

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 6:30 pm. The pledge of allegiance was recited and a quorum was noted. Board Chair Ramsey Wood was absent.

II. APPROVAL OF AGENDA

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

III. PUBLIC COMMENT

- A. Joe Egan- Commented asking for clarification on the RCD's Complaint process, and inquiring when the RCD's legal counsel will be consulted. His questions were answered by Adams, Meyer, and members of the Committee.

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

- A. Board Member Hanson motioned to open the public hearing on Jay Dow Complaint (Barham Kelley), Board Member Bartley 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 (Barham Kelley), FILED 7/26/19- Adams

- A. Board Member Bartley motioned to close the public hearing on Jay Dow Complaint (Barham Kelley), Board Member Hanson 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 four to one vote, to not allow the use of 740 acre-feet of the Barham Kelley 3037 Decree water rights, and suggested for the District to seek legal advice on the matter. The Watermaster will issue Jay Dow a written confirmation of the WAC's decision.

VII. ADJOURNMENT

Board Member Bartley made a motion to adjourn the meeting, Board Member Langston seconded and the meeting was adjourned at 7:32pm. All. The next regularly scheduled WAC meeting will be held Thursday, September 12, 2019 at the USDA Service Center, 170 Russell Avenue, Suite C, Susanville at 5:30 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carrie Adams".

Carrie Adams
Deputy Watermaster, SRWMSA
Honey Lake Valley RCD

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August 8, 2019 Watermaster Advisory Committee Hearing

The Dow-Bonomini Family 2013 Trust Water Rights Complaint

Re Barham Kelley Water Rights



Barham Kelley Judgment

- *A.C. Barham, et al. v. E.T. Cannon, et al.* – Case No. 3037 (Superior Court of Lassen County) (hereinafter referred to as “Barham Kelley Judgment”)
 - The Parties:
 - A.C. Barham and Delta M. Barham – the plaintiffs
 - E.T. Cannon, George F. Kelley, Maud R. Holmes, Fred E. Kelley, and Ruby B. Tehaney – the defendants
- A 1931 judgment allocating limited water rights of the Susan River

Barham Kelley Water Rights

- **The plaintiffs' water rights:**

- “[T]he plaintiffs have a superior right to divert and use of the waters of the Susan River for the irrigation of their said lands as riparian owners, six hundred (600) acre-feet of water during each and every year . . . continuously, day and night, for sixty (60) days, and to use said quantity of water continuously for fifteen days each month, and not otherwise, during that part of each year prior to the first day of July[.]”

- **The defendants' water rights:**

- “[D]efendants have a right . . . to divert and use of the waters of said Susan River and the Fitzell Ditch one hundred forty (140) acre feet of water during the irrigation season of each and every year, prior to the first day of July of each year, and to divert and use such quantities of water upon their lands during the fifteen days of each month of the irrigation season prior to the first day of July”

Barham Kelley Water Rights

- “IT IS FURTHER ORDERED, ADJUDGED AND DECREED . . . that plaintiffs in this action are entitled to a prior and a superior right to divert and use of the natural flow of Susan River Six Hundred (600) acre feet of water for the irrigation of the lands of plaintiffs, described in this action; and . . . that the defendants have a right, secondary and subordinate to that of plaintiffs, to divert and use of the natural flow of Susan River for the irrigation of defendants’ lands one hundred forty (140) acre feet of water during the irrigation season of each year until the first day of July of each year[.]”

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

Susan River Decree

- Paragraph 55 of the Susan River Decree states:
 - “shall supersede all former judgments and decrees as to the water rights involved, except the decrees of the above entitled court in the cases of Barham vs. Kelly...”
- This reference is further explained in the June 12, 1937 Report of Referee in Decree Case No. 4573, at 41:16-19, which refers to the case of “Barham vs. Kelly, No. 3037.”
 - Said report of referee was “affirmed and adopted as the basis for the decree of [the] Court determining and establishing the several rights in and to the use of the waters of the Susan River and its tributaries” (Susan River Decree at ¶1.)

Barham Kelley Water Rights

- The Dow-Bonomini Family 2013 Trust (the “Trust”) owns all of the water rights described in the Barham Kelley Judgment
 - The Trust is the owner of those properties (see “Exhibit 3” to Complaint), which are delineated on sheet #3 of the irrigated lands map for the Susan River Decree (attached as “Exhibit 4” to complaint) and the water rights associated therewith.
 - These lands are shown in white on that map, as they were not granted rights under the Susan River Decree, but the Susan River Decree did not supersede the rights these lands had been granted by the Barham Kelley Judgment.
- These water rights allow the Trust to divert a total of 740 acre-feet.

Present Complaint

- The Watermaster has determined to administer the Susan River Decree in a manner that obstructs and interferes with the Trust's water rights.
- Specifically, the Watermaster has determined that in administering the Decree, it will not respect the Trust's water rights under the April 3, 1931 Barham Kelley Judgment.

Present Complaint

- In past irrigation seasons, the Watermaster has not interfered with the Trust's use of its water rights under the Barham Kelley Judgment.
- During the most recent irrigation season that ended on June 30, 2019, Jay Dow, trustee for the Trust, requested that the Watermaster ensure that its administration of the Susan River Decree did not interfere with the Trust's ability to divert 25 cfs until June 30.

Present Complaint

- The effect of the Watermaster’s decision to administer the Susan River Decree in this manner is that other parties are able to divert the water to which the Trust and its properties are entitled.
- As a result of the Watermaster’s determination, during the most recently concluded irrigation season, the Trust was denied 740 acre-feet (“AF”) of his court-adjudged water rights.
- This has resulted in the Lassen Irrigation Company (“LIC”) storing water that the Trust should have been allowed to divert.

Requested Action and Remedy

- The Watermaster must administer the Decree in a manner that does not infringe upon the Trust's rights pursuant to the Barham Kelley Judgment, which were not superseded by the Susan River Decree.
- The Watermaster's determination has resulted in LIC diverting water in Leavitt Lake, and McCoy Flat and Hog Flat Reservoirs that the Trust should have been able to divert under his rights pursuant to the Barham Kelley Judgment.
- 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 740 AF at Diversion 46.
 - 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.

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