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FILED
AUG 3 3 08 PM '90
BY *[Signature]*
DEPUTY

Attorneys for Petitioner, Donald A. Garlin

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA,)
)
Plaintiff)
)
v.)
)
H. C. ANGLE, et al.,)
)
Defendants.)

CU-S-80-583-LKK

IN EQUITY NO. 30
CIVIL NO. _____

NOTICE OF PETITION AND
PETITION TO CONFIRM
CHANGE IN PLACE OF USE
OF CERTAIN DECREED RIGHTS

TO ALL PARTIES AND TO THEIR ATTORNEYS:

PLEASE TAKE NOTICE that on September 10, 1990, at 10:00 a.m., or as soon thereafter as the matter can be heard, in the courtroom of the Honorable Lawrence K. Karlton, United States District Court Judge, at the United States Courthouse, 650 Capitol Mall, Sacramento, California, Donald A. Garlin will petition this court to confirm a change in the place of use of his water entitlement under the Angle Decree.

The Petition will be based upon this Notice, upon the Petition, upon the Memorandum of Points and Authorities filed concurrently herewith, upon the files and records of this Court, and upon such other facts or circumstances as may be brought to

NOTE - p. 2 IS MISSING
Charles R. Shockey
8.27.08

171

1 the SE 1/4, Section 20, T. 18 N., R. 6 W., M.D.B.&M., 2.7 acres
2 in the SE 1/4 of the SE 1/4, Section 20, T. 18 N., R. 6 W.,
3 M.D.B.&M., 4.0 acres in the NE 1/4 of the NE 1/4, Section 29, T.
4 18 N., R. 6 W., M.D.B.&M., 15.0 acres in the NW 1/4 of the NE
5 1/4, Section 29, T. 18 N., R. 6 W., M.D.B.&M., and 8.9 acres in
6 the SW 1/4 of the NE 1/4, Section 29, T. 18 N., R. 6 W.,
7 M.D.B.&M. (Angle Decree at 124, attached as Exhibit "2".)

8 3. Prior to Petitioner's purchase of the land in
9 question in 1964, a catastrophic flood washed away much of the
10 topsoil from several tracts in Sections 20 and 29 included
11 within the decreed place of use. Rather than waste water trying
12 to irrigate such rocky soil, Petitioner used the water allocated
13 to these flooded tracts to irrigate other land owned by him
14 which was not included as a decreed place of use, but which is
15 in close proximity to tracts that were so included. In order to
16 conserve water, Petitioner installed an underground pipeline and
17 leveled the other land. Petitioner has irrigated this other
18 land for over 25 years. (Declaration of Donald A. Garlin
19 at ¶2.)

20 4. As a result of the circumstances described in the
21 paragraph above, Petitioner seeks judicial confirmation of this
22 change in the place of use of his Angle Decree water rights.
23 Specifically, Petitioner has changed the place of use from 29.3
24 acres identified in the Angle Decree to 29.3 other acres which
25 he has irrigated since acquiring the property. The 29.3 acres
26 included within the originally decreed place of use, which
27 Petitioner has not irrigated, consists of 3.0 acres in the NW
28 1/4 of the SE 1/4, Section 20, T. 18 N., R. 6 W., M.D.B.&M.,

1 2.5 acres in the NE 1/4 of the SE 1/4, Section 20, T. 18 N., R.
 2 6 W., M.D.B.&M., 17.1 acres in the SW 1/4 of the SE 1/4, Section
 3 20, T. 18 N., R. 6 W., M.D.B.&M., 2.7 acres in the SE 1/4 of the
 4 SE 1/4, Section 20, T. 18 N., R. 6 W., M.D.B.&M., and 4.0 acres
 5 in the NE 1/4 of the NE 1/4, Section 29, T. 18 N., R. 6 W.,
 6 M.D.B.&M. The 29.3 acres to which Petitioner seeks to change
 7 his place of use, which Petitioner has irrigated, consists of
 8 23.0 acres within the NW 1/4 of the NE 1/4 of Section 29, T. 18
 9 N., R. 6 W., M.D.B.&M. and 6.3 acres within the SW 1/4 of the NE
 10 1/4 of Section 29, T.18 N., R. 6 W., M.D.B.&M. The locations of
 11 these tracts are indicated on the map attached to this Petition
 12 as Exhibit "3". (See Declaration of Deborah Garlin.) The total
 13 acreage actually irrigated is 53.2 acres, which is the same
 14 amount of land as that identified as the place of use in the
 15 Angle Decree. (Declaration of Donald A. Garlin at ¶3.).

