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UNITED STATES DISTRICT COURT

8

FOR THE EASTERN DISTRICT OF CALIFORNIA

9

THE UNITED STATES OF AMERICA,

10

NO. CIV. S-80-583 LKK

11

Plaintiff,

12

v.

13

H.C. ANGLE, et al.,

O R D E R

14

Defendants.

15

16 This case began over ninety years ago. In 1918, the United
17 States commenced a water rights adjudication to settle the water
18 rights to the flows of Stony Creek and its tributaries in Northern
19 California. As part of the adjudication process, the United States
20 named as defendants all then-existing claimants to the subject
21 water, several hundred parties in all. The adjudication culminated
22 in the Angle Decree on January 13, 1930, which determined the
23 rights of all parties.

24

25 Pursuant to that decree, the Bureau of Reclamation receives
26 water which it uses to operate the Orland Project, which in turn
provides water that is used in irrigating agricultural lands. The

1 Bureau, now standing as plaintiff to the Angle decree, seeks to
2 modify the "place of use" provisions in the decree, to allow Orland
3 Project water to be used to irrigate somewhat different lands.

4 One successor in interest to a party to the decree, defendant
5 Michael J. Barkley, has filed an opposition to the proposed
6 amendment. In addition, defendant Barkley has filed a counter-
7 motion that argues that the entire decree is invalid, and in the
8 alternative, that the decree should be substantially modified
9 because of changed circumstances. For the reasons stated below,
10 the court grants plaintiff's motion to amend the decree, and denies
11 defendant's motion.

12 **I. BACKGROUND¹**

13 **A. The Angle Decree**

14 The Reclamation Act of 1902, 43 U.S.C. § 391 et seq., empowers
15 the federal government to acquire water rights for the reclamation
16 and irrigation of land. Pursuant to this authority, the United
17 States Bureau of Reclamation sought to exercise this authority and
18 acquire water from Stony Creek to serve the Orland Reclamation
19 Project.

20 In an action commenced in 1918, the United States, as
21 plaintiff, brought suit against several hundred defendants within
22 the Stony Creek watershed, seeking an adjudication of all parties'
23 respective water rights. The United States District Court, sitting

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25 ¹ For further background, see United States v. Angle, 760
26 F.Supp. 1366 (E.D. Cal. 1991), rev'd by Wackerman Dairy, Inc. v.
Wilson, 7 F.3d 891 (9th Cir. 1993).

1 in equity, issued its decision in 1930, in what is commonly
2 referred to as the Angle Decree. Pursuant to this decree, the
3 Bureau of Reclamation owns specific rights to water which it uses
4 in operating the Orland Project, serving the members of the Orland
5 Unit Water Users Association. The decree sets a variety of limits
6 on how this and other water can be used, including the which lands
7 may be irrigated (the Project Lands Schedule).

8 **B. The Proposed Modifications**

9 The Bureau of Reclamation, still appearing as plaintiff in
10 this suit, now seeks to modify the Project Land Schedule.
11 According to plaintiff, current irrigation practices violate the
12 Project Lands Schedule. Pl.'s Mem. Supp. Mot., 3, 7. This is
13 because some land initially included in the schedule has proven to
14 be unproductive or unirrigable, and the Bureau has allowed water
15 to be moved to more productive land. The Bureau therefore seeks
16 to modify the decree to legitimize current practice.

17 The proposed modifications would increase the total acreage
18 of lands eligible for irrigation from 21,000 acres to approximately
19 22,633 acres. However, there would be no change in the number of
20 acres actually irrigated in any given year, or in the amount of
21 water actually used.

22 Additionally, the Bureau of Reclamation proposes incorporating
23 into the decree a modified process for future modification of the
24 decree's project land schedule.

25 The propose amendments have the support of the Water Master
26 designated to oversee the decree and the Orland Unit Water Users

1 Association.

2 **C. Defendant Barkley's Allegations**

3 One defendant to the decree has filed objections to the
4 proposed amendment, along with a cross motion that seeks to vacate
5 the entire decree. This defendant, Michael Barkley ("defendant"),
6 owns property in the Stony Creek watershed upstream from the Orland
7 Project, and has inherited a water right provided in the original
8 decree.

