



PUBLIC NOTICE
Special Meeting of the:
Honey Lake Valley Resource Conservation District
Attachments available 12/17/19 at

www.honeylakevalleyrcd.org

Date: Thursday, December 19, 2019

Location: USDA Service Center
170 Russell Avenue, Suite C
Susanville, Ca. 96130
(530) 257-7271 x100

Time: **3:30 PM**

SPECIAL MEETING AGENDA

NOTE: THE HONEY LAKE VALLEY RESOURCE CONSERVATION DISTRICT MAY ADVISE ACTION ON ANY OF THE AGENDA ITEMS SHOWN BELOW.

NOTE: IF YOU NEED A DISABILITY-RELATED MODIFICATION OR ACCOMMODATION, INCLUDING AUXILIARY AIDS OR SERVICES, TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE DISTRICT OFFICE AT THE TELEPHONE NUMBER AND ADDRESS LISTED ABOVE AT LEAST A DAY BEFORE THE MEETING.

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

II. APPROVAL OF AGENDA

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational capacity.

III. PUBLIC COMMENT

Per RCD Board Policy No. 5030.4.1, during this portion of the meeting, any member of the public is permitted to make a brief statement, express his/her viewpoint, or ask a question regarding matters related to the District. Five (5) minutes may be allotted to each speaker and a maximum of twenty (20) minutes to each subject matter.

IV. CONSENT ITEMS

- A. Approval of 11/26/19 meeting minutes (attachments)
- B. Treasurer's Report (attachment)

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational capacity.

V. REPORTS

- A. District Manager Report (attachment) – Meyer
- B. NRCS Agency Report – Stephens
- C. Lassen SWAT – Meyer/Tippin

- D. WAC Report – Langston
- E. Modoc Regional RCD/CARCD Report – Tippin
- F. Fire Safe Council Report – Johnson
- G. IRWMP Report – Claypool
- H. Unagendized reports by board members

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational capacity.

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

- A. Consideration and approval of Craig Collins Accountant Engagement Letter for 2019 Audit (attachment)

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational capacity

- B. Consideration and approval of Northeastern CSDA Chapter Certificate of Liability (attachment)

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational capacity

- C. Consideration and approval of Board Service Thank You letter for Dave Schroder (attachment)

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational

VII. ITEMS FOR BOARD ACTION AND/OR DISCUSSION– WATERMASTER

- A. Review and discussion of further District action regarding Dow-Bonomini Trust Motion of Appeal re: Paragraph 17 (attachment)

Tie to the Strategic Plan: Strategic Issue 1.4 – Watermaster services are professionally provided.

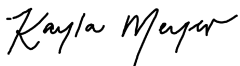
- B. Review and discussion of further District action regarding Dow-Bonomini Trust Motion of Appeal re: Case 3037 (Barham/Kelly) (attachement)

Tie to the Strategic Plan: Strategic Issue 1.4 – Watermaster services are professionally provided.

IX. ADJOURNMENT

The next Honey Lake Valley RCD meeting will be **January 23, 2019 at 3:30PM**. The location is the USDA Service Center, 170 Russell Avenue, Suite C, Susanville, CA.

I certify that on Tuesday, December 17, 2019 agendas were posted as required by Government Code Section 54956 and any other applicable law.



Kayla Meyer – District Manager



PUBLIC NOTICE
Special Meeting of the:
Honey Lake Valley Resource Conservation District
Attachments available 11/22/19 at
www.honeylakevalleyrcd.org

Date: Tuesday, November 26, 2019

Location: USDA Service Center
170 Russell Avenue, Suite C
Susanville, Ca. 96130
(530) 257-7271 x100

Time: **3:30 PM**

MEETING MINUTES

NOTE: THE HONEY LAKE VALLEY RESOURCE CONSERVATION DISTRICT MAY ADVISE ACTION ON ANY OF THE AGENDA ITEMS SHOWN BELOW.

NOTE: IF YOU NEED A DISABILITY-RELATED MODIFICATION OR ACCOMMODATION, INCLUDING AUXILIARY AIDS OR SERVICES, TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE DISTRICT OFFICE AT THE TELEPHONE NUMBER AND ADDRESS LISTED ABOVE AT LEAST A DAY BEFORE THE MEETING.

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

Board member Jesse Claypool called the meeting to order at 3:40pm, the pledge of allegiance was recited, and a quorum was noted. Board member Wayne Langston not present and a Board member vacancy was noted.

II. APPROVAL OF AGENDA

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

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational capacity.

III. PUBLIC COMMENT - NONE

Per RCD Board Policy No. 5030.4.1, during this portion of the meeting, any member of the public is permitted to make a brief statement, express his/her viewpoint, or ask a question regarding matters related to the District. Five (5) minutes may be allotted to each speaker and a maximum of twenty (20) minutes to each subject matter.

IV. CONSENT ITEMS

Board member Laurie Tippin made a motion to approve consent items, Board member Will Johnson seconded, and the motion passed. All.

A. Approval of 10/24/19 meeting minutes (attachments)

B. Treasurer's Report (attachment)

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational capacity.

V. REPORTS

- A. District Manager Report (attachment) – Meyer
Board discussion of casting a bigger net for potential to fill Board vacancy.
- B. NRCS Agency Report – Stephens
Stephens updated district that three new NRCS employment positions were posted.
- C. Lassen SWAT – Meyer/Tippin
- D. WAC Report – Langston
- E. Modoc Regional RCD/CARCD Report – Tippin
Tippin discussed 2020 Spring dates for an upcoming Modoc Regional meeting and asked members to plan for an April date. Additionally, Tippin discussed that CARCD is working on baseline funding opportunities.
- F. Fire Safe Council Report – Johnson
- G. IRWMP Report – Claypool
- H. Unagendized reports by board members
Claypool updated board members that a Northeastern Chapter has been formed and that the District will take the lead of facilitating meetings under a ‘fee for service’ model. Board also discussed having the ability to donate on the website as well as a CARCD toolkit funding resource.

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational capacity.

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

- A. Consideration and approval of Larry Bain Engagement Letter for 2019 Audit (attachment)
Board member Laurie Tippin made a motion to approve the letter, Board member Will Johnson seconded, and the motion passed. All.
- B. Consideration and approval of the 2020 Calendar. (attachment)
Board member Will Johnson made a motion to approve the calendar, Board member Laurie Tippin seconded, and the motion passed. All.

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational capacity

- C. Consideration and approval of Thompson Peak WUI Fuel Treatments Project – Letter of Support (attachment)
Board member Laurie Tippin made a motion to approve the letter, Board member Will Johnson seconded, and the motion passed. All.

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational capacity & 2 – Stay Relevant to the Conservation Needs of the Community & 3 – Capture Conservation Opportunities, as Appropriate.

- D. Discussion of HLV RCD future involvement with RWMG Board.
Board discussion of future IRWMP/RWMG, project and funding opportunities. Board advised to wait for further funding and award announcements from DWR. Announcements to be used as a catalyst to begin conversation with other members of the RWMG board for decision of future activities.

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational

- E. Consideration and approval of RCD Employee Handbook (attachment)

Board member Will Johnson made a motion to approve Handbook with proposed corrections, Board member Laurie Tippin seconded, and the motion passed. All.

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational

- F. Consideration to cancel December Board Meeting and discussion to reschedule.

Board member Laurie Tippin made a motion to cancel December's regularly scheduled meeting for a special meeting, Board member Will Johnson seconded, and the motion passed. All.

Special meeting scheduled for December 19, 2019 at 3:30 pm.

Tie to the Strategic Plan: Strategic Issue 1 – Build HLVRCD leadership & organizational capacity

VII. ITEMS FOR BOARD ACTION AND/OR DISCUSSION– WATERMASTER

- A. Consideration and approval of final draft of the 2018/2019 Susan River Watermaster Service Area Annual Use Report (attachment)

Board member Will Johnson made a motion to approve Annual Use Report, Board member Laurie Tippin seconded, and the motion passed. All.

Tie to the Strategic Plan: Strategic Issue 1.4 – Watermaster services are professionally provided.

- B. Consideration and approval of Lozano Smith invoice 209554 and 2095545, totaling \$1,220.50 (attachment)

Board member Will Johnson made a motion to approve invoice amounts, Board member Laurie Tippin seconded, and the motion passed. All.

Tie to the Strategic Plan: Strategic Issue 1.4 – Watermaster services are professionally provided.

IX. ADJOURNMENT

The next Honey Lake Valley RCD meeting will be **December 19, 2019 at 3:30PM**. The location is the USDA Service Center, 170 Russell Avenue, Suite C, Susanville, CA.

Respectfully Submitted,

APPROVED: _____
Jesse Claypool, RCD Board Chairperson



DATE: **December 19th, 2019**

Kayla Meyer
District Manager

Honey Lake Valley Resource Conservation District

PROFIT AND LOSS DETAIL

November 2019

PTO Accrual: 293

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	SPLIT	AMOUNT	BALANCE
Ordinary Income/Expenses							
Income							
40070 Grant Proceeds							
40075 IRWMP							
11/04/2019	Deposit			Invoice 6 Proceeds	10000 Tri-Co 639	30,600.00	30,600.00
Total for 40075 IRWMP						\$30,600.00	
Total for 40070 Grant Proceeds						\$30,600.00	
40180 Watermaster Fees							
11/21/2019	Deposit			Direct Billings	11600 Tri-Co WM 218	9,257.00	9,257.00
Total for 40180 Watermaster Fees						\$9,257.00	
Total for Income						\$39,857.00	
Expenses							
60005 Dues and subscriptions							
11/12/2019	Expense		CSDA	CSDA - 2020 Renewal Dues	10000 Tri-Co 639	186.00	186.00
Total for 60005 Dues and subscriptions						\$186.00	
60065 Conference							
11/13/2019	Expense			CARCD Conference - Meal expense	10000 Tri-Co 639	12.89	12.89
11/18/2019	Expense			POS PUR 1106 SHERATON_SHERATON_530-3642800 CA	10000 Tri-Co 639	5.00	17.89
11/18/2019	Expense			Annual CARCD Conference	10000 Tri-Co 639	468.07	485.96
Total for 60065 Conference						\$485.96	
60110 EQUIPMENT							
11/07/2019	Expense			POS PUR 5193 TRACTOR SU_142 ROBS WAY_SUSANVILLE CA	11600 Tri-Co WM 218	127.58	127.58
Total for 60110 EQUIPMENT						\$127.58	
60240 Office							
11/01/2019	Expense		Intuit	REC POS 2581 Intuit *Qu_Intuit *QuickBooks_800-446-8848 CA	10000 Tri-Co 639	40.00	40.00
11/01/2019	Expense		Google SV Google	POS PUR 2581 GOOGLE *GS_GOOGLE *GSUITE_hone_cc@google.com	10000 Tri-Co 639	54.00	94.00
			SVCsapps	CA			
11/07/2019	Expense		U.S. Cellular	PRE AUT 2732 U.S. CELLU	11600 Tri-Co WM 218	57.51	151.51
11/07/2019	Expense		Frontier	REC POS 7410 CTS*FRONTI_CTS*FRONTIER ONLINE_800-921-8101 CT	10000 Tri-Co 639	75.98	227.49
11/07/2019	Expense		Walmart	WM - Office Supplies	11600 Tri-Co WM 218	16.37	243.86
11/12/2019	Expense		U.S. Cellular	REC POS 2732 USCELL REC_USCELL RECURRING_WWW.USCELLULA	11600 Tri-Co WM 218	57.51	301.37
				IL			
11/29/2019	Expense		Adobe Pro Software	REC POS 2581 ADOBE ACRO_ADOBE ACROPRO SUBS_800-833-6687	10000 Tri-Co 639	14.99	316.36
				CA			
Total for 60240 Office						\$316.36	
60375 SNC							
11/29/2019	Expense		Hulsman Ranch	SNC 901 - Invoice 3 Payment	10000 Tri-Co 639	37,143.60	37,143.60
Total for 60375 SNC						\$37,143.60	
62000 Bank charges and Fees							
11/12/2019	Expense		Intuit		11600 Tri-Co WM 218	3.50	3.50
11/26/2019	Check		Intuit		11600 Tri-Co WM 218	3.50	7.00
Total for 62000 Bank charges and Fees						\$7.00	
66000 Payroll Expenses							
11/30/2019	Journal Entry	SA-11-2019		Total Due from RCD - Taxes November	-Split-	341.40	341.40
11/30/2019	Journal Entry	SA-11-2019		Total Due from RCD - Gross November	-Split-	2,812.00	3,153.40
11/30/2019	Journal Entry	SA-11-2019		Watermaster A/C November Payroll Gross	-Split-	7,338.00	10,491.40
11/30/2019	Journal Entry	SA-11-2019		Watermaster A/C November Payroll Taxes	-Split-	687.67	11,179.07
Total for 66000 Payroll Expenses						\$11,179.07	
Total for Expenses						\$49,445.57	
Net Income						\$ -	
						9,588.57	

