

Franklin, Keith

From: Barry Rosenberg [barry@kealliance.org]
Sent: Friday, July 13, 2007 1:41 PM
To: Franklin, Keith
Subject: Re: Johnson Meadows Settlement Agreement

*Proposed
Agreement
No signatures*

Keith,

Attached is the settlement agreement that all the protestants signed. I made the changes that IDWR requested in the Mutual Actions section. All I can think of is that Cindy Espe mail the previous agreement. I will call her to see if she did that.

Barry

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

From: Franklin, Keith
To: barry@kealliance.org
Sent: Friday, July 13, 2007 12:58 PM
Subject: Johnson Meadows Settlement Agreement

Barry,

I've had a chance to revisit the Johnson Meadows Settlement File. There were "Mutual Action" items the department was not willing to incorporate into the permit, such as policing CC&Rs. My notes indicate you were to review the agreement and see if it could be revised without having to get everyone to resign the agreement.

I've taken the liberty to draft a permit with what I believe the department can agree to, copy attached. Let me know what you think.

Keith

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No virus found in this incoming message.

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Version: 7.5.476 / Virus Database: 269.10.4/898 - Release Date: 7/12/2007 4:08 PM

**SETTLEMENT AGREEMENT BETWEEN JOHNSON MEADOWS ESTATES WATER
ASSOCIATION INC. AND BEV AND NORBERT TWILLMANN, DOUG AND LINDA
REAGON, DALE DENNIS, MYRA AND HAL SHERMAN, SUSAN MELKA, DAVID H.
WARDSWORTH AND THE KOOTENAI ENVIRONMENTAL ALLIANCE IN
REGARDS TO IDAHO DEPARTMENT OF WATER RESOURCES (IDWR)
APPLICATION TO PERMIT NO. 95-9362**

This Settlement Agreement (Agreement) is entered into by and between Bev & Norbert Twillmann, Doug & Linda Reagon, Dale Dennis, Myra & Hal Sherman, Susan Melka, David H. Wardsworth and the Kootenai Environmental Alliance, (the Protestants) and Johnson Meadows Estates Water Association Inc. to resolve disputes regarding Idaho Department of Water Resources (IDWR) Application to Permit No. 95-9362. 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 settle all matters related solely to the protest filed by the Protestants of Johnson Meadows Estates Water Association Inc. water right application filed with IDWR (Permit No. 95-9362).

B. Actions of Johnson Meadows Estates Water Association Inc.

Under the terms of this Agreement, Johnson Meadows Estates Water Association Inc. agrees to undertake the following actions:

1. Submit an amended Application to Permit 95-9362 to the Idaho Department of Water Resources for 0.11 cfs for municipal use, not to exceed 17.9 acre feet per annum, which works out to an average of 800 gallons/day/home, except for use in documented fire protection incidents.
2. To locate the primary well servicing water Johnson Meadows Estates in the Northeast corner of this property in lot 11, in 48N, 3W, SW 1/4, NE 1/4 of Sec 6
3. Agree that the water requested in this water right will be used solely to supply water to the proposed development and that there will be no more than 20 connections plus three fire hydrants.
4. Report on a yearly basis the annual water withdrawal and distribution information by October 15 to IDWR for fiscal year ending on October 1.
5. Agree to finance static line monitoring by an independent engineer for two wells of the existing home of Norbert and Bev Twillmann in order to determine the impact of the newly constructed primary well proposed in the development, should the primary newly constructed well servicing this subdivision be located in the initially chosen spot on the east face of the hillside, directly above the aquifer servicing the Twillmann wells. *Should the primary well servicing water for this subdivision be placed on the Northeast corner in lot #11, no monitoring of the Twillmann well would be necessary.*

6. Enact covenants, conditions, and restrictions (CCRs) that require property owners in the proposed subdivision utilize water efficient landscaping on their property and limit the size of irrigated lawns to ¼ acre. A copy of said CCRs agreement will be provided to the Protestants of this water request.
7. All items in the Declaration of Protective Covenant, Conditions and Restrictions (CC&Rs) for Johnson Meadow Estates relating to landscaping and water conservation measures as described in the CC&Rs shall not be amended, altered or deleted.
8. Require each home to be equipped with a water meter and implement a rate schedule that encourages water conservation.
9. Require in the CCRs that moisture and/or rain sensors will be installed as an integral part of the constructed automatic irrigation systems on their property.
10. 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.
11. Recommend the installation of underground sprinkler systems and drip systems for shrubs.
12. Agree that there will be no community swimming pools.
13. Require that the fire district be granted access to the 75,000-gallon reservoir located on the grounds of the proposed development.
14. Agree that a 3rd fire hydrant on Asbury Road perimeter be included in the construction according to Fire District Standards, of the proposed development.
15. Agree to meet with Protestants within one-year and/or as necessary to ensure compliance with the terms of the agreement.

C. Mutual Actions

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

1. Incorporates as conditions in the permit the terms of the amended water right application as described in section B (1) (2) (3) (4) (5).
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 the Protestants, 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 Protestants

In consideration for the actions identified above and upon the issuance of a final water rights permit to Johnson Meadows Estates Water Association Inc. that incorporates the terms set forth in section C, Protestants agrees to a full and final dismissal of its protest.

E. Enforcement

The Parties agree that all terms of this Agreement may be enforceable, to the extent practicable, through an action by IDWR or by an enforcement action brought by the Protestants in an Idaho Court seeking specific performance of the terms of this agreement and/or liquidated damages, whichever is appropriate.

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.

APPLICANT

Date

Fred Johnson, for Johnson Meadow Estates Water Association Inc.

PROTESTANTS

Bev & Norbert Twillmann

Date _____

Doug and Linda Reagon

Date _____

Susan Melka

Date _____

Dale Dennis

Date _____

Myra and Hal Sherman

Date _____

David H. Wardsworth

Date _____

Barry Rosenberg,
Kootenai Environmental Alliance

Date _____