

# Operations Manual for the IM Water Service Program (WSP)

## Table of Contents

Preface  
 Introduction  
 IMMD Water Services  
 Brief History of IM Water Augmentation  
 Headwater Authority of the South Platte  
 Administrative Structure  
 Financing Strategy  
 Acceptance into the IM WSP  
 Core Operating Policies  
 Permissible Water Usage  
 Water Meters  
 Monthly Reporting  
 Filing with Authorities  
 Opting-Out of the IM WSP  
 Dismissal from the IM WSP  
 Amending the Operations Manual  
 Other Supporting Materials

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1	July 14, 2018	BSWC Option/6 & 7 WSP Administrative Structure/8 Application Fee/9
2	March 9, 2019	Edited throughout, deleted program comparison section, updated technical information

## Preface

*“...all wells within the subdivision MUST be covered by an operating plan of augmentation to continue to legally pump. Continuing to have your well covered under the [existing plan] is one option. I believe there are also other options to cover your well.”*

David L. Nettles  
Division Engineer, Water Division 1  
Colorado Division of Water Resources  
October 11, 2016

## Introduction

After more than two decades of meetings, negotiations, offers, counteroffers, litigation, and court rulings, the Indian Mountain Metropolitan District (IMMD), with support of the Indian Mountain Property Owners Association (IMPOA), forged an agreement with the Headwater Authority of the South Platte (HASP) for water augmentation of Indian Mountain (IM) wells. The IMMD augmentation plan is an alternative to the original plan of the IM developer (formerly Indian Mountain Corporation and now Bar Star Water Company) for the augmentation of our wells.

This innovative community plan, called the IM Water Service Program (WSP), offers a long-term, predictable, stable, fair, transparent, low-cost solution for augmentation.

We believe you will see the benefits of participating in the IM WSP and hope you are reassured in knowing that IMMD and IMPOA worked diligently to create and maintain an alternative water augmentation plan. For in-depth information regarding these topics, please visit our website at [www.indianmountain.info](http://www.indianmountain.info). And, as always, if you have any questions regarding the information in this publication, please send Samantha Bertin, the WSP Administrator, an email at [indianmtn@hotmail.com](mailto:indianmtn@hotmail.com) or call 719-836-9043.

Respectfully,  
IMMD Board of Directors

## IMMD Water Services

In January 2013, the Park County Board of County Commissioners approved an updated and amended Service Plan for the Indian Mountain Metropolitan District (formerly the Indian Mountain Recreation and Park District). The change in the Service Plan added water services as a purpose for the District, which provides the authority for IMMD to operate the IM WSP. Water services are defined in the Service Plan as follows:

“Water Services. The District shall have the power and authority to finance, design, construct, acquire, install, maintain and provide for potable water and for the maintenance, conservation, and community access to water resources within the District. More specifically, the District may manage two earthen-dams with associated seasonal ponds, wetland corridors, a section along the Tarryall Creek, and seasonal springs and ponds. Management may include, but is not limited to, fencing to control cattle, stream bank stabilization, trail design and relocation, regulatory and interpretive signage, fishery improvements, RV dump station and storage lot, erosion control, pond restoration and maintenance, dam safety and maintenance, community information and education, and controls for appropriate public use and enjoyment.

“The District shall have the power and authority to finance, design, construct, acquire, install, maintain and provide services associated with the ownership and administration of the Indian Mountain water augmentation plan, including the plan’s water rights, facilities, transfer system, storage reservoirs, access, easements, ditches, gates, and other incidental and appurtenant facilities. The District shall have the power and authority to contract with other private and governmental entities to provide any or all of the services associated with the Indian Mountain water augmentation plan.”

## **Brief History of IM Water Augmentation**

**A community was born (early 1970).** More than 10,000 acres of land were transferred to the Park Development Company, including interest in the Slater Ditch and Tarryall Ranch Reservoirs No. 1 and No. 2. The Park Development Company, and its general partner Meridian Properties, began to develop and sell the residential lots comprising the Indian Mountain subdivision (IM).

