

1 McGREGOR W. SCOTT
United States Attorney
2 Eastern District of California

3 DAVID T. SHELEDY
Assistant U.S. Attorney
4 Eastern District of California

5 RONALD J. TENPAS
Assistant Attorney General
6 Environment and Natural Resources Division
United States Department of Justice

7
8 CHARLES R. SHOCKEY (DC Bar # 914879)
Attorney, Natural Resources Section
Environment and Natural Resources Division
9 United States Department of Justice
501 "I" Street, Suite 9-700
10 Sacramento, CA 95814
Telephone: (916) 930-2203
11 Facsimile: (916) 930-2210
Email: charles.shockey@usdoj.gov

12 Attorneys for Plaintiff United States of America

13
14 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
15 SACRAMENTO DIVISION

16 THE UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 H.C. ANGLE, *et al.*,

20 Defendants.

Civil No. S-80-583-LKK [In Equity No. 30]

PLAINTIFF'S MEMORANDUM
IN SUPPORT OF MOTION TO AMEND
ANGLE DECREE RE: PLACE OF USE OF
WATER RIGHTS AND TO ESTABLISH
COURT-APPROVED PROCESS FOR
FUTURE ANNEXATIONS AND
CHANGES IN PLACE OF USE

21 DATE: October 20, 2008

22 TIME: 10:00 a.m.

COURT: Courtroom 4, 15th Floor

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1 **I. INTRODUCTION**

2 The plaintiff United States of America files this memorandum on behalf of the
3 Department of the Interior’s Bureau of Reclamation (Reclamation) in support of its motion to
4 amend the Angle Decree (Angle Decree or Decree). The proposed amendment would update the
5 designated “place of use” of water rights on certain lands described in the Decree to conform to
6 current irrigation practices. The Angle Decree authorizes the court to approve such changes, and
7 the court has confirmed similar changes in the past. The proposed amendment also would
8 establish a process for the parties to secure court approval of any future annexations or changes
9 in place of use.

10 **II. BACKGROUND AND PROCEDURAL HISTORY**

11 **A. The Angle Decree**

12 The Orland Project (Project) is a federal reclamation project designed to promote the
13 irrigation of agricultural lands for the beneficial use of water. In 1918, the United States
14 commenced a water rights adjudication proceeding to settle water rights claims to the surface
15 flows of Stony Creek and its tributaries in northern California. United States v. Angle, No. 30,
16 In Equity. The Honorable Judge Frank H. Kerrigan of the United States District Court for the
17 Northern District of California, Second Division, entered the Angle Decree to conclude the
18 adjudication on January 13, 1930.^{1/} The Decree, identified as Exhibit 1 to the attached
19 Declaration of Robert Colella,^{2/} adjudicated the water rights of the United States and hundreds of
20 individual landowners to the surface flows of Stony Creek, a tributary of the Sacramento River.

22 ^{1/} In 1930, Orland Project lands in Glenn, Colusa, and Tehama Counties were located within
23 the jurisdiction of the United States District Court for the Northern District of California. When
24 Congress created the United States District Court for the Eastern District of California as a separate
25 federal judicial district in 1966, the three counties with land in the Orland Project area were
26 transferred to the Eastern District. *See* Pub. L. 89-372, § 3, 80 Stat. 75, codified in 28 U.S.C. §
27 84(b). This court has continuing jurisdiction to enforce the Angle Decree. United States v. Angle,
28 760 F.Supp. 1366, 1369 n.2 (E.D.Cal. 1993)(Angle), *reversed and remanded on other grounds sub*
nom. Wackerman Dairy, Inc. v. Wilson, 7 F.3d 891 (9th Cir. 1993)(Wackerman Dairy).

^{2/} The plaintiff files Exhibit 1, the 175-page Angle Decree, on CD-ROM because its size (14 megabytes) is too large for the court’s electronic filing system.

1 In an earlier ruling in this case, the Ninth Circuit described the 179-page Angle Decree as
 2 “structured compartmentally.” Wackerman Dairy, 7 F.3d at 894. “Articles I through VI dismiss
 3 certain defendants, bar other defendants’ claims of right, record waivers, disclaimers and failures
 4 to respond on the part of numerous defendants (listed in four separate schedules), and determine
 5 that another class of defendants (detailed in two schedules) failed to prove either riparian or
 6 appropriative rights to Stony Creek’s waters.” Id. Article VII then sets forth the appropriation
 7 rights of 117 defendants. Id.

