

1 a water rights adjudication proceeding to settle existing water rights claims to the surface flows of
2 Stony Creek and its tributaries in northern California. *See Wackerman Dairy, Inc. v. Wilson*, 7
3 F.3d 891, 893 (9th Cir. 1993). These water rights were adjudicated and set forth in the Angle
4 Decree in 1930. *U.S. v. H.C. Angle, et al.*, No. 30, In Equity. Under the Decree, Plaintiff owns
5 specific rights to water used in operating the Orland Project, a federal reclamation project
6 designed to promote the irrigation of agricultural lands for the beneficial use of water. (Mem. of
7 P. & A. Supp. Pl.’s Mot. to Amend, ECF No. 353-1 at 1.) The place of use of these water rights
8 is regulated in the Decree under the Orland Project Land Schedule. *Id.* There is a Court-
9 established process for parties to follow for annexations and changes in place of use of water
10 rights under the Angle Decree.² (Order filed February 11, 2009, “February 2009 Order,” ECF
11 No. 295.) The Court has approved amendments to the Decree regarding changes in place of use
12 of water rights and the Orland Project Land Schedule in the past. (ECF No. 295; Order filed
13 February 24, 2014, ECF No. 343.)

14 B. Proposed Modifications

15 Plaintiff seeks to modify the place of use of water rights on certain lands described in the
16 Decree to “conform to current irrigation practices, through the annexation of six specified
17 properties, broken down by parcel, into the lands of the Orland Project.” (ECF No. 353-1 at 1.)
18 The proposed modifications would increase the total gross acreage of the lands included in the
19 Orland Project Land Schedule from approximately 22,818 acres to approximately 23,385 acres.
20 (*Id.* at 10.) These modifications have the support of the Court-appointed Water Master
21 designated to oversee the Decree and the Orland Unit Water Users’ Association (OUWUA).
22 (Decl. of Pendell, ECF No. 353-2; OUWUA Joinder, ECF No. 357.)

23 C. Defendant’s Allegations

24 Defendant filed an Opposition to Plaintiff’s Motion to Amend. (ECF No. 356.)

25 _____
26 ² Parties wishing to make amendments to the Decree must comply with certain procedures before the Court will
27 consider a motion to amend. (ECF No. 295 at 15.) These procedures include, but are not limited to, submitting a
28 written request to the OUWUA, obtaining approval by the OUWUA and the Water Master, as well as providing
notice and opportunity for objections regarding the proposed changes, and filing the motion or proposed order with
the Court. (*See id.* at 15–17.)

1 Defendant makes overarching arguments against the validity of the entire Angle Decree, yet does
2 not raise any specific concerns about the proposals presented in Plaintiff’s Motion to Amend.
3 (*See* ECF No. 356; Decl. of Barkley, ECF No. 356-1.) Rather, Defendant asks that consideration
4 of the Motion to Amend “be postponed indefinitely” until Plaintiff and the United States
5 Department of Justice perform certain acts.³ (ECF No. 356 at 2.)

6 II. STANDARDS OF LAW

7 The 1930 Angle Decree provides the applicable standard of review to determine whether
8 the Decree should be amended with regard to the elements of the water rights determined by the
9 Court, including changes in the place of use of the water. The Decree states that:

10 [A]ny of the parties to whom the rights to water have been decreed
11 herein shall be entitled, in accordance with applicable laws and
12 legal principles, to change the point of diversion and the places,
13 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.

14 (Decl. of Colella, Ex. 1, at 175, ECF No. 278.) Accordingly, as long as a party with decreed
15 water rights can demonstrate that the proposed change is in accordance with applicable laws, then
16 the only consideration for the Court is whether the change can be accomplished “without injury to
17 the rights of other parties” as defined in the Decree. Absent proof of injury, a party is entitled to
18 change the place of use for its water rights.

19 III. ANALYSIS

20 A. Defendant’s Opposition is Non-Responsive

21 As previously stated, Defendant’s Opposition fails to include the grounds upon which he
22 opposes Plaintiff’s Motion to Amend. (*See* ECF No. 356; ECF No. 356-1.) Defendant does not
23 assert or offer proof that the proposed modifications violate applicable laws and legal principles
24 or that the modifications will injure his rights as a decreed water rights holder. (*See* ECF No.
25 356; ECF No. 356-1.) Therefore, the Court finds that Defendant’s Opposition is non-responsive
26 to the issues raised in the Motion to Amend, and thus the Court rejects Defendant’s arguments.

27 ³ Defendant makes numerous other claims and requests in his Opposition and Declaration. (*See* ECF No. 356; Decl.
28 of Barkley, ECF No. 356-1.) However, the Court declines to address these points as they are not relevant to the
specific issue presented to the Court by the Plaintiff’s Motion to Amend.

1 B. Plaintiff's Motion

2 Plaintiff requests this Court amend the Angle Decree by approving the proposed changes
3 in the place of use for the decreed water rights and the annexation of six properties into the
4 Orland Project. (ECF No. 353; ECF No. 353-1; Pl.'s Reply in Supp., ECF No. 358.)