HONEY LAKE VALLEY RESOURCE
CONSERVATION DISTRICT
170 RUSSELL AVE STE C
SUSANVILLE CA 96130

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Not for Profit Business Chkg

Account: XXXXXXXX2639

Account #	XXXXXXXX2639	Statement Dates	10-31-19 thru 11-30-19
Beginning Balance	112,476.82		
2 Deposits/Credits	56,998.66		
9 Checks/Debits	38,000.53		
Total Service Charges	0.00		
Interest Paid	0.00		
Ending Balance	131,474.95		

Transactions

<u>Date</u>	<u>Description</u>	<u>Amount</u>
11-01	Rec POS 2581 Intuit *Qu Intuit *Quickbooks 800-446-8848 CA	40.00 -
11-01	POS Pur 2581 Google *Gs Google *Gsuite_hone Cc@google.com CA	54.00 -
11-04	Deposit	30,600.00
11-07	Rec POS 7410 Cts*Fronti Cts*Frontier Online 800-921-8101 Ct	75.98 -
11-13	POS Pur 1106 Tst* From Tst* From The Heart Redding CA	12.89 -
11-18	POS Pur 1106 Sheraton Sheraton Redding CA	468.07 -
11-18	POS Pur 1106 Sheraton Sheraton 530-3642800 CA	5.00 -
11-21	Cm Xfer Fr DDA XXXXXXXX6331	26,398.66
11-29	Rec POS 2581 Adobe Acro Adobe Acropro Subs 800-833-6687 CA	14.99 -

Checks

<u>Check #</u>	<u>Date</u>	<u>Amount</u>	<u>Check #</u>	<u>Date</u>	<u>Amount</u>	<u>Check #</u>	<u>Date</u>	<u>Amount</u>
2987	11-12	186.00	2988	11-29	37,143.60			

* Indicates a Gap in Check Number Sequence

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HONEY LAKE VALLEY RESOURCE
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Not for Profit Business Chkg

Account: XXXXXXXX4218

Account #	XXXXXXXX4218	Statement Dates	10-31-19 thru 11-30-19
Beginning Balance	71,786.31		
1 Deposits/Credits	9,257.00		
7 Checks/Debits	13,602.39		
Total Service Charges	0.00		
Interest Paid	0.00		
Ending Balance	67,440.92		

Transactions

<u>Date</u>	<u>Description</u>	<u>Amount</u>
11-07	POS Pur 5193 Tractor Su 142 Robs Way Susanville CA	127.58 -
11-07	POS Pur 5193 Wal-Mart S 1616 Wal-Sams Susanville CA	16.37 -
11-12	Rec POS 2732 Uscell Rec Uscell Recurring Www.uscellula IL	57.51 -
11-12	Intuit Payroll S Quickbooks Honey Lake Valley Reso	4,156.14 -
11-15	Employment Devel Edd Eftpmt Honey Lake Valley Reso	992.42 -
11-15	Irs Usataxpymt Honey Lake Valley Reso	4,694.32 -
11-21	Deposit	9,257.00
11-26	Intuit Payroll S Quickbooks Honey Lake Valley Reso	3,558.05 -

End of Statement

Honey Lake Valley RCD District Manager Report

Kayla Meyer – District Manager

December 19, 2019

RCD Administration:

- 2019 Audit to be initiated January 2020
- Board vacancy
- Board Member compliance requirements 2020 (Sexual Harassment, Ethics, 700)
- Winter office clean-up/file archive

Susan River Water Master Service

- Usage report draft 9/12/19 – First WAC reading 9/26/19
 - Approved at 11/14/2019 WAC meeting
 - Final submission – 12/31/2019
- DOW appeals received 12/09/2019

DWR: Lahontan Basin IRWM (DACI Grant)

- Invoice 7 submitted 10/15/2019 – Awaiting payment
- Needs Assessment requirement due to DWR – before 12/25/2019
- LIC – IRWMP Application submitted 10/21/2019
- Mapping application for region near completion
 - KM to review draft application with GIS technician

DOC: RCD Accreditation Program

- Pending final invoice payment

SNC: Lassen Creek Watershed

- Progress report submitted 7/31/19
- Work has been completed on both properties
 - Check issued for 3rd invoice, advance request submitted, 4rd invoice and advance request to follow
 - Final report and invoice due end of December 2019

CalRecycle: Farm and Ranch Solid Waste Cleanup and Abatement Grant

- Dave Schroder finished work on Mendes project in June – Grant close-out work complete
 - Issued final payment check
- Schroder has finished work on Bertotti site
 - Final report submitted and approved
 - Awaiting payment
- Work plan to be developed for Doyle sites
- Grant applications for further sites due February 2020

CDFG: Carbon Farming Technical Assistance Grant / Carbon Farming Initiatives

- NRCS CIG Funding Opportunity for RCD – 50k annually for 5 years
 - Grant awards will be announced December 2019

Special Weed Action Team

- 3 SWAT grants (~60k each)
- First invoice submitted – 10/30/2019
- All CEQA due and reported by 12/30/2019

Plans for Next Month:

- Continue work on open grants/agreements: SNC, CalRecycle, DACI, SWAT, Carbon Farming Initiatives

COLLINS ACCOUNTANCY COMPANY

620 THIRD STREET, SUITE 120
POST OFFICE BOX 426
LINCOLN, CALIFORNIA 95648-0426
TELEPHONE: (916) 626-4984

LINDA FOSTER, CPA, MS TAX
CRAIG D. COLLINS, CPA

WEBSITE: [HTTP://WWW.COLLINSACCT.COM/](http://www.collinsacct.com/)

December 14, 2019

Kayla Meyer, District Manager
Board of Directors
Honey Lake Valley Resource Conservation District
170 Russell Ave., Suite C
Susanville, CA 96130

Dear Ms. Meyer:

We are pleased to confirm our understanding of the services you have requested that we provide to the Honey Lake Valley Resource Conservation District (the "District") for the period from December 2019 through June 2020 (or later, if requested by the District and confirmed by us) and to clarify the nature and extent of this engagement.

Objectives of the Engagement

The objectives of the engagement are to assist management in preparing for the upcoming audit of the District's financial statements by addressing specific aspects of the District's books identified by the District and the District's external auditor and other areas that may be identified as the engagement progresses and as agreed to by us. The purpose of the assistance will be to provide support to management in performing certain aspects of the District's accounting functions, but not to assume overall responsibility for the District's accounting operations. We anticipate performing the following types of tasks, which may be adjusted or modified as the engagement progresses:

1. Compare the District's QuickBooks balances with the prior year audited balances and prepare adjustments as needed to reconcile QuickBooks balances to the previous audit.
2. Review the activity in the interfund asset/liability accounts (due to/from other funds), request any additional needed information from management, and propose adjustments to agree the interfund asset/liability accounts where the information provided enables us to do so.
3. Prepare an adjusting entry based on review of the General Ledger activity to adjust the accrued payroll liability to the actual balance as of June 30, 2019, based on information you provide.
4. Perform bank reconciliations as necessary based on the bank statements you provide and the QuickBooks information and based on your responses to our questions where applicable.

5. Scan the general ledger detail for a period of time after June 30, 2019 and make inquiries based on known information to identify possible receivables and payables and prepare adjusting entries to the extent such are not already recorded in the books. Compare grant revenue during the 2018-2019 fiscal year to associated expenses as shown in QuickBooks to determine the extent of deferred revenue that may need to be recorded.
6. Create separate self-balancing trial balances for the General Fund and Watermaster fund based on the QuickBooks data you provide and any additional information you provide.
7. Update the depreciation schedule based on your responses to our inquiries and our review of the QuickBooks general ledger.

The objectives are subject to revision, depending on funding priority and availability to perform work. During the engagement, circumstances could arise that may cause us to discontinue work on this engagement. In such an event, we will notify you in writing.

Our Responsibilities

These services are limited to the objectives described above. The engagement involves review of the documents you submit to us, discussions with you, e-mails to you, and preparation of documents for your review. Due to the limited information presented to us from you and the limited amount of time we will spend together, our consulting services are general in nature, based on limited facts, circumstances and documents, and are not intended to provide assurance like the assurance provided with an audit, examination, or review engagement. We will not audit, examine, or review your financial statements, prospective financial information including cash flow forecasts, or the underlying financial data.

We are not required to, and will not, verify the accuracy or completeness of the information you will provide to us for the engagement or otherwise gather evidence for the purpose of expressing an opinion or conclusion. Accordingly, we will not express an opinion or conclusion or provide any assurance on the financial statements, cash flow forecasts, other prospective financial information, or the District's internal control.

Because the District receives funding from multiple sources, it is necessary for the District to allocate its personnel cost among the funding sources to determine how much funding from each source is used to pay for District personnel. The allocation of personnel cost has a significant impact on the District's financial statements, and we intend to perform our procedures based on the District's current practices of staff time allocation without attempting to verify that those allocation practices are in compliance with applicable legal requirements or whether the allocation represents an accurate distribution of staff time devoted to each

Kayla Meyer, District Manager
Board of Directors
Honey Lake Valley Resource Conservation District
December 14, 2019
Page 3 of 6

activity. Inaccuracies could exist, such as the District's allocation of 50% of personnel cost to the Watermaster fund or its allocations to grant-funded activities, many of which require an after-the-fact actual distribution of staff time spent. You acknowledge the risk of noncompliance and inaccuracy present in this area and agree that we will communicate that risk to the District's independent auditor.

In the District's case, the very small size of the operation and a District Manager that works primarily off-site create risk of paying for hours not worked and billing hours to activities that are not eligible. We have been informed that the District has a process in place for the Board President to oversee the activities of the District Manager, which should reduce this risk. In performing our procedures, we will rely on the hours worked recorded in your payroll system absent clear and definite evidence beyond a reasonable doubt that it is incorrect. However, we do so having communicated this risk to you. You agree that we may also communicate this risk to the District's independent auditor.

Management agrees that each page of the financial statements, cash flow forecasts, or other prospective financial information prepared without a compilation report will contain a statement that no assurance is expressed. Without this statement, we will be required to issue a disclaimer to the same effect to be attached to the financial statements, cash flow forecast, or other prospective financial information. When prepared under these requirements, we are responsible for conducting the engagement in accordance with the Statements of Standards for Accounting and Review Services (SSARs) promulgated by the Accounting and Review Services Committee of the AICPA and complying with the AICPA's Code of Professional Conduct, including the ethical principles of integrity, objectivity, professional competence, and due care. Management acknowledges and understands that our role in the financial statement preparation engagement is to prepare financial statements, cash flow forecasts, and/or other prospective financial information in accordance with the desired accounting framework, Generally Accepted Accounting Principles, unless otherwise agreed. Management has overall responsibilities that are essential to our undertaking the engagement for preparation of your financial statements, as defined under "Your Responsibilities," below.

Management has knowledge about the nature of procedures applied and the basis of accounting and assumptions used in the financial statements, cash flow forecasts, and any other prospective financial information. You have also been informed of the limitations on the engagement in this letter.

Because of the limitations of our consulting and accounting services, our engagement cannot be relied upon to identify or disclose any financial statement misstatements, including those caused by fraud or error, or to identify or disclose any wrongdoing within the entity or

noncompliance with laws and regulations. Consequently, there is a risk that that material errors, irregularities, or illegal acts, including fraud or defalcation, may exist and may not be detected by us. We need not report any matters regarding illegal acts that may have occurred that are clearly inconsequential and may reach agreement in advance with you on the nature of any such matters to be communicated.

