

HONEY LAKE VALLEY
RESOURCE CONSERVATION DISTRICT

WATERMASTER ADVISORY COMMITTEE (WAC)
Special Meeting Minutes

Date: Thursday, August 8th, 2019

Location: USDA Service Center, 170 Russell Avenue, Suite C, Susanville

Present: Board: Daren Hagata Mike Bartley Wayne Langston
Todd Swickard Brad Hanson

Staff: Kayla Meyer Carrie Adams

Attendees: Jay Dow and Counsel, Brad Herrema
Joe Egan

I. CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL

Meeting called to order by Board Vice Chair Swickard at 5:30 pm. The pledge of allegiance was recited and a quorum was noted. Board Chair Ramsey Wood was absent.

II. APPROVAL OF AGENDA

Board Member Hagata made a motion to approve the agenda, Board Member Bartley seconded and the motion passed. All.

III. PUBLIC COMMENT

None.

IV. MOTION TO OPEN PUBLIC HEARING ON JAY DOW COMPLAINT (Water Transfer), FILED 7/26/19- Adams

- A. Board Member Hanson motioned to open the public hearing on Jay Dow Complaint (Water Transfer), Board Vice Chair Swickard seconded and the motion passed. All.
- B. Deputy Watermaster Carrie Adams started with a summary of the complaint, the actions that preceded, and her reasoning behind her decision. Brad Herrema with Brownstein Hyatt Farber Schreck, LLP representing Jay Dow, followed with a PowerPoint presentation explaining their argument (attached). There was then open discussion and questions from the WAC members with responses from Adams, Dow, and Herrema.

V. MOTION TO CLOSE PUBLIC HEARING ON JAY DOW COMPLAINT (Water Transfer), FILED 7/26/19- Adams

- A. Board Member Hagata motioned to close the public hearing on Jay Dow Complaint (Water Transfer), Board Member Bartley seconded and the motion passed. All.

VI. CONSIDERATION AND APPROVAL TO UPHOLD, MODIFY, OR REVERSE WATERMASTER'S DECISION

- A. Committee remained in open session and voted to uphold the Watermaster's decision, in a three to two vote, to not allow the transfer of Schedule 4 and Schedule 5 1st and 2nd priority water rights. The Watermaster will issue Jay Dow a written confirmation of the WAC's decision.

VII. ADJOURNMENT

Board Member Langston made a motion to adjourn the meeting, Board Member Hagata seconded and the meeting was adjourned at 6:30 pm. All. The next scheduled WAC meeting will be held **Thursday, August 8, 2019** at the **USDA Service Center, 170 Russell Avenue, Suite C, Susanville** at **6:30 p.m.**

Respectfully submitted,

A handwritten signature in cursive script that reads "Carrie Adams". The signature is written in black ink and is positioned above the printed name.

Carrie Adams
Deputy Watermaster, SRWMSA
Honey Lake Valley RCD

wac meeting minutes 8-8-19



August 8, 2019 Watermaster Advisory Committee Hearing

The Dow-Bonomini Family 2013 Trust Water Rights Complaint

Re Paragraph 17 and Diversion of Schedule 4 and Schedule 5, Priority 2 Rights

Susan River Decree

- *J.J Fleming, et al. v. J. B. Bennett, et al.* – Case No. 4573 (Superior Court of Lassen County)
- A 1940 decree allocating water rights of the Susan River
- All water rights are defined by provisions of the Decree

2

Susan River Decree – Water Rights

- The Dow-Bonomini Family 2013 Trust (the “Trust”) owns certain water rights listed in the Decree, including Schedule 4 and Schedule 5, priority 2 rights.
 - Schedule 4 rights are entitled to rights in and to the use of the natural flows of Gold Run Creek, Lassen Creek and Piute Creek during the seasons stated in paragraph 21.
 - Addressed in paragraph 46 and schedule 4 of the Decree
 - Schedule 5 rights: those upon Susan River and Lower Willow Creek, during the seasons stated in paragraph 21.
 - Addressed in paragraphs 47 and 49 and schedule 5 of the Decree

3

Susan River Decree – Paragraph 17

- Paragraph 17 of the Decree provides that:
 - “Nothing herein contained shall, or shall be construed to . . . *about joint ditches* or from preventing any party hereto, who has allotment to two or more ditches, from using all or any portion of his allotment through each or any number of his ditches on all or any portion of this land, so long as the maximum quantity of water diverted shall not exceed the aggregate of all allotments to all of his ditches.”

4

See also Water Code § 1706

- “The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code may change the point of diversion, place of use, or purpose of use if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.”

5

Present Complaint

- During the most recent irrigation season, Jay Dow, trustee for the Trust, requested that the Watermaster administer the Decree to allow the Trust to divert its Schedule 4 and Schedule 5, priority 2 water rights at Diversions 82, 83, 89, 92, 98, 99, 100, 101, and 102 for a ranch that it owns.
- While the Watermaster has previously allowed this, in this year it did not, which is contrary to Paragraph 17 of the Decree.
- As a result, the Trust was unable to divert 10 cubic feet per second (“cfs”) for thirteen days, or 260 acre-feet (“AF”) of water, pursuant to its Schedule 4 and Schedule 5, priority 2 rights.

6

Requested Action and Remedy

- The Watermaster is obligated to administer the decree in accordance with its terms.
 - The Watermaster must allow the Trust to divert water associated with one ditch through another of its ditches, so long as the maximum quantity of water diverted does not exceed the aggregate of all allotments to its ditches.
 - The Watermaster's determinations have resulted in LIC diverting water in Leavitt Lake, and McCoy Flat and Hog Flat Reservoirs that it should have been able to divert, namely, its Schedule 4 and Schedule 5, priority 2 rights pursuant to Paragraph 17 of the Susan River Decree.
- Under the Watermaster's supervision and direction, LIC should release into the Susan River an amount of water equal to that which was improperly diverted by LIC in June 2019 for the Trust's diversion of 260 AF at Diversions 82, 99, and 100.
 - This remedy has historical precedent, as when DWR served as Watermaster, it required LIC to release water that it had improperly diverted for use by those right holders whose rights had been obstructed or interfered with.

7