**Water Court and the creation of IMRPD (mid 1970s).** After the Colorado Legislature passed Senate Bill 35 in 1972, developers of subdivisions in the Colorado high country typically established a home owner’s association (HOA) to hold water rights and operate a water augmentation plan for a subdivision’s wells. The Park Development Company, Meridian Properties and Indian Mountain Corp all failed to establish an HOA for the IM subdivision. They did, however, create the Indian Mountain Recreation and Park District (IMRPD), which owned and managed the subdivision’s ski hill, golf course and other amenities.

In the mid-1970s, the State Engineer blocked further IM development because he determined wells on the lots would cause “material injury” to senior water right holders. Sales were suspended. Meridian Properties developed an augmentation plan that would allow wells in the IM subdivision to pump for domestic use even when the stream depletions they caused were out of priority. Division 1 Water Court (case number 73CW7389) issued a decree approving the IM Water Augmentation Plan.

**Indian Mountain Corporation (IMC) and James Campbell.** In 1976, the Park Development Company conveyed its interest in IM lands to Indian Mountain Corp owned and operated by James Campbell. Campbell continued to operate the IM Water Augmentation Plan from 1976 to 2013 without requesting or receiving any payment for administration of the plan. Numerous requests were made to Campbell by IMMD and IMPOA over the years to transfer the IM Water Augmentation Plan over to the community but to no avail.

**IMRPD Becomes IMMD.** The 1972 Indian Mountain Recreation and Park District's service plan was updated and approved by the Park County Board of County Commissioners in January 2013 to reflect the actual services provided to IM including park and recreation, and water services. To keep the District in legal compliance with Title 32 of the Colorado Revised Statutes, the name was changed to Indian Mountain Metropolitan District. The revision also gave authority to the District, on behalf of the community, to secure and manage water augmentation services such as the IM WSP.

**IMC sold to Bar Star LLC and James Ingalls (2013).** Campbell sold IMC to James Ingalls and Mark Goosman of Bar Star LLC in summer 2013 without giving IM the opportunity to purchase the IM Water Augmentation Plan. After the sale, Bar Star LLC demanded payment from IMMD for the operation of the plan and then sued IMMD for \$286,000, a value Bar Star LLC set for the water and services provided to the IM community for implementation of the plan from April 2012 to April 2014. IMMD had no obligation to pay Bar Star LLC and refused to pay what IMMD considered an exorbitant amount.

Bar Star LLC/IMC sued IMMD, and the case went to state district court in Fairplay. During the trial, water experts testified the plan did not cost more than \$5,000 annually to maintain, including the dam, reservoir, head gates, and ditch, and to release water back into the Tarryall River. The court ruled Bar Star could charge IM well owners for only actual and reasonable costs to operate the plan. Bar Star appealed that ruling, and the Colorado Court of Appeals reversed the District Court ruling, saying Bar Star LLC could charge IM owners whatever the market would bear. IMMD asked the Colorado Supreme Court to review the Appeals Court decision, but the request was denied on April 25, 2017.

**IMMD and IMPOA develop an alternative water service program (2017).** IM property owners expressed an overwhelming desire for the community to control its own water and not rely on a private company claiming empowerment by the Appeals Court to charge whatever fees the market would bear. IMMD and IMPOA began working on an alternative way to augment IM wells. The IM Water Service Program resulted from that effort and became a way for IM well owners to augment their wells.

## **Headwater Authority of the South Platte**

The Upper South Platte Water Conservancy District (USPWCD) and the Center of Colorado Water Conservancy District (CCWCD) are water districts serving Park County and portions of Teller, Douglas, Jefferson and Clear Creek counties. The two districts joined together to form the Headwater Authority of the South Platte (HASP). HASP operates a water rights enterprise through which it sells augmentation water to customers throughout its service areas.

HASP goals are:

1. To locate and develop water resources for use by HASP customers.
2. To help businesses and residents to obtain a water supply for their water uses.
3. To bring out-of-compliance water users into compliance with state regulations.

