



October 11, 2016

RE: Indian Mountain Subdivision Augmentation Water Supply
Water Court Decree W-7389

To Indian Mountain Property Owners:

As a property owner in the Indian Mountain subdivision, you have probably heard about potential changes to the water supply options for your property. **These changes may impact your ability to either operate your existing well or obtain a permit to drill a well on your property in the future.**

You may already be aware of the litigation between the Indian Mountain Corporation and the Indian Mountain Metropolitan District (Park County District Court No. 14CV30056 and Court of Appeals No. 15CA1055) related to the Water Court decree for Indian Mountain subdivision in Case No. W-7389 (Decree). The recent (August 11, 2016) ruling of the Court of Appeals created the necessity for this letter, as I will explain below.

First, let me take a moment to explain my role in regulating water diversions and use in northeast Colorado. One of the main duties of the Division Engineer (as part of the Division of Water Resources (DWR), also known as the Office of the State Engineer) is to regulate water diversions from streams and groundwater in accordance with Colorado's prior appropriation system of water law. The basic principle is that the person who first diverts water and places it to beneficial use has a better, or more senior, right to use the water than later diverters, i.e. "first in time, first in right". The primary water regulation objective of DWR is to optimize the use of water consistent with the prior appropriation system and the decrees of the water courts.

As part of the regulation just discussed, I am required by law to order water users with more junior water rights (junior user) to cease diversions when that water is required by a user with a more senior water right (senior user). As part of the optimization also just discussed, the junior diverter can "augment" the water available to the senior diverter by supplying water from another source to the senior diverter, allowing the junior diverter to keep diverting water when they would otherwise be curtailed. However, the junior diverter may only do this as part of either: (A) a "plan for augmentation" decreed by the Water Court; or (B) a temporary plan for augmentation called a "substitute water supply plan" (SWSP) approved by the State Engineer while the permanent plan for augmentation is being considered by the Water Court. In either case, the plan (along with all other water rights) is regulated by DWR.

It is important to note that pumping from wells affects surface streams, but those effects are delayed in time. When water is pumped from a well, that pumping eventually results in a corresponding decrease in water in the stream system. Wells almost always have very junior water rights and, because of this delayed well pumping impact on the stream system, it is impossible to predict if pumping a well today will cause a decrease in stream flow that does or does not harm senior water rights in the future. This is where a plan for augmentation comes in; it allows wells to pump when they would not otherwise have the right to pump by providing a mechanism to replace the well pumping impacts to senior water rights to prevent injury to them.



Now let me get down to what all of the above information has to do with you as a property owner in Indian Mountain subdivision (Subdivision).

The Decree entered in 1974 created a plan for augmentation to allow the individual lot owners in the Subdivision to obtain a water supply for in-house purposes from on-lot wells. The Decree also changed the use of parts of three water rights (the Slater Ditch (Ditch), Tarryall Ranch Reservoir No. 1 (Reservoir 1) and Tarryall Ranch Reservoir No. 2 (Reservoir 2)) to be used to augment these on-lot wells to prevent injury to senior users.

The Decree basically operates by providing augmentation water from the Ditch in the summer and water from Reservoir 2 in the winter. However, the Decree did not expressly convey the changed water rights to the Subdivision lot owners. This non-conveyance does not impact use of the Ditch right because that water is simply left in the stream. It does impact the Reservoir 2 right because the non-conveyance led to the litigation mentioned in the second paragraph of this letter (Park County District Court No. 14CV30056 and Court of Appeals No. 15CA1055) after the Reservoir 2 right was sold a few years ago. The current result of this litigation is that the present Reservoir 2 (AKA Tarryall Ranch Reservoir) owners (now Bar Star Water, LLC) may charge individual well owners for releasing replacement water from the reservoir.

All of the well permits currently issued within the Subdivision were issued only because they are covered by the Decree and must continue to be covered by a plan for augmentation. Likewise, any future well permits within the Subdivision will only be issued in compliance with a decreed plan for augmentation, either the existing Decree or, possibly, another plan for augmentation able to cover wells within the Subdivision.

I realize that many of you do not agree with the current result of the litigation discussed above. I hope you all realize that I must remain neutral in this dispute. My duty is to follow state water law and the decrees of the Courts. As part of that duty, I have to tell you that all wells within the Subdivision MUST be covered by an operating plan of augmentation to continue to legally pump.

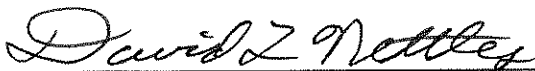
Please understand that I am NOT telling you that your well must be or is not covered by the plan for augmentation represented by the Decree. Continuing to have your well covered under the Decree is one option. I believe there are also other options to cover your well in a plan for augmentation if your well is first removed from the Decree through a court action. You may want to contact the Indian Mountain Property Owners Association or Indian Mountain Metropolitan District or Bar Star Water, LLC for information on other options (plans for augmentation) that could cover wells within the Subdivision.

It appears that unless wells in the Indian Mountain Subdivision are removed from the Decree through a court action, the augmentation plan operators are required to make releases for all of the wells. The water commissioner recently ordered Bar Star to release water from storage for the winter obligation of the estimated 625 wells permitted and connected to dwellings within Indian Mountain Subdivision. We will work diligently to enforce that order, but if replacement water is not provided to the stream, senior water rights will be injured and I will be forced to issue well curtailment orders for all of the wells in the Subdivision. Furthermore, we will not be able to issue new well permits pursuant to the Decree. I will meet with Bar Star Water, LLC to clarify that they need to make a release to cover all of the wells in the subdivision. Any payment or collection of fees for the operation of the augmentation plan under the Decree is an issue between the parties subject to the requirements of the Decree (currently Bar Star Water, LLC and subdivision well owners).

I understand that these water supply issues may be surprising, frustrating, and potentially costly to you. However, it is important that depletions from well pumping within the Indian Mountain Subdivision be replaced to the stream system to prevent a well curtailment order for your well or, if you have not yet drilled a well on your lot, to allow you to obtain a permit to drill a well in the future.

Please contact me or Justin Bieri at the phone number or address shown at the bottom of the first page of this letter with questions related to this letter.

Thank you,



David L. Nettles, P.E.

Division Engineer, Water Division 1

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