8 The federal government’s water rights are decreed in Article VIII. Id. Article VIII ¶ (1)
 9 grants to the United States a total water right of 85,050 acre-feet^{3/} of natural flow during the
 10 irrigation season, along with year-round storage in the Project’s East Park storage reservoir. The
 11 areas covered by the government’s water rights are described in the Project Land Schedule
 12 (PLS), which is set forth in columns that describe the “legal subdivisions of the lands affected”
 13 in the “squares thus formed.” The Decree states that the covered acreage is described according
 14 to the “irrigable area of each quarter-quarter section (or 40-acre tract); subdivisions of the listed
 15 sections which are excluded from the schedule being denoted by squares containing no acreage
 16 figures.” Id. The Decree authorized the diversion of water at two Orland Project canals and
 17 confirmed the beneficial use of water for agricultural irrigation on 21,000 acres of land, as
 18 described in the PLS.^{4/} Colella Declaration, Exhibit 1 at 137.^{5/}

19
 20 ^{3/} An “acre-foot” is a “volume measurement in irrigation, equal to the amount of water that will
 21 cover one acre of land in one foot of water (325,851 gallons).” Black’s Law Dictionary, 7th Ed.

22 ^{4/} The United States also holds storage rights under the Angle Decree for use by the Orland
 23 Project, as well as storage rights granted by the California State Water Resources Control Board
 24 (SWRCB) or its predecessor. If the court approves the proposed amendment to the Decree requested
 25 in this motion, Reclamation will file a similar petition with the SWRCB to amend its “place of use”
 for those Orland Project water rights granted by, and under the jurisdiction of, the SWRCB.

26 ^{5/} The Angle Decree contains eight other articles. “Articles X through XIV resolve the rights
 27 of ‘Riparian Owners,’ the Grindstone Indian Reservation, and the Glenn-Colusa Irrigation District
 28 (the latter also by stipulation). The remaining Articles XV through XVII set forth general
 provisions.” Wackerman Dairy, 7 F.3d at 894.

1 During the 78 years since the court entered the Angle Decree in 1930, certain lands have
 2 been taken out of agricultural production, while other lands have received Project water
 3 deliveries. The primary reasons for these changes relate to increasing urbanization around the
 4 City of Orland, modifications in land use patterns, and identification of lands eventually deemed
 5 non-irrigable or less productive over time. As a result of these changes, the PLS, which sets
 6 forth the “place of use” for those water rights decreed to the United States in 1930, no longer
 7 accurately describes all lands currently irrigated by water deliveries from the Orland Project.
 8 The United States brings this motion to amend the Angle Decree to conform to the existing
 9 irrigation practices in the Project and accurately describe the current place of use for Orland
 10 Project water.

11 **B. The Orland Project Facilities**

12 The Ninth Circuit described the geographic setting for the Orland Project and the Angle
 13 Decree as follows:

14 The Stony Creek watershed is located northwest of Sacramento, California
 15 primarily in Tehama and Glenn Counties. Stony Creek flows northward from the
 16 mountains before turning east, passing by the town of Orland, to join the
 Sacramento River near Chico, California. The surrounding arid and semi-arid
 land depend on it for irrigation.

17 Wackerman Dairy, 7 F.3d at 892.^{6/} Local landowners first diverted the waters of Stony Creek
 18 and put those waters to agricultural use in 1864. Id. Irrigation continued and expanded in the
 19 ensuing decades. Early in the Twentieth Century, Congress enacted the Reclamation Act of June
 20 17, 1902, 32 Stat. 388, 43 U.S.C. §§ 391, *et seq.* The 1902 Reclamation Act “empowers the
 21 federal government to acquire water rights for the reclamation and irrigation of land like that
 22 served by Stony Creek.” 7 F.3d at 893. Following examinations and surveys authorized under
 23 section 2 of the Reclamation Act of 1902, the Secretary of the Interior (Secretary) approved the
 24 Orland Project on Stony Creek on December 18, 1906, as a feasible federal reclamation project.

25
 26 ^{6/} Although the Ninth Circuit referred to “Tehama and Glenn Counties,” much of the Stony
 27 Creek watershed actually is located in Colusa County, immediately to the south of Glenn County.
 28 Most of the Project facilities are located in Glenn and Colusa Counties, and the lands that benefit
 from being served by Project water are located in Tehama and Glenn Counties.

1 The Secretary then authorized construction of the Orland Project on October 5, 1907, pursuant to
2 section 4 of the Reclamation Act of 1902.

