

Operations Manual for the IM Water Service Program (WSP)

Table of Contents

Preface2

Introduction.....2

IMMD Water Services.....3

Brief History of IM Water Augmentation3

Headwater Authority of the South Platte.....5

Administrative Structure.....5

Financing Strategy6

Check Your Well Permit7

Acceptance into the IM WSP7

Core Operating Policies8

Permissible Water Usage9

Water Meters10

Monthly Reporting for Participants with Operational Wells.....10

Filing with Authorities.....11

Opting-out of WSP11

Penalties and Fine Schedule11

Dismissal from the IM WSP.....12

Amending the IM WSP Operations Manual.....13

Other Supporting Materials14

APPENDIX A.....15

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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
3	February 13, 2021	Edited throughout, amended Community Advisory Board, updated fees and added fine amounts.
4	April 10, 2021	Minor changes largely in Dismissal Section, updated enrollment form requirements, new table for fee history.
5	December 9, 2023	Minor changes in Dismissal Section, Penalties and Fine Schedule
6	April 13, 2024	Minor changes in Dismissal Section, Penalties and Fine Schedule, and History

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. And, as always, if you have any questions regarding the information in this publication, please send the WSP Administrator an email at indianmountainmetrodist@gmail.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 homeowner’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.

Bar Star LLC/IMC sued IMMD, and the case went to state district court in Fairplay. 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). 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 WSP Administrator, who in turn must report these amounts to the HASP Operations Manager by the 10th of each month. The HASP website at 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 may activate an IM WSP Community Advisory Committee to provide support and advice to the Board if needed necessary and beneficial. If such an advisory Committee is established, its members would be selected by the Board and serve at the pleasure of the Board. It would 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 specific role of the Committee would be defined at the time the Committee is activated.
- 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.

- 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. 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. Annual financial reviews shall be posted on the IMMD website within 60 days of acceptance by the Board.
- d. For new enrollees, a \$50 non-refundable application fee is required to cover administrative costs.
- e. A water purchase fee shall be required for new or returning WSP participants (see Appendix A – Fee Schedule). The Board applies these monies exclusively to water acquisition. The water purchase 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 water purchase fee is charged. In the event of the sale of a property in the WSP, the augmentation water right travels with the land.
- f. An annual operating fee shall be payable by each WSP participant within 30 days of IMMD invoicing, generally in the first month 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, WSP Administrator costs, financial audit costs, legal fees, technical consultant fees, supplies, telecommunications, local travel, funds in reserve for emergency conditions, and office equipment. The operating fee may change in

the future to reflect projected reasonable and actual costs (see Appendix A – Fee Schedule).

- g. 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, please go to: <https://dwr.state.co.us/Tools/WellPermits>. On this Main Page, click on "More Options." In that search window, 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.

An existing well or well permit is not required to join the IM WSP.

Acceptance into the IM WSP

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

1. Submission to the WSP Administrator of a completed signed and notarized IM WSP Enrollment Form, a personal check to cover both the \$50 IM WSP Application Fee and the water purchase fee (as set forth in Attachment A), and a copy of your well permit (see previous section), only if you have an existing well or well permit.
2. Submission to the WSP Administrator of the meter certificate verifying that your water meter has been installed and is certified and operating properly according to HASP standards (only if you have an operational well).

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 after HASP water has been purchased to cover all enrollees under the Intergovernmental Agreement between IMMD and HASP. Participants may register their individual 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 Enrollment & Transfer Forms. “I” refers to each owner of a well in Indian Mountain that becomes an IM WSP participant.

1. If I have an operational well, 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 I must make sure that the water meter stays in good working order. I am responsible to make sure that a copy of the meter certification is on file with the WSP administrator.
2. I understand that the WSP Administrator will send at least one email alert 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 to www.indianmountain.info to electronically report my total water meter reading in gallons between the 1st and 6th of each month. All accounts will have an account # assigned to them for reporting and identification purposes.
3. I understand my annual WSP operating fee is to be received within 30 days of invoicing at the beginning of each year; that the IMMD Board of Directors may change the annual operating fee from year to year based upon actual costs during the preceding year and upon the number of participants and the 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 the 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 state 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, accurate and submitted between the 1st and 6th 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 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 understand that failure to meet all specified fee/fine/penalty payments, reporting requirements, or usage limits could result in being dismissed from the IM WSP, and I will be required to seek alternate water well augmentation from other providers. Failure to maintain a water augmentation plan will result in non-compliance with Colorado Division of Water Resources (DWR) requirements and could subject me to Colorado State legal action. I will be notified (i.e., given a warning) by certified mail of any breaches or violations. If I fail to correct the breaches or violations, I understand that I may be dismissed from the WSP without recovery of any fees, costs, or expenses. My dismissal from the WSP will be filed with HASP, the Park County Clerk and Recorder's Office, and the Colorado Division of Water Resources.
9. I understand that acceptance into the 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 IM WSP Operations Manual, and that, on occasion, given new information or circumstances, the Board of Directors may amend the WSP Operations Manual and provide notice of such changes to WSP participants.
11. I understand that additional requirements may be required by the DWR during the enrollment period. This is dependent on future rulings from DWR, the Attorney General's Office, or Water Court.
12. I understand that having perpetual water augmentation is a significant asset to my property. If I sell my property, I will make sure the buyer knows the value of the WSP certificates and I will provide the buyer with a WSP Transfer Form. I will also notify the WSP Administrator of the pending transfer.

