROUND WATER RIGHTS OF JOEL and LAURA WENDLER, Applicants,  IN ELBERT COUNTY	Case Number: 2020CW3628
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE</b>	

A claim for underground water rights was filed in this case on February 28, 2020. All matters contained in the application having been reviewed, such testimony having been taken and evidence presented as was necessary, and being otherwise fully advised in the premises, it is hereby the finding of the Referee as follows:

**FINDINGS OF FACT**

1. Name and Address of Applicants:  
 Joel and Laura Wendler  
 P.O. Box 1357  
 Elizabeth, CO 80107
2. Statements of Opposition: No statements of opposition were filed and the time for filing of such statements has expired.
3. Subject Matter Jurisdiction: Timely and adequate notice of the application was published as required by statute, and the Court has jurisdiction over the subject matter of this proceeding and over the parties affected hereby, whether they have appeared or not.

**APPROVAL OF GROUNDWATER RIGHTS**

4. Aquifers and Location of Groundwater: Applicants are granted a decree for rights to groundwater in the net nontributary Upper Dawson and nontributary Denver, Arapahoe and Laramie-Fox Hills aquifers underlying 2.1 acres generally located in the SW1/4 NW1/4 of Section 35, Township 7 South, Range 66 West of the 6th P.M., Douglas County, Colorado, as shown on Exhibit A ("Subject Property"). Applicants are the owners of the Subject Property.
5. Well Locations, Pumping Rates, and Annual Amounts: The groundwater may be withdrawn at rates of flow necessary to withdraw the amounts decreed herein. The

## SHANOR &amp; FRANKLIN LLC

groundwater will be withdrawn through any number of wells necessary, to be located at any location on the Subject Property. Applicants waive any 600-foot spacing rule for wells located on the Subject Property, but must satisfy C.R.S. § 37-90-137(4), for wells owned by other on adjacent properties. The following average annual amounts are available for withdrawal subject to the Court's retained jurisdiction in this matter.

Aquifer	Saturated Thickness (feet)	Annual Amount (acre-feet)	Total Amount (acre-feet)
Upper Dawson	55	0.231 (NNT)	23.1
Denver	260	0.928 (NT)	92.8
Arapahoe	255	0.91 (NT)	91.0
Laramie-Fox Hills	190	0.598 (NT)	59.8

These amounts conform to the values and amounts referenced in the State Engineer's Determination of Facts dated April 15, 2020.

6. Decreed Uses: The water will be used, reused, and successively used for domestic, commercial, irrigation, livestock watering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property.
7. Final Average Annual Amounts of Withdrawal:
  - 7.1 Final determination of the applicable average saturated sand thicknesses and resulting average annual amounts available to Applicants will be made pursuant to the retained jurisdiction of this Court, as described in Paragraph 17 below. The Court shall use the acre-foot amounts in Paragraph 5 herein in the interim period, until a final determination of water rights is made.
  - 7.2 The allowed annual amount of groundwater which may be withdrawn through the wells specified above and any additional wells, pursuant to C.R.S. § 37-90-137(10), may exceed the average annual amount of withdrawal, as long as the total volume of water withdrawn through such wells and any additional wells constructed subsequent to the date of this decree does not exceed the product of the number of years since the date of the issuance of any well permits or the date of this decree, whichever is earliest in time, multiplied by the average annual amount of withdrawal, as specified above or as determined pursuant to the retained jurisdiction of the Court. However, amounts set forth in well permits will not be exceeded.
8. Source of Groundwater and Limitations on Consumption:
  - 8.1 The groundwater to be withdrawn from the Denver, Arapahoe and Laramie-Fox Hills Aquifers is "nontributary groundwater" as defined in C.R.S. § 37-90-103(10.5), and in the Denver Basin Rules, the withdrawal of which will not, within 100 years of continuous withdrawal, deplete the flow of a natural stream, including a natural stream as defined in C.R.S. §§ 37-82-101(2) and 37-92-

*Just and Leroy Wendler  
Case No. 20CW3028  
Page 2 of 7*

SHANOR & FRANKLIN LLC

102(1)(b), at an annual rate greater than 1/10 of 1% of the annual rate of withdrawal. The groundwater to be withdrawn from the Upper Dawson Aquifer is "not nontributary" as defined in C.R.S. §§ 37-90-105(10.7) and 37-90-137(9)(c.5) and will not be withdrawn without a plan for augmentation.

- 8.2 Applicants may not consume more than 98% of the annual quantity of water withdrawn from the nontributary aquifers. The relinquishment of 2% of the annual amount of water withdrawn to the stream system, as required by the Denver Basin Rules effective January 1, 1986, may be satisfied by any method selected by the Applicants and satisfactory to the State Engineer, so long as Applicants can demonstrate that an amount equal to 2% of such withdrawals (by volume) has been relinquished to the stream system.
- 8.3 There is unappropriated groundwater available for withdrawal from the subject aquifers beneath the Subject Property, and the vested water rights of others will not be materially injured by such withdrawals as described herein. Withdrawals hereunder are allowed on the basis of an aquifer life of 100 years, assuming no substantial artificial recharge within 100 years. No material injury to vested water rights of others will result from the issuance of permits for wells which will withdraw not nontributary and nontributary groundwater or the exercise of the rights and limitations specified in this decree.

9. Additional Wells and Well Fields:

- 9.1 Applicants may construct additional and replacement wells in order to maintain levels of production, to meet water supply demands or to recover the entire amount of groundwater in the subject aquifers underlying the Subject Property. As additional wells are planned, applications shall be filed in accordance with C.R.S. § 37-90-137(10).
- 9.2 Two or more wells constructed into a given aquifer shall be considered a well field. In effecting production of water from such well field, Applicants may produce the entire amount which may be produced from any given aquifer through any combination of wells within the well field.
- 9.3 In considering applications for permits for wells or additional wells to withdraw the groundwater which is the subject of this decree, the State Engineer shall be bound by this decree and shall issue said permits in accordance with provisions of C.R.S. § 37-90-137(10).
- 9.4 In the event that the allowed average annual amounts decreed herein are adjusted pursuant to the retained jurisdiction of the Court, Applicants shall obtain permits to reflect such adjusted average annual amounts. Subsequent permits for any wells herein shall likewise reflect any such adjustment of the average annual amounts decreed herein.