HASP is a partner with IMMD in operating the IM WSP. IMMD purchases water from HASP for each WSP participant so they each have augmentation water for their wells and comply with state regulations. By opting-in to the IM WSP, owners of wells in Indian Mountain change from augmentation under the IM Water Augmentation Plan owned by Bar Star (Water Court Decree 73CW7389) to the HASP water augmentation plans (Water Court Decrees 02CW389 and 12CW50).

Each month, participants in the IM WSP must report their water usage to the Program Administrator, who in turn must report these amounts to the HASP Operations Manager by the 10<sup>th</sup> of each month. The HASP website at [www.haspwater.com](http://www.haspwater.com) includes several other rules and regulations with which the IM WSP must abide.

## Administrative Structure

(a) The Indian Mountain Metropolitan District is responsible for operation of the IM WSP in accordance with the April 20, 2018 Intergovernmental Agreement between IMMD and HASP and HASP regulations. Furthermore, all decision-making and actions of the IMMD Board must be in accordance with the rules governing a Colorado Special District.

(b) The IMMD Board established an IM WSP Community Advisory Committee to provide support and advice to the Board, whose members are selected by the Board and serve at the pleasure of the Board. It is to be comprised of a non-voting liaison from the IMMD Board, a non-voting liaison from the IMPOA Board, and up to five IM WSP enrollees. WSP enrollees are invited to participate on the committee based upon their knowledge of the WSP, demonstrated engagement in the WSP and Board affairs, and availability to constructively participate in such matters.

The role of the Committee is to:

- Provide recommendations to the Board to help ensure the IM WSP is effective, efficient, attractive, financially solvent, transparent and fair to WSP enrollees;
- Provide advice and counsel to the Board on any operational and policy matters associated with the IM WSP;
- Recommend punitive actions for participants who are not operating in compliance with program policies and procedures; and
- Review annual WSP financials.

The Committee shall elect a chairperson to provide leadership and to be the spokesperson in reporting to the Board via the IMMD liaison. The Committee will meet as needed on the second Saturday of the month at the IM Community Center. The meetings will be announced to the community in advance, open to the public and provide an opportunity for public input. The Committee shall prepare and publish minutes of its meetings. The Committee may establish its

own rules and policies to ensure members are effectively participating and to ensure members are duly considering the welfare of the community over their own personal interests.

(c) The WSP Administrator shall be responsible for the daily and routine operations of the IM WSP. The WSP Administrator shall serve at the pleasure of the Board and is authorized to follow and enforce the policies and procedures set forth in the Operations Manual. The WSP Administrator shall report on the status and welfare of the WSP at each regular IMMD Board meeting and in various reviews, audits, and evaluations, including meetings of the IM WSP Community Advisory Committee.

(d) IMPOA does not have direct authority or responsibility for the IM WSP but helped to create and continues to promote, support, and sustain the IM WSP. One IMPOA Director selected by its Board of Directors shall serve as a non-voting liaison to the Community Advisory Committee, and the IMPOA board itself is welcome to provide advice and counsel to the IMMD Board of Directors at any time.

## Financing Strategy

(a) The basic operating principle underlying the IM WSP is that the Program will operate on a reasonable and actual cost basis, where costs are distributed evenly among all participants. The IMMD Board may establish a reserve account for unanticipated WSP expenses (e.g., litigation and trucking water if drought occurs). That is, the program is not intended to generate revenue beyond reasonable and actual costs for IMMD.

(b) IMMD shall maintain a detailed accounting of IM WSP reserves, revenues and expenses separate from other IMMD programs and accounts.

(c) IMMD shall perform and publish an annual review of the IM WSP account, and based upon projected costs and the number of participants, the annual operating fee charged to participants will be changed and evenly distributed among the participants. After review by the WSP Community Advisory Committee and the IMMD Board, the annual financial reviews shall be posted on the IMMD website within 60 days of acceptance by the Board.

