

DISTRICT COURT, PARK COUNTY, STATE OF COLORADO P. O. Box 190 Fairplay, Colorado 80440	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<b>Plaintiff:</b>  <b>INDIAN MOUNTAIN CORP.</b>  v.  <b>IMMD:</b>  <b>INDIAN MOUNTAIN METROPOLITAN DISTRICT</b>	
Attorneys for Indian Mountain Metropolitan District: Peter J. Ampe, #23452 Nathan P. Flynn #39336 Andrew J. Rottman, #41317 Hill & Robbins, P.C. 1660 Lincoln Street, Suite 2720 Denver, CO 80264 Phone: (303) 296-8100 Fax: (303) 296-2388 E-mail: peterampe@hillandrobbsins.com nflynn@hillandrobbsins.com arottman@hillandrobbsins.com	Case Number: 14CV30056  Ctrm/Div: _____
<b>INDIAN MOUNTAIN METROPOLITAN DISTRICT'S ANSWER AND COUNTERCLAIMS</b>	

Indian Mountain Metropolitan District (“IMMD”), by and through its counsel, Hill & Robbins, P.C., submits this Answer and Counter Claims to Plaintiff Indian Mountain Corp.’s Complaint.

**I. ANSWER**

1. IMMD is without knowledge or information as to the allegations contained in paragraph 1 of the Complaint, and therefore denies same.
2. IMMD admits the allegations contained in paragraph 2 of the Complaint.
3. IMMD admits the allegations contained in paragraph 3 of the Complaint.

4. IMMD admits the allegations contained in paragraph 4.a. of the Complaint. IMMD is without knowledge or information as to the allegations contained in paragraph 4.b of the Complaint, and therefore denies same.

5. IMMD admits the allegations contained in paragraph 5 of the Complaint.

6. IMMD admits the allegations contained in paragraph 6 of the Complaint.

7. The boundaries of the Indian Mountain Subdivision are on file with the Park County Clerk and Recorder. To the extent such location may be considered generally east of the Town of Como, IMMD admits the allegations contained in paragraph 7 of the Complaint.

8. IMMD admits the allegations contained in paragraph 8 of the Complaint.

9. IMMD admits the allegations contained in paragraph 9 of the Complaint as a general matter; however, there may be wells that were drilled but never connected to or used for an indoor water supply.

10. Paragraph 10 calls for a legal conclusion, to which no response is required. To the extent that a response is required, IMMD denies the same. Further, the well permits governing use of groundwater within the Subdivision and the W-7389 Decree speak for themselves and are the best evidence of their content.

11. Paragraph 11 and its subparagraphs call for a legal conclusion, to which no response is required. To the extent that a response is required, IMMD denies the same. Further, the W-7389 Decree speaks for itself and is the best evidence of its content.

12. IMMD admits the allegations contained in paragraph 12 of the Complaint. However, the 1972 Service Plan speaks for itself and is the best evidence of its content.

13. Paragraph 13 calls for a legal conclusion, to which no response is required. The 1972 Service Plan speaks for itself and is the best evidence of its content.

14. Paragraph 14 calls for a legal conclusion, to which no response is required.

15. IMMD denies the allegations contained in paragraph 15 of the Complaint.

16. IMMD denies the allegations contained in paragraph 16 of the Complaint.

17. IMMD admits that based on the request and urging of the former sole and controlling shareholder of the Indian Mountain Corp., on November 13, 2012, the Board of Directors of the Indian Mountain Recreation and Park District filed an Amended and Restated Service Plan for the District with the Park County Clerk and Recorder.

18. IMMD admits the allegations contained in paragraph 18 of the Complaint. However, the Amended Service Plan speaks for itself and is the best evidence of its content.

19. IMMD admits that the Amended Plan petitioned for a change to a metropolitan district. However, the Amended Service Plan speaks for itself and is the best evidence of its content. The remaining allegations in paragraph 19 of the Complaint call for legal conclusions, to which no response is required.

20. IMMD admits the allegations contained in paragraph 20 of the Complaint. However, the Amended Service Plan speaks for itself and is the best evidence of its content.

21. IMMD admits the allegations contained in paragraph 21 of the Complaint. However, the Amended Service Plan speaks for itself and is the best evidence of its content.

22. Paragraph 22 calls for a legal conclusion, to which no response is required.

23. Paragraph 23 calls for a legal conclusion, to which no response is required. To the extent that a response is required, IMMD denies the implication that the listed services are the only services provided by the District or that said services constitute only two services. Further, the Amended Plan speaks for itself and is the best evidence of its content.

