



COLORADO
Division of Water Resources
Department of Natural Resources
Water Division 1 - Main Office

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CASE NUMBER: 1973CW7389

February 1, 2019

Served via Colorado Courts E-filing

Bar Star land, LLC
% Adam C. Davenport

Subject: Notice filed in Case No. 73CW7389 on January 3, 2019

Dear Adam,

This letter is in response to your notice filed in Case No. 73CW7389 on January 3, 2019. Please be advised that since this case is not open, we consider your notice, along with the other notices filed in the Colorado Courts' E-filing system, simply to be communications intended to reach the Division of Water Resources (DWR). We do not believe that a notice filed by Indian Mountain Metropolitan District (IMMD) or Bar Star in this case can remove a well from the W-7389 plan for augmentation.

In your notice you state that DWR deemed a prior notice filed by IMMD "sufficient to effectively remove the noticed wells from the W-7389 Plan." This statement is not correct. We do not believe that the noticed wells have been removed from the W-7389 plan since the Decree in Case No. W-7389 does not provide any mechanism to remove a well and since the Court has not entered such an order. It is our position that **all wells in the Indian Mountain subdivision are, by default, included in the W-7389 Plan for Augmentation and Bar Star is responsible for their depletions.** However, in consideration of the recent ruling by the Court of Appeals in Case No. 15CW1055 and the administrative authority provided to the Division Engineer under the Decree entered in Case No. W-7389, we believe the wells listed in IMMD's notice (wells) do not need to be included in the Division Engineer's calculation of augmentation releases needed from the Tarryall Ranch Reservoirs since the wells are being augmented by another plan. The Division Engineer does not find that additional augmentation water released by Bar Star is "necessary to offset" the depletions since those well depletions have already been replaced by another plan (i.e., HASP). DWR considers IMMD's notice simply as a communication that the listed wells are covered by HASP, thus allowing the Division Engineer to relieve Bar Star from making releases for these wells in the Division Engineer's periodic calculation of augmentation releases, during times that these wells are covered by HASP. If the Division Engineer was to require Bar Star to release augmentation water for depletions already covered by HASP, it would result in waste, which implicates the Division Engineer's authority under the Decree in Case No. W-7389 to determine the amount of augmentation water "found necessary" to offset well depletions.

Also in your notice, you state that, beginning on December 31, 2018, Bar Star will not make any augmentation releases for those owners of wells that have not paid the fees assessed by Bar Star for augmenting out-of-priority depletions. Consistent with our prior determinations and pursuant to the Decree in Case No. W-7389, Bar Star **is** obligated to make augmentation releases for all wells within the Indian Mountain subdivision that require augmentation, regardless of whether they are delinquent in payment. **This is because all wells in the Indian Mountain subdivision are, by default, included in the W-7389 Plan for Augmentation and Bar Star is responsible for their depletions.** Since the "delinquent" wells are not being augmented by another plan, the release of augmentation water by Bar Star is found to be "necessary to offset" the occurring depletions. This position is consistent with the two letters we previously sent to you in July of 2018, which are attached to this letter.



Bar Star Land, LLC
January 29, 2019
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I hope this letter helps to clarify DWR's administration of the W-7389 Decree. Any well not being served by HASP in the Indian Mountain subdivision will be included in the Division Engineer's next periodic calculation of Bar Star's augmentation release requirement. Please feel free to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Corey DeAngelis". The signature is written in a cursive style with a large initial 'C'.

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

CTD/dws

Enclosures (2)



COLORADO

Division of Water Resources

Department of Natural Resources

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

July 17, 2018

Adam Davenport
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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

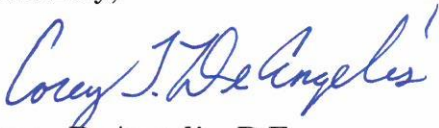


not be included in the number of single-family residential equivalent units that Bar Star serves and will not be included in the calculated release from the Tarryall Ranch Reservoirs. This approach assures that all depletions are replaced, and water is not wasted, consistent with previous Orders of the 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
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Adam Davenport, adam.davenport@dt-services.com
Matthew Montgomery, matthewmontgomery@hillandrobbs.com





July 20, 2018

Adam Davenport
1501 Washington Avenue, Unit C-1
Golden, Colorado 80401
adam.davenport@dtsservices.com

Subject: Adam Davenport Letter Dated July 17, 2018

Mr. Davenport,

I am writing in response to your letter dated July 17, 2018 (Letter), on behalf of your client Bar Star Water, LLC ("Bar Star").

Your Letter makes reference to a 2016 letter from Dave Nettles and a statement in this letter that Bar Star is required to make releases for all wells in the Indian Mountain Subdivision unless removed from Case No. W-7389 by court action. Please note that on October 11, 2016, when the letter was written, this office understood that none of the wells within Indian Mountain Metropolitan District ("IMMD") were included in any other plan of augmentation decreed by the Water Court. Therefore, in accordance with the W-7389 decree, Bar Star was instructed to make replacements for all of the wells served by Bar Star.

As provided in my recent letter dated July 17, 2018, approximately 340 wells have joined a decreed augmentation program operated by the Headwater Authority of the South Platte ("HASP"). Our office considers these wells to have been lawfully added to HASP's augmentation plan so as to reduce Bar Star's replacement obligations under our interpretation of the W-7389 decree.

In accordance with the W-7389 decree, we will continue to determine the amount and timing of augmentation water required to be released by Bar Star to cover the depletions resulting from the single-family residential equivalent units Bar Star serves at the time of replacement. I believe that I have adequately described how the number of units that Bar Star serves will be determined by DWR in my July 17, 2018 letter.

I would like to advise you that, like all water users, your reservoir(s) will be administered pursuant to their respective decrees and in accordance with DWR's




guidelines titled "GENERAL ADMINISTRATIVE GUIDELINES FOR RESERVOIRS, Colorado Division of Water Resources, October 2011, Amended February 2016", or as may be amended in the future. You can reference that document on our website at:
water.state.co.us/DWRIPub/Documents/Reservoir%20Administration%20Guidelines.pdf

Any releases of stored water for non-decreed beneficial use or purpose, such as a release in excess of Bar Star's replacement obligations as determined by the Division Engineer under the W-7389 decree, will be considered excess releases of storage water and will count against the volumetric fill limits of the reservoirs (paper fill) going forward. This paper filled portion of the reservoirs volumetric limits will be carried over to the following year, reducing the physical amount that you may store in the reservoirs.

Last, I would like to point out that the IMMD wells covered by HASP, have been added in accordance with the terms and conditions contained in the Court Decrees that govern the HASP augmentation plan. We consider the inclusion of these wells into HASP to be within the scope of court action previously contemplated in the 2016 Letter since it has the same effect on administration. Please recognize that we do not offer legal advice and Division Engineer Nettles' statement requiring removal from the W-7389 Decree was not intended as such.

Hopefully this provides clarity to your outstanding questions noted in your Letter. Thank you for your cooperation in this matter.

Regards,


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
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