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.

- 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, with operational wells, 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 Administrator. It is expected this verification will be received within 6 months of submitting an application form and check for the required fees. An augmentation certificate will not be filed until verification is received.
- b. Water Meter certification is required every ten years while in this program. Recertification is required within 6 months of the 10-year due date.
- c. 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 WSP 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 may have suggestions.

Monthly Reporting for Participants with Operational Wells

- a. Participants will be emailed by the WSP Administrator, at the email address they have provided, on at least one occasion 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 during the water reporting period between the 1st and 6th 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 WSP 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 WSP Administrator as to any inability to do so. Email communication should be sent to indianmountainmetrodist@gmail.com or call 719-836-9043.

Filing with Authorities

On a continuing basis, 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 will be filed by IMMD with HASP.

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 certified mail to 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 the 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 of Directors.
- d. Opting-out of the WSP becomes effective as soon as participants in the WSP have been reported to HASP at the monthly reporting of water meter readings.

Penalties and Fine Schedule

The following fines will be applied as indicated below, and the IMMD Board of Directors and the WSP Administrator may adjust the application at their discretion. These fines are well within best practice limits of other water augmentation organizations and are lower than industry standards.

- a. A \$20 fine will be charged for the late payment of the annual operating fee, for each month that the payment is late. If the payment is overdue for 90 days or more, the participant may be considered for dismissal from the program.
- b. A \$20 fine will be charged for each instance of failure to report monthly water meter readings between the 1st and the 6th of every month. If the participant does not report between the 1st and 6th of every month, 5 times or more in a 12-month period, the participant may be considered for dismissal from the program. If the \$20 fine is not paid in 30 days, a \$5 penalty will be charged for each month that the payment is late. If the payment of the fine is overdue for 90 days or more, the participant may be considered for dismissal from the program.

- c. A \$100 fine will be charged for failure to provide proof of water meter installation and meter certification within 6 months of application to the IM WSP or required meter recertification date, if participant has an operating well. If the participant's provision of proof is more than 90 days overdue, the participant may be considered for dismissal from the program.
- d. HASP is authorized to put liens on properties not paying or reporting. They can recover attorney fees and administrative costs for removal from the program. They can notify the State Engineer at the Colorado Division of Water Resources that the well is not in compliance with state law, potentially causing the well to be shut down by the state.

Dismissal from the IM WSP

Dismissal from the WSP occurs under the following circumstances.

- a. The IMMD Board 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 or fines 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. After the sale of a property that belonged to a WSP member, if the new owner fails to transfer into the WSP after three letters have been mailed regarding the transfer to the new owner's address listed on the Park County Assessor's website of which one by certified mail, within a reasonable period of time not to exceed 6 months after the closing on the property, then that new owner may be dismissed from the WSP.
- f. There may be situations where a participant is not in compliance with the WSP Operations Manual. The WSP Administrator and/or the IMMD Board will try to communicate with the participant and try to bring the situation into compliance. After three attempts to correct the situation, if the participant does not comply, then a formal written warning of dismissal will be sent by the Board to the participant by certified mail.
- g. Prior to a dismissal, the Board shall request a written statement from the non-compliant WSP member. The statement must explain the cause or circumstances resulting in the violation(s) and what specific steps and timetable the non-compliant WSP member

proposes in order to come back into compliance. The Board will duly consider the written statement in their dismissal decision. If a written statement is not received by the Board within 30 days of the dated certified letter, the Board may vote to dismiss. In addition to a written statement, the Board may grant the participant an opportunity to present themselves at a regular meeting of the IMMD Board. Based upon input from the WSP Administrator, careful review of a written statement if submitted, and an optional presentation by the non-compliant to the Board, the Board will make a decision to dismiss or not, or to take other punitive actions.

- h. Participants dismissed from WSP will not be eligible for any rebate or reimbursement of fees, charges, liens, or other expenses. They are solely responsible to find another water augmentation plan and to notify the Colorado Division of Water Resources of their new augmentation plan.
- i. Dismissal from the IM WSP will be effective immediately. IMMD will promptly notify HASP of the dismissal after the Board action is taken. HASP will then proceed with their Disenrollment process detailed in the 2021 Amended IGA between HASP and IMMD. Furthermore, HASP will amend the records at the Park County Clerk and Recorder's Office and with 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 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, shall be submitted to the full IMMD Board at least 7 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, via the WSP Administrator, will be responsible for communicating Operations Manual changes in a timely fashion to WSP participants by way of the IMMD and IMPOA websites, email, newsletters, 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 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.

APPENDIX A

Fee Schedule

Year	Water Acquisition Fee	Operating Fee
2017	\$150	New Program
2018	\$300	\$100
2019	\$300	\$100
2020	No Open Enrollment	\$100
2021	\$300	\$80
2022	\$300	\$75
2023	No Open Enrollment	\$75
2024	No Open Enrollment	\$75