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6 | Defendant, in propria persona

FILED

SEP 26 2008

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

THE UNITED STATES OF AMERICA,)	Civil No. S-80-583-LKK [In Equity No. 30]
Plaintiff,)	DEFENDANT'S OPPOSITION TO
v.)	PLAINTIFF'S MOTION TO AMEND
H. C. ANGLE, et al.,)	ANGLE DECREE, AND
Defendants.)	DEFENDANT'S COUNTER-MOTION
)	

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO AMEND ANGLE DECREE,
AND DEFENDANT'S COUNTER-MOTION

TO PLAINTIFFS, OTHER DEFENDANTS, AND THEIR ATTORNEY'S OF RECORD:

30 Defendant Michael J. Barkley opposes Plaintiff United States of America's (that is, the
31 Department of the Interior's Bureau of Reclamation (Reclamation)) Motion scheduled in this case for
32 October 20, 2008, at 10:00 a.m., or as soon thereafter as the court's schedule permits, before the
33 Honorable Lawrence K. Karlton, in Courtroom 4, 15th Floor, of the United States District Court for
34 the Eastern District of California, Sacramento Division, located at 501 "I" Street, Sacramento,

1 California 95814, for reasons stated herein and in the attached Memorandum in Opposition and such
2 other further evidence as may be presented to the Court at the time of hearing, pursuant to L.R.
3 78-230(c) and (e), and submits his Counter-Motion in which he moves as stated below:

4 Plaintiff's motion should be rejected because it would lend further credibility to a Decree
5 that was and is fatally flawed, and for which the underlying justifications have changed and
6 subsequent conditions have changed, making the Decree both irrelevant and more harmful:

7 The Decree was based on errors and transgressions, yielding an inequitable result:

8 1) Plaintiff found no need to negotiate with upstream farmers ("There are small amounts of
9 lands irrigated along Stony Creek in the narrow valley on the upper reaches of the stream. It is not
10 expected that serious misunderstanding or litigation can result from conflict in regard to
11 the use of water." November 12, 1906 letter to Reclamation Service Chief Engineer, from D.C.
12 Henny, E.G. Hopson, S.G. Bennett in the Court's Angle archives)

13 2) Plaintiff used wrong rainfall records, used mountain records rather than relevant foothill
14 rainfall records to plan East Park reservoir; Rainbow Diversion Dam was an inadequate fix to that
15 error

16 3) Plaintiff failed to understand the wide swing in annual flow between drought and flood
17 years, 30,000 acre-feet minimum vs. 1,000,000 acre-feet maximum

18 4) with the Orland project in jeopardy, Plaintiff went looking for someone weak to take the
19 shortfall from, using force and fear, threats, intimidation, and the government's infinite deep pocket
20 to bludgeon them into submission - rather than just protecting the project's storage, Plaintiff went
21 after every parcel in the watershed

22 5) Plaintiff, and the Court's Water Masters on Plaintiff's behalf, engaged in decades of
23 oppression of upstream farmers in a manner and to a degree that no one downstream suffered,
24 leaving other downstream appropriators to take runoff denied upstream farmers, and leaving
25 upstream communities devastated

26 Changed circumstances require rejection of and reconfiguration of the Angle Decree:

1 1) Discovery of and growth in understanding the Stony Creek Aquifer - 25,000,000 acre-
2 feet of water in 1,000 feet of gravel under Orland of which at least 1/4 is fresh water, rapidly
3 replenished, with a value at Los Angeles rates of up to \$10,000,000,000. (Billion. Annually.)