Your Responsibilities

You understand and accept your responsibility for

- The selection of the financial reporting framework to be applied in the preparation of financial statements and for purposes of cash flow forecasts or other prospective financial information.
- The preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America.
- Designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of financial statements and cash flow forecasts or other prospective financial information that are free from material misstatement, whether due to fraud or error, including but not limited to the implementation of any corrective actions necessary to resolve audit findings.
- Preventing and detecting fraud.
- Identify and ensuring that the entity complies with the laws and regulations applicable to its activities
- Ensuring the accuracy and completeness of the records, documents, explanations, and other information, including the significant judgments provided by management for the preparation of financial statements, cash flow forecasts, and any other prospective financial information.
- Providing us with
 - access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, cash flow forecasts, and any other prospective financial information, such as records, documentation, and other matters;
 - additional information that we may request from management for the purpose of the engagement, and;
 - unrestricted access to the persons within the entity of whom we determine it necessary to ask questions.

Our services may assist you in fulfilling the responsibilities noted above, but the responsibility for deciding whether or not they are sufficient rests with you.

Kayla Meyer, District Manager
Board of Directors
Honey Lake Valley Resource Conservation District
December 14, 2019
Page 5 of 6

Although we may propose journal entries and make other recommendations during the course of our engagement, our services are not intended to be a substitute for management. You acknowledge your responsibility for evaluating our services, making all management decisions and performing management functions, and for approving the results of the services and taking responsibility for them. Our involvement in performing the functions as described above could impair our independence with respect to the District. Independence is required for performing audits or other attest services.

Engagement Administration

In the course of performing our duties under this agreement, it may be necessary for us to release information about the District to external parties, including but not limited to oversight authorities and external auditors. You authorize us to release information about the District where we deem it appropriate in our professional judgment or at your request.

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail and otherwise transmit information about the District via the Internet, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

Our firm may transmit confidential information that you provided us to third parties that we retain in order to facilitate delivering our services to you. For example, such transmissions might include, but not be limited to providing information for outside services by data processing and professional staff who work as independent contractors for us. With the exception of internet providers subject to the risks discussed in the preceding paragraph, we will ensure we have a confidentiality agreement with any service providers we have retained to assist us in delivering service to you and with whom we share your confidential information, and we will take reasonable precautions to determine that they have the appropriate procedures in place to prevent the unauthorized release of confidential information to others. We will remain responsible for the work provided by any third-party service providers used under this agreement. By your signature below, you consent to having confidential information transmitted to entities outside the firm. Please feel free to inquire if you would like additional information regarding the transmission of confidential information to entities outside the firm.

Craig D. Collins, CPA is the engagement partner and is responsible for supervising the engagement. Our fee for the services described above will be \$85 per hour. We will render our invoices not more than monthly. Payment will be due within 30 days of the invoice date.

If any dispute arises among the parties hereto, the parties agree to first try in good faith to settle the dispute by mediation administered by the American Arbitration District under its

Kayla Meyer, District Manager
Board of Directors
Honey Lake Valley Resource Conservation District
December 14, 2019
Page 6 of 6

Rules for Professional Accounting and Related Services Disputes before resorting to litigation. Costs of any mediation proceeding shall be shared equally by all parties.

The District and Collins Accountancy Company both agree that any dispute over fees charged by us to the District will be submitted for resolution by arbitration in accordance with the Rules for Professional Accounting and Related Services Disputes of the American Arbitration District. Such arbitration shall be binding and final. IN AGREEING TO ARBITRATION, WE BOTH ACKNOWLEDGE THAT IN THE EVENT OF A DISPUTE OVER FEES CHARGED BY THE ACCOUNTANT, EACH OF US IS GIVING UP THE RIGHT TO HAVE THE DISPUTE DECIDED IN A COURT OF LAW BEFORE A JUDGE OR JURY AND INSTEAD WE ARE ACCEPTING THE USE OF ARBITRATION FOR RESOLUTION.

We appreciate the opportunity to be of service to the District. We believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign a copy and return it to us.

Very cordially yours,

Craig D. Collins, CPA
Partner

RESPONSE:

This letter correctly sets forth the understanding of the Honey Lake Valley Resource Conservation District.

Signature: _____
Kayla Meyer
District Manager
Honey Lake Valley Resource Conservation District

Signature: _____
Board President
Honey Lake Valley Resource Conservation District

December 19, 2019

RE: Certificate for Liability Coverage

The undersigned, being duly authorized to execute this Certificate on behalf of the Board of Directors of Honey Lake Valley Conservation District (hereinafter the "District") hereby affirm the following:

1. That the participation by employees and members of the Board of Directors of the District in the meetings and activities conducted by the Northeastern Chapter of the California Special Districts Association have been authorized by the District's Board of Directors; and that the Board of Directors has found such activities constitute activities in the course and scope of such individual's employment with or position of director with the District.

Sincerely,

Jesse Claypool
Board Chair
Honey Lake Valley Resource Conservation District

Honey Lake Valley Resource Conservation District

170 Russell Ave., Suite C.
Susanville, CA 96130
(530)252-7271

www.honeylakevalleyrcd.org



December 19, 2019

Dave Schroder
709-650 Saddleback Lane
Janesville, CA 96114

RE: Board Member Service

Dear Mr. Schroder,

On behalf of the Board of Directors of the Honey Lake Valley RCD, I would like to thank you and your efforts in serving on the District's Board. We are indeed grateful to you for your passionate support and service, which helps us assist those in our community.

Thank you once again.

Sincerely,

Jesse Claypool
Board Chair
Honey Lake Valley Resource Conservation District

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BRADLEY J. HERREMA (State Bar No. 228976)
ARTHUR ZORIO (State Bar No. 196737)
BROOKE M. WANGSGARD (State Bar No. 296199)
BROWNSTEIN HYATT FARBER SCHRECK, LLP
2049 Century Park East, Suite 3550
Los Angeles, CA 90067
Telephone: 310.500.4600
Facsimile: 310.500.4602

Attorneys for Petitioner
THE DOW-BONOMINI FAMILY 2013
TRUST

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LASSEN

J.J. FLEMING, et al.,

Plaintiffs,

v.

J.B. BENNETT, et al.,

Defendants.

Case No. 4573

Assigned for All Purposes to the
Honorable David L. DeVore

NOTICE OF MOTION RE: APPEAL FROM
WATERMASTER'S NOVEMBER 7, 2019
DECISION RE PARAGRAPH 17 PURSUANT
TO COURT'S CONTINUING
JURISDICTION

[Filed Concurrently with Declaration Of Jay
Dow in Support of Motion]

**Request for Long-Cause Hearing Pursuant
to Rule of Court No. 1(D)**

Date: January 17, 2020
Time: 8:30 a.m.
Department: Department 3

BROWNSTEIN HYATT FARBER SCHRECK, LLP
2049 Century Park East, Suite 3550
Los Angeles, CA 90067

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TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 17, 2020 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 3 of the above-entitled court located at 2610 Riverside Drive, Susanville, California 96130, Petitioner THE DOW-BONOMINI FAMILY 2013 TRUST will move this Court to interpret the 1940 Decree, vacate the Watermaster's Decision dated November 7, 2019, and enter an Order requiring the Watermaster to allow Petitioner to divert water associated under the Susan River Decree with one ditch through another one of its ditches, so long as the maximum quantity of water diverted does not exceed the aggregate of all allotments to its ditches or injure another water user.

This Motion is based upon this Notice, the Memorandum of Points and Authorities, the Declaration of Jay Dow, pleadings and records on file herein, and upon such other and further oral and documentary evidence as the Court may consider at or prior to the hearing on this matter.

NOTICE IS FURTHER GIVEN that Counsel for Petitioner is of the opinion that this matter will require more than ten minutes to be heard. Pursuant to Superior Court of California, County of Lassen Rule of Court No. 1(D), Petitioner requests a long-cause hearing for this matter.

Dated: December 9, 2019

BROWNSTEIN HYATT FARBER SCHRECK, LLP


By: 
BRADLEY J. HERREMA
ARTHUR A. ZORIO
Attorneys for Petitioner
The Dow-Bonomini Family 2013 Trust

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BROWNSTEIN HYATT FARBER SCHRECK, LLP
 2049 Century Park East, Suite 3550
 Los Angeles, CA 90067

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioner THE DOW-BONOMINI FAMILY 2013 TRUST (“Petitioner”) seeks this
4 Court’s interpretation of the Susan River Decree, and corresponding direction to the Watermaster
5 to administer the Decree in such a manner ensuring that Petitioner receives all water due to it
6 under the Decree. Petitioner has followed the complaint procedures described in the
7 Watermaster’s Rules and Regulations and now appeals the Watermaster’s decision subject to this
8 Court’s continuing jurisdiction to adjudicate and enforce the Decree. Specifically, Petitioner
9 requests that this Court order the Watermaster to allow Petitioner to exercise its water rights
10 under the Decree consistent with the provisions of paragraph 17 thereof.

11 Paragraph 17 provides:

12 Nothing herein contained shall, or shall be construed to, prevent
13 any of the parties hereto, who have a joint ditch, where there is a
14 continuous flow allotment to said ditch, from employing by
15 agreement of such joint users of said ditch a system of rotation in
16 use as among themselves, or from preventing any party hereto, who
17 has allotments to two or more ditches, from using all or any portion
of his allotments through each or any number of his ditches on all
or any portion of his land, so long as the maximum quantity of
water diverted shall not exceed the aggregate of all allotments to all
of his ditches.

18 (See, e.g., Decl. of Jay Dow, Trustee of the Dow-Bonomini Family 2013 Trust [“Dow Decl.”],
19 Ex. 1 at p. 11, ¶ 17.)

20 Petitioner is the successor in interest to the lands held by and water rights decreed to
21 parties to the Decree. These rights are associated with certain points of diversion—or ditches—
22 along the Susan River and its tributaries. (See, e.g., *id.*, Ex. 1 at pp. 83–92.) Consistent with the
23 manner in which previous Deputy Watermasters administered the Susan River system, Petitioner
24 now seeks to use water—within the aggregate of all its allotments—that was allotted to certain
25 ditches under the Decree via diversion at other ditches, and upon properties that Petitioner has
26 acquired, but as to which the water was not allotted at the time of the Decree. In other words,
27 Petitioner seeks to intermittently use all or a portion of its upstream water rights at its downstream
28

1 properties, consistent with the water rights' priorities under the Decree.

2 In short, to make its farming operations economically feasible, Petitioner has aggregated
3 various lands within the Susan River watershed to which different water rights were allotted
4 pursuant to the Decree. Pursuant to Paragraph 17 of the Decree, Petitioner wishes to divert and
5 apply water associated with points of diversion in the upper reaches of the watershed at and upon
6 lands within the lower reaches of the watershed. Such diversion and use can be administered by
7 the Watermaster so that Petitioner is not exceeding the total of all allotments to its lands, and no
8 other party is harmed. Prior Watermasters have accommodated Petitioner's ability to do so in the
9 past, and Petitioner wishes to continue this practice as allowed under the Decree.

10 **II. FACTS**

11 **A. Background**

12 In 1940, this Court issued a judgment and decree ("Decree") in the case of *J.J. Fleming, et*
13 *al. v. J.R. Bennett, et al.*, Lassen County Superior Court Case Number 4573. (See Dow Decl., Ex.
14 1.) The Decree identified and established water rights on the Susan River stream system. (See *id.*)

15 For sixty-seven years, the Department of Water Resources (formerly known as the
16 Division of Water Resources) ("DWR") acted as Watermaster to administer the Decree. (Dow
17 Decl., ¶ 9; see also *id.*, Ex. 3.) In 2007, this Court granted a petition to substitute the Susan River
18 Watermaster, and the Honey Lake Valley Resource Conservation District ("HLVRCD" or
19 "Watermaster") assumed the role of Watermaster from DWR effective January 1, 2008. (Dow
20 Decl., ¶ 10; see also *id.*, Ex. 3.)

