

July 8, 2017

To: All Indian Mountain Property Owners

The attached letter and the legal opinions expressed therein have been prepared by my attorney solely for my benefit. I share the contents voluntarily with my fellow Indian Mountain lot owners, the Indian Mountain Metropolitan District and the Indian Mountain Property Owners Association. It does not constitute legal advice to any other person and may not be relied upon by any third party. As my legal counsel states in last paragraph of the letter "Other Indian Mountain lot owners who have received similar invoices from Bar Star Water Company may wish to seek advice from their own legal counsel".

You are advised to seek your own legal counsel so they can provide advice to you based upon your unique circumstances and concerns.

Thank you.

A handwritten signature in cursive script that reads "Carl Neu". The signature is written in black ink and is positioned below the "Thank you." text.

Carl Neu



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July 7, 2017

Carl Neu
8169 W. Baker Ave.
Lakewood, CO 80227

Re: Bar Star Water Company Billing

Dear Mr. Neu:

You have requested this firm's opinion regarding an invoice which you have received from Bar Star Water Company dated May 31, 2017 in the amount of \$1,625.00 (the "Invoice"). The Invoice states that it is for "Well Augmentation Service from; January 1, 2012 to May 31, 2017." In preparing this opinion letter I have considered the Invoice, the decision of the Colorado Court of Appeals in *Indian Mountain Corporation v. Indian Mountain Metropolitan District*, 2016 WL 4249745 (Colo. App. 2016), undated correspondence from Bar Star Water Company, and a letter dated October 11, 2016 from David L. Nettles of the Colorado Division of Water Resources to Indian Mountain Property Owners (the "Nettles Letter").

The question presented is whether you are legally obligated to pay the Invoice. In my opinion you are not, for the following reasons:

First, any claim by Bar Star Water Company for amounts allegedly owed by you for "Well Augmentation Service" provided more than two, or at most three, years ago would appear to be barred by the applicable statute of limitations. C.R.S. § 13-80-101(1)(a) provides that all contract actions must be brought within three years after the cause of action accrues. However, as discussed below, there is no contract either express or implied by which you have agreed to pay Bar Star Water Company for "Well Augmentation Service." Thus, the applicable state of

limitations would be C.R.S. § 13-80-102(1)(i) requiring that “[a]ll other actions of every kind for which no other period of limitation is provided” be brought within two years from the date the cause of action accrues. It seems clear that any claim for services allegedly provided before Mid-2015 is time barred.

Second, there seems to be no identifiable legal theory under which you are indebted to Bar Star Water Company for the amount stated in the Invoice. There is certainly no express contract by which you have agreed to pay Bar Star Water Company or its predecessors for Water Augmentation Service. Nor does there appear to be any argument that there is an implied contract for such payment. The undated letter from Bar Star Water Company seems to imply that the Invoice may be authorized by either the ruling of the Court of Appeals or the Nettles Letter. However, the pertinent portion of the Court of Appeals’ opinion reads as follows:

Finally, while both parties raise arguments concerning the appropriate amount IMC can charge lot owners for operating the Plan, we decline to address this issue because the lot owners were not joined as parties. We note, however, that absent regulations governing water fees, IMC, as a private entity, may charge whatever price for its services the market will bear, particularly given lot owners’ ability to purchase water from several different sources.

Id. The Court specifically recognized that it was without jurisdiction to address charges to lot owners such as you, and nothing in the non-binding dicta regarding charges addresses the issue of charges for historic, as opposed to future, “Water Augmentation Services.”

Similarly, the Nettles Letter also disclaims any involvement in the charges for Water Augmentation Services, stating “Any payment or collection of fees for the operation of the augmentation plan under the Decree is an issue between the parties subject to the requirements of the Decree (currently Bar Star Water, LLC and subdivisions well owners).”

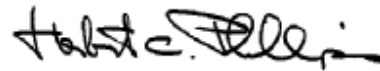
While there seems to be no legal theory by which you are liable to Bar Star Water Company for the amount of the invoice there are a number of legal principles that would likely bar this belated claim for Water Augmentation Services provided over the past five years and seven months. These include the doctrines of waiver, equitable estoppel and laches, just to name a few. A detailed discussion of these equitable doctrines is beyond the scope of this opinion letter but they involve the voluntary relinquishment of a known right, reasonable reliance on another party’s conduct, or an unreasonable delay in pursuing an available remedy.

In summary, it is incumbent upon Bar Star Water Company to identify some legal theory under which you are legally responsible for payment of the amount of the Invoice. If such a theory be proffered, Bar Star Water Company should then explain how and why its claim is not barred, in large part, by the applicable statute of limitations and why its entire claim is not barred by equitable doctrines such as those identified above. Unless and until some coherent explanation

supporting the Invoice is provided by Bar Star Water Company there would seem to be no basis for payment of the Invoice by you.

As we have discussed, the content of this letter and the opinion expressed herein is exclusively for the benefit of you as this firm's client, and may not be relied upon by any third party. Other Indian Mountain lot owners who have received similar invoices from Bar Star Water Company may wish to seek advice from their own legal counsel.

Very truly yours,

A handwritten signature in black ink, appearing to read "Herbert C. Phillips". The signature is written in a cursive style with a prominent initial "H".

Herbert C. Phillips
Lee@law-hcp.com