

12/23/85 #8913E

1 LODGED
2
3
4

5 8/17 1986 PCW
6

7 CLERK, U. S. DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA

9 BY 8 DAF DEPUTY

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

12 UNITED STATES OF AMERICA,) EQUITY NO. 30
13 Plaintiff,) CIVIL NUMBER S-80-583-PCW
14 v.) ORDER CONFIRMING CHANGES
15 H.C. ANGLE, et al.,) IN CERTAIN DECREED RIGHTS
16 Defendants.)
17

18 WHEREAS, on February 3, 1984, the United States of America
19 on behalf of the Department of Agriculture, U. S. Forest Service
20 (hereafter Forest Service), filed a petition in this action to
21 confirm changes in point of diversion, place of use and purpose
22 of use of certain rights decreed herein, herein called the
23 Forest Service right, and to transfer certain decreed rights,
24 which petition is hereafter called the Forest Service Petition;
25 and

26 WHEREAS, on February 13, 1984, the County of Colusa,
27 Arthur W. Schaefer, Phil B. Shimmel, and Wanda M. Shimmel, here-
28 inaftter collectively called the Colusa County Petitioners, filed
a petition to confirm change in point of diversion, place

1 of use, and purpose of use of certain rights decreed herein,
2 herein called the Schaefer-Shimmel right, and to transfer cer-
3 tain decreed rights, which petition is hereinafter called the
4 Colusa County Petition; and

5 WHEREAS, Respondent Orland Unit Water Users' Association,
6 and the U. M. Buckley Respondents, filed points and authorities
7 in opposition to the Forest Service Petition and the Colusa
8 County Petition; and

9 WHEREAS the Forest Service, the Colusa County Petitioners,
10 Respondent Orland Unit Water Users' Association and the U. M.
11 Buckley Respondents have stipulated to the following order
12 providing for the granting of such petitions upon the following
13 terms and condi- tions, and good cause appearing:

PART I.

15 IT IS HEREBY ORDERED that the following transfers and
16 changes in points of diversion, place of use and purpose of use
17 be confirmed as follows:

A. Schaefer-Shimmel Right

19 The transfer of the following decreed water rights set
20 forth in the Final Decree in the above entitled action ("Angle
21 Decree"), herein called the Schaefer-Shimmel Right from peti-
22 tioners Arthur W. Schaefer, Phil B. Shimmel, and Wanda M.
23 Shimmel to petitioner County of Colusa is confirmed: A portion
24 of the decreed right to divert from Big Stony Creek through the
25 Kesselring Ditch, shown in the Angle Decree (p. 125) as owned by
26 F.M. Kesselring and Annie M. Kesselring, with a priority date

111

111

1 of April 14, 1890 appurtenant to the lands conveyed to Arthur W.
2 Schaefer and Phil B. Shimmel.

3 The Schaefer-Shimmel right is based on the ownership of
4 three acres of land, two of which are within the Southeast
5 one-quarter of the Northeast one-quarter of Section 32, T 18N,
6 R 6 W, MDB&M, and the third of which is in the Northeastern-
7 quarter of the Northeast one-quarter of the same section. The
8 maximum diversion for the irrigation season applicable to such
9 right is 11.25 acre-feet, of which not more than 2.82 acre-feet
10 could be diverted during the month of maximum use under the
11 Angle Decree. The maximum amount diverted during the month of
12 maximum use under the Schaefer-Shimmel right is hereby increased
13 to 4.02 acre-feet, but the maximum amount which can be diverted
14 for the irrigation season is not changed.

15 The changes in point of diversion, place of use, and pur-
16 pose of use of the above described decreed right is confirmed as
17 follows:

18 (a) Point of Diversion. The current Angle Decree
19 point of diversion for the above referenced right is described
20 as being with in the Northeast Quarter of Section 31, Township
21 8 North, Range 6 West, Mount Diablo Base and Meridian,
22 California. The new point of diversion is confirmed to be at
23 the Colusa County wells located within the Northeast Quarter of
24 the Southwest Quarter of Section 29, Township 18 North, Range 6
25 West, Mount Diablo Base and Meridian, California.

26 (b) Place of Use. The new place of use of the above
27 referenced right includes the Colusa County Service Area No. 2

28 ///

1 (Stonyford); as shown on the map attached hereto and marked
2 Exhibit A, and not more than five acres of the Schaefer-Shimmel
3 property adjacent to and including that within said service area.