4 2) Slow decline of the Orland Unit Water Users Association towards an uneconomical
5 collection of small-parcel hobby farms (per April 1992 Glenn County General Plan, Section 2.1.5)
6 wasting the water they've taken from the upstream farmers, which helps explain why Plaintiff is
7 attempting to expand the project area rather than return the water to the farmers Plaintiff took it from

8 3) approval of Reclamation funding for 42 wells into the Stony Creek Fan in 1977 (Mar.
9 21, 1977, p. 4 San Francisco Chronicle) giving Plaintiff two sources for their water

10 4) storage capacity granted Reclamation from Black Butte Dam,

11 5) construction of the Tehama-Colusa Canal, with access to three times the amount of
12 water needed to irrigate the entire Sacramento Valley, giving Plaintiff three sources

13 For these reasons and those laid out in the accompanying memorandum, Defendant
14 prays that this honorable Court will and hereby moves the Court to:

15 1) Reject Plaintiff's motion

16 2) Rejoin the State of California as a defendant inasmuch as their settlement has been lost
17 and their obligations are unclear

18 3) Set aside the Angle Decree in its entirety, or at least the enforcement of it

19 4) Set aside all appropriations downstream from Black Butte pending review

20 5) Direct Reclamation to:

21 a) assess which lands upstream from Black Butte might benefit from irrigation,
22 including by sprinkler or drip irrigation, and how much water per year would be required for such
23 irrigation and set that aside as an annual reserve

24 b) draft a plan that will ensure no downstream users or appropriators will intrude on
25 that upstream annual reserve and then reallocate the downstream appropriations, and coordinate the
26 plan with and advocate the plan with the various interested State of California agencies

c) develop the Stony Creek Aquifer to offset any deficiency in supply that the upstream annual reserve might cause, as well as to fund all that which is ordered here, and sell the excess

d) present the plan to this court, and implement the plan following approval

e) develop or improve physical works to deliver the water to those upstream lands at

Plaintiff's cost

f) evaluate the impairment in value caused irrigable upstream acreages over the decades since the decree, including annual crop impairments, and including lands taken by the Black Butte Dam project, compute the accumulated total per parcel including compound interest, and pay those sums to such heirs as can be found.

g) establish a \$50,000,000 redevelopment fund for Elk Creek, Stonyford, and Grindstone Rancheria, ignoring Newville which has disappeared as a community

5) Suspend state impediments to the development and maintenance of water storage facilities such as stock ponds within the Stony Creek watershed upstream from Black Butte.

A proposed Order is attached for the Court's consideration.

Respectfully submitted,

Michael J. Barkley, Defendant, in propria persona
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Dated: September 25, 2008

PROOF OF SERVICE

9 My name is Laura Ann Barkley. My residence address is 161 N. Sheridan Ave. #1,
10 Manteca, CA 95336. I am over the age of 18 and not a party to this action. On September 26,
11 2008 I served a copy of

16 on Plaintiff's counsel and the other 71 persons (actually, only 70) listed on p. 16 of
17 Plaintiff's Memorandum in Support, and on the two persons copied on Plaintiff's transmittal
18 letter, Andrew Hitchings and George Wilson, and on the other five persons added by
19 Defendant to Plaintiff's mailing list, list attached, by placing a true copy thereof enclosed in a
20 sealed envelope with the correct first class postage thereon fully prepaid in the United States
21 Mail at the Manteca, California Post Office addressed to each of the persons as shown on the
22 attached list.

23 I declare under penalty of perjury that the foregoing is true and correct and that this
24 declaration was executed on September 26, 2008.

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Laura Ann Barkley

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6 Defendant, in propria persona

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

14
15 THE UNITED STATES OF AMERICA,) Civil No. S-80-583-LKK [In Equity No. 30]
16
17 Plaintiff,) MEMORANDUM IN SUPPORT OF
18) DEFENDANT'S OPPOSITION TO
19) PLAINTIFF'S MOTION TO AMEND
20 v.) ANGLE DECREE,
21) AND IN SUPPORT OF
22 H. C. ANGLE, et al.,) DEFENDANT'S COUNTER-MOTION
23
24 Defendants.) DATE: October 20, 2008
25) TIME: 10:00 a.m.
26) COURT: Courtroom 4, 15th Floor