3 The Orland Project presently consists of the following principal facilities and structures:
4 Stony Gorge Dam and Reservoir; East Park Dam and Reservoir; Rainbow Diversion Dam and
5 East Park Feed Canal; Northside Diversion Dam; approximately 16.9 miles of canals; and 139
6 miles of laterals. For a more detailed description of the Orland Project, the United States refers
7 the court to the Colella Declaration, Exhibit 3, along with a map of the Orland Project area,
8 attached as Colella Declaration, Exhibit 4. The area served by the United States' decreed water
9 rights for the Orland Project consists of 21,000 acres of land surrounding the City of Orland.

10 The Orland Project has two storage reservoirs. East Park Dam and Reservoir, completed
11 in 1910, is located upstream on a tributary, Little Stony Creek. East Park Dam stores water for
12 irrigation. The reservoir impounded by the dam has a storage capacity of 50,900 AF. Little
13 Stony Creek rarely provides sufficient flow to fill the reservoir, so additional water is diverted
14 and conveyed from Stony Creek via the seven-mile-long East Park Feed Canal. Releases and
15 spills of water from East Park Reservoir then flow downstream about 18 miles through Stony
16 Creek into the second Orland Project reservoir, Stony Gorge Dam and Reservoir. Completed in
17 1928 with a storage capacity of 50,200 AF, Stony Gorge Reservoir regulates flows on Stony
18 Creek, stores water for irrigation, and releases water for diversion downstream at the North and
19 South Canals. These two canals are the principal points of diversion for Orland Project water to
20 area landowners.

21 A third reservoir, Black Butte Reservoir, also is located on Stony Creek, approximately
22 23 miles downstream from Stony Gorge Dam. Black Butte Reservoir, however, is not an Orland
23 Project facility, but rather, as this court has noted, a California Central Valley Project (CVP)
24 facility. Angle, 760 F.Supp. at 1369 n.1. Congress authorized the U.S. Army Corps of
25 Engineers (Corps) to construct Black Butte Reservoir under § 10 of the Flood Control Act of
26 1944, Pub. L. No. 534, ch. 665, 58 Stat. 887 (Dec. 22, 1944). The Corps completed construction
27 of the reservoir in 1963. The irrigation storage portion of the reservoir was integrated with the
28 CVP by the Act of October 23, 1970, Pub. L. No. 91-502, 84 Stat 1097. Black Butte Reservoir,

1 with a storage capacity of approximately 160,000 AF, is located between Stony Gorge and the
2 North and South Canals.

3 As a Corps project, Black Butte is operated primarily for flood control, not irrigation.
4 This flood control purpose requires the Corps to evacuate the reservoir each fall and maintain a
5 certain level of empty storage capacity during the annual winter and spring flood season.
6 Because of its location between Stony Gorge Reservoir and two canals of the Orland Project, the
7 Black Butte Reservoir, although operated primarily for flood control, also can assist the Orland
8 Project's irrigation purposes under the terms of an exchange agreement between the United
9 States and the Orland Unit Water Users Association (OUWUA or Association). Under that
10 agreement, stored water may be exchanged among all three reservoirs on Stony Creek, provided
11 that the requisite amount of flood control storage space is maintained. The operational details for
12 the exchange are spelled out in that 1964 agreement, attached as Colella Declaration, Exhibit 5.

13 **C. Development of the Project Land Schedule and United States' Water Rights**

14 The United States' water rights under the Angle Decree have a unique system of
15 appropriation because the 1906 Orland Project predates the establishment of the CVP by several
16 decades. In 1909, the OUWUA, a California corporation organized in the early 1900s, executed
17 a contract with the United States in which the Association agreed to repay the United States for
18 the construction costs of the Orland Project and for the beneficial use of Orland Project water
19 issued to the shareholders of the Association, payable in ten annual installments. The 1909
20 contract is attached as Colella Declaration, Exhibit 6.

21 To receive the right to use the United States' Orland Project water (*i.e.*, water that is
22 diverted or stored by the United States with Orland Project facilities), a landowner first must
23 become a stockholder of the OUWUA. An example of a landowners's stock subscription and
24 contract is attached as Colella Declaration, Exhibit 7. Once the landowner becomes a member of
25 the OUWUA, the landowner can apply for a "Permanent Water Right" from Reclamation to
26 allow the beneficial use of Orland Project water. The landowners first filed applications with
27 Reclamation as early as 1916. An example of the application used by Reclamation between
28 1915 and 1941 is attached as Colella Declaration, Exhibit 8.

