

DISTRICT COURT, WATER DIVISION NO. 1, COLORADO 901 9 th Avenue P. O. 2038 Greeley, CO 80632	<div style="text-align: right; color: blue; font-size: small;"> DATE FILED: August 16, 2018 7:28 AM CASE NUMBER: 2018CW3005 </div> <div style="text-align: center; margin-top: 100px;"> ▲COURT USE ONLY ▲ </div>
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: LOGAN WELL USERS, INC. IN LOGAN, MORGAN and WASHINGTON COUNTIES.	
<div style="text-align: center;"> FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING AND DECREE OF WATER COURT </div>	

An application for Water Rights and to Add Wells to Augmentation Plan was filed in this case in the Water Court, Water Division No. 1 by Logan Well Users Inc. The Court, having considered the pleadings and evidence presented, and being fully advised in the premises hereby finds, concludes, adjudicates and decrees as follows.

FINDINGS OF FACT

1. The Applicant. Applicant is Logan Well Users Inc., P.O. Box 1172, Sterling, Colorado, 80751. Applicant operates an augmentation plan decreed in Case No. 03CW195, Corrected Findings of Fact, Conclusions of Law and Decree of Water Court dated February 21, 2006 (2003 Decree) as supplemented by the Corrected Order on Calculation of Recharge Well Depletions and Order Vacating Hearing dated October 9, 2008 ("Recharge Well Order"). ¶49.6 of the 2003 Decree allows the addition of wells to the plan subject to notice and terms and conditions. Applicant seeks to adjudicate water rights for 5 Wells and to add those Wells to its plan for augmentation.

2. The Application. Applicant filed the Application for Water Rights and Approval of Augmentation Plan on January 17, 2018.

3. Notice and Jurisdiction. All notices of this matter required by law have been fulfilled and the Court has jurisdiction over the subject matter of this application and all amendments and over all persons and property affected by it, irrespective of

whether they or its owners have appeared. The water and lands that are the subjects of this Application are not located in a designated groundwater basin.

4. Statement of Opposition. A Statement of Opposition was filed in this matter by the City of Sterling on March 29, 2018. No other Statements of Opposition were filed and the time for filing Statements of Opposition has expired.
5. Summary of Consultation. The Division Engineer for Water Division No. 1 filed a Summary of Consultation dated April 30, 2018. Court has duly considered the Summary of Consultation and the Response.

APPLICATION FOR WATER RIGHTS

6. Name of Structure. Kenneth Fritzler Well (Permit No. 53734, LWU No. 495).
 - 6.1. Owner. Kenneth Fritzler, 11520 CR 37, Sterling, Colorado 80751.
 - 6.2. Location. In the NW1/4 SW1/4 of Section 6, Township 7 North, Range 52 West of the 6th P.M., Logan County Colorado, 2790 feet from the South section line and 150 feet from the West section line of said Section 6.
 - 6.3. Appropriation date. December 14, 2017.
 - 6.4. Amount claimed. 22 g.p.m., conditional.
 - 6.5. Source. Groundwater tributary to the South Platte River.
 - 6.6. Use. Residential and shop, 1 acre of home lawn and garden irrigation, domestic animal and livestock watering.
7. Name of Structure. Sexton Well (LWU No. 496). (At the time of filing the Application, this Well was referred to as the "G. A. Samber Well", in reference to the owner at that time. Since the filing of the Application, the well and property have been conveyed to the owners described below.)
 - 7.1. Owner. John D. and Lacey M. Sexton, 16430 CR 39 Sterling Colorado, 80751.
 - 7.2. Location. In the NW1/4 SW1/4 of Section 8, Township 8 North, Range 52 West of the 6th P.M., Logan County Colorado, 2,505 feet from the South section line and 220 feet from the West section line of said Section 8.
 - 7.3. Appropriation date: December 14, 2017.
 - 7.4. Amount claimed. 15 g.p.m., conditional.
 - 7.5. Source. Groundwater tributary to the South Platte River.
 - 7.6. Use. Residential, 1 acre of home lawn and garden irrigation, domestic animal and livestock watering.

