

**Special Meeting of the:
Honey Lake Valley Resource Conservation District**

Attachments available 11/21/19 at
www.honeylakevalleyrcd.us

Date: Monday, November 4th, 2019; 12:00pm
Location: USDA Service Center, 170 Russell Avenue, Suite C Susanville, CA 96130
Present: **Board:** Jesse Claypool
Laurie Tippin
Wayne Langston
William Johnson
Staff: Kayla Meyer
Carrie Adams
Attendees: Jay Dow

MEETING MINUTES

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

Board Chair Jesse Claypool called the meeting to order at 12:00pm, the pledge of allegiance was recited, and a quorum was noted. Board Vacancy noted.

II. APPROVAL OF AGENDA

Board Member Laurie Tippin made a motion to approve the agenda, Board Member William Johnson seconded and the motion passed. All.

III. PUBLIC COMMENT

None.

IV. ITEMS FOR BOARD ACTION AND/OR DISCUSSION – RCD

A. MOTION TO OPEN PUBLIC HEARING ON JAY DOW COMPLAINT (Barham Kelley) APPEAL FILED 8/15/19 (Attachments) – Adams/Meyer

Board Member Wayne Langston made a motion to open the public hearing, Board Member Tippin seconded and the motion passed. All.

Deputy Watermaster Carrie Adams started with a summary of the complaint, the actions that preceded, and her reasoning behind the decision. Jay Dow followed with a PowerPoint presentation printout, via his counsel with Brownstein Hyatt Farber Schreck, LLP, explaining their argument (attached). There was then open discussion and questions from the Board members with responses from Adams and Dow.

B. MOTION TO CLOSE PUBLIC HEARING ON JAY DOW COMPLAINT (Barham Kelley) APPEAL FILED 8/15/19 – Adams/Meyer

Board Member Johnson motioned to close the Public Hearing on Jay Dow Complaint (Barham Kelley), Board Member Langston seconded and the motion passed. All.

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

The Board remained in open session and a motion was made by Board Member Johnson, and seconded by Langston, to uphold the Watermaster's decision to not allow the use of 740 acre-feet of the Barham Kelley 3037 Decree water rights. All Board Members voted in support of this motion, and the motion passed. The Watermaster issued Jay Dow a written decision and summary on November 7, 2019 (attached).

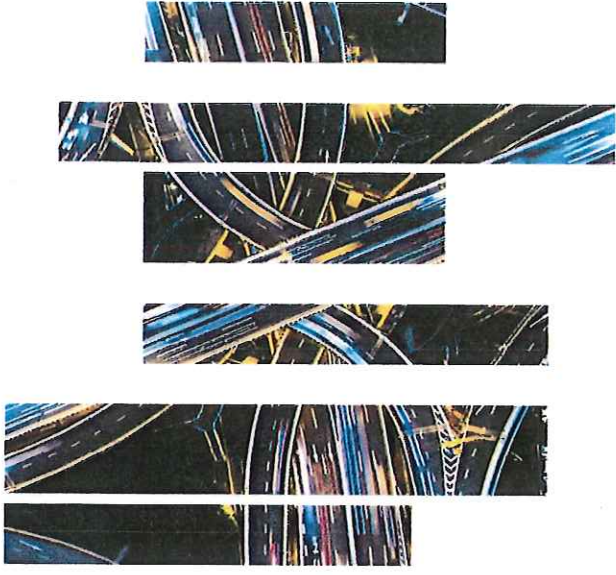
V. ADJOURNMENT

Board Member Langston made a motion to adjourn the meeting, Board Member Johnson seconded, and the motion passed. All. The next scheduled Honey Lake Valley RCD meeting will be **November 26, 2019 at 3:30 pm.** The location is the USDA Service Center, 170 Russell Avenue, Suite C, Susanville, CA.

Respectfully submitted,



Carrie Adams
Susan River Service Area, Deputy Watermaster
Honey Lake Valley RCD



November 4, 2019 Watermaster Board of Directors 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 Fizzell 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
 - Prior to the Susan River Decree, Susan River water rights were allocated by dozens of individual decrees and judgments

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.)
- Accordingly, the water rights described in the Susan River Decree and the Decree itself do **not** supersede the water rights described in Barham Kelley.

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 Barham Kelley 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 Barham Kelley 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 740 acre feet prior to June 30th each year.

