

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

RECEIVED

AUG 04 2006

IDWR/North

IN THE MATTER OF APPLICATION FOR)
AMENDMENT 72669 TO AMEND) NOTICE OF SETTLEMENT AND
PERMIT NO. 95-9045 IN THE NAME OF) CONDITIONAL MOTION TO WITHDRAW
BLACK ROCK UTILITIES, INC.) PROTEST

The parties to the above titled matter, Black Rock Utilities, Inc. ("Black Rock") and the Kootenai Environmental Alliance, hereby provide notice to the Idaho Department of Water Resources ("IDWR") of the attached Settlement Agreement Between Black Rock Utilities, Inc. and the Kootenai Environmental Alliance in Regards to IDWR Application for Amendment of Permit No. 72669 ("Settlement Agreement"), resolving all issues of the parties in this matter. As set forth in the attached Settlement Agreement, the Kootenai Environmental Alliance agrees to withdraw its protest in this matter subject to the terms of the Settlement Agreement, including the following specific actions of IDWR. IDWR shall amend Black Rock's water permit No. 95-9045 as follows:

1. Eliminate the 1.00 CFS for domestic use as described in Permit No. 95-9045.
2. Limit the municipal use for irrigation only from 3/15 to 11/15, with the exception of fire protection and construction water. "Construction water" will be used only for dust control and compaction during a two-year period for construction of roads, golf course and building pads. Black Rock will notify IDWR in writing at the beginning and end of the two-year construction period.

1 3. Require on a yearly basis the annual water withdrawal information from Lake Coeur
2 d'Alene by Black Rock Utilities, Inc. by October 15 for fiscal Report year ending on
3 October 1 to IDWR.

4 4. IDWR shall issue the above referenced water right permit with a provision stating, "The
5 diversion and use of water described in this order is subject to additional conditions and
6 limitations agreed to by both Kootenai Environmental Alliance, and the water right
7 holder under a separate agreement to which the Department is not a party and which is
8 independently enforceable by a court of law;" and

9 5. IDWR shall specifically reference the attached Settlement Agreement in the amended
10 water right permit and include a copy in the permit file.

11
12 Should IDWR agree to amend water right Permit No. 95-9045 consistent with the terms
13 set forth above, the Kootenai Environmental Alliance agrees to withdraw its protest of this
14 matter and both parties agree not to further protest or challenge any permit issued consistent with
15 the terms of the attached Settlement Agreement.

16 DATED this 4 day of August, 2006.

17
18 Barry Rosenberg
19 For the Kootenai Environmental Alliance

20
21 [Signature]
22 For Black Rock Utilities, Inc.
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**SETTLEMENT AGREEMENT BETWEEN BLACK ROCK UTILITIES, INC. AND THE
KOOTENAI ENVIRONMENTAL ALLIANCE IN REGARDS TO IDWR APPLICATION
FOR AMENDMENT OF PERMIT NO. 72669**

RECEIVED
AUG 04 2006
IDWR/Noth

This Settlement Agreement (Agreement) is entered into by and between the Kootenai Environmental Alliance (KEA) and Black Rock Utilities, Inc. (Black Rock) to resolve disputes regarding IDWR Application for Amendment of Permit No. 72669 to change the water use for Water Permit 95-9045 from 2.50 CFS for irrigation and 1.00 for domestic to 3.50 CFS for municipal use. The water is diverted from Lake Coeur d'Alene.

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 as settlement all matters related solely to the protest filed by KEA of Application for Amendment of Permit No. 72669.

B. Actions of Black Rock

Under the terms of this Agreement, Black Rock agrees to undertake the following actions:

1. Submit a letter to Idaho Department of Resources stating that Black Rock will change its request for Application for Amendment of Permit No. 72669 pursuant to the settlement with KEA.
2. Agree to relinquish the 1.00 CFS for domestic use as described in Permit No. 95-9045.
3. Agree to limit the municipal use for irrigation only from 3/15 to 11/15, with the exception of fire protection and construction water. "Construction water" will be used only for dust control and compaction during a two-year period for construction of roads, golf course and building pads. Black Rock will notify KEA and IDWR in writing at the beginning and end of the two-year construction period.
4. Report on a yearly basis the annual water withdrawal information by October 15 for fiscal year ending on October 1 to Idaho Department of Water Resources (IDWR) and, submit the annual water withdrawal report to KEA only upon receipt of notification from KEA. Such notifications shall include written or e-mail notice from KEA.

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 described in section B, above and
2. 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 that incorporates the terms set forth in section C, KEA agrees to a full and final dismissal of its protest.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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 the Kootenai Environmental Alliance

Barry Rosenberg
Barry Rosenberg

7/19/06
Date

For Black Rock Utilities, Inc.

Marshall Chesrown
Marshall Chesrown

7-17-06
Date