8. Name of Structure. Pratt Well, (Permit No. 193060, LWU No. 497).
 - 8.1. Owner. Britt and Morgan Pratt, 4567 CR 25 Merino, Colorado, 80741.
 - 8.2. Location. In the NE1/4 NE1/4 of Section 12, Township 6 North, Range 54 West of the 6th P.M., Logan County Colorado, 753 feet from the North section line and 342 feet from the East section line of said Section 12.
 - 8.3. Appropriation date. December 14, 2017.
 - 8.4. Amount claimed. 15 g.p.m., conditional.
 - 8.5. Source. Groundwater tributary to the South Platte River.
 - 8.6. Use. Residential (up to 3 single family dwellings), 1 acre of home lawn and garden irrigation, domestic animal and livestock watering.
9. Name of Structure. Colorado Endoscopy Services Inc., Well, (LWU No. 498).
 - 9.1. Owner. Colorado Endoscopy Services Inc., 114 South 3rd Ave Sterling Colorado, 80751 (mailing address); 11905 CR 5 Merino, Colorado, 80741 (property address).
 - 9.2. Location. In the NE1/4 NE1/4 of Section 5, Township 7 North, Range 55 West of the 6th P.M., Logan County Colorado, 588 feet from the North section line and 715 feet from the East section line of said Section 5.
 - 9.3. Appropriation date. December 14, 2017.
 - 9.4. Amount claimed. 35 g.p.m., conditional.
 - 9.5. Source. Groundwater tributary to the South Platte River.
 - 9.6. Use. Commercial uses associated with a feedlot operation, stock watering and fire protection.
10. Name of Structure. PVRE Pit #1, (LWU No. 499).
 - 10.1. Owner. Platte Valley Real Estate LLC, 116 Spruce Road Sterling Colorado, 80751.
 - 10.2. Location. In the SW1/4 NW1/4 of Section 33, Township 8 North, Range 52 West of the 6th P.M., Logan County Colorado, the centroid of the pit is located 2,350 feet from the North section line and 1,090 feet from the West section line of said Section 33.
 - 10.3. Appropriation date. December 14, 2017.
 - 10.4. Amount claimed. 40 acre-feet, conditional.
 - 10.5. Source. Groundwater tributary to the South Platte River.

10.6. Use. Industrial uses associated with a gravel pit.

Addition of Wells to Augmentation Plan

11. Augmentation Plan. Applicant seeks to add the wells described in ¶¶6-10 of this decree (collectively the “Wells” or individually a “Well”) to the augmentation plan decreed in the 2003 Decree. ¶49.6 of the 2003 Decree allows the addition of wells to the plan subject to notice and terms and conditions.

11.1. Description of the Plan. The wells to be added to the plan, hereinafter “Wells” are the 5 Wells described in ¶¶6-10. Figure 1, attached, shows the location of the Wells.

11.2. Aquifer Parameters. The aquifer parameters and other information required by the Decree for each Well are set out in Table 1.

Table 1

Well No.	Name	Permit No.	Well Location				In LID ¹	Abv/Bel SIC ²	Aquifer Parameters ³			
			Qtr/Qtr	Sec	TwN	Rge			W	X	Harm T	Lag to
495	Kenneth Fritzler	53734	NWSW	6	7N	52W	x	b	25,050	8,940	336,500	R
496	Sexton Well	Pending	NWSW	8	8N	52W	x	b	10,095	5,615	259,300	PD
497	Britt and Morgan Pratt	193060	NENE	12	6N	54W		a	13,155	8,345	164,700	R
498	Colorado Endoscopy Services Inc	Pending	NENE	5	7N	55W		a	89,940	84,940	110,900	PC
499	Platte Valley Real Estate LLC	Pending	SWNW	33	8N	52W		b	22,800	1,800	200,600	R

NOTES:

1 In LID = Located inside boundaries of Logan Irrigation District as of December 2008

2 Abv/Bel SIC = Location of depletions with respect to Sterling No. 1 Ditch headgate. Above - a, Below - b

3 Aquifer Parameters

W = Width of aquifer on side of river where well is located (ft)

X = Distance from the river to the location of structure (ft)

Harm T = Harmonic Transmissivity of the aquifer in the vicinity of structure (gpd/ft)

S = 0.2

Lag to: R = River, PD = Pioneer Drain, PC = Pawnee Creek

11.3. Consumptive Use and Depletions. The consumptive use factors used will be those set out in the Decree at ¶52.3.4. Out of priority depletions from use of the Wells that have occurred prior to the date the court allows the Wells to be added to the plan will be replaced by Applicant. Out of priority depletions from use of the Wells that may occur after the court decree adding the Wells to the plan, whether or not the depletions result from

pumping before or after the date the court allows the Wells to be added to the plan, will be replaced by the Applicant.