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AUTHORITIES

11	<u>A Treatise on Federal Practice, Civil and Criminal</u> , by Roger Foster, Chicago, Callaghan &
12	Company, 1920, viewed at
13	http://books.google.com/books?hl=en&id=qu89AAAAIAAJ&dq=%22A+Treatise+on+Federal+Practice%22&printsec=frontcover&source=web&ots=6JpFWRDRwP&sig=b6V1IJvcYWaCDHp09h9Q7T84Ju4&sa=X&oi=book_result&resnum=6&ct=result Page 3
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15	
16	<u>Equity and Equitable Remedies</u> , Cases and Materials, Edward D. Re, Foundation Press,
17	Mineola, N.Y., 1975 Page 10
18	
19	<u>Federal Equity Practice</u> , Vol II, By Thomas Atkins Street, Edward Thompson Company,
20	Northport, Long Island, N.Y. 1909, viewed at
21	http://books.google.com/books?id=NPo9AAAAIAAJ&pg=PA613&dq=%22federal+equity+practice%22+street+Volume+II#PPA1254,M1 Page 8
22	
23	<u>Federal Rules of Civil Procedure</u> 60(d)(1) or (3) Page 8
	<u>Federal Rules of Civil Procedure</u> 60(e) Page 8

1 I. DEFENDANT

2 Comes now Defendant Michael J. Barkley, one of several heirs to D. H. Masterson, Mrs. D.
3 H. Masterson, James Masterson, Frank (F. P.) Masterson, George Clark, Nora Clark, and possibly
4 heir or successor in interest to various other Mastersons, Clarks, Cleeks, Bedfords, and Cushman, part owner of the land being operated as Masterson Properties partnerships, with ancestry on the
5 North Fork Stony Creek dating back to before the Gold Rush, and recognizes that Plaintiff has
6 moved to re-open the Angle case and opposes Plaintiff's Motion and offers his own Counter-Motion.
7 Defendant prays the Court will forgive the hastily prepared nature of this Opposition. Plaintiff has
8 been working on its Motion for 2+ years, but Defendant only received a copy, forwarded from his
9 brother, on September 17, 2008. As it is, the bulk of this memorandum is assembled from notes
10 Defendant compiled in 2001; Plaintiff's motion to reopen the Angle case seems to be the first
11 opportunity since then that Defendant or anyone else would be allowed to bring these facts and
12 issues before the Court. Defendant is quite ready to do a better job of citation to the voluminous,
13 unindexed early Angle record, and other relevant sources and authorities should the Court grant the
14 further opportunity.

16 On p. 14 in Plaintiff's memorandum appears the language "The United States is not aware of
17 any dispute, controversy, or opposition to this proposed change from any landowner or water rights
18 holder under the Decree." All that says is that memories are short or no one is listening. A quote is
19 enlightening: "There is considerable hard feeling against the Orland Project among many of the
20 Defendant Water Users [sic], they seem to have the feeling that the Orland Project [sic] is forever
21 trying to take away from them the water allowed then [sic] in the Decree" (letter from Water Master
22 E.A. Garland dated December 6, 1963, on file in the Court's Angle archives). Being aware of
23 opposition depends on who is asked and how they are asked.

24 As he was growing up, Defendant was always curious how, on the drive out to the ranch,
25 there were so many lush green well-irrigated fields, which stopped and turned dry and sun-burnt
26 beyond Black Butte, except for one field at "Floyd Corner" irrigated from artesian wells. His

1 questions were always answered, "the Government stole our water". All of it? At times there is as
2 much as 25,000 cubic feet per second flowing past the family's North Fork Stony Creek ranches.
3 "All of it except enough to irrigate 13 acres." That was stunning. At the time, Defendant's
4 grandfather operated somewhere around 6,000 acres along that valley, with maybe 1200 irrigable, all
5 reduced to dry farming.

6 During law school, concurrent with his Equity course, Defendant learned of the Angle
7 decision and visited the archives to gain a greater understanding of the problem. He was surprised to
8 find, but should not have been, that it was a Federal Equity case. How could that be? Didn't the
9 maxims of equity apply? "He who seeks equity must do equity. The maxims enforced by other
10 courts of equity are followed by the Federal courts....", for instance (A Treatise on Federal Practice,
11 Civil and Criminal, by Roger Foster, Chicago, Callaghan & Company, 1920, Section 79a, p. 556,
12 viewed at

13 http://books.google.com/books?hl=en&id=qu89AAAAIAAJ&dq=%22A+Treatise+on+Federal+Practice%22&printsec=frontcover&source=web&ots=6JpFWRDRwP&sig=b6V1IJvcYWaCDHp09h9Q7T84Ju4&sa=X&oi=book_result&resnum=6&ct=result) Didn't this apply? or any of the other
14 maxims? Yes, it appears the maxims have fallen in disfavor as with all of Equity, but from 1918
15 through 1930, weren't they well-regarded? If so, how could Plaintiff The United States Bureau of
16 Reclamation (Reclamation) have gotten away with all that they did?