1 The individual landowners made annual payments to the OUWUA, which in turn repaid
2 the United States for the cost of constructing the Orland Project facilities. After the individual
3 landowner completed final payment of his or her assigned portion of Orland Project construction
4 costs, Reclamation issued the landowner a Final Water-Right Certificate. A sample certificate is
5 attached as Colella Declaration, Exhibit 9. The certificate does not grant a landowner a legal
6 entitlement to a specific volumetric *quantity* of water; rather, it specifies the number of *irrigable*
7 *acres* covered by the certificate. The certificate limits the water right to the amount of water that
8 can be put to the authorized beneficial use of irrigation on those irrigable acres. In 1954,
9 Reclamation transferred the responsibility for the ongoing operation and maintenance (O&M)
10 costs of the Orland Project to the OUWUA. See Angle, 760 F.Supp. at 1377. Landowners
11 continue to pay OUWUA for O&M costs for the Orland Project. By 1988, the landowners
12 collectively had repaid the original construction costs for the Orland Project.

13 Between 1916 and approximately 1985, Reclamation received applications from
14 landowners for Orland Project water rights and granted Final Water Right Certificates to the
15 landowners. The Angle Decree's Project Land Schedule (PLS) describes the irrigable lands
16 according to a "quarter-quarter section" method.^{2/} Certain lands within the Orland Project,
17 previously believed to be irrigable, have proven not to be irrigable or have become less
18 productive over time, while other lands have discontinued their previous use for irrigation
19 altogether. These changes resulted primarily from factors such as urbanization and other land
20 use developments. Since the court entered the Angle Decree in 1930, Reclamation and the

21
22
23 ^{2/} The Public Land Survey System (PLSS) is a way of subdividing and describing land in the
24 United States. All lands in the public domain are subject to subdivision by this rectangular system
25 of surveys, which is regulated by the U.S. Department of the Interior, Bureau of Land Management.
26 The Angle Decree describes the Orland Project lands and water rights in terms of the traditional
27 quarter-quarter section method of land surveying. Each quarter-quarter section contains 40 acres,
28 rather than describing specific metes and bounds. A six-mile square is called a township. Each
township is divided into 36 sections of about one-mile square each. A section contains about 640
acres. Each section may be further subdivided in halves, quarters, and so on. See generally
http://nationalatlas.gov/articles/boundaries/a_plss.html (visited April 3, 2008).

1 landowners occasionally found it necessary or efficient to shift certain Orland Project water from
2 unproductive lands to more productive agricultural lands.^{8/}

3 Reclamation and the landowners typically did not file a motion for contemporaneous
4 judicial confirmation to accompany changes that varied from the acreage descriptions set forth in
5 the PLS. Reclamation, having completed an assessment of the current land use and water
6 delivery practices, has recognized that the current irrigation practices no longer adhere precisely
7 to the description of all parcels of lands described in the PLS. Reclamation concluded, therefore,
8 that it would be appropriate to file this motion to amend the Angle Decree. The purpose of the
9 motion is to conform the judicially approved water rights to current water use and to the modern
10 irrigation and cropping patterns.

11 **D. Proposed Amendment to the Angle Decree Place of Use**

12 Reclamation has prepared a list of all lands that it has determined should be included in
13 the PLS. This list is set forth in the “Tabulation of Land Issued Water Right Certificates Not
14 Covered by Project Land Schedule.” Colella Declaration, Exhibit 10. With the exception of the
15 lands identified as “Wincapaw,” all of these lands historically have been irrigated with Orland
16 Project water. Reclamation has prepared a copy of a “Proposed Project Land Schedule,” which
17 details how the PLS would be amended in the Decree. Colella Declaration, Exhibit 11.^{9/} This
18 revised PLS identifies those lands that have received Final Water Right Certificates from
19 Reclamation, but which currently are not included in the PLS. Reclamation has prepared a map
20 depicting (in red blocks) the lands proposed to be added to the PLS and depicting (in blue

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22
23 _____
24 ^{8/} Reclamation’s Application for Permanent Water Right states that a “plan of rotation in
25 delivery of water to this and other lands in the project shall be followed wherever, in the opinion of
the project superintendent, it is practicable.” Colella Declaration, Exhibit 9, ¶ 3.

26 ^{9/} The United States recognizes that Reclamation would need to petition the court at a future
27 date to add points of diversion and re-diversion to the Angle Decree in order to serve the lands
28 identified in Exhibit 11 as “Clemins,” “Siam,” and “Wincapaw.”