5 *i. Proposed Modifications are in Accordance with Applicable Law*

6 Under the Angle Decree, Plaintiff has the total water right of 85,050 acre-feet (af) of
7 natural flow during the irrigation season and the right to reclaim and irrigate up to 21,000 acres of
8 the gross lands of the Orland Project described in the Orland Project Land Schedule. (See ECF
9 No. 295 at 15.) The annexation of the proposed six properties would increase the total gross
10 acreage of the lands included in the Orland Project Land Schedule from approximately 22,818
11 acres to approximately 23,385 acres. (ECF No. 353-1 at 10.) However, the number of acres
12 actually irrigated per given year will remain approximately 20,597 acres per the limitation
13 imposed by Plaintiff's existing Final Water Right Certificates.⁴ (*Id.* at 11.) As such, there would
14 be no increase in the acreage receiving water for irrigation per year. Further, the proposed change
15 in the place of use of the water rights will not result in an increase in the quantity of water put to
16 beneficial use under the Angle Decree. (*Id.* at 12.) Therefore, the Court finds that the proposed
17 modifications are in compliance with the limits set forth in the Angle Decree.

18 *ii. No Injury to the Rights of Other Parties*

19 Pursuant to the February 2009 Order, Plaintiff's proposed modifications underwent review
20 by OUWUA and the Court-appointed Water Master. (ECF No. 358 at 1.) The Water Master
21 found that the annexations of the six properties would not injure the rights of any other water
22 right holder under the Decree. (ECF No. 353-2 at 2.) The manager of the OUWUA agrees with
23 the Water Master's evaluation. (Decl. of Massa, ECF No. 357-1.) Given these assessments along
24 with the finding that there will not be an increase in irrigated lands nor an increase in the quantity
25 of water used as a part of the Orland Project, the Court finds that the proposed amendments will

26 _____
27 ⁴ In order to receive Orland Project water, a landowner must obtain a Final Water Right Certificate showing the
28 landowner has repaid a proportionate share of the Orland Project's construction cost. (ECF No. 353-1 at 11.) This
certificate specifies the number of irrigable acres covered by the certificate and limits the water right to the amount of
water that can be put to the authorized beneficial use of irrigation on those acres. (*Id.* at 6.)

1 not injure the rights of other parties under the Angle Decree. Therefore, the Court finds that good
2 cause exists to GRANT Plaintiff's motion.

3 **IV. CONCLUSION**

4 For the reasons set forth above, IT IS HEARBY ORDERED THAT Plaintiff's Motion to
5 Amend is GRANTED. (ECF No. 353.)

6 The Project Land Schedule of the Angle Decree is AMENDED to annex the following
7 lands into the Orland Project:

8	NAME	SN	ACRES	LOCATION	TOTAL ACRES
9	Blair	860	14.6	NW1/4 NE1/4 Sec. 23-T22N R3W	
10			1.6	NE1/4 NW1/4 Sec. 23-T22N R3W	16.2
11	Lowe	862	7.27	NE1/4 SE1/4 Sec. 14 T22N R4W	
12			4.92	NW1/4 SW1/4 Sec. 13 T22N R4W	
13			40.18	SE1/4 SE1/4 Sec. 14 T22N R4W	
14			18.16	SW1/4 SW1/4 Sec. 13 T22N R4W	70.53
15	Orland Ranch LLC	863	40.06	SE1/4 SW1/4 Sec. 25 T22N R4W	
16			40.11	NE1/4 SW1/4 Sec 25 T22N R4W	
17			39.98	NW1/4 SE1/4 Sec. 26 T22N R4W	
18			39.96	SW1/4 SE1/4 Sec. 26 T22N R4W	
19			40.29	NE1/4 NE1/4 Sec. 26 T22N R4W	
20			40.28	SE1/4 NE1/4 Sec. 26 T22N R4W	
21			40.25	NW1/4 NE1/4 Sec. 26 T22N R4W	
22			40.23	SW1/4 NE1/4 Sec. 26 T22N R4W	321.16
23	Laurel Creek LLC	864	7.02	NW1/4 SE1/4 Sec. 11 T22N R4W	
24			37.12	SW1/4 SE1/4 Sec. 11 T22N R4W	44.14
25	Fodge	865	0.25	NW1/4 NE1/4 Sec. 6 T21N R3W	
26			3.92	NE1/4 NE1/4 Sec. 6 T21N R3W	
27			5.06	NE1/4 NE1/4 Sec. 6 T21N R3W	
28			35.26	NW1/4 NW1/4 Sec. 5 T21N R3W	

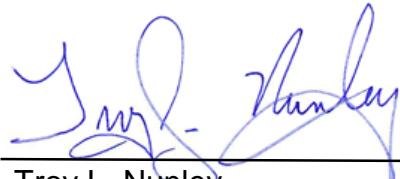
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		10.29	SW1/4 NW1/4 Sec. 5 T21N R3W	54.78
Old Colony Ranch	866	4.38	SE1/4 NE1/4 Sec. 32 T23N R4W	
		3.32	SW1/4 NW1/4 Sec. 33 T23N R4W	
		26.39	NW1/4 SW1/4 Sec. 33 T23 R4W	
		1.99	NE1/4 SW1/4 Sec. 33 T23N R4W	
		1.51	SE1/4 SW1/4 Sec. 33 T23N R4W	
		1.79	SW1/4 SW1/4 Sec. 33 T23N R4W	
		5.33	SW1/4 SW1/4 Sec. 33 T23N R4W	
		7.39	NW1/4 SW1/4 Sec. 33 T23N R4W	
		6.70	NE1/4 SE1/4 Sec. 32 T23N R4W	
		1.23	NE1/4 SE1/4 Sec. 32 T23N R4W	60.03

The number of acres within the Orland Project to which Orland Project water may be delivered in any given irrigation season, including newly annexed lands, will remain capped at 21,000 acres, as prescribed in the Angle Decree.

IT IS SO ORDERED.

Dated: February 23, 2016



Troy L. Nunley
United States District Judge