17 II. A DIFFERENT VERSION OF STONY CREEK HISTORY

18 In the Angle case, on May 28, 1918 Reclamation brought suit against a handful of riparians
19 on Stony Creek upstream of Black Butte to stop them from diverting from the creek water that their
20 client agency, the Orland Unit Water Users Association (OUWUA), felt was theirs having been
21 stored in Reclamation reservoirs upstream during winter flows for their use later in the season. But
22 the real reason was that Reclamation had used erroneous rainfall statistics for their first Orland
23 reservoir (mountain rainfall statistics instead of much-lower, foothill statistics), and then oversold
24 the Orland Project in good years. When shortages developed in bad years they sought a succession of
25
26

1 increased storages and stream appropriations to cover up their mistakes, protect their jobs, and keep
2 Reclamation from being disbanded for having fumbled the Orland Project, their first project, and in a
3 fit of greed expanded their litigation to strip water rights from all persons possibly having a claim to
4 upstream Stony Creek water regardless of whether or not O UWUA waters flowed past their lands.
5 Over the next 12 years Reclamation settled out the few defendants with enough resources to defend
6 themselves, and then reduced all possible claims through aggressive litigation tactics until only a
7 handful of upstream users remained, and only those users who could prove what they'd appropriated
8 and used were allowed any further usage under the Decree. Many defendants, cowed by
9 Reclamation's aggression walked away from their rightful claims. Others, even after their rights were
10 acknowledged, walked away from their entitlements rather than try to pay the water master fees
11 (backed up with contempt of court citations, arrest, and imprisonment) levied during the Depression.
12 Buried within the Decree is the end result of an incredibly slick and ruthless bit of Federal lawyerly
13 mischief: the Decree stripped every upstream riparian of all riparian rights, rights still enjoyed by
14 pioneering Californians on every other watershed but this one, and it recognized only actual
15 appropriations.

16 For Plaintiff's irrigation district clients, proving their appropriation and use was no problem
17 since they were the Plaintiffs and arms-length records were available - for the upstream farmers,
18 proof was a very tough task. Still, many upstream users were aided in their proofs by a 1911 report
19 from a Reclamation survey team that made a record of all upstream diversion facilities, including
20 blueprints of diversion and conveyance systems. All, that is, except any on North Fork, where no
21 such survey was made, North Fork along which Defendant's lands lay. For North Fork,
22 Reclamation's heavy handed actions were a death sentence, effectively stripping lands upstream of
23 Black Butte of water they'd enjoyed for 80 - 90 years. These upstream lands were settled in the late
24 1840s because of good arable land, plus year-round water especially at water gaps like Newville and
25 Bedford Creek on the North Fork. At one time the town of Newville was the largest town in Colusa
26 County (later split to form Tehama, Colusa and Glenn Counties). The year-round water is essential

1 for these upstream communities since temperatures reach up to 120 degrees in the shade in the
2 summer. But the upstream farmers made a fatal mistake: accustomed to year-round water over the
3 70 years since settling the Stony Creek foothill lands, they did not realize that they needed to
4 "appropriate" what was always there for them (regardless of riparian rights) and did not adequately
5 understand the coalescing forces of evil downstream. The Angle Decree led to a 70 or 80 year
6 period of oppression for this upstream region with dwindling population, economic hardship, and
7 hastened the death of the town of Newville, already waning since the railroad linked the valley
8 towns and not those in the foothills.

9 Overall the irrigable acreage upstream exceeds the size of the Orland Project, but the Decree
10 limited irrigation water upstream of Black Butte to 11,967.30 acre-feet (or 13,073.30 a-f?),
11 delivering by fiat some 100,000 to 150,000 acre-feet to the Orland Project, and the balance to
12 Glenn-Colusa Irrigation District or to flow to the Sacramento River to be picked up by other
13 appropriators who were not subjected to the arbitrary and punitive limits imposed on the upstream
14 farmers, farmers kept by Angle from gaining their own appropriations.