9 The impetus behind defendant's motion is clear. As
10 exemplified by defendant himself, many upstream Stony Creek
11 property owners believe that the Angle consent decree was an
12 injustice, and that "the Government stole our water." Amended
13 Opp'n, 2. Defendant contends that in the original Angle
14 litigation, the United States sought

15 to strip water rights from all persons
16 possibly having a claim to upstream Stony
17 Creek water regardless of whether or not
18 Orland Project waters flowed past their lands.
19 Over the next 12 years Reclamation settled out
20 the few defendants with enough resources to
21 defend themselves, and then reduced all
22 possible claims through aggressive litigation
23 tactics until only a handful of upstream users
24 remained Many defendants, cowed by
25 Reclamation's aggression[,] walked away from
26 their rightful claims. Others, even after
their rights were acknowledged, walked away
from their entitlements rather than try to pay
the water master fees . . . levied during the
Depression.

24 Amended Opp'n, 3. Defendant alleges that insult was added to this
25 injury in that, although the decree allocated limited rights to
26 upstream users, these users must watch an average of 23,000 acre-

1 feet of water flow through their lands annually. Id. at 5.

2 Defendant's initial opposition memorandum recounted this
3 history, as well as subsequent "oppressive" acts taken pursuant to
4 the decree, but it contained little in the way of citation to
5 evidence and otherwise showed signs of being hastily prepared. The
6 memorandum itself acknowledged these faults, and requested an
7 opportunity to file an amended opposition. The court granted
8 defendant an additional month to file an amended opposition.
9 Defendant availed himself of this opportunity, but again concedes
10 that the opposition provides little in the way of documentation.
11 For example, defendant has provided no evidence supporting the
12 above-recounted retelling of the Angle adjudication.

13 **II. STANDARD**

14 **A. Standard for a Motion to Amend the Decree**

15 The 1930 Angle Decree provides the applicable standard of
16 review to determine whether the Decree should be amended with
17 regard to the elements of the water rights determined by the court,
18 including changes in the place of use of the water. The Decree
19 provides that:

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

25
26 Angle Decree at 175. As long as a party with decreed water rights

1 can demonstrate that the proposed change is in accordance with
2 applicable laws, then the only consideration for the court is
3 whether the change can be accomplished "without injury to the
4 rights of other parties" as defined in the decree. Absent proof of
5 injury, a party is entitled to change the place of use of its water
6 rights.

7 **B. Standard for A Motion Seeking Relief from a Judgment, Order
8 or Proceeding**

9 Defendant admits that he is unclear as to how his counter-
10 motion should be characterized. He suggests that it might be
11 brought under Fed. R. Civ. P. 60(d)(1) or (3). These provisions
12 do not themselves grant any authority to the court. Instead, they
13 note that Rule 60 does not limit a court's power to "entertain an
14 independent action to relieve a party from a judgment" or to "set
15 aside a judgment for fraud on the court." Rule 60(d)(1), (d)(3).
16 Defendant has not filed an independent action, nor has he alleged
17 fraud on the court.

18 Thus, defendant's counter-motion is instead best characterized
19 as a motion under Fed. R. Civ. P. 60(b),² which permits a court to
20 "relieve a party or its legal representative from a final judgment,
21 order or proceeding." Relief may be warranted by, inter alia,
22 fraud, misrepresentation, or misconduct by an opposing party, Rule
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25 ² Although Rule 60 was rewritten in 2007, the advisory
26 committee notes indicate that none of the amendments since 1948
have changed the substance of the rule, so the guidance provided
by prior cases interpreting the rule still applies.

1 60(b)(3),³ when applying the judgment prospectively is no longer
2 equitable, 60(b)(5), or for "any other reason that justifies
3 relief," 60(b)(6). The burden of proof is on the party bringing
4 the Rule 60 motion. Rufo v. Inmates of Suffolk County Jail, 502
5 U.S. 367, 383 (1992) (the "party seeking modification of a consent
6 decree bears the burden of establishing that a significant change
7 in circumstances warrants revision of the decree."), United States
8 v. Metro. St. Louis Sewer Dist., 440 F.3d 930, 935 (8th Cir.
9 2006) (party bringing a Rule 60(b)(3) motion must provide clear and
10 convincing evidence of fraud), Mountain Gold Properties v. City of
11 Lathrup Village, 874 F. Supp. 769, 772 (E.D. Mich. 1995) (denying
12 request to modify consent decree because Rule 60(b)(5) movant
13 failed to provide evidence supporting his claims).

14 **III. ANALYSIS**

15 **A. Counter-motion**

16 The court begins with defendant's counter-motion, because if
17 the decree is vacated, the motion to amend will become moot. As
18 noted above, defendant challenges the legitimacy of the original
19 decree, and argues in the alternative that circumstances arising
20 since the decree was adopted warrant vacating or substantially
21 modifying the decree.

