

# Bushong & Holleman PC

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May 14, 2025

Town of Lyons  
432 5<sup>th</sup> Avenue  
Lyons, Colorado 80540

## **Re: Water Resources at 4497 Ute Highway, Longmont Colorado 80503**

Dear Town of Lyons Staff:

Our firm represents Dave Merkley, who's company is the owner of the property located at 4497 Ute Highway, Longmont, Colorado 80503 ("the property"). We have been asked to provide a brief report on any water resources associated with the property to support our client's request for annexation into the Town of Lyons. This report is not intended to be a title opinion on water rights and is instead a summary of any water resources associated with the property. For any questions regarding this report, please contact our firm at the address above.

To develop this report, our firm reviewed the deed by which our client took ownership of the property. We also conducted searches for surface water, groundwater, and well rights through the State of Colorado's Decision Support System database, and the Colorado Department of Water Resources Map Viewer database (collectively "DWR Database"). The following summarizes our findings.

### **Groundwater Rights**

Our review of the property in the DWR Database revealed one well permit issued by the State of Colorado associated with the property, Division of Water Resources Well Permit No. 32554-A ("well 32554-A"). Well 32554-A is currently permitted only for uses described under C.R.S. 37-92-602(1)(c) for drinking and sanitary facilities inside a commercial business. Well 32554-A is limited to 15gpm, a total of .33 acre-feet per year (108,600 gallons), and requires use of a non-evaporative waste disposal system. A copy of the well permit is attached hereto as "Exhibit A." Well 32554-A is for an exempt well, meaning it is exempt from administration in priority with water rights based on the assumption that no material injury will result from the allowed use. We note that the well permit is currently not in our client's name, however, we are

recommending a change of ownership form be submitted to the Division of Water Resources, which is merely a ministerial task.

We have confirmed through the DWR Database there are no other groundwater rights associated with the property, including no other well rights. Nor does there exist any Denver Basin or designated basin groundwater underlying the property. While the special warranty deed which conveyed the property does not specifically identify any water rights, the well would be expected to transfer through the appurtenance clause in the deed. A copy of the deed is attached hereto as "Exhibit B."

### **Surface Water Rights**

Our review of the property in the DWR Database revealed that there are no surface water rights of any kind connected with our client's ownership of the property. The Exhibit B special warranty deed likewise does not explicitly convey any surface water rights. Accordingly, based upon the information reviewed, it is our opinion that our client does not own any rights to surface water associated with the property, nor does our client own any shares in any irrigation or ditch company associated with the property.

Please let us know if you have any questions or if we can be of further assistance.

Sincerely,

BUSHONG & HOLLEMAN, P.C.

By: Paul Raymond  
Paul J. Raymond  
Steve Bushong  
Counsel for Dave Merkley

Form No.  
GWS-25OFFICE OF THE STATE ENGINEER  
COLORADO DIVISION OF WATER RESOURCES  
818 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203  
(303) 866-3581

1425

## APPLICANT

WELL PERMIT NUMBER	32554	-	A
DIV. 1	WD 5	DES. BASIN	MD

AER INVESTMENTS LLC  
24 PINE BROOKE RD  
BOULDER, CO 80304-

(303) 247-0903

## APPROVED WELL LOCATION

BOULDER COUNTY  
SW 1/4 NE 1/4 Section 20  
Township 3 N Range 70 W Sixth P.M.