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.

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 must administer the Decree in a manner that does not allow the water rights as set forth in the Susan River Decree to supersede or interfere with the Trust's right to divert 740 AF at Diversion 46, pursuant to the Barham Kelley Judgment and paragraph 55 of the Susan River Decree.
- As a result of the Watermaster's administration of the Decree, the Trust has incurred damages equivalent to the value of the water that it was not able to divert under its Barham Kelley water rights, and it should be made whole.

BEFORE
THE WATERMASTER BOARD
OF THE HONEY LAKE VALLEY
RESOURCE CONSERVATION DISTRICT
STATE OF CALIFORNIA

In the Matter of) SUSAN RIVER WATERMASTER: JAY
) DOW APPEAL; NOVEMBER 4, 2019
THE AUGUST 15, 2019 APPEAL BY JAY) HEARING
DOW OF THE WATERMASTER'S)
APPLICATION OF THE 1940 DECREE, AS) A DECISION OF THE BOARD PURSUANT
SUBSEQUENTLY INTERPRETED) TO SECTION 6.6 OF ARTICLE VI OF THE
) RULES AND REGULATIONS OF THE
) HONEY LAKE VALLEY RESOURCE
) CONSERVATION DISTRICT
)
)
_____)

Hearing Date: November 4, 2019

Attending: Honey Lake Valley Resource Conservation District Board Members
Present: Board Chair, Jesse Claypool; Vice Chair, Laurie Tippin; Treasurer,
Wayne Langston; Director, William Johnson

Jay Dow

Kayla Meyer, District Manager
Carrie Adams, Deputy Watermaster

Location: USDA Service Center, 170 Russell Avenue, Suite C, Susanville, CA 96130

The appeal submitted by Jay Dow and the Dow-Bonomini Family 2013 Trust, as heard, pursuant to Section 6.6 of Article VI of the Susan River Watermaster Rules and Regulations ("SRWRR"). Based upon the following analysis and discussion, and all oral and written materials referenced or relied upon in the appeal hearing, which are hereby incorporated by reference, this Board denies the appeal of Mr. Dow.

WATERMASTER'S INTERPRETATION OF THE WATER RIGHTS OF THE PARTY TO THE APPEAL.

Based on the public hearing that was held on November 4, 2019, at USDA Service Center, 170 Russell Avenue, Suite C, Susanville, CA 96130, and the oral and written testimony and evidence presented to the Board of Directors ("Board") for the Honey Lake Valley Resource Conservation District ("District") at that hearing, the Board finds that Carrie Adams Deputy Watermaster, (hereinafter collectively referred to as "Watermaster") acted well within her authority when she denied Jay Dow the use of 740 acre feet of water described in the 1931 Barham Kelley 3037 Decree. Despite other interpretations being possible, the Barham Kelley 3037 Judgement is interpreted as a dispute resolution between two adjacent water users and does not entitle Dow, the current landowner, with water rights additional to those designated to said land in the Susan River Decree.

BACKGROUND/FACTS

After discussing the matters since June 11, 2019, on July 1, 2019 Ms. Adams informed Mr. Dow of the final decision to not allow the use of 740af of water described in the 1931 Barham Kelley Judgement No. 3037. In response, Mr. Dow filed a Watermaster Complaint with the District on July 26, 2019, alleging that the Watermaster administered the Susan River Decree in a manner that obstructs and interferes with the Trust's water rights. On August 8, 2019, the Water Advisory Committee (WAC) conducted a public hearing in efforts to reach an understanding on this matter. It was found in a four to one vote to uphold the Watermaster's decision to not allow the transfer of water. On August 15, 2019, the Jay Dow and the Dow-Bonomini Family 2013 Trust submitted an Appeal to this decision. On November 4, 2019 the Watermaster Board heard the case at hand and voted to uphold the WAC decision and the Watermaster's decision.

GOVERNING LAW

A. The Initial 1940 Decree

A commitment by the District, as Watermaster, to faithfully and correctly administer the 1940 Decree as it may be interpreted and amended by the Lassen County Superior Court, or any other court or regulatory agency with jurisdiction.