- 11.4. Water Rights to be used for Augmentation. All water rights decreed in Case Nos. 03CW195, 07CW300, and 13CW3162.
- 11.5. Names and Address of Owners of the Wells. The names and addresses of the owners of the Wells are set out above.
- 11.6. Operation of the Plan for Augmentation. Diversions from the Wells described in ¶¶6-10 and listed in Table 1 cause depletions to the South Platte River and its tributaries. To the extent that those depletions are out of priority, the purpose of this plan is to provide for replacement of such out of priority depletions in time, location and amount, under the terms and conditions of this decree. The Court approves the addition of the Wells to the plan for augmentation subject to the terms and conditions of this decree.
- 11.7. Incorporated Terms. The terms of the 2003 Decree are incorporated herein to the extent they are not in conflict with terms set out herein or to the extent a term is not addressed herein.
- 11.8. Curtailment. The plan for augmentation decreed in the 2003 Decree, as supplemented by this decree, is sufficient to permit the continuation of diversions by the Wells when curtailment would otherwise be required to meet a valid senior call for water, to the extent Applicant complies with all the terms and conditions of the 2003 Decree and this decree including, but not limited to providing the necessary replacement water as required by the 2003 Decree and this decree. Pursuant to §37-92-305(8) C.R.S., the State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.

CONCLUSIONS OF LAW

12. Incorporation of Findings of Fact. The foregoing Findings of Fact are incorporated herein.
13. Notice and Jurisdiction. The Water Court for Water Division No. 1 has jurisdiction over the subject matter of these proceedings and over all persons, owners of property and water rights that may be affected hereby, whether or not they have chosen to appear. The application in this matter and the resume publication of the application placed such persons on notice of the relief requested by the application and granted by this decree.
14. Groundwater Rights Contemplated by Law. The application for groundwater rights in ¶¶6-10 of this decree are contemplated by law and satisfy the requirements of §37-92-103 (14)(a), 37-92-101 et seq., including but not limited to §§37-92-103, 37-92-302, 37-92-305(1), 37-92-305(9) and 37-92-305(12), C.R.S. The appropriations for the groundwater rights were lawfully initiated on the dates shown in the Findings of Fact, and were pursued with reasonable diligence from the date

of initiation.

15. Addition of Wells to Plan for Augmentation Contemplated by Law. The application to add Wells to the plan for augmentation decreed in the 2003 Decree is contemplated by law and satisfies the requirements of §37-92-101 et seq., C.R.S., including but not limited to §§37-92-103, 37-92-302, 37-92-304(6), 37-92-305(3), 37-92-305(5), 37-92-305(8) and 37-92-305(12). Operation of the plan for augmentation will not injuriously affect any owner of or person entitled to use water under a vested water right or decreed conditional water right, so long as operated and administered in accordance with the terms of 2003 Decree and this decree.
16. Burden of Proof. Applicant has met its burden of proof and is therefore entitled to a decree approving its application herein, as amended.
17. Administrability. This decree is administrable by the officials of the State of Colorado.