## DISTANCES FROM SECTION LINES

1940 Ft. from North Section Line  
1365 Ft. from East Section Line

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

Easting: Northing:

## PERMIT TO CONSTRUCT A 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) The construction of this well shall be in compliance with the Water Well Construction Rules 2 CCR 402-2, unless approval of a variance has been granted by the State Board of Examiners of Water Well Construction and Pump Installation Contractors in accordance with Rule 18.
- 3) Approved pursuant to CRS 37-92-602(3)(c) for the relocation of an existing well, permit no. 32554-A. The old well must be plugged in accordance with Rule 16 of the Water Well Construction Rules within ninety (90) days of completion of the new well. The enclosed Well Abandonment Report form must be completed and submitted to affirm that the old well was plugged.
- 4) Approved pursuant to the policy of the State Engineer for appropriation of ground water tributary to South Platte River system.
- 5) The use of ground water from this well is limited to drinking and sanitary facilities as described in CRS 37-92-602(1)(c), for a commercial business. Water from this well shall not be used for lawn or landscape irrigation or for any other purpose outside the business building structure.
- 6) The pumping rate of this well shall not exceed 15 GPM.
- 7) The annual amount of ground water to be diverted by this well shall not exceed 1/3 acre-foot (108,600 gallons).
- 8) Approved as the only well on a tract of land of 0.29 acre(s) described as the SW 1/4 of the NE 1/4 of Section 20, Township 3N, Range 70 W of the 6th P.M., Boulder County, reference attached exhibit "A".
- 9) The return flow from the use of this well must be through an individual waste water disposal system of the non-evaporative type where the water is returned to the same stream system in which the well is located.
- 10) 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.
- 11) This well shall be constructed not more than 200 feet from the location specified on this permit. *A.D.B. 10-26-2012*

APPROVED  
ADB

Receipt No. 3654562

State Engineer

DATE ISSUED

10-26-2012

By EXPIRATION DATE 10-26-2014

*Dick Wolfe**Arlene D. Boone*

## Change in Owner Name/Contact Information for Well Permits For Use in Connection with a Real Estate Transaction

*To be completed by the individuals or entities claiming ownership of a well permit, and submitted by title companies/settlement agents as an uploaded attachment using the eForm Submittal Tool.*

### New Well Owner(s) Contact Information:

Name(s)*:	David Merkley
Organization <sup>1</sup> :	Phoenix Equity Group, Inc., a Florida corporation
Mailing Address*:	
City, St., Zip*:	
Phone:	
Email(s)*:	

\*required fields to submit eForm.

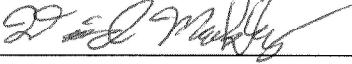
<sup>1</sup>ONLY enter a name here if the Organization itself OWNS the well.

### Well Permit

Well Permit Number*	Physical Address of the parcel on which the well is located (include city and zip)
32554-A	4497 Ute Highway, Longmont, CO 80503-9186

\*required field (except when using the title company eForm for wells where a valid permit number cannot be identified. In those cases, this form can still be completed and uploaded; however, the permit number would be left blank on this form)

I (we) claim and say that I am (we are) the owner(s) of the well permit described above, know the contents of the statements made herein, and state that they are true to my (our) knowledge. This filing is made pursuant to C.R.S. 37-90-143. I (we) understand that filing a Change of Owner Name/Contact Information form is for contact information purposes only. Filing this form does not convey real property.

Signature of the New Owner(s)*	Please print the Signer's Name* & Trust	Date*
	Phoenix Equity Group, Inc., a Florida corporation	01/21/2025

\*required fields

Note: If there are multiple owners with different mailing addresses or additional room is needed for signatures, please include this as an attachment to the form.

**After Recording Return To:**  
Phoenix Equity Group, Inc.  
Attn: David Merkley  
4435 Ute Highway  
Longmont, CO 80503

**SPECIAL WARRANTY DEED**

THIS DEED is made as of January 21, 2025, between AER Investments, LLC, a Colorado limited liability company (the "Grantor"), and Phoenix Equity Group, Inc., a Florida corporation, whose address is 4435 Ute Highway, Longmont, CO 80503 (the "Grantee").

Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, conveys and confirms unto Grantee and Grantee's successors and assigns forever, all the real property, together with any improvements thereon, located in the County of Boulder, State of Colorado, legally described as

SEE EXHIBIT A LEGAL DESCRIPTION ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE,

and known as 4497 Ute Highway, Longmont, CO 80503 (the "Property").