21 **B. The Susan River Decree**

22 1. Types of Water Rights

23 Paragraph 7 of the Decree specifies that "the rights involved in [the underlying] action
24 fall into four classifications" and then sets out those classifications as follows:

- 25 a. Special class rights, as set forth in paragraphs 22 to 40;
26 b. Interrelated rights on Willow Creek and the Susan River below Willow
27 Creek, as set forth in paragraph 45 and schedule 3;
28

1 c. Interrelated rights on Gold Run Creek, Lassen Creek, Piute Creek and
2 their tributaries, as set forth in paragraphs 41, 42, 43, and 46 and schedule
3 4; and

4 d. Interrelated rights on the Susan River and its tributaries above Piute Creek,
5 as set forth in paragraphs 44 and 47 to 52 and schedules 5 and 6.

6 (Dow Decl., Ex. 1; *Dow v. Lassen Irrigation Company* (2013) 216 Cal.App.4th 766, 781 [quoting
7 the Decree] [hereinafter "*Dow v. LIC*".])

8 Similarly, paragraph 19 of the Decree explains that "special class rights are 'set forth in
9 paragraphs 22 to 40' and interrelated rights are 'set forth in paragraphs 41 to 52 . . . and in
10 Schedules 3, 4, 5 and 6.'" (Dow Decl., Ex. 1; *Dow v. LIC*, 216 Cal.App.4th at 781 [quoting the
11 Decree].) In each Schedule, an identified water user is granted a maximum rate of water that may
12 be diverted under its right (described in cubic feet per second ("cfs")), a purpose of use, a point of
13 diversion, and a relative priority regarding users in the other three schedules and amongst users
14 within the same schedule. (See Dow Decl., Ex. 1 at pp. 30–94.)

15 2. Petitioner's Water Rights Under the Decree

16 Petitioner is successor-in-interest to several land owners granted water rights under the
17 Decree, including, rights under Schedule 3 (Priority 1 and 2), Schedule 4, Schedule 5 (Priority 2
18 and 3), and Schedule 6 (Priority 1) of the Decree. (Dow Decl., ¶ 8; see generally *id.*, Ex. 1 at pp.
19 83–92; see also *Dow v. LIC*, 216 Cal.App.4th at 779 n.15.) Petitioner's Schedule 4 and Schedule
20 5 Priority 2 rights are most relevant for purposes of this motion.

21 C. The Appellate Decision

22 As this Court is aware, in 2010, Jay Dow, trustee for Petitioner, appealed this Court's
23 order regarding a dispute among Petitioner, the Watermaster, and the Lassen Irrigation Company
24 ("LIC"). The dispute concerned the Watermaster's administration of the Decree in which it
25 allowed LIC to divert water for storage in its reservoirs while simultaneously releasing water
26 from Lake Leavitt. (*Dow v. LIC*, 216 Cal.App.4th at 779.) In 2013, the Court of Appeal for the
27 Third District issued its decision, *Dow v. LIC* (2013) 216 Cal.App.4th 766.¹

28 ¹ As the Court is aware, in 2018, Petitioner appealed a decision of the Watermaster regarding
LIC's ability to simultaneously exercise its water rights under the Decree, and the Court heard

1 **D. Recent Events**

2 On January 27, 2016, the Watermaster Board² approved and adopted rules and regulations
3 governing the Watermaster’s functions (the “Rules and Regulations”).³ (Dow Decl., Ex. 5.) The
4 HLVRCD, as the “Watermaster” identified in the Rules and Regulations, includes the
5 “Watermaster Board, all Decisionmakers and its agents, employees, and designees.” (Dow Decl.,
6 Ex. 5 at p. 5, Art. I, § 1.1(o).) Pursuant to Article VI of the Rules and Regulations, a water user
7 may file a complaint “objecting to or otherwise disputing the action, omission, or decision of the
8 Deputy Watermaster regarding the implementation of water distribution and reporting of the
9 Judgment or such in administration of the Service Area within thirty (30) days of the action,
10 omission, or decision.” (Dow Decl., Ex. 5 at p. 13, Art. VI, § 6.1.) The Rules and Regulations
11 acknowledge that this Court exercises continuing jurisdiction over the Decree. (See e.g. Dow
12 Decl., Ex. 5 at pp. 4–5, Art. I, §§ 1.1(e), (j), 1.3; see also *id.*, Ex. 1 at p. 95, ¶ 56.)

13 Each year, Petitioner makes ranch management decisions based on water availability in
14 order to maximize the economic value of its properties and operations. (Dow Decl., ¶ 7.)
15 Previously, prior Deputy Watermasters have operated the system to accommodate Petitioner
16 when it requested to divert water arising under its Schedule 4 and Schedule 5 water rights
17 associated with its upstream properties for use on its properties situated below the confluence of
18 the Susan River and Willow Creek. (Dow Decl., ¶ 15; *id.*, Ex. 4 at p. 7.)

19 During the 2019 irrigation season, Petitioner requested that the Watermaster administer
20 the Susan River system in such a manner that Petitioner would be allowed to divert water arising
21 under its Schedule 4 and Schedule 5 Priority 2 rights for use on Petitioner’s properties that are
22 situated below the confluence of the Susan River and Willow Creek. (Dow Decl., ¶ 13.) After a
23 series of communications—both by telephone and electronically—the Deputy Watermaster
24 and decided Petitioner’s appeal motion in the second quarter of 2019. Petitioner has appealed this
25 Court’s June 5, 2019 ruling, and that appeal is presently pending before the Court of Appeal for
26 the Third District as Case No. C090304. The issues raised in this motion are not related to the
27 pending appeal or this Court’s June 5, 2019 ruling.

26 ² The Board of Directors of the HLVRCD is the Watermaster Board. (Dow Decl., Ex. 5 at p. 5,
27 Art. I, § 1.1(p).)

27 ³ These Rules and Regulations were subsequently amended in February 2019. (See Dow Decl.,
28 Ex. 5.) All references to the Rules and Regulations are to the Rules and Regulations following the
February 2019 amendments.

1 informed Petitioner that it was her final decision not to administer the Susan River system in such
2 a manner. (Dow Decl., ¶¶ 14, 16.) As a result of the Watermaster’s determination described
3 above, during the most recently concluded irrigation season, Petitioner was not allowed exercise
4 260 AF of its water rights as it should have been allowed. (Dow Decl., ¶ 14.)

5 As a result, on July 25, 2019,⁴ Petitioner submitted a proper complaint to the Watermaster,
6 complaining that the Deputy Watermaster’s decision was contrary to the Decree, and requesting
7 that the Watermaster overturn the Deputy Watermaster’s decision. (Dow Decl., ¶¶ 17–18; see *id.*,
8 Ex. 2 at pp. 6–36.) Specifically, Petitioner alleged that it is the owner of water rights listed in
9 Decree Schedule 4 and Schedule 5 Priority 2, and that during the most recent irrigation season,
10 the Deputy Watermaster had denied Petitioner’s request to administer the Decree in order that
11 Petitioner might divert water pursuant to those rights at Diversions 82, 83, 89, 92, 98, 99, 100,
12 101, and 102 for use on other of Petitioner’s properties that are situated below the confluence of
13 the Susan River and Willow Creek. (Dow Decl., ¶ 18; see *id.*, Ex. 2 at p. 15.)

14 On August 8, 2019, the Watermaster Advisory Committee held a public hearing regarding
15 Petitioner’s Complaint. (Dow Decl., ¶ 19.) At the August 8, 2019 hearing as to Petitioner’s
16 Complaint, the Watermaster Advisory Committee members present, by a 3-2 vote, upheld the
17 Deputy Watermaster’s decision. (Dow Decl., ¶ 20; see *id.*, Ex. 2 at p. 5.) At the Watermaster
18 Advisory Committee hearing, the Deputy Watermaster discussed prior filings with this Court by
19 other parties to the Decree, which filings related to the notification of changes in place of use or
20 points of diversion of water allotments decreed under the Decree. (See Dow Decl., ¶ 21.) A few
21 days after the August 8, 2019 hearing, the Deputy Watermaster sent copies of these filings to
22 Petitioner, stating that “[a]ttached are the right transfers that took place since the RCD has housed
23 the Watermaster Service.” (Dow Decl., ¶ 21; see *id.*, Ex. 2 at pp. 24–35.) In appealing the
24 Watermaster Advisory Committee’s decision, Petitioner’s August 15, 2019 notice of appeal
25 included a request that the Watermaster Board postpone scheduling a public hearing regarding the

26 ⁴ On July 23, 2019, Petitioner submitted a single complaint to the Deputy Watermaster that
27 addressed two separate issues related to Petitioner’s water rights. On July 25, 2019, the Deputy
28 Watermaster requested that I resubmit the complaint as two separate complaints, which would
allow the Watermaster Advisory Committee to evaluate each independent of the other, should the
opportunity for separate outcomes be an option. (See Dow Decl., ¶ 17.)

1 matter so that Petitioner and the Deputy Watermaster might attempt to work toward a mutually
2 agreeable resolution of the disagreement. (See Dow Decl., Ex. 2 at pp. 3–4.)

3 On November 4, 2019, the Watermaster Board held a hearing on Petitioner’s complaint.⁵
4 Four Watermaster Board Members were present at the Watermaster Board hearing. (Dow Decl.,
5 ¶ 24.) At the conclusion of the hearing, the Watermaster Board, by a three to one vote, took action
6 to uphold the Deputy Watermaster’s determination. (Dow Decl., ¶ 24.)

7 Following this hearing, on November 7, 2019, the Deputy Watermaster transmitted to
8 Petitioner’s representative a written decision entitled A Decision of the Board Pursuant to Section
9 6.6 of Article VI of the Rules and Regulations of the Honey Lake Valley Resource Conservation
10 District (“Watermaster Decision”). (Dow Decl., ¶ 26; see *id.*, Ex. 6.) No draft of this decision was
11 before the Watermaster Board during the November 4, 2019 hearing and it is not clear whether
12 any draft was circulated to the Watermaster Board before transmittal to Petitioner. (Dow Decl. at
13 ¶ 27; see generally *id.*, Ex. 6.)

14 The Watermaster Decision states:

15 The Board finds that the Watermaster’s interpretation of the 1940
16 Decree was correctly implemented by not allowing the use of
17 Schedule 4 and Schedule 5, 2nd priority water rights below the
18 confluence of the Susan River and Willow Creek. Therefore, the
19 Watermaster may continue to allow LIC to divert this water if Mr.
20 Dow does not divert them at their upstream Decreed locations, and
21 thus leaving them in the system. Accordingly, Mr. Dow’s appeal
22 and remedy request is denied and rejected. This decision is final for
23 all proposes pursuant to the Susan River Watermaster Rules and
24 Regulations.

25 (Dow Decl., Ex. 6 at p. 5.) A section of the Watermaster Decision⁶ entitled “Board Concurrence
26 with Watermaster’s Position” states:

27 The Board was unpersuaded by [Petitioner’s] argument that it is
28 within the Decree, Paragraph 17 that the Watermaster must allow
the use of the Schedule 4 and 5 priority 2 water rights at the other
properties downstream. [Petitioner] failed to present sufficient
evidence to overrule the Watermaster’s interpretation of the Susan
River Decree, the *Dow v. Lassen Irrigation Company* decision and

⁵ The agenda packet for the Board meeting is attached to the Declaration of Jay Dow as Exhibit 2.

⁶ The Watermaster Decision includes a quotation of the Appellate Decision, saying “this interpretation is supported by the [quoted language].” (See Dow Decl., Ex. 6 at pp. 3–4.) However, it is not clear to which interpretation this portion of the quoted language is intended to support.

1 Paragraph 17 of the Decree. From the court's example, it is evident
2 to the Board that the writers of the Decree did not intend for users
3 to move their water rights between Schedules. Furthermore, the
4 Board supports that the allowance of this movement of water would
obstruct LIC's water rights under the terms described in the Decree
and *Dow v. Lassen Irrigation Company*.