16 5. Petitioner has raised this matter with Angle Decree
 17 Water Master George G. Wilson. The Water Master has indicated
 18 that approval of a petition to implement the proposed change in
 19 the place of use is proper. (Declaration of George G. Wilson at
 20 ¶4.) The Water Master's approval is expressed in a letter to
 21 Petitioner, which is attached as Exhibit "4" to this Petition.
 22 (See, Declaration of George G. Wilson.) According to the Water
 23 Master's letter, the proposed change in the place of use would
 24 allow more beneficial use of water on lands of greater
 25 productivity, and would further the objective of water
 26 conservation. The letter also indicates the Water Master's view
 27 that the proposed change is in accord with the provisions of the
 28 Angle Decree. According to the Water Master, this change would

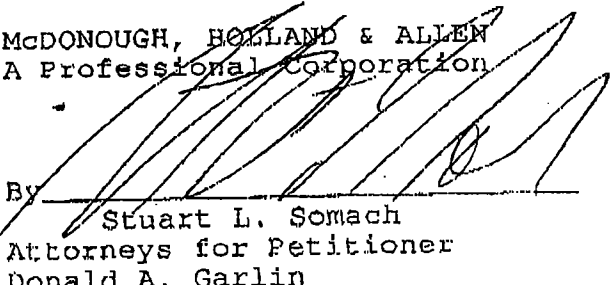
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not infringe upon other parties with water rights under the Angle Decree.

This Petition is made pursuant to the Court's Orders issued September 16, 1960, and July 11, 1966, and Rule 230 of the Local Rules of Practice, United States District Court, Eastern District of California. Copies of the two Orders are attached as Exhibits "B" and "C" to the accompanying Memorandum of Points and Authorities.

DATED: 8-1-90

McDONOUGH, HOLLAND & ALLEN
A Professional Corporation

By 
Stuart L. Somach
Attorneys for Petitioner
Donald A. Garlin

as against any of the parties herein, their assigns or successors, or their rights as decreed herein—any right, title or interest in or to the waters of Stony Creek or its tributaries, or any thereof, except the rights specified, determined and allowed by this decree, and each and all thereof are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of Stony Creek or its tributaries or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters by the owners of prior or superior rights therein as defined and established by this decree; that nothing herein shall prejudice the rights of any of the parties hereto or of their grantees, assigns or successors in interest, under any transfer or legal succession in interest after the commencement of this action, to any of the rights hereby adjudicated; that except as hereinbefore mentioned or otherwise stated, the provisions of this decree shall bind, and inure to the benefit of, the grantees, assigns and successors in interest of the owners of rights and parties hereto, whether substituted as parties or appearing in this case or named herein or not; that the several parties to this suit shall pay their own costs in this action as directly incurred or authorized by them respectively, provided that any further compensation of the Special Master, or amounts shown to be coming to him or the reporter, if any there be, shall be paid in such manner, at such times and by such parties as may be ordered by the court; that the retention of