(d) An application fee shall be required for new or returning WSP participants. The Board applies these monies exclusively to water acquisition. In 2017, this fee was \$150 per applicant. The IMMD Board raised the fee to \$300 in 2018 based on experience in acquiring water in 2017 and the high number of applicants in 2017. The IMMD board approved a 2019 application fee of \$810. The application fee is a one-time charge for acquisition of water for a participant's well. The augmentation water for that well is then owned in perpetuity and no further application fee is charged. In the event of the sale of a property in the WSP, the augmentation water right travels with the land.

(e) An annual operating fee shall be payable by each WSP participant within 30 days of IMMD invoicing, generally in first quarter of the year. This fee is to cover the actual routine program operations costs, such as, but not limited to, the HASP annual administration fee, meter data management and reporting, annual financial audit, software and web support, mailings and postage, program administrator costs, financial audit costs, legal fees, technical consultant fees, supplies, telecommunications, local travel, funds in reserve for emergency conditions, incidental WSP Community Advisory Committee costs, and office equipment. In 2018, this fee was \$100

per participant. The IMMD board has approved the 2019 operating fee of \$100 per participant. The operating fee may change in the future to reflect projected reasonable and actual costs.

(f) IMMD may accept donations or enter into leases or lease/purchase financial arrangements to support the IM WSP, in accordance with rules governing IMMD as a Colorado Special District.

## Check Your Well Permit

A surprising number of enrollees have had mistakes or deficiencies on their well permit; for example, the permit was in the name of the builder, a previous owner or a deceased family member, has a wrong address, lacks a pump installation report or well construction report, etc. We strongly encourage you to check your well permit, whether you are a WSP participant or not.

To check the status of your well permit or to update ownership information online, please go to: <http://water.state.co.us/DataMaps/RecordsResearch/Pages/default.aspx>. On this Main Page, click on "Well Permit Search." On that search page, you will find different criteria to define your search. Put in your name, permit number, or your lot and filing number in the IM Subdivision. This should take you to your well permit where you can check for accuracy. Print off a copy and submit it with your application.

## Acceptance into the IM WSP

Acceptance into the IM WSP is a two-step process:

1. Submission to the Program Administrator of a completed signed and notarized IM WSP Application Form, a personal check to cover the IM WSP Application Fee, and a copy of your well permit (see previous section).
2. Submission to the Program Administrator of the meter certificate verifying that your water meter has been installed and is operating properly according to HASP standards.

Participants will receive a Certificate of Augmentation from IMMD and have their name and well information filed with the Park County Clerk and Recorder's Office and the Colorado Division of Water Resources after HASP water has been purchased to cover all enrollees under the April 20, 2018 three-year Intergovernmental Agreement between IMMD and HASP. Participants may register their Certificates of Augmentation with the County Clerk at any time. There is a small fee to do so.

## Core Operating Policies

These operating policies are written in first-person as they are in the Application Form. "I" refers to each owner of a well in Indian Mountain that becomes an IM WSP participant.

1. I am responsible to install and have certified a totalizing water meter that will measure my inside (in-house) residential water use with an accuracy equal to or better than +/- 5%, and a copy of the meter certification must be on file with the WSP program administrator.

