

<b>DISTRICT COURT, PARK COUNTY, STATE OF COLORADO</b> P. O. Box 190 Fairplay, Colorado 80440	
<b>Plaintiff: INDIAN MOUNTAIN CORP</b>  v.  <b>Defendant: INDIAN MOUNTAIN METROPOLITAN DISTRICT</b>	<b>▲ COURT USE ONLY ▲</b>
ATTORNEY FOR INDIAN MOUNTAIN CORP. Adam C. Davenport, #45342 112 North Rubey Drive, Suite 101 Golden, Colorado 80403 Tele: (720) 627-6151 Fax: (720) 216-2055 Email: adam.davenport@indianmtncorp.com	Case No. 14CV30056
<b>INDIAN MOUNTAIN CORP.’S MOTION FOR RECONSIDERATION AND REQUEST FOR REASSIGNMENT AND RESETTING IN ACCORDANCE WITH C.R.C.P. 107(c)</b>	

Indian Mountain Corp. (“IMC”) by and through its undersigned counsel, files the following Motion for Reconsideration and Request for Reassignment and Resetting in Accordance with C.R.C.P. 107(c) (“Motion”). In support of this Motion, IMC states as follows:

**INTRODUCTION**

On August 19, 2015, Indian Mountain Metropolitan District (“IMMD”) filed a Verified Motion for Show Cause Order Regarding Criminal Contempt of Court Under C.R.C.P. 107(c) and Request for Ex Parte Consideration (“Show Cause Motion”). In its Show Cause Motion, IMMD alleges that certain actions by IMC subsequent to this Court’s March 16, 2015 Order (the “Order”) regarding disposition of the Indian Mountain Augmentation Plan water rights contradict the Order and “implicate the Orders of this Court in a fraud upon the public.” IMMD makes no attempt to explain how, after the Court’s denial of IMC’s Motion for Post-Trial Relief, IMC’s actions contradict the plain terms of this Court’s Orders. Nevertheless, the Court granted IMMD’s Show Cause Motion less than 24 hours after it was filed, providing IMC, and James Ingalls personally, no opportunity to respond to the allegations leveled against them. Based on the arguments more fully set forth below, IMC respectfully requests that the Court reconsider its granting of the Show Cause Motion.

In the alternative, IMC requests that the show cause hearing set by the Court on September 9, 2015 be reset to allow for James Ingalls to be personally served with the citation at least 21 days

prior to the date of the hearing as required by C.R.C.P. 107(c) and the Court's Order Granting the Show Cause Motion. Order to Show Cause at 5 ("At least 21 days before the time designated for the hearing, IMMD shall serve directly upon James Ingalls a copy of the Verified Motion and a Copy of this Order and Citation.").

Finally, IMC respectfully requests that the show cause hearing be reassigned to a different judicial official pursuant to C.R.C.P. 107(d).

#### ARGUMENT

### **I. IMC Respectfully Requests that the Court Reconsider its Order to Show Cause or in the Alternative, Hold the Order in Abeyance Until Such Time as IMC May Respond to the Allegations Contained in IMMD's Show Cause Motion**

#### **a. IMMD's Show Cause Motion Should be Denied for Failure to Make a Prima Facie Showing that IMC has Violated the Court's March 16 Order**

Regarding the disposition of the Indian Mountain Augmentation Plan Water Rights – the “central issue of the [14CV30056] case” – the Court held as follows:

The court finds and concludes that IMC received a benefit (proceeds from lot sales) from the purchasers of the lots, and that IMC would be unjustly enriched by charging ongoing fees forty (40) years later for use of the augmentation water. The court further finds and concludes that IMC holds title to the Augmentation Plan and its associated rights as trustee for the express benefit of the Indian Mountain property owners, the beneficiaries. As long as IMC retains ownership, IMC has a duty to maintain and operate the Augmentation Plan keeping it in compliance at all times. As long as IMC elects to retain ownership, IMC is entitled to be reimbursed for its actual and reasonable expenses for maintenance, repair and operation of the plan. IMC may delegate this task to IMMD or turn over ownership to IMMD, after which IMC's ongoing obligations regarding the Augmentation Plan shall cease.

March 16, 2015 Order at 8.

The sum total of IMMD's “prima facie showing that IMC has committed indirect criminal contempt against the Court” is three numbered paragraphs that contain conclusory allegations that IMC's actions have violated an order of the Court without so much as a mention of what the Court ordered on March 16, 2015, as quoted above.

Instead, IMMD claims that the Court's denial of IMC's Motion for Post-Trial Relief modifies the Court's March 16 Order and somehow precludes IMC from seeking reimbursement for its actual and reasonable expenses for maintenance, repair and operation of the plan pursuant to the plain terms of the Court's March 16 Order. In fact, the Court's Order Denying IMC's Motion for Post-Trial Relief reaffirms the operative language of the March 16 Order and states in its entirety:

This matter comes before the court pursuant to the Plaintiff's motion for reconsideration. The court has reviewed the motion, the response, and reply and hereby enters the following order.

The court ruled that Plaintiff is entitled to its "actual and reasonable expenses for maintenance, repair, and operation of the plan." However, Plaintiff failed to meet its burden of proof regarding the 'actual and reasonable expenses' incurred in 2012 and 2013. Furthermore, at trial Plaintiff did not seek payment for such expenses for prior years, and failed to meet its burden of proof regarding any such claimed expenses.

Therefore, Plaintiff's motion for reconsideration is denied.

April 6 Order.

Importantly, IMC's Motion for Post-Trial Relief requested the Court amend its findings and judgment pursuant to C.R.C.P. 59(a)(3) and (4). As quoted above, the Court denied IMC's motion to amend the March 16 Order and reaffirmed its previous ruling that "[IMC] is entitled to its 'actual and reasonable expenses for maintenance, repair, and operation of the plan.'" For IMMD to now claim that the denial of a motion to amend the Court's findings and order somehow changes the underlying judgment is disingenuous and contrary to the plain terms of the Court's orders.

