

RECEIVED

Christopher H Meyer

APR 6 1 2009

From: CHM
Sent: Friday, March 20, 2009 5:42 PM
To: Gary Spackman <Gary.Spackman@idwr.idaho.gov>
Cc: John Layman <jrlayman@laymanlawfirm.com>; Amie (Layman attys) Anderson <aanderson@laymanlawfirm.com>; Kyle Capps <kylec@blackrockdevelopment.com>; Scott King <sking@spfwater.com>; Robert (Bob - IDWR) Haynes <bob.haynes@idwr.idaho.gov>; Barry Rosenberg <barry@kealliance.org>; Jai Nelson <jaikandcadence@yahoo.com>
Subject: Follow up on Condition No. 3 (Black Rock)
Importance: High

DEPARTMENT OF
WATER RESOURCES

Mr. Spackman,

I am writing to follow up with respect to the language on "Condition No. 3".
(See also my email to you of 2-24-09.)

At the conclusion of the hearing, you asked that we try one more time to work out an agreement with KEA regarding the proper language for Condition No. 3. As the email below shows, we have been unable to accomplish that despite substantial efforts on our part.

The email below does not provide any basis for KEA's objection to the most recent language.

Nor has any substantive basis for objection been provided to Black Rock.

Frankly, I think the problem is that KEA does not understand the difference between the various categories of use (e.g., the difference between "municipal storage" and "municipal from storage").

We have tried mightily to explain how this works, but to no avail.

This leaves us at an impasse.

If I recall correctly, you had suggested at the hearing that, if we are unable to agree on new language, the simplest approach may be to stick with the stipulated language in "Black Rock's Submission of Proposed Conditions" dated 11-3-08 (to which KEA previously agreed), and then include further explanation in the order or perhaps in another remark simply explaining the effect of the condition is to limit the use of water under the "municipal" and "municipal from storage" categories of use, and does not limit in any way the authorized uses under the water right for "diversion to storage", "aesthetic storage", or "municipal storage". That, of course, was the intent of the language "direct flow use and diversions from storage under this right" at the beginning of the condition.

Black Rock, however, defers to your judgment and preference in how to approach this.

If you think a status conference would be appropriate, we could do that.

That might not be a bad idea. I think part of the problem is a lack of trust between KEA and Black Rock.

Hearing directly from you as to how what the effect of these conditions would be might be helpful in bridging that gap.

Again, however, we defer to your judgment as to the best way to proceed.

Sincerely,

Chris Meyer for Black Rock

cc: KEA & Jai Nelson

Contact information for sender:

Christopher H. Meyer

Givens Pursley LLP

601 West Bannock Street
P.O. Box 2720
Boise, ID 83701
Direct: 208-388-1236
Fax: 208-388-1300
Cell: 208-407-2792
Home: 208-336-2485
Email: chrismeyer@givenspursley.com
Firm Website: www.givenspursley.com

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>> From: Barry Rosenberg [<mailto:barry@kealliance.org>]
>> Sent: Tuesday, March 10, 2009 4:49 PM
>> To: Christopher H Meyer
>> Cc: Gary Spackman
>> Subject: Black Rock
>>
>>
>> Chris,
>>
>> I have given it much thought and decided that KEA doesn't want to make another
>> attempt at revising the stipulation agreement between Black Rock Utilities and
>> Kootenai Environmental Alliance.
>>
>> See you at the Water Law Conference.
>> Barry
>>
>>
>> Barry Rosenberg
>> Executive Director
>> Kootenai Environmental Alliance
>> 408 Sherman, Suite 301
>> Coeur d'Alene, ID 83814
>> (208) 667-9093
>> barry@kealliance.org