5 (*Id.* at p. 5.)⁷

6 In a section of the Watermaster Decision entitled "Watermaster's Position," there is
7 additional discussion of LIC's water rights. Specifically, the Watermaster Decision states:

8 As interpreted, the use of water rights are to be used at or near the
9 associated irrigated acres; where in this case, the Trust is requesting
10 to use the water rights a minimum of 13 miles downstream from
11 where they are allocated in the Decree, and to different Schedules,
12 as organized by the Decree. Further, on the Susan River side at
13 Colony Dam, LIC has the right to divert anything over 20cfs,
14 March 1 to July 1, and over 5cfs at all other times. Allowing this
15 request to transfer water would put the gauge reading over 20 or
16 5cfs and LIC would be prevented by the Watermaster from
17 diverting its full allotment as the water would be considered Mr.
18 Dow's upstream, Schedule 4 and 5 2nd priority rights. The
19 Watermaster assessed that if Mr. Dow does not divert his water at
their Decreed Points of Diversion, this water becomes a part of the
"natural flow of the Susan River," which LIC is entitled to take if
Colony Dam is above its specific threshold. Thus, allowing the
requested transfer would be infringing upon LICs water rights.
Supported by the *Dow v. Lassen Irrigation Company* Judgment in
J.J. Fleming v. J.B. Bennett, Lassen County Superior Court Case
No. 4573, October 1, 2014; when describing the exception in
paragraph 21 pertaining to the Irrigation Company's rights,
Schedule 4 and Schedule 5, 2nd priority rights are not mentioned as
they are upstream of the Colony Dam, and thus are irrelevant to
LICs right to divert. This exclusion demonstrates how it is not

20 ⁷ This section of the Watermaster Decision also provided that "The Board commends both the
21 Watermaster and the Trust for working together and is in support of the user taking the steps to
22 change the Points of Diversion with the Superior Court. Upon the results of this process, the
23 Honey Lake Valley Resource Conservation District as the Watermaster will abide by the
24 decisions made by the Lassen County Superior Court." (See Dow Decl., Ex. 6 at p. 5.) On
25 November 1, 2019, Petitioner had filed with the Court in this matter a Notice of Change of
26 Diversion Points ("Notice of Change"), notifying the Court and all interested parties that
27 Petitioner had changed the points of diversion through which water would be diverted pursuant to
28 Petitioner's Schedule 4 and Schedule 5 Priority 2, rights to include those points of diversion
associated with Petitioner's lands situated below the confluence of the Susan River and Willow
Creek, and that such change would not increase the quantity of water Petitioner diverts or stores
beyond amounts as stated in the Decree, nor would Petitioner increase the amount of acreage to
which it delivers water beyond the total acreage listed in the Decree associated with its water
rights. (See Dow Decl., ¶ 28; *id.*, Ex. 7.) Additionally, such change would not injure any other
water user since Petitioner would only be moving water that it is entitled to divert upstream to a
downstream location. (See Dow Decl., Ex. 7 at p.2.) This Notice of Change was not the subject of
and is not discussed in the Watermaster Decision. (See Dow Decl., Ex. 6.) At the time of this
filing, no pleadings have been filed in response to the Notice of Change. (See Dow Decl., ¶ 29.)

1 intended by the Decree for users to be able to utilize their water on
2 a different river or section of river, essentially transferring the
3 water, as this request would so do. Based on this evidence as
4 interpreted by the Watermaster, Paragraph 17 is speaking to
multiple diversions on joint ditches, and single or adjacent
properties; again, not the liberty for a user to move water between
Schedules.

5 (See Dow Decl., Ex. 6 at pp. 4–5 [footnotes omitted].)

6 Petitioner timely appeals the Watermaster Decision pursuant to this Court’s retention of
7 jurisdiction over the parties and the Decree, and in accord with Section 6.4 of the Rules and
8 Regulations which provides that Petitioner “may appeal” the Watermaster’s final decision “to the
9 Court within thirty (30) days.” (See Dow Decl., Ex. 5 at p. 14, Art. VI, § 6.4.)

10 **III. STANDARD OF REVIEW**

11 This Court’s review of the Watermaster Decision is *de novo* and it need not defer to the
12 Watermaster Board in regard to the disposition of the Watermaster Decision. As a “pure
13 question[] of law, not involving the resolution of disputed facts,” the interpretation of the Decree
14 and Paragraph 17 is subject to this Court’s independent or *de novo* review. (See *Diamond Benefits*
15 *Life Ins. Co. v. Troll* (1998) 66 Cal.App.4th 1, 5.)

16 The role of the Watermaster is presently being assumed by the Board of an agency, the
17 HLVRCO—however, the Watermaster itself is not an agency entitled to deference. Prior to the
18 appointment of the District’s Board as the Watermaster in this case, that role was filled by the
19 DWR. (See Dow Decl., ¶ 9; see also *id.*, Ex. 3.) As described on the District’s “Susan River
20 Watermaster Service” webpage, the reason that parties to the 1940 Decree sought the
21 appointment of the District as the Watermaster was not because of any District expertise in regard
22 to the administration of the 1940 Decree—but for financial reasons.⁸

23
24 ⁸ “In 2007, [DWR] stated they would need to raise the rates of many water rights holders in
25 California including the Susan River Watermaster Service Area (SRWSA). The rate increase was
26 a result of DWR’s budget reorganization which ceased state subsidies for Watermaster service
27 resulting in a four-fold increase in Watermaster fees. Due to rising costs many areas in the state
28 assumed local Watermaster programs.... On July 31, 2007, at the request of water users within
the SRWSA to increase local control and lower operational expenses for the service, the
[HLVRCO] was appointed as Watermaster for the SRWSA by Lassen County Superior Court
modifying decree case no. 4573. As a result, this has saved local water rights holders and
agricultural producers in the community hundreds of thousands of dollars.” (Honey Lake Valley
Resource Conservation District, Susan River Watermaster Service, available at

1 Deference, as to an agency, is not required in this situation. The deference given to agency
2 decisions derives from the doctrine of separation of powers. (See *Faulkner v. California Toll*
3 *Bridge Auth.* (1953) 40 Cal.2d 317, 329 [courts should not “substitute their judgment or notions
4 of expediency, reasonableness, or wisdom” for those of administrative agencies]; *Carmel Valley*
5 *Fire Prot. Dist. v. State* (2001) 25 Cal.4th 287, 297 [separation of powers “limits the authority of
6 one of the three branches of government to arrogate to itself the core functions of another
7 branch”].) This doctrine is inapplicable here because the Watermaster is not a separate branch of
8 government; it was created by this Court and is considered an arm of the Court. (See Water Code
9 § 4050(c)(1) [“A watermaster appointed . . . shall have the powers and duties prescribed by the
10 court pursuant to the exercise of its judicial authority, which may include any powers and duties
11 prescribed by this part.”].) The Court still must have the ability to review the Watermaster’s
12 decisions and must have final say. (See Water Code § 4161 [when a person injured by the action
13 of a watermaster seeks an injunction from a superior court, such an injunction shall be issued
14 where “the watermaster has failed to distribute the water *according to the rights as determined by*
15 *decrees of court, agreements, permits, or licenses*”] (emphasis added).)

16 Even if the Watermaster’s interpretations of the Decree were extended deference, such
17 deference is not required where “the interpretation flies in the face of the clear language and
18 purpose of the interpreted provision.” (*Communities for a Better Env’t v. State Water Res.*
19 *Control Bd.* (2003) 109 Cal.App.4th 1089, 1104.) The language of Paragraph 17 is clear: nothing
20 in the Decree shall prevent any party who has allotments to two or more ditches from using all or
21 any portion of the party’s allotments “through *each or any number of [its] ditches on all or any*
22 *portion of [its] land*” so long as the maximum quantity of water diverted shall not exceed the
23 aggregate of all allotments to all of its ditches. (Dow Decl., Ex. 1 at p. 11, ¶ 17 [emphasis
24 added].)

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27 <https://www.honeylakevalleyrwd.us/susan-river-watermaster-service> (last accessed December 3,
28 2019.)

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IV. ARGUMENT

A. Paragraph 17 Allows Diversion of Water Through Each and Any of a Party's Ditches on All or Any Portion of its Land

The Watermaster Decision should be overturned because Petitioner's requested administration of the Susan River Decree falls squarely within the scenario contemplated by Paragraph 17. It is undisputed that Petitioner is the successor in interest to water rights in both Schedule 4 and Schedule 5 Priority 2. (See Dow Decl., ¶¶ 6–8; see *id.*, Ex. 2 at 17–23.) It is similarly undisputed that Petitioner is successor in interest to lands situated lower in the Susan River watershed, below the confluence of the Susan River and Willow Creek, which have been irrigated pursuant to the Decree through diversion points labeled 82, 83, 89, 92, 98, 99, 100, 101, and 102. (See Dow Decl., ¶¶ 6–8.)

Judicial orders or decrees are “writings,” to be construed in accordance with substantially the same canons of interpretation” as statutes and contracts. (*Verdier v. Verdier* (1953) 121 Cal.App.2d 190, 193). Initially, the interpretation of a judgment must be determined from the writing’s own language if any uncertainty exists. (*Canavan v. College of Osteopathic Physicians & Surgeons* (1946) 73 Cal.App.2d 511, 518). Therefore, when the language in a judgment is “clear and explicit and does not lead to absurd results, we ascertain intent from the written terms and go no further.” (*Ticor Title Ins. Co. v. Employers Ins. of Wausau* (1995) 40 Cal.App.4th 1699, 1707; Civ. Code § 1638).

The language of Paragraph 17 is clear: nothing in the Decree shall prevent any party who has allotments to two or more ditches from using all or any portion of the party’s allotments “through *each or any number of [its] ditches on all or any portion of [its] land*” so long as the maximum quantity of water diverted shall not exceed the aggregate of all allotments to all of its ditches. (Dow Decl., Ex. 1 at p. 11, ¶ 17 [emphasis added].)

The Watermaster Decision does not point to any other provision of the Decree to support its proffered interpretation of Paragraph 17, but simply states that “Nothing in the 1940 Decree, as interpreted by subsequent judicial consideration, expressly rejects or prohibits the administrative interpretation made in good faith by the Watermaster.” (Dow Decl., Ex. 6 at pp. 2–3.)

1 Additionally, there is no support in the Watermaster Decision or the Decree for the Watermaster’s
2 position that Paragraph 17 applies only to “multiple diversions on joint ditches, and single or
3 adjacent properties.” (Dow Decl., Ex. 6 at p. 5; see also *id.* at p. 4 [“As interpreted, the use of
4 water rights are to be used at or near the associated irrigated acres; where in this case, the Trust is
5 requesting to use the water rights a minimum of 13 miles downstream from where they are
6 allocated in the Decree, and to different Schedules, as organized by the Decree.”].) Accordingly,
7 Paragraph 17’s own language plainly allows Petitioner to divert its water rights through any of its
8 ditches on any of its lands.

9 Further, Petitioner’s requested change comports with the general principles of California
10 water law. It has long been the law in California “that the person entitled to the use of water may
11 change the place of diversion, or the place where it is used, or the use to which it was first
12 applied, if others are not injured by such change.” (*Ramelli v. Irish* (1892) 96 Cal. 214, 217.)
13 Water Code section 1706 and its predecessor statute codified this rule.⁹ This general principle
14 applies to adjudicated or decreed rights. (See *Orange Cove Irr. Dist. v. Mos Molinos Mutual*
15 *Water Co.* (2018) 30 Cal.App.5th 1, 19 [stating that although a decree “contemplated the water
16 would be diverted only from Mill Creek, the law allows [a party] to use the water elsewhere if it
17 can do so without injuring the rights of others to the water”].) Petitioner’s requested change would
18 not increase the quantity of water it diverts beyond the amounts as stated in the Decree, nor would
19 the change increase the amount of acreage to which water is delivered and irrigated. As a result,
20 Petitioner’s requested change would not result in any negative impact or injury to any other water
21 user in the Susan River system.

22 **B. Petitioner Is Not Proposing to Change the Schedule of Any of Its Water**
23 **Rights**

24 The Watermaster Decision states that Paragraph 17 is not speaking to “the liberty for a
25 user to move water between Schedules.” (Dow Decl., Ex.6, p. 4.) Petitioner is not and has never

26 ⁹ Water Code section 1706 states that “[t]he person entitled to the use of water by virtue of an
27 appropriation other than under the Water Commission Act or this code may change the point of
28 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.” (Water Code § 1706.)

1 sought to change the schedule of any of its water rights. Rather, Petitioner is seeking to divert
2 water under its permitted schedules (Schedule 4 and Schedule 5 Priority 2)—meaning its priority
3 within the Decree—at different points of diversion associated with Petitioner’s other lands. The
4 language of Paragraph 17 does not distinguish between ditches on different schedules, but simply
5 states that so long as a party is not exceeding its aggregate water rights, it may divert those rights
6 “through *each or any number of [its] ditches on all or any portion of [its] land.*” (Dow Decl., Ex.
7 1 at p. 11, ¶ 17 [emphasis added].)