**Moreover, IMMD and Indian Mountain Property Owners Association ("IMPOA") have both publically acknowledged that the actions that they now claim amount to criminal contempt are in fact, in conformance with this Court's Orders. In their May 12, 2015 joint newsletter, IMMD and IMPOA provided the following summary of the outcome of the 14CV30056 litigation:**

On March 16, 2015, the District Judge ruled in favor of the Indian Mountain Metropolitan District (IMMD), defendant in a lawsuit brought by Indian Mountain Corp (IMC). The Judge's two major rulings were that (1) the IMMD is operating in accordance with its 2013 Amended Service Plan approved by the Park County Board of County Commissioners and the District Court, and (2) the Indian Mountain Water Augmentation Plan, while record title is held by IMC, has been and is held in "constructive trust" for the sole benefit and use of Indian Mountain property owners. **Furthermore, the Judge ruled that IMC could only charge IM property owners for the "actual and reasonable expenses for maintenance, repair, and operation of the plan."** The full ruling is posted on both the IMMD and IMPOA website.

Exhibit A, IMPOA/IMMD Spring/Summer Newsletter posted on May 12, 2015 at 1-2 (emphasis added).

In essence, IMMD now seeks to either force IMC to operate the plan at its own expense indefinitely or strip IMC of the water rights, both of which are contrary to the Court's March 16 Order and amount to little more than a second bite at the proverbial apple. Further, IMMD's

accusations of criminal contempt ring hollow when that organization represented to lot owners that in fact, IMC could charge them for operation and maintenance pursuant to the Court's Orders. For all of these reasons, IMC respectfully requests that the Court reconsider its Order to Show Cause and now deny IMMD's Show Cause Motion.

**b. Alternatively, IMC Requests that the Court Hold the Show Cause Order in Abeyance Until IMC may respond to the Allegations Contained in the Show Cause Motion**

IMMD has sought both remedial and punitive sanctions for what it alleges are violations of this Court's Orders based on conclusory allegations of IMC's intent, motivations and mischaracterizations of IMC's representations to lot owners without any support for the same.<sup>1</sup> If found guilty, James Ingalls may be subject to a fine, imprisonment or both, with a maximum sentence of six months in jail. C.R.C.P. 107(d)(1); IMMD Show Cause Motion at p. 3, ¶ 18; Show Cause Order at 21.

"A court before imposing penal sanctions for contempt should proceed with caution and deliberation." *Lobb v. Hodges*, 641 P.2d 310, 311 (Colo. App. 1982). "The power should be exercised only when necessary to prevent obstruction or interference with the administration of justice." *Id.*; *See also, Conway v. Conway*, 299 P.2d 509, 510 (Colo. 1956) ("The power to punish for contempt should be used with caution after due deliberation, and only when necessary to prevent actual, direct obstruction of, or interference with, the administration of justice.") As of the filing of this Motion, IMC and Mr. Ingalls are being compelled to appear and defend against allegations to which they were precluded from responding. If the accusations leveled by IMMD are allowed to be fully briefed, the necessity of holding a show cause hearing may be completely nullified. As a result, IMC requests that the Court hold its Show Cause Order in abeyance and set a truncated briefing schedule for IMC to file its Response and IMMD its Reply.

**II. IMC Respectfully Requests that the Court Reset the Show Cause Hearing to Allow James Ingalls to be Personally Served as Required by C.R.C.P. 107(c) and this Court's Order to Show Cause**

The show cause hearing is currently set for September 9, 2015 at 9:00 a.m., or 20 days from date of the Court's Show Cause Order. As of the time of filing this Motion, Mr. Ingalls has not been personally served with either a copy of the motion, affidavit, order or citation. C.R.C.P. 107(c) requires that an alleged contemnor be personally served with a copy of the citation at least 21 days prior to the time designated for the person to appear: "The citation and a copy of the

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<sup>1</sup> For instance at paragraph 21 of the Show Cause Motion, IMMD states "the Letters falsely represent that IMC prevailed in the above captioned action; that IMC obtained a judgment, including statutory interest, from this Court; and that, as a result of this judgment, the residents of Indian Mountain are under an existing obligation of this Court to pay money to IMC." This accusation is patently false. At no point, either in the letters sent to Indian Mountain lot owners or in conversations with those lot owners has IMC ever represented that it prevailed in the 14CV30056 litigation. *See* Exhibit 1 to IMMD Show Cause Motion. Moreover, IMC does not claim to have "obtained a judgment", instead, IMC merely recited the Court's March 16 Order. *Id.*

motion, affidavit and order shall be served directly upon such person at least 21 days before the time designated for the person to appear.” Further, the Court ordered that Mr. Ingalls be personally served at least 21 days prior to the date of the hearing in its Order to Show Cause: “At least 21 days before the time designated for the hearing, IMMD shall serve directly upon James Ingalls a copy of the Verified Motion and a Copy of this Order and Citation.” Show Cause Order at 5. Even assuming arguendo that Mr. Ingalls is personally served within the next 24 hours, it will still be less than the 21 days required by the Rule and the Court’s Order.

IMC’s request that the hearing be reset to comport with C.R.C.P. 107(c) and the Show Cause Order is no mere trifle or technicality. Presumably, at least 21 days is afforded the accused so that they may arrange their personal affairs so that they may appear and answer the charges leveled against them. Here, Mr. Ingalls will be returning to Colorado on September 9 from family matters out of state. More fundamentally however, in addition to seeking a laundry list of remedial sanctions, IMMD is also seeking punitive sanctions that if awarded could result in imprisonment for a maximum of six months. C.R.C.P. 107(d)(1). Principles of due process dictate that Mr. Ingalls should at least be given the full 21 days to prepare his defense to IMMD’s allegations.

### **III. IMC Respectfully Requests that the Show Cause Hearing be Reassigned to a Different Judicial Officer as Provided by C.R.C.P. 107(d).**

Pursuant to C.R.C.P. 107(d)(1), at the show cause hearing Mr. Ingalls will be advised of his right to “have the action heard by another judge.” *See also, People v. Jones*, 262 P.3d 982, 989 (Colo. App. 2011) (“C.R.C.P. 107(d)(1) provides that in an indirect contempt proceeding initiated by a judge, the accused must be informed of her right to have the action heard by another judge.”). In the interest of judicial economy and out of respect for the time of opposing counsel, IMC now respectfully requests that the show cause hearing take place before a different judicial officer pursuant to C.R.C.P. 107(d)(1). IMC makes this request at this time so that the matter may be set on the docket of a different judge without causing unnecessary delay to the Court or the parties.

