

From: George Kokkinakis [georgek@russco.com]
Sent: Wednesday, October 22, 2008 1:08 AM
To: Shockey, Charles (ENRD)
Subject: Motion to Amend Angle Decree - comments

Dear Mr.. Shockey,

It was nice speaking with you on Monday. I apologize for not getting my contact details off to you earlier, as shortly after speaking with you a package was forwarded to me from my Chico address to my Santa Maria offices and I did in fact receive the Motion to Amend the Angle Decree. Hence there is only the need for the CD your referred to in our discussion. My office mailing address is noted below.

Having read the documentation I now understand the limited intentions of the amendment are to expand the amount of irrigable land to be covered by the Angle decree and make a change in the place of use of the waters in question, subject to the limits of the taking of water prescribed by the decree.

Forgiving the layman's review of these documents, my interpretation of this amendment request is that it is the implied intention of the request to also relieve the Court of some of its burden in overseeing the administration of the Angle Decree and moving more of the burden for the administration over to the Court appointed Water Master, starting first by giving the Water Master some further authority to oversee requests for "changes in place of use" of the waters adjudicated by the courts under the Decree without having to go to the Court for each and every such request.

What is not clear are the mechanics of how and by what approval process such requests for movement in the "place of use" will take place. My assumption is that if the Court were to approve the amendment requested, that the Court is willing to further relegate to proper authority the minutia of the administration of the Angle decree. If this were to be the case, should there not as part of this Amendment, also be some application and review process format or template be presented to the Court as to how the administration in practical terms will take place?

If an administrative process to review "change in place of use" requests by the water Master is so approved by the Court; then the question will be how will the mechanics of the process be communicated to all impacted parties by the Water Master to insure that in the absence of a direct Court review of each and every request, that the action of one party to this decree to make a "change in place of use" request, will be fairly reviewed by the Water Master so as to insure that any approval of a change in place of use rendered by the Water Master's office will not cause injury to another party.

By extension then, my first question becomes one of distinguishing between a "change in place of use" and "change in place of diversion." If a party to the Angle decree makes a request to "change the place of use", is it not possible that to make such a "change in place of use", the requestor may also need to change the place from which they divert water as well?

Since the opportunity to make an amendment request is fast upon you, my second question is, should the amendment request to the Decree to allow for a "change in place of use" not also be balanced by a simultaneous request of the courts that the same parties to this Decree also have the ability to petition administratively for a "change in point of diversion?"

Perhaps, it may be important to consider in this requested amendment that upstream beneficiaries of the Angle Decree such as myself, and others who live in the upper reaches of the North Fork tributaries of Stoney Creek have similar if not more drastic environmental problems to contend with in attempting to divert water, such as annual flooding and flood damage, and destruction if not total loss of equipment impacted by raging winter water runoff conditions. Having the rights to water is invaluable to the ability to sustain our operations however the continuing viability of the point of diversion originally authorized by the Angle Decree can change for upstream and downstream users of these waters. In one of the earlier court rulings approving a "change in place of use," flooding was noted as a reason for requesting and securing a favorable "change" ruling. What was not in evidence in your documentation was whether the petitioner also had to change the "the point of

diversion" in order to render the replacement otherwise arid land parcel viable as irrigated property.

"Place of use" becomes academic when "point of diversion" cannot be achieved or economically sustained and should have the same standing as when change is needed as when "point of diversion" can be achieved but the the authorized "place of use" is no longer economically viable and needs to be changed to allow a farmer to sustain their business.

Mr.. Wilson, has been very consistent and clear about the lack of latitude under the current wording of the Decree in making requests for or securing any changes in the authorized "point of diversion" of waters under the Decree. I respect his guidance as well as his mandate from the court, however given that both Mr.. Wilson and others benefiting from the Decree now recognize that nature can and does often render man's best intentions to control and channel water unworkable; using a little common sense and applying some flexibility can fix problems as witness the common sense nature of the amendment as currently worded. Favorable changes in place of use rulings is a good thing for the beneficiaries of the ruling. Equitably, if the same situation exists over issues of point of diversion problems, similar favorable rulings, be it by the court directly or by the court's appointed administrator seem to be reasonable to expect.

My third question then is, would it not be worth considering making a one-time best use of the Court's attention by further amending the request to make it more equitable for all parties concerned with the Angle Decree?

In making such a request to amend your petition further, I would like to ask your opinion and comment as to whether further amending the petition now to give equal weight to asking the Court to approve giving the Water Master the ability to render as equally valuable any decision making authority on a request for a "change in place of use" to a request for a "change in point of diversion" following the "no harm" rule makes common sense.

Having the ability to petition the Water Master for permission to make a "change in point of diversion" on a "no harm" basis to allow a beneficiary an option to request a more reliable and more accessible and secure diversion point is as valuable to the beneficiaries of the Angle Decree as it seems is being placed on the value of the "change in place of use" for other beneficiaries.

If you would like to discuss these question directly please let me know when a good time would be for a call.

Your comments are appreciated.

Respectfully submitted.

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