15 North Fork was hit hardest, though never a part of the conveyance system that Reclamation
16 originally tried to protect. With thousands of irrigable acres, and a highly seasonal stream flow of up
17 to 56,100 acre-feet, North Fork riparians were limited by the Decree to exactly 130.5 acre-feet
18 of water, to be applied to 3 specific parcels. Although there is a potential small project dam site on
19 North Fork's Salt Creek tributary at Conklin Ranch which could be supplemented by flume from
20 Thomes Creek, all but two of the Fork's riparians were stripped of their water rights by the Decree,
21 and threats of arrest and water cutoffs had a very real chilling effect on any development efforts. The
22 Salt Creek dam site is seismically questionable and would have required condemning a neighbor's
23 (or relative's) land, a tough prospect for a district as small as a Newville Irrigation District would be.
24 Newville is now gone. Subsequently U.S Army Corps of Engineers was able to take for Black Butte
25 Dam Defendant's best North Fork bottom land for pennies on the dollar compared to what it would
26 have been worth irrigated. If Reclamation had treated Defendant and his neighbors with the same

1 generosity it treated Orland, Newville and North Fork would still be alive, well-populated, and
2 economically healthy.

3 This oppression continues today with little water available even though, after the Angle
4 Decree, there is enough water for users downstream of Black Butte to do anything they might wish.
5 For those along North Fork, every year an average of 23,000 acre-feet of water flows through their
6 lands, water they are forbidden to touch. Every request they make for an appropriation is fought tooth
7 and nail by Plaintiff and their client, OUWUA. While watching downstream users enjoy their
8 abundance, Defendant is reduced to using a maximum of somewhere below 70 acre-feet, plus a few
9 expensively-regulated stock ponds, and a few low-flow water wells and springs ("seeps", actually).
10 For the rest of the upstream areas, in any given year, half or less of the 12,000 (or 13,000?) allotted
11 acre-feet is used upstream, with the rest going to Reclamation's clients as an unearned dividend of
12 their aggression, or to subsequent appropriators, but none of it is returned to those upstream farmers
13 from whom it was taken by force.

14 Examples of the oppressive activity over the past 80 years from the Court's Angle archive
15 include contempt of court filings/Arrests/Water Master cutting off water, a partial list [these are
16 included to suggest what the upstream Stony Creek farmers have suffered]:

17 --St. John Outing Club, D. E. Studybaker, Bruce H. Sutliff, M. G. Bedford, Geo. W. Lewis and Frank
18 W. Lewis, 1931, non-payment of Water Master assessments

19 --Henry Werth and Mrs. May E. Werth, 1932, diversions, barred Water Master from property, tore
20 down his signs; order for arrest; bench warrant; jail sentence suspended; probation officer requested
21 termination and discharge of probation after one year....

22 --Ben F. Provence and Jane Doe Provence, 1933, pumped water out of a ditch onto 3 acres; order for
23 arrest; bench warrant....

24 --E. A. Wright, 1947, flushing his toilet without a meter, served by a U.S. Marshall with an order to
25 appear in District Court in Sacramento with his attorney....

26 --Gary Gregory, 1985, irrigating outside of his irrigation season but inside OUWUA's season, clear

1 unequal treatment in favor of Plaintiff's client....
2 – Joseph M. Castro, 1992, needed a better measuring weir so the Water Master cut off his water....
3 All this while downstream users have diverted water far in excess of their rights under the decree,
4 see for instance unprosecuted diversions by OUWUA at lines 1 through 10 of Plaintiff's
5 Memorandum dated September 5, 2008. Similar are the contortions Colusa County had to go
6 through to provide adequate municipal water to Stonyford, and the U.S. Forest Service to serve its
7 site at Fouts Springs. No one downstream from Black Butte has been subjected to the level of
8 oppression that has been levied on those with lands upstream. It's long been understood the "chilling
9 effect" selective repression can have on otherwise legitimate commerce. The effect on upstream
10 Stony Creek farms and communities is such an example. A drive through the towns of Elk Creek
11 and Stonyford reveal the effects: they look like third-world communities, sun-blasted, dusty and
12 hopeless.