*Just and Lorenz Wauder  
Case No. 20C-W-0024  
Page 3 of 7*

SHANOR & FRANKLIN LLC

10. Conditions for Well Operation and Construction:

For each well constructed pursuant to this decree, Applicants shall comply with the following conditions:

- 10.1 A totalizing flow meter shall be installed on the well discharge pipe prior to withdrawing any water therefrom, and shall be maintained and operational at all times for the life of the well. Applicants shall keep accurate records of all withdrawals by the well, make any calculations necessary, and submit such records to the Water Division 1 Engineer upon request.
- 10.2 The entire length of the open bore hole shall be geophysically surveyed prior to casing and copies of the geophysical log submitted to the Division of Water Resources. Applicants may provide a geophysical log from an adjacent well or test hole, pursuant to Rule 9A of the Statewide Rules and acceptable to the State Engineer, which fully penetrates the aquifer, in satisfaction of the above requirement.
- 10.3 Groundwater production shall be limited to the specific identified aquifer. Plain, unperforated casing must be installed and properly grouted to prevent withdrawal from or intermingling of water from zones other than those for which the well was designed.
- 10.4 Each well shall be permanently identified by its permit number, this Water Court Case Number, and the name of the producing aquifer on the above-ground portion of the well casing or on the pump house.

CONCLUSIONS OF LAW

- 11. Full and adequate notice of the application was given, and the Court has jurisdiction over the subject matter and over the parties whether they have appeared or not.
- 12. The Water Court has jurisdiction over this proceeding pursuant to C.R.S. § 37-90-137(6). This Court concludes as a matter of law that the application herein is one contemplated by law. C.R.S. § 37-90-137(4).
- 13. The application for a decree confirming Applicants' right to withdraw and use all unappropriated groundwater from the nontributary aquifers beneath the Subject Property as described herein pursuant to C.R.S. § 37-90-137(4), is granted, subject to the provisions of this decree. The Upper Duvon Aquifer groundwater decreed herein will not be withdrawn and used until it is included in a separate plan for augmentation.

*Joel and Laura Wendler  
Case No. 20CW0026  
Page 4 of 7*

SHANOR & FRANKLIN LLC

JUDGMENT AND DECREE

14. The Findings of Fact and Conclusions of Law set forth above are hereby incorporated into the terms of this Ruling and Decree as if the same were fully set forth herein.
15. Applicant may withdraw the subject groundwater herein through wells to be located anywhere on the Subject Property in the average annual amounts and at the estimated average rates of flow specified herein, subject to the limitations herein and the retained jurisdiction by this Court.
16. The groundwater rights described in the Findings of Fact are hereby approved, confirmed and adjudicated, including and subject to the terms and conditions specified herein. No owners of or persons entitled to use water under a vested water right or decreed conditional water right will be injured or injuriously affected by the pumping of Applicants' groundwater resources as decreed herein.
17. Retained Jurisdiction:
  - 17.1 The Court retains jurisdiction as necessary to adjust the average annual amounts of groundwater available under the Subject Property to conform to actual local aquifer characteristics as determined from adequate information obtained from wells, pursuant to C.R.S. § 37-92-305(11). Within 60 days after completion of any well decreed herein or any test hole(s), Applicants or any successor in interest to these water rights shall serve copies of such log(s) upon the State Engineer.
  - 17.2 At such time as adequate data is available, any person, including the State Engineer, may invoke the Court's retained jurisdiction to make a Final Determination of Water Right. Within four months of notice that the retained jurisdiction for such purpose has been invoked, the State Engineer shall use the information available to him to make a final determination of water rights findings. The State Engineer shall submit such finding to the Water Court and the Applicants.
  - 17.3 If no protest to such finding is made within 60 days, the Final Determination of Water Rights shall be incorporated into the decree by the Water Court. In the event of a protest, or in the event the State Engineer makes no determination within four months, such final determination shall be made by the Water Court after notice and hearing.
18. The groundwater rights decreed herein are vested property rights appurtenant to the Subject Property and shall remain appurtenant unless expressly severed by conveyance to someone other than the property owner. If any deed for the Subject Property is silent to the conveyance of the water rights decreed herein, it is assumed that the water rights have been conveyed as an appurtenance to the Subject Property, unless all or part of the water rights have been previously severed.

*Jud and Laura Wendler  
Case No. 20CW0028  
Page 3 of 7*

SHANOR & FRANKLIN LLC

19. After the referee ruling was entered on July 28, 2020, a correction was made to the table in paragraph 5. The referee finds that this correction does not require an extension of the protest period.

Date: August 3, 2020



John S. Cowan  
Water Referee  
Water Division One

The Court finds that no protest was filed in this matter. The foregoing is confirmed and is made the judgment and decree of this Court.