Appropriation Schedule

CLAIMANT	DATE OF PRIORITY	NAME OF STREAM		DITCH (Or Pump and Ditch)	POINT OF DIVERSION				LAND FOR WHICH RIGHT ACQUIRED						REQUIREMENT AT TIME For Irrigation Season In Acre Feet per Acre	CONFORMANCE LOSS In Per Cent of Diversion	DIVERSION RIGHT						
		Main Stream (Stony Cr. & Big Stony Cr., latter being main stream above junction with Little Stony Cr.)	Tributary		Side of Stream	Location				Location							For Irrigation Season In Acre Feet		For Month of Maximum Use				
						Referred to Mt. Diablo Base and Meridian				Referred to Mt. Diablo Base and Meridian				County			Per Acre	Total	Acre Feet Per Acre	Flow in Cubic Feet per Second			
						K of K	Sec.	T. N.	R. W.	K of K	Sec.	T. N.	R. W.							Per Acre	Total		
Geo. W. Lewis Frank W. Lewis 24	June 10, 1885	Big Stony Creek		Sutliff	Left	NW NW	31	18	6	50.0 13.0 37.0	Total SW SW SE SW					Glenn	3.7	30	5.3	265	1.3	1/46	1.09
Laura Bell Griffith E (Bruce). H. Sutliff Ellis A. Sutliff Emily (A.) Sutliff G (George). W. Sutliff 21	June 10, 1885	Big Stony Creek		Sutliff	Left	NW NW	31	18	6	20.0 28.0 30.0 30.0 32.0	Total NE NW NW NW SW NW SE NW					Glenn	4.0	20	5.0	600	1.25	1/49	2.45
Alex. Brown 24	Nov. 23, 1885	Big Stony Creek		Brown No. 1	Left	SW SW	29	18	6	2.5 53.2 3.0 17.1 2.7 4.0 15.0 8.9	NE SE Total NW SE SW SE SE SE NE NE NW NE SW NE					Glenn	4.0	25	5.3	282	1.3	1/46	1.16
Henry Chastain 29	Nov. 23, 1885	Big Stony Creek		Brown No. 1	Left	SW SW	29	18	6	20.0 15.0 5.0	Total NE SW NW SW					Colusa	5.0	20	6.25	125	1.55	1/39	.51
John O. Johannsen Wiebke Johannsen 2	March 8, 1886	Stony Creek		Johannsen West Side	Left	SW SE	10	19	6	68.1 12.6 20.0 22.0 3.3 5.0 5.2	Total NE NW SE NW NE SW SE SW NE NW SE NW					Glenn	3.5	18	4.25	289	1.06	1/58	1.17
I. E. True 29	March 8, 1886	Stony Creek		Johannsen West Side	Left	SW SE	10	19	6	71.2 1.3 1.0 0.8 5.5 3.0 14.0 13.0 7.1 13.0 13.0 3.5	Total SW SW SE SW NE NW NW NW SW NW SE NW NE SW NE SW NW SW SE SW Lot 3					Glenn	4.25	30	6.1	434	1.5	1/37	1.92
M. G. Bedford 27	April 15, 1887	Stony Creek		Bedford	Right	SW NE	16	20	6	12.1 1.0 3.0 8.1	Total NE NE SW NE SE NE					Glenn	4.0	25	5.3	64	1.3	1/46	.26