13 The last major group protest, against proposed appropriations by Reclamation of Black Butte
14 surpluses, drew an angry letter to the Court from Reclamation that the presence of upstream stock
15 ponds meant riparians were stealing Reclamation's water, and demanded actions including arrest.
16 Understanding what the loss of stock ponds would do to such agriculture as remained, the protest
17 group disappeared rather than risk such a loss. It again emphasized Reclamation's position that
18 downstream swimming pools were more important than upstream farms and ranches. Reclamation's
19 position is all the more outrageous since many multiples of alternate sources have been located since
20 the decree:

- 21 1) Tehama-Colusa Canal can yield to Orland many times the water taken from upstream users, a
22 supply recognized in a November 12, 1906 Reclamation Service report on file in the Angle case files
23 (and reproduced at "Bureau of Reclamation Project Feasibilities and Authorizations, 1957 Edition",
24 p. 682):
- 25 2) Water awarded Reclamation from Black Butte Dam was more than enough to satisfy the
26 area-of-origin/beneficial use needs of the upstream users,

1 3) discovery of the 6,700,000 acre-foot Stony Creek Fan underflow under Orland (the fresh-water
2 "flowing" part of the 25,000,000 acre-foot Stony Creek Aquifer; one of California's greatest
3 reservoirs, undeveloped, untapped) meant that Orland already had hundreds of times more water than
4 it needed at the time Reclamation took the water from Defendant, and approval of 42 wells to tap the
5 Fan in 1977 meant they could tap the supply any time they wished.

6 Faced with the responsibility of informing the Court of these alternative and fully available
7 supplies, instead of doing the right thing, instead of doing "equity" in this Federal Equity litigation,
8 Reclamation has avoided its legal and moral duties and persevered in its continuous punitive efforts
9 to starve out the upstream Stony Creek riparians. Sanctions against Reclamation are certainly in
10 order, as is setting aside the Decree and requiring Reclamation to rework it in the fashion requested
11 in Defendant's Counter-Motion.

12 Lord Chancellor Bacon's Ordinance #1 showed a clear path forward for changed
13 circumstances ("some new matter which hath risen in time after the decree"), still usable but
14 diminished somewhat in the Bill of Review in Federal Equity Practice (Federal Equity Practice, Vol
15 II, By Thomas Atkins Street, Edward Thompson Company, Northport, Long Island, N.Y. 1909, pp.
16 1253-1293, sections 2117 - 2195, viewed at
17 <http://books.google.com/books?id=NPo9AAAAIAAJ&pg=PA613&dq=%22federal+equity+practice%22+street+Volume+II#PPA1254,M1>) until abolished by Federal Rule 60(e). Did F.R. 60(d)(1) or
19 (3) provide the replacement way forward? or is there sufficient jurisdiction remaining within the
20 Angle Decree to accomplish it by modifying the method of enforcement? If there is sufficient
21 jurisdiction remaining within the Angle Decree to accommodate Plaintiff's Motion, there should also
22 be sufficient to accommodate Defendant's Counter-Motion.

23 III. SUMMARY

24 To summarize, the Angle Decree is both obsolete and in error from the beginning and it
25 should be replaced:

26 A. CHANGED CIRCUMSTANCES,

1 1) the discovery of a 6,700,000 acre-foot rechargeable underflow in the Stony Creek Fan
2 under Orland, a quantity far in excess of the reasonable use by either Orland Unit Water Users
3 Association (OUWUA) or Glenn-Colusa Irrigation District (GCID) despite Decree terms deeding it
4 to GCID.,
5 2) approval of funding for Reclamation for 42 wells into the Fan in 1977,
6 3) storage capacity granted Reclamation from Black Butte Dam,
7 4) construction of the Tehama-Colusa Canal, with access to three times the amount of water
8 needed to irrigate the entire Sacramento Valley
9 all change the circumstances under which the Decree was issued