Date: August 20, 2020

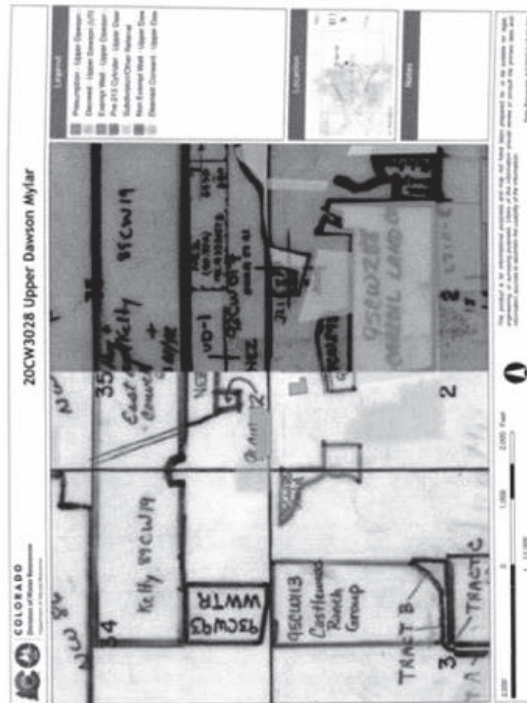


James F. Hartmann  
Water Judge  
Water Division One

Jail and Laura Wendler  
Case No. 20CW1029  
Page 6 of 7



SHANOR & FRANKLIN LLC



Just and Laura Wendler  
Case No. 20CW3028

EXHIBIT A

## SHANOR &amp; FRANKLIN LLC

## Exhibit C: WELL PERMIT WCB-147

Form No. 4  
(Revised 5/84)

147

COLORADO WATER CONSERVATION BOARD  
LOG AND HISTORY

Location: Sec. 35 T 7 R 66 P.M.W. 1/4 Sec. 5 W. County Douglas  
or Street Address \_\_\_\_\_ City \_\_\_\_\_  
Owned by Ernest & J. Dora Langer Address Franktown, Colo  
Tenant \_\_\_\_\_ Address \_\_\_\_\_  
Drilled by J. B. Hamacher Address Sierra, Colo  
Water Well Driller's License No. 71 Name or No. of Well \_\_\_\_\_  
Type of Well: Domestic ☒ Municipal ☐ Stock ☐ Irrigation ☐  
Industrial ☐ Drainage ☐ Other \_\_\_\_\_  
Cased: 0 ft. to 160 ft. Type plain Size 4 in Wt. of Casing: Lbs./Ft. 5  
Cased: 160 ft. to 200 ft. Type plain Size 4 in Wt. of Casing: Lbs./Ft. 5  
Cased: 200 ft. to 290 ft. Type plain Size 4 in Wt. of Casing: Lbs./Ft. 5  
Perforated or Screened: Ft. 290 to Ft. 485; Ft. \_\_\_\_\_ to Ft. \_\_\_\_\_  
Type of Screen or Perforation fine  
Date Started May 7 - 1986 Date Completed May 22 - 1986  
Static Water Level 140 Ft.  
or  
Shut in Pressure \_\_\_\_\_ lbs./sq. in. Date May 22 - 1986  
Pumping Water Level 175 Ft. at 10 G P M yield.  
How Tested: pump Length of Test 5 Hours.  
Put Formation Log on Reverse Side  
REMARKS: (Gravel Packing, Cementing, Packers, Type of Shut-off, Depth of Shut-off, Method Drilling, etc.)  
TO BE MADE IN TRIPLICATE: White copy to owner, Blue copy to Colorado Water Conservation Board, and other copy to driller.

RECORDED  
JUL 14 1986  
COLORADO WATER  
CONSERVATION BOARD

SHANOR & FRANKLIN LLC

LOG OF WELL		
DESCRIPTION OF MATERIAL DRILLED		METHOD OF DRILLING
Feet		
00	to 4	Top Soil
4	to 3.5	Sand Gravel clay
3.5	to 4.30	Shale Blue
4.30	to 4.60	Sand Rock white matrix Bearing
4.60	to 4.65	Shale Blue
	to	

SHANOR & FRANKLIN LLC

Form No. 3  
(Revised 5/74)

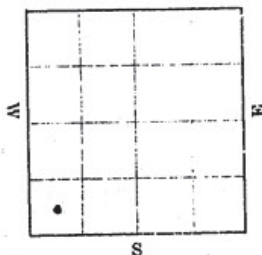
**COLORADO WATER CONSERVATION BOARD**  
NOTIFICATION OF INTENTION TO DRILL ☒ REDRILL ☐  
RECASE ☐ OR DEEPEN ☐ A WATER WELL