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of Grantor, either in law or equity, of, in and to the Property, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the Property, with the appurtenances, unto Grantee and Grantee's successors and assigns forever. Grantor, for itself and its successors and assigns, does covenant and agree that Grantor shall and will WARRANT AND FOREVER DEFEND the Property in the quiet and peaceable possession of Grantee, its successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under Grantor, except for and subject to: (i) taxes and assessments for the year 2025 and subsequent years, not yet due and payable; (ii) those specific matters set forth in Exhibit B attached hereto and incorporated herein by this reference; and (iii) statutory exceptions as defined in C.K.S. § 38-30-113(5)(a).

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed effective as of the date first set forth above.

**GRANTOR:**

DMRR, LLC, a Colorado limited liability company

By:

David Rheingold, Manager

*(ACKNOWLEDGMENT ON FOLLOWING PAGE)*

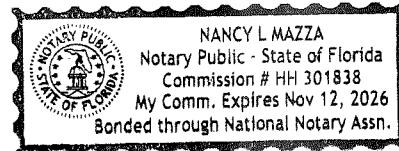
STATE OF Florida )  
COUNTY OF Broward ) ss:  
)

The foregoing instrument was acknowledged before me this 17 day of January, 2025, by David Rheingold, as Manager of DMRR, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 11/12/2026.

Nancy L Mazza  
Notary Public  
Nancy L. Mazza



**EXHIBIT A  
TO  
SPECIAL WARRANTY DEED**

Legal Description  
(4497 Ute Highway, Longmont, CO 80503)

**PARCEL 1:**

That part of the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  of Section 20, Township 3 North, 70 West of the 6th P.M., described as follows:

Beginning at a point at the intersection of the centerline of the Longmont- Lyons Highway No. 66 and the Boulder-Lyons Highway No. 7;

Thence running North 02°10' East 331 feet to the Southerly bank of the Rough and Ready Ditch;

Thence South 49°52' West along the Southerly bank of said ditch a distance of 100.3 feet;

Thence South 08°27' West 243.4 feet to the centerline of said Longmont-Lyons Highway No. 66;

Thence South 72°57' East along the centerline of said Highway No. 66 a distance of 108.2 feet to the point of beginning;

Except that portion which is included in a strip of land 48 feet in width running from the Lyons- Longmont County Road to the East line of the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  of Section 20, the North line of which strip of land is the North line of the Rough and Ready Ditch, as conveyed to the Rough and Ready Irrigating Ditch Co., by Deed recorded December 16, 1920, in Book 460 at Page 543; and,

Except that portion conveyed to the Department of Highways, State of Colorado, in instrument recorded November 24, 1967 as Reception No. 864444, and described as follows:

Beginning at a point on the West property line from which the Southeast corner of the NE  $\frac{1}{4}$  of Section 20, Township 3 North, Range 70 West, bears South 64°27'30" East, a distance of 1,558.3 feet; thence South 80°53'30" East, a distance of 106.1 feet to the East property line; Thence along the East property line, South 08°20'30" West, a distance of 138.9 feet to the Northerly right of way line of the C.B. & Q.R.R. (May 1967);

Thence 50.0 feet Northerly from and parallel with the centerline of the C.B. & Q.R.R. (May 1967), along the Northerly right of way line of the C.B. & Q.R.R. (May 1967), along the arc of a curve to the right, having a radius of 1,382.7 feet, a distance of 105.5 feet (the chord of this arc bears North 74°32'30" West, a distance of 105.5 feet);

Thence along the West property line, North 07°41'30" East, a distance of 127.3 feet, more or less, to the point of beginning, County of Boulder, State of Colorado.