2. I understand that the WSP Program Administrator will send two email alerts in the latter part of each month reminding me that the monthly water report is due by the 6th day of the new month, and that I, or my designee, must go on-line to the IMMD website and electronically report my meter reading between the 1st and 6th of each month.
3. I understand my annual WSP administration fee is to be received within 30 days of IMMD invoicing each year; that the IMMD Board of Directors may change the administrative fee from year to year based upon actual costs the preceding year and the number of participants and projected administrative costs for the forthcoming year; and that the IMMD Board will annually audit WSP finances and publicly disclose the findings.
4. I understand that the IMMD Board of Directors will rely upon statements in this Application and subsequent monthly water reports made by me, or my designee, and that such statements are subject to the provisions of C.R.S. 18-8-503 which states that a person commits second degree perjury if he/she makes a materially false statement (i.e., one that he/she does not believe to be true) while under oath with the intent to mislead a public servant in the performance of the servant's duty.
5. I understand that approval by the IMMD Board of Directors of this Application and my participation in the WSP may be rescinded if it is determined that one or more of my Application statements are materially false, that my monthly water reports are not complete and submitted between the 1<sup>st</sup> and 6<sup>th</sup> day of each month, or that I fail to follow the policies and procedures set forth in this WSP Operations Manual.
6. I understand that my participation in the IM WSP allows me to use up to 7,333 gallons per month for indoor (in-house) residential use only, or 88,000 gallons per year, and that any water above this amount may incur additional costs, fines, liens, or other punitive actions deemed appropriate by the IMMD Board.
7. I understand that if my contact information changes (mailing address, phone or email), I am to notify the WSP program administrator within 30 days of the change.
8. I understand that the benefits of the WSP only accrue to me (i.e., property owners) while I am in good-standing and in compliance with the WSP Operations Manual. I will be notified (i.e., given a warning) by registered mail of any breaches or violations. If I fail to correct the breaches or violations, I understand that I may be dropped from the WSP without recovery of any fees, costs, or expenses. My dismissal from the WSP will be filed with the Park County Clerk and Recorder's Office and the Colorado Division of Water Resources.
9. I understand that acceptance into WSP will effectively change the augmentation plan for my well from the IM Water Augmentation Plan (Water Court Decree W-7389) currently administered by the Bar Star Water Company to the HASP Water Augmentation Plans (02CW389 and 12CW50) supporting this IM WSP.
10. I acknowledge that prior to signing and submitting this Application, I have read and understand the IMMD WSP Operations Manual, and that, on occasion, given new information or circumstances, the Board of Directors may amend the WSP Manual and provide notice of such changes to WSP participants.

11. I understand that additional requirements may be required by the Division of Water Resources during the enrollment period. This is dependent on future rulings from DWR, the Attorney General's Office, or Water Court.

## Permissible Water Usage

- a. Participants may use up to 7,333 gallons per month for indoor (in-house) residential use, or up to 88,000 gallons per year.
- b. Exterior use of water is not permitted at this time, but the option may be available in the future with the acquisition of additional augmentation water rights by individual participants.
- c. Water allocations cannot be saved, collected, transferred, shared, sold, or rolled-over from one month to another month, from one year to another, from one well to another, or from one person to another.
- d. Water consumption above 7,333 gallons per month, or 88,000 gallons per year, may result in additional charges, fines, lien, or dismissal from the IM WSP. IMMD is not responsible and will not pay for HASP water charges for overages.

## Water Meters

Water meters are required of all WSP participants, as described above.

- a. Participants shall install and have certified a totalizing water meter that will measure the interior residential water use with accuracy equal to or better than +/- 5%, and a copy of the meter certification must be on file with the WSP program administrator. It is expected this verification will be received within 6 months of submitting an application form and check for the application fee. An augmentation certificate will not be filed until verification is received.
- b. IMMD does not require or otherwise prescribe or suggest any particular water meter, manner of installation, manufacturer, installer, certifier or other person or company related to water metering. The Program Administrator may indicate what water meters, manufacturers, installers and certifiers other IM WSP participants have used and how to make contact. The HASP website at [www.haspwater.com](http://www.haspwater.com) may have suggestions.

## Monthly Reporting

- a. Participants will be emailed by the WSP Administrator, at the address they provide, on two occasions towards the end of each month as a reminder to report their water meter readings. It is not the responsibility of IMMD to make sure participants have an operating email or that the email is received.
- b. WSP participants are expected to log on to [www.indianmountain.info](http://www.indianmountain.info) during the water reporting period between the 1<sup>st</sup> and 6<sup>th</sup> of each month to record their water meter readings.

- c. In the event of extended absences, or other circumstances that do not permit the participant to provide actual water meter readings, the participant is responsible to contact the Program Administrator before the reporting period and make other arrangements.
- d. It is a violation of the operating principles of the IM WSP to not report water meter readings each month or otherwise communicate with the Program Administrator as to any inability to do so. Email communication should be sent to indianmtn@hotmail.com or call Samantha Bertin at 719-836-9043.\

## **Filing with Authorities**

By December 15th of each year, the names and required information of all those WSP participants in good standing, as well as those participants opting-out or being dismissed from the IM WSP in that calendar year, will be filed by IMMD with the Colorado Division of Water Resources.