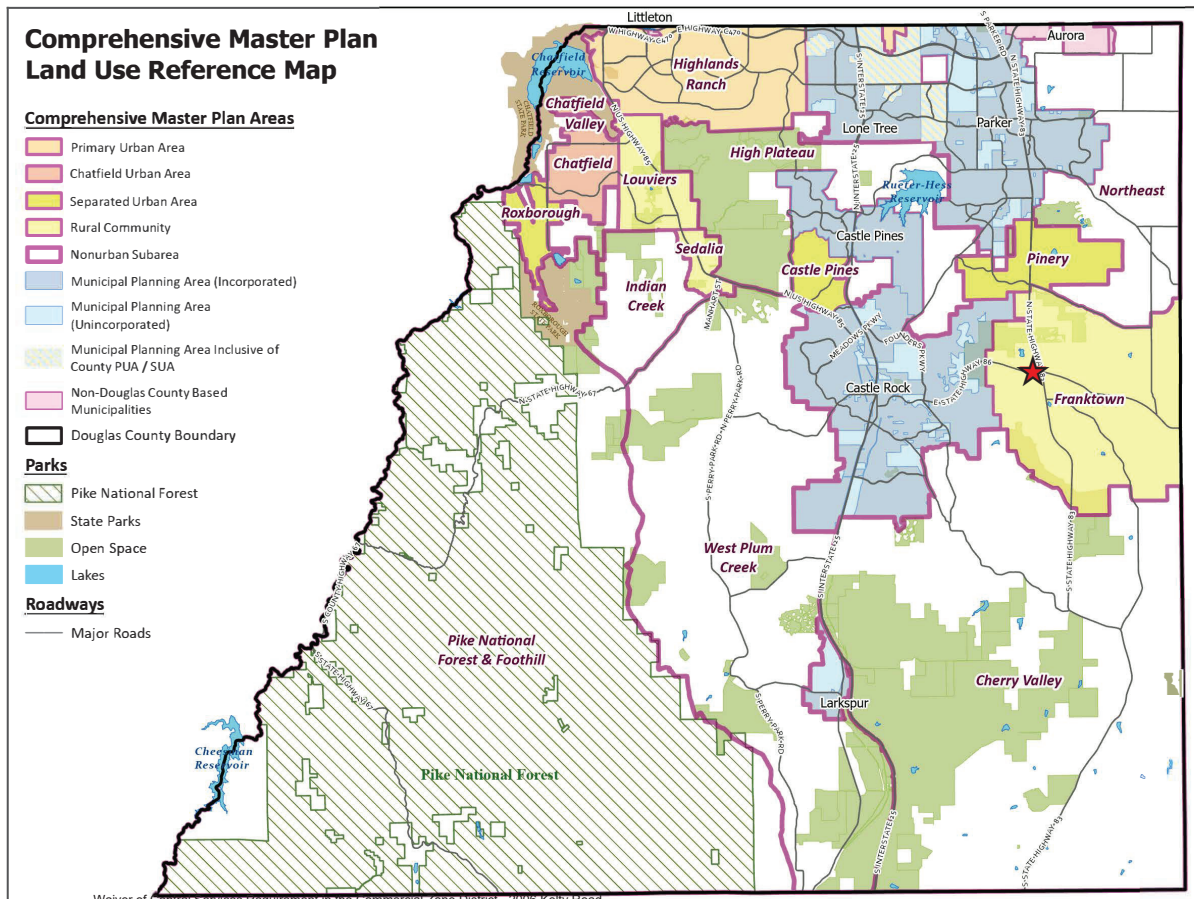
District No. 2 Name or Number of Well \_\_\_\_\_  
Name of Driller J. P. Hamacher Phone No. 66  
Address Lincoln, Colo.  
Well Driller's License No. 71 Date Start of Work May 7 1956  
Land Owner's Name Ernest & Doris Lonsdale  
Address Franktown, Colo.  
Estimated Depth of Well 46 1/2 Ft. LOCATION OF WELL  
Diameter of Well 6 In. Section 35 County Douglas  
Diameter of Casing 4 1/2 In. Twp. 7 Range 66 P.M. 114  
Weight of Casing 5 Lbs./Ft. Please mark well location to nearest 40 acres  
(small square) below.

Type of Well: Domestic ☒  
Irrigation ☐  
Municipal ☐  
Stock ☐  
Other \_\_\_\_\_

Method to be used in drilling: Peterson If above location is unknown, complete the following:  
County \_\_\_\_\_  
City, Town or Subdivision \_\_\_\_\_  
Street Address of Well Location \_\_\_\_\_

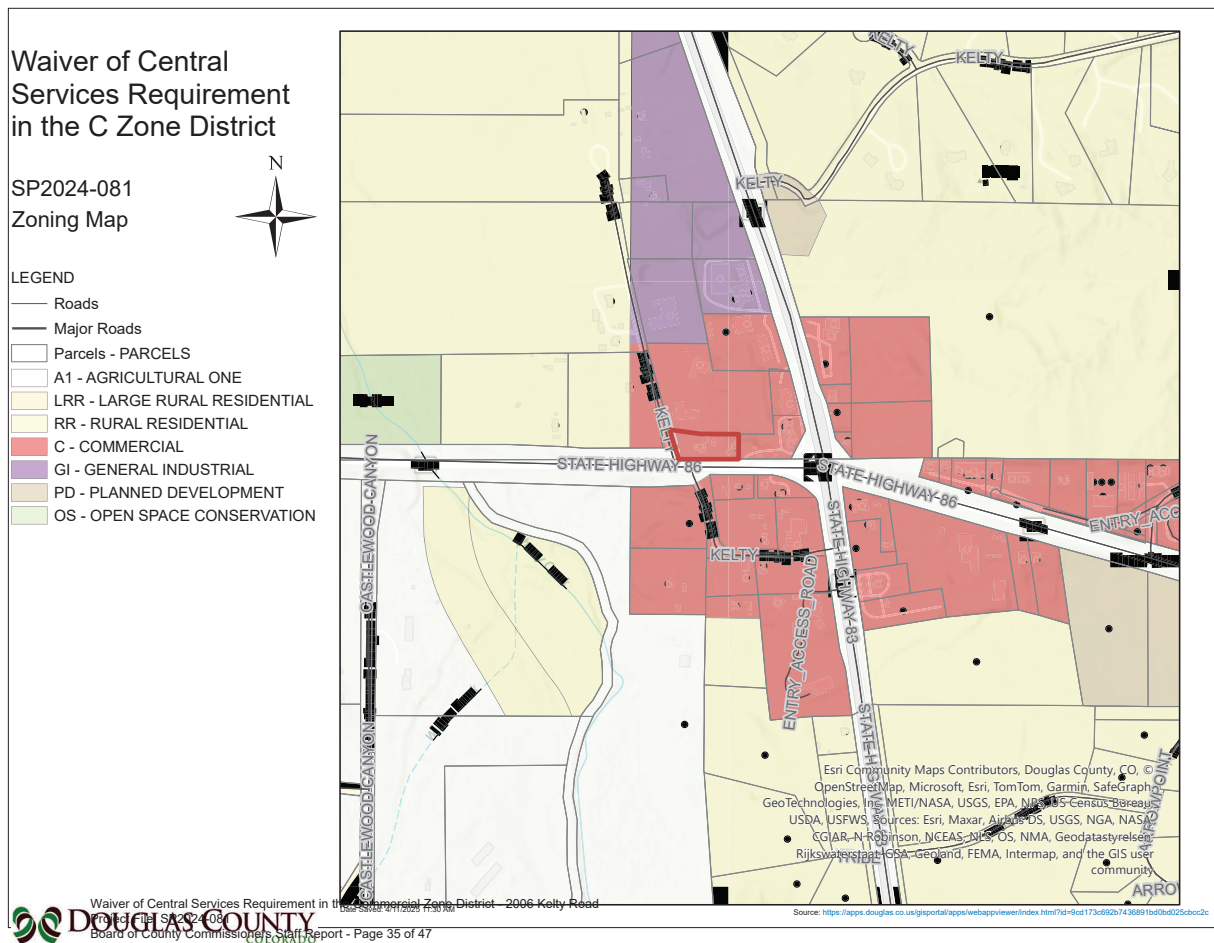
Estimated Depth of Bottom and Top of Shutoff \_\_\_\_\_  
Type of Shutoff \_\_\_\_\_