1 blocks) those lands within the PLS as originally established in the Angle Decree. Colella
2 Declaration, Exhibit 12.^{10/}

3 The “squares” in the PLS state the number of acres in each described quarter-quarter (40-
4 acre) section that are deemed irrigable and may be irrigated with Project water. Many “squares”
5 either contain no figures or figures with values less than 40 acres. This reflects the fact that
6 many quarter-quarter sections indicated are not authorized for irrigation with Project water or
7 that only a portion of the square is authorized for irrigation with Project water. Consequently,
8 the red and blue areas of the map in Exhibit 12 collectively exceed the acreage authorized (and
9 requested to be authorized) for Project water delivery. The red and blue blocks, however, do
10 accurately indicate which quarter-quarter sections contain (or are proposed to contain) the lands
11 authorized for Project water delivery and which contain certificated water rights.

12 Even though some lands proposed to be included on the revised PLS are not currently
13 irrigated, Reclamation requests permission to amend the Angle Decree by adding these lands to
14 the PLS. Reclamation, however, does not propose to deduct any currently non-irrigable lands
15 from the PLS description. There are several reasons for this request to add certain lands without
16 removing others. First, some of these lands, now fallow, may be irrigated again in the future.
17 Reclamation would prefer to minimize the circumstances and frequency with which it would
18 seek judicial amendments to the Angle Decree. If every change in land use in the 21,000 acres
19 contained in the PLS required separate judicial approval, that rather cumbersome process would
20 substantially burden this court, the landowners, the OUWUA, and Reclamation with a regular
21 stream of administrative actions and judicial motions and hearings.^{11/} Moreover, keeping all

22 _____
23 ^{10/} Exhibit 12 is provided for demonstrative purposes only. The United States does not request
24 that the court include Exhibit 12 as part of the Angle Decree. The plaintiff files Exhibit 12 on CD-
ROM, as the document’s size (43 megabytes) is too large for the court’s electronic filing system.

25 ^{11/} As Mr. George Wilson informed the court in his Water Master’s Annual Report for 2006,
26 the records compiled over more than 70 years since the Angle Decree have included approximately
27 1100 landowners and over 1400 separate parcels of land. *See* Doc. 273, ¶ IV. f. These figures
28 illustrate the potential burden if every change in land use or irrigation practices among more than
1,000 landowners and 1,000 parcels of land required a separate judicial approval.

1 lands within the PLS for possible irrigation use, even though certain land may not currently be
 2 used for irrigation, is consistent with the economic realities of modern agriculture faced by
 3 landowners in many of these parcels. Most importantly, retaining these lands in the PLS is
 4 compatible with the Angle Decree's overall goal of allowing reasonable and practicable crop
 5 rotation to maximize the beneficial use of water for irrigation.

6 The result of Reclamation's proposal, if approved by the court, would be that the total
 7 acreage of the lands to be included within the PLS will increase by less than eight percent from
 8 21,000 acres to approximately 22,633 acres. The United States emphasizes to the court,
 9 however, that there would be no increase in the acreage actually irrigated in any given year.
 10 Similarly, there would be no increase in the quantity of water actually put to beneficial use under
 11 the Angle Decree. To accomplish this result and ensure consistency with the Decree without
 12 injuring any other party, the United States proposes to modify the language in the Angle Decree
 13 to provide that only up to 21,000 acres of the aggregate or "gross lands" described in the PLS
 14 could be irrigated in any given irrigation season. The United States proposes the following
 15 specific amendment to the language in Article VIII, ¶ (1) of the Angle Decree:

16 The right, by reservation and appropriation, to divert 85,050 acre-
 17 feet of the waters of Stony Creek and its tributaries, during each
 18 irrigation season, from the natural flow in said creek at the South
 19 and North Diversion Dams of the Orland Project—as of the date of
 20 priority of October 10, 1906, and to the extent that such waters are
 21 available under said priority—at a rate of diversion not exceeding
 22 279 cubic feet per second at any time during the season, for the
 23 reclamation and irrigation of ~~the up to 21,000 acres of irrigable~~ ***the***
 24 ***gross*** lands of the Orland Project described in the Project Land
 25 Schedule as appended to this Article of the decree and made part
 hereof; that said schedule (~~with those of similar character in this~~
~~decree~~), by a system of horizontal and vertical columns, sets down
 the legal subdivisions of the ***gross*** lands affected, and in the
 squares thus formed indicates in acreage figures ~~the irrigable area~~
 of each quarter-quarter section (or 40-acre tract) ***constituting the***
gross lands; subdivisions of the listed sections which are excluded
 from the schedule being denoted by squares containing no acreage
 figures;

26 Angle Decree, p. 137; Colella Declaration, Exhibit 1 (showing proposed additions to existing
 27 decree language in ***bold italic*** text and proposed deletions from decree in ~~strikeout~~ text).

28 Defining the place of use of a Reclamation water right in terms of net irrigated acres with a gross

1 area is not unusual. For example, most Reclamation water right permits for the Friant Division
2 of the CVP, issued by the State Water Resources Control Board, implement this concept.