24. IMMD admits that the Amended Plan includes the language in paragraph 24 and its subparts. However, the Amended Service Plan speaks for itself and is the best evidence of its content.

25. IMMD admits the allegations contained in paragraph 25 of the Complaint. However, Resolution No. 2013-01 of the Park County Colorado Board of County Commissioner speaks for itself and is the best evidence of its content.

26. IMMD admits the allegations contained in paragraph 26 of the Complaint. However, the February 26, 2013 Order of the Park County District Court speaks for itself and is the best evidence of its content.

27. IMMD denies the allegations contained in paragraph 27 of the Complaint. However, IMMD admits that, because Indian Mountain Corp. has refused to recognize that it holds the W-7389 Decree in trust for the benefit of the owners of lots within the Indian Mountain Subdivision and has refused to transfer title to IMMD to hold the W-7389 Decree on behalf of the owners of lots within the Indian Mountain Subdivision, Plaintiff's actions have prevented IMMD from providing certain water services, as IMMD believes Plaintiff is using the term "water services." IMMD is without knowledge as to whether it has correctly interpreted "water services," insofar as the term is used by Plaintiff in this paragraph.

28. IMMD denies the allegations contained in paragraph 28 of the Complaint.

29. IMMD is without sufficient knowledge to determine what Plaintiff means by "acquired," and therefore denies the allegations in paragraph 29 of the Complaint. To the extent IMMD has an interest in the Water Rights held in trust for the benefit of the Indian Mountain Lot

Owners, IMMD asserts an ownership interest in the Water Rights. In addition, IMMD has water rights other than those held in trust pursuant to the W-7389 Decree.

30. IMMD is without sufficient knowledge to determine what Plaintiff means by “water service,” and therefore denies the allegations in Paragraph 30 of the Complaint. To the extent IMMD has an interest in to the Water Rights held in trust for the benefit of the Indian Mountain Lot Owners, IMMD asserts an ownership interest in the Water Rights.

31. IMMD admits that the Park County Assessor’s office shows Indian Mountain Corp. c/o Bar Star Land LLC as the owner of the listed property. IMMD is without sufficient knowledge as to whether taxes have been paid and therefore denies the remaining allegations contained in paragraph 31 of the Complaint.

32. IMMD is without sufficient knowledge as to the adequacy of the chain of title upon which Plaintiff bases its claim of ownership, and therefore denies same. To the extent Plaintiff has an interest in the Water Rights, such interest is held in trust for the benefit of the Indian Mountain Lot Owners.

33. IMMD is without sufficient knowledge as to what actions Plaintiff took during 2012 and 2013 and whether actions complied with the W-7389 Decree, and therefore denies the allegations contained in paragraph 33 of the Complaint.

34. IMMD admits that the District has not provided compensation to Plaintiff, but is without sufficient knowledge to determine what Plaintiff means by “services” and so denies the allegations contained in paragraph 34. Further, paragraph 34 calls for a legal conclusion, to which no response is required.

35. IMMD incorporates by reference all answers and responses to all other paragraphs as if fully set forth herein.

36. Paragraph 36 of the Complaint calls for a legal conclusion, to which no response is required.

37. Paragraph 37 of the Complaint calls for a legal conclusion, to which no response is required.

38. IMMD admits there is a controversy between Plaintiff and IMMD as to whether Plaintiff holds an interest in the Water Rights, and if so, what is the extent of such interest.

39. Paragraph 39 of the Complaint calls for a legal conclusion, to which no response is required. To the extent that a response is required, the Complaint speaks for itself and is the best evidence of its content as to what Plaintiff seeks.

40. IMMD incorporates by reference all answers and responses to all other paragraphs as if fully set forth herein.

41. Paragraph 41 of the Complaint calls for a legal conclusion, to which no response is required. To the extent a response is required, IMMD denies the allegations contained in the paragraph.

42. Paragraph 42 of the Complaint calls for a legal conclusion, to which no response is required. To the extent a response is required, IMMD denies the allegations contained in the paragraph.

43. Paragraph 43 of the Complaint calls for a legal conclusion, to which no response is required. To the extent a response is required, IMMD denies the allegations contained in the paragraph.