22 At the outset, the court notes that defendant has standing to
23 bring this counter-motion. Defendant owns a share in a water right

25 ³ However, as discussed below, a Rule 60(b)(3) motion must be
26 brought within one year of the entry of judgment. Fed. R. Civ. P.
60(c)(1).

1 provided by the decree, as well as property in upstream Stony Creek
2 that would potentially receive additional riparian water rights if
3 the decree was vacated. See Sur-reply at 4 (citing Decree at 133,
4 134). These interests are sufficient to give rise to case or
5 controversy. Although the decree itself may prohibit defendant's
6 predecessors-in-interest, and therefore defendant himself, from
7 challenging aspects of the decree, this prohibition goes only to
8 the merits of defendant's counter-motion.⁴

9 **2. Defendant's Challenge to the Original Decree**

10 Defendant argues that the original decree misapplied
11 applicable California law, contained numerous factual errors, was
12 marred by an unjust and coercive process that precluded meaningful
13 participation by many defendants, and was otherwise inequitable.

14 The court does not address the merits of these claims, or
15 whether defendant has provided evidence to support them, because
16 the time for raising these arguments has long passed. In
17 discussing a similar adjudication of water rights, the Ninth
18 Circuit held that the resulting decree "is res judicata as to all
19 parties represented in the litigation and their privy; accordingly
20 such parties cannot seek additional rights to the [adjudicated]
21 waters." United States v. Orr Water Ditch Co., 914 F.2d 1302, 1304
22 (9th Cir. 1990) (citing Nevada v. United States, 463 U.S. 110

23
24 ⁴ The court further notes that defendant has alleged that he
25 will suffer injury from the amendment in particular, in that the
26 amendment may allow Orland Project water users to use water that
could otherwise revert to defendant, and in that the amendment
validates the continued existence of the decree. The merits of
these allegations are discussed in the opinion.

1 (1983)). Here, res judicata is not directly applicable. While
2 that doctrine bars claims that could have been adjudicated in an
3 earlier, separate suit, in this case, defendant's motion is brought
4 in the same suit that produced the original decree.⁵ C.f. Nevada,
5 463 U.S. at 113 (plaintiff brought a separate suit seeking
6 additional rights).

7 Rule 60 nonetheless encompasses similar principles.
8 Defendant's primary allegations concern misconduct on the part of
9 the United States before and during the Stony Creek adjudication.
10 Rule 60(b)(3) permits a party to seek relief from a judgment, order
11 or proceeding on these grounds, however, the motion must be brought
12 no more than a year after the entry of such order. Fed. R. Civ.
13 P. 60(c)(2). Motions brought under Rule 60(b)(5) and 60(b)(6) are
14 not subject to this one-year limit, but "must be made within a
15 reasonable time."

16 Defendant has failed to provide arguments or evidence that
17 would support the astounding conclusion that a delay of seventy-
18 eight years was reasonable. Defendant's separate allegations of
19 changed circumstances--for example, changes the population and
20 water use in the relevant counties, or identification of various
21 fresh-water aquifers--do not justify the delay in bringing the
22 claim that the decree was improper from the outset. Other factors
23 cited by defendant, such as the development of photocopiers, the

24
25 ⁵ Defendant has argued that res judicata might also prohibit
26 plaintiff's attempt to amend the decree. Res judicata in no way
limits plaintiff's ability to use the amendment procedure provided
by the decree itself.

1 advent of the internet as a tool for research, and the court's
2 adoption of CM/ECF, have reduced the cost of filing this motion
3 (and, the court hopes, furthered the inexpensive and just
4 resolution of controversies in general), but this reduction in cost
5 does not itself justify re-examining old cases. Surreply, 22.

6 Finally, defendant argues that these arguments could only be
7 raised in an opposition to another party's motion to modify the
8 decree, because Article XVII of the decree forbids defendant from
9 challenging the decree. On this, defendant is half correct.
10 Article XVII "forever enjoined and restrained" parties to the
11 decree, their successors and assigns "from asserting or claiming
12 . . . any right, title or interest in or to the waters of Stony
13 Creek or its tributaries . . . except the rights specified . . .
14 by this decree."⁶ Decree, 177-78. Because defendant argues that
15 the decree wrongfully deprived his predecessors of their water
16 rights, his claim violates this prohibition. This prohibition is
17 not relaxed or waived by plaintiff's motion to amend. Therefore,
18 rather than providing a justification for defendant's delay,
19 Article XVII provides an independent ground for denying defendant's
20 counter-motion.

21 Therefore, to the extend that defendant's counter-motion
22 argues that the decree was invalid when it was adopted, the
23 counter-motion must be denied.

