

AUG 02 2007

IDWR/North

**SETTLEMENT AGREEMENT BETWEEN SILVER LEAF HOMEOWNER'S ASSOCIATION AND THE KOOTENAI ENVIRONMENTAL ALLIANCE, Inc. IN REGARDS TO IDWR APPLICATION FOR PERMIT NO. ~~96-9304~~ 95-9444**

This Settlement Agreement (Agreement) is entered into by and between the Kootenai Environmental Alliance, Inc. (KEA) and Silver Leaf Homeowner's Association to resolve disputes regarding IDWR Application for Permit No. 96-9304. In consideration of the mutual promises specified herein and by conditioning their performance under this Agreement upon satisfaction of the identified conditions precedent, and for other good and valuable consideration, the Parties agree as follows:

**A. Scope of Agreement**

This Agreement is intended to settlement all matters related solely to the protest filed by KEA of Silver Leaf Homeowner's Association Inc. Application for Permit filed with IDWR (Permit No. ~~96-9304~~) 95-9444

**B. Actions of Silver Leaf Homeowner's Association.**

Under the terms of this Agreement, Silver Leaf Homeowner's Association agrees to undertake the following actions:

1. Submit an amended Application for Permit ~~96-9304~~ 95-9444 to the Idaho Department of Water Resources for a total diversion rate of 0.30 cfs for domestic and fire protection, not to exceed 28 acre feet per annum, which works out to 1,000 gallons/day/connection, for a total withdrawal of 9,125,000 gallons per annum, except for use in documented fire protection incidents.
2. Agree to limit the number of users to no more than 25 connections for the water requested.
3. Require each home to be equipped with a water meter and implement a rate schedule that encourages water conservation.
4. Utilize water efficient gardens at any common area.
5. Recommend the supplement of existing soils, as necessary, to enhance the moisture retention characteristics of the soils that will be used in the irrigated portions of each lot in the development.
6. Report on a yearly basis the annual water withdrawal and distribution information by October 15 to IDWR for fiscal year ending on October 1.
7. Enact covenants, conditions, and restrictions (CCRs) that require property owners in the proposed subdivision utilize water efficient landscaping on their property.
8. Require in the CCRs that rain sensors will be installed as an integral part of the constructed automatic irrigation systems on their property.
9. Require in CCRs that property owners in the proposed development do not irrigate during the high evaporation times between 9:00 a.m. and 7:00 p.m. and utilize an odd only or an even only watering schedule.
10. Recommend drip systems for shrubs; recommend that property owners in the proposed development employ reputable landscape irrigation companies.

11. Amend the by-laws of Silver Leaf Ranch Homeowner's Association to include a strict rate schedule aimed at water conservation.
12. Follow through with the designed plans by Tate Engineering, Inc. and provide all houses with interior sprinkler systems, build a 70,000 gallon reservoir, limit irrigated areas to 1/2 acre per lot, and develop the property in such a manner as to keep it as natural as possible.

### **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.

The conditional motion to withdraw protest shall be conditioned upon the acceptance and inclusion of the terms set forth in that section by IDWR. The Parties further agree not to protest or otherwise challenge the terms of IDWR's water right permit should the terms of that permit be issued in a manner consistent with this Agreement.

### **D. Actions of KEA**

In consideration for the actions identified above and upon the issuance of a final water rights permit to Silver Leaf Homeowner's Association that incorporates the terms set forth in section C, KEA agrees to a full and final dismissal of its protest.

### **E. Enforcement**

1. The Parties agree that all terms of this Agreement may be enforceable, to the extent practicable, through an action by IDWR or by the enforcement action described as follows in the Silver Leaf Homeowner's Association Declaration of Protective Covenants, Conditions and Restrictions at 5:

"It is recommended to supplement the existing soils, as necessary, to enhance the moisture retention characteristics of the soils that will be used as irrigated portions of the lot and to add drip systems for shrubs and trees. Reputable landscaping companies should be used to avoid inefficient irrigation systems. To conserve water, no more than 1/2 acre of landscape area shall be planted in lawn grass, garden area or be irrigated and all irrigations systems will be required to have a rain sensor. During High evaporation periods, homeowner's will not be allowed to water between the hours 9:00 AM and 7:00 PM and may be subject to an "odd or even" day watering schedule. The Homeowner's Association is responsible to enforce water preservation standards as outlined in the settlement agreement with KEA regarding application for water rights permit #96-9304. The Homeowner's Association reserves the right to fine offenders up to \$100.00 per occurrence of violations for abuse of water conservation. Said fine may be assessed against offender's water bill."

**F. Non-Severability**

The paragraphs of this Agreement are not severable. This Agreement is executed on the understanding that each paragraph is in consideration of the others.

**G. Good Faith**

The Parties to this Agreement agree to act in good faith and make all reasonable efforts to satisfy the conditions of the Agreement.

**H. Successors and Assigns**

This Agreement will be binding and will inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns, except as restricted by this Agreement.

**I. Authorizations**

All individuals executing this Agreement and other documents on behalf of the respective Parties certify and warrant that they have the capacity and have been duly authorized to so execute the documents on behalf of the Party so indicated.

**J. Advice of Attorneys**

Each Party represents and warrants that in executing this Agreement, each has been advised by or has had an opportunity to be advised by independent legal counsel. Each party has read the terms of this Agreement and understands their consequences. Each Party further acknowledges and represents that, in executing this Agreement, it has not relied on any inducements, promises or representations made by any other Party or its representatives, except as otherwise stated in this Agreement.

**K. Entire Agreement and Amendment**

With respect to the issues considered herein, this Agreement contains the entire understanding and agreement of the Parties. There have been no promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature binding except as stated in this Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Agreement and by no other means. An amendment to the Agreement is binding only on the Parties that execute the Amendment. Each Party waives its right to claim, contest or assert that this Agreement was modified, cancelled, superseded or changed by any oral agreement, course of conduct, waiver, or estoppel.

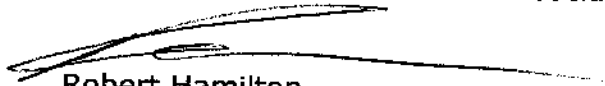
For Kootenai Environmental Alliance, Inc.



Barry Rosenberg, Executive Director

Date 6/22/07

For Silver Leaf Homeowner's Association, Inc.

  
Robert Hamilton

Date 7/25/07