44. IMMD denies the allegations contained in Paragraph 44 of the Complaint.

45. Paragraph 45 of the Complaint calls for a legal conclusion, to which no response is required. To the extent a response is required, IMMD denies the allegations contained in the paragraph.

46. Paragraph 46 of the Complaint calls for a legal conclusion, to which no response is required. To the extent a response is required, IMMD denies the allegations contained in the paragraph.

47. IMMD incorporates by reference all answers and responses to all other paragraphs as if fully set forth herein.

48. Paragraph 48 of the Complaint calls for a legal conclusion, to which no response is required.

49. IMMD denies the allegations contained in Paragraph 49 of the Complaint.

50. IMMD admits paragraph 50 of the Complaint and its subparts that list language contained in the Amended Plan. However, the Amended Service Plan speaks for itself and is the best evidence of its content.

51. Paragraph 51 of the Complaint and its subparts call for a legal conclusion, to which no response is required. To the extent a response is required, IMMD denies the allegations contained in the paragraph and its subparts.

52. Paragraph 52 of the Complaint calls for a legal conclusion, to which no response is required.

53. Paragraph 53 of the Complaint calls for a legal conclusion, to which no response is required. To the extent a response is required, IMMD denies the allegations contained in the paragraph.

54. Paragraph 54 of the Complaint calls for a legal conclusion, to which no response is required. To the extent a response is required, IMMD denies the allegations contained in Paragraph 54.

55. Paragraph 55 of the Complaint calls for a legal conclusion, to which no response is required. To the extent that a response is required, the Complaint speaks for itself and is the best evidence of its content as to what Plaintiff seeks.

56. IMMD incorporates by reference all answers and responses to all other paragraphs as if fully set forth herein.

57. Paragraph 57 of the Complaint calls for a legal conclusion, to which no response is required. To the extent a response is required, IMMD denies the allegations contained in the paragraph.

58. Paragraph 58 of the Complaint calls for a legal conclusion, to which no response is required. To the extent a response is required, IMMD denies the allegations contained in the paragraph.

59. Paragraph 59 of the Complaint calls for a legal conclusion, to which no response is required. To the extent that a response is required, the Complaint speaks for itself and is the best evidence of its content as to what Plaintiff seeks.

### **AFFIRMATIVE DEFENSES**

60. The Complaint fails to state a claim upon which relief may be granted.

61. This matter is not ripe.

62. The Complaint should be dismissed for failure to join indispensable parties who have an interest that would be affected by the declaratory judgment. In addition to the negative impact the declaratory judgment would have on property and residents within the Indian Mountain Subdivision, individuals and/or entities may have an ownership interest in the Indian Mountain Plan of Augmentation, and the water rights associated therewith, either by adverse possession or record title.

63. Plaintiff's claims are barred by the doctrines of estoppel, laches, and waiver.

64. Plaintiff's claims are barred by the doctrines of res judicata and/or collateral estoppel.

## **II. COUNTERCLAIMS**

## **FACTUAL ALLEGATIONS**

65. The Indian Mountain Subdivision is located entirely within Park County, Colorado.

66. The Indian Mountain Subdivision now consists of approximately 2,450 lots of less than 35 acres, owned by various individuals or entities (“Indian Mountain Lot Owners”), including property owned by IMMD for the recreational benefit of the Indian Mountain Lot Owners and their guests.

67. The Indian Mountain Subdivision was conceived and largely developed by Meridian Property Development (“Meridian”), which acted as the general partner for various individuals, groups, and entities that invested and participated in the development of the Indian Mountain Subdivision.

68. Meridian began the process of developing and platting the Indian Mountain Subdivision in the late 1960s or very early 1970s.

69. As originally conceived by Meridian, the Indian Mountain Subdivision was to consist of approximately 10,000 acres, divided into thousands of individual lots less than 35 acres, together with recreational amenities for the lot owners, including a ski area, 18-hole executive golf course, ponds, trails, equestrian facilities, and snowmobile trails.

70. In August 1970, Meridian, as General Partner to various individuals and entities, filed the first subdivision plat, Filing No. 1, with the Park County Clerk and Recorder.

71. As Meridian went forward with its attempts to develop the Indian Mountain Subdivision, subdivide property, and sell the lots to individuals, the development was blocked by the State Engineer following a determination that material injury was likely to occur to decreed water rights by virtue of diversion of water necessary or proposed to be used to supply the proposed subdivision and his review of adequacy of proposed water supply to meet requirements of the proposed subdivision.