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25

⁶ Plaintiffs, however, seek to invoke the amendment process
26 provided by the decree itself, and thereby do not violate Article
XVII.

1 **3. Whether Changed Circumstances Undermine the Decree**

2 The argument that changed circumstances have rendered the
3 decree inequitable presents a different set of issues. Here, the
4 running of a "reasonable time" must be measured from the onset of
5 the changed circumstances. As such, defendant's argument is not
6 obviously time barred.⁷ However, the changed circumstances
7 argument must fail on the merits.

8 The first changed circumstance identified by defendant is the
9 availability of alternate water sources and infrastructure.
10 Defendant is apparently under the impression that California enjoys
11 a surplus of water.⁸ Based on this premise, defendant argues that
12 because other sources can meet the Orland Project's need for water,
13 allocating Stony Creek water to the Orland Project is no longer
14 equitable. Because defendant has not provided evidence that such
15 a surplus exists, the court does not express an opinion as to what
16 consequences would follow from such a surplus.

17 The second changed circumstance is the series of allegedly
18 "oppressive" events performed in enforcement of the decree. As
19 plaintiff notes, defendant has not provided any evidence of six the
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23 ⁷ To determine whether these claims were time barred, the
24 court would need to determine when each of the changes in
circumstance became relevant, and determine whether the period
between that time and the present was reasonable.

25 ⁸ In this belief, defendant may be alone. See, e.g., Matt
26 Weiser, Water Watchers Cast A Wary Eye, Sacramento Bee, February
2, 2009, at page A1 (above the fold).

1 alleged events, most of which occurred prior to 1950.⁹ Each
2 particular event is described in so little detail that the court
3 cannot even evaluate the consequences that would follow from an
4 assumption that the allegations are true. Similarly, defendant has
5 not supported his allegation that the decree has been only
6 selectively enforced.¹⁰ Accordingly, defendant has not shown
7 grounds for relief from the decree.

8 **B. Motion to Amend**

9 Having concluded that defendant's challenges to the decree
10 itself fail, the court turns to plaintiff's motion to amend the
11 decree. As stated above, this motion turns on whether there are
12 harmful effects to other water users. The Orland Unit Water Users
13 Association and the water master have stated that they do not
14 believe any such harms will ensue.

15 Defendant has identified only speculative and attenuated harms
16 resulting from the proposed amendment. In essence, defendant
17 alleges that if the amendment is denied, the Orland Unit Water
18 Users Association will be less likely to use their entire allotment
19 of water, and that any surplus water will be likely to be made

20 ⁹ Defendant alleges events in 1931, 1932, 1933, 1947, 1985,
21 and 1992. Amended Opp'n, 5-6.

22 ¹⁰ The court notes that plaintiff's present motion effectively
23 concedes that users of Orland Project water are currently in
24 violation of the decree--plaintiff seeks to amend the decree "to
25 conform to current irrigation practices," rather than to permit a
prospective change in said practices. Pl.'s Mem., 1. However,
defendant has not identified any enforcement action since 1992 that
could be juxtaposed with this present leniency. Moreover,
defendant has not established that the just response to selective
enforcement, if it were shown, would be to vacate the decree.

1 available for upstream users, pursuant to California's developing
2 "local preference" laws, e.g., California Water Code Section 11460.
3 Again, defendant has failed to meet his burden in supporting this
4 argument. Although the region is undoubtedly changing, the
5 documents cited by defendant do not establish that these changes
6 will result in reduced demand for irrigation water. As to the
7 second step in defendant's argument, a proposal to amend the decree
8 is to be granted unless it would cause injury to water rights
9 provided by the decree. Decree, 175. Defendant has not argued
10 that the decree establishes any reversionary or other water right
11 for upstream users, and the proposed amendment would not impact
12 defendant's water right under the decree.

13 **C. Concluding Remarks**

14 Defendant's opposition and counter-motion are premised on the
15 belief that it would be unfair to allow the Bureau to change some
16 parts of the decree without allowing defendant to argue that other
17 parts should also be changed. The court has addressed this
18 argument in the discussion above. However, this point bears
19 repeating. Plaintiff and defendant seek strikingly different
20 things. Plaintiff seeks to make use of the decree's own procedures
21 for amendment. Defendant, on the other hand, requests changes that
22 cannot be made through this amendment procedure. As such, there
23 is no inconsistency in granting plaintiff's request for amendment
24 while denying defendant's motion. Because the reasonable time for
25 such challenges has passed, this court lacks the power to address
26 the merits of defendant's challenge to the original decree, and

1 plaintiff's amendment of the decree does not change that fact.