### **CONCLUSION**

WHEREFORE, IMC requests that the Court reconsider its Order to Show Cause based on IMMD’s failure to substantiate how IMC’s actions have violated the Court’s March 16 Order in light of their public admission that IMC may charge lot owners for operation and maintenance of the Augmentation Plan.

In the alternative, IMC requests that the Court suspend its Order and hold it in abeyance until IMMD’s Show Cause Motion is fully briefed. IMC further requests that, if its Motion for Reconsideration is not granted that the Court reset this matter to a later date to afford time for personal service and preparation of defense as required by C.R.C.P. 107 and the Court’s Show Cause Order. Finally, IMC requests that the show cause hearing be reassigned to a different presiding judicial officer pursuant to C.R.C.P. 107.

Three separate proposed orders are provided for the Court’s consideration for the three alternative requests for relief stated herein.

Dated this 21<sup>st</sup> day of August, 2015.

ATTORNEY FOR INDIAN MOUNTAIN CORP.

By:




Adam C. Davenport, #45342

E-filed per C.R.C.P. 121 –

Duly signed original on file with counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> day of August, 2015 a true and correct copy of this **MOTION FOR RECONSIDERATION AND REQUEST FOR REASSIGNMENT AND RESETTING IN ACCORDANCE WITH C.R.C.P. 107(c)** was filed in Case No. 14CV30056 and was served by e-filing via ICCES and addressed to the following:

S/   
Adam C. Davenport

Efiled per C.R.C.P. 121  
Duly signed original on file with counsel

Party Name	Party Type	Attorney Name
Indian Mountain Metropolitan District	Defendant	Matthew A. Montgomery Nathan Flynn Peter Ampe

# EXHIBIT A TO IMC MOTION FOR RECONSIDERATION



## INDIAN MOUNTAIN NEWS SPRING/SUMMER 2015

### A JOINT NEWSLETTER OF IMMD and IMPOA

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#### SUMMER 2015 EVENT SCHEDULE

Summer is a busy and wonderful time in Indian Mountain. Listed here are the key events to place on your calendar. The newsletter contains important details for each event. You can also keep current on all Indian Mountain events by checking the [www.indianmountain.info](http://www.indianmountain.info) under the heading *Events Calendar*.

Annual Community Open House at Community Center – Sunday, May 24, 1:30 p.m. – 3:30 p.m.

Indian Mountain Chili Cook-off at Community Center – Saturday, June 13, 4:00 p.m. – 7:00 p.m.

Annual July 4<sup>th</sup> Picnic at Indian Mountain Park – Saturday, July 4, 12:00 p.m. – 3:00 p.m.

Annual IMPOA Dumpster Day at Community Center – Sunday, July 5, 8:00 a.m. – 5:00 p.m.

Annual IMPOA Meeting at Community Center – Saturday, August 8, 1:00 p.m. – 3:00 p.m.

#### WATER UPDATE

On March 16, 2015, the District Judge ruled in favor of the Indian Mountain Metropolitan District (IMMD), defendant in a lawsuit brought by Indian Mountain Corp (IMC). The Judge's two major rulings were that (1) the IMMD is operating in accordance with its 2013 Amended Service Plan approved by the Park County Board of County Commissioners and the District Court, and (2) the Indian Mountain Water Augmentation Plan, while



record title is held by IMC, has been and is held in a “constructive trust” for the sole benefit and use of Indian Mountain property owners. Furthermore, the Judge ruled that IMC could only charge IM property owners for the “actual and reasonable expenses for maintenance, repair, and operation of the plan.” The full ruling is posted on both the IMMD and IMPOA websites.

Several additional legal actions have since transpired:

1. On March 30, 2015, IMC filed a motion for “post-trial relief” which in effect was a request for judicial reconsideration. IMMD strongly contested this request, and on May 6, 2015, the Judge issued an order denying IMC’s motion for reconsideration. This is good news for IM property owners.
2. In April, IMMD submitted a request for reimbursement of attorney fees, which would be paid by IMC. The amount requested was about \$38,000 and is a partial amount of the total court costs incurred to date. The Judge has not yet ruled on this request.
3. In April, IMMD submitted a request for reimbursement of some court costs, which would be paid by IMC. The amount requested was about \$8,000. The Judge has not yet ruled on this request.

A remaining question at this time is whether IMC will appeal the March 16, 2015, court ruling. Originally, our understanding was that IMC had 49 days from the March 16<sup>th</sup> ruling to file an appeal, but that timetable was altered because of IMC’s “post-trial relief” motion. With the Judge’s denial of that motion, IMC has time remaining to file an appeal. The ad hoc water committee will quickly post on the websites of IMMD and IMPOA any significant new information regarding the case.

## **ANNUAL COMMUNITY OPEN HOUSE**

The IMPOA and IMMD boards of directors will host a Community Open House on Sunday May 24<sup>th</sup> from 1:30 to 3:30 p.m. at the Community Center on Keneu Court. The agenda will cover a wide range of topics including roads, signage, burn pit, fire mitigation, comfort station and lodge improvements, upcoming events and the current water augmentation plan situation. There will be ample time for questions and discussion. This is an important opportunity to exchange information and views at the start of a new summer season on the mountain, so please try to join us.

## **INDIAN MOUNTAIN CHILI COOK-OFF**

Details concerning the first (or last) Indian Mountain Chili Cook-off on June 13, 2015 are posted on the IMPOA and IMMD websites. Residents who want to compete and share their chili recipes should get in line soon. There are six competitor slots remaining as this newsletter goes to press. If you are interested in this fun and friendly competition, please read the announcement on either website and then call Samantha at the Community Center to reserve your place among the twelve competitors (719-836-9043). Whether you want to be a competitor or not, mark your calendars to join us to taste, judge, and enjoy this special dining experience.

## **ANNUAL JULY 4TH PICNIC**

On Saturday July 4<sup>th</sup>, IMMD and IMPOA will sponsor the annual picnic at the park. There will be lots of good food and fun for the whole family. We ask that those attending bring a side dish to share that will feed 8 to 10 people. The meat, beverages and dessert will be provided by IMMD and IMPOA. The event begins at 12:00 p.m. and goes until 3:00 p.m. at Indian Mountain Park, 1996 Chief Trail. If you would like to volunteer to help in any way, please call Susan Stoval at 303-420-4509.