10 B. ERRORS IN THE ORIGINAL DECREE include that

11 --it allowed appropriators to interfere unduly with riparians' reasonable use of their water
12 --it treated riparians as appropriators and appropriators as riparians, while ensuring the riparians were
13 permanently cut off from further riparian or appropriative rights.
14 --it supplanted correlative rights in an unfair and inequitable manner
15 --it allowed appropriators to attain appropriations and prescriptions by law that they had not attained
16 in fact,
17 --it allowed Reclamation to claim prescription, but did not allow prescription against Reclamation
18 --it allowed a wholesale prescription against property of every riparian in the basin except Plaintiff's
19 clients, rather than proper condemnation and compensation,
20 --it allowed Reclamation to destroy riparian rights far in excess of what would have been necessary
21 to accommodate the Reclamation project,
22 --it allowed Reclamation to divest riparian ownership in a way inconsistent with state law and
23 practice
24 --it allowed Reclamation to impose a Federal regulatory scheme on a watershed that should have
25 been left for State regulation
26 --it levied a draconian seizure upon Stony Creek riparians in a way that has been levied upon no

1 other class of Californians,

2 -it granted the Orland Project a longer irrigation season than any defendant except Hall & Scearce,

3 -it interfered with application of a more appropriate and fairer state regulatory scheme that would
4 have included considerations of area of origin and equitable/reasonable/beneficial use

5 -it did an injustice to "Equity", ignoring such equitable maxims as:

6 "He who seeks equity must do equity."

7 "He who comes into equity must come with clean hands."

8 "Equity delights to do justice and not by halves."

9 "Equity will not suffer a wrong to be without a remedy."

10 "Equity regards that as done which ought to be done."

11 "Equality is equity."

12 "Equity abhors a forfeiture."

13 (Equity and Equitable Remedies, Cases and Materials, Edward D. Re, Foundation Press, Mineola,
14 N.Y., 1975 pp. 12-14) and the "Doctrine of balance of hardships" (Re, pp. 1118 et seq.)

15 -Reclamation brought the action to cover up its own mistakes in developing the Orland Project
16 rather than to halt wrongful diversions by riparians,

17 -a fairer result would have been to order Reclamation/OUWUA to place its flow in canals between
18 East Park, Stony Gorge, and Black Butte, or even in short canals past the few diversions, rather than
19 allow it to commingle its water with that of riparians and use that as an excuse to strip riparians of
20 their rights

21 -the District Court has proven ill-equipped to administer this Decree

22 -subsequent orders and opinions from the District Court and Court of Appeals have been numerous,
23 inconsistent, and largely unpublished, leaving all Stony Creek interests unable to define their rights
24 and duties under the Decree.

25 -the June 24, 1922 settlement with the State of California has been lost, leaving the State unable to
26 define its rights and duties under the settlement, and leaving the state with a history of its own

actions and opinions violative of the Decree.

--the Decree has unfairly allowed the very same people who overdrew the watershed flow, that is, OUWUA, Reclamation, The District Court, The Water Master, Glenn Colusa Irrigation District, and other appropriators, to assert to upstream riparians that no water is available to them because the stream has been over-allocated,

–the Decree has allowed OUWUA, Reclamation, Glenn-Colusa ID, and other downstream appropriators a hidden profit by allowing them to take all waters not actually used by upstream riparians, in amounts far in excess of the awards to such downstream appropriators under the Decree and in amounts that certainly show the deception in their claims of over-allocation

–enforcement has been levied only against upstream farmers while leaving violations by downstream appropriators unpunished.

--it allowed the California State Water Rights/Resources Control Board and its predecessors to grant further appropriations for which the SWRCB does not have jurisdiction,

Defendant prays that this honorable Court will grant his Counter-Motion and deny Plaintiff's Motion.