2 **IV. CONCLUSION**

3 For the reasons stated above, plaintiff's motion to amend the
4 Angle decree is GRANTED, and defendant's motion to vacate the
5 decree is DENIED.

6 IT IS HEREBY ORDERED THAT the plaintiff's motion to amend the
7 Angle Decree is GRANTED. To accomplish this result and ensure
8 consistency with the Angle Decree without injuring any other party,
9 the Court finds that the following portion of Article VIII, ¶ (1)
10 of the Angle Decree should be amended, with proposed additions to
11 the existing Decree language in ***bold italic*** text and proposed
12 deletions from Decree in ~~strikeout~~ text, as follows:

13 The right, by reservation and appropriation,
14 to divert 85,050 acre-feet of the waters of
15 Stony Creek and its tributaries, during each
16 irrigation season, from the natural flow in
17 said creek at the South and North Diversion
18 Dams of the Orland Project—as of the date of
19 priority of October 10, 1906, and to the
20 extent that such waters are available under
21 said priority—at a rate of diversion not
22 exceeding 279 cubic feet per second at any
23 time during the season, for the reclamation
24 and irrigation of the ~~up to~~ 21,000 acres of
25 ~~irrigable~~ ***the gross*** lands of the Orland
Project described in the Project Land 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;

1 Article VIII, ¶ (1) of the Angle Decree, as so modified to reflect
2 these changes, henceforth shall read as follows:

3 The right, by reservation and
4 appropriation, to divert 85,050 acre-feet of
5 the waters of Stony Creek and its tributaries,
6 during each irrigation season, from the
7 natural flow in said creek at the South and
8 North Diversion Dams of the Orland Project—as
9 of the date of priority of October 10, 1906,
10 and to the extent that such waters are
11 available under said priority—at a rate of
12 diversion not exceeding 279 cubic feet per
13 second at any time during the season, for the
14 reclamation and irrigation of up to 21,000
15 acres of the gross lands of the Orland Project
described in the Project Land Schedule as
appended to this Article of the decree and
made part hereof; that said schedule 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 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;

16 IT IS FURTHER ORDERED THAT the plaintiff's motion to establish
17 a process for any future annexations and changes in the place of
18 use of water rights under the Angle decree is GRANTED, as follows:

19 Reclamation shall not issue additional or new Final Water
20 Right Certificates for lands outside the Project Land Schedule, as
21 set forth in the Decree, nor shall the agency approve any
22 additional or new water right applications for such lands, without
23 first receiving the approval of this Court. In considering any
24 such matters, the parties are directed to comply with the following
25 procedures:

26 First, the party proposing the annexation shall prepare a

1 written request for annexation and submit that request to the
2 Orland Unit Water Users' Association (OUWUA) for initial review.

3 Second, OUWUA shall review any request for annexation and
4 concur with the annexation if the property is serviceable from an
5 existing or a modified Orland Project canal or lateral without
6 hindering service to other Orland Project Lands and if providing
7 water service to the property would not result in any water supply
8 shortages to the lands already within the Project.

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

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

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

25 Sixth, any objections or protests to the proposed change in
26 place of use then must be submitted to the Water Master within 60

1 days of the Water Master's filing of the notice with the court.
2 If any such protest or objection is filed, then the United States
3 would file a notice and motion with the Court to address the
4 proposed change in place of use.

5 Seventh, if no objection or protest were filed with 60 days,
6 then the United States promptly would file with the Court a
7 proposed order to amend the place of use as set forth in the
8 notice, and the Court may approve the order without a further
9 hearing. Such order would provide that the number of acres within
10 the Orland Project to which Orland Project water may be delivered
11 in any given irrigation season, including the newly annexed lands,
12 will remain capped at 21,000 acres, as prescribed in the Angle
13 Decree.

14 Finally, before Reclamation may consider issuing any
15 additional or new certificates (or approving any additional or new
16 water right applications) for lands that would otherwise increase
17 the total irrigated acreage for the Orland Project above the
18 current limit of 21,000 acres, Reclamation first would be required
19 to cancel existing certificates as necessary or practicable, within
20 the agency's discretion, to remain within the 21,000-acre Angle
21 Decree limitation. This ceiling on the total number of irrigated
22 acres would remain the responsibility of Reclamation to enforce
23 through the regular duties of the Court-appointed Federal
24 Watermaster who administers the Angle Decree.

25 IT IS SO ORDERED.

26 DATED: February 11, 2009.