## **LODGE AND COMMUNITY CENTER RENTALS**

The lodge and the Community Center are booking up fast, so if you or your family need to rent either facility this year you are encouraged to go to [www.indianmountain.info](http://www.indianmountain.info) to the events calendar/lodge tab and check availability and then place your reservation with the business manager soon. Call Samantha for any questions you may have. 719-836-9043

## **GENERAL REMINDERS**

Summer hours at the Community Center begin on **May 9<sup>th</sup>** and will be as follows: Thursdays and Fridays 9:00 a.m. – 1:00 p.m. and Saturdays 9:00 a.m. – 5:00 p.m. The Center is open for use during these hours and there is WIFI access, TV/DVD viewing, pool table, games and books, so drop by and make yourself comfortable. You can also pick up your Burn Pit pass or comfort station/RV dump keys and register your RV for storage. If you have questions, call the office 719-836-9043 or email [indianmtn@hotmail.com](mailto:indianmtn@hotmail.com).

## **FUTURE EXPANSION TO COMMUNITY CENTER PARKING**

It's been raining. The annual Community Open House is this weekend. Do you leave a half-hour early to get a parking spot, or do you hope that you're lucky this time, and can park close enough to the Community Center to not have to walk up Keneu Court in the mud? Do you take a chance parking on Arrowhead, knowing it's too narrow for roadside parking and two-way traffic?

Maybe you've rented the Community Center for a wedding or a family reunion, but you have to warn everyone to meet somewhere else and carpool in because there's just not enough parking for everyone. Not a very convenient situation, especially if your guests don't know the roads very well.

Do these scenarios sound familiar? We've all been there. A solution may be available in the not-too-distant future: the Indian Mountain Metropolitan District (IMMD) Board is looking into the feasibility of building an expansion parking lot for the Community Center. The existing gravel parking lot can hold 20-24 cars, depending on how carefully everyone parks. The expansion lot that should hold another 50 cars, so if each car holds an average of two people, we could have decent parking for about 150 people!

The concept currently being considered is to build the expansion lot on the south side of Keneu Court, directly across from the existing lot. It would be graveled, with concrete parking blocks to identify where each car should park. The plan is to have four rows of parking with directed traffic flow in one direction to ease entry and exit. The board is currently seeking bids to verify that there is room in the annual budget for the project.

Please consider attending the monthly IMMD Board Meetings (2<sup>nd</sup> Saturday of each month, 9:00 am at the Community Center) or contact one of the board members to express your thoughts about adding more parking for the Center.

## **IMPROVEMENTS AT THE LODGE**

To better serve those Indian Mountain property owners who reserve the Lodge for themselves, their family or their friends, a fully tiled shower has been installed in the bathroom. Before this addition, guests had to walk to the Comfort Station to shower. This was not exactly convenient during inclement weather.

Ken McIver, a contractor, and Charles Phillips, the IMMD maintenance contractor, did the work. To accommodate the new shower, plumbing had to be redone, new pipes installed and the pressure tank in the basement moved. In addition, a cabinet was installed in the bathroom to increase surface and storage space.

On behalf of the community, the IMMD board thanks both Ken and Charles for a job well done and hopes future guests will enjoy these added conveniences.

## **FUTURE INDIAN MOUNTAIN OFF-LEASH DOG PARK**

Indian Mountain's natural beauty inspires us to enjoy the great outdoors in the company of our pets. However, the only legal and safe way to exercise our dogs is to keep them on leash. Unfortunately, many owners allow their dogs to roam freely. This practice is not only counter to Colorado law, which requires dogs to be under control, and Park County rules, it also is unsafe for the dogs who are potential prey for mountain lions, coyotes, porcupines, badgers, bears and a host of smaller critters. It is also unfair to neighboring property owners who may not want dogs on their property.

IMMD owns several underutilized properties that are possible places to establish an off-leash dog park. These sites are being assessed using criteria such as sufficient size to accommodate the fenced area and parking, minimal road dust and, importantly, impact on nearby property owners. As with all good dog parks, it would be operated under posted rules such as "daytime use only and users clean up and carry out for their own dogs."

The IMMD board envisions that volunteers would be responsible for constructing and maintaining such a park. Some volunteers have already signed up. If you would like to volunteer to help on this project, please leave your contact information with Samantha at the Community Center office 719-836-9043 or [indianmtn@hotmail.com](mailto:indianmtn@hotmail.com). For more information about off-leash dog parks, go to [www.akc.org](http://www.akc.org).

## **BURN PIT OPERATIONS IN 2015**

Spring is upon us and with it comes unpredictable weather! Accordingly, the opening of the IMMD Burn Pit has been tentatively pushed back to Saturday, May 16. The Fire Department was able to burn the forest slash from last year during the week of April 27, which is great news and many thanks go to that group! After the burn comes some clean up that still needs to be completed. In addition, we need to wait for the pit to dry out a bit. It is springtime in the Rockies and we can never bemoan the arrival of water here in Park County. People who are anxious to bring forest slash to the Burn Pit should check the IMMD website as well as the message board at the Community Center to follow progress and confirmation of the opening date before they load their vehicles.

IMMD needs a whole bunch of volunteers to maintain the Saturday 9:00 a.m. to 5:00 p.m. hours for the Burn Pit. Two shifts of two people each will be used again this year. The shifts are 9:00 a.m. to 1:00 p.m. and 1:00 p.m. to 5:00 p.m. every Saturday. If you are interested in providing your time and meeting your neighbors, please contact Bev Bushaw, IMMD board member, at [bbushaw@comcast.net](mailto:bbushaw@comcast.net) or 303-990-0459 or leave your contact information with Samantha at the Community Center. Let's help Bev fill those shifts quickly. :-)

Thanks to the people that have helped in the past and to the additional people that will help this season.

## **BURN PIT FIREWOOD**

One of the facilities that we are blessed with in Indian Mountain is the burn pit, where we can drop off forest slash from our properties. It's a great way to make our homes more defensible against wildfire, as well as to improve the aesthetics of our community. We have even invited our neighbors in adjoining communities such as Stagesstop, Elkhorn Ranch, Lost Park Ranch and Buffalo to make use of the burn pit for a fee.