72. Meridian, through Park Development Corporation, then ceased developing the Indian Mountain Subdivision and suspended sales.

73. In March 1972, representatives of Meridian presented a proposed Service Plan for the proposed Indian Mountain Metropolitan Recreation and Park District (“Recreation District”) to the Park County Board of County Commissioners.

74. The Park County Board of County Commissioners chose not to vote on establishing the Recreation District until such time as the proposed Indian Mountain Subdivision complied with Colorado law by establishing a manner to replace out-of-priority depletions from ground water withdrawals within the developed subdivision.

75. Meridian never established a homeowners association or similar entity to hold water rights for the Indian Mountain Subdivision or the Indian Mountain Lot Owners.

76. In response to the prohibition of the continued development and subdivision of the property, on May 31, 1973, Meridian filed an Application for Change of Water Right and Application for Approval of Plan for Augmentation in District Court, in and for Water Division No. 1, Case No. W-7389.

77. The purpose of the W-7389 Application was to change the use of certain decreed irrigation rights and decree Indian Mountain Plan of Augmentation to allow for the subdivision of the 10,000 acres to create the Indian Mountain Subdivision and the Recreation District and sell those subdivided lots.

78. On January 2, 1974, the Water Court for Water Division 1 entered its Findings of Fact, Conclusions of Law and Decree Modifying Water Rights and Approving Plan of Augmentation in Case No. W-7389 (“W-7389 Decree”), decreeing a change of use and plan of augmentation to replace out-of-priority depletions caused by the withdrawal of ground water by up to 5,250 single-family residential equivalent units either for individual wells per unit or for larger wells for multiple-family units or multiple units of single-family dwellings.

79. The stated purpose of the W-7389 Decree “is to eliminate the projected injury to other water rights in the South Platte River, to assure the granting of permits for wells under ’63 C.R.S. 148-21-45 and other provisions of the law and to prevent curtailment of diversions through facilities required to serve the 5,250 single-family residential equivalent units that the applicant has presented its plan of augmentation to this Court for approval.”

80. Said W-7989 Decree further holds: “The State Engineer, in the discharge of his responsibility with respect to the processing of applications for permits to drill wells and use ground water for the provisions of domestic or municipal water service to 5,250 single-family residential equivalent units within the Indian Mountain development, either through individual on-lot wells sought under the provisions of ’63 C.R.S 148-21-45 or through wells applied for under other provisions of the law which may be required to supply multi-family units or multiples of single-family units shall recognize the existence and operation of this plan of augmentation and shall not deny applications for wells for the purposes herein mentioned and within the amounts herein contemplated, but shall require the applicant, as a condition precedent to the issuance of any such well permit, to file, as an attachment to his application, a receipt from the Water Clerk of Water Division No. 1 for the payment herein of a \$5.00 supplemental docket fee for the recording in these proceedings of each well applied for.”

81. On June 30, 1975, in Civil Action No. 4062, the District Court of Park County entered a decree creating the Indian Mountain Parks and Recreation District (“Recreation District”). As a parks and recreation district, the Recreation District did not have the authority to hold, own, or control water rights.



82. After securing access to a domestic water supply for Indian Mountain Subdivision Lot Owners through the W-7389 Decree, the development project was revived and land comprising the Indian Mountain Subdivision was duly subdivided and the plats filed with the Park County Clerk and Recorder, which filings continued for years. The various plats were filed with Meridian as general partner and various individuals or entities as limited partners. The total number of lots created through said subdivision and platting was approximately 2,500.

83. The sale price of said lots by Meridian or its various subsidiary entities reflected the higher value of land in Park County, Colorado, that could legally be developed for residential use with a non-exempt domestic well protected by an associated decreed plan of augmentation to replace all out-of-priority depletions from that domestic well.

84. James Campbell signed said plats and other legal and binding documents on behalf of Meridian Properties.

85. Said lots were sold through various grantors including Park Development Corporation and Indian Mountain Corp.

86. Sales of lots were represented by Indian Mountain Corp. as having the approval of the State Engineer and District Court – Water Division No. 1 for the issuance of well permits on individual lots, and that there would be no central water supply.

87. Indian Mountain Corp. provided documents to potential purchasers stating that access to well permits for a domestic water supply is “assured by the developer.”

88. As sales of lots in the Indian Mountain Subdivision continued, the development was scaled back, as the developers realized the impractical nature of sustaining a ski area, executive golf course, and other amenities. Those planned amenities were abandoned and the number of single-family residential units was reduced.