8 **C. Petitioner is Not Seeking a Determination of LIC’s Water Rights**

9 While the Watermaster Decision spends considerable time discussing LIC’s water rights
10 under the Decree (Dow Decl., Ex. 6 at pp. 3–5), Petitioner is not seeking a determination of LIC’s
11 Water Rights as part of its Complaint. It may be that the Watermaster Decision discusses LIC’s
12 rights due to Petitioner’s claim that water that Petitioner had not been able to divert due to the
13 Deputy Watermaster’s Decision had subsequently been diverted by LIC and that LIC could be
14 required to release such water in order to address Petitioner’s claimed injury. However, the
15 Complaint was not a dispute regarding LIC’s water right priority—rather, it identified a remedy
16 that LIC could release water held in storage (water that LIC would not have been able to divert
17 had Petitioner diverted it upstream at the points of diversion outlined in the Decree) as a means of
18 making Petitioner whole.

19 The issue in this Appeal is whether Paragraph 17 allows the use of water other than on
20 contiguous properties, not whether LIC’s water rights were properly exercised. At the same time,
21 LIC’s ability to take water is still dependent upon the priority of its water rights, which are of a
22 lower priority than those which Petitioner wishes to divert at its ditches upon its lands below the
23 confluence of the Susan River and Willow Creek. (See Dow Decl., Ex. 1 at p. 13, ¶ 21 [exception
24 allowing LIC to “divert, or store . . . irrespective of and notwithstanding the allotments granted to
25 users in said Schedule 3 and 6 and the users of third priority class in said Schedule 5” does not
26 apply to Schedule 4 and Schedule 5 Priority 2 rights].) Petitioner does not agree that LIC may
27 simply take as much water as it wishes, regardless of priority, when flows at Colony Dam are
28

1 above 20 cfs or 5 cfs—this is merely the condition that must exist for it to divert at all. (See *id.*
2 [“[LIC] shall be entitled to divert, or store up to the present capacity of its reservoirs . . . from the
3 natural flow of Susan River between March 1 and July 1 of each year when the flow of said Susan
4 River is in excess of 20 cubic feet per second, measured immediately above the confluence of
5 said river with Willow Creek, and at all other times when the flow of said river is in excess of 5
6 cubic feet per second measured at said point”].) Allowing Petitioner to divert its Schedule 4 and
7 Schedule 5 Priority 2 rights downstream from the points of diversion defined in these schedules in
8 the Decree does not alter the schedule or priority of these rights—it merely changes the point of
9 diversion and location of use. (See, e.g., *id.*)

10 Thus, nothing in the Decree permits the Watermaster to allow LIC to take this water if
11 Petitioner has explicitly requested to divert it further downstream. While such a change would
12 require the Deputy Watermaster to measure and ensure that said water is delivered to Petitioner’s
13 points of diversion—and not diverted by LIC as part of the “natural flow¹⁰ of Susan River”—the
14 plain language of Paragraph 17 allows a water user to divert its allocation in the manner requested
15 by Petitioner. (See *Orange Cove Irr. Dist.*, 30 Cal.App.5th at 19 [“Whether an owner leaves its
16 water in the creek to be diverted downstream or conveys it somewhere after [the watermaster]
17 diverts it, [the watermaster] can still measure the water to ensure the owner does not receive more
18 than its allotted share. [The Watermaster] need only calculate the proper allocation and either
19 leave that amount in the creek or superintend the appropriated amount through its system of
20 canals and ditches to the owner's property or conveyance system, where it can measure the
21 volume delivered.”].)

22 **V. CONCLUSION**

23 Paragraph 17 of the Decree provides that owners of water rights pursuant to the Decree
24 may divert and use that water “through each or any number of [its] ditches on all or any portion of
25

26 ¹⁰ Notably, the Decree defines the term “natural flow” as “such flow as will naturally occur at any
27 given point in a stream from the run-off of the watershed which it drains, from springs which
28 naturally contribute to the stream, from seepage, and from waste and return flow from dams,
conduits, and irrigated lands; as distinguished from related stored water and from ‘foreign water’
directly conveyed to a stream from another watershed.” (Dow Decl., Ex. 1 at p. 8, ¶ 8.)


1 [its] land” so long as the maximum quantity of water diverted shall not exceed the aggregate of all
2 allotments to all of its ditches. The Watermaster Decision is contrary to this provision of the
3 Decree and, for the reasons described above, the Court should direct the Watermaster to proceed
4 in accordance with Paragraph 17 in its administration of the Decree.

5 WHEREFORE, Petitioner prays that this Court Grant the instant motion and:

- 6 1. Direct the Watermaster to vacate the Watermaster Decision;
- 7 2. Declare that Paragraph 17 of the Decree allows Petitioner to divert its Schedule 4
8 and Schedule 5 Priority 2 allotments through each or any number of its ditches on all or any
9 portion of its lands, so long as the maximum quantity of water diverted shall not exceed the
10 aggregate of all allotments to all of its ditches; and
- 11 3. Direct the Watermaster to measure and allow Petitioner to divert its Schedule 4
12 and Schedule 5 Priority 2 water rights at its ditches on all or any portion of its lands.

13
14 Dated: December 9, 2019

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

15
16 By: 
17 BRADLEY J. HERREMA
18 ARTHUR ZORIO
19 BROOKE M. WANGSGARD
Attorneys for Petitioner
20 THE DOW-BONOMINI FAMILY 2013
TRUST

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1 **PROOF OF SERVICE**

2 I, Ivy B. Capili, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is Brownstein Hyatt Farber Schreck, LLP, 2049 Century Park East, Suite 3550, Los Angeles,
6 California 90067. On December 9, 2019, I served a copy of the within document(s):

7 NOTICE OF MOTION RE: APPEAL FROM WATERMASTER'S NOVEMBER 7, 2019
8 DECISION RE PARAGRAPH 17 PURSUANT TO COURT'S CONTINUING
9 JURISDICTION

- 10 by placing the document(s) listed above in a sealed envelope with postage thereon
11 fully prepaid, the United States mail at Los Angeles, California addressed as set
12 forth below.
- 13 by placing the document(s) listed above in a sealed Federal Express envelope and
14 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal
15 Express agent for delivery.
- 16 based on a court order or an agreement by the parties to accept service by
17 electronic transmission, I caused the documents to be sent to the persons at the
18 electronic notification listed below.

19 *Please see attached service list.*

20 I am readily familiar with the firm's practice of collection and processing correspondence
21 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
22 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
23 motion of the party served, service is presumed invalid if postal cancellation date or postage
24 meter date is more than one day after date of deposit for mailing in affidavit.

25 I declare under penalty of perjury under the laws of the State of California that the above
26 is true and correct. Executed on December 9, 2019, at Los Angeles, California.

27 
Ivy B. Capili

BROWNSTEIN HYATT FARBER SCHRECK, LLP
2049 Century Park East, Suite 3550
Los Angeles, CA 90067

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J.J. Fleming v. J.B. Bennett, et al.

Lassen County Superior Court Case No. 4573

Service List

William P. Curley III
Lozano Smith
515 S. Figueroa St. Suite 750
Los Angeles, CA 90071
Email: wcurley@lozanosmith.com

Honey Lake Valley RCD
170 Russell Avenue, Suite C
Susanville, CA 96130

20001926

BROWNSTEIN HYATT FARBER SCHRECK, LLP
2049 Century Park East, Suite 3550
Los Angeles, CA 90067

1 BRADLEY J. HERREMA (State Bar No. 228976)
ARTHUR ZORIO (State Bar No. 196737)
2 BROOKE M. WANGSGARD (State Bar No. 296199)
BROWNSTEIN HYATT FARBER SCHRECK, LLP
3 2049 Century Park East, Suite 3550
Los Angeles, CA 90067
4 Telephone: 310.500.4600
Facsimile: 310.500.4602

5 Attorneys for Petitioner
6 THE DOW-BONOMINI FAMILY 2013
TRUST
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LASSEN

10
11 J.J. FLEMING, et al.,
12 Plaintiffs,
13 v.
14 J.B. BENNETT, et al.,
15 Defendants.

Case No. 4573

Assigned for All Purposes to the
Honorable David L. DeVore

NOTICE OF MOTION RE: APPEAL FROM
WATERMASTER'S NOVEMBER 7, 2019
DECISION RE 3037 JUDGMENT
PURSUANT TO COURT'S CONTINUING
JURISDICTION

[Filed Concurrently with Declaration Of Jay
Dow in Support of Motion]

**Request for Long-Cause Hearing Pursuant
to Rule of Court No. 1(D)**

Date: January 17, 2020

Time: 8:30 a.m.

Department: Department 3

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BROWNSTEIN HYATT FARBER SCHRECK, LLP
2049 Century Park East, Suite 3550
Los Angeles, CA 90067

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TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 17, 2020 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 3 of the above-entitled court located at 2610 Riverside Drive, Susanville, California 96130, Petitioner THE DOW-BONOMINI FAMILY 2013 TRUST will move this Court to interpret the Susan River Decree, vacate the Watermaster's Decision dated November 7, 2019, and enter an Order requiring the Watermaster to administer the Susan River Decree in a manner that does not infringe upon Petitioner's right to divert 740 acre feet at the Barham Dam pursuant to the judgment entered in *Barham, et al v. Cannon et al*, Lassen County Superior Court Case No. 3037, and Paragraph 55 of the 1940 Decree.

This Motion is based upon this Notice, the Memorandum of Points and Authorities, the Declaration of Jay Dow, pleadings and records on file herein, and upon such other and further oral and documentary evidence as the Court may consider at or prior to the hearing on this matter.

NOTICE IS FURTHER GIVEN that Counsel for Petitioner is of the opinion that this matter will require more than ten minutes to be heard. Pursuant to Superior Court of California, County of Lassen Rule of Court No. 1(D), Petitioner requests a long-cause hearing for this matter.

Dated: December 9, 2019

BROWNSTEIN HYATT FARBER SCHRECK, LLP


By: 
BRADLEY J. HERREMA
ARTHUR A. ZORIO
Attorneys for Petitioner
The Dow-Bonomini Family 2013 Trust

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BROWNSTEIN HYATT FARBER SCHRECK, LLP
2049 Century Park East, Suite 3550
Los Angeles, CA 90067

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Federal Cases

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California Cases

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Drouet v. Superior Ct. (2003)
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Fullerton v. State Water Res. Control Bd. (1979)
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In re Marriage of Hobby (2004)
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioner THE DOW-BONOMINI FAMILY 2013 TRUST (“Petitioner”) seeks this
4 Court’s interpretation of the Susan River Decree (“Decree”), and corresponding direction to the
5 Watermaster to administer the Decree in such a manner that it does not infringe on Petitioner’s
6 rights under the April 3, 1931 Judgment in *Barham, et al v. Cannon et al*, Lassen County
7 Superior Court Case No. 3037 (“3037 Judgment”). Petitioner is a party to the Decree and the
8 successor in interest to all lands owned by all parties to the 3037 Judgment.

9 Petitioner has followed the complaint procedures described in the Honey Lake Valley
10 Resource Conservation District (“HLVRCD”) Watermaster’s Rules and Regulations and now
11 appeals the Watermaster’s decision subject to this Court’s continuing jurisdiction to adjudicate
12 and enforce the Decree. Specifically, Petitioner requests that this Court order that the
13 Watermaster recognize Petitioner’s right to divert water according to the 3037 Judgment, not
14 interfere with Petitioner’s diversion of its 3037 Judgment water rights, and administer the Decree
15 in a manner that does not infringe upon Petitioner’s right to divert 740 acre feet (“AF”) at the
16 Barham Dam pursuant to the 3037 Judgment and paragraph 55 of the Decree. Paragraph 55 of the
17 Decree provides:

18 This judgment and decree shall supersede all former judgments and
19 decrees as to the water rights involved, except the decrees of the
20 above entitled court in the cases of Barham vs. Kelly and Frank
Buffum, et ux, vs. Lassen Irrigation Company.