RULING AND DECREE

18. Incorporation of Findings and Conclusions. The foregoing Findings of Fact and Conclusions of Law are incorporated herein as if set forth.
19. Approval of Water Rights and Plan for Augmentation. The groundwater rights set out in ¶¶6-10, and the addition of wells to the 2003 Decree plan for augmentation set out in ¶11 are hereby confirmed, approved, adjudicated and decreed.
20. Adequacy of Replacement and Augmentation Supplies. The replacement and augmentation supplies which Applicant will use for operation of the Plan for Augmentation for the Wells have been and shall be of a quality and continuity satisfactory to meet, in time, location and amount, the requirements for which the water of senior appropriators has normally been used.
21. No Material Injury. The terms and conditions provided for in this decree are adequate to assure that no material injury to any water users will result from the changes of water rights and addition of wells to the plan for augmentation approved herein.
22. Measuring Devices. The terms of the 2003 Decree with respect to the measurement of all well diversions are incorporated herein. In addition Applicant shall install and maintain, at Applicant's expense, such additional meters, gauges, or other measuring devices as are required by the Water Commissioner or Division Engineer, and shall report at the times required by the 2003 Decree to the Water Commissioner and/or Division Engineer the readings of such meters, gauges, or other measuring devices pursuant to §37-92-502(5)(a), C.R.S. subject to the Stipulation between Applicant and the State Engineer in Case No. 11CW292 regarding the Rules Governing Measurement of Tributary Ground Water in the South Platte River Basin in Colorado.
23. Satisfaction of Senior Water Rights. So long as operated and administered in accordance with this decree, the operation of the plan for augmentation decreed

in the 2003 Decree will be sufficient to permit the continuation of withdrawals, and resulting depletions, from the Wells without impairing the water rights of others, in the amounts and for the purposes adjudicated herein, when curtailment of such operations would otherwise be required to meet valid senior calls for water. Pursuant to §37-92-305(8) C.R.S., the State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.

24. Accounting. Applicant shall account for the diversions and plan of augmentation in the same manner as required by the 2003 Decree. Accounting shall be added to or incorporated into the accounting for the 2003 Decree.
25. Binding Effect of Decree. Applicant shall record this decree with the clerk and recorder for Logan County within 10 days after the decree becomes final upon the expiration of the right of all parties to appeal this decree. The terms and conditions of this decree shall bind, and be enforceable against, the owners of the Wells, the water rights decreed to or otherwise associated with those wells, and the lands upon which the Wells included in this decree are located, and the successors and assigns of such owners, until all obligations under the 2003 Decree and this decree have been fulfilled. In the event Applicant is unable or unwilling, for any reason, fully to comply with the terms of the 2003 Decree and this decree, including, but not limited to, as a result of dissolution of the Applicant in accordance with the procedures required by law, the owners of such lands, wells and water rights, shall comply with the terms and conditions of the 2003 Decree and this decree, as it relates to the wells owned by that owner, and shall replace all out of priority well depletions which are occurring or which will occur from operation of that owners wells in the 2003 Decree and this decree. So long as the terms and conditions of the 2003 Decree and this decree are fully complied with, nothing in this paragraph is intended to prohibit the owners of the wells in this decree from adjudicating an additional plan for augmentation to replace depletions from the wells or from establishing another corporation for replacement of depletions under the 2003 Decree or this decree or an additional decree. Nor is anything in this paragraph intended to affect the exercise of any remedy which may be available to any person affected by the failure of the Applicant or the land owners to comply with the terms and conditions of the 2003 Decree and this decree.
26. Retained Jurisdiction. Pursuant to §37-92-304(6) C.R.S., the Court retains jurisdiction over the addition of the Wells to the plan for augmentation decreed in the 2003 Decree and herein on the issue of injury to vested water rights of others for one year from the date this decree is entered. Except to the extent subject to retained jurisdiction, the findings, conclusions and decree herein are final. The retained jurisdiction provisions of this paragraph are in addition to the retained jurisdiction provisions included in the 2003 Decree which are incorporated herein by reference.
27. Administration by State and Division Engineers. The State Engineer and Division

Engineer shall administer this decree in accordance with the terms and conditions set forth herein.

28. Diligence. The conditional water rights herein are continued in full force and effect until August 31, 2024. If Applicant desires to maintain such conditional rights, an application for finding of reasonable diligence shall be filed on or before August 31, 2024, or a showing made on or before such date that the conditional water rights have become absolute water rights by reason of the completion of the appropriation.
29. Priorities. The priorities herein awarded to the Wells in ¶¶6-10 were filed in the Water Court in the year of 2018, and shall be administered as having been filed in that year; and shall be junior to all priorities filed in previous years. As between all rights, filed in the same calendar year, priority shall be determined by decreed date of appropriation and not affected by date of the entry of ruling.

Date: July 24, 2018



John Cowan
Water Referee
Water Division One

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Date: August 16, 2018

BY THE COURT:



James F. Hartmann
Water Judge
Water Division One