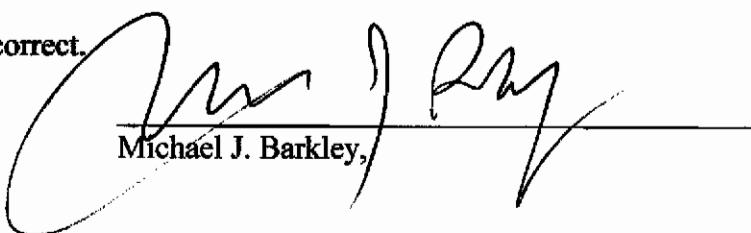
Respectfully submitted,

Michael J. Barkley, Defendant, in *propria persona*
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(209)823-4817 (no fax) mjbarkl@inreach.com

Dated: September 25, 2008

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VERIFICATION

I am a defendant in this proceeding and I researched, compiled and wrote this Memorandum. I declare under penalty of perjury that the allegations and factual contentions in this Memorandum and in the accompanying Defendant's Notice of Opposition to Plaintiff's Motion, and Defendant's Counter-Motion are true and correct, except for those submitted on information and belief and as for those I believe them to be true and correct.



Michael J. Barkley,

Dated: September 25, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

THE UNITED STATES OF AMERICA,) Civil No. S-80-583-LKK [In Equity No. 30]
Plaintiff,) ORDER DENYING PLAINTIFF'S MOTION
v.) TO AMEND ANGLE DECREE AND
H. C. ANGLE, et al.,) GRANTING DEFENDANT'S
Defendants.) COUNTER-MOTION TO RESTRUCTURE
) THE ANGLE DECREE
) [PROPOSED]

This matter is before the Court on the motion filed by the plaintiff, United States of America on behalf of the U.S. Bureau of Reclamation (Reclamation) to change the place of use of certain decreed water rights as set forth in the Angle Decree entered by the honorable Frank H. Kerrigan of this Court on January 13, 1930, and to amend the Angle Decree accordingly. The motion also seeks to establish a Court-approved process for future annexations of land to Reclamation's federal Orland Project and changes in the place of use governed by the Angle Decree.

Defendant Michael J. Barkley filed an opposition to plaintiff's motion and filed his own counter motion to restructure the decree and the water rights of the watershed.

1 The Court, having reviewed both motions and supporting documentation, the responses
2 filed to those motions, and as much of the voluminous record before the Court in this matter as
3 practicable, finds that good cause exists to DENY plaintiff's motion and GRANT defendant Michael
4 J. Barkley's counter-motion. Accordingly,

5 **IT IS HEREBY ORDERED THAT ,**

6 1) Plaintiff's motion is DENIED,
7 2) The State of California is rejoined as a defendant inasmuch as their settlement has been
8 lost and their obligations are unclear,

9 3) The Angle Decree is set aside in its entirety,
10 4) State impediments to the development and maintenance of water storage facilities such
11 as stock ponds within the Stony Creek watershed upstream from Black Butte are suspended,
12 5) All appropriations within the Stony Creek watershed downstream from Black Butte are
13 set aside,

14 6) Reclamation is ordered to:
15 a) assess which lands in the Stony Creek watershed upstream from Black Butte
16 might benefit from irrigation, including by sprinkler or drip irrigation, and how much water per year
17 would be required for such irrigation and set that aside as an annual reserve

18 b) draft a plan that will ensure no downstream users or appropriators will intrude on
19 that upstream annual reserve and then reallocate the downstream appropriations, and coordinate the
20 plan with and advocate the plan with the various interested State of California agencies

21 c) develop the Stony Creek Aquifer to offset any deficiency in supply that the
22 upstream annual reserve might cause any of the current downstream users, as well as to fund all that
23 which is ordered here, and sell the surplus as it chooses,

24 d) bring these plans back before the Court, and upon approval, implement the plans,
25 e) develop or improve physical works to deliver the water to those upstream lands
26 at Plaintiff's cost,

f) evaluate the impairment in value caused irrigable upstream acreages over the decades since the decree, including annual crop impairments, and including lands taken by the Black Butte Dam project, compute the accumulated total per parcel including compound interest, and pay those sums to such heirs as can be found,

g) establish a \$50,000,000 redevelopment fund for Elk Creek, Stonyford, and Grindstone Rancheria, ignoring Newville which has disappeared as a community

SO ORDERED this ____ day of _____, 2008.

**HONORABLE LAWRENCE K. KARLTON
SENIOR UNITED STATES DISTRICT JUDGE**

Presented by:

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