89. As sales of lots in the Indian Mountain Subdivision continued, various legal disputes arose, both internal and external to Meridian and Indian Mountain Corp.

90. As a result of the resolution of various legal disputes, upon information and belief, Indian Mountain Corp. is the successor or assignee of the rights and liabilities of Meridian. Indian Mountain Corp. now asserts ownership of the Indian Mountain Plan of Augmentation.

91. James Campbell became the primary, if not sole, stockholder, owner, and controller of Indian Mountain Corp.

92. Sale of lots and development of single family residences on those lots continued. The State Engineer issued permits to construct wells upon receipt of the five-dollar fee required by the W-7389 Decree, with the following term and condition: “Approved pursuant to CRS 37-90-137(2) on the condition that this well is operated in accordance with the Meridian Properties,

Inc. Augmentation Plan approved by the Division 1 Water Court in case no. W-7389. If this well is not operated in accordance with the terms of said decree, it will be subject to administration including orders to cease diverting water.”

93. The Indian Mountain Lot Owners have for four decades continuously, openly, and exclusively put the water rights decreed in the W-7389 case to a beneficial use, namely the replacement of out-of-priority depletions from domestic wells in the Indian Mountain Subdivision.

94. At no time over the previous four decades, or by any means in the sale of Indian Mountain property lots, did James Campbell or the Indian Mountain Corp. convey to the purchasers or owners of Indian Mountain Subdivision property, realtors engaged in the sale of Indian Mountain property, the Indian Mountain Property Owners Association (a voluntary association of Indian Mountain lot owners) (“IMPOA”), the former Indian Mountain Recreation and Park District, or the current Indian Mountain Metropolitan District that there was an expectation, obligation, liability, or responsibility of these parties to:

- a. pay Indian Mountain Corp. for the Indian Mountain Plan of Augmentation or the cost of obtaining the Water Rights associated therewith;
- b. pay Indian Mountain Corp. for the annual implementation costs of the Indian Mountain Plan of Augmentation; or
- c. that at some future time Indian Mountain Lot Owners would be responsible to pay Indian Mountain Corp. for the implementation of the Indian Mountain Plan of Augmentation for those preceding years since the inception of the subdivision.

95. Beginning in early 2005, in discussions with representatives of the Boards of Directors of the Recreation District and IMPOA, James Campbell, on behalf of Indian Mountain Corp., suggested the Recreation District take possession of the Indian Mountain Plan of Augmentation and responsibility for the operation of the Plan for the benefit of Indian Mountain Lot Owners. However, the Recreation District could not legally provide water services on behalf of the Indian Mountain Lot Owners.

96. In 2012, representatives of the Boards of Directors of the Recreation District and IMPOA resumed discussions with James Campbell regarding his earlier recommendation that the Recreation District take full possession of the Indian Mountain Plan of Augmentation and responsibility for operation of the Plan for the benefit of Indian Mountain Lot Owners. At that time, Mr. Campbell suggested that the Recreation District take legal steps to become capable of owning and operating the Indian Mountain Plan of Augmentation for the benefit of Indian Mountain Subdivision Lot Owners.

97. Following Mr. Campbell’s suggestion, the Recreation District hired Collins Cockrell and Cole as legal counsel and sought approval of the Park County Commissioners to amend the Service Plan of the Recreation District to create the IMMD. The purpose of the

Amended and Restated Service Plan was to more properly reflect the duties and responsibilities owed to the Indian Mountain Lot Owners based on the actual development of the Indian Mountain Subdivision and to have the capability to own and provide water services for the benefit of Indian Mountain Lot Owners, including but not limited to the Plan for Augmentation.

98. A hearing was held on December 12, 2012, before the Park County Board of County Commissioners on the Amended and Restated Service Plan of the Recreation District to create the IMMD.

99. On January 3, 2013, the Park County Board of County Commissioners unanimously approved the Amended and Restated Service Plan of the Recreation District to create the IMMD. On February 26, 2013, District Court of Park County Colorado entered an Order to Change Name of District, Case No. 1975CW4062.