Perhaps we've done too good of a job making use of the facility, however. The Jefferson-Como Fire District burns the slash for us, hopefully annually, but can't do that unless there is adequate snow on the ground, and no

more than marginal wind, to prevent air-borne cinders from carrying the fire outside of the pit. The burn itself throws off carbon, in the form of carbon dioxide, into our atmosphere, having an effect on the climate. One ton of wood, if completely burned, releases about 1.5 tons of carbon dioxide. A cord of pine weighs from 2 to 3 tons. You can do the math. Incredulous? Then to the web, where you will find scientific proof that burning wood generates more carbon dioxide than burning an equivalent amount of coal. Who would have thought?

There are options to burning the slash – it can be chipped in the pit, and the chips can be carried off for use in landscaping, but if the removal of the chips doesn't keep up with the creation, we would soon have a pile of chips that can't be burned (it would smolder for days, but not burn). The slash could, and perhaps should, be chipped in place, on the lot where it originated. The Fire District is working with a coalition of communities (with help from IMPOA) to determine the best way to develop and implement a plan to deal with forest slash.

There is another way that we, as property owners, can assist with the build-up of wood in the burn pit. If you have a wood-burning stove or fireplace, you probably already know that you are welcome to remove burnable wood from the pit, and maybe you already do this to secure your supply of firewood. If not, please consider it because bringing in firewood from an outside supplier doesn't help our local wildfire mitigation issues. Granted, the same amount of carbon dioxide will be released from the wood whether it's burned in the pit or in your stove (though some sources suggest that a stove may be more efficient), but we may as well get some value from the burn, rather than just sending the heat and smoke up in the air. Even if the wood in the pit is green, it will be seasoned properly after less than a year out of doors. Perhaps you only use your wood stove occasionally, more to set the mood than as a heat source, but think about how expensive propane is, and you may want to use more of that free wood from the pit.

Let's make the most of our resources, whether it's the burn pit itself or the wood that we put in it, and be good stewards of our planet.

## **WILDFIRE MITIGATION**

The return of summer brings renewed opportunity to increase the safety of your property from wildfire. The season also brings increased risk of wildfire. In Indian Mountain, we have had a three pronged approach to wildfire mitigation in recent years, namely,

1. The IMMD burn pit to dispose of forest slash created by property owners that clear accumulations of dead, down or overcrowded forest materials from their properties,
2. Chipping of forest slash on individual properties coordinated by IMPOA and conducted by volunteers with the help of the Coalition of the Upper South Platte (CUSP), and
3. Grant-supported wildfire mitigation by owners and contractors on community and private properties in Indian Mountain.

The burn pit will operate this year as it has in the recent past, i.e., open on Saturdays and manned by volunteer monitors to ensure that only forest slash enters the pit. Details of how the pit operates and how you can volunteer to be a monitor are described above.

No one has volunteered to lead the second program listed above (chipping by CUSP) in 2015. If no one volunteers to take on this chore, there will be no service of this type in Indian Mountain this year.

There is a chance that grants again will become available this year to support wildfire mitigation in IM. Roger Mattson, president of IMPOA, is coordinating requests for such grant money. If grant money becomes available, first priority will be given to community and private properties around the base of Indian Mountain to continue recent efforts by IMPOA, IMMD and individual property owners to protect that iconic area from

wildfire. Roger also can refer property owners to reliable contractors for assistance in improving their property's resistance to wildfire.

Indian Mountain received *Wildfire Community* recognition by the National Fire Protection Association and the US Forest Service in 2015, the third year in a row for this distinction. Property owners new to the idea of wildfire mitigation can learn about it in the Community Wildfire Protection Plan at [www.impoa.net](http://www.impoa.net). The *Firewise Communities* Program encourages local solutions for wildfire safety by involving owners, community leaders, planners, developers, firefighters and others in creating fire-adapted communities.

The Jefferson Como Fire Protection District (JCFPD), with encouragement from IMPOA and others, recently gained county approval for a new program to require wildfire mitigation measures for all new construction permits for residential and commercial properties in the District's boundaries. To pay for this initiative, the District is imposing an impact fee of \$250 on all new construction permits. You can read more about what services by JCFPD the fees will offset by going to the District's website at <http://www.jcfpd.org> and clicking on the tab More and then the tab Department News. Defensible space and other sensible wildfire mitigation measures will become standard practice for all new homes in Indian Mountain because of this laudable initiative by the District. Kudos to JCFPD for launching this program!

Finally, yet importantly, each of us bears a responsibility to protect our community against the ravages of wildfire. Care must be exercised with outdoor barbecues, campfires, slash burning, smoking, shooting, vehicles with hot mufflers in tall grass, etc. There are many ways our inattention to such details could exact a heavy price on our community and us. Let's be careful out there, especially in times of high fire danger as posted by the Fire District in cooperation with the Park County Sheriff. And, before you burn outside, get a permit.

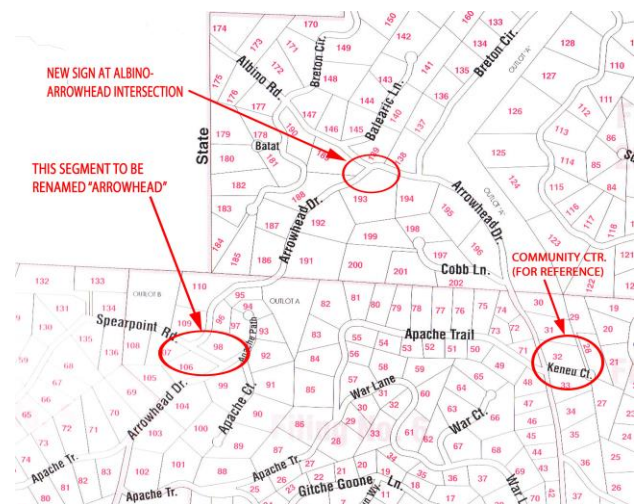
## IMPOA DUMPSTER DAY

IMPOA will host the annual Dumpster Day on Sunday, July 5, the day following the community picnic on Saturday, July 4. We will have two 40-yard dumpsters on Keneu Court next to the Community Center available from 8:00 a.m. to 5:00 p.m. Dues paying IMPOA members dump free; other IM property owners pay \$35, which includes IMPOA dues for 2015.

Items that cannot be dumped include garbage and appliances, such as refrigerators and air conditioners, which may contain Freon. Likewise, liquids, toxic substances and paints may not be dumped. However, near-empty cans of paint can be made solid and acceptable by adding kitty litter a few days before dumping. You can bring any items you might want to swap, and you can take items someone else has left.