21 (Decl. of Jay Dow, Trustee of the Dow-Bonomini Family 2013 Trust [“Dow Decl.”], Ex. 1 at p.
22 95, ¶ 55.)

23 Consistent with the manner in which previous Deputy Watermasters have administered
24 the Susan River system, Petitioner now seeks to be allowed to divert water pursuant to its rights
25 under the 3037 Judgment without interference by the Watermaster’s administration of the Decree.

26 **II. FACTS**

27 **A. Case No. 3037**

28 Before the litigation that led directly to the Decree, “there was a history of ‘[t]rouble’

1 involving ‘the use of water and ditches diverting [water] from Susan River.’” (*Dow v. Lassen Irr.*
2 *Co.* (2013) 216 Cal.App.4th 766, 771.) In 1893, a judgment was entered in a case involving water
3 from the Susan River entitled *J.D. Byers et al. v. Chas. K. Hartson, B.H. Leavitt, C.C.*
4 *Hutchinson, et al.* (1893) (Lassen Superior Court Case No. 280). (*Id.*) The judgment in that case
5 gave Leavitt and Hutchinson, “as against the plaintiffs in that case, the right to divert the water of
6 Susan River from the channel thereof for storage in their Lake Leavitt Reservoir, and in other
7 reservoirs.” (*Id.* [internal quotation marks omitted].) From 1893 forward, various water right
8 disputes arose among several groups of water right owners on the upper Susan River and its four
9 tributaries: Willow Creek, Gold Run Creek, Lassen Creek, and Piute Creek. (*Id.*)

10 One of these cases was *Barham, et al v. Cannon et al*, Lassen County Superior Court Case
11 No. 3037 (“*Barham v. Kelley*”). On April 3, 1931, a judgment was entered in *Barham v. Kelley*,
12 allocating water rights among the parties and determining that the plaintiffs, A.C. Barham and
13 Delta M. Barham, had a superior right to divert and use the waters of the Susan River as riparian
14 owners over the defendants, E.T. Cannon, George F. Kelley, Maud R. Holmes, Fred E. Kelley,
15 and Ruby B. Tehaney. (Dow Decl., Ex. 2 at pp. 69–73.) The 3037 Judgment quantified the rights
16 of each of the parties principally as follows:

17 “[T]he plaintiffs have a superior right to divert and use of the
18 waters of the Susan River for the irrigation of their said lands as
19 riparian owners, six hundred (600) acre-feet of water during each
20 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[.]”

21 . . . [D]efendants have a right . . . to divert and use of the waters of
22 said Susan River and the Fitzell Ditch one hundred forty (140) acre
23 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”

24 . . . IT IS FURTHER ORDERED, ADJUDGED AND DECREED .
25 . . . that plaintiffs in this action are entitled to a prior and a superior
26 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
27 plaintiffs, described in this action; and that the defendants have

28 a right, secondary and subordinate to that of plaintiffs, to divert and
use of the natural flow of Susan River for the irrigation of

1 defendants' lands one hundred forty (140) acre feet of water during
2 the irrigation season of each year until the first day of July of each
year[.]”

3 (Dow Decl., Ex. 2 at pp. 70–72.)

4 Petitioner is the successor in interest to the lands that were owned by the parties to the
5 3037 Judgment, and to the water rights that were decreed under the 3037 Judgment. (Dow Decl.,
6 ¶ 7; *id.*, Ex. 2 at pp. 74–77.) These lands are delineated on sheet #3 of the irrigated lands map for
7 the Decree. (Dow Decl., ¶ 8; *id.*, Ex. 2 at p. 78.) Consistent with Paragraph 55 of the Decree, the
8 Decree did not supersede the water rights these lands had been granted by the 3037 Judgment.
9 (See Dow Decl., Ex. 1 at p. 95, ¶ 55.)

10 **B. The Susan River Decree**

11 In 1940, this Court issued a judgment and decree (“Decree”) in the case of *J.J. Fleming, et*
12 *al. v. J.R. Bennett, et al.*, Lassen County Superior Court Case Number 4573. (See generally Dow
13 Decl., Ex. 1.) The Decree identified and established nearly all water rights on the Susan River
14 stream system. (See *id.*) For sixty-seven years, the Department of Water Resources (formerly
15 known as the Division of Water Resources) (“DWR”) acted as Watermaster to administer the
16 Decree. (See Dow Decl., ¶ 11; see also *id.*, Ex. 3.) In 2007, this Court granted a petition to
17 substitute the Susan River Watermaster, and the Honey Lake Valley Resource Conservation
18 District (“HLVRCD” or “Watermaster”) assumed the role of Watermaster from DWR effective
19 January 1, 2008. (See Dow Decl., ¶ 12; see also *id.*, Ex. 3.)

20 Petitioner is successor-in-interest to several land owners granted water rights under the
21 Decree. (See generally Dow Decl., Ex. 1 at pp. 83–92.) Petitioner’s rights set forth in the Decree
22 are not relevant for purposes of this motion.

23 Paragraph 55 of the Decree states that it “shall supersede all former judgments and
24 decrees as to the water rights involved, except the decrees of the above entitled court in the cases
25 of *Barham vs. Kelly* and *Frank Buffum, et ux, vs. Lassen Irrigation Company.*” (See Dow Decl.,
26 Ex. 1 at p. 95, ¶ 55 [emphasis added].) This reference to “*Barham vs. Kelly*” is further explained
27 in the June 12, 1937 Report of Referee in Decree Case No. 4573, which refers to the case of
28

1 “Barham vs. Kelly, No. 3037.” (See Dow Decl., Ex. 2 at pp. 52, 57.)

2 **C. Recent Events**

3 On January 27, 2016, the Watermaster Board¹ approved and adopted rules and regulations
4 governing the Watermaster’s functions (the “Rules and Regulations”).² (Dow Decl., Ex. 5.) The
5 HLVRCD, as the “Watermaster” identified in the Rules and Regulations, includes the
6 “Watermaster Board, all Decisionmakers and its agents, employees, and designees.” (Dow Decl.,
7 Ex. 5 at p. 5, Art. I, § 1.1(o).) Pursuant to Article VI of the Rules and Regulations, a water user
8 may file a complaint “objecting to or otherwise disputing the action, omission, or decision of the
9 Deputy Watermaster regarding the implementation of water distribution and reporting of the
10 Judgment or such in administration of the Service Area within thirty (30) days of the action,
11 omission, or decision.” (Dow Decl., Ex. 5 at p. 13, Art. VI, § 6.1.) The Rules and Regulations
12 acknowledge that this Court exercises continuing jurisdiction over the Decree. (See e.g. Dow
13 Decl., Ex. 5 at pp. 4–5, Art. I, §§ 1.1(e), (j), 1.3; see also *id.*, Ex. 1 at p. 95, ¶ 56.)

14 In order to be able to make its farming operations economically feasible, Petitioner has
15 aggregated various lands within the Susan River watershed as to which different water rights
16 were allotted pursuant to the 3037 Judgment and the Decree. (Dow Decl. at ¶ 10.) Each year,
17 Petitioner makes ranch management decisions based on water availability in order to maximize
18 the economic value of its properties and operations. (*Id.*)

19 During the 2019 irrigation season, Petitioner requested that the Watermaster administer
20 the Susan River system in such a manner that Petitioner would be allowed to divert water arising
21 from its ownership of the lands held by the parties to the 3037 Judgment. (Dow Decl., ¶ 17.) Prior
22 Deputy Watermasters had administered the Susan River so that these water rights could be
23 diverted. (Dow Decl., ¶ 16; *id.*, Ex. 4.) After a series of communications—both by telephone and
24 electronically—the Deputy Watermaster informed Petitioner that it was her final decision not to
25 administer the Susan River system in such a manner. (Dow Decl., ¶¶ 18, 20, Ex. 2 at 7–13.) As a

26 ¹ The Board of Directors of the HLVRCD is the Watermaster Board. (Dow Decl., Ex. 5 at p. 5,
27 Art. I, § 1.1(p).)

28 ² These Rules and Regulations were subsequently amended in February 2019. (See Dow Decl.
Ex. 5.) All references to the Rules and Regulations are to the Rules and Regulations following the
February 2019 amendments.

1 result of the Watermaster’s determination described above, during the most recently concluded
2 irrigation season, Petitioner was not allowed to exercise 740 AF of its water rights. (Dow Decl.,
3 ¶ 19.)

4 As a result, on July 25, 2019,³ Petitioner submitted a proper complaint to the Watermaster,
5 complaining that the Deputy Watermaster’s decision was contrary to portions of the Decree and
6 requesting that the Watermaster overturn the Deputy Watermaster’s decision. (Dow Decl., ¶¶ 21–
7 22; see *id.*, Ex. 2 at pp. 5–78.) Specifically, Petitioner alleged that the Watermaster had
8 determined to not respect Petitioner’s rights under the 3037 Judgment and administer the Decree
9 in a manner that obstructs and interferes with Petitioner’s water rights. (Dow Decl., ¶ 22; see *id.*,
10 Ex. 2 at p. 14.) In its Complaint, Petitioner reiterated that the Watermaster “must administer the
11 Decree in a manner that does not infringe upon [Petitioner’s] rights pursuant to the Judgment in
12 Case No. 3073, which were not superseded by the Susan River Decree.” (Dow Decl., Ex. 2 at p.
13 14.)

14 On August 8, 2019, the Watermaster Advisory Committee held a public hearing regarding
15 Petitioner’s Complaint. (Dow Decl., ¶ 23.) At the August 8, 2019 hearing, the Watermaster
16 Advisory Committee members upheld the Deputy Watermaster’s decision by a 4 – 1 vote. (Dow
17 Decl., ¶ 24; see *id.*, Ex. 2 at p. 4.) Petitioner timely appealed the Watermaster Advisory
18 Committee’s determination. (Dow Decl., ¶ 25.)

19 On November 4, 2019, the Watermaster Board held a hearing on Petitioner’s Complaint.⁴
20 Four Watermaster Board Members were present at the Watermaster Board hearing. (Dow Decl.,
21 ¶ 26.) At the conclusion of the hearing, the Watermaster Board took action to uphold the Deputy
22 Watermaster’s determination. (Dow Decl., ¶ 26.)

23 Following this hearing, on November 7, 2019, the Deputy Watermaster transmitted to
24 Petitioner’s representative a written decision entitled “A Decision of the Board Pursuant to

25 _____
26 ³ On July 23, 2019, Petitioner submitted a single complaint to the Deputy Watermaster that
27 addressed two separate issues related to Petitioner’s water rights. On July 25, 2019, the Deputy
28 Watermaster requested that it resubmit the complaint as two separate complaints, which would
allow the Watermaster Advisory Committee to evaluate each independent of the other, should the
opportunity for separate outcomes be an option. (Dow Decl., ¶ 21.)

⁴ The agenda packet for the Board meeting is attached to the Declaration of Jay Dow as Exhibit 2.

1 Section 6.6 of Article VI of the Rules and Regulations of the Honey Lake Valley Resource
2 Conservation District” (“Watermaster Decision”). (Dow Decl., ¶ 28; see *id.*, Ex. 7.) No draft of
3 this decision was before the Watermaster Board during the November 4, 2019 hearing, and it is
4 not clear whether it was circulated to the Watermaster Board before transmittal to Petitioner.
5 (Dow Decl., ¶ 29.)

6 The Watermaster Decision states:

7 The Board finds that the Watermaster’s interpretation of the
8 Barham Kelley 3037 Judgement to not adjudicate additional water
9 rights to those described in the 4573 Susan River Decree; and thus,
10 the Dow-Bonomini 2013 Family Trust is not permitted to divert
11 740af of water from the Susan River. Accordingly, Mr. Dow’s
12 appeal is denied and rejected. This decision is final for all proposes
13 pursuant to the Susan River Watermaster Rules and Regulations.

14 (Dow Decl., Ex. 7. at p. 4.) A section of the Watermaster Decision entitled “Board Concurrence
15 with Watermaster’s Position” states:

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

25 (*Id.*) In a section of the Watermaster Decision entitled “Watermaster’s Interpretation of the Water
26 Rights of the Party to the Appeal,” the Watermaster Decision reads “[d]espite other
27 interpretations being possible, the Barham Kelley 3037 Judgement is interpreted as a dispute
28 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.” (Dow
Decl., Ex. 7. at p. 2.) Petitioner now timely appeals the Watermaster Decision pursuant to this
Court’s retention of jurisdiction over the parties and the Decree, and in accord with Section 6.4 of
the Rules and Regulations which provides that Petitioner “may appeal” the Watermaster’s final
decision “to the Court within thirty (30) days.” (See Dow Decl., Ex. 5 at p. 14, Art. VI, § 6.4.)