100. On February 22, 2013, IMMD received an email from Joe Tom Wood, a professional engineer representing James Campbell, which stated, “with the most recent and successful conversion of the Indian Mountain Recreation and Park District into the Indian Mountain Metropolitan District, Jim believes that there finally exists an appropriate entity to which he can convey the Indian Mountain plan for augmentation decreed in Case No. W-7389, its underlying water rights in the Slater Ditch and the associated storage space 33.42 acre-feet in the Tarryall Ranch Reservoir. The operation of the Indian Mountain augmentation plan and, in part, the operation of the Slater Ditch and Tarryall Ranch Reservoir would also pass from Jim Campbell to the newly formed Metropolitan District, or to an entity such as the Center of Colorado Water Conservancy District, who would take on these activities for the Metropolitan District and the residents of the Indian Mountain Subdivision.”

101. At no point did James Campbell or Joe Tom Wood state that Mr. Campbell or Indian Mountain Corp. expected to be paid in exchange for transferring the Indian Mountain Plan of Augmentation and water rights to IMMD.

102. At some point in mid-2013, James Campbell sold the entirety of the Indian Mountain Corp. to Bar Star Land, LLC (“Bar Star Land”). Bar Star Land is listed with the Office of the Colorado Secretary of State as the registered agent of Indian Mountain Corp., with an address of 848 Bobolink Court, Castle Rock, Colorado 80109.

103. On August 7, 2013, Mark Goosmann, principal in Bar Star Land, contacted IMMD through email and stated that Bar Star Land had purchased Indian Mountain Corp. from James Campbell, which purchase included Tarryall Ranch Reservoir, water storage rights, water rights, and the Indian Mountain Plan of Augmentation.

104. On August 10, 2013, Mark Goosmann and James Ingalls, principals of Bar Star Land attended an IMMD Board meeting and stated that they had purchased the Indian Mountain Corp. from Jim Campbell and expressed interest in transferring the Indian Mountain Plan of Augmentation and cooperating on managing the annual implementation of the Plan.

105. In August 2013, representatives from IMMD and the IMPOA entered into discussions regarding the transfer of ownership and operations of the Indian Mountain Plan of Augmentation to IMMD for the benefit of the Indian Mountain Lot Owners and the payment of reasonable sums to compensate Indian Mountain Corp. for operation and maintenance of the structures associated with the Indian Mountain Plan of Augmentation.

106. IMMD has been and continues to be willing and able to hold and operate the Indian Mountain Plan of Augmentation for the benefit of the Indian Mountain Lot Owners.

107. IMMD has been and continues to be willing to provide reasonable compensation, based on actual expenses, to the owners of the structures associated with the Indian Mountain Plan of Augmentation or a contracted third party for the annual implementation of the Indian Mountain Plan of Augmentation.

108. On October 18, 2013, Indian Mountain Corp. sent what was styled as an invoice to IMMD for \$143,000 for the "Water Augmentation Plan and Maintenance 2012," payable in 14 days. On November 1, 2013, Indian Mountain Corp. sent a second so-called invoice to IMMD for \$143,000 for the "Water Augmentation Plan and Maintenance 2013," payable in 30 days.

109. Due to the unreasonable demands for payment by the now representatives of Indian Mountain Corp., further discussions between IMMD and those representatives regarding the ownership and operation of the Indian Mountain Plan of Augmentation did not result in any agreement.

110. On April 9, 2014, James Campbell, as general partner of Park Development Company and director of Meridian Properties, Inc., executed an Affidavit and quit-claim deed of the Indian Mountain Plan of Augmentation and other water rights to Indian Mountain Corp. Said documents were filed with the Park County Clerk on April 16, 2014.

111. Upon information and belief, Indian Mountain Corp. now claims sole and exclusive ownership of the Indian Mountain Plan of Augmentation with the right to lease, sell, or otherwise transfer said Plan to other areas for other purposes without regard to the rights or reliance of the Indian Mountain Lot Owners on said Plan and in contravention of the rights and reliance of said lot owners to maintain a domestic supply of water for their individual lots to the detriment of the rights, reliance, expectations, and representations of Indian Mountain Corp. and/or its predecessors in interest that there was a legal and decreed plan of augmentation for the benefit of all Indian Mountain Lot Owners that would allow the legal purchase and development of lots within the Indian Mountain Subdivision for the establishment of single family homes.

### **FIRST CAUSE OF ACTION**

#### **(Declaratory Judgment Regarding Ownership, Use, and Control of Indian Mountain Plan of Augmentation)**

112. IMMD hereby incorporates the allegations set forth in the preceding paragraphs, as if fully set forth herein.

113. Pursuant to C.R.C.P. 57(a), this Court has “the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed . . . and such declarations shall have the force and effect of a final judgment or decree.”