3 If the court approves this request to add lands to the PLS, Reclamation's Final Water
4 Right Certificates would cover approximately 20,859 acres. This area is less than the 21,000-
5 acre maximum figure specified in the Decree. A landowner still must possess a Final Water
6 Right Certificate, which shows that the landowner (or his or her predecessor) has repaid the
7 proportionate share of the Orland Project's construction cost before he or she is entitled to
8 receive Orland Project water. Reclamation's existing Final Water Right Certificates provide an
9 independent limitation on the number of acres that actually irrigate crops in any given season.

10 **E. Process For Future Annexations to Place of Use Under the Angle Decree**

11 Based on discussions between the parties, both Reclamation and the Orland Unit Water
12 Users Association (OUWUA) recognize that the need may arise for future annexations for water
13 service from the Orland Project and the place of use under the Angle Decree. Reclamation
14 would not issue additional or new Final Water Right Certificates for lands outside the PLS, nor
15 would the agency approve any additional or new water right applications for such lands, without
16 first receiving court approval. Accordingly, and in the interest of judicial economy, Reclamation
17 requests that the Court establish the following procedure for reviewing and approving any
18 further annexations of land to Reclamation's federal Orland Project, as well as for changes to the
19 designated place of use under the Angle Decree.

20 First, the party proposing the annexation shall prepare a written request for annexation
21 and submit that request to the OUWUA for initial review.

22 Second, OUWUA shall review any request for annexation and concur with the
23 annexation if it finds that (1) the property is serviceable from an existing (or a modified) Orland
24 Project canal or lateral without hindering service to other Orland Project Lands and (2) providing
25 water service to the property would not result in any water supply shortages to the lands already
26 within the Project.

27 Third, if the OUWUA Board of Directors determines that the proposed lands should be
28 annexed, then OUWUA shall file an application for a water rights certificate with Reclamation.

1 Fourth, if Reclamation deems such application acceptable for processing, then OUWUA
2 shall forward the request for annexation to the Water Master for the Water Master's independent
3 review as to whether the proposed addition of lands to the place of use will injure the rights of
4 other parties to the Angle Decree.

5 Fifth, the Water Master shall document findings regarding no injury. If, upon completing
6 an independent review, the Water Master determines that the proposed addition will not injure
7 the rights of other parties to the Angle Decree, the Water Master shall cause notice of the
8 proposed change in the place of use to be filed with the court and promptly served via certified
9 mail upon all of the parties listed on the court's service list for the Angle Decree.

10 Sixth, any objections or protests to the proposed change in place of use then must be
11 submitted to the Water Master within 60 days of the Water Master's filing of the notice with the
12 court. If any such protest or objection is filed, then the United States would file a notice and
13 motion with the court to address the proposed change in place of use.

14 Seventh, if no objection or protest were filed with 60 days, then the United States
15 promptly would file with the court a proposed order to amend the place of use as set forth in the
16 notice, and the court could approve the order without the need for the court to hold a further
17 hearing. The order would provide that the number of acres within the Orland Project to which
18 Orland Project water may be delivered in any given irrigation season, including the newly
19 annexed lands, will remain capped at 21,000 acres.

20 Finally, if Reclamation were to consider issuing any additional or new certificates (or
21 approving any additional or new water right applications) for lands that would otherwise
22 increase the total irrigated acreage for the Orland Project above the current limit of 21,000 acres,
23 Reclamation first would cancel existing certificates as necessary or practicable to remain within
24 the 21,000-acre Angle Decree limitation. This ceiling on the total number of irrigated acres
25 would be enforced by Reclamation and ensured as part of the regular duties of the Federal
26 Watermaster who administers the Angle Decree.

27 In summary, if this motion to amend the Angle Decree is approved, the maximum
28 number of acres allocated water for the irrigation of Orland Project lands during each irrigation

1 season will remain unchanged at a maximum of 21,000 acres. This motion seeks only the
2 inclusion of lands already being served by Orland Project water pursuant to Final Water Right
3 Certificates issued by Reclamation, along with a court-approved process for future annexations.
4 Therefore, approval of the amended Decree would not increase the quantity or affect the timing
5 of any deliveries to Orland Project lands or of any diversions by Project facilities.

