

Cefalo, James

From: Cefalo, James
Sent: Monday, February 6, 2023 2:15 PM
To: Gilbert Kort; sadie.barrett@icloud.com; raksland@msn.com; David Craig
Cc: Lafortune, Thomas; Henman, Christina
Subject: RE: Summary of Informal Settlement Conference

Dear Parties:

Thank you for responding with your comments and concerns on the draft Summary of Informal Settlement Conference. Some of the responses were sent to the entire group, some were sent only to me. The Korts have asked if I would provide a copy of all the responses so the parties can prepare for our next informal settlement conference. I agree that it would be helpful to know the position of the parties on the topics set forth in the Summary. Please do not send me additional arguments about this email or the responses from the other parties. We will handle any further discussion on these topics in our next informal settlement conference.

David Craig provided this response on January 25th:

Thank you for your efforts yesterday, your professionalism and arbitration skills are excellent. The only item I take slight issue with is item 11. I am uncomfortable with language that indicates that 10 "will" do something when only 4 were represented. The neighborhood is divided on the need for a formal association and what that means. From a legal standpoint, an "association" without formal formation is nothing more than an agreement. There have been a number of "associations" formed for the lake creek spring over the years. Without legal existence they come and go or are only recognized when it benefits. Barrett claims to have formed a new association last August, but did so with the approval of only 4 of the ten users. Kort and I consulted a water rights attorney in Idaho Falls when Barrett claimed to have taken control of the spring, and we were given legal advice regarding "water user associations". We were told the legal requirement to form one only applies to irrigation rights. Furthermore, he explained that water user associations are rarely successful long term unless a non-profit corporation is formed. This seems to be supported by our own history... With the formal organization, it is possible to get a tax id number, open a bank account in the name of the association, etc. He also indicated that the association typically also holds the water rights, but not always. Given the breaches in trust in our neighborhood, an association will likely be a hard sell. The other issue for us is that there are numerous lots owned by separate parties from all over the US in Lake Creek Subdivision. There is great potential for future challenges regarding the Lake Creek Spring because of the substantial body of evidence that the spring was originally developed to serve the entire subdivision. A formal and legally recognized water user association would create the entity for those landowners to sue should they choose. The financial burden of such challenges would then be born by the members of the association. I believe we have a much better chance of negotiating and getting all ten to sign a simple written agreement that addresses all of the things you outline in section 11. The goal would be an agreement that would record to all ten properties so that we can avoid similar conflicts in the future as owners change. Regardless, I have attached a proposed edit to your Summary.

Gilbert and Kathleen Kort provided this response on January 27th:

I am sure that all of us who attended the Informal Settlement Conference with the IDWR, on Tuesday, have had time to think over what was discussed and have reviewed the Summary, emailed to us by James Cefalo, of the IDWR. We agree to the Summary except as to items 7 and 11.

In regards to item 7, of the above referenced Summary, it is not necessary to restrict our water rights to culinary purposes only. As our water use is already restricted by the location of the out-take pipe. The out-take pipe is suspended several feet from the bottom of the cistern, so we are the first to run out of water. It is physically impossible for our pump to cause the siphon to break (air lock) in the piping, nor is it possible for our use to run anyone else out of

water. The present location of our out-take pipe can be measured and documented as a part of the Water Right permit if allowed by IDWR.

In regards to item 11, we are not opposed to discussing a water users association but we do need to include all users of the Lake Creek Spring not just those users in this informal settlement.

Sadie Barrett provided this response on February 1st:

I have taken some time and put a lot of thought into the proposal you submitted. I ask that you consider the following:

From what I can tell, 75-13725 water right was filed with two RP numbers. One of them was purchased by me and reflected a water right at the time. The form that we looked at during settlement was just a lot line adjustment that was added after the purchase to correct a line with the seller of the property when the surveyor shot the line incorrectly. But, after reviewing the original filing, it is clear that it was intended for the household on the other RP that coincides with lot 3. Richard and I will continue working towards making that correction.

I will file under adjudication, but have not decided if I will continue to defer or not. Since there is no deadline, I am not sure if it's the best time.

Bill Kittrell still believes his water right is 10499, and we are still looking through the records on his house to confirm whether or not the same bank held it. He has significant health issues that are delaying our efforts. As I stated in the meeting, I am not in agreement that it belongs to the golf cart shed that never had water until David Craig built on top of it.

The domestic water right 75-14748 held by Tri-West will have to stay limited to in-house culinary use and does not include lawn, garden, landscape, or other types of irrigation. It was noted in the filing as N/A for outside watering, and in the field exam, even more clearly states that it was for culinary purposes for the shop only. I think we have already made concessions to allow it for both buildings. They denied the existence of the hydrant, but last fall I discussed the issue of it emptying the spring within a day when it is used. Gil and Kathy acknowledged its existence and told me it had been disconnected from the spring. I also don't believe there is a spring where they claim to have one by the pond. I think it is the shallow well, which you had told us does not constitute a water right. There should be no need for outside watering since it duplicates existing water rights for the area around the house.

It is incredibly important that the wording is changed in item 11. The water users association has been in existence and by definition under Idaho code 42-13(?) for over 10 years and we had a meeting last year to update its board members. It is defined as those who share a POD and have water rights. Once users have rights, they can join the existing association. The easement is a notarized document and currently in existence, which gives the water users association access. If Gil wants to protest that, I think it is a civil matter. If we dissolve the old association we could possibly lose the easement. I believe it is the intention of Gil and David to do this, so I will not agree to a new association nor will I agree to address the easement within this settlement. As you heard in the meeting, they were adamant that our association was illegal, and members were too scared to come to the meetings and get the details of the association worked out and updated.

I am prepared to go to formal settlement if the details cannot be worked out fairly and honestly.

Richard Aksland provided this response on February 2nd:

Thank you for the work you did for us. However, I still have some issues that will require that I get legal council before I can sign on to this agreement.

I am asking that you allow me two weeks to have a few questions answered.

I will do my best to get this resolved within this time frame. Please feel free to call me should you have any questions or if you would like to discuss this.

James



From: Gilbert Kort <grksa13@gmail.com>
Sent: Thursday, February 2, 2023 3:17 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Cc: Sadie Barrett <sadie.barrett@icloud.com>; Lafortune, Thomas <Thomas.Lafortune@idwr.idaho.gov>; raksland@msn.com; David & Melissa Craig <david@questaff.com>; Henman, Christina <Christina.Henman@idwr.idaho.gov>
Subject: RE: Summary of Informal Settlement Conference

Hi James,

We received your email regarding the next informal settlement conference. We will be emailing Christina with the dates we are available.

In regards to the responses from the first informal meeting, ourselves and the Craig's responded to all interested parties. However, we did not receive any information from Richard Aksland and Sadie Barrett. In order to be prepared for the next informal meeting could you please forward us a copy of their comments.

Thank you very much,

Gil and Kathy Kort