Waiver of Certain Services to be provided in the Commercial Zone District - 2016 Kelly Road  
Project File: SP2024-081  
Board of County Commissioners Staff Report - Page 34 of 47





Waiver of Central  
Services Requirement  
in the C Zone District

SP2024-081  
Aerial Map

LEGEND

- Roads
- Major Roads
- Parcels - PARCELS





October 10, 2024

Eric Pavlinek, Project Planner  
Douglas County Department of Community Development  
Transmitted via email: [epavlinek@douglas.co.us](mailto:epavlinek@douglas.co.us)

**Re: Franktown Coffee at 2006 Kelty Road**  
**Project File #: SP2024-081**  
Part of the S ½ SW ¼ SW ¼ of Sec. 35, Twp. 7 South, Rng. 66 West, 6<sup>th</sup> P.M.  
Water Division 1, Water District 8  
CDWR Assigned Referral No. 32512

Dear Eric Pavlinek:

We have reviewed the referral to renovate existing structures on an approximately 1-acre parcel at 2006 Kelty Road into a coffee shop. Residential use will continue on the site.

This referral does not appear to qualify as a "subdivision" as defined in section 30-28-101(10)(a), C.R.S. Therefore, pursuant to the State Engineer's March 4, 2005 and March 11, 2011 memorandums to county planning directors, this office will only perform a cursory review of the referral information and provide informal comments. The comments do not address the adequacy of the water supply plan for this project or the ability of the water supply plan to satisfy any County regulations or requirements. In addition, the comments provided herein cannot be used to guarantee a viable water supply plan or infrastructure, the issuance of a well permit, or physical availability of water.

The estimated peak water demand for the commercial business is 42.2 gpm. The water demand for the continued residential water use was not provided.

The proposed water supply is an existing well with permit no. 24201. Permit no. 24201 was issued on June 7, 1965 for domestic use. The use of this well is limited to its historical uses that existed as of May 8, 1972 which have continued since that time [provided such uses are no greater than those uses allowed for a well permit pursuant to section 37-92-602(1), C.R.S., which are: fire protection, ordinary household purposes inside not more than three single-family dwellings, the watering of poultry, domestic animals and livestock on a farm or ranch and the irrigation of not more than one acre of home gardens and lawns]. **Uses that are an expansion of the historical use of the well, such as added commercial uses, are not permitted.** While this permit was included in the referral, it is unclear whether this well is actually located on the property. The Well Yield Test Report submitted with the referral for a well located at 2006 Kelty Road shows a pumping level of 160 feet at the end of the test whereas well no. 24201 was only drilled to a depth of 40 feet. Based on the depth of the well, the well likely produces from the alluvial aquifer. Additionally, the original file for permit no. 24201 indicates the well is located at the northeast corner of the intersection of Highways 83 and 86, which is also not consistent with the property. In order to use this well for both

1313 Sherman Street, Room 821, Denver, CO 80203 P 303.866.3581 [www.colorado.gov/water](http://www.colorado.gov/water)  
Jared S. Polis, Governor | Dan Gibbs, Executive Director | Jason T. Ullmann, State Engineer/Director



Waiver of Central Services Requirement in the Commercial Zone District - 2006 Kelty Road  
Project File: SP2024-081  
Board of County Commissioners Staff Report - Page 37 of 47



SP2024-081 Franktown Coffee at 2006 Kelty Road, Douglas County  
October 10, 2024

Page 2 of 2

commercial and indoor household use, the Applicant must either obtain an exempt commercial well permit, using forms GWS-45 and GWS-57, which would limit the well to 108,600 gallons per year and no outdoor landscaping would be permitted; or the well must be included in a court-approved augmentation plan and re-permitted with a nonexempt well permit (form GWS-45).

A review of our records indicates that well permit no. 147-WCB, issued on July 26, 1956 for domestic use, may be the correct permit number for the well on the property. This is based on the location of the well according to the permit file consistent with the property, the depth and pumping level of the well at the time it was drilled consistent with the report included in the referral, and a recent Pump Installation Report filed by the previous landowner stating the well was located at 2006 Kelty Road. The use of this well is limited to its historical uses that existed as of May 8, 1972 which have continued since that time, provided such uses are no greater than those uses allowed for a well permit pursuant to section 37-92-602(1), C.R.S. as described above. **Uses that are an expansion of the historical use of the well, such as added commercial uses, are not permitted.** Based on the perforated intervals of the well, it appears the well produces from both the not-nontributary Upper Dawson aquifer and nontributary Lower Dawson aquifer. The well must be modified to produce from only one aquifer prior to being re-permitted. However, our preliminary estimates indicate there is not sufficient water in either aquifer to support both a commercial business and a residence.

Well permitting forms are available for download online. Permit applications may be emailed to [DWRpermitsonline@state.co.us](mailto:DWRpermitsonline@state.co.us) after which the Applicant will be invoiced the filing fee. The filing fee for a new permit application is \$100. Evaluation of complete applications requires 4-6 weeks.

