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AUG 3 3 66 PM '90

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
AT SACRAMENTO
BY *[Signature]*
DEPUTY *[Signature]*

7 Attorneys for Petitioner, Donald Garlin

8

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

11 CU-80-583-LK/K

12 THE UNITED STATES OF AMERICA,)
13 Plaintiff)
14 v.)
15 H. C. ANGLE, et al.,)
16 Defendants.)
17)
18)

IN EQUITY NO. 30
CIVIL NO. _____

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION TO CONFIRM CHANGE
IN PLACE OF USE OF CERTAIN
DECREED RIGHTS

19 The Angle Decree provides for changes in the place of
20 use of decreed water rights. The decree provides in relevant
21 part:

22 [A]ny of the parties to whom rights to water have
23 been decreed shall be entitled, in accord with
24 applicable laws and legal principles, to change the
25 point of diversion and places, means, manner or
26 purpose of use of the water to which they are so
27 entitled or of any part thereof, so far as they may
28 do so without injury to the rights of other parties
as the same are defined herein.

(Angle Decree at 175, attached as Exhibit "A", emphasis
added).

This Angle Decree provision is consistent with the
California Water Code section related to changes of use of
water rights such as Petitioner's Angle Decree rights. Water
Code section 1706 provides as follows:

1 water rights such as Petitioner's Angle Decree rights. Water
2 Code section 1706 provides as follows:

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

11 While the Court has retained jurisdiction with respect
12 to administration of rights granted under the Angle Decree,
13 the decree does not specify an exact procedure for judicial
14 confirmation of the changes in use authorized by the decree
15 in the passage set forth above. The Court has specified the
16 proper procedure for judicial confirmation of changes in use
17 in two orders issued subsequent to the decree. Under these
18 Orders, filed September 16, 1960 and July 11, 1966, notice
19 must be given to interested parties prior to any action being
20 taken on a petition for a proposed change in the point of
21 diversion, place of use, or purpose of use of Angle Decree
22 water rights. This notice requirement is consistent with the
23 notice requirement contained in Rule 230, Local Rules of
24 Practice, Eastern District of California. The two Orders
25 have been attached as Exhibits "B" and "C" hereto for the
26 Court's information and convenience.

27 In accordance with these Orders and the Angle Decree
28 provision providing for changes in use which do not injure
other parties, Petitioner requests judicial confirmation of
the instant change in the place of use. As set forth more
fully in the body of the Petition, Petitioner holds a decreed

1 right to divert from Big Stony Creek through Brown Ditch No.
2 1, a total of 282 acre-feet of water for the irrigation of
3 53.2 acres of land. (Declaration of Donald Garlin at ¶ 1) A
4 flood occurring over 25 years ago washed away much of the
5 topsoil from a portion of the land identified as the place of
6 use under the decree. In order to maximize beneficial use of
7 his decreed water rights and reduce waste, Petitioner has
8 irrigated other lands in close proximity to the decreed place
9 of use for over 25 years. (Declaration of Donald Garlin at
10 ¶ 2) Petitioner now seeks to have the Court confirm his
11 change in the place of use, from 29.3 acres of the 53.2 acres
12 identified as the place of use in the Angle Decree, to 29.3
13 acres of other lands which Petitioner has irrigated since
14 acquiring the property.

15 Water Master George Wilson has indicated that this
16 change in the place of use allows greater beneficial use of
17 water on lands of higher productivity, and in fact conserves
18 water. The Water Master has also determined that the change
19 is consistent with the provisions of the Angle Decree and
20 would not injure other parties with water rights under the
21 decree. Neither the acreage with a water right nor the
22 amount of water used would be increased beyond those amounts
23 provided for in the Angle Decree. The Water Master's
24 position is set forth in a letter attached as Exhibit "4" to
25 the Petition.

26 The Water Master has indicated that approval of a
27 petition to implement the proposed change in the place of use
28 is proper. Petitioner will continue to divert only those

1 quantities of water to which he is entitled under the Angle
2 Decree, in accordance with the priority granted to him under
3 the decree. The proposed change will not injure any other
4 party to the Angle Decree. Petitioner requests that the
5 Court, in accordance with the Angle Decree and the Water
6 Master's recommendation, approve his Petition to change the
7 place of use of his Angle Decree rights.

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9 DATED: 8-1-90

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McDONOUGH, HOLLAND & ALLEN
A Professional Corporation

BY

Stuart L. Somach

Attorneys for Petitioner
Donald Garlin

force such rotation, but shall consult with, and endeavor to obtain the agreements of, such water users as in his judgment should resort thereto, and shall embody his action in this regard into such reports as he may make or be required to make to the court herein; that if no valid objection thereto be made by other water users an owner of any right decreed herein, when the allowable diversion thereunder in the judgment of the Water Master does not constitute an adequate irrigation head for his lands, may with or without agreement for rotation, when permitted by said Water Master, divert a larger head or flow into his ditch for short periods of time in lieu of the smaller flow allowed to him under his said right, providing always that such use shall not exceed for the irrigation season the amount in acre-feet herein specified and allowed to be diverted from the stream for his lands; that appropriations and priorities of the same date rank as having rights of the same standing, and as having a simultaneous call upon the stream source in the proportion which said rights, as decreed herein, bear to each other in amounts entitled to be diverted thereunder; that any of the parties to whom rights to water have been decreed herein shall be entitled, in accord with applicable laws and legal principles, to change the point of diversion and the places, means, manner or purpose of the use of the waters to which they are so entitled or of any part thereof, so far as they may do so without injury to the rights of other parties as the same are defined herein.

Exhibit A

FILED

JUL 16 1960

C. W. CALBREATH, CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA, NORTHERN DIVISION

---oo---

11 UNITED STATES OF AMERICA,)
12 Plaintiff,)
13 vs.) In Equity No. 30
14 H. C. ANGLE, et al.,)
15 Defendants.)
16

MEMORANDUM AND ORDER RELATIVE TO NOTICE FOR
FUTURE HEARINGS IN THIS PROCEEDING

I have this day entered an order authorizing Jane E. Buckley, L. F. Buckley, and U. M. Buckley to secure from Stony Creek, during the irrigation season of 1960, one hundred fifty (150) additional acre feet of water, for use on their ranch, with the express proviso that this water is to be charged against the unused allotment of Daniel Gilman, the owner of the Alec Braum Ranch, and with the further express proviso that this order is not to be a precedent or pattern for the future. I have made this order in the exercise of my equity jurisdiction, solely because it has been made to appear to me that irreparable damage may be done if the order is not entered.

1.

Exhibit B

EXHIBIT C

1 forthwith.

2 It appears that in the past there has been no re-
3 quirement that notice be given of such hearings as the one re-
4 ferred to above. I deem this to be unfortunate at best. Having
5 such hearings without notice can only sow the seeds of discon-
6 tent and eventual litigation, so I have decided that the ends
7 of justice require me to lay down a positive rule requiring
8 notice of all such future proceedings. Notwithstanding, but not
9 in lieu of, any other provisions of the law:

10 IT IS HEREBY ORDERED that no future hearings in this
11 case shall be heard unless, and until, the Stony Creek Water-
12 master, and all other persons, who may have possible interest
13 in the subject matter of the action, shall have been advised
14 in writing of the subject matter of the motion, and the time
15 and place of the hearing of the motion. Said advice and notice
16 shall be served upon the Watermaster, and all such interested
17 parties, not less than five days prior to the hearing, unless,
18 for good cause, the Court shall, by written order, shorten said
19 period of notice.

20 DATED: September 16, 1960.

21 
22 UNITED STATES DISTRICT JUDGE

1 DANIEL F. GALEWY
2 Attorney at Law
3 Suite 205
4 926 J St, Building
5 Sacramento, California 95814
6 Telephone: (916) 444-2880
7 Attorney for Petitioners

FILED

JUL 11 1966

JAMES P. WELSH, Clerk

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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 NORTHERN DIVISION

11 THE UNITED STATES OF AMERICA, } IN EQUITY, NO. 30

12 Plaintiff,

13 v. } ORDER
14 B. C. ANGLE, et al., } FIXING NOTICES TO BE GIVEN ON
15 Defendants. } APPLICATIONS TO CHANGE OR ADD
16 POINTS OF DIVERSION

17 A motion having been made for an Order specifying the
18 notice to be given on future applications to change or add points
19 of diversion under the Decree herein, appropriate notice having
20 been given and a hearing having been held, and good cause appear-
ing therefor,

21 IT IS ORDERED that notice of any future motions to
22 change or add points of diversion under the Decree herein, need
23 only be given to (a) the parties diverting between the old and
24 new points of diversion, (b) the Orland Water Users Association
25 (being the principal user and party downstream from all parties),
26 (c) the United States, who is the plaintiff, and (d) to any water-
27 master who may hereafter be appointed by the Court.

28 DATED: July 11, 1966.

De O' Haller
United States District Judge

Exhibit C

CASE TITLE: United States of America v. H.C. Angle, et al.
COURT/CASE NO:

PROOF OF SERVICE
(Federal)

I am employed in the County of Sacramento; my business address is 555 Capitol Mall, Suite 950, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On _____ 1990, I served the within:

NOTICE OF PETITION AND PETITION TO CONFIRM CHANGE IN
PLACE OF USE OF CERTAIN DECREED RIGHTS; MEMORANDUM OF
POINTS AND AUTHORITIES

- on all parties in said action by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States post office mailbox at Sacramento, California, addressed as set forth below:
- by personally delivering a true copy thereof to the person and at the address set forth below:

See attached list.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ at Sacramento, California.

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