

Franklin, Keith

From: Barry Rosenberg [barry@kealliance.org]
Sent: Thursday, November 13, 2008 11:19 AM
To: Franklin, Keith
Subject: Fw: Garwood Language

Keith,

Here is my reply to a query by Glen Rothrock of the Garwood Water Cooperative Board. Do you find it acceptable?

Barry

----- Original Message -----

From: Barry Rosenberg
To: Glen.Rothrock@deq.idaho.gov
Sent: Thursday, November 13, 2008 11:10 AM
Subject: Re: Garwood Language

Glen,

I am sure that the enforcement language in "E" will be acceptable to IDWR. I know from past settlement agreements IDWR wants to have number 2, under Mutual Actions included, and KEA wants No. 3 included in the Mutual Action section. These inclusions do not significantly alter the agreement.

Barry

----- Original Message -----

From: Glen.Rothrock@deq.idaho.gov
To: barry@kealliance.org
Sent: Thursday, November 13, 2008 10:03 AM
Subject: RE: Garwood Language

Barry: got your voice mail, and I'm a little unsure of the language check you sent to Keith Franklin. In E. Enforcement, is it the phrase "thorough an action by IDWR or by an enforcement action brought by KEA.."; and that IDWR does not want to be referenced in this sentence?

From: Barry Rosenberg [mailto:barry@kealliance.org]
Sent: Monday, November 10, 2008 2:51 PM
To: Keith Franklin
Cc: Glen Rothrock; Luke J. Russell
Subject: Garwood Language

Keith,

In previous agreements we used the following language under Mutual Actions. In the Garwood agreement similar language can be found under "E, Enforcement."

C. Mutual Actions

The Parties agree to jointly file a notice of settlement, a copy of this Agreement, and a conditional motion to withdraw protest requesting that IDWR issue a water right that:

1. Incorporates the terms of the amended water right application described in section B (1) & B (2);
2. Contain a provision stating, "The diversion and use of water described in this order is subject to additional conditions and limitations agreed to by both Kootenai Environmental Alliance, and the water right holder under a separate agreement to which the Department is not a party and which is independently enforceable by a court of law;" and
3. References this Agreement and includes a copy of this Agreement in the permit file.

GARWOOD LANGUAGE

E. Enforcement

The Parties agree that all terms of this Agreement may be enforceable, to the extent feasible through an action by IDWR or by an enforcement action brought by KEA in an Idaho Court seeking specific performance of the terms of this Agreement.

Do you find the Garwood language acceptable?

Barry

Barry Rosenberg
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