## ROAD IMPROVEMENTS

At last! Albino Road (County Road 32) from the Jefferson-Como Fire Station to Indian Mountain will get a new roadbed soon. Park County Public Works (Road & Bridge) will re-construct the road with new materials from the end of the paved portion below the Fire Station into Indian Mountain on Arrowhead Drive, past the Community Center to Chief Trail, up Chief Trail to Stagesop Road, and down Stagesop Road to Highway 77. The new roadbed design was developed by Public Works through experiments on County 5 last fall. The new materials include a dust suppressant.



## **INDIAN MOUNTAIN STREET SIGNS**

IMPOA pays for street signs in Indian Mountain by reimbursing Park County Public Works that buys the signs from contractors. The County then installs the signs at no expense to IM property owners. If you see any missing or damaged signs in Indian Mountain, contact Fred Whitaker at 719-836-1702 or 303-947-2115 (cell).

IMPOA and the County are currently replacing signs at Albino and Arrowhead to clarify that Albino ends at that point and Arrowhead enters from the south and continues east past the Community Center. Folks who have turned right at the Albino/Arrowhead intersection, thinking that Arrowhead begins at that point, get lost when the road reaches Spearpoint and seems to end. A short stretch of Spearpoint at that area is being changed to Arrowhead to show that Arrowhead jogs left and continues south. There are similar problems along Warrior, and IMPOA will address them. If you know of any other signage problems please contact Fred.

IMPOA has been assessed \$1200 for materials by Road & Bridge to replace 60 old street signs with new reflecting street signs so emergency services can more readily find addresses on those streets.

## **SNOWPLOWING**

We had some issues with snow plowing in Indian Mountain this past winter. Fred Whitaker, member of the IMPOA board of directors, made a number of inquiries of the county on behalf of property owners. Here is a synopsis of what he learned. You might want to paste this information somewhere you can find it next fall.

Park County Public Works (Road & Bridge Department) has an on-line Road Classification and Snowplowing Priorities Map at [www.parco.us/documentcenter/view/1573](http://www.parco.us/documentcenter/view/1573). The map shows that the first priority Arterial roads in our area are Elk Horn Road, Albino Rd, Antler Ridge Rd, Hwy 77, Stagestop Road, and the major roads inside Indian Mountain: Arrowhead Dr., Longbow Dr., Chief Tr., and others. Collector and Local roads are shown with declining priorities. You can go to the Priorities Map to find your road and its priority.

The County's snowplowing is to be on a 24 hour, 7 days per week schedule for snowplowing during the winter months, meaning all of our roads should be cleared within three days of a snowstorm, if not sooner.

Typically, snow will be pushed to the south and east sides of our roads to prevent wind-blown snow from re-covering the roads. The snowplows will return after all roads have been plowed to clear driveway entrances, as time permits. Otherwise, clearing the driveway entrance is the responsibility of the resident.

From the Park County website:

“In emergency situations, plowing may be provided to access homes or citizens. If a citizen has an emergency, they should call 911 for assistance. Emergency plowing will only be provided once an emergency has been verified and at the discretion of the jurisdictional authority (fire, EMS, or law enforcement).

“If resources are requested to respond to a residence and the road was plowed to get there, the citizen will be responsible to pay for all costs if it is determined that no emergency exists. If you have questions about routine plowing procedures, please contact Public Works at (719) 836-4277.”

## **ATVs and INDIAN MOUNTAIN**

With the warmer weather, we'll see more folks come to the mountains to camp and enjoy all that Indian Mountain has to offer. Please be reminded that ATVs and any vehicle without a license plate are not allowed on the roads in Indian Mountain. There are trails for riding ATVs in the National Forest as long as one obtains an OHV (Off Highway Vehicle) pass from the Forest Service ahead of time. Of course, riding on your own



property is OK but not on your neighbor's property without permission. OHVs are also not allowed in Indian Mountain Park.

Here is an excerpt of Colorado law for "Off highway vehicles." Title 33, Section 14.5, Article (1) states clearly that off-highway vehicles are prohibited on streets, roads or highways except for road crossing, culvert crossing, etc. Article (2) describes ATV registration requirements. Here is the link for more information:  
[http://www.blm.gov/co/st/en/BLM\\_Programs/law\\_enforcement\\_-\\_ohv\\_use.html](http://www.blm.gov/co/st/en/BLM_Programs/law_enforcement_-_ohv_use.html)

What should you do if someone is riding an unlicensed ATV on the county roads? Have a friendly chat – they may not know that off road vehicles aren't allowed. If you prefer, you can contact the Park County Sheriff's non-emergency number at 719-836-2494. Everyone loves their time in Indian Mountain; please respect one another.

## **RECENT CHANGES ON IMPOA BOARD OF DIRECTORS**

This is an item of sad news and good news. The sad part is that two of the IMPOA directors have resigned in 2015, Tina Bogani and Glenn Haas. Tina was with the board for a brief time, but her service as Secretary of the Board was outstanding and greatly appreciated. Glenn has provided yeoman service to the board for more than 8 years. His first stint as a director, in which he served as President of the Board, extended from 2006 to 2009. His second stint was from 2011 to 2015, during which time he served as Vice President of the Board. Glenn has been part of the solid foundation on which the recent growth of IMPOA has been founded and was the major-domo in cementing good relations between the IMMD and the IMPOA boards of directors. Glenn has served the community in countless ways and likely will continue to do so for years to come. His current term on the IMPOA board was set to expire in August 2015 so he decided to step aside early to provide space on the board for a new director. He will continue to serve on the IMMD board of directors, as the IMMD liaison with IMPOA and as a member of the ad hoc water committee.

The good news is that two property owners have stepped forward to serve as IMPOA directors. The board at its April 2015 meeting appointed **Marcia Logan** to fill the final two years of Tina Bogani's term. Marcia has a background in finance and IT for a major oil and gas company. She is a part-time Indian Mountain resident, where she shares good times with her daughter and granddaughter. At the same April meeting, the board appointed **Dennis McQuillan** to fill the final few months of Glenn Haas's term. Dennis is a retired electrical engineer and project manager. He has been a part time Indian Mountain resident since 1997. He and his wife built their cabin over a period of 4 years. They also enjoy RV travel, bicycling and hiking. As required by the IMPOA Bylaws, any appointments to the board must be confirmed by a vote of the members in good standing at the next annual meeting. Both Marcia and Dennis plan to stand for election to these board positions at the August 8, 2015 annual meeting of IMPOA members. Board member Karen Goodman's term ends in August 2015, so the election will include her position as well. In addition, at its April 2015 meeting, the IMPOA board accepted Kim Novitch's offer to assume the position as Secretary of the Board, which duties she had been fulfilling for several months.