6 **III. DISCUSSION**

7 **A. Standard of Judicial Review**

8 The 1930 Angle Decree provides the applicable standard of review to determine whether
9 the Decree should be amended with regard to the elements of the water rights determined by the
10 court, including changes in the place of use of the water. The Decree states as follows:

11 any of the parties to whom rights to water have been decreed herein shall be
12 entitled, in accordance with applicable laws and legal principles, to change the
13 point of diversion and the places, means, manner or purpose of the use of the
14 water to which they are so entitled or of any part thereof, so far as they may do so
15 without injury to the rights of other parties as the same are defined herein.

14 Angle Decree at 175; Colella Declaration, Exhibit 1. As long as a party with decreed water
15 rights can demonstrate that the proposed change is in accordance with applicable laws, then the
16 only consideration for the court is whether the change can be accomplished “without injury to
17 the rights of other parties” as defined in the Decree. Absent proof of injury, a party is entitled to
18 change the place of use for its water rights.

19 **B. Substantive Compliance with the Angle Decree “Place of Use” Limits**

20 Reclamation respectfully submits that there will be no injury to the rights of other parties
21 from the proposed change for the following enumerated reasons.

22 1. First, the overall volume of water delivered from the Orland Project to water
23 users for irrigation will remain unchanged. As approved by the court in 1930, the total quantity
24 of this portion of the United States’ annual water right is 85,050 acre-feet. That quantity of
25 water will not increase as the result of the change in the place of use. Instead, the same quantity
26 remains in effect. Thus, no other party will be deprived of any water as a result of the change in
27 place of use.

28 2. Second, the number of acres to which water may be delivered in any given

1 irrigation season will remain capped at 21,000 acres, the same acreage amount approved by the
2 court in the 1930 Decree. The only change is that the water will be delivered for use on a
3 slightly modified and expanded description of acres. Thus, no other party would be injured by
4 being prevented from irrigating its own lands with Project water as a result of the proposed
5 change in place of use.

6 3. Third, by slightly expanding the aggregate or gross number of acres eligible to
7 receive Project water – but not expanding the amount of water or number of acres actually
8 irrigated in any given year – the amendment to the PLS will enable the landowners within the
9 Project to make more efficient use of water. This will occur by ensuring that water is delivered
10 to irrigate lands with higher agricultural value, instead of having water delivered to irrigate crops
11 that may be less productive and valuable.

12 4. Fourth, Reclamation conferred with the court-appointed Water Master, Mr.
13 George Wilson, who conducted an independent review of Reclamation’s proposal.^{12/} Mr.
14 Wilson determined that amending the Decree to update the place of use will not result in injury
15 to any other party to the Angle Decree. Mr. Wilson sent a letter to Reclamation on October 30,
16 2006, summarizing his findings and expressing his opinion that the proposed amendments to the
17 PLS place of use “will not cause injury to another party” to the Angle Decree. Colella
18 Declaration, Exhibit 2. Mr. Wilson’s opinion is entitled to particular weight in light of his role
19 as the court’s adviser with regard to the implementation and enforcement of the Decree,
20 especially in light of his long and meritorious tenure in that position.

21 5. Fifth, based on information and belief, based on discussions with the OUWUA,
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25 ^{12/} In Article XVI of the Angle Decree, the court appointed a Water Master to administer and
26 enforce the judicially decreed water rights for Stony Creek. Angle Decree at 176; Angle, 760
27 F.Supp. at 1369. There was “a hiatus of approximately two decades from 1964 until 1982 in which
28 no watermaster was appointed to administer the rights under the Angle Decree.” Id. at 1377. In
1983, the court appointed Mr. George Wilson, who has served with distinction for 25 years.

1 the landowners in the Orland Project support the proposed amendment. Accordingly, unlike the
 2 contested issue that the court decided in 1991,^{13/} the present motion to amend the Decree has
 3 widespread support. The United States is not aware of any dispute, controversy, or opposition to
 4 this proposed change from any landowner or water rights holder under the Decree.^{14/} Those
 5 landowners collectively represent the interests of the parties most directly affected, and their
 6 support indicates that the beneficial owners of the water rights in question will not be injured.

7 6. Sixth, the governing standard set forth in the Decree – *i.e.*, a party is entitled to
 8 change the place of use “without injury to the rights of other parties” – is consistent with state
 9 law concerning changes to appropriation rights under California’s statutory water appropriation
 10 law.^{15/} Under the California Water Code, the holder of a pre-1914 appropriation right (*i.e.*, the
 11 right to appropriate water rights authorized under the common law of California prior to
 12 California’s adoption of the Water Commission Act) has the right to change the place of use “if
 13 others are not injured by such change.”^{16/}

14 _____
 15 ^{13/} The disputed issue presented by the contested summary judgment motions in 1991 and
 16 appealed in Wackerman Dairy was limited to the specific quantity of water to which one landowner
 17 was entitled, based on an 1864 priority date and a series of subsequent stipulations that predated the
 18 Angle Decree. No comparable dispute appears to exist with regard to the present motion.