1 **III. STANDARD OF REVIEW**

2 This Court’s review of the Watermaster Decision is *de novo* and it need not defer to the
3 Watermaster Board in regard to the disposition of the Watermaster Decision. As a “pure
4 question[] of law, not involving the resolution of disputed facts,” the interpretation of the Decree
5 and Paragraph 55 is subject to this Court’s independent or *de novo* review. (See *Diamond Benefits*
6 *Life Ins. Co. v. Troll* (1998) 66 Cal.App.4th 1, 5.)

7 The role of the Watermaster is presently being assumed by the Board of an agency, the
8 HLVRCD—however, the Watermaster itself is not an agency entitled to deference. Prior to the
9 appointment of the District’s Board as the Watermaster in this case, that role was filled by the
10 DWR. (See Dow Decl. at ¶ 11; see also *id.*, Ex. 3.) As described on the District’s “Susan River
11 Watermaster Service” webpage, the reason that parties to the Decree sought the appointment of
12 the District as the Watermaster was not because of any District expertise in regard to the
13 administration of the Decree—but for financial reasons.⁵

14 Deference, typically given to an agency, is not required in this situation. The deference
15 given to agency decisions derives from the doctrine of separation of powers. (See *Faulkner v.*
16 *California Toll Bridge Auth.* (1953) 40 Cal.2d 317, 329 [courts should not “substitute their
17 judgment or notions of expediency, reasonableness, or wisdom” for those of administrative
18 agencies]; *Carmel Valley Fire Prot. Dist. v. State* (2001) 25 Cal.4th 287, 297 [separation of
19 powers “limits the authority of one of the three branches of government to arrogate to itself the
20 core functions of another branch”].) This doctrine is inapplicable here because the Watermaster is
21 not a separate branch of government; it was created by this Court and is considered an arm of the

22 _____
23 ⁵ “In 2007, [DWR] stated they would need to raise the rates of many water rights holders in
24 California including the Susan River Watermaster Service Area (SRWSA). The rate increase was
25 a result of DWR’s budget reorganization which ceased state subsidies for Watermaster service
26 resulting in a four-fold increase in Watermaster fees. Due to rising costs many areas in the state
27 assumed local Watermaster programs On July 31, 2007, at the request of water users within
28 the SRWSA to increase local control and lower operational expenses for the service, the
[HLVRCD] was appointed as Watermaster for the SRWSA by Lassen County Superior Court
modifying decree case no. 4573. As a result, this has saved local water rights holders and
agricultural producers in the community hundreds of thousands of dollars.” (Honey Lake Valley
Resource Conservation District, Susan River Watermaster Service, available at
<https://www.honeylakevalleyrcd.us/susan-river-watermaster-service> (last accessed December 3,
2019).)

1 Court. (See Water Code § 4050(c)(1) [“A watermaster appointed . . . shall have the powers and
2 duties prescribed by the court pursuant to the exercise of its judicial authority, which may include
3 any powers and duties prescribed by this part.”].) The Court still must have the ability to review
4 the Watermaster’s decisions and must have determinative authority. (See Water Code § 4161
5 [when a person injured by the action of a watermaster seeks an injunction from a court, such an
6 injunction shall be issued where “the watermaster has failed to distribute the water *according to*
7 *the rights as determined by decrees of court, agreements, permits, or licenses*” (emphasis
8 added)].)

9 Even if the Watermaster’s interpretations of the Decree were extended deference, such
10 deference is not required where “the interpretation flies in the face of the clear language and
11 purpose of the interpreted provision.” (*Communities for a Better Env’t v. State Water Res.*
12 *Control Bd.* (2003) 109 Cal.App.4th 1089, 1104.) The language of Paragraph 55 is clear: the
13 Decree “*shall supersede all former judgments and decrees as to the water rights involved, except*
14 *the decrees of the above entitled court in the cases of Barham vs. Kelly and Frank Buffum, et ux,*
15 *vs. Lassen Irrigation Company.*” (Dow Decl., Ex. 1 at p. 95, ¶ 55 [emphasis added].)

16 **IV. ARGUMENT**

17 **A. The Watermaster Decision Is Contrary to the Express Language in the**
18 **Decree**

19 The Watermaster Decision should be overturned because Petitioner’s requested
20 administration of the Decree—that the Watermaster recognize its 3037 Judgment water rights—
21 falls squarely within Paragraph 55 of the Decree. It is undisputed that Petitioner is the successor
22 in interest to the water rights and parcels owned by the parties in *Barham v. Kelley*. (See Dow
23 Decl., ¶ 7; *id.*, Ex. 2 at pp. 7–13, 74–77.) The Watermaster’s Decision, however, renders
24 Paragraph 55 of the Decree both completely superfluous—the Watermaster’s interpretation gives
25 absolutely no meaning to Paragraph 55’s identification of two specific prior cases adjudicating
26 water rights in the Susan River system.

27 Judicial orders or decrees are “‘writings,’ to be construed in accordance with substantially
28 the same canons of interpretation” as statutes and contracts. (*Verdier v. Verdier* (1953) 121

1 Cal.App.2d 190, 193). Initially, the interpretation of a judgment must be determined from the
2 writing’s own language if any uncertainty exists. (*Canavan v. College of Osteopathic Physicians*
3 *& Surgeons* (1946) 73 Cal.App.2d 511, 518). Writings should be interpreted to give meaning to
4 every word and an interpretation that renders words irrelevant or surplusage is to be avoided. (See
5 *People v. Woodhead* (1987) 43 Cal.3d 1002, 1010; *In re Marriage of Hobdy* (2004) 123
6 Cal.App.4th 360, 366.) Therefore, when the language in a judgment is “clear and explicit and
7 does not lead to absurd results, we ascertain intent from the written terms and go no further.”
8 (*Ticor Title Ins. Co. v. Employers Ins. of Wausau* (1995) 40 Cal.App.4th 1699, 1707; Civ. Code
9 § 1638). Applying these rules, we make the following observations.

10 The language of Paragraph 55 is clear: the Decree “*shall supersede* all former judgments
11 and decrees as to the water rights involved, except the decrees of the above entitled court in the
12 cases of *Barham vs. Kelly* and Frank Buffum, et ux, vs. Lassen Irrigation Company.” (Dow Decl.,
13 Ex. 1 at p. 95, ¶ 55 [emphasis added].) Therefore, the Decree explicitly provides that the water
14 rights involved in *Baraham vs. Kelly* were not superseded by the terms of the Decree—those
15 rights would continue to exist in place. In this case, the Watermaster’s administration of the
16 Decree ignores Paragraph 55, rewriting the Decree to find that the Judgment 3037 rights have not
17 only been superseded, but were eliminated altogether by the Decree.

18 The Watermaster Decision, in effect, negates Paragraph 55 and the meaning of the word
19 “supersede.” (Dow Decl., Ex. 7. at p. 2 [determining the proper weight of the 3037 Judgment as
20 merely “a dispute resolution between two adjacent water users,” and not entitling Petitioner as the
21 parties’ successor to any water rights “additional to those designated to said land in the
22 [Decree]”]; see *id.* at p. 4 [stating that the 3037 Judgment “simply adjudicates the superiority of
23 water rights between users that share a ditch”].) Supersede is a word of ordinary common
24 meaning, which has been repeatedly recognized by courts. (*County of Ventura v. George* (1983)
25 149 Cal.App.3d 1012, 1016 [stating that the word “supersede” means that “the superseding order
26 is controlling”]; *In re Nunez* (9th Cir. 1996) 196 B.R. 150, 156 [“The dictionary defines supersede
27 as ‘to cause to be set aside’ or ‘to replace.’”]; cf. *Drouet v. Superior Ct.* (2003) 31 Cal.4th 583,
28 593 [“When the Legislature provides that one law *does not* supersede another, the two are to be

1 construed *together*.”] (First emphasis added.) Because the 3037 Judgment rights are not
2 superseded, the Decree must be interpreted as declaring water rights that are in addition to those
3 included in the 3037 Judgment. If the 3037 Judgement was *only* an adjudication of priority
4 between two water users, there would be no need for this Court to have included Paragraph 55 in
5 the Decree at all—the parties in the case of *Barham vs. Kelly* would be bound by the terms of the
6 Judgment regarding the respective priorities of their water rights to one another. (See Civ. Proc.
7 Code § 874.210.)

8 **B. The Watermaster’s Interpretation of the Decree Directly Interferes with**
9 **Petitioner’s Water Rights**

10 While the water rights described in 3037 Judgment are not part of the Decree, the manner
11 in which the Watermaster has chosen to administer the Decree directly affects and interferes with
12 Petitioner’s ability to exercise its rights. Under California law, water rights are considered
13 possessory property rights to use water from a particular source. (See *Fullerton v. State Water*
14 *Res. Control Bd.* (1979) 90 Cal.App.3d 590, 597.) A prior and paramount water right is entitled to
15 protection against material injury. (*Phoenix Water Co. v. Fletcher* (1863) 23 Cal. 481, 487;
16 *Natoma Water & Min. Co. v. McCoy* (1863) 23 Cal. 490, 492.) In this case, the manner in which
17 the Watermaster is administering the Decree interferes with Petitioner’s ability to divert its prior
18 and paramount—not superseded—water rights, resulting in material injury to Petitioner.
19 Accordingly, the Watermaster must be instructed not to administer the Decree in this manner.
20 (See Water Code §§ 4160, 4161.)

21 **V. CONCLUSION**

22 Paragraph 55 of the Decree indicates that the water rights outlined in the 3037 Judgment
23 were not affected or diminished by the Decree. The Watermaster Decision is contrary to this
24 provision of the Decree and, for the reasons described above, the Court should direct the
25 Watermaster to not interfere with the water rights and priorities set forth in the 3037 Judgment in
26 its administration of the Decree.

27 WHEREFORE, Petitioner prays that this Court Grant the instant motion and:

- 28 1. Direct the Watermaster to vacate the Watermaster Decision;


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2. Declare that, in the administration of the Decree, the Watermaster may not interfere with Petitioner's ability to divert its 740 AF as provided for in the 3037 Judgment and in conformance with Paragraph 55 of the Decree; and

3. Direct the Watermaster to administer the Decree in a manner that allows Petitioner to divert its 740 AF as provided for in the 3037 Judgment in future irrigation seasons.

Dated: December 9, 2019

**BROWNSTEIN HYATT FARBER
SCHRECK, LLP**

By: 

**BRADLEY J. HERREMA
ARTHUR ZORIO
BROOKE M. WANGSGARD
Attorneys for Petitioner
THE DOW-BONOMINI FAMILY 2013
TRUST**

PROOF OF SERVICE

I, Ivy B. Capili, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Brownstein Hyatt Farber Schreck, LLP, 2049 Century Park East, Suite 3350, Los Angeles, California 90067. On December 9, 2019, I served a copy of the within document(s):

NOTICE OF MOTION RE: APPEAL FROM WATERMASTER'S DECISION DATED NOVEMBER 7, 2019, PURSUANT TO COURT'S CONTINUING JURISDICTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPEAL FROM WATERMASTER'S NOVEMBER 7, 2019 DECISION RE 3037 JUDGMENT PURSUANT TO COURT'S CONTINUING JURISDICTION

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- based on a court order or an agreement by the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification listed below.

Please see attached service list.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 9, 2019, at Los Angeles, California.


Ivy B. Capili

J.J. Fleming v. J.B. Bennett, et al.

Lassen County Superior Court Case No. 4573

Service List

William P. Curley III
Lozano Smith
515 S. Figueroa St. Suite 750
Los Angeles, CA 90071
Email: wcurley@lozanosmith.com

Honey Lake Valley RCD
170 Russell Avenue, Suite C
Susanville, CA 96130

20008372

BROWNSTEIN HYATT FARRER SCHRECK, LLP
2049 Century Park East, Suite 3550
Los Angeles, CA 90067

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