114. Rule 57 further provides, “Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under an instrument . . . and obtain a declaration of rights, status, or other legal relations thereunder.” C.R.C.P. 57(b).

115. This Court has broad authority under Rule 57 to provide declaratory relief where “a judgment or decree will terminate the controversy or remove an uncertainty.” C.R.C.P. 57(e).

116. A controversy exists between IMMD and Indian Mountain Corp. regarding ownership, control, and use of the Indian Mountain Plan of Augmentation and the water rights associated therewith.

117. The Indian Mountain Plan of Augmentation is owned by the Indian Mountain Lot Owners and has been held in constructive trust by other entities from the time the subdivision was approved and subdivided to the present.

118. The Indian Mountain Lot Owners, by purchasing lots and well permits dependent upon the Indian Mountain Plan of Augmentation, justifiably placed confidence in Meridian and its successors and assigns that the Indian Mountain Plan of Augmentation was held for the benefit of the Indian Mountain Lot Owners.

119. Allowing Defendant Indian Mountain Corp. to continue to hold and control the Indian Mountain Plan of Augmentation would unjustly enrich Indian Mountain Corp. at the expense of the of the Indian Mountain Lot Owners.

120. IMMD seeks a determination of the rights of the parties with respect to the ownership, use, and control of the Indian Mountain Plan of Augmentation, and all water rights associated therewith, and declarations from this Court that:

- a. To the extent Indian Mountain Corp. holds any interest in the Indian Mountain Augmentation Plan, it has and continues to hold such interest in constructive trust for the benefit of the Indian Mountain Lot Owners;
- b. As owners of the trust *res*, the Lot Owners have the right to compel the transfer of Indian Mountain Corp.’s interest in the Indian Mountain Plan of Augmentation to the IMMD or any other individual or entity with legal capacity to hold such interest on their behalf; and
- c. Indian Mountain Corp. is not entitled to recover from IMMD or the Lot Owners the value of water rights associated with the Indian Mountain Plan of

Augmentation that have been used, or will be used in the future, to augment depletions caused by the operation of domestic wells in the Indian Mountain Subdivision.

**SECOND CAUSE OF ACTION**

**(Declaratory Judgment that Indian Mountain Corp. Constitutes a “Public Utility” pursuant to Colo. Rev. Stat. § 40-1-103)**

121. IMMD hereby incorporates the allegations set forth in the preceding paragraphs, as if fully set forth herein.

122. In the alternative to its first claim for relief, IMMD seeks a determination from the Court that Indian Mountain Corp. constitutes a “public utility” pursuant to Colo. Rev. Stat. § 40-1-103, and is therefore subject to regulation by the Colorado Public Utility Commission (“PUC”).

123. Colo. Rev. Stat. § 40-1-103(1)(a) defines “public utility” as “every common carrier, pipeline corporation, gas corporation, electrical corporation, telephone corporation, water corporation, person, or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest. . . .”

124. Colo. Rev. Stat. § 40-1-103(1)(a) further provides that every “public utility” is “subject to the jurisdiction, control, and regulation of the commission and to the provisions of articles 1 to 7 of this title.”

125. All charges made, demanded, or received by any public utility for any rate, product, or commodity furnished or any service rendered must be just and reasonable. Colo. Rev. Stat. § 40-3-101.

126. In addition, a public utility providing water services in Colorado must receive PUC approval before it can impose a new or changed tariff. 4 Colo. Code Regs. § 723-5:5109.

127. In the event a determination is made that Indian Mountain Corp. owns and controls the Indian Mountain Plan of Augmentation free from any claim, interest in, or right of the IMMD or the Indian Mountain Lot Owners, Indian Mountain Corp. constitutes a “public utility” providing water services to the Indian Mountain Lot Owners through the administration of the Indian Mountain Plan of Augmentation.

128. As a public utility, Indian Mountain Corp. is subject to regulation by the PUC and must comply with all applicable statutory and regulatory requirements governing the provision of water services in Colorado before it can impose any tariffs or fees on the IMMD or the Indian Mountain Lot Owners for the value of the water or water services provided.

**THIRD CAUSE OF ACTION**  
**(Injunctive Relief)**

129. IMMD hereby incorporates the allegations set forth in the preceding paragraphs, as if fully set forth herein.

130. On January 2, 1974, the Water Court for Water Division 1 entered the W-7389 Decree, which approved a change of use and plan of augmentation to replace out-of-priority depletions caused by the withdrawal of ground water by up to 5,250 single-family residential equivalent units either for individual wells per unit or for larger wells for multiple-family units or multiple units of single-family dwellings.