19 ^{14/} As discussed in Part III. C. below, the United States has coordinated with the Water Master
 20 and the OUWUA to provide notice to potentially interested persons in the area.

21 ^{15/} As the Ninth Circuit recognized in the earlier appeal in this case, in “adjudicating water
 22 rights, courts must look to state law unless it conflicts with explicit Congressional directives. United
 23 States v. Orr Water Ditch Co., 914 F.2d 1302, 1307 (9th Cir.), *cert denied*, 498 U.S. 817, 111 S.Ct.
 24 60, 112 L.Ed.2d 35 (1990); 43 U.S.C. § 383.” Wackerman Dairy, 7 F.3d at 896.

25 ^{16/} Section 1706 of the California Water Code provides as follows:

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

California Water Code § 1706 (emphasis added).

1 7. Finally, the United States is aware of at least two other situations in which the
2 court has approved changes in the place of use for a water right decreed in the Angle Decree.
3 Most recently, on August 3, 1990, Donald Garlin filed a “Notice of Petition and Petition to
4 Confirm Change in Place of Use of Certain Decreed Rights.” A copy of that Petition is attached
5 to the Colella Declaration as Exhibit 13, along with the petitioner’s memorandum in support,
6 attached as Colella Declaration, Exhibit 14. The purpose of Mr. Garlin’s petition was to change
7 the place of use for certain water rights under the Angle Decree, due to a flood having washed
8 away the topsoil on those acres. Mr. Garlin’s memorandum in support of his petition describes
9 the procedure for requesting a change in use authorized by the Angle Decree. Colella
10 Declaration, Exhibit 14 at 2-3.

11 The United States also attaches the October 15, 1990 Order granting Mr. Garlin’s
12 Petition. Doc. 197; Colella Declaration, Exhibit 16.^{17/} In that 1990 Order, the court found that
13 the petition was consistent with California’s “no harm rule.” The court also relied on a
14 declaration by the Water Master, Mr. Wilson.

15 The court also approved a stipulation in 1986 among several parties, including the United
16 States and the OUWUA. Order Confirming Changes in Certain Decreed Rights (Jan. 8, 1986),
17 attached as Colella Declaration, Exhibit 18. The court’s order confirmed transfers and changes
18 in points of diversion, place or use, and purpose of use. *Id.* at 2. That 1986 order, approving a
19 stipulation among the parties, stated that “the foregoing transfer and confirmation of changes are
20 the result of unique circumstances and should not be considered as a precedent for future such
21 petitions, . . .” *Id.* at 6. While the United States does not contend that the prior order constitutes
22 precedent that binds the court with regard to the present motion, the fact that Judge Wilkins
23 found it appropriate to approve that change in the place of use illustrates that such changes are
24 permissible and appropriate under the Angle Decree.

25
26
27 ^{17/} The court’s CM/ECF PACER docket sheet only lists docket entries starting with Doc. 196
28 on September 24, 1990, and the Clerk’s Office reports that all earlier case files have been archived.

1 **V. CONCLUSION**

2 For the reasons set forth in this memorandum, the attached exhibits and declarations, the
3 complete record before the court in this matter, and such additional reasons and evidence as may
4 be presented at the hearing, the United States requests that the court amend the Angle Decree by
5 confirming the change in the place of use for the decreed water rights at issue and approve the
6 proposed process for reviewing and approving future annexations.

7 A proposed order is attached for the court's consideration.

8 Respectfully Submitted,

9 McGREGOR W. SCOTT
10 United States Attorney
Eastern District of California

11 DAVID T. SHELEDY
Assistant U.S. Attorney

12 RONALD J. TENPAS
13 Assistant Attorney General
United States Department of Justice
14 Environment & Natural Resources Division

15 /s/ *Charles R. Shockey*

16 CHARLES R. SHOCKEY, Attorney
D.C. Bar # 914879
17 United States Department of Justice
Environment & Natural Resources Division
18 Natural Resources Section
501 "I" Street, Suite 9-700
19 Sacramento, CA 95814-2322
Telephone: (916) 930-2203
20 Facsimile: (916) 930-2210
Email: charles.shockey@usdoj.gov

21 Dated: September 5, 2008

22 OF COUNSEL:

23 AMY AUFDEMBERGE
24 Assistant Regional Solicitor
U.S. Department of the Interior
25 Office of the Regional Solicitor
2800 Cottage Way, Room E-1712
26 Sacramento, CA 95825

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