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JAN 18 2008
DEPARTMENT OF
WATER RESOURCES

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18 BEFORE THE DEPARTMENT OF WATER RESOURCES
19 OF THE STATE OF IDAHO

20 IN THE MATTER OF APPLICATION FOR)
21 PERMIT NO. 96-9253 IN THE NAME OF)
22 KOOTENAI LAND AND TRUST LLC)
23)
24)
25)
26)
27)
28)

NOTICE OF SETTLEMENT AND
CONDITIONAL MOTION TO
WITHDRAW PROTEST

COMES NOW Arthur B. Macomber and Scott W. Reed, Counsel for Kootenai
Environmental Alliance, Inc. (KEA, Inc.), Protestant, pursuant to IDAPA 37.01.01.260(1)
giving notice of a Settlement Agreement and conditionally motioning to withdraw its
protest.

STATEMENT OF FACTS

On July 29, 2005, Applicant Kootenai Land and Trust, L.L.C., filed a municipal
water right application to divert the water resources of Idaho and apply them to a beneficial
use. The Idaho Department of Water Resources (IDWR) assigned that application Permit
Number 96-9253. On October 3, 2005, Protestant KEA, Inc. filed a formal Protest, which
included acknowledgement that more information gathering and discovery would be
necessary. (KEA, Inc., *Protest*, p. 1 (2005).)

Following IDWR's allowance for discovery, Applicant Kootenai Land and Trust, L.L.C., and Protestant KEA, Inc. endeavored to reach a voluntary Settlement of the issues related to the protest prior to discovery.

On January 11, 2008, Applicant and Protestant reached agreement and committed it to written form entitled **Settlement Agreement Between Kootenai Land and Trust, LLC and the Kootenai Environmental Alliance, Inc. In Regards to IDWR Application for Permit No. 96-9253**, see Exhibit "A" herewith attached.

NOTICE AND MOTION

The parties to the above entitled matter, Kootenai Land and Trust LLC and Kootenai Environmental Alliance, hereby provide notice of the attached Settlement Agreement, see Exhibit “A” herewith, and make a conditional motion to the Presiding Officer of the Idaho Department of Water Resources for resolving all issues between the parties in this matter. Protestant conditionally motions to withdraw its protest in this matter conditioned upon IDWR’s acceptance of the Exhibit “A” Settlement Agreement pursuant to IDAPA 37.01.01.614 following review pursuant to IDAPA 37.01.01.612 and the *express* inclusion of certain provisions of said Agreement in the water right permit, and Applicant’s adherence to the terms of the Settlement Agreement, said conditions including the following specific actions of the Applicant and IDWR:

1. The Applicant will alter its request for water rights permit and IDWR will accept said request to conform with the attached Settlement Agreement, specifically to include in Applicant's application that the Department of Water Resources issue Kootenai Land and Trust LLC a water right permit *expressly* allowing for no more than 0.3 cfs for domestic and irrigation use and not to exceed 40.3 acre feet per annum, except for use in documented fire protection incidents;

2. The Applicant will alter its request for water rights permit and IDWR will accept said request to conform with the attached Settlement Agreement, specifically to include in its application that the Department of Water Resources issue Kootenai Land and

SETTLEMENT AGREEMENT BETWEEN KOOTENAI LAND AND TRUST LLC AND THE KOOTENAI ENVIRONMENTAL ALLIANCE, Inc. IN REGARDS TO IDWR APPLICATION FOR PERMIT NO. 96-9253

This Settlement Agreement (Agreement) is entered into by and between the Kootenai Environmental Alliance, Inc. (KEA) and Kootenai Land and Trust LLC to resolve KEA's protest regarding Application for Permit No. 96-9253 filed by Kootenai Land and Trust LLC to the Idaho Department of Water Resources (IDWR). 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 Settlement Agreement is intended to settle all matters related solely to the protest filed by KEA of Kootenai Land and Trust, LLC Application for Permit No. 96-9253 filed with IDWR.

B. Actions of Kootenai Land and Trust LLC

Under the terms of this Agreement, Kootenai Land and Trust LLC agrees to undertake the following actions:

1. Amend the Kootenai Land and Trust LLC Application for Permit to stipulate a total diversion rate for the water rights associated with IDWR permit No. 96-9253 of 0.30 cfs for domestic and fire protection, not to exceed 40.3 acre feet per annum, except for use in documented fire protection incidents, for the first five years from the date of issuance of the water right permit (original permit) by IDWR.
2. Report on a yearly basis the total annual water withdrawal and distribution information by January 31st to IDWR and KEA for the previous calendar year.
3. Five years from the date of issuance of the original permit the average per annum water consumption granted in the permit shall be reviewed and the Applicant and/or its successor in interest agrees to seek amendment of the permit and/or license based

on actual average per annum water consumption as set forth herein. Actual average per annum water consumption (actual use) will be calculated as follows:

The total amount of water measured at the wellhead and reported for the previous calendar year divided by the actual number of occupied homes. This amount is to be pro-rated for any homes that were not occupied for the entire year. The Applicant and/or its successor in interest agrees to seek amendment of its per annum allocation based on actual use plus 10% multiplied by the 24 connections anticipated at build out. The total cannot exceed 40.3 acre-feet per annum.

4. Agree to limit the number of users to no more than 24 connections for this Application for Permit No. 96-9253.
5. Require each home to be equipped with a water meter.
6. Implement a rate schedule that encourages water conservation.
7. Amend the Rolling Meadows Ranch governing documents to add or revise as follows:
 - a. Require property owners in the proposed development not to irrigate between 9:00 a.m. and 7:00 p.m.;
 - b. Require the implementation of an odd only or an even only watering schedule for property owners;
 - c. Require rain sensors or moisture sensors to be installed as an integral part of all constructed automatic irrigation systems;
 - d. Require water efficient gardens at any common area;
 - e. Recommend property owners in the proposed subdivision to utilize water efficient landscaping on their property;
 - f. Recommend drip systems for shrubs; and

- g. Recommend that property owners in the proposed development employ licensed landscape irrigation companies.

C. Mutual Actions

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

1. Incorporates sections B (1) B (2) B (3) & B (4) stated above;
2. Contains 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 may be independently enforceable by a court of law;" and
3. References this Agreement and includes a copy of this Agreement in the permit file.

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 that incorporate the terms set forth in section C, KEA will motion for 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, a civil action in law or equity, or by the enforcement action to be described as follows in the Rolling Meadows Ranch governing documents:

"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. Licensed landscaping companies should be used to

avoid inefficient irrigation systems and all irrigation systems will be required to have a rain or moisture sensor. Homeowners will be subject to irrigation restrictions during the hours between 9:00 AM and 7:00 PM and homeowners will be subject to an "odd or even" day watering schedule. The Rolling Meadows Ranch Homeowner's Association, Inc. is responsible to enforce water conservation standards as outlined in the settlement agreement with KEA regarding application for water rights permit No. 96-9253. 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. Severability

The paragraphs of this Agreement are 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

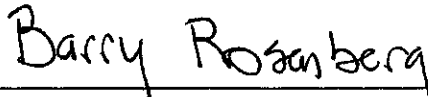
Each Party represents and warrants that in executing this Agreement, each has been advised by or has had an opportunity to be advised by independent legal counsel. Each party has read the terms of this Agreement and understands their consequences. Each Party further acknowledges and represents that, 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 1/11/08

For Kootenai Land and Trust



Dan Sims, Managing Partner

Date 1/11/08