Lastly, the application materials indicate that stormwater detention structure(s) may be a part of this project. The Applicant should be aware that unless the structure(s) can meet the requirements of a "storm water detention and infiltration facility" as defined in section 37-92-602(8), C.R.S., the structure may be subject to administration by this office. The Applicant should review DWR's Administrative Statement Regarding the Management of Storm Water Detention Facilities and Post-Wildland Fire Facilities in Colorado to ensure that the notification, construction and operation of the proposed structure meets statutory and administrative requirements. The Applicant is encouraged to use the Colorado Stormwater Detention and Infiltration Facility Notification Portal to meet the notification requirements.

Please contact [Wenli.Dickinson@state.co.us](mailto:Wenli.Dickinson@state.co.us) or 303-866-3581 x8206 with any questions.

Sincerely,



Ioana Comaniciu, P.E.  
Water Resources Engineer

Ec: Files for permit nos. 24201 and 147-WCB

**Eric Pavlinek**

---

**From:** Wenli Dickinson <wenli.dickinson@state.co.us>  
**Sent:** Thursday, November 7, 2024 5:14 PM  
**To:** Eric Pavlinek; Caroline Young-Henry  
**Subject:** Re: Douglas County eReferral (SP2024-081) Is Ready For Review  
**Attachments:** SP2024-081 Franktown Coffee (Douglas) - DWR Comments.pdf; 2\_10039228 permit 336476.pdf; Policy 1985-1.pdf

Caroline and Eric,

The new permit for the well will be issued at 6pm today but is also attached. Note that though the permit is issued for commercial use, under [Policy 1985-1](#), "Use of water from the well may include serving the ordinary household purposes of a single-family residential unit or units on the parcel, such as an on-site proprietor's residence or a caretaker/employee unit, provided the residential use is directly associated with the commercial business." Since the well is now permitted for the commercial business and associated residence, so long as the well is used in accordance with its permitted terms and conditions, the concerns raised in our October 10, 2024 letter regarding the well for SP2024-081 have been addressed.

Thank you,

Wenli Dickinson, P.E.  
Water Resource Engineer  
Team 1A: Division 1, Denver Basin



(303) 866-3581 x8206  
1313 Sherman St, Suite 821, Denver, CO 80203  
[wenli.dickinson@state.co.us](mailto:wenli.dickinson@state.co.us) | [dwr.colorado.gov](http://dwr.colorado.gov)

On Fri, Oct 11, 2024 at 12:21 PM Eric Pavlinek <[epavlinek@douglas.co.us](mailto:epavlinek@douglas.co.us)> wrote:

Hi Wenli,

Thank you for the review and comments regarding project SP2024-081. This is to confirm that I received the documents and will add them to the project file. The comments will also be provided to the applicant.

Thanks,

**Eric Pavlinek** | Principal Planner

**Douglas County Department of Community Development**

**Planning Services Division**  
**Address** | 100 Third St., Castle Rock, CO 80104  
**Direct** | 303.814.4377 **Main** | 303.660.7460

**Email** [epavlinek@douglas.co.us](mailto:epavlinek@douglas.co.us)

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**From:** Dickinson - DNR, Wenli <[wenli.dickinson@state.co.us](mailto:wenli.dickinson@state.co.us)>  
**Sent:** Thursday, October 10, 2024 6:19 PM  
**To:** Eric Pavlinek <[epavlinek@douglas.co.us](mailto:epavlinek@douglas.co.us)>  
**Subject:** Re: Douglas County eReferral (SP2024-081) Is Ready For Review

Hi Eric,

Attached are DWR's comments regarding SP2024-081 at 2006 Kelty Road. We have concerns that the applicant has misidentified the permit for their well, and also that the well is not permitted for commercial use. Please let me know if you have any questions.

Regards,

Wenli Dickinson, P.E.  
Water Resource Engineer  
Team 1A, Division 1, Denver Basin



(303) 866-3581 x8206  
1313 Sherman St, Suite 821, Denver, CO 80203  
[wenli.dickinson@state.co.us](mailto:wenli.dickinson@state.co.us) | [dwr.colorado.gov](http://dwr.colorado.gov)

----- Forwarded message -----

**From:** <[epavlinek@douglas.co.us](mailto:epavlinek@douglas.co.us)>  
**Date:** Fri, Oct 4, 2024 at 9:26 AM  
**Subject:** Douglas County eReferral (SP2024-081) Is Ready For Review  
**To:** <[joanna.williams@state.co.us](mailto:joanna.williams@state.co.us)>

There is an eReferral for your review. Please use the following link to log on to your account:

[https://urldefense.com/v3/\\_https://apps.douglas.co.us/planning/projects/Login.aspx\\_!!PUG2raq7KiCZwBk!e3VXUso5zPzBboQqCw6LEiferzVeuwLZiwFN72asGdpwzsaZt11xwVC483a6ADIVhrgJHLzSiASN\\_O2jhX2tH28K1FDdHw\\$](https://urldefense.com/v3/_https://apps.douglas.co.us/planning/projects/Login.aspx_!!PUG2raq7KiCZwBk!e3VXUso5zPzBboQqCw6LEiferzVeuwLZiwFN72asGdpwzsaZt11xwVC483a6ADIVhrgJHLzSiASN_O2jhX2tH28K1FDdHw$)

Project Number: SP2024-081

Project Title: 2006 Kelty Road

Project Summary: The applicant requests Site Improvement Plan (SIP) approval for a coffee shop and other mercantile uses on the 0.942-acre parcel. The subject property is zoned Commercial.

This referral will close on Friday, October 25, 2024.

If you have any questions, please contact me.

Sincerely,

Eric Pavlinek  
Planning Services  
100 Third Street  
Castle Rock, CO 80104  
303-660-7460 (main)

	<b>COLORADO</b> Division of Water Resources Department of Natural Resources	WELL PERMIT NUMBER	336476-
		RECEIPT NUMBER	10039228

**ORIGINAL PERMIT APPLICANT(S)**

BRANDON MESSER

HEIDI MESSER

**APPROVED WELL LOCATION**

Water Division: 1      Water District: 8

Designated Basin: N/A

Management District: N/A

County: DOUGLAS

Parcel Name: N/A

Physical Address: 2006 KELTY ROAD FRANKTOWN, CO  
80116


SW 1/4 SW 1/4 Section 35 Township 7.0 S Range 66.0 W Sixth P.M.