**PARCEL 2:**

A parcel of land located within the Northeast  $\frac{1}{4}$  of Section 20, Township 3 North, Range 70 West of the 6th P.M., said parcel being bounded as follows:

By the East line of a tract of land described in instrument recorded August 31, 1971 on Film 743 as Reception No. 988285 in the office of the Boulder County Clerk and Recorder,

By the most Southerly line extended Easterly (a line parallel with and 48 feet distant from the North line of the Rough and Ready Ditch) of a tract of land described in instrument recorded December 13, 1920 in Book 460 at Page 543 in the office of the Boulder County Clerk and Recorder,

By the West line of a tract of land described in instrument recorded April 19, 1994 on Film 1965 as Reception No. 1417848 in the office of the Boulder County Clerk and Recorder,

By the West line of a tract of land described in instrument recorded May 20, 1994 on Film 1977 as Reception No. 1429342 in the office of the Boulder County Clerk and Recorder,

By the North line of a parcel of land described in instrument recorded January 1, 1968 as Reception No. 869134 in the office of the Boulder County Clerk and Recorder,

Excepting therefrom a forty (40) foot wide right of way for Highland Drive (also known as Boulder County Road No. 49, and formerly known as Old Estes Park Highway),

Said parcel of land being further described as follows:

Beginning at the Southeast corner of that tract of land described in instrument recorded August 31, 1971 on Film 743 as Reception No. 988285;

Thence North  $02^{\circ} 56'07''$  East along the East line of said tract of land described in instrument recorded August 31, 1971 on Film 743 as Reception No. 988285, a distance of 174 feet, more or less, to the South line of that tract of land described in instrument recorded December 13, 1920 in Book 460 at Page 543;

Thence North  $68^{\circ} 12'37''$  East along the most Southerly line extended Easterly (a line parallel with and 48 feet distant from the North line of the Rough and Ready Ditch) of said tract of land described in instrument recorded December 13, 1920 in Book 460 at Page 543, a distance of 47 feet, more or less, to the West right of way line of Highland Drive (also known as Boulder County Road No. 49, and formerly known as Old Estes Park Highway);

Thence along the West right of way line of Highland Drive, along a curve to the left 87 feet, more or less, said curve having a radius of 154 feet, more or less;

Thence South  $08^{\circ} 23'28''$  West along the West right of way line of Highland Drive, a distance of 115 feet, more or less, to the point of beginning, County of Boulder, State of Colorado.

**EXHIBIT B  
TO  
SPECIAL WARRANTY DEED**

Exceptions to Title

1. Patent Reservations in Patent recorded April 7, 1911 in Book 369 at Page 1.
2. Any portion of said land which may lie within those certain lands as conveyed to The Rough and Ready Irrigating Ditch Company by Maney Peterson, Howarth E. Jones and Mattie Jones in Warranty Deed recorded December 16, 1920 in Book 460 at Page 543.
3. Easement granted to Effie Wysong, Willis Wysong and Aldena Wysong for right of way for driveway purposes along existing road and across a certain bridge over the "Palmerton Ditch" recorded March 25, 1955 in Book 974 at Page 450
4. Matters contained in Certificate of Survey recorded August 17, 1971 as Reception No. 986496.
5. Matters contained in the Map of Longmont Water System recorded May 21 or 26, 1904 in Book B at Page 18
6. Resolution 2011-23 Second Amendment to Lyons Planning Area Comprehensive Development Plan Intergovernmental Agreement recorded June 22, 2011 as Reception No. 3155123 and re-recorded July 14, 2011 as Reception No. 3159093.
7. Special Warranty Deed recorded April 6, 2012 as Reception No. 3215131.
8. Quitclaim Deed recorded April 16, 2012 as Reception No. 3216785.
9. Easement granted to Gwynne L. Owen for sign purposes recorded April 16, 2012 as Reception No. 3216810.
10. Easement granted to County of Boulder for maintaining culvert recorded December 19, 2014 as Reception No. 3419152.
11. Matters disclosed by survey dated August 16, 2016 prepared by Lee Stadele, PLS 26300 for and on behalf of Flagstaff Surveying Inc., Job No. 16620a-2.
12. Matters disclosed by survey dated December 18, 2024 prepared by Don E. Johnson, PLS 34593 for and on behalf of AEI Consultants, Job No. 502746.