## **ANNUAL IMPOA MEETING AND ELECTION OF DIRECTORS**

The IMPOA annual meeting will be held on August 8, 2015 in the Community Center at 1:00 p.m. Three director positions are up for election at that time (see previous story). Three years ago, IMPOA moved the annual meeting into the summer months when more people are in the neighborhood. The result was much larger turnouts, and we hope for another large crowd this year. We promise to bring you up to speed on the latest news, show you how important your dues money is and give you all a chance to talk, ask questions and voice concerns. IMPOA membership is at an all-time high, exceeding the 700-member goal set for the year. We hope to see as many of you as possible at this important annual meeting!

## NEW IMPOA WEBSITE COMING SOON!

In the next month or so, the IMPOA board will be launching a brand new IMPOA website! The new site will still be available at the same location as the old site, i.e., [www.impoa.net](http://www.impoa.net). Our goal with the new website is to provide the community an easier way to learn about Indian Mountain and surrounding areas. The new website is interactive and provides additional functionality. It will enable the IMPOA board to provide property owners and others with information more quickly and efficiently. We will be updating the content of the website with helpful information, articles, newsletters and other community information and will have the ability to utilize systematic ways of interacting with owners, including surveys, online voting, payment of annual dues and donations. It will be Coming Soon to a computer near you!

### IMPOA Board of Directors Contact Information

Name	Position	Term	Phone	e-Mail Address	Mailing Address
Karen Goodman	Treasurer	2015	303-912-1063	<a href="mailto:kkmbg1@comcast.net">kkmbg1@comcast.net</a>	PO Box 203 Como, CO 80432
Gail Lane	Membership Director	2016	719-836-3154	<a href="mailto:rgflane@centurylink.net">rgflane@centurylink.net</a>	PO Box 32 Como, CO 80432
Marcia Logan	Director	2017	970-586-9194	<a href="mailto:ep.mjlogan@yahoo.co">ep.mjlogan@yahoo.co</a>	1360-C Raven Circle Estes Park, CO 80517
Dennis McQuillan	Director	2015	303-881-5091	<a href="mailto:dmcqtech@gmail.com">dmcqtech@gmail.com</a>	6179 S. Fenton Ct. Littleton, CO 80123
Roger Mattson	President	2016	303-278-1406	<a href="mailto:rdmattson@comcast.net">rdmattson@comcast.net</a>	2511 Fossil Trace Ct. Golden, CO 80401
Kim Novitch	Secretary	2017	303-941-6190	<a href="mailto:oufunchick@hotmail.com">oufunchick@hotmail.com</a>	17079 E. 106th Way Commerce City CO80022
Fred Whitaker	Director	2017	719-836-1702	<a href="mailto:whitakerfc@gmail.com">whitakerfc@gmail.com</a>	PO Box 255 Como, CO 80432
Samantha Bertin	Business Manager	---	719-836-9043	<a href="mailto:cloudnineranch@gmail.com">cloudnineranch@gmail.com</a>	---
IMPOA Contacts	---	---	IMPOA.net	<a href="mailto:IMPOA01@hotmail.com">IMPOA01@hotmail.com</a>	PO Box 196 Jefferson, CO 80456

### IMMD Board of Directors Contact Information

Name	Position	Phone	e-Mail Address	Mailing Address
Beverly Bushaw	Vice President II	303-990-0459	<a href="mailto:bbushaw@comcast.net">bbushaw@comcast.net</a>	PO Box 25 Como, CO 80432
Glenn Haas	Secretary	970-498-9350	<a href="mailto:glennehaas@comcast.net">glennehaas@comcast.net</a>	3403 Green Wing Ct Fort Collins, CO 80524
Louise Mark	Vice President	719-836-2481	<a href="mailto:lfmark43@gmail.com">lfmark43@gmail.com</a>	PO Box 28 Como, CO 80432
Tom Odle	Treasurer	303-683-9812	<a href="mailto:thodle99@q.com">thodle99@q.com</a>	2855 Clairton Dr. Highlands Ranch, CO 80126
Susan Stoval	President	719-836-0138	<a href="mailto:sdstoval@gmail.com">sdstoval@gmail.com</a>	PO Box 25 Como, CO 80432
Samantha Bertin	Business Manager	719-836-9043	<a href="mailto:indianmtn@hotmail.com">indianmtn@hotmail.com</a>	---
IMMD Contacts	---	indianmountain.info	<a href="mailto:indianmtn@hotmail.com">indianmtn@hotmail.com</a>	PO Box 25 Como, CO 80432



<b>District Court, Park County, State of Colorado</b> P.O. Box 190 Fairplay, Colorado 80440	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<b>Plaintiff: Indian Mountain Corp.</b>  v.  <b>Defendant: Indian Mountain Metropolitan District</b>	
<b>ORDER GRANTING INDIAN MOUNTAIN CORP.'S MOTION TO RECONSIDER AND ORDER DENYING INDIAN MOUNTAIN METROPOLITAN DISTRICT'S MOTION FOR ORDER TO SHOW CAUSE</b>	

THIS MATTER comes before the Court on Plaintiff Indian Mountain Corp.'s ("IMC") Motion for Reconsideration and Request for Reassignment and Resetting in Accordance with C.R.C.P. 107(c) filed August 21, 2015 (the "Motion"). Having reviewed the Motion, any response and reply, and now being fully advised in the premises the Court now finds, concludes, and orders as follows:

In the Motion IMC requests that the Court reconsider its August 20, 2015 Order to Show Cause and to deny Indian Mountain Metropolitan District's ("IMMD") Motion for Order to Show Cause. In support of its request, IMC provided a joint newsletter published by IMMD and Indian Mountain Property Owners Association ("IMPOA") and provided to Indian Mountain lot owners on or about May 12, 2015. In the newsletter, IMPOA and IMMD stated that "the Judge ruled that IMC could only charge IM property owners for the 'actual and reasonable expenses for maintenance, repair, and operation of the plan.'" The Court finds and concludes that IMMD may not now seek an order finding IMC in contempt when IMMD acknowledged that the Court's orders allowed IMC to take the actions that it now alleges amount to contempt.