## **Opting-out of WSP**

Participants may opt-out of the WSP under the following circumstances:

- a. A WSP participant may withdraw from the Program at any time for any reason by a written notification of the WSP Administrator.
- b. Participants withdrawing from the WSP will not be eligible for any rebate or reimbursement of fees, fines, liens, charges, or other expenses.
- c. Participants withdrawing from WSP may still be responsible for any fees, fines, liens, charges or other obligations owed to the Program unless released from these obligations by a majority vote of the IMMD Board.
- d. Opting-out of the WSP becomes effective early in the following year when participants in the WSP are recorded with the Colorado Division of Water Resources.

## **Dismissal from the IM WSP**

Dismissal from the WSP occurs under the following circumstances.

- a. The IMMD Board, after a recommendation by a majority of the IM WSP Community Advisory Committee, may dismiss a participant based upon a majority vote of the IMMD Board.
- b. Dismissal from the WSP is a serious matter for all parties, and the Board shall take reasonable and prudent efforts to communicate and correct the situation in advance of a dismissal decision.
- c. Warnings, fines, liens and other punitive actions are options that may precede dismissal.
- d. Reasons for dismissal include, but are not limited to, a failure to pay annual operating fees within 90 days of due date, lack of timely water meter reporting, lack of proper water

meter equipment and certification, excessive amount of water usage, improper water usage, false reporting of water meter readings, or otherwise providing misleading or false information.

- e. The IM WSP Community Advisory Committee will be responsible to review situations where a participant is not in compliance with the WSP Operations Manual. The Committee will try to communicate with the participant and try to bring the situation into compliance. After three attempts to correct the situation, the Committee may, by majority vote, recommend to the IMMD Board that a participant is subject to punitive measures up to dismissal from the Program.
- f. The Committee will provide a written summary of the situation to the Board and to the participant in question. The Board will invite the Participant to appear before the Board within 60 days.
- g. Participants dismissed from WSP will not be eligible for any rebate or reimbursement of fees, charges, liens, or other expenses.
- h. Dismissal will be effective in December when the action is recorded with the Park County Clerk and Records Office and the Colorado Division of Water Resources.

## **Amending the IM WSP Operations Manual**

It is expected that, from time to time, the Board may amend the WSP Operations Manual.

- a. Change in the Operations Manual may be caused by, but not be limited to, the practical experience of operating the WSP, new information or circumstances, new technologies or software, results of reviews and evaluations, public comment, financial audit, or direction from HASP, DWR, or the Courts.
- b. Small editorial and clarification changes, particularly in the first year of operation, may be made by the IMMD Board or WSP Administrator with notification to the IMMD Board at the subsequent regular IMMD Board meeting.
- c. Substantive changes, which materially affect the policies, procedures, or participants of the WSP, should be initially considered by the IM WSP Community Advisory Committee. The Committee will be responsible to review, analyze and recommend any proposed “substantive” changes in the Operations Manual. A written summary of the issue and recommendation will be submitted to the full IMMD Board at least 30 days prior to any action at a regular IMMD Board meeting, unless there are compelling reasons seriously impacting the effectiveness, efficiency, or financial welfare of the WSP, in which case the Board may act sooner.
- d. The IMMD Board will be responsible for communicating Operations Manual changes in a timely fashion to WSP participants via the IMMD and IMPOA websites, email, and other means deemed effective.

## **Other Supporting Materials.**

Other WSP supporting materials not included in this Operations Manual, but available on the IMMD website at [www.indianmountain.info](http://www.indianmountain.info) include:

- Intergovernmental Agreement Signed by IMMD and HASP.
- Lease Purchase Agreement between Park County, Colorado and IMMD, August 17, 2017.
- IM WSP Enrollment and Transfer Forms.
- Guidance from the Colorado Division of Water Resources concerning water augmentation in Indian Mountain.