B. 1931 Barham Kelley Decree Case No. 3037

Heard before the Lassen County Superior Court, was a dispute between the plaintiff party, *A.C. Barham and Delta M. Barham*, versus *E.T Cannon, George F. Kelley, Maud R. Holmes, Fred E. Kelley, and Ruby B. Tehaney*, the defendants. A judgment was made on April 3, 1931 that describes the plaintiffs' and defendants' 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[.]"

"[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..."

ANALYSIS AND DISCUSSION

A. Jay Dow's Appeal Hearing Argument

During the Board hearing, Mr. Dow, using material from his counsel Brad Herrema with Brownstein Hyatt Farver Schreck, LLP., reiterated the statements made in his Complaint, stating that he must be allowed to use a total of 740-acre feet allocated in the 1931 Barham v Kelley No. 3037 Judgement. The Trust is the owner of all of the properties described in the Barham Kelley Judgement, and thus owns the water rights associated therewith. The Trust further explained that, "These lands are shown in white on [the Susan River Decree Irrigated Lands] map, as they were

not granted rights under the Susan River Decree...”¹ The Trust cites Paragraph 55 of the Susan River Decree which reads that it “shall supersede all former judgements and decrees as to the water rights involved except the decrees of the above entitled court in the cases of Barham vs. Kelley...”² The Trust objects that the Watermaster has determined to administer the Decree in a manner that prevents the utilization of its 740af of Barham Kelley Water Rights.

B. Watermaster’s Position

The Watermaster did not allow the use of 740af of water described in the Barham Kelley Judgement, claiming that the Judgement document, as interpreted, does not adjudicate water rights in addition to those adjudicated to the Barham users in the Susan River Decree; but simply adjudicates the superiority of water rights between users that share a ditch. Such understanding is based on the fact that in the 1931 Barham Kelley 3037 Judgement, there are no Points of Diversions described, nor are there legal descriptions, or any information of irrigated lands in this document, except for the defendants being said to have 70 acres of land. In the Susan River Decree, A.C Barham and Delta M. Barham are allotted a total of 3.10cfs at diversions 41 and 46; the defendants in the Barham Kelley 3037 Judgement are not allotted any rights in the 4573 Decree. It is only presumed, based on the Decreed names, that the locations of diversion and use of the water described in the Barham Kelley 3037 Judgement are at the diversions 46, known as Barham, and 47 known as Kelley, cited in the Susan River Decree under Schedule 2: Points of Diversion from Susan River and its Tributaries. The Watermaster came to the conclusion that these presumptions, and lack of descriptions associated with the Barham Kelley 3037 Judgment, do not prove it to be a standalone document, adjudicating additional water rights to the ones clearly defined in the 4573 Decree. Additionally, there is no record of the ‘complaint’ or ‘findings’³, referred to in the 3037 Judgement, which would hold more information on the happenings that preceded the Judgement. Furthermore, on June 17, 2019 upon receiving Mr. Dow’s request “to take 25CFS of my Barham Kelley Decree water...”, the Watermaster had to make a timely decision on the use of a significant amount of Susan River water and concluded that there is not enough evidence proving that the Barham Kelley 3037 Judgement is anything more than a dispute resolution between adjacent water users.

C. Board Concurrence with Watermaster’s Position

The Board was unpersuaded by the Trust’s argument that the Barham Kelley 3037 Judgement adjudicates 740af of water rights additional to the rights described in the Susan River Decree. The Trust failed to present sufficient evidence to overrule the Watermaster’s interpretation of the Barham Kelley 3037 Judgement and the Susan River Decree. The Board supports that the Susan River Decree does not supersede the Barham Kelley Judgement; however, interprets that to be a dispute resolution, not decreed water rights.

DECISION

The Board finds that the Watermaster’s interpretation of the Barham Kelley 3037 Judgement to not adjudicate additional water rights to those described in the 4573 Susan River Decree; and thus, the Dow-Bonomini 2013 Family Trust is not permitted to divert 740af of water from the Susan River. Accordingly, Mr. Dow’s appeal is denied and rejected. This decision is final for all proposes pursuant to the Susan River Watermaster Rules and Regulations.

¹ Brownstein Hyatt Farver Schreck, LLP. Presentation Slide 7.

² Susan River Decree, *J.J. Fleming et al. v. J.R. Bennett et al.* (No. 4573, April 18, 1940)

³ Barham Kelley Decree, *A.C. Barham et al. v. E.T. Cannon et al.* (No. 3037, April 3, 1931)