The Court further finds and concludes that IMC has not misrepresented the import of the Courts orders to Indian Mountain lot owners. The statements contained in the letters sent to Indian Mountain lot owners from IMC are not substantially different than the explanation that IMMD provided to lot owners in the May 12, 2015 newsletter.

WHEREFORE, the Court hereby CONCLUDES AND ORDERS that the Motion to Show Cause entered on August 20, 2015 is DISCHARGED and IMMD's Verified Motion for Show Cause Order Regarding Criminal Contempt of Court Under C.R.C.P. 107(c) is hereby DENIED.

Entered this \_\_\_\_ day of \_\_\_\_\_, 2015.

BY THE COURT:

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Honorable Stephen A. Groome

<b>District Court, Park County, State of Colorado</b> P.O. Box 190 Fairplay, Colorado 80440	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<b>Plaintiff: Indian Mountain Corp.</b>  v.  <b>Defendant: Indian Mountain Metropolitan District</b>	
<b>ORDER GRANTING INDIAN MOUNTAIN CORP.’S MOTION TO HOLD SHOW CAUSE ORDER IN ABEYANCE</b>	

THIS MATTER comes before the Court on Plaintiff Indian Mountain Corp.’s (“IMC”) Motion for Reconsideration and Request for Reassignment and Resetting in Accordance with C.R.C.P. 107(c) filed August 21, 2015 (the “Motion”). Having reviewed the Motion, any response and reply, and now being fully advised in the premises the Court now finds, concludes, and orders as follows:

In its Motion, IMC requested that it have the opportunity to fully brief and respond to the allegations made by Indian Mountain Metropolitan District in its Motion for Order to Show Cause. “A court before imposing penal sanctions for contempt should proceed with caution and deliberation.” *Lobb v. Hodges*, 641 P.2d 310, 311 (Colo. App. 1982). “The power should be exercised only when necessary to prevent obstruction or interference with the administration of justice.” *Id.*; *See also, Conway v. Conway*, 299 P.2d 509, 510 (Colo. 1956) (“The power to punish for contempt should be used with caution after due deliberation, and only when necessary to prevent actual, direct obstruction of, or interference with, the administration of justice.”).

The Court finds and concludes that IMC should be afforded the opportunity to respond to IMMD’s allegations. Doing so will more fully develop the pertinent issue of whether IMC’s actions following the Court’s March 16 and April 6 Orders amount to a deliberate and willful disobedience of the plain terms of the orders and will increase judicial efficiency.

WHEREFORE, the Court hereby CONCLUDES AND ORDERS that the Order to Show Cause issued by the Court on August 20, 2015 is hereby held in abeyance until the allegations raised by IMMD its Motion for Show Cause Order are fully briefed. IMC shall have five (5) days from the date of this Order to file its Response to IMMD’s Motion for Order to Show Cause. IMMD will thereafter have three (3) days in which to file its Reply after IMC has filed its Response. The Court will thereafter rule on whether a show cause order is warranted.

Entered this \_\_\_\_ day of \_\_\_\_\_, 2015.

BY THE COURT:

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Honorable Stephen A. Groome

<b>District Court, Park County, State of Colorado</b> P.O. Box 190 Fairplay, Colorado 80440	<b>▲ COURT USE ONLY ▲</b>
<b>Plaintiff: Indian Mountain Corp.</b>  v.  <b>Defendant: Indian Mountain Metropolitan District</b>	
<b>ORDER GRANTING INDIAN MOUNTAIN CORP.’S MOTION TO RESET SHOW CAUSE HEARING AND REASSIGNMENT PURSUANT TO C.R.C.P 107(c)</b>	

THIS MATTER comes before the Court on Plaintiff Indian Mountain Corp.’s (“IMC”) Motion for Reconsideration and Request for Reassignment and Resetting in Accordance with C.R.C.P. 107(c) filed August 21, 2015 (the “Motion”). Having reviewed the Motion, any response and reply, and now being fully advised in the premises the Court now finds, concludes, and orders as follows:

On August 20, 2015, this Court entered an Order Granting Indian Mountain Metropolitan District’s (“IMMD”) Motion for Order to Show Cause and set the said hearing for September 9, 2015 at 9:00 a.m.; a period of 20 days between the date of the Court’s order and the date set for the show cause hearing. C.R.C.P. 107(c) requires that the alleged contemnor be personally served with the citation and a copy of the motion, affidavit and order at least 21 days prior to the date set for the person to appear. The Court’s August 20, 2015 Order Granting Indian Mountain Metropolitan District’s Motion for Order to Show Cause also required that James Ingalls be personally served the citation and a copy of the motion, affidavit and order at least 21 days prior to the date set for the show cause hearing. Since it is impossible meet the 21 day requirement set forth in C.R.C.P. 107 and this Court’s August 20, 2015 Order, the Court finds that the show cause hearing must be reset to a date no sooner than 21 days after Mr. Ingalls is personally served. The Court further finds that principles of due process can only be served by granting Mr. Ingalls at least 21 days in which to prepare his defense to the allegations made against him by IMMD.

In the Motion, IMC also requested that the show cause hearing be reassigned to a different presiding judge, as is its right pursuant to C.R.C.P. 107(d). In Colorado, “where conditions do not make it impracticable, or where the delay may not injur[e] public or private right, a judge called upon to act in a case of contempt in which he is involved may, without flinching from his duty, properly ask that one of his fellow judges take his place.” *Harthun v. District Court in and for Second Judicial District*, 495 P.2d 539, 542 (Colo. 1972). The Court finds that reassignment of the show cause hearing to a different presiding judge will not cause

prejudice or undue delay to any party. As such, the Court finds that the show cause hearing shall be heard by a different presiding judge.

WHEREFORE, the Court hereby CONCLUDES AND ORDERS that the show cause hearing shall be reassigned to a different presiding judge. The Court FURTHER CONCLUDES AND ORDERS that the show cause hearing shall be reset for a date not later than at least 21 days after James Ingalls is personally served with the citation and a copy of the motion, affidavit and order as required by C.R.C.P. 107(c) and this Court's previous order granting IMMD's Motion for Order to show Cause.

Entered this \_\_\_\_ day of \_\_\_\_\_, 2015.

BY THE COURT:

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Honorable Stephen A. Groome