131. The Indian Mountain Lot Owners have for four decades continuously, openly, and exclusively put the water rights decreed in W-7389 case to a beneficial use, namely the replacement of out-of-priority depletions from domestic wells in the Indian Mountain Subdivision.

132. At no time prior to the 2013 sale of Indian Mountain Corp. to Bar Star Land did James Campbell or any other representative of Indian Mountain Corp. inform the purchasers or owners of Indian Mountain Subdivision property, realtors engaged in the sale of Indian Mountain property, the IMPOA, the former Indian Mountain Recreation and Park District, or the current Indian Mountain Metropolitan District that there was an expectation, obligation, liability, or responsibility of these parties to: (a) pay Indian Mountain Corp. for the Indian Mountain Plan of Augmentation or for the Water Rights associated therewith; (b) to pay Indian Mountain Corp. for the annual implementation costs of the Indian Mountain Plan of Augmentation; or (c) that at some future time Indian Mountain Lot Owners would be responsible to pay Indian Mountain Corp. for the implementation of the Indian Mountain Plan of Augmentation for those preceding years since the inception of the subdivision.

133. On October 18, 2013, Indian Mountain Corp. sent what was styled as an invoice to IMMD for \$143,000 for the "Water Augmentation Plan and Maintenance 2012," payable in 14 days. On November 1, 2013, Indian Mountain Corp. sent a second so-called invoice to IMMD for \$143,000 for the "Water Augmentation Plan and Maintenance 2013," payable in 30 days.

134. Indian Mountain Corp. recently stated that it will only operate the Indian Mountain Plan of Augmentation for Indian Mountain Lot Owners who individually pay to Indian Mountain Corp. a \$300.00 fee by Sept. 1, 2014 for operation of the Plan from May 1, 2014 to April 30, 2015.

135. The continued operation of the Indian Mountain Plan of Augmentation is necessary for Indian Mountain Lot Owners to withdraw groundwater for domestic purposes pursuant to their well permits.

136. Serious and irreparable injury would result should Indian Mountain Corp. cease operating the Plan of Augmentation for the benefit of Indian Mountain Lot Owners at any point before the respective rights and obligations of the parties can be determined.

137. Serious and irreparable injury has already resulted to Indian Mountain Lot Owners due to the public controversy generated by Indian Mountain Corp.'s claim that exorbitant fees are owed for its operation of the water augmentation plan in 2012 and 2013.

138. As a result, IMMD seeks a preliminary injunction requiring Indian Mountain Corp. to continue operating the Indian Mountain Plan of Augmentation, as decreed, for the benefit of Indian Mountain Lot Owners during the pendency of the this case, subject to reimbursement by IMMD of any actual expenses incurred by Indian Mountain Corp. as a result of the continued operation of the Plan.

### **PRAYER FOR RELIEF**

**WHEREFORE**, IMMD respectfully requests that this Court:

- A. Find in favor of IMMD and against Indian Mountain Corp. on each of the claims for relief set forth herein;
- B. Award IMMD compensatory damages, punitive damages, and attorney fees, and costs as permitted by law;
- C. Enter a preliminary injunction requiring Indian Mountain Corp. to continue to operate the Plan of Augmentation, as decreed, for the benefit of Indian Mountain Lot Owners during the pendency of the this case; and
- D. Take any other action the Court deems to be just and proper.
- E. In the alternative that the Court declare Indian Mountain Corp. to be a public utility and to be subject to the jurisdiction, control and regulation of the Public Utility Commission and to the provisions of articles 1 to 7 of title 40, C.R.S.

### **JURY DEMAND**

**IMMD HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**



Dated this 25<sup>th</sup> day of July, 2014.

Respectfully submitted,

*signed original on file at Hill & Robbins, P.C.*

s/ Peter J. Ampe

Peter J. Ampe, #23452

Nathan P. Flynn #39336

Andrew J. Rottman, #41317

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 25<sup>th</sup> day of July, 2014, service of the foregoing INDIAN MOUNTAIN METROPOLITAN DISTRICT'S ANSWER AND COUNTERCLAIMS was made ICCES, addressed as follows:

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*Attorneys for Plaintiff*

*signed original on file at Hill & Robbins, P.C.*

s/ Rae Macias

Rae Macias