4 (c) Purpose of Use. The purpose of use of the above
5 referenced right is confirmed to include, in addition to irriga-
6 tion, domestic and municipal purposes including fire suppression.

B. Forest Service Right

13 The Forest Service Right is described at page 121 of the
14 Angle Decree under the name of F. M. Kesselring and Annie M.
15 Kesselring. This right is for the diversion of water for the
16 irrigation of 5 acres in the Southeast one-quarter of the South-
17 east one-quarter of Section 29, T 18 N, R 6 W, MDB&M (with
18 3.75 acre-feet of water per acre) from Big Stony Creek through
19 Kesselring Ditch.

20 Diversion under this Forest Service Right may not exceed
21 18.75 acre-feet for the irrigation season, and under the Angle
22 decree, the right for the month of maximum use would be
23 4.7 acre-feet. The maximum amount which can be diverted during
24 the month of maximum use under the Forest Service Right is
25 hereby increased to 6.7 acre-feet, but the maximum amount which
26 can be diverted for the irrigation season is not changed.

27 // /
28 // /

1 The changes in point of diversion, place of use, and
2 purpose of use of the Forest Service Right hereafter confirmed
3 are for the term of the contract, dated May 17, 1983, between
4 the Forest Service and Colusa County, that is, for a term of one
5 year beginning with the first day of June, 1983, for a period of
6 five years and any renewal or extension thereof; provided,
7 however, that the Forest Service shall give one years' notice to
8 the Watermaster under the decree of any failure to renew or
9 extend, and upon the filing of such notice the Forest Service
10 and Colusa County shall jointly file with this Court and serve
11 upon all parties to this Decree a plan for future operations,
12 for approval by this Court.

13 The changes in point of diversion, place of use, and pur-
14 pose of use of the Forest Service Right is hereby confirmed,
15 subject to the paragraph next above, as follows:

16 (a) Point of Diversion. The current Angle Decree
17 point of diversion for the above referenced right is described
18 as being with in the Northeast Quarter of Section 31,
19 Township 18 North, Range 6 West, Mount Diablo Base and Meridian,
20 California. The new point of diversion is confirmed to be at
21 the Colusa County Wells located within the Northeast Quarter of
22 the Southwest Quarter of Section 29, Township 18 North, Range 6
23 West, Mount Diablo Base and Meridian, California.

24 (b) Place of Use. The new place of use of the above
25 referenced right includes the Colusa County Service Area No. 2
26 (Stonyford); as shown on the map attached hereto and marked
27 Exhibit A and not more than five acres of the Schaeffer-Shimmel
28 property adjacent to and including that within said Service Area.

PART II.

11 IT IS HEREBY FURTHER ORDERED that the foregoing transfer
12 and confirmation of changes are the result of unique circum-
13 stances and should not be considered as a precedent for future
14 such petitions, and accordingly are made subject to the following
15 conditions:

25 The meter on the wells of the County of Colusa is presently
26 calibrated in hundreds of gallons; if there is a change in the
27 method of metering, Colusa County shall notify the Watermaster
28 prior to making the change.

5 (c) No additional pumping capacity will be added to
6 the two present pumping plants of the county and no additional
7 wells will be installed except in replacement of existing wells.

18 (f) This court makes no finding as to the nature or
19 extent of any other water right of any petitioner or other water
20 user under the Decree.

111

(h) The Watermaster shall have the same power to order cessation or reduction of use by Petitioners as in applicable to all other users of water under the Angle Decree.

(i) Petitioners, the Watermaster, or any other party to the Decree may petition this court for review of this part of this order should any detriment appear to be caused thereby. Notice of any such petition shall be given to all parties who may be affected.

PART III.

IT IS HEREBY ORDERED, that the following additional protection of present uses under the Angle Decree be provided:

The Watermaster Supervision Committee, created by order of this court entered in 1980, which is made up of one representative of Glenn-Colusa Irrigation District, one representative of Orland Unit Water Users, one representative of the Bureau of Reclamation, and two representatives of the landowners within the watershed, plus the Watermaster himself, making up a total of six, is authorized to hear any proposals in regard to water use prior to any action by Colusa County in regard to a development proposal within the watershed of Stony Creek. A development proposal would be deemed to be a lot split, subdivision, planned unit development or building permit. If the Committee finds that there was adequate water available or rights available under the Angle Decree, or that the use of water proposed would not impact the Angle Decree, by an affirmative vote of four members if all members are voting, or by an affirmative vote of three members if the representative of the Bureau of Reclamation does not participate, Colusa County may accept for

1 processing and take whatever action it deems proper in regard to
2 the proposal.

3 If the Watermaster Supervision Committee does not make such
4 a finding, then the water right and availability of water must
5 be determined by this Court, and in such case Colusa County
6 agrees and is ordered not to process and/or approve any develop-
7 ment permit until a decree of the Court authorizes an adequate
8 water supply for the use of land proposed.

9 The Watermaster Supervision Committee shall base its deci-
10 sion upon a determination as to the water supply and storage
11 needed for the development and determine whether that supply is
12 considered by the Committee to be legally available to the prop-
13 erty. All Health Department and environmental requirements shall
14 also continue to apply to the proposed development.

15 The Watermaster Supervision Committee shall establish an
16 informal procedure without formal notice and hearing but with an
17 opportunity to the developer to present the proposed development
18 plan. Upon disposition by the Committee, the applicant or any
19 other interested party may petition this Court for *de novo*
20 hearing and shall provide notice as may be ordered by the Court.

21 This Part III of this Order shall have a term of 25 years,
22 or until this Court finds and determines that there are other
23 adequate and reasonable measures to provide for the objects of
24 this order and this order is no longer reasonably required,
25 whichever first occurs.

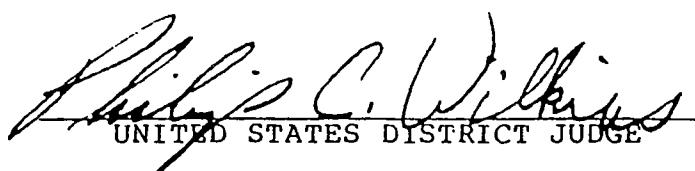
26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
PART IV.

1
2 IT IS FURTHER ORDERED that all parties shall bear their own
3 costs in this proceeding.
4 Dated: Jan. 8, 1986

5
6 
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion as to be competent to serve papers.

That on January 7, 1986, she served a copy of the attached:

ORDER CONFIRMING CHANGES
IN CERTAIN DECREED RIGHTS

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Sacramento, California:

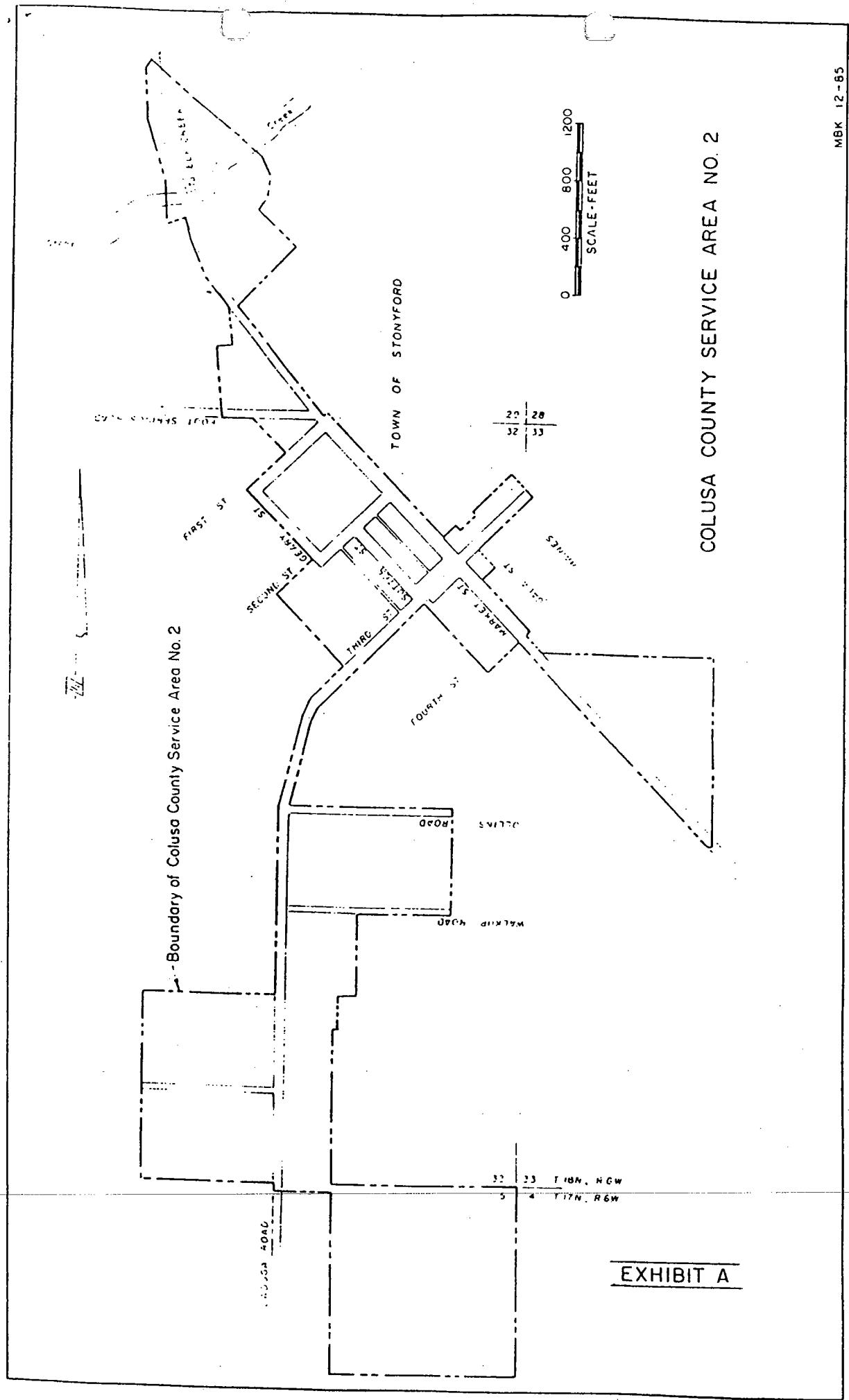
George Basye
DOWNEY, BRAND, SEYMOUR
& ROHWER
555 Capitol Mall, Suite 1050
Sacramento, CA 95814

Martin McDonough
McDONOUGH, HOLLAND & ALLEN
555 Capitol Mall, Suite 950
Sacramento, CA 95814

Paul J. Minasian
MINASIAN, MINASIAN, MINASIAN,
SPRUANCE & BABER
1681 Bird Street, P.O. Box 1679
Oroville, CA 95965-1679

Virgie Toms

VIRGIE TOMS



MEK 12-65

COLUSA COUNTY SERVICE AREA NO. 2

EXHIBIT A

COLUSA COUNTY - TONYFORD

ORDER

Jan. 8, 1986

USA

CERTIFICATE OF SERVICE

RECEIVED
1/13/86

v
)
)
H. C ANGLE, ET AL)
)

Case #CIV S -80-583-PCW

I, the undersigned, do hereby certify that I am an employee in the office of the Clerk, U.S. District Court, Eastern District of California, and that on January 10, 1986, I served a copy of the attached

STIPULATION FOR ORDER + ORDER CONFIRMING CHANGES IN CERTAIN DECREED RIGHTS by placing said copy in a postage paid envelope addressed to the persons listed below by depositing said envelope in the U.S. Mail at Sacramento, California; or by placing said copy into an inter-office mail box located in the Clerk's Office.

SERVED BY MAIL

Served by Inter-office

DOWNEY, BRAND, SEYMOUR & ROHWER
GEORGE BASYE
555 Capitol Mall, Ste 1050
Sacramento, CA 95814

AUSA- ROBINSON

JUDGE WILKINS

HAROLD WILSEY, FR.
Colusa County Counsel
Colusa, CA 95932

MINASIAN, MINASIAN, MINASIAN, SPRUANCE & BABER
PAUL J. MINASIAN
1681 Bird Street, P.O. Box 1679
Oroville, CA 95965

MCDONOUGH, HOLLAND & ALLEN
MARTIN McDONOUGH
555 Capitol Mall, Ste 950
Sacramento, CA 95814

GEORGE WILSON
C/O ORLAND UNIT WATER USERS ASSOC.
828 Eight Street
Orland, CA 95963

DANIEL F. GALLERY, APC
926 Jay Building, #505
Sacramento, CA 95814

Deputy Clerk