



COLORADO

Division of Water Resources

Department of Natural Resources

Water Division 1 - Main Office
810 9th Street, Suite 200
Greeley, CO 80631

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Adam Davenport
112 N. Rubey Drive, Suite 100
Golden, Colorado 80403
adam.davenport@dtsservices.com

Matthew Montgomery
Hill & Robbins, P.C.
1660 Lincoln Street, Suite 2720
Denver, Colorado 80264
matthewmontgomery@hillandrobbins.com

Dear Sirs,

I am writing to provide you with my plan for administration with regard to the ongoing questions surrounding Indian Mountain Metropolitan District (“IMMD”) and Bar Star Water, LLC (“Bar Star”). As you are aware, on June 11, 2018 IMMD filed a notice in Case No. 73CW7389 (hereinafter “W-7389”), which indicates that approximately 340 wells have joined an augmentation program operated by the Headwater Authority of the South Platte (“HASP”). The 340 wells will receive modified well permits, which reflect augmentation provided by HASP rather than by Bar Star.

Division of Water Resources employees and attorneys from the Attorney General’s Office have met with each of you and your respective clients on multiple occasions recently to discuss the effect of the notice filed in Case No. W-7389, the effect of the modified well permits, and the proper interpretation of the Findings of Fact, Conclusions of Law and Decree Modifying Water Rights and Approving Plan of Augmentation in Case No. W-7389 (“Decree”). I believe that the Decree affords me sufficient administrative discretion to increase and decrease the amount of augmentation water that Bar Star must provide based on the number of single-family residential equivalent units that Bar Star serves at the time replacement is necessary. Therefore, if a well is properly augmented by another augmentation plan, I believe the Decree gives me the discretion to reduce the



amount of replacement water Bar Star must provide by reducing the number of single-family residential equivalent units recognized as being served by Bar Star.

My interpretation is based on reviewing the Decree in its entirety with specific attention to the language in paragraph 7 of the decretal portion of the Decree. Subparagraph A requires that applicant “shall be ordered to release from the waters stored in the Tarryall Ranch Reservoirs Nos. 1 or 2 a volume of water at a rate of flow determined by the Division Engineer of Division No. 1 to be adequate to offset depletions then simultaneously occurring as a result of the provision of domestic and municipal water service to the number of single-family residential equivalent units then being served within the Indian Mountain development.” Similarly, subparagraph B states that “the Division Engineer shall require the applicant, its successors or assigns to release from storage in the Tarryall Ranch Reservoirs Nos. 1 and 2 such amounts of water at such rates of flow as may be found necessary to offset the then occurring simultaneous depletions resulting from the provision of domestic and municipal water service to the then existing number of single-family residential equivalent units being served within the Indian Mountain development.” Both of these requirements direct the Division Engineer to determine the proper amount of replacement to be provided under the plan. And both provisions are reasonably construed as requiring that amount to be based on the number of single-family residential equivalent units that applicant (Bar Star) serves in the development.

Therefore, I believe that I have the discretion and flexibility under the Decree to modify the amount of replacement water ordered to be released from Tarryall Ranch Reservoirs Nos. 1 and 2 based on how many single-family residential equivalent units Bar Star serves at the time replacement is necessary. If a well is not served by Bar Star, I have the discretion to reduce the amount of replacement Bar Star is required to release from the Tarryall Ranch Reservoirs. This interpretation of the Decree avoids the potential absurd results of multiple plans providing replacement for the same depletions, which results in waste. Similarly, it would be wasteful to require Bar Star to release water for an Indian Mountain homeowner without a well who relies on hauling water in from a legal source.

I will direct the Water Commissioner to determine when releases from the Tarryall Ranch Reservoirs are needed to prevent injury from pumping wells in Indian Mountain based upon how many single-family residential equivalent units Bar Star serves. Any wells that have approval to be augmented by another lawful source will

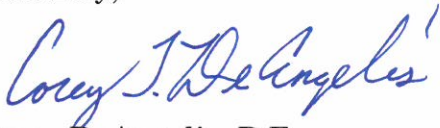


not be included in the number of single-family residential equivalent units that Bar Star serves and will not be included in the calculated release from the Tarryall Ranch Reservoirs. This approach assures that all depletions are replaced, and water is not wasted, consistent with previous Orders of the Division Engineer.

Approximately 80 of the 340 wells that have already joined a HASP plan have decreed water rights. My office will have further communication with those well owners. In the meantime, they may continue to operate under the modified well permits and HASP plans.

I believe my interpretation of the Decree gives effect to the terms of the Decree, maximizes the beneficial use of limited water resources, and avoids waste and absurd results. I am happy to meet or discuss this further if you like. However, please consider that this is my interpretation of the Decree and our related administration and I do not expect that this will change absent contrary direction from the Water Court.

Sincerely,



Corey DeAngelis, P.E.
Division Engineer, Division 1

ec: Kevin Rein, State Engineer
Jeff Deatherage, Chief of Water Supply
Sarah Brucker, Team Leader, Division 1 (Outside Denver Basin)
Dean Santistevan, Assistant Division Engineer
Garver Brown, Water Commissioner, District 23
Paul Benington, First Assistant Attorney General
Ema Schultz, Assistant Attorney General
Division Filing: WDID 2302221
Adam Davenport, adam.davenport@dtsservices.com
Matthew Montgomery, matthewmontgomery@hillandrobbs.com