**UTM COORDINATES (Meters, Zone:13, NAD83)**

Easting: 521069.0      Northing: 4360243.0

**REGISTRATION OF EXISTING WELL**ISSUANCE OF THIS PERMIT DOES NOT CONFER A WATER RIGHT  
**CONDITIONS OF APPROVAL**

- 1) This well shall be used in such a way as to cause no material injury to existing water rights. The issuance of this permit does not ensure that no injury will occur to another vested water right or preclude another owner of a vested water right from seeking relief in a civil court action.
- 2) Construction details for this existing well have not been provided to this office; therefore, it is not known if the construction of this well is in compliance with the Water Well Construction Rules, 2 CCR 402-2. The issuance of this permit does not relieve the well owner of responsibility or liability in the event contamination of the groundwater source results from the construction or use of this well, nor does the State Engineer assume any responsibility or liability should contamination occur.
- 3) Recorded pursuant to CRS 37-92-602(5), as explained in State Engineer's Policy 1990-1, for historical use as indicated herein. This well produces 10 GPM, and is used for drinking and sanitary facilities as described in CRS 37-92-602(1)(c), in an individual commercial business, based on the Applicant's written claim regarding the historical use of this well prior to May 8, 1972. Water from this well shall not be used for lawn/landscape/greenhouse irrigation, domestic animal/livestock watering, or any other purpose outside the business building structure(s).
- 4) Approved as the only well providing water to this business, which is on a 1-acre parcel at 2006 Kelty Road, described as a portion of the SW 1/4 SW 1/4 of Sec. 35, Twp. 7 South, Rng. 66 West of the 6th P.M., Douglas County, more particularly described on Exhibit A in the well permit file.
- 5) Approved for to re-register an existing well constructed under permit no. 147-WCB. Well permit no. 147-WCB, permitted for domestic use is re-registered for the actual historical commercial exempt use. The issuance of this permit hereby cancels permit no. 147-WCB.
- 6) The annual amount of groundwater to be withdrawn shall not exceed one (1) acre-foot (325,900 gallons).
- 7) The date of first beneficial use, as claimed by the applicant, is 1956.
- 8) A totalizing flow meter must be installed on this well and maintained in good working order. Permanent records of all diversions must be maintained by the well owner (recorded at least annually) and submitted to the Division Engineer upon request.
- 9) This well shall be located not more than 200 feet from the location specified on this permit.
- 10) The return flow from the use of this well must be through an individual wastewater disposal system of the non-evaporative type where the water is returned to the same stream system in which the well is located.

 Issued By      WENLI DICKINSON	Date Issued:      11/7/2024 Expiration Date:      N/A
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**Eric Pavlinek**

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**Subject:** RE: FW: Douglas County eReferral (SP2024-081) Is Ready For Review

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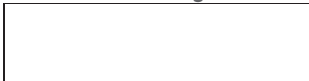
**From:** Comaniciu - DNR, Ioana <ioana.comaniciu@state.co.us>  
**Sent:** Monday, April 14, 2025 2:22 PM  
**To:** Eric Pavlinek <epavlinek@douglas.co.us>  
**Cc:** Dickinson - DNR, Wenli <wenli.dickinson@state.co.us>  
**Subject:** Re: FW: Douglas County eReferral (SP2024-081) Is Ready For Review

Good Afternoon,

Based on the information provided by Wenli on November 7, 2024 email our concerns raised from the October 10, 2024 letter have been addressed. Therefore, so long as the new well permit no. 336476 is used in accordance with its permitted terms and conditions, we have no additional comments on SP2024-081 referral.

Best regards,

Ioana Comaniciu, P.E.  
Water Resources Engineer



P 303-866-3581 x 8246  
1313 Sherman St., Suite 818, Denver, CO 80203  
[ioana.comaniciu@state.co.us](mailto:ioana.comaniciu@state.co.us) | [www.colorado.gov/water](http://www.colorado.gov/water)



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April 10, 2025

Eric Pavlinek  
100 Third St.  
Castle Rock, CO 80104

RE: SP2024-081

Dear Mr. Pavlinek

Thank you for the opportunity to review and comment on the application for a Site Improvement Plan for the coffee shop at 2006 Kelty Rd. Douglas County Health Department (DCHD) staff have reviewed the application for compliance with pertinent environmental and public health regulations. After reviewing the application, DCHD has the following comments.

**Food Service Plan Review**

Plans for all new and remodeled retail food establishments must be reviewed by DCHD for compliance with Colorado Retail Food Establishment Rules and Regulations and approved by the Department before the start of construction.

*The Food Service Plan Review is currently underway with DCHD. Upon completion, a Plan Review Approval Letter will be issued by DCHD.*

**On-Site Wastewater Treatment System (OWTS) – within 400 feet of sewer line**

Douglas County Health Department Regulation Number 22-01, Section 3.6.B states that the Department may refuse to issue a permit for the construction of an OWTS where a sewage treatment works is available within 400 feet of the nearest property line and connection can be made thereto. In order for the Department to issue a permit, the applicant shall provide a letter from the sewer district, municipality or county having jurisdiction, stating whether it is permissible for the Department to issue a permit for installation, alteration or repair of an OWTS.

*This letter has been provided by the Franktown Business Area Metropolitan District. DCHD has no objection to an OWTS as the method of wastewater disposal.*

**On-Site Wastewater Treatment System (OWTS) – Use Permit**

Proper wastewater management promotes effective and responsible water use, protects potable water from contaminants, and provides appropriate collection, treatment, and disposal of waste, which protects public health and the environment. Douglas County Health Department Regulation Number 22-01, Section 4.2 requires a Use Permit be obtained following a change in use of the property from residential to commercial.



A Use Permit (Permit #STS31154) was issued on 07/12/2024 for the sale of the property. DCHD will not require an additional Use Permit inspection for the “change in use”, but instead would require an evaluation by a certified septic designer to determine if the existing septic system can accommodate the proposed commercial use. A list of certified septic designers can be found at: <https://www.cpow.net/owts-practitioners-certificate-holders/>.

*DCHD would recommend waiting for the Plan Review Approval Letter to be issued before proceeding with the septic evaluation. This will ensure that the septic designer will have all pertinent information for the evaluation.*

*This septic evaluation should also include the installation of a grease interceptor, which is required for Retail Food Establishments that rely on an OWTS for wastewater disposal. The grease interceptor should be sized appropriately for the proposed use.*

Please contact me at 720-907-4888 or bfreyer@douglas.co.us if you have any questions about our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Freyer".

Brent Freyer  
Environmental Health Specialist II  
Douglas County Health Department





## Memorandum

**Date:** April 30, 2025  
**To:** Eric Pavlinek, Principal Planner  
**From:** DJ Beckwith, Principal Planner  
Lauren Pulver, Planning Supervisor  
Kati Carter, AICP, Assistant Director of Planning Resources  
Chris Pratt, Managing County Attorney  
**CC:** Terence T. Quinn, AICP, Director of Community Development  
**Subject:** **Water Commission Member Referral Comments**  
**SP2024-081 – 2006 Kelty RD**

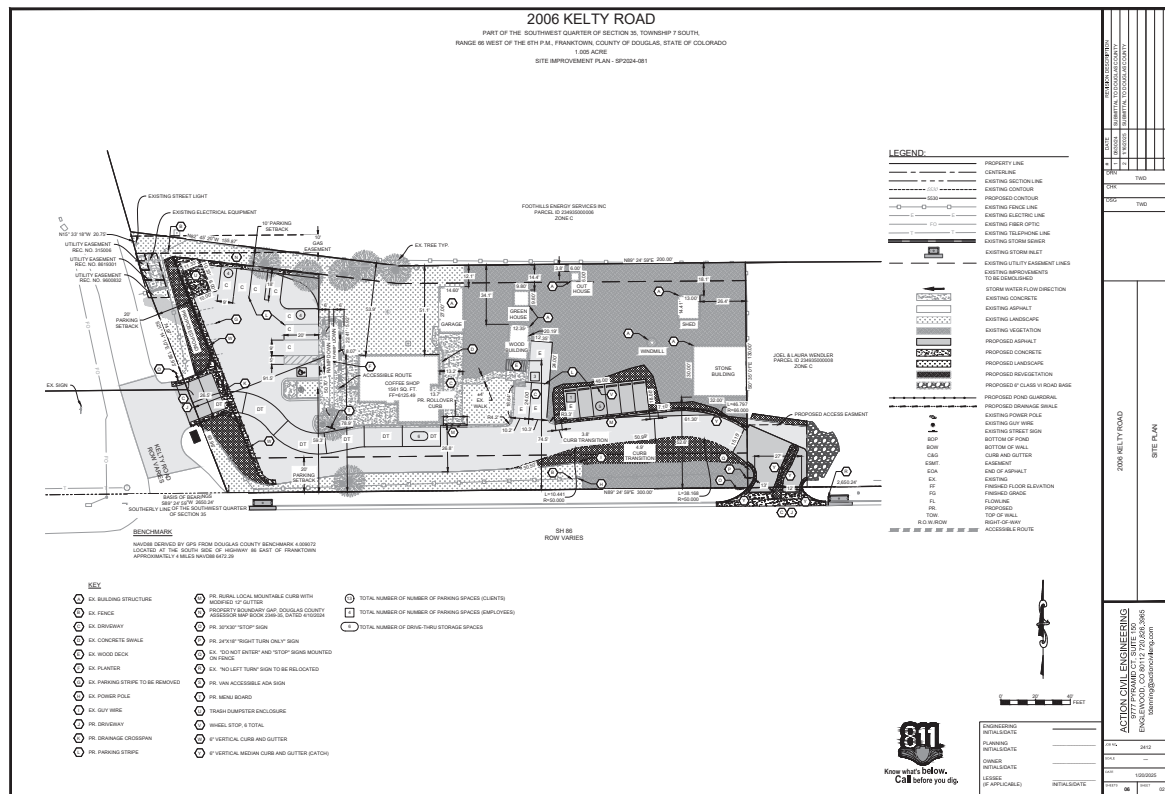
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The Douglas County Water Commission (Commission) met on April 28, 2025 and provided comment on SP2024-081 – 2006 Kelty RD (Project). There was no consensus comment from the Commission, only individual comments were provided. All other members had no comment. The following is a summary of comments from each Commission member that provided comments on the Project. This Project was pulled from the agenda for discussion by Commission Member Harold Smethills.

Harold Smethills: Member Smethills commented that the well permit for this Project is moving from residential use to restaurant use and was concerned about the increased usage of water on the property. Member Smethills stated that the applicant is asking for an exception to the County policy regarding central water and sewer in the Commercial Zone Districts. He further stated that a County policy should either provide greater clarity for exemptions or be enforced. Member Smethills stated that he did not see any reason to grant the exemption to the policy. He suggested that maybe the County needs to reevaluate this policy. Member Smethills did state that he had no objection to the what the applicants are wanting to do regarding the coffee shop.

Tricia Bernhardt: Member Bernhardt commented that she does not oppose this project. She stated that they do not have the option to connect to any kind of water district and that the water use would be minimal compared to other water wells in that area.

Evan Ela: Member Ela commented that he too had no opposition to the project. He spoke to the process the applicants would have to go through with the state, getting a well exemption to get an exempt commercial well permit. Member Ela stated that unless the state finds that their demands are too high, he had no reason to oppose the project.



Water and Sewer Providers in Douglas County, Colorado