**DECEED PLACE OF USE
ACREAGE TO BE CHANGED**

S.E. 1/4 of Section 20

N.W. 1/4:	3.0
N.E. 1/4:	2.5
S.W. 1/4:	17.1
S.E. 1/4:	2.7

N.E. 1/4 of Section 29

N.E. 1/4:	4.0
Total changed:	29.3

**DECEED PLACE OF USE ACREAGE
ACREAGE UNCHANGED**

N.E. 1/4 of Section 29

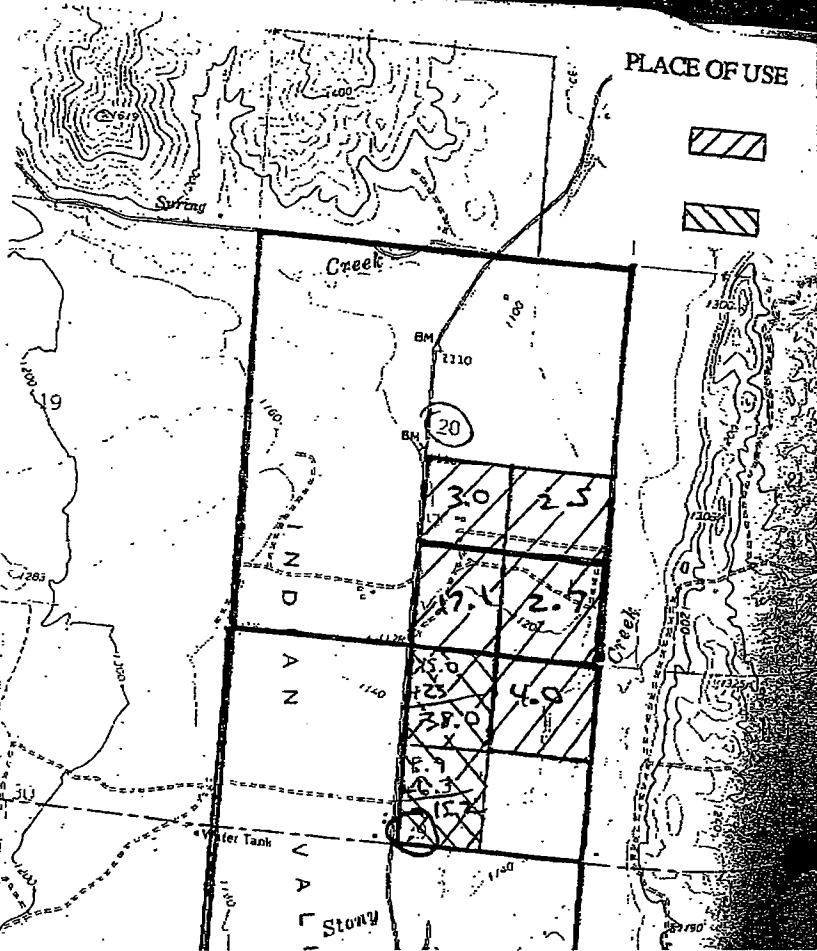
N.W. 1/4:	15.0
S.W. 1/4:	8.9
Total above:	29.3
Total decreed:	53.2

ACTUAL PLACE OF USE

N.E. 1/4 of Section 29

N.W. 1/4:	15.0 (decreed)
	23.0 (transferred from 29.3 above)

S.W. 1/4:	8.9 (decreed)
	6.3 (transferred from 29.3 above)
Total:	53.2 (same as decreed total)



OFFICE OF WATER MASTER
STONY CREEK AND TRIBUTARIES

G.G. WILSON
WATER MASTER
By Authority of the U.S. District Court
for the Eastern District of California

April 28, 1989

Donald Garlin
Star Route Box 27
Elk Creek, Ca 95939

Dear Don:

This is in regard to your letter dated April 24, 1989 and our discussion at your ranch near the town of Stonyford, on April 23, 1989.

Our discussion pertained to your desire to change the place of use for a portion of your water right, allocated under the Angle Decree, from a certain 29.3 acres of your land to different parcels of your land consisting of 29.3 acres.

The reasons we discussed for the proposed change in the place of use, were to conserve water, more beneficial use of water, and to comply with the provisions of the Angle Decree.

It is my opinion that approval of a petition to implement the proposed change of place of use, described below, is proper. The change in place of use, would allow for more beneficial use of water on more productive lands, conservation of a limited source of water, correct a situation which, through no fault of the present landowner, has existed for approximately 25 years, would not increase the quantity of water used, would not infringe upon other parties decreed water right and would not infringe upon other parties provided for under the Angle Decree. The proposed changes in place of use are in accord with provisions of the Angle Decree.

The proposed changes in place of use are as follows:

3.0	acres	from NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 20-T18N-R61W
2.5	"	" NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of " " "
17.1	"	" SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of " " "
2.7	"	" SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of " " "
4.0	"	" NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 29 " "

The place of use for the total of 29.3 acres is to be moved to the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of section 29-T18N-R61W. The total of 53.2 acres with water right will remain unchanged.

If additional data or documents are required, please contact me.

Sincerely,

George G. Wilson

George G. Wilson, Water Master
STONY CREEK & TRIBUTARIES

cc: Water Master Committee, U.S